The Town of Hilton Head Island
Board of Zoning Appeals Meeting
Monday, January 24, 2011
2:30 p.m. Benjamin M. Racusin Council Chambers
AGENDA

As a Courtesy to Others Please Turn Off All Cell Phones and Pagers during the Meeting.

1. **CALL TO ORDER**

2. **ROLL CALL**

3. **FREEDOM OF INFORMATION ACT COMPLIANCE**
   Public notification of the Board of Zoning Appeals meeting has been published, posted and mailed in compliance with the Freedom of Information Act and the requirements of the Town of Hilton Head Island Land Management Ordinance.

4. **WIRELESS TELEPHONE USAGE**
   Please turn off all wireless telephones so as not to interrupt the meeting.

5. **WELCOME AND INTRODUCTION TO BOARD PROCEDURES**

6. **APPROVAL OF AGENDA**

7. **APPROVAL OF MINUTES –** December 13, 2010 Special Meeting

8. **UNFINISHED BUSINESS**
   APL100007: Request for Appeal from Chester C. Williams on behalf of Ephesian Ventures, LLC. The Community Development Department issued a letter stating revocation proceedings will not be pursued for a notice of action, approving a tabby walkway and brick areas at Edgewater on Broad Creek. The appellant contends that the Community Development Department erred in its decision and is requesting that town staff be directed to institute proceedings to revoke the notice of action. *Presented by: Nicole Dixon*

   APL100010: Request for Appeal from Chester C. Williams on behalf of Ephesian Ventures, LLC. The Community Development Department issued a letter stating that an appeal application filed by the appellant should not be heard by the Planning Commission since the subject of the appeal was an administrative determination. The appellant contends that the Community Development Department erred in its decision and is requesting that town staff be directed to accept the previously submitted appeal to the Planning Commission. *Presented by: Nicole Dixon*

9. NEW BUSINESS

None

10. BOARD BUSINESS

11. STAFF REPORT

Waiver Report - *Presented by: Nicole Dixon*

12. ADJOURNMENT

TOWN OF HILTON HEAD ISLAND
Board of Zoning Appeals
Minutes of the Monday, December 13, 2010 Special Meeting
11:00am – Benjamin M. Racusin Council Chambers **DRAFT**

Board Members Present:	Chairman Roger DeCaigny, Vice Chairman Peter Kristian, Alan Brenner, Jack Qualey, Stephen Murphy and Bob Sharp
Board Members Absent:	Michael Lawrence
Council Members Present:	Bill Ferguson, Bill Harkins and George Williams
Town Staff Present:	Nicole Dixon, Senior Planner & Board Coordinator Anne Cyran, Senior Planner; Gregg Alford, Town Attorney; Brian Hulbert, Board Attorney Kathleen Carlin, Board Secretary

1. CALL TO ORDER

Chairman DeCaigny called today's special meeting to order at 11:00am.

2. ROLL CALL

3. INTRODUCTION TO BOARD PROCEDURES

Chairman DeCaigny stated the Board's procedures for conducting today's meeting.

4. APPROVAL OF THE AGENDA

Vice Chairman Kristian made a **motion** to approve the agenda as presented. Mr. Qualey **seconded** the motion and the motion **passed** with a vote of 6-0-0.

5. APPROVAL OF THE MINUTES

Vice Chairman Kristian made a **motion** to **approve** the minutes of the October 25, 2010 meeting as presented. Mr. Sharp **seconded** the motion and the motion **passed** with a vote of 5-0-1. Mr. Qualey abstained from the vote due to his absence from the meeting.

6. UNFINISHED BUSINESS

*** APL100007**: Request for Appeal from Chester C. Williams on behalf of Ephesian Ventures, LLC. The Community Development Department issued a letter stating revocation proceedings will not be pursued for a notice of action, approving a tabby walkway and brick areas at Edgewater on Broad Creek. The appellant contends that the Community Development Department erred in its decision and is requesting that Town staff be directed to institute proceedings to revoke the notice of action.

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<u>* APL100010</u>: Request for Appeal from Chester C. Williams on behalf of Ephesian Ventures, LLC. The Community Development Department issued a letter stating that an appeal application filed by the appellant should not be heard by the Planning Commission since the subject of the appeal was an administrative determination. The appellant contends that the Community Development Department erred in its decision and is requesting that town staff be directed to accept the previously submitted appeal to the Planning Commission.

* Ms. Nicole Dixon reported that the applicant has requested that the review of the above two applications (APL100007 and APL100010) be postponed to the January 24, 2011 meeting. Ms. Dixon stated that the Board needs to approve the applicant's request for postponement.

The Board discussed the request for postponement. Following their discussion, Vice Chairman Kristian made a **motion** to **approve** the applicant's request to postpone the review of APL100007 and APL100010 to the January 24, 2011 meeting. Mr. Brenner **seconded** the motion and the motion **passed** with a vote of 6-0-0.

7. NEW BUSINESS

Public Meeting

<u>APL100013</u>: Request for Appeal from Chester C. Williams on behalf of St. James Baptist Church. The Community Development Department issued a Tree Approval to Beaufort County allowing tree pruning and removal in the approach slopes on the north end of airport property. The appellant contends that the Tree Approval letter was issued improperly and is requesting that the letter be declared void.

Ms. Annie Cyran, case manager, presented opening comments and then introduced Gregg Alford, Town Attorney. Mr. Alford made the presentation on behalf of the Town. Mr. Alford began his presentation with background details related to the jurisdictional issue. The question is whether or not the Board of Zoning Appeals *or* the Planning Commission has the authority and ability to hear the case. The second issue concerns the validity of the Town's Ordinance.

Mr. Alford stated that it is the duty of the Board of Zoning Appeals to interpret and analyze how the staff has dealt with an applicant in light of the existing Ordinance. The State Enabling Legislation does not permit the Board of Zoning Appeals to go back and question whether or not an Ordinance is valid.

Mr. Alford stated that the primary premise of the appeal is that the Town's Ordinance is defective, and that proper notice was not followed. The applicant would like the Board to ignore the amendment that was made by Town Council to the Overlay District, which the Board is not permitted to do. Mr. Alford stated that he believes the LMO Administrator properly interpreted the Town's Ordinance.

The Board and Mr. Alford discussed several issues including the applicant's remedy (Circuit Court), adequate notice requirements, and proper notification to the Catawba Indian Nation. Mr. Alford stated that the Ordinance has nothing to do with the permit being issued. The applicant's notice questions are attempts to invalidate Town Council's amendment to the

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Ordinance. Mr. Alford stated that the applicant (St. James Baptist Church) has had ample opportunity to review the file since the application was submitted in September 2010.

Following this presentation, Mr. Alford introduced Ms. Mary Lohr, a representative of Beaufort County. Mr. Alford requested that the Board allow statements from Ms. Lohr to be heard. Chairman DeCaigny and the Board agreed to the request. Chairman DeCaigny stated that a motion on the request is not required.

Ms. Lohr stated that Beaufort County is the applicant for the tree permit. Ms. Lohr discussed several issues including the approval of the Catawba Indian Tribe. Ms. Lohr stated that she agrees with the arguments presented by Mr. Alford concerning the validity of the Ordinance.

Ms. Lohr stated that these types of arguments are non-issues because legislative questions need to be addressed by the Circuit Court. Ms. Lohr discussed the time limit imposed upon Beaufort County and the urgency to move forward with the application. Today's appeal is the only item holding up this process.

The Board and Ms. Lohr discussed the issue of safety with regard to the need to remove trees rather than just trim or prune the trees. Ms. Lohr stated that Beaufort County is adopting the Town's submittal with regard to positions taken in the application for appeal. Following Ms. Lohr's presentation and discussion by the Board, Chairman DeCaigny requested that the applicant make their presentation.

Chester C. Williams, Esq., attorney for St. James Baptist Church, made the presentation on behalf of his client. Mr. Williams stated that St. James Baptist Church is the applicant in the appeal. Beaufort County is the applicant under the tree permit. However, Beaufort County is a necessary party to the appeal. Mr. Williams presented statements with regard to the notice issue and the rezoning issue.

Mr. Williams read from State Code Section 629-760 (D) regarding the procedure for the enactment or the amendment of a zoning regulation or map. Mr. Williams claimed that the Town did not comply with the required notice requirements. Therefore, the 60-day period has not yet started running, and the validity of Ordinance No. 2010-03 is open for discussion.

Mr. Williams claimed that it is improper for the Town staff to enforce an invalid Ordinance, and the BZA should not be expected to follow it. Mr. Williams stated that the BZA, under the State Enabling Act, has the authority to make Findings of Fact and Conclusions of Law. Mr. Williams claimed that the Town did not comply with the notice requirements in enacting Ordinance No. 2010-03. Mr. Williams presented statements regarding the issue of safety and the County's desire to remove trees instead of pruning them. Mr. Williams also presented statements regarding the jurisdictional issue. The question is whether this is a Board of Zoning Appeals zoning decision or a Planning Commission land development decision.

The Board stated that the jurisdictional issue should be addressed first and then the substantive issue should be addressed. The Board and Mr. Williams discussed the issue of jurisdiction to determine whether or not the permit was properly issued by the Town. The Board and Mr. Williams discussed the issue of the completeness of today's application.

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Vice Chairman Kristian stated that the Board must first determine if they have jurisdiction before moving forward. Chairman DeCaigny requested that a motion on jurisdiction be made.

Mr. Brenner made a **motion** that the Board of Zoning Appeals **has jurisdiction** to determine the completeness of the County's application for a permit to cut and remove trees from the airport runway areas. Vice Chairman Kristian **seconded** the motion. Mr. Gregg Alford requested clarification on the motion. Mr. Alford stated that the jurisdictional question before the Board today does not relate to the completeness issue. The issue before the Board is whether or not the BZA has jurisdiction to hear this appeal (which relates to the propriety of the issuance of the permit). Brian Hulbert, Esq., Board Attorney, stated his agreement with these comments and requested that the motion be amended.

Mr. Brenner **amended** his motion to state that the Board of Zoning Appeals **has subject matter jurisdiction** to hear the appeal presented before the Board today by St. James Baptist Church. Vice Chairman Kristian **seconded** the motion. To clarify the motion, Vice Chairman Kristian recommended that Mr. Brenner withdraw his original motion. Vice Chairman Kristian stated that he will then withdraw his second to the original motion. This way there will be only one motion to vote on.

Mr. Brenner agreed and **withdrew** his **original motion** with respect to **jurisdiction**. Vice Chairman Kristian **withdrew** his **second** to the original motion. Chairman DeCaigny stated that no vote on the motion is necessary. Chairman DeCaigny requested that Mr. Brenner re-state his new motion for the record.

Mr. Brenner made a **motion** that the BZA is the proper body**,** and **has jurisdiction**, to hear the appeal by St. James Baptist Church related to the approval given to Beaufort County, South Carolina, to remove and prune trees on the property of the Hilton Head Island Airport. Vice Chairman Kristian **seconded** the motion.

Chairman DeCaigny stated that the Board will take a brief recess to allow Mr. Brenner time to meet with Ms. Kathleen Carlin, Board Secretary, to prepare the motion for overhead review and discussion. Following this break, the Board reviewed the prepared motion. The Chairman then called for a vote on the motion, and the motion **passed** with a vote of 6-0-0.

For the record, Chester C. Williams, Esq., stated his opposition to the form of the motion. Mr. Williams claimed that the motion is improper because it did not contain the required Findings of Fact and Conclusions of Law.

Vice Chairman Kristian stated that the Board should discuss the issue of whether or not the Board has the authority to judge whether an Ordinance adopted by the Town of Hilton Head Island is valid or not.

Mr. Williams claimed that the Town's response to his original application does not meet the required rules with respect to required Findings of Fact and Conclusions of Law. The Board discussed the issue of case law with Mr. Williams. Vice Chairman Kristian stated that the Board of Zoning Appeals is not the proper place for this discussion because it is the Board of

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Zoning Appeals' duty to interpret the Ordinances and not render judgments over whether or not they are validity adopted.

Mr. Brenner stated that he has researched this issue and he has not been able to find anything in State or local law that gives the Board of Zoning Appeals the express right to determine the constitutionality of an Ordinance or if an Ordinance is valid or not.

Mr. Qualey and Mr. Williams discussed the issue of the required Findings of Fact and Conclusions of Law and the power by the BZA to render a decision on a Town Ordinance. The Board and Mr. Williams also discussed notice requirements. At the completion of the discussion, Chairman DeCaigny requested that a motion be made.

Mr. Qualey made a **motion** that the Board of Zoning Appeals **does not** have the power or the authority to pass on the constitutionality or validity of the Town's Ordinance in question in this appeal based on South Carolina Code Sec. 6-29-800 (A) which contains a list of the powers of a Board of Zoning Appeal and based on Town Code Sec. 16-2-305 which also contains a list of the limited powers of the Board of Zoning Appeal. Vice Chairman Kristian **seconded** the motion.

Chairman DeCaigny stated that the Board will take a brief recess to allow Mr. Qualey time to meet with Ms. Kathleen Carlin, Board Secretary, to prepare the motion for overhead review and discussion. Following this break, the Board reviewed and discussed the motion. Chairman DeCaigny then called for a vote and the motion **passed** with a vote of 6-0-0.

As a point of clarification, Mr. Qualey stated that the Findings of Fact leading to his motion is that there are express limitations on the powers of Boards of the Zoning Appeals in State and local ordinances; and that it is based upon those facts that (I) made the motion that we conclude as a matter of law that this body (the Board of Zoning Appeals) does not have the power or the authority to make a decision as to the constitutionality or the validity of the Ordinances that is of issue in this appeal. Following these comments, Chairman DeCaigny stated that the Board will now proceed with the next order of business. Chairman DeCaigny requested that Mr. Williams make his presentation.

Mr. Williams requested that the Board refer back to his original appeal submission and the supplemental brief submitted on December 10, 2010. Based on the ruling that was just made, Mr. Williams stated that he will forgo any further discussion on the issue concerning the validity of the Ordinance. With respect to completeness of the application, however, Mr. Williams claimed that the Town's LMO Administrator did not follow proper procedures with regard to obtaining required permits and approval. Permits were received from the Army Corps of Engineers and DHEC.

The Board and Mr. Williams discussed the approval of the Catawba Indian Nation. The Board and Mr. Williams also discussed LMO requirements for the tree permit application. Mr. Williams claimed that the application does not comply with the provisions of the LMO as enacted by Ordinance 2010-03 (regarding Base Zoning District vs. Overlay Zoning District).

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The Board and Mr. Williams discussed the distinction between the Base Zoning District and the Overlay District, particularly with regard to the Airport Overlay Zoning District.

Regarding the adoption of the Ordinance itself, Mr. Qualey stated that the Board of Zoning Appeals is not here to deal with the intent of the Ordinance. Mr. Williams stated that the issue is whether or not the permit was valid when issued.

Gregg Alford, Esq., presented statements regarding the legal and the factual basis necessary for the BZA to deal with these issues. Mr. Alford stated that other than the validity of the Ordinance, and the jurisdictional question, there isn't much left to consider.

Mr. Alford stated that the Town's response (submitted by Curtis Coltrane, Esq.,) addresses the applicant's issues. The issues are clear with respect to the arguments that deal with both jurisdiction and the Code. Mr. Alford stated that this is not a rezoning issue.

Following final discussion, Chairman DeCaigny requested that a motion be made. Mr. Qualey made a **motion** that the Board of Zoning Appeals **affirm the action** of the Administrator in issuing the Tree Approval Letter and **deny** the **appeal** based upon the Board's determination that the appellant has not met the burden of proving that the issuance of the Tree Approval Letter was improper, based on the application of Town Code Sec. 16-4-403(C), and based upon the application of Town Ordinance 2010-03. Vice Chairman Kristian **seconded** the motion.

Chairman DeCaigny stated that the Board will take a brief break to enable Mr. Qualey time to meet with Ms. Kathleen Carlin, Board Secretary, to prepare the motion for overhead review and discussion. Following this break, the Board reviewed and discussed the motion. Chairman DeCaigny then called for a vote and the motion **passed** with a vote of 6-0-0.

8. BOARD BUSINESS

None

9. STAFF REPORT

1) Ms. Dixon stated that there are no Waivers to report.
2) Ms. Dixon distributed copies of the adopted Rules of Procedures.
3) Ms. Dixon distributed a memo from Brian Hulbert, Esq., regarding ex-parte communications. Mr. Hulbert presented statements in support of the memo.

Prior to the adjournment of today's business meeting, Brian Hulbert, Staff Attorney, and Gregg Alford, Town Attorney, presented statements to the Board regarding the Town's official Notice of Action resulting from the Board's determination on today's appeal. The Board stated that the usual procedure for a Notice of Action should be followed.

10. ADJOURNMENT

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The meeting was adjourned at 1:00pm.

Submitted By:	Approved By:
_____	_____
Kathleen Carlin	Roger DeCaigny
Board Secretary	Chairman

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TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Board of Zoning Appeals
FROM: Nicole Dixon, *Senior Planner and Board Coordinator*
VIA: Teri B. Lewis, *AICP, LMO Official*
DATE January 5, 2011
SUBJECT: APL100007 - Edgewater

Staff has received an appeal from Chester C. Williams on behalf of Ephesian Ventures, LLC, regarding the July 28, 2010 letter stating the Town of Hilton Head Island will not take steps to revoke a Notice of Action for XDPR100013, which permits a tabby walkway and brick areas at Edgewater on Broad Creek.

The appellant is appealing this decision and asking that the Board reverse the decision of the LMO Official and find that the Notice of Action should be revoked. The record as attached consists of the following documents: Appeal Application, Appellant's Narrative titled Attachment 1, Determination Letter titled Exhibit A, XDPR100013 File and Notice of Action titled Exhibits B & C, Deed Information titled Exhibit D, and Other Letters from the Town and Appellant titled Exhibits E-J. We reserve the right to submit additional items in connection with this appeal.

If you have any questions, feel free to contact Nicole Dixon at 341-4686 or nicoled@hiltonheadislandsc.gov.

Town Government Center ♦ One Town Center Court ♦ Building C
Hilton Head Island ♦ South Carolina ♦ 29928
843-341-4757 ♦ (FAX) 843-842-8908

LAW OFFICE OF
CHESTER C. WILLIAMS, LLC
17 Executive Park Road, Suite 2
Post Office Box 6028
Hilton Head Island, SC 29938-6028
Telephone (843) 842-5411
Telefax (843) 842-5412
Email Firm@CCWLaw.net

Chester C. Williams
ALSO MEMBER LOUISIANA BAR

Thomas A. Gasparini
ALSO MEMBER CALIFORNIA BAR
(Inactive)
ALSO MEMBER OHIO BAR
(Inactive)

August 9, 2010

HAND DELIVERED
and
VIA EMAIL TO TeriL@HiltonHeadIslandSC.gov

Teri B. Lewis, AICP
LMO Official
Town of Hilton Head Island
One Town Center Court
Hilton Head Island, SC 29928

RE: Appeal of Administrative Determination Regarding Revocation of Notice of Action on Expedited Development Plan Review Application No. XDPR100013 – Our File No. 01505-005

Dear Teri:

We are pleased to deliver to you herewith for filing with the Town's Board of Zoning Appeals our appeal on behalf of our client, Ephesian Ventures, LLC, regarding the administrative determination made in your July 28, 2010 letter to us. Also enclosed is our check for $100.00 payable to the Town for the required filing fee for this appeal.

By way of his copy of this letter, we advise Roger A. DeCaigny, the Chairman of the Board of Zoning Appeals, of our filing of this appeal to the Board of Zoning Appeals on behalf of Ephesian Ventures, LLC.

Because Edgewater on Broad Creek Owners' Association, Inc. is the permittee under Expedited Development Plan Review Application No. XDPR100013, it may be a necessary party to this appeal. By way of his copy of this letter, we serve a copy of our appeal on Michael W. Mogil, Esq., the attorney for Broad Creek Owners' Association, Inc.

Please let us know if you, your staff, or the Board of Zoning Appeals require any further information from or on behalf of our client with respect to this appeal or the enclosed motion.

With best regards, we are

Very truly yours,

LAW OFFICE OF CHESTER C. WILLIAMS, LLC

Chester C. Williams

CCW:skt

Enclosures

cc: Mr. Roger A. DeCaigny
Michael W. Mogil, Esquire
Gregory M. Alford, Esquire

Town of Hilton Head Island

Community Development Department
One Town Center Court
Hilton Head Island, SC 29928
Phone: 843-341-4757 Fax: 843-842-8908
www.hiltonheadislandsc.gov

FOR OFFICIAL USE ONLY
Date Received: _____
Accepted by: _____
App. #: APL_____
Meeting Date: _____

Applicant/Agent Name: Epehsian Ventures, LLC Company: Chester C. Williams, Attorney for the Applicant
Mailing Address: Post Office Box 6028 City: Hilton Head island State: SC Zip: 29938
Telephone: 843-842-5411 Fax: 843-842-5412 E-mail: Firm@CCWLaw.net

APPEAL (APL) SUBMITTAL REQUIREMENTS

Digital Submissions may be accepted via e-mail by calling 843-341-4757. The following items must be attached in order for this application to be complete:

- ✓ A detailed narrative stating the Town Official or Body the made the decision, the date of the decision you are appealing, the decision you are appealing, the basis for your right to appeal, the grounds of the appeal, and citing any LMO Section numbers relied upon; **and** a statement of the specific decision requested of the Board of Zoning Appeals. See Attachment 1
- ✓ Any other documentation used to support the facts surrounding the decision. See Attachment 1
- ✓ Filing Fee - $100.00 cash or check made payable to the Town of Hilton Head Island.

To the best of my knowledge, the information on this application and all additional documentation is true, factual, and complete. I hereby agree to abide by all conditions of any approvals granted by the Town of Hilton Head Island. I understand that such conditions shall apply to the subject property only and are a right or obligation transferable by sale.

I further understand that in the event of a State of Emergency due to a Disaster, the review and approval times set forth in the Land Management Ordinance may be suspended.

Applicant/Agent Signature: _____ Date: August 9, 2010
Chester C. Williams, Attorney for the Applicant

STATE OF SOUTH CAROLINA	)	**BEFORE THE BOARD OF ZONING APPEALS OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA**
	)	
COUNTY OF BEAUFORT	)	**REQUEST FOR APPEAL NO. APL10000_____**

ATTACHMENT 1
TO THE APPEAL APPLICATION OF
EPHESIAN VENTURES, LLC

NARRATIVE

I. RESERVATION OF RIGHTS

Nothing in this Attachment 1 or the Request for Appeal to which it is attached should be construed or interpreted as an admission by Ephesian Ventures, LLC that jurisdiction lies with the Board of Zoning Appeals of the Town of Hilton Head Island for all of the issues presented herein. This appeal to the Board of Zoning Appeals is being filed with the LMO Official in case the LMO Official refuses to accept for filing an appeal by Ephesian Ventures, LLC to the Planning Commission that is substantially similar to this appeal. Ephesian Ventures, LLC believes that jurisdiction to hear some, if not all, of the issues raised in this appeal may lie with the Planning Commission, and not with the Board of Zoning Appeals.

II. INTRODUCTION

This Attachment 1 is part of the Request for Appeal (this "Appeal") filed by Ephesian Ventures, LLC ("Ephesian") in connection with the letter from Teri

B. Lewis, AICP, the LMO Official for the Town of Hilton Head Island (the "Town"), to the undersigned Chester C. Williams dated July 26, 2010 (the "07/26/10 Letter")[1] by which Mrs. Lewis has declined to institute revocation proceedings for the Notice of Action dated April 15, 2010 (the "Notice of Action") on Expedited Development Plan Review Application No. XDPR100013 (the "XDPR Application")[2] filed on April 12, 2010 on behalf of Edgewater on Broad Creek, HPR (the "Edgewater HOA"). The Notice of Action[3] purports to permit the construction of a tabby pathway on property which is subject to restrictive covenants and easements and other rights held by Ephesian. This Narrative is submitted to the Town as part of this Appeal, for inclusion in the record of this Appeal, and for review by the Town's Board of Zoning Appeals (the "BZA").

Ephesian owns a 16.01 acre tract adjacent to the property of Edgewater on Broad Creek Horizontal Property Regime (the "Regime"). The Regime was created by the recording of the Master Deed Establishing the Edgewater on Broad Creek Horizontal Property Regime (Phase I) on December 31, 2002 in Beaufort County Record Book 1689 at Page 574 (the "Master Deed").[4] The Master Deed submitted 7.64 acres of the Edgewater on Broad Creek property (the "Regime Property") to the provisions of the South Carolina Horizontal Property Act, Section 27-31-10, *et seq.* of the Code of Laws of South Carolina (1976), as amended (the "SC Code"). Ephesian is the owner of property at Edgewater on Broad Creek (the "16.01 Acre Tract") <u>not</u> included in the Regime Property.

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[1] A copy of the 07/26/10 Letter is attached to this Narrative as Exhibit A.

[2] A copy of the XDPR Application is attached to this Narrative as Exhibit B.

[3] A copy of the Notice of Action is attached to this Narrative as Exhibit C.

[4] The Master Deed as recorded, including all exhibits, is 91 pages. Ephesian has previously provided copies of the Master Deed to the Town Staff. Because of the size of the document, a copy of the Master Deed is not attached to this Narrative as an exhibit; however, Ephesian will have a copy of the Master Deed available at the hearing of this Appeal, and will readily provide a copy to any member of the BZA upon request.

Ephesian acquired the 16.01 Acre Tract by way of that certain deed from the Trustee in Bankruptcy for Broad Creek Edgewater, LP recorded on July 7, 2008 in Beaufort County Record Book 2742 at Page 2049.[5] Ephesian's deed also conveys to Ephesian the rights of the Declarant under the Master Deed and numerous reserved easements and other interests in the Regime Property, as more fully discussed below.

The Regime Property is designated as Beaufort County tax parcel R510-011-000-0177-0000, and the 16.01 Acre Tract is designated as Beaufort County tax parcel R510-011-000-0004-0000.

This Appeal seeks to reverse the decision of the LMO Official to refuse to institute revocation proceedings under Section 16-63-301(C) of the Town's Land Management Ordinance (the "LMO") regarding the Notice of Action. The 07/26/10 Letter says that the administrative determination contained therein may be appealed to the BZA.

III. BACKGROUND

On or about April 9, 2010, the Edgewater HOA started site work and construction of a tabby pathway on a portion of the Regime Property, without seeking the consent of Ephesian for such work. That same day, Nicole Dixon, Planner for the Town, on behalf of the Town, ordered that such site work and construction activities cease until the proposed work was properly permitted by the Town. Ephesian believes that, as a result of the Town's stop work order, the XDPR Application was filed with the Town on April 12, 2010.

By way of a letter to Ms. Dixon on April 15, 2010, the undersigned, on behalf of Ephesian, asked that Ms. Dixon provide Ephesian with notice of the filing of the XDPR Application, specifically for the purpose of reviewing the XDPR Application for compliance with applicable restrictive covenants.[6]

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[5] A copy of Ephesian's deed is attached to this Narrative as Exhibit D.

[6] A copy of the April 15, 2010 letter to Ms. Dixon is attached to this Narrative as Exhibit E.

However, Ephesian was not advised by Ms. Dixon of the filing of the XDPR Application until the undersigned received an email from Ms. Dixon on April 20, 2010,[7] in which Ms. Dixon advised the undersigned of the issuance of the Notice of Action. The undersigned and Ephesian did not receive copies of the XDPR Application and the Notice of Action until they were obtained from a review of the Town's file on the XDPR Application on April 26, 2010.

By way of a letter to Teri B. Lewis, AICP, the Town's LMO Official, on April 28, 2010, Ephesian, through the undersigned, notified the Town that the XDPR Application contained factual inaccuracies and was improperly issued.[8] That letter identified Ephesian as the holder of the rights of the Declarant (the "Declarant Rights") under the Master Deed by way of the Ephesian Deed, advised Mrs. Lewis and the Town of certain rights reserved under the Master Deed to the Declarant and held by Ephesian, further advised Mrs. Lewis and the Town of restrictive covenants contained in the Master Deed that are applicable to the Regime Tract, and informed the Town that the restrictive covenants applicable to the Regime Tract are contrary to, conflict with, or prohibit the activity permitted by the XDPR Application and the Notice of Action.

On April 30, 2010, in her letter to IMC Resort Services, Inc., the Edgewater HOA's agent on the XDPR Application,[9] Mrs. Lewis, rescinded the Notice of Action, stating:

> The Notice of Action has been rescinded and the project denied based on discovery that <u>misinformation was provided by you</u> as part of the application. After further review by the Town's attorney, the <u>proposed project is in violation of the Master Deed</u>

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[7] A copy of the April 20, 2010 email from Ms. Dixon is attached to this Narrative as Exhibit F.

[8] A copy of the April 28, 2010 letter to Ms. Lewis (without the two enclosures, which are the Master Deed and Ephesian's deed) is attached to this Narrative as Exhibit G.

[9] A copy of Mrs. Lewis' April 30, 2010 letter to IMC Resort Services, Inc. is attached to this Narrative as Exhibit H.

> Establishing the Edgewater on Broad Creek Horizontal Property Regime (Phase 1). According to information contained in the deed, Ephesian retains all rights that went with the property transfer as part of the bankruptcy. South Carolina Code of Laws (Section 6-29-1145(B)(3)) prohibits the issuance of permits and approvals if they are contrary to the restrictive covenants. Therefore, prior to the review of any subsequent applications, you must receive written approval from Ephesian based on requirements in the recorded covenants and submit it as part of your applications. (Emphasis added.)

On May 19, 2010, the Edgewater HOA filed an appeal of the rescission of the Notice of Action; however, on June 25, 2010 Mrs. Lewis advised the Edgewater HOA by her letter of that date that her rescission of the Notice of Action was improper under LMO Section 16-3-310(C), and that the rescission of the Notice of Action would be held in abeyance.[10] Based on Mrs. Lewis' withdrawal of her rescission of the Notice of Action, the Edgewater HOA's appeal was rendered moot, and the Notice of Action is still effective.

By way of a letter dated July 8, 2010, the undersigned, on behalf of Ephesian, requested that Mrs. Lewis, as the LMO Official, institute revocation proceedings regarding the Notice of Action under LMO Section 16-3-301(C) on the basis that the XDPR Application contained a material misrepresentation by the landowner or its agent.[11] Thereafter, Mrs. Lewis declined to institute the requested revocation proceedings in the 07/26/10 letter.

Ephesian alleges that Mrs. Lewis, as the LMO Official, has a duty to enforce the provisions of the LMO, and that duty imposes on her an obligation to institute revocation proceedings regarding the Notice of Action if, in fact, she believes the XDPR Application contains misinformation that is a material misrepresentation by the landowner or its agent. To that end, Ephesian now

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[10] A copy of Mrs. Lewis' June 25, 2010 letter to IMC Resort Services, Inc. is attached to this Narrative as Exhibit I.

[11] A copy of the July 8, 2010 letter from the undersigned to Mrs. Lewis is attached to this Narrative as Exhibit J.

seeks an order of the BZA directing Mrs. Lewis to institute the requested revocation proceedings.

IV. APPEALS OF ADMINISTRATIVE DECISIONS

Under applicable state law, Section 6-29-340(B) of the Code of Laws of South Carolina (1976), as amended (the "SC Code"), which is part of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (the "State Enabling Act"), charges the Planning Commission with the power and duty to, among other things, prepare and recommend for adoption to the Town Council regulations for the subdivision or development of land, and appropriate revisions thereof, and "to oversee the administration of the regulations that may be adopted [by the Town] as provided in [the State Enabling Act]". Section 6-29-800(A)(1) of the State Enabling Act grants the BZA the power "to hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the [Town's] zoning ordinance"; and SC Code Section 6-29-800(B) provides that appeals to the BZA may be taken by any person aggrieved.

Notwithstanding the fact that the 07/26/10 Letter says that the administrative determination contained therein may be appealed to the BZA, Ephesian believes that the Town's Planning Commission, and not the BZA, may have jurisdiction to hear some, if not all, of the issues raised in this Appeal.

V. THE XDPR APPLICATION

A review of the Town's file on the XDPR Application clearly indicates that the XDPR Application was incomplete when filed and when the Notice of Action was issued.

More importantly, the XDPR Application represents that there are no recorded private covenants and/or restrictions that are contrary to, conflict with, or prohibit the proposed request. As noted in the April 28, 2010 letter to

Mrs. Lewis, and as confirmed in Mrs. Lewis' April 30, 2010 letter, the representation made on behalf of the Association in the XDPR Application regarding recorded private covenants and/or restrictions is clearly factually inaccurate. Specifically, Mrs. Lewis said in her letter that "… misinformation was provided by you [the Edgewater HOA's agent] as part of the application."

VI. THE NOTICE OF ACTION

As mentioned above, the XDPR Application was submitted in response to Ms. Dixon's order to cease work on the tabby walkway that was under construction by the Edgewater HOA.

Ephesian notes for the record that it has neither consented to nor approved of the filing of the XDPR Application as it relates to Ephesian's interests in the Regime Property. Ephesian also notes for the record that it categorically has not, and does not, consent to any work on the Regime Property that may have an adverse impact on its interests in the Regime Property, including the work purportedly permitted by the Notice of Action, absent specific written approval from Ephesian.

Ephesian asserts that Notice of Action was wrongfully and improperly issued by the Town to the Edgewater HOA because of, among other things, the misinformation contained in the XDPR Application.

Ephesian further asserts that if the misinformation contained in the XDPR Application is a material misrepresentation by the Edgewater HOA or its agent, then Mrs. Lewis has an obligation to seek to revoke the Notice of Action; however, Mrs. Lewis has declined to do so. Ephesian, whose rights have been violated by the work authorized by the Notice of Action, is clearly aggrieved by Mrs. Lewis' refusal to revoke the Notice of Action, and therefore has filed this Appeal to the BZA.

VII. STANDING

Ephesian has standing to file this Appeal to the BZA because the 07/26/10 Letter says it is appealable to the BZA. In addition, because Ephesian holds easements and other rights in and to the Regime Property, including the Declarant Rights, under applicable restrictive covenants contained in the Master Deed, Ephesian has standing to file this Appeal to the BZA under Section 6-29-760(C) of the State Enabling Act; and Ephesian also has standing to file this Appeal under LMO Section 16-3-2001.[12]

VIII. NECESSARY PARTY

The Edgewater HOA, as the permittee under the Notice of Action, may be a necessary party to this Appeal. Accordingly, Ephesian asks that the Edgewater HOA receive notice of all matters and hearings associated with this Appeal.[13]

IX. GROUNDS FOR APPEAL

Ephesian alleges that Mrs. Lewis, as the LMO Administrator, has a duty and obligation to institute revocation proceedings regarding the Notice of Action under LMO Section 16-3-310(C) if she believes the XDPR Application contains a material misrepresentation by the Edgewater HOA or its agent.

---

[12] LMO Section 16-3-2001 seems to indicate that an appeal of a decision, interpretation, or determination of the LMO Administrator lies to the Board of Zoning Appeals; however, because this Appeal is centered on the Notice of Action on the XDPR Application, which is clearly part of the land development regulations of the LMO, out of an abundance of caution, Ephesian has also filed a similar appeal to the Planning Commission.

[13] See *Spanish Wells Property Owners Association, Inc. v. Board of Adjustment of the Town of Hilton Head Island*, 367 S.E.2d 160 (SC 1988), a copy of which is attached to this Narrative as Exhibit K.

X. EPHESIAN'S ARGUMENTS FOR APPEAL

A. MATERIAL MISREPRESENTATION IN THE XDPR APPLICATION

Ephesian owns property that is adjacent to the Regime Tract, and holds easements and other rights, including the Declarant Rights, over the Regime Tract pursuant to the recorded private covenants and restrictions contained in the Master Deed.

The XDPR Application represents that there are no "recorded private covenants and/or restrictions that are contrary to, conflict with, or prohibit the proposed request". Based on the covenants and restrictions contained in the Master Deed and the easements and other rights in and to the Regime Property now held by Ephesian under the Master Deed, Ephesian submits that this representation is factually inaccurate.[14]

The Town, through Mrs. Lewis, as the LMO Official, and the Town Attorney, Gregory M. Alford, Esq., is already on the record as agreeing with Ephesian that the XDPR Application contained "misinformation" regarding applicable restrictive covenants, that the project proposed by the XDPR Application "is in violation of the Master Deed", and that "Ephesian retains all rights that went with the property transfer as part of the bankruptcy." Specifically, in her April 30, 2010 letter to IMC Resort Services, Inc., the agent for the Edgewater HOA on the XDPR Application, Mrs. Lewis stated:

> The Notice of Action has been rescinded and the project denied based on discovery that <u>misinformation was provided by you</u> as part of the application. After further review by the Town's attorney, the <u>proposed project is in violation of the Master Deed</u> Establishing the Edgewater on Broad Creek Horizontal Property Regime (Phase 1)." (Emphasis added.)

---

[14] Ephesian has no reason to believe that this factual inaccuracy in the XDPR Application was an intentional misrepresentation by or on behalf of the Edgewater HOA; instead, Ephesian assumes this factual inaccuracy was a mistake on the part of the Edgewater HOA.

Clearly, that letter evidences a determination by Mrs. Lewis, as the LMO Official, and Gregory M. Alford, Esq., the Town Attorney, that the XDPR Application contains misinformation that is a material misrepresentation.

Section 6-29-1145(B)(3) of the Code of Laws of South Carolina (1976), as amended, prohibits the Town from issuing any permit if the Town has knowledge from any source of a restrictive covenant on a tract or parcel of land that is contrary to, conflicts with, or prohibits the permitted activity. Based on the determinations made by Mrs. Lewis, as the LMO Official, and the Town Attorney as set forth in Mrs. Lewis' April 30, 2010 letter, it is readily apparent that the XDPR Application would not, and could not, have been approved by the Town but for the material misrepresentation in the XDPR Application.

Under LMO Section 16-8-103(A), Mrs. Lewis, as the LMO Official and the Administrator of the LMO, has responsibility for enforcement of the LMO; and under LMO Section 16-8-103(C)(2), Mrs. Lewis has a duty to take whatever action is necessary to assure compliance with the provisions of the LMO. Based upon the specific determinations made in her April 30, 2010 letter, after review by the Town Attorney, that misinformation was provided to the Town as part of the XDPR Application and that the project proposed by the XDPR Application is in violation of the Master Deed, it is incumbent upon Mrs. Lewis to institute revocation proceedings regarding the Notice of Action under LMO Section 16-3-310(C), as a material misrepresentation in an application is a clear basis for revocation of a permit.

Ephesian submits that Mrs. Lewis and her staff cannot sit idly by and take no action in such circumstances, particularly when she and the Town Attorney have already made determinations which are conclusive to the issues.

Because the XDPR Application contains a material misrepresentation by the Edgewater HOA or its agent, under LMO Sections 16-8-103(A) and 16-8-103(C)(2), Mrs. Lewis has a duty and obligation to enforce the provisions of, and to assure compliance with, the LMO, and should therefore proceed to institute revocation proceedings regarding the Notice of Action under LMO

Section 16-3-310(C), and the BZA, pursuant to its appeal jurisdiction, should order her to do so.

B. CONSTITUTIONAL ISSUES

Ephesian further believes that Mrs. Lewis' refusal to institute revocation proceedings regarding the Notice of Action under LMO Section 16-3-310(C) is wrong because the work purportedly permitted by the Notice of Action has a material detrimental effect on protected property rights and interests of Ephesian in the Regime Property, without having afforded Ephesian the right to notice and an opportunity to be heard in the XDPR Application process, in violation of the equal protection and due process clauses of the United States Constitution and South Carolina Constitution. Mrs. Lewis' refusal to properly revoke the Notice of Action is arbitrary and capricious, in derogation of Ephesian's protected property interests, and without a reasonable basis or justification in law or fact, for the reasons specified above.

XI. CONCLUSION

Because the Notice of Action is based on the incomplete and factually inaccurate XDPR Application, which contains a material misrepresentation by the Edgewater HOA or its agent, and because the Edgewater HOA did not obtain Ephesian's consent before the project permitted by the Notice of Action was undertaken, the Notice of Action should be revoked, and Mrs. Lewis should be directed to institute revocation proceedings under LMO Section 16-3-310(C). Accordingly, Ephesian asks that the BZA (a) consider the issues raised in this Appeal and the pertinent provisions of the State Enabling Act, the LMO, and other applicable law, (b) find that the Notice of Action should be revoked under LMO Section 16-3-310(C), and (c) reverse the decision of the LMO Official to refuse to institute revocation proceedings regarding the Notice of Action.

Ephesian reserves the right to submit additional materials, documents, and information to the BZA in connection with this Appeal.

Respectfully submitted on behalf of Ephesian Ventures, LLC this 9th day of August, 2010.

Chester C. Williams, Esquire
Law Office of Chester C. Williams, LLC
17 Executive Park Road, Suite 2
Post Office Box 6028
Hilton Head Island, SC 29938-6028
843-842-5411
843-842-5412 (fax)
Firm@CCWLaw.net

Exhibit A (1 Page)

TOWN OF HILTON HEAD ISLAND
COMMUNITY DEVELOPMENT DEPARTMENT
One Town Center Court, Hilton Head Island, S.C. 29928
(843) 341-4757 Fax (843) 842-7228
http://www.hiltonheadislandsc.gov

VIA E-MAIL

July 26, 2010

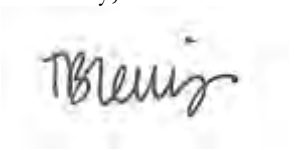
Mr. Chester C. Williams
17 Executive Park Road, Suite 2
PO Box 6028
Hilton Head Island, SC 29938-6028

Dear Chet:

This letter is in reference to your correspondence dated July 8, 2010 regarding XDPR100013 [the tabby sidewalk at Edgewater on Broad Creek]. Your letter requests that I, acting in my capacity as the LMO [Land Management Ordinance] Official for the Town, revoke the Notice of Action issued for XDPR100013 on the grounds that misinformation was provided as part of the application. As I stated in my June 25, 2010 letter to Mr. Bucko [property manager for Edgewater at Broad Creek] at this time, staff is holding the revocation of the Notice of Action for XDPR100013 in abeyance until such time that Edgewater and Ephesian have resolved the covenant dispute. You were copied on this letter. Staff has not changed their position on this issue and therefore at this time I do not intend to take steps to initiate revocation proceedings under LMO Section 16-3-310(C).

Please be aware that per Town Land Management Ordinance (LMO) Section 16-3-2001 should you disagree with this administrative determination you may appeal to the Town's Board of Zoning Appeals (BZA) within 14 calendar days of the receipt of the above decision.

Sincerely,



Teri B. Lewis
LMO Official

cc: Gregory M. Alford
Stephen G. Riley
Charles F. Cousins
Michael Mogil

TOWN OF HILTON HEAD ISLAND
COMMUNITY DEVELOPMENT DEPARTMENT

Exhibit B (4 Pages)

MASTER APPLICATION FORM

ONE TOWN CENTER COURT • HILTON HEAD ISLAND, SC 29928 • 843-341-4757 • FAX 843-842-8908

Please TYPE or PRINT legibly

NAME OF DEVELOPMENT or BUSINESS EDGEWATER ON BROADCREEK, HPR

STREET ADDRESS 50 VERBENA LANE HHI SC 29926

ZONING DISTRICT _____ OVERLAY DISTRICT _____

TAX DISTRICT _____ MAP _____ PARCEL (S) _____

LAND OWNER	APPLICANT	AGENT
EDGEWATER ON BROADCREEK, HPR	EDGEWATER ON BROADCREEK, HPR	IMC RESORT SERVICES, INC.
NAME N/A	← SAME	SAME
COMPANY		
MAILING ADDRESS 2 CORPUS CHRISTIE PLACE, STE 302	← SAME	2 CORPUS CHRISTIE PLACE, STE 302
CITY STATE ZIP HILTON HEAD SC 29928	← SAME	HILTON HEAD, SC 29928
TELEPHONE 843-785-4775 x107 / FAX 843-785-3901	← SAME	843-301-3857 / 843-785-3901
	Bus License # 11152 (For DRB, DR & SUB Only)	Bus License# 2605 (For DRB, DR & SUB Only)
EMAIL ADDRESS –	EMAIL ADDRESS –	EMAIL ADDRESS AJB@IMCRESORTSERVICES.COM

*** A CHECK-IN CONFERENCE IS REQUIRED FOR THESE ITEMS. SEE LMO 16-3-104 FOR MORE INFORMATION. ATTACH THE NECESSARY SUPPLEMENTAL FORM(S).**

- [ ] APPEAL *
- [ ] DEVELOPMENT PLAN REVIEW (DPR)*
- [ ] PLANNED UNIT DEVELOPMENT *
- [ ] SPECIAL EXCEPTION *
- [ ] SUBDIVISION *
- [ ] VARIANCE *
- [ ] ABBREVIATED DPR*
- [ ] ZONING MAP AMENDMENT *
- [ ] DESIGN REVIEW BOARD
- [ ] PUBLIC PROJECT
- [ ] SIGN PERMIT
- [ ] TREE APPROVAL
- [ ] WETLAND ALTERATION
- [x] EXPEDITED DPR*

Are there recorded private covenants and/or restrictions that are contrary to, conflict with, or prohibit the proposed request?
☐ **YES** ☒ **NO**
If so, a copy of the private covenants and/or restrictions must be submitted with this application.

TO THE BEST OF MY KNOWLEDGE, THE INFORMATION ON THIS APPLICATION AND ALL ADDITIONAL DOCUMENTATION IS TRUE, FACTUAL AND COMPLETE. I HEREBY AGREE TO ABIDE BY ALL CONDITIONS OF ANY APPROVALS GRANTED BY THE TOWN OF HILTON HEAD ISLAND. I UNDERSTAND THAT SUCH CONDITIONS SHALL APPLY TO THE SUBJECT PROPERTY ONLY AND ARE A RIGHT OR OBLIGATION TRANSFERABLE BY SALE.

SIGNATURE _____ DATE 4-9-10

I UNDERSTAND THAT IN THE EVENT OF A STATE OF EMERGENCY, DUE TO A DISASTER, THOSE REVIEW & APPROVAL TIMES SET FORTH IN THE LAND MANAGEMENT ORDINANCE MAY BE SUSPENDED.

SIGNATURE _____ DATE 4-9-10

FOR OFFICIAL USE ONLY

DATE RECEIVED: 4/12/2010
ACCEPTED BY: MD
MASTER TRACKING NUMBER: _____

COMMUNITY DEVELOPMENT DEPARTMENT

EXPEDITED DEVELOPMENT PLAN REVIEW SUPPLEMENTAL APPLICATION FORM

THIS FORM MUST BE ACCOMPANIED BY A MASTER APPLICATION FORM.

Please TYPE or PRINT legibly

PROJECT/DEVELOPMENT NAME: EDGEWATER ON BROADCREEK, HPR

OWNER/AGENT SUBMITTING APPLICATION: IMC RESORT SERVICES, INC - AGENT

NAME AJ BUCKO

E-MAIL ADDRESS* AJB@IMCRESORTSERVICES.COM

PHONE NUMBER 843-301-3857

FAX NUMBER 843-785-3904

APPLICATION SUBMISSION REQUIREMENTS:

APPLICANTS SHALL SUBMIT ALL THE FOLLOWING MATERIALS BEFORE AN APPLICATION SHALL BE CONSIDERED COMPLETE:

- [x] **NOTARIZED** WRITTEN CERTIFICATION, SIGNED BY THE OWNER(S) OF RECORD OF THE PROPERTY, THAT THE OWNER(S) CONSENT TO THE PROPOSED DEVELOPMENT. CERTIFICATION IS NOT NECESSARY IF THE OWNER IS THE APPLICANT.
- [x] WRITTEN NARRATIVE DESCRIBING THE SCOPE OF THE PROJECT.
- [x] FOUR (4) COPIES OF A SURVEY OF AREA OF THE PROPERTY BEING AFFECTED BY THIS APPLICATION SHOWING EXISTING TOPOGRAPHY, ALL TREES 6 INCHES IN DIAMETER AND LARGER, ALL IMPROVEMENTS, AND IF APPLICABLE, THE LOCATION OF BORDERING STREETS, MARSHES AND BEACHES.
- [N/A] A LANDSCAPE PLAN SHOWING ANY CHANGES BEING PROPOSED, IF APPLICABLE.
- [N/A] A COPY OF APPROVAL FROM ANY OUTSIDE AGENCIES, IF APPLICABLE.
- [N/A] A COPY OF APPROVAL FROM ANY PROPERTY OWNERS ASSOCIATION, IF APPLICABLE.
- [x] Application Fee ($100)

*IF YOU WOULD LIKE TO RECEIVE COMMENTS AND/OR APPROVALS VIA E-MAIL PLEASE INCLUDE YOUR E-MAIL ADDRESS.

ADDITIONALLY IF YOU WOULD LIKE TO RECEIVE THE COMMUNITY DEVELOPMENT DEPARTMENT QUARERLY NEWSLETTER VIA EMAIL PLEASE INDICATE BY SIGNING BELOW.

SIGNATURE _____ DATE _____

FOR OFFICIAL USE ONLY

DATE RECEIVED: 4/12/20 TIME: 1:45 pm

ACCEPTED BY: NO APPLICATION NUMBER: XDRR100013

April 9, 2010

Re: Expedited Development Plan Review Supplemental Application Form

This letter certifies that the current Board of Director's for Edgewater on Broadcreek, HPR has approved, on behalf of all 23 Owners, the proposed plan for a tabby walkway with (2) brick features (please refer to narrative describing scope of work).

4/9/2010

Bobby Fitzgerald
Edgewater on Broadcreek, HPR
Acting Vice President
In Charge of Landscape Committee

Date

ORIGINAL RECEIPT

TOWN OF HILTON HEAD ISLAND
ONE TOWN CENTER COURT
HILTON HEAD ISLAND, SC 29928

Receipt Number: **R10001023**
Issuing Officer: LC
(Receipt not valid without Issuing Officer's initials.)

OWNER: EDGEWATER ON BROADCREEK
BUSINESS NAME:
APD #: XDPR100013
SITE ADDRESS: 50 VERBENA LANE ****
ACCOUNT NUMBER: ??
NOTATION: IMC RESORT SVC, 2 CORPUS CHRISTI, #302, HHI SC 29928

TRANSACTION DATE: 04/12/2010

TOTAL PAYMENT: 100.00

TRANSACTION LIST:

Type	Method	Description	Amount
Payment	Check	6198	100.00

ACCOUNT ITEM LIST:

Item#	Fee Description	Account Code	Total Fee	Total Paid	Current Pmt
5405	Expedited DPR	11001-40401	100.00	100.00	100.00

ISSUED BY: LYNNC
DATE: April 12, 2010 01:50 PM

Copy Reprinted on 04-12-2010 at 13:51:29

Town of
Hilton Head Island
Beaufort County South Carolina

NOTICE OF ACTION

Exhibit C (2 Pages)

APPLICATION # **XDPR100013**

Name of Development: EDGEWATER ON BROADCREEK	**Location:** 50 VERBENA LANE

Owner:	**Applicant:**	**Agent:**
EDGEWATER ON BROADCREEK	EDGEWATER ON BROADCREEK	

Location and Development Information:

Description: 145FT TABBY WALKWAY, 2 BRICK CIRCLE SITING AREAS, 12FT & 6 FT.

Zoning District: WMU
Overlay District(s): 500 ft of OCRM Critical Line

Tax District Map Parcel: R510011000017700000

Approved Site Plan Information:

Date of latest revision of approved site plan:

Based on Plans by: IMC Resort Services
Plans Titled: Edgewater on Broad Creek

Any deviation from the approved plans will require additional review.

Case Manager: NICOLE DIXON **Sign:** Nicole Dixon

Date Issued: 04/15/2010 **Expiration Date: 04/15/2011**

Pursuant to LMO 16-3-310 or 16-3-608, this approval expires as indicated above unless a complete building permit application is submitted, or where no building permit is required, a Certificate of Compliance is obtained. Pursuant to LMO 16-3-706, the Building Official can issue no final Certificate of Occupancy until the Planning Division issues a final Certificate of Compliance. For more information, see LMO 16-3-703 and 16-3-801 through 807 (Development Sureties).

Print Name: AJ Bucko Signature: AJ Bucko Date: 4-15-10
Owner or Authorized Agent of Owner

Conditions of the Approval:

Town Staff conditions are included, additional pages may be attached.

1: No additional excavation can be done to install sidewalk and associated brick areas/circle. All bricks must be laid on a sand base.

2: If any base is installed for the sidewalk, the material must not be limestone (use granite instead).

TOWN OF HILTON HEAD ISLAND, SC
DEVELOPMENT PLAN APPROVAL

The Town has found this plan to be in compliance with the Town's Land Management Ordinance and has authorized this approval.

Application #: XDPR100013

Certified By: Nick Dixon

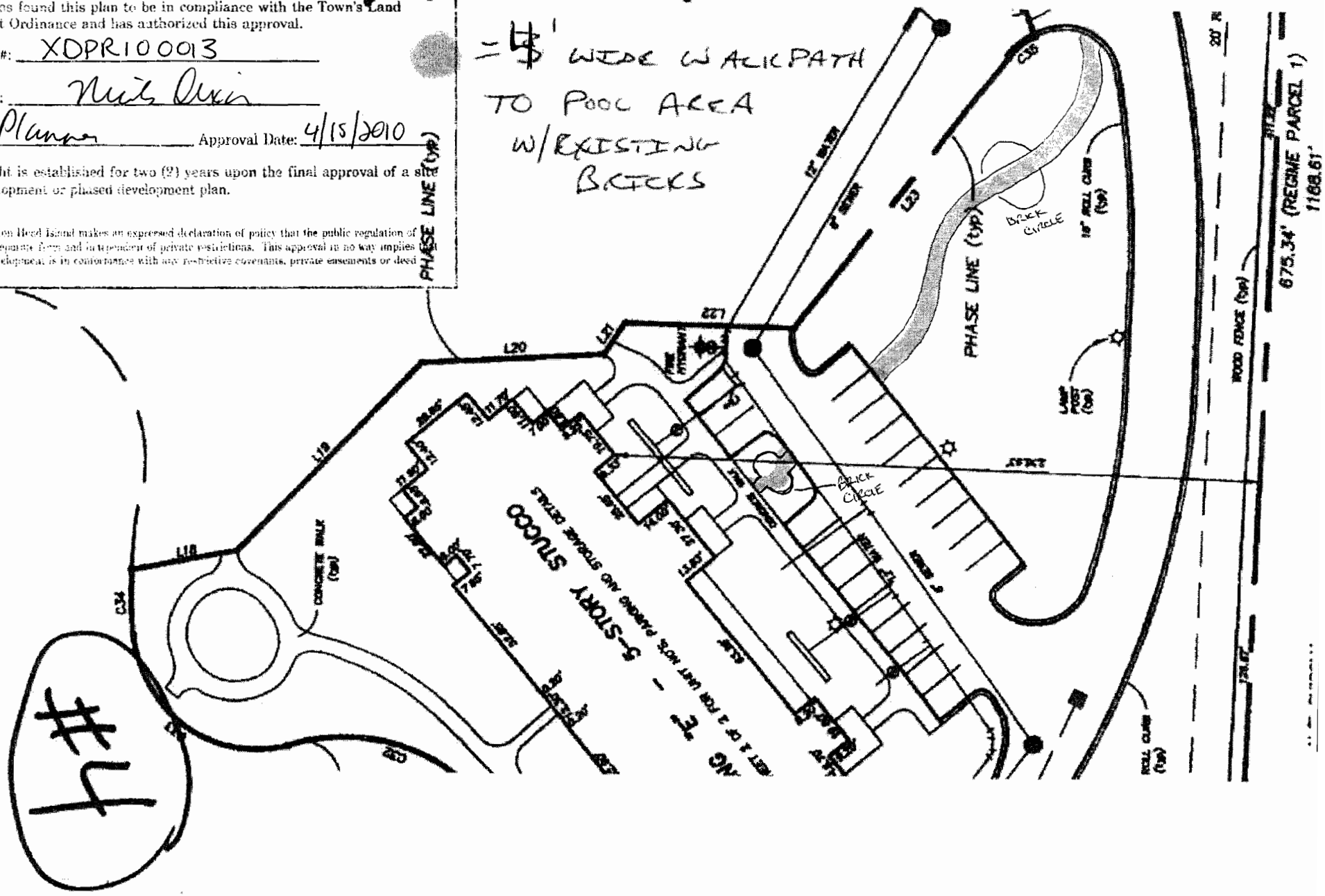
Title: Planner Approval Date: 4/15/2010

A vested right is established for two (2) years upon the final approval of a site specific development or phased development plan.

Disclaimer
The Town of Hilton Head Island makes an expressed declaration of policy that the public regulation of land is entirely separate from and independent of private restrictions. This approval in no way implies that the proposed development is in conformance with any restrictive covenants, private easements or deed restrictions.

WALKWAY

= 4' WIDE WALKPATH TO POOL AREA W/EXISTING BRICKS



15 PB
21
Footer law
1489

RECORDED
2008 Jul -18 12:59 PM
Sharon G. Burris
BEAUFORT COUNTY AUDITOR

BEAUFORT COUNTY SC - ROD
BK 02742 PGS 2049-2063
FILE NUM 2008043041
07/07/2008 02:53:34 PM
REC'D BY P BAXLEY RCPT# 551338
RECORDING FEES 21.00
County Tax 9,900.00
State Tax 23,400.00
Transfer Tax 22,500.00

Exhibit D (15 Pages)

Document prepared by
W. Thomas Vernon
Attorney at Law, P.C.
2511 Wilmot Avenue
Columbia, SC 29205

Upon filing, please return
to above address.

STATE OF SOUTH CAROLINA) **QUIT CLAIM DEED**
)
COUNTY OF BEAUFORT)

TO ALL WHOM THESE PRESENTS MAY COME:

WHEREAS: KEVIN CAMPBELL, TRUSTEE IN BANKRUPTCY FOR BROAD CREEK EDGEWATER, LP, SENDS GREETING:

WHEREAS, on May 9, 2007, BROAD CREEK EDGEWATER, LP was placed in an involuntary bankruptcy under Chapter 7 or the Bankruptcy Code in the United States Bankruptcy Court for the District of South Carolina, as is recorded in said Office in Case No. 07-0546; and

WHEREAS, by Order for Relief entered on June 6, 2007, the Honorable David R. Duncan, Judge, United States Bankruptcy Court, BROAD CREEK EDGEWATER, LP was adjudicated and entitled to relief under the Bankruptcy Code; and

WHEREAS, by Order Authorizing Sale, signed by the Honorable David R. Duncan, Judge, United States Bankruptcy Court, Kevin Campbell, Trustee in Bankruptcy for BROAD CREEK EDGEWATER, LP, was authorized to sell the estate's interest in the property described more fully below, lying and being in the County of Beaufort, State of South Carolina. (Attached hereto and incorporated by reference as **Exhibit B**)

NOW, KNOW ALL MEN BY THESE PRESENTS, that I, the said Kevin Campbell, Trustee in Bankruptcy for **BROAD CREEK EDGEWATER, LP, a South Carolina Limited Partnership** (hereinafter the "Grantor") in consideration of the sum of Nine Million and no/100s Dollars ($9,000,000.00) to it in hand paid at and before the sealing and delivery of these presents by **EPHESIAN VENTURES, LLC, a Nevada Limited Liability Company** (hereinafter the "Grantee"), in the State aforesaid the receipt of which is hereby acknowledged has granted, bargained, sold and remised, released and forever quit-claimed, and by these presents does remise, release and forever quit-claim unto the said Grantee all of its right, title and interest in the following property:

See Exhibit A attached hereto and incorporated herein by reference.

Grantee's address: **c/o W. Thomas Vernon**
2511 Wilmot Avenue
Columbia, South Carolina 29205

ADD DMP Record 7/15/2008 11:31:14 AM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R510	011	000	0004	0000	00

1

ADD DMP Record 7/15/2008 11:31:24 AM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R510	011	000	0177	0000	00

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said Grantee, Ephesian Ventures, LLC, its successors and assigns, forever, so that the Grantor, Broad Creek Edgewater, LP, nor its successors and assigns, nor any other entity, person or persons, claiming under it, shall at any time hereafter, by any way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part or parcel thereof.

WITNESS the Grantor's Hand and Seal this 7th day of July in the year of our Lord Two Thousand Eight (2008).

Signed, Sealed and Delivered in the Presence of:

Broad Creek Edgewater, LP

By:
Kevin Campbell, Esquire
Trustee for Broad Creek Edgewater, LP in bankruptcy

STATE OF SOUTH CAROLINA)
CHARLESTON ~~Bty~~)
COUNTY OF ~~BEAUFORT~~)

PROBATE

PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named Broad Creek Edgewater, LP, by Kevin Campbell, Esquire, its Trustee sign, seal and as the Grantor's act and deed deliver the within Limited Warranty Deed and that deponent with Michael Conroy **witnessed the execution thereof.**

(witness 1)

SWORN to before me this
7th of July, 2008.

(Seal)
NotaryPublic for South Carolina
My Commission expires: 8/31/11

Exhibit A
Property Description

All that certain piece, parcel of tract of land, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing approximately 16.01 acres, shown as "Additional Property of Edgewater on Broad Creek" on that certain ALTA/ACSM LAND TITLE SURVEY prepared for Bear Properties, LLC, certified by Terry G. Hatchell of Surveying Consultants, Bluffton, SC, SCRLS No. 11059 dated May 16, 2008, to be recorded, and also the approximately 16.01 acres shown as "ADDITIONAL PROPERTY OF EDGEWATER ON BROAD CREEK" on that plat entitled "SURVEY OF :EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME-PHASE I" prepared by Surveying Services, Inc., certified to by James W. Edwards, SCRLS #15515, dated December 19, 2002, and recorded in Plat Book 91 at Page 5 in the Office of the ROD for Beaufort County on 12/31/02. R510-011-000-0004-0000

Being also all rights retained by Grantor, if any, to that certain piece, parcel of tract of land, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing approximately 7.64 acres, shown as "REGIME PARCEL I" on that certain plat entitled "SURVEY OF: EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME-PHASE I" prepared by Surveying Services, Inc., certified to by James W. Edwards, SCRLS #15515, dated December 19, 2002, and recorded in Plat Book 91 at Page 5 in the Office of the ROD for Beaufort County on 12/31/02. (hereinafter also referred to as "Adjacent Tract").

Together with all Declarant (as that term is defined in the Master Deed noted below) rights, title to real estate, covenants, restrictions, improvements and any other rights now held by Seller as owner or Declarant in the aforesaid property:

a. **Seller's non-exclusive easement for ingress and egress over the streets and highways, open or proposed, in front of or adjoining the land and across that certain tract of land containing 7.64 acres, more or less (the "Adjacent Tract") previously submitted to that certain Master Deed Establishing Edgewater on Broad Creek Horizontal Property Regime recorded on December 31, 2002, in the Office of the Register of Deeds for Beaufort County South Carolina in Record Book 1689 at Page 574 (the "Master Deed"); and**
b. **all developmental rights, easements, rights of way, ponds, lagoons, waterways, privileges, permits, licenses, appurtenances and other rights pertaining thereto, if any, for the Property and the Adjacent Tract, and**
c. **to the extent such exists, water and sewage capacity and spray field rights for the entire Project [which shall herein be used to describe the Property described in Exhibit A and the adjacent tract containing approximately 7.64 acres] and any remaining such rights and/or capacity in (including a capacity which at a minimum would allow a density of twelve units per acre), and**
d. **all rights and obligations as the Declarant (but none of the Declarant obligations, if any if such purported and alleged obligations: (a) arose following the recordation of the original Master Deed [which was recorded on December 31, 2002, in the Office of the Register of Deeds for Beaufort County South Carolina in Book 1689 at page 574] by**

action or inaction of the Seller and/or (b) have not been the subject of a valid amendment of said Master Deed recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, and any other rights affecting the Property and all of Seller's interest in any roadways, bridges, access ways, easements, covenants, restrictions, or right affecting the Property (provided, however, Purchaser shall not be obligated in any way to perform any duty, take on any burden, pay any sum due by Seller in connection with the transfer of these rights or otherwise, except for Purchaser's obligation to pay the Town of Hilton Head Transfer Tax; all of which are hereinafter referred to as the "Property."

The foregoing property is being acquired from Broad Creek Edgewater, LP, by and through Kevin Campbell, Esquire, the duly appointed and acting Trustee for Broad Creek Edgewater, LP, a South Carolina Limited Partnership, in bankruptcy and pursuant to an order to be issued by the United States Bankruptcy Court. The foregoing property is a portion of the property acquired by Broad Creek Edgewater, LP, a South Carolina Limited Partnership by deeds recorded in the Office of the ROD for Beaufort County, South Carolina Book 1194, at Page 2435, Book 1196, at Page 2438 and Book 1196, at Page 2441.

EXHIBIT B

U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: 07-02546-DD

ORDER APPROVING SALE FREE AND CLEAR OF LIENS, JUDGMENTS AND ENCUMBRANCES PURSUANT TO 11 U.S.C. §363(f)

The relief set forth on the following pages, for a total of 7 pages including this page, is hereby **ORDERED**.

FILED BY THE COURT
05/27/2008

Entered: 05/28/2008

US Bankruptcy Court Judge
District of South Carolina

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:	)	
	)	B/K Case No. 07-02546-DD
BROAD CREEK EDGEWATER, LP	)	Chapter 7
	)	
Debtor.	)	**ORDER APPROVING SALE**
	)	

THIS MATTER comes before the Court upon the application of Kevin Campbell, the duly appointed and acting Chapter 7 Trustee for the above Debtor (hereinafter referred to as the "Trustee") for authority to sell the property of the estate identified on the attached Exhibit "A" (hereinafter referred to as the "Edgewater Property") free and clear of all liens, judgments and encumbrances pursuant to 11 U.S.C. §363(f). There were no objections to the application.

The Trustee proposes to sell the Edgewater Property to Bear Properties, LLC, a Georgia Limited Liability Company, or its assigns (the "Buyer"). The Buyer is a good faith purchaser for value under §363(m) and does not have any known adverse interest in this case or any parties involved in this case, including the Debtor, its counsel and the U.S. Trustee's office. The Buyer is not a creditor of the Debtor. The sales price is $9,000,000, with a closing to take place after Court approval at a date not more than thirty (30) days from the entry of a final Order approving the sale (including any appeals or other actions which would limit the finality of this Order), at place and time to be agreed upon by the parties.

EXCEPT AS OTHERWISE PROVIDED IN THE PURCHASE AGREEMENT, THE TRUSTEE IS SELLING THE ABOVE-REFERENCED PROPERTY "AS IS," WITH NO WARRANTIES WHATSOEVER INCLUDING, BUT NOT LIMITED TO, WARRANTY AS TO TITLE. THE BUYER AGREES TO RECEIVE THE PROPERTY WITH ALL FAULTS. THE TRUSTEE MAKES NO WARRANTY, EXPRESS OR IMPLIED, REGARDING THE PROPERTY, AND SPECIFICALLY EXCLUDES ANY IMPLIED WARRANTY OF MERCHANTABILITY AND ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR USE.

THE TRUSTEE SHALL PROVIDE AT CLOSING "INSURABLE TITLE." INSURABLE TITLE IS DEFINED AS TITLE THAT IS FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES BASED ON AN ORDER ENTERED BY THE BANKRUPTCY COURT ALLOWING THE TRUSTEE TO CONVEY THE PROPERTY FREE AND CLEAR OF ANY SUCH LIENS AND ENCUMBRANCES AND INSURABLE WITHOUT INDEMNITY BY THE TRUSTEE AT NORMAL RATES BY A REPUTABLE NATIONAL TITLE COMPANY (AS CHOSEN BY THE PURCHASER PURSUANT TO THE AGREEMENT BEING APPROVED BY THIS ORDER) AND THAT ALL LIENS AND ENCUMBRANCES ATTACH ONLY TO THE PROCEEDS OF THE SALE AND TITLE IS SUBJECT TO COVENANTS, CONDITIONS

AND RESTRICTIONS OF RECORD, INCLUDING, BUT NOT LIMITED TO, THE MASTER DEED AND THE GENERAL OR STANDARD CONDITIONS OF ANY TITLE INSURANCE COMPANY, BUT SPECIFICALLY EXCLUDING PARAGRAPH 5 OF THE OCTOBER 31, 2006 ORDER ISSUED BY THE COURT OF COMMON PLEAS FOR THE COUNTY OF BEAUFORT WHICH SUIT WAS BROUGHT BY PAIL L. HUMMEL, ROBERT J. DEMA, JOHN EDWARDS, JR., JAQUELINE HEISS, KEN MEEKS, ROBERT FITZGERALD AND JOHN DOE PLAINTIFFS 1 -20 INDIVIDUALLY AND AS CO-OWNERS IN EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME (THE "PLAINTIFFS") AND PLAINTIFF'S COUNSEL STIPULATED AT THE HEARING ON THE APPLICATION FOR SALE OF PROPERTY THAT PARAGRAPH 5 WAS NO LONGER VALID AND WOULD NOT EFFECT THE PROPERTY AND RIGHTS BEING SOLD TO PURCHASER HEREIN.

THE BUYER HAS BEEN GIVEN AN OPPORTUNITY TO HAVE TITLE TO THE REAL PROPERTY RESEARCHED AND ACCEPTS THE STATUS OF THE REAL PROPERTY. THE TRUSTEE DOES NOT PROVIDE LIEN OPINIONS. PROPERTY TO BE CONVEYED BY QUIT CLAIM DEED.

THE BUYER HAS BEEN GIVEN THE OPPORTUNITY TO EXAMINE THE PROPERTY <u>BEFORE</u> SIGNING ANY CONTRACT OR SUBMITTING A BID TO PURCHASE THE PROPERTY, AND TO PERFORM SUCH TESTING, IF APPLICABLE, TO DETECT POSSIBLE LATENT DEFECTS.

At closing, with the exception of the real estate commission, the Trustee shall be authorized to pay normal seller's closing costs as set forth in the Purchase Agreement.

Alex Graham, Auctioneer (SC License #3997); Sperry Van Ness Commercial Properties, LLC, 1250 Fairmont Avenue, Mt. Pleasant, SC 29464, has been duly appointed as the Trustee's sale's agent. Except as provided for herein, a sales commission of Four (4%) percent of the contract sales price shall be paid, with the Trustee being responsible for the payment of the Trustee's agent two (2%) percent commission and one (1%) percent Buyer's agent commission. The Buyer shall be responsible for paying the remaining one (1%) percent Purchaser's agent commission. As provided for herein, the real estate commissions will not be paid at closing, but shall attach to the net sale proceeds pending agreement between the parties or further Order of this Court.

There is a disputed first mortgage lien held by Regions Bank, dated May 6, 2005, as assigned to Distinct Edgewater, LLC on January 3, 2007. There are related UCC-1's also of record held by Regions Bank and also assigned to Distinct Edgewater, LLC. The Trustee disputes the amount owed to this creditor. This creditor's lien shall attach to the net sale proceeds until an agreement is reached between the parties, or further order of this Court.

The Trustee disputes that certain Mechanic's Lien action filed by Strecansky & Co. (Case No. 06-CP-07-2497). The Trustee believes that this cause of action has been sold and/or assigned to CDCJ Holdings, LLC. The Trustee has filed an adversary proceeding

(Adv. Pro. No. 07-80149-DD) to have this Court determine the validity and extent of this lien. The Trustee believes that the lien was not properly perfected or is not otherwise valid. Further, the Trustee disputes the amount owed to this creditor. This disputed lien shall attach to the net sale proceeds until an agreement is reached between the parties or further Order of this Court.

The Trustee disputes that certain Mechanic's Lien action filed by KRA, Inc. (Case No. 06-CP-07-2325). The Trustee believes that this cause of action has been sold and/or assigned to Distinct SC Limited, LLC. The Trustee has filed an adversary proceeding (Adv. Pro. No. 07-80105-DD) to have this Court determine the validity and extent of this lien. The Trustee believes that the lien was not properly perfected or is not otherwise valid. Further, the Trustee disputes the amount owed to this creditor. This disputed lien shall attach to the net sale proceeds until an agreement is reached between the parties or further Order of this Court.

Pursuant to a Court approved lending order filed on August 23, 2007 and May 6, 2008, there is a mortgage from the Debtor to John W. Baird as Trustee for the John W. Baird Trust, dated August 23, 2007. This mortgage secures certain amounts that have already been paid or will be paid to the Estate for expenses, including, but not limited to, adequate protection payments, operating costs, and costs and fees of marketing, as well as potential future advances to the Estate. Pursuant to said Order, this lien is junior and subordinate to all presently existing liens, judgments or encumbrances on the subject property to the extent those liens, judgments or encumbrances are not otherwise voided or avoided by further Order of this Court.

The Trustee disputes a purported lien or security interest held by Landplan Partnership, Inc. as recorded in M/L Book 27 at Page 505. An Order finding this lien to be invalid has been entered by this Court. This sale is free and clear of this avoided lien.

The Trustee disputes that certain Mechanic's Lien action filed by Pro Slab, Incorporated (Case No. 07-CP-07-92). An Order finding this lien to be invalid has been entered by this Court. This sale is free and clear of this avoided lien.

The Trustee disputes a purported lien or security interest held by Calibogue Enterprises as recorded in M/L Book 28 at Page 1958. An Order finding this lien to be invalid has been entered by this Court. This sale is free and clear of this avoided lien.

The Trustee disputes a purported judgment lien or security interest held by Paul A. Hummel, et al. under Case No. 06-CP-07-3556 as recorded in Judgment Book 2006-2556. The Trustee believes that the lien constitutes an avoidable preference and/or fraudulent conveyance. Further, the Trustee disputes the amount owed to this creditor. This disputed lien shall attach to the net sale proceeds until an agreement is reached between the parties or further Order of this Court.

The Trustee is not aware of any other liens, judgments, encumbrances or other

interests. To the extent they may exist, they are disputed and they shall attach to the estate's interest in the net sale proceeds pursuant to 11 U.S.C. §363(f)(4). This sale is free and clear of all liens, judgments encumbrances and other interests pursuant to 11 U.S.C. §363(f).

Net sale proceeds is defined as those funds remaining after payment of normal seller's closing costs, as set forth in the Purchase Agreement or otherwise provided for in this Order.

In the event that after payment of all valid and perfected superior liens, county real property and other taxes and seller's closing costs and other expenses provided for herein, if there remains insufficient net sale proceeds to pay all Chapter 7 administrative claims, including the real estate/sales commissions, the Chapter 7 administrative claims, including real estate/sales commissions, shall be pro-rated.

In the event the net sale proceeds are sufficient and the administrative claims are paid in full, including the full commission to the Sales Agent/Auctioneer, then the Sales Agent/Auctioneer shall repay to the Estate the costs and expenses incurred in the marketing and sale and/or auction of the property, which could be in the approximate amount of $32,042, which sums have or will be advanced to the Estate by the John W. Baird Trust, pursuant to previous Court Order and secured by the mortgage referenced herein.

If for any reason this sale does not occur within the time set forth herein, the Trustee may instead sell this property to a back-up bid for the same or higher price, provided it closes within 60 days of the date of the final entry of this Order.

I find that this matter is properly before this Court and that there were no objections filed to this Notice of Sale.

I find that ten (10) day stay pursuant to Fed.R.Bankr.P. 6004(g) be waived in this matter and that upon the entry of the Order the Trustee be allowed to immediately enforce and implement the terms of said Order. It is, therefore

ORDERED, ADJUDGED and DECREED that the Trustee is authorized to sell and to convey the above-described property free and clear of all liens, judgments and encumbrances pursuant to 11 U.S.C. §363(f), on the terms and conditions recited herein and to sign any and all documents necessary to effectuate the transfer.

IT IS FURTHER ORDERED that the ten (10) day stay pursuant to Fed.R.Bankr.P. 6004(g) be waived in this matter and that upon the entry of the Order the Trustee be allowed to immediately enforce and implement the terms of said Order.

IT IS FURTHER ORDERED that the disputed liens set forth herein shall attach to the net sale proceeds as provided for herein until disbursed pursuant to further Order of this Court;

IT IS SO ORDERED!

EXHIBIT "A"

All Declarant (as that term is defined in the Master Deed noted below) rights, title to real estate, covenants, restrictions, improvements and any other rights now held by Seller as owner or Declarant in all that certain piece, parcel, tract of land located on Hilton Head Island, Beaufort County, South Carolina, consisting of approximately 16.01 acres and shown as "Additional Property of Edgewater on Broad Creek" on that certain plat entitled "SURVEY OF: EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME - PHASE 1" prepared by Surveying Services, Inc., certified to by James W. Edwards, SCRLS #15515 dated December 19, 2002, and recorded in Plat book 91 at page 5 in the ROD Office for Beaufort County South Carolina on 12/31/02, and all that certain piece, parcel of tract of land, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing approximately 16.01 acres, shown as "Additional Property of Edgewater on Broad Creek" on that certain ALTA/ACSM LAND TITLE SURVEY prepared for Bear Properties, LLC, certified by Terry G. Hatchell of Surveying Consultants, Bluffton, SC, SCRLS No. 11059 dated May 16, 2008, to be recorded, together with:

a. A non-exclusive easement for ingress and egress over Seller's interest, if any, in the streets and highways, open or proposed, in front of or adjoining the land and across that certain tract of land containing 7.64 acres, more or less (the "Adjacent Tract") previously submitted to that certain Master Deed Establishing Edgewater on Broad Creek Horizontal Property Regime recorded on December 31, 2002, in the Office of the Register of Deeds for Beaufort County South Carolina in Record Book 1689 at Page 574 (the "Master Deed"); and

b. all developmental rights, easements, rights of way, ponds, lagoons, waterways, privileges, permits, licenses, appurtenances and other rights pertaining thereto, if any, for the Property and the Adjacent Tract; and

c. to the extent such exists, water and sewage capacity and spray field rights for the entire Project [which shall herein be used to describe the Property described in Exhibit A and the adjacent tract containing approximately 7.64 acres] and any remaining such rights and/or capacity in (including a capacity which at a minimum would allow a density of twelve units per acre); and

d. the right to use all documents called for in this Agreement to be delivered to Purchaser in the same manner as Seller; and

e. all rights and obligations as the Declarant (but none of the Declarant obligations, if any if such purported and alleged obligations: (a) arose following the recordation of the original Master Deed [which was recorded on December 31, 2002, in the Office of the Register of Deeds for Beaufort County South Carolina in Book 1689 at page 574] by action or inaction of the Seller and/or (b) have not been the subject of a valid amendment of said Master Deed recorded in the Office of the Register of Deeds for Beaufort County, South Carolina as of the date this Agreement is first executed by the Purchaser, which such purported and/or alleged obligations are set out in Exhibit G) under the Master Deed, and any other rights affecting the

Property and all of Seller's interest in any roadways, bridges, access ways, easements, covenants, restrictions, or right affecting the Property (provided, however, Purchaser shall not be obligated in any way to perform any duty, take on any burden, pay any sum due by Seller in connection with the transfer of these rights or otherwise, except for Purchaser's obligation, as provided in this agreement, to pay the Town of Hilton Head Transfer Tax;

All of which is hereinafter referred to as the "Edgewater Property".

BAE SYSTEMS

Bankruptcy Noticing Center
2525 Network Place, 3rd Floor
Herndon, Virginia 20171-3514

CERTIFICATE OF SERVICE

District/off: 0420-2 User: douglase Page 1 of 1 Date Rcvd: May 28, 2008
Case: 07-02546 Form ID: pdf01 Total Served: 7

The following entities were served by first class mail on May 30, 2008.

aty	+J. Ronald Jones, Jr., 126 Seven Farms Drive, Suite 200, Charleston, SC 29492-8144	
aty	+Michael H. Conrady, 890 Johnnie Dodds Blvd, PO Box 684, Mount Pleasant, SC 29465-0684	
aty	Michael W. Mogil, 303 Professional Building, Hilton Head Island, SC 29928	
aty	+R. Geoffrey Levy, 2300 Wayne Street, Columbia, SC 29201-2057	
tr	+Kevin Campbell, PO Box 684, Mount Pleasant, SC 29465-0684	
ust	+US Trustee's Office, Strom Thurmond Federal Building, 1835 Assembly St., Suite 953, Columbia, SC 29201-2448	
adb	+BROAD CREEK EDGEWATER, LP, 389 Marshland Road, Hilton Head Island, SC 29926-2103	

The following entities were served by electronic transmission.
NONE. TOTAL: 0

***** BYPASSED RECIPIENTS *****
NONE. TOTAL: 0

Addresses marked '-' were corrected by inserting the ZIP or replacing an incorrect ZIP.
USPS regulations require that automation-compatible mail display the correct ZIP.

I, Joseph Speetjens, declare under the penalty of perjury that I have served the attached document on the above listed entities in the manner shown, and prepared the Certificate of Service and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 9): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: May 30, 2008 **Signature:** Joseph Speetjens

U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: 07-2546

The relief set forth on the following pages, for a total of 2 pages including this page, is hereby **ORDERED**.

FILED

at ___ O'clock & ___ min ___ M

FILED BY THE COURT ON MAY 2 2 2008

United States Bankruptcy Court
Columbia, South Carolina (23)

David R. Duncan
US Bankruptcy Court Judge
District of South Carolina

ENTERED: ENTERED

MAY 2 3 2008

R. S. S.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:	)	
	)	Chapter 7
Broad Creek Edgewater, LP,	)	
	)	Case No.: 07-02546-dd
Debtor.	)	
	)	

ORDER APPROVING BIDDING PROCEDURES

This proceeding comes before the Court on the notice and motion of the Chapter 7 trustee for approval of certain bidding proceeding to assist in selling the Debtor's assets.

The Court has been informed that all parties in interest have been notified of the proposed bidding procedures, and no objections to the proposed bidding procedures have been received. The Chapter 7 trustee has represented to the Court that such bidding procedures are in the best interest of the creditors of the estate. It is therefore,

ORDERED, ADJUDGED, AND DECREED, that the bidding procedures set forth in the Motion are approved and the Asset Purchase Agreement with Bear Properties LLC is approved, including the termination fee of $200,000, the initial overbid of $350,000 and subsequent bidding increments of $50,000.

The Applicant:

/s/ Kevin Campbell
Kevin Campbell, Chapter 7 Trustee

BAE SYSTEMS
Bankruptcy Noticing Center
2525 Network Place, 3rd Floor
Herndon, Virginia 20171-3514

CERTIFICATE OF SERVICE

District/off: 0420-2 User: shealy Page 1 of 1 Date Rcvd: May 23, 2008
Case: 07-02546 Form ID: pdf01 Total Served: 6

The following entities were served by first class mail on May 25, 2008.
aty +John Timothy Stack, Office of the United States Trustee, 1835 Assembly Street Suite 953, Columbia, SC 29201-2448
aty +Joseph F. Buzhardt, III, Office of the United States Trustee, 1835 Assembly Street Suite 953, Columbia, SC 29201-2448
aty +Michael H. Conrady, 890 Johnnie Dodds Blvd, PO Box 684, Mount Pleasant, SC 29465-0684
tr +Kevin Campbell, PO Box 684, Mount Pleasant, SC 29465-0684
ust +US Trustee's Office, Strom Thurmond Federal Building, 1835 Assembly St., Suite 953, Columbia, SC 29201-2448
adb +BROAD CREEK EDGEWATER, LP, 389 Marshland Road, Hilton Head Island, SC 29926-2103

The following entities were served by electronic transmission.
NONE. TOTAL: 0

***** BYPASSED RECIPIENTS *****
NONE. TOTAL: 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.
USPS regulations require that automation-compatible mail display the correct ZIP.

I, Joseph Speetjens, declare under the penalty of perjury that I have served the attached document on the above listed entities in the manner shown, and prepared the Certificate of Service and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 9): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: May 25, 2008 **Signature:** Joseph Speetjens

LAW OFFICE OF
CHESTER C. WILLIAMS, LLC
17 Executive Park Road, Suite 2
Post Office Box 6028
Hilton Head Island, SC 29938-6028
Telephone (843) 842-5411
Telefax (843) 842-5412
Email Firm@CCWLaw.net

Exhibit E (2 Pages)

Chester C. Williams
ALSO MEMBER LOUISIANA BAR

Thomas A. Gasparini
ALSO MEMBER CALIFORNIA BAR
(Inactive)
ALSO MEMBER OHIO BAR
(Inactive)

April 15, 2010

Ms. Nicole Dixon
Planner
Town of Hilton Head Island
Community Development Department
One Town Center Court
Hilton Head Island, SC 29928

RE: Edgewater on Broad Creek - Edgewater HOA Swimming Pool Applications – Our File Nos. 015005-001 and 01505-004

Dear Nicole:

Following-up regarding the above matter, we understand the Town's Design Review Board has approved the aesthetics of the proposed site plan for the swimming pool proposed by the Edgewater HOA.

As we understand our last discussion with you regarding the proposed HOA swimming pool on this past Tuesday morning, the Edgewater HOA will be required by the Town to obtain development plan review approval before they are able to apply for and obtain a building permit for their proposed pool. We are reviewing those issues on behalf of our client, Ephesian Ventures, LLC, the owner of the substantial portion of the Edgewater property that is the subject of permits issued by the Town.

You have advised us that you will provide us with a copy of any development plan review applications submitted by the Edgewater HOA for their proposed pool. We trust this will include any proposals to amend any existing permits, and we would also appreciate receiving copies of any other permit applications that the Edgewater HOA may submit in connection with its proposed pool.

In addition, we would appreciate receiving copies of any applications submitted by the Edgewater HOA with respect to the sidewalk or other pathway installation which is underway last week, which we understand has been stopped by the Town.

Thanking you for your consideration regarding this matter, we are

Very truly yours,

LAW OFFICE OF CHESTER C. WILLIAMS, LLC

Chester C. Williams

CCW:skt

Exhibit F (1 Page)

From: Dixon Nicole [mailto:nicoled@hiltonheadislandsc.gov]
Sent: Tuesday, April 20, 2010 9:04 AM
To: Firm@CCWLaw.net
Subject: Edgewater

Chet,
I also forgot to mention that the other applicant for Edgewater did come in and get an XDPR for the tabby sidewalk last week and it was approved and I believe they have completed that work. Let me know if you have any questions about that. When they come in for the DPR for the pool, I will let you know and you can stop by and take a look at their plans.

Nicole Dixon, Planner
Community Development Department
Town of Hilton Head Island
One Town Center Court
Hilton Head Island, SC 29928
843-341-4686
fax 843-842-8908

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed.

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Any views expressed in this message are those of the individual sender.

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LAW OFFICE OF
CHESTER C. WILLIAMS, LLC
17 Executive Park Road, Suite 2
Post Office Box 6028
Hilton Head Island, SC 29938-6028
Telephone (843) 842-5411
Telefax (843) 842-5412
Email Firm@CCWLaw.net

Exhibit G (3 Pages)

Chester C. Williams
ALSO MEMBER LOUISIANA BAR

Thomas A. Gasparini
ALSO MEMBER CALIFORNIA BAR
(Inactive)
ALSO MEMBER OHIO BAR
(Inactive)

April 28, 2010

Teri B. Lewis, AICP
LMO Official
Community Development Department
Town of Hilton Head Island
One Town Center Court
Hilton Head Island, SC 29928

HAND DELIVERED

RE: Edgewater on Broad Creek; Tabby Pathway; Expedited Development Plan Review Application No. XDPR100013 – Our File No. 01505-005

Dear Teri:

We represent Ephesian Ventures, LLC ("Ephesian"), which owns a 16.01 acre tract adjacent to the Edgewater on Broad Creek Horizontal Property Regime (the "Regime"). The Regime was established by the Master Deed (the "Master Deed") recorded on December 31, 2002 in the Office of the Register of Deeds for Beaufort County, SC in Record Book 1689 at Page 574. A copy of the Master Deed is enclosed herewith.

The Master Deed submitted 7.64 acres of the Edgewater on Broad Creek property to the provisions of the South Carolina Horizontal Property Act, Section 27-31-10, *et. seq.* of the Code of Laws of South Carolina (1976), as amended (the "Act"). Ephesian is the owner of property at Edgewater on Broad Creek not submitted to the provisions of the Act by the Master Deed.

Ephesian is also the holder of the rights of the Declarant under the Master Deed by way of that certain Quitclaim Deed from the Trustee in Bankruptcy for Broad Creek Edgewater, LP, recorded on July 7, 2008 in Beaufort County Record Book 2742 at Page 2049 (the "Quitclaim Deed"). A copy of the Quitclaim Deed is enclosed herewith.

It has come to Ephesian's attention that Edgewater on Broad Creek Owners' Association, Inc. (the "Edgewater HOA") filed the above-referenced application for Expedited Development Plan Review (the "XDPR Application") on April 12, 2010 in connection with the construction of a tabby pathway and related recreational amenities on the Regime property. A Notice of Action on the XDPR Application was issued on April 15, 2010.

By way of our letter of April 15, 2010 to Nicole Dixon, we had asked that Nicole advise of us the filing of the XDPR Application, specifically for the purpose of reviewing the XDPR Application for compliance with applicable restrictive covenants. A copy of our April 15, 2010 letter to Nicole is enclosed. However, despite our written request, we were not advised by Nicole of the filing of the XDPR Application until we received her email of April 20, 2010, in which Nicole also advised us of the issuance of the Notice of Action on the XDPR Application. We obtained a copy of the XDPR Application on April 26, 2010 when we reviewed the Town's file on the XDPR Application.

Among the rights reserved under the Master Deed to the Declarant, as defined in the Master Deed, and held by Ephesian pursuant to the Quitclaim Deed, are the right to improve the Regime by clearing, tree pruning, constructing additional parking and common facilities, including, but not necessarily limited to recreational facilities, drainage facilities, lagoons, and the like. In addition, Ephesian holds rights of ingress and egress across the Regime property, the rights to install utility and drainage lines, equipment and facilities over the Regime property, and the right to grant easements over the Regime property. Further, Ephesian owns all water and sewer lines, pipes, pumps, pumping stations, and other equipment and facilities on the Regime property. We refer you to Exhibit A to the Master Deed.

Our review of the Town's file on the XDPR Application clearly indicates that the XDPR Application was incomplete when filed and when the Notice of Action was issued. The XDPR Application also represents that there are no recorded private covenants and/or restrictions that are contrary to, conflict with, or prohibit the proposed request. As you can readily ascertain from this letter, Ephesian believes this representation is clearly false, as the Edgewater HOA's tabby pathway and related recreational amenities are in conflict with, and prohibited by, the provisions of the Master Deed.

Section 6-29-1145(B)(3) of the Code of Laws of South Carolina (1976), as amended provides, in part,

> (B) If a local planning agency has actual notice of a restrictive covenant on a tract or parcel of land that is contrary to, conflicts with, or prohibits the permitted activity:
>
> (3) from any other source including, but not limited to, other property holders, the local planning agency must not issue the permit unless the local planning agency receives confirmation from the applicant that the restrictive covenant has been released for the tract or parcel of land by action of the appropriate authority or property holders or by court order.

Ephesian does not intend to relinquish any rights reserved to the Declarant under the Master Deed and the Quitclaim Deed, and is opposed to the project contemplated by the XDPR Application. Accordingly this letter provides the Town of Hilton Head Island with actual notice of a restrictive covenant on the Regime property that is contrary to, conflicts with, or prohibits the permitted activity.

We trust that the Town will take the appropriate action by rescinding the Notice of Action on the XDPR Application, and by not issuing any permit or other Notice of Action in connection with the XDPR Application until the XDPR Application is complete, and there is full compliance with the provisions of Section 1145(B)(3) of the South Carolina Code.

With best regards, we are

Very Truly Yours,

LAW OFFICE OF CHESTER C. WILLIAMS, LLC

Chester C. Williams

CCW:skt
Enclosures

Exhibit H (1 Page)

TOWN OF HILTON HEAD ISLAND
COMMUNITY DEVELOPMENT DEPARTMENT
One Town Center Court, Hilton Head Island, S.C. 29928
(843) 341-4757 Fax (843) 842-7228
Http://www.hiltonheadislandsc.gov

IMC Resort Services, Inc
2 Corpus Christi Place
Suite 302
Hilton Head Island, SC 29928

RE: Edgewater on Broad Creek, tabby walkway
XDPR10013

April 30, 2010

Dear Mr. Bucko:

Town Staff has rescinded the Notice of Action issued to Edgewater on Broad Creek to construct a tabby walkway and brick areas at 50 Verbena Lane (Expedited Development Plan Review (XDPR10013). The Notice of Action has been rescinded and the project denied based on discovery that misinformation was provided by you as part of the application. After further review by the Town's attorney, the proposed project is in violation of the Master Deed Establishing the Edgewater on Broad Creek Horizontal Property Regime (Phase 1). According to information contained in the deed, Ephesian retains all rights that went with the property transfer as part of the bankruptcy. South Carolina Code of Laws (Section 6-29-1145(B)(3)) prohibits the issuance of permits and approvals if they are contrary to the restrictive covenants. Therefore, prior to the review of any subsequent applications, you must receive written approval from Ephesian based on requirements in the recorded covenants and submit it as part of your application.

Please be aware that per Town Land Management Ordinance (LMO) Section 16-3-309 should you disagree with the denial of XDPR100013 you may appeal to the Town's Planning Commission.

Additionally, the approval to install a new pool, Design Review Board application DR100017 has been voided by Town Staff for the reasons as described in the first paragraph above.

Please contact me if you have any additional questions concerning this matter.

Sincerely,

TBlewis

Teri Lewis, AICP
LMO Official

Cc: Chester C. Williams

Exhibit I (2 Pages)

TOWN OF HILTON HEAD ISLAND
COMMUNITY DEVELOPMENT DEPARTMENT
One Town Center Court, Hilton Head Island, S.C. 29928
(843) 341-4757 Fax (843) 842-7228
Http://www.hiltonheadislandsc.gov

June 25, 2010
IMC Resort Services, Inc
2 Corpus Christi Place
Suite 302
Hilton Head Island, SC 29928

RE: Edgewater on Broad Creek, tabby walkway
XDPR100013

Dear Mr. Bucko:

This letter is in reference to the revocation of the Notice of Action issued for XDPR100013. On April 30, 2010, I sent you a letter stating that Town Staff was rescinding the Notice of Action issued for XDPR100013 due to discovery that misinformation was provided as part of the application. It is apparent that a neighboring property owner (Ephesian) claims certain covenant rights and controls which are disputed by Edgewater. It would appear that this is a civil dispute between two property owners which needs to be resolved by a court.

In addition, during a recent review of the Town's Land Management Ordinance (LMO) and discussions with legal staff, Town Staff realized that we revoked the Notice of Action without following the proper procedure listed in the LMO for revoking a permit. LMO Section 16-3-310.C states the following:

> A vested right to a site specific development plan or phased development plan is subject to revocation by the local governing body upon its determination, after notice and public hearing, that there was a material misrepresentation by the landowner or substantial noncompliance with the terms and conditions of the original or amended approval.

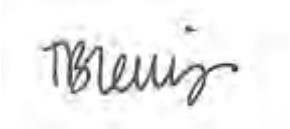
Based on the above section Staff should not have revoked the Notice of Action for XDPR100013 without prior notice and a public hearing.

At this time staff is going to hold the revocation in abeyance until such time that Edgewater and Ephesian have resolved the covenant dispute. As a result of this decision, APL100004 is moot and staff is in the process of refunding the $100 application fee. Additionally the approval issued for XDPR100013 will remain in place subject to the outcome of the pending covenant dispute.

Also, in accordance with LMO Section 16-3-309 the issuance of the NOA for XDPR100013 may be appealed for a period of 30 days; the appeal period was interrupted by our letter of April 30, 2010. This above mentioned interruption results in the appeal period being tolled for 15 days and therefore any interested parties still have an additional 15 days to appeal the NOA for XDPR100013.

Please contact me if you have any additional questions concerning this matter.

Sincerely,



Teri Lewis, AICP
LMO Official

cc: Gregg Alford
Brian Hulbert
Michael Mogil
Chester C. Williams

Exhibit J (4 Pages)

LAW OFFICE OF
CHESTER C. WILLIAMS, LLC
17 Executive Park Road, Suite 2
Post Office Box 6028
Hilton Head Island, SC 29938-6028
Telephone (843) 842-5411
Telefax (843) 842-5412
Email Firm@CCWLaw.net

Chester C. Williams
ALSO MEMBER LOUISIANA BAR

Thomas A. Gasparini
ALSO MEMBER CALIFORNIA BAR
(Inactive)
ALSO MEMBER OHIO BAR
(Inactive)

July 8, 2010

Teri B. Lewis, AICP
LMO Official
Town of Hilton Head Island
One Town Center Court
Hilton Head Island, SC 29928

HAND DELIVERED

RE: Edgewater on Broad Creek; Expedited Development Plan Review Application No. XDPR100013 for Tabby Pathway – Our File No. 01505-005

Dear Teri:

On behalf of our client Ephesian Ventures, LLC ("Ephesian"), we request that you, as the LMO Official for the Town of Hilton Head Island (the "Town"), initiate proceedings under Section 16-3-310(C) of the Town's Land Management Ordinance (the "LMO") to revoke the approval of Expedited Development Plan Review Application No. XDPR100013 (the "XDPR Application") evidenced by the April 15, 2010 Notice of Action (the "Notice of Action") of the XDPR Application on the grounds that there was a material misrepresentation by the landowner or its agent in the XDPR Application.

Ephesian owns a 16.01 acre tract adjacent to the Edgewater on Broad Creek Horizontal Property Regime (the "Regime"). The Regime was established by the Master Deed Establishing the Edgewater on Broad Creek Horizontal Property Regime (Phase I) recorded on December 31, 2002 in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 1689 at Page 574 (the "Master Deed"). We have previously provided you with a copy of the Master Deed, and we refer you to our letter to you of April 28, 2010.

Ephesian is the holder of the rights of the Declarant under the Master Deed by way of that certain Quitclaim Deed from the Trustee in Bankruptcy for Broad Creek Edgewater, LP, recorded on July 7, 2008 in Beaufort County Record Book 2742 at Page 2049 (the "Quitclaim Deed"). We have previously

provided you with a copy of the Quitclaim Deed, and we again refer you to our letter to you of April 28, 2010.

We also refer you to your letter dated April 30, 2010 to IMC Resort Services, Inc., the agent for the Edgewater Regime on the XDPR Application, by which you rescinded the Notice of Action, stating:

> The Notice of Action has been rescinded and the project denied based on discovery that misinformation was provided by you as part of the application. After further review by the Town's attorney, the proposed project is in violation of the Master Deed Establishing the Edgewater on Broad Creek Horizontal Property Regime (Phase 1)." (Emphasis added.)

A copy of your April 30, 2010 letter is enclosed herewith. Clearly, that letter evidences a determination by you, as the LMO Official, and Gregory M. Alford, Esq., the Town Attorney, that the XDPR Application contains misinformation that is a material misrepresentation.

Thereafter, by way of your June 25, 2010 letter to IMC Resort Services, Inc., you advised the Edgewater Regime that your April 30, 2010 revocation of the Notice of Action did not follow the procedure set forth in LMO Section 16-3-310(C), and that revocation is now being held in abeyance.

Section 6-29-1145(B)(3) of the Code of Laws of South Carolina (1976), as amended, prohibits the Town from issuing any permit if the Town has knowledge from any source of a restrictive covenant on a tract or parcel of land that is contrary to, conflicts with, or prohibits the permitted activity. Based on the determinations made by you, as the LMO Official, and the Town Attorney as set forth in your April 30, 2010 letter, it is readily apparent that the XDPR Application would not, and could not, have been approved by the Town but for the material misrepresentation in the XDPR Application.

Under LMO Section 16-8-103(A), you, as the LMO Official and the Administrator of the LMO, have responsibility for enforcement of the LMO; and under LMO Section 16-8-103(C)(2), you have a duty to take whatever action is necessary to assure compliance with the provisions of the LMO. Based upon the specific determinations made in your April 30, 2010 letter, after review by the Town Attorney, that misinformation was provided by you as part of the XDPR Application and that the project proposed by the XDPR Application is in violation of the Master Deed, it is incumbent upon you to institute revocation proceedings regarding the XDPR Application and the Notice of Action under LMO Section 16-3-310(C), as a material misrepresentation in an application is

a clear basis for revocation of a permit. We submit that you and your Staff cannot sit idly by and take no action in such circumstances, particularly when you and the Town Attorney have already made determinations which are conclusive to the issues.

On behalf of Ephesian, we formally request that you immediately take appropriate steps to initiate revocation proceedings under LMO Section 16-3-310(C) regarding the Notice of Action, and suspend the effectiveness of the Notice of Action pending those proceedings.

With best regards, we are

Very truly yours,

LAW OFFICE OF CHESTER C. WILLIAMS, LLC

Chester C. Williams

CCW:skt
Enclosure
cc: Stephen G. Riley, AICP
Charles F. Cousins, AICP
Gregory M. Alford, Esq.

TOWN OF HILTON HEAD ISLAND
COMMUNITY DEVELOPMENT DEPARTMENT
One Town Center Court, Hilton Head Island, S.C. 29928
(843) 341-4757 Fax (843) 842-7228
Http://www.hiltonheadislandsc.gov

IMC Resort Services, Inc
2 Corpus Christi Place
Suite 302
Hilton Head Island, SC 29928

RE: Edgewater on Broad Creek, tabby walkway
XDPR10013

April 30, 2010

Dear Mr. Bucko:

Town Staff has rescinded the Notice of Action issued to Edgewater on Broad Creek to construct a tabby walkway and brick areas at 50 Verbena Lane (Expedited Development Plan Review (XDPR10013). The Notice of Action has been rescinded and the project denied based on discovery that misinformation was provided by you as part of the application. After further review by the Town's attorney, the proposed project is in violation of the Master Deed Establishing the Edgewater on Broad Creek Horizontal Property Regime (Phase 1). According to information contained in the deed, Ephesian retains all rights that went with the property transfer as part of the bankruptcy. South Carolina Code of Laws (Section 6-29-1145(B)(3)) prohibits the issuance of permits and approvals if they are contrary to the restrictive covenants. Therefore, prior to the review of any subsequent applications, you must receive written approval from Ephesian based on requirements in the recorded covenants and submit it as part of your application.

Please be aware that per Town Land Management Ordinance (LMO) Section 16-3-309 should you disagree with the denial of XDPR100013 you may appeal to the Town's Planning Commission.

Additionally, the approval to install a new pool, Design Review Board application DR100017 has been voided by Town Staff for the reasons as described in the first paragraph above.

Please contact me if you have any additional questions concerning this matter.

Sincerely,

Teri Lewis, AICP
LMO Official

Cc: Chester C. Williams

Exhibit K (2 Pages)

H

Supreme Court of South Carolina.
SPANISH WELLS PROPERTY OWNERS ASSOCIATION, INC., Respondent,
v.
BOARD OF ADJUSTMENT OF the TOWN OF HILTON HEAD ISLAND, South Carolina, Petitioner.
In re CALIBOGUE SQUARE SUBDIVISION.
No. 22859.

Heard March 8, 1988.
Decided April 11, 1988.

After town planning commission granted preliminary development permit, property owners association appealed the commission's action to the Board of Adjustment. The Board of Adjustment denied the appeal, and association appealed to the Court of Common Pleas. The Court of Common Pleas, Beaufort County, John H. Waller, Jr., J., granted Board of Adjustment's motion to dismiss, and association appealed. The Court of Appeals, 292 S.C. 542, 357 S.E.2d 487, reversed, and board sought review. The Supreme Court granted certiorari to review, and held that party, who was granted development permit, was necessary party to appeal of its permit.

Reversed.

West Headnotes

Zoning and Planning 414 ⚷1602

414 Zoning and Planning
414X Judicial Review or Relief
414X(B) Proceedings
414k1600 Parties
414k1602 k. Necessary and indispensable parties. Most Cited Cases
(Formerly 414k582.1, 414k582)
Party who was granted development permit was necessary party to appeal of its permit.

****161 *67** Curtis L. Coltrane and James M. Herring, of Herring, Meyer & Coltrane, P.A., Hilton Head Island, for petitioner.

Phillip C. Lyman, of Lyman & Howell, P.A., Hilton Head Island, for respondent.

***68** PER CURIAM:

This case involves a development dispute on Hilton Head Island. This Court granted certiorari to review the decision of the Court of Appeals in *Spanish Wells Property Owners Ass'n v. Board of Adjustment,* 292 S.C. 542, 357 S.E.2d 487 (Ct.App.1987). We now reverse and remand.

The Hilton Head Island Planning Commission granted a preliminary development permit to Calibogue Yacht Properties, Inc. (Calibogue). Respondent Spanish Wells Property Owners Association, Inc. (Spanish Wells) objected to the issuance and appealed to petitioner Board of Adjustment (Board). The Board denied the appeal, and Spanish Wells appealed to the circuit court. The Board moved to dismiss under Rule 12(b)(7), SCRCP, arguing that Calibogue was a necessary party to the appeal under Rule 19, SCRCP. The circuit court granted the motion to dismiss, but allowed Spanish Wells fifteen days leave to join Calibogue. Spanish Wells instead appealed the order; the Court of Appeals reversed, holding that Calibogue was a proper, but not necessary, party to the appeal.

The sole question we address here is whether a permittee is a necessary party to an action to revoke a development permit.

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Other jurisdictions are divided on whether the permittee or successful applicant is a necessary party to an appeal instituted by an aggrieved party. The emerging majority view is that the permittee is a necessary party. *See* 3 Rathkopf, *The Law of Zoning and Planning* § 42.05[3] (4th Ed.1980 & Supp.1987) (citing numerous cases espousing "ascending" view); 101A C.J.S. *Zoning and Planning* § 301 (1979).

We find the reasoning behind the majority rule convincing. Designating the permittee a necessary party insures the most vitally interested party's participation in the appellate process. *See Cathcart-Maltby-Clearview Community Council v. Snohomish County,* 96 Wash.2d 201, 634 P.2d 853 (1981) (owner-applicant is party "most affected" and is necessary to any proceeding to invalidate his interest). Participation***69** by the most interested party serves judicial economy. Additionally, the majority rule insures that where a circuit court reverses a permit approval, the permittee will be bound because it is a party to the appeal. *See Hidden Lake Development Co. v. District Court,* 183 Colo. 168, 515 P.2d 632 (1973); *accord Board of Commissioners of Mesa County v. Carter,* 193 Colo. 225, 564 P.2d 421 (1977); *Lanaux v. City of New Orleans,* 489 So.2d 329 (La.Ct.App.1986); *Schroeder v. Burleigh County Board of Commissioners,* 252 N.W.2d 893 (N.D.1977).

For the foregoing reasons, we adopt the majority rule and hold that a development permittee is a necessary party to an appeal of its permit. The trial court therefore correctly ruled that Calibogue was a necessary party to Spanish Wells' appeal of the permit approval. Accordingly, the decision of the Court of Appeals to the contrary is ****162** reversed and the circuit court's order is affirmed.

REVERSED.

S.C.,1988.
Spanish Wells Property Owners Ass'n, Inc. v. Board of Adjustment of Town of Hilton Head Island
295 S.C. 67, 367 S.E.2d 160

END OF DOCUMENT

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TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Board of Zoning Appeals
FROM: Nicole Dixon, *Senior Planner and Board Coordinator*
VIA: Teri B. Lewis, *AICP, LMO Official*
DATE January 5, 2011
SUBJECT: APL100010 - Edgewater

Staff has received an appeal from Chester C. Williams on behalf of Ephesian Ventures, LLC, regarding the August 19, 2010 letter stating that an appeal application filed by the appellant should not be heard by the Planning Commission since the subject of the appeal was an administrative determination. Appeals of administrative determinations are to be heard by the Board of Zoning Appeals.

The appellant is appealing the Town's decision to not accept an appeal application to the Planning Commission. The record therefore consists of the following documents: Appeal Application, Appellant's Narrative titled Attachment 1, Determination Letter titled Exhibit A, a copy of LMO Sections 16-3-309, 16-3-607, and Chapter 3 Article XX, and a copy of State Codes Sections 6-29-340 and 6-29-800. We reserve the right to submit additional items in connection with this appeal.

If you have any questions, feel free to contact Nicole Dixon at 341-4686 or nicoled@hiltonheadislandsc.gov.

LAW OFFICE OF
CHESTER C. WILLIAMS, LLC
17 Executive Park Road, Suite 2
Post Office Box 6028
Hilton Head Island, SC 29938-6028
Telephone (843) 842-5411
Telefax (843) 842-5412
Email Firm@CCWLaw.net

Chester C. Williams
ALSO MEMBER LOUISIANA BAR

Thomas A. Gasparini
ALSO MEMBER CALIFORNIA BAR
(Inactive)
ALSO MEMBER OHIO BAR
(Inactive)

September 7, 2010

HAND DELIVERED
and
VIA EMAIL TO TeriL@HiltonHeadIslandSC.gov

Teri B. Lewis, AICP
LMO Official
Town of Hilton Head Island
One Town Center Court
Hilton Head Island, SC 29928

RE: Appeal of Administrative Determination Regarding Appeal to Planning Commission – Our File No. 01505-005

Dear Teri:

We are pleased to deliver to you herewith for filing with the Town's Board of Zoning Appeals our appeal on behalf of our client, Ephesian Ventures, LLC, regarding the administrative determination made in your August 19, 2010 letter to us. Also enclosed is our check for $100.00 payable to the Town for the required filing fee for this appeal.

By way of his copy of this letter, we advise Roger A. DeCaigny, the Chairman of the Board of Zoning Appeals, of our filing of this appeal to the Board of Zoning Appeals on behalf of Ephesian Ventures, LLC.

Please let us know if you, your staff, or the Board of Zoning Appeals require any further information from or on behalf of our client with respect to this appeal or the enclosed motion.

With best regards, we are

Very truly yours,

LAW OFFICE OF CHESTER C. WILLIAMS, LLC

Chester C. Williams

CCW:skt
Enclosures

cc: Mr. Roger A. DeCaigny
Gregory M. Alford, Esquire

Town of Hilton Head Island

Community Development Department
One Town Center Court
Hilton Head Island, SC 29928
Phone: 843-341-4757 Fax: 843-842-8908
www.hiltonheadislandsc.gov

FOR OFFICIAL USE ONLY
Date Received: 9/7/10
Accepted by: #2
App. #: APL 100010
Meeting Date:

Applicant/Agent Name: Epehsian Ventures, LLC Company: Chester C. Williams, Attorney for the Applicant
Mailing Address: Post Office Box 6028 City: Hilton Head island State: SC Zip: 29938
Telephone: 843-842-5411 Fax: 843-842-5412 E-mail: Firm@CCWLaw.net

APPEAL (APL) SUBMITTAL REQUIREMENTS

Digital Submissions may be accepted via e-mail by calling 843-341-4757. The following items must be attached in order for this application to be complete:

- ✓ A detailed narrative stating the Town Official or Body the made the decision, the date of the decision you are appealing, the decision you are appealing, the basis for your right to appeal, the grounds of the appeal, and citing any LMO Section numbers relied upon; **and** a statement of the specific decision requested of the Board of Zoning Appeals. See Attachment 1
- ✓ Any other documentation used to support the facts surrounding the decision. See Attachment 1
- ✓ Filing Fee - $100.00 cash or check made payable to the Town of Hilton Head Island.

To the best of my knowledge, the information on this application and all additional documentation is true, factual, and complete. I hereby agree to abide by all conditions of any approvals granted by the Town of Hilton Head Island. I understand that such conditions shall apply to the subject property only and are a right or obligation transferable by sale.

I further understand that in the event of a State of Emergency due to a Disaster, the review and approval times set forth in the Land Management Ordinance may be suspended.

Applicant/Agent Signature: _____ Date: September 7, 2010
Chester C. Williams, Attorney for the Applicant

THE TOWN OF HILTON HEAD ISLAND

BOARD OF ZONING APPEALS

2010 Public Meeting Schedule

BZA Powers and Duties	Application Procedure
The Board of Zoning Appeals has the following powers: A. To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the administration or enforcement of Title 16 of the Municipal Code, Land Management Ordinance. B. To hear and decide requests for variance from the Design and Performance Standards of the Land Management Ordinance. C. To review and take action on applications for uses by special exception; and D. To review and take action on appeals of Planning Commission action on certain traffic analysis plans.	Applications for Variance and Special Exception must be completed and submitted not later than 45 days prior to the meeting at which the application will be considered. In addition, Applications for Appeal must be filed not later than 14 days from the date of the decision being appealed. An Application Check-In Conference is required for all applications to determine whether the application meets the minimum requirements for acceptance. Application Check-In Conferences must be scheduled by appointment with the Community Development Department staff.

BZA PUBLIC MEETING DATE	APPLICATION DEADLINE
January 25, 2010	December 11, 2009
February 22, 2010	January 8, 2010
March 22, 2010	February 5, 2010
April 26, 2010	March 12, 2010
May 24, 2010	April 9, 2010
June 28, 2010	May 14, 2010
July 26, 2010	June 11, 2010
August 23, 2010	July 9, 2010
September 27, 2010	August 13, 2010
October 25, 2010	September 10, 2010
November 22, 2010	October 8, 2010
*December 20, 2010	November 5, 2010

** December 20th is the 3rd Monday of the month due to Christmas week*

Regular meetings are held on the 4th Monday of each month at 2:30pm in Council Chambers.

REQUEST FOR APPEAL

PROCEDURES BEFORE THE BOARD OF ZONING APPEALS

Appeal of Administrative Decisions Request

This is a request to appeal to the Board of Zoning Appeals by any person aggrieved by a decision, interpretation or determination of the Administrator. The Board will also review and take action on appeals of Planning Commission action on certain traffic analysis plans. An aggrieved person is defined as any property owner within 350 feet of the property for which a decision or determination has been rendered, and may include persons owning property beyond 350 feet if it is determined by the Board of Zoning Appeals that such property owners may be affected by a decision or determination of the Administrator or the Planning Commission. An application for appeal shall be filed (received by the Administrator or postmarked) not later than 14 calendar days after receipt of the decision being appealed in order to be considered by the Board of Zoning Appeals.

PROCEDURES

A. Submission of Application

1. Submit the application by the deadline indicated for each meeting on the Board of Zoning Appeals Public Hearing Schedule.

2. For an appeal of administrative decisions request, please submit the Appeal Application Form, along with the items listed as submittal requirements on that form.

3. An application check-in conference is required for all applications to determine whether the application meets the minimum requirements for acceptance. The application check-in conference must be scheduled by appointment with the Community Development Department staff.

B. Public Notice Requirements

1. Public notice to be published is required for an appeal request.

2. **Published Notice** - A Public Notice shall be placed by the Administrator in a local newspaper of general circulation within the Town for not less than 30 calendar days prior to the meeting for the purpose of notifying the public.

C. Staff Review and Report

1. In an appeal, the Administrator will prepare a staff report which provides in detail staff's decision/interpretation of the LMO.

2. The Administrator shall provide a copy of the report to the Board of Zoning Appeals and the appellant (applicant) before the scheduled meeting.

D. Meeting Before the Board of Zoning Appeals

1. The Board is comprised of seven members, appointed by Town Council.

2. The Chairman of the Board opens the meeting and reads the procedures to be followed during the meeting.

3. In an appeal, staff will present the Administrator's interpretation of the LMO. The applicant will then have an opportunity to present why they are appealing staff's decision.

4. The Board may have questions for Town staff or the applicant.

5. The Board will then deliberate until a decision is reached. During the deliberations by the Board, Board members may address questions to staff or the applicant, but no person shall participate in these discussions unless addressed by the Chairman or a Board member.

6. The Chairman will then ask for a motion.

7. In an appeal, at the conclusion of the proceeding on the appeal, the Board will either: affirm the action of the Administrator, modify the action of the Administrator, or reverse the action of the Administrator.

E. Written Notification of Decision

1. Within 10 calendar days after a decision has been made by the Board of Zoning Appeals, a copy of the written decision shall be sent to the applicant or appellant and the property owner.

2. A copy of the notice shall be filed in the office of the Administrator, where it shall be available for public inspection during regular office hours.

F. Appeals from the Decision of the Board of Zoning Appeals

1. A person who may have a substantial interest in any decision of the Board of Zoning Appeals, or an officer or agent of the appropriate governing authority may appeal from a decision of the Board to the Circuit Court of Beaufort County. The appeal must be filed within 30 days after the decision of the Board is mailed.

2. A property owner whose land is the subject of a decision of the Board of Zoning Appeals may appeal to the Circuit Court of Beaufort County or by filing a notice with the circuit court accompanied by a request for pre-litigation in mediation. The notice of appeal and request for pre-litigation in mediation must be filed within 30 days after the decision of the board is mailed.

STATE OF SOUTH CAROLINA	)	**BEFORE THE BOARD OF ZONING**
	)	**APPEALS OF THE TOWN OF HILTON**
	)	**HEAD ISLAND, SOUTH CAROLINA**
	)	
	)	**REQUEST FOR APPEAL**
COUNTY OF BEAUFORT	)	**NO. APL10000_____**

ATTACHMENT 1

TO THE APPEAL APPLICATION OF

EPHESIAN VENTURES, LLC

NARRATIVE

I. RESERVATION OF RIGHTS

Nothing in this Attachment 1 or the Request for Appeal to which it is attached should be construed or interpreted as an admission by Ephesian that jurisdiction lies with the Board of Zoning Appeals of the Town of Hilton Head Island (the "BZA" and the "Town", respectively) for the issues presented herein. This appeal is being filed with the BZA because of the LMO Administrator's prior refusal to accept for filing other appeals to the Town's Planning Commission, notwithstanding the fact that the decision appealed is based on a land development application, and in case the LMO Administrator likewise refuses to accept a contemporaneous appeal to the Planning Commission that is substantially similar to this appeal. Ephesians believes that jurisdiction to hear this appeal lies with the Planning Commission, and not the BZA.

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II. INTRODUCTION

This Attachment 1 is part of the Request for Appeal (this "Appeal") filed on behalf of Ephesian Ventures, LLC ("Ephesian") in connection with a decision or determination (the "Decision") made by Teri B. Lewis, AICP, LMO Administrator for the Town of Hilton Head Island (the "Town"), purporting to interpret or construe provisions of the South Carolina Code of Laws (1976), as amended (the "SC Code") and the Town's Land Management Ordinance (the "LMO") regarding the jurisdiction of the Town's Planning Commission (the "Planning Commission") to hear an appeal of an administrative decision in connection with an application to the Town for a land development permit, and is submitted for inclusion in the record of this Appeal, and for review by the Planning Commission.

The Decision, which relates to the April 15, 2010 Notice of Action (the "Notice of Action") on Expedited Development Plan Review Application No. XDPR100013 (the "XDPR Application") filed on April 12, 2010 on behalf of Edgewater on Broad Creek, HPR for a tabby pathway on the property of Edgewater on Broad Creek Horizontal Property Regime, is set forth in the August 19, 2010 letter from Mrs. Lewis to the undersigned, Chester C. Williams, attorney for Ephesian.[1]

This Appeal seeks relief from the Decision by which Mrs. Lewis has determined that only the Town's Board of Zoning Appeals (the "BZA"), and not the Planning Commission, has jurisdiction to hear an appeal of an administrative decision in connection with a land development permit application.

This Appeal presents only a matter of law. There is no dispute about the facts. The only issues here are (1) whether or not the Planning Commission has jurisdiction to hear an appeal that is based on a land development permit which is timely delivered to the LMO Administrator for filing, and (2) whether

---

[1] A copy of the August 19, 2010 letter from Mrs. Lewis is attached to this Narrative as Exhibit A.

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by refusing to accept timely appeals for filing, the LMO Administrator can preempt that jurisdiction. Ephesian believes the Planning Commission has both the power and the duty to hear such appeals, and further believes that only the Planning Commission has the authority to decide the issue of its appeal jurisdiction.

III. BACKGROUND

On August 9, 2010 Ephesian timely filed appeals of Mrs. Lewis' decision not to institute revocation proceedings in connection with the XDPR Application and the Notice of Action by delivering to the LMO Administrator for filing two complete applications for appeal, one to the Planning Commission, and one to the BZA.[2] Mrs. Lewis received and accepted the appeal to the BZA for filing; however, while Mrs. Lewis received the appeal to the Planning Commission, she did not accept it for filing. In her August 19, 2010 letter, Mrs. Lewis "determined that this appeal should not be heard by the Planning Commission."

By way of Mrs. Lewis' August 19, 2010 letter to the undersigned, the Town made the Decision that is the subject of this Appeal, formally refusing to accept Ephesian's August 9, 2010 appeal to the Planning Commission, on the basis that only the BZA has jurisdiction to hear Ephesian's August 9, 2010 appeal.

IV. GROUNDS FOR APPEAL

Ephesian alleges that the Decision was improperly made, and is in error, because it is arbitrary and capricious, and contrary to the explicit provisions of Title 6, Chapter 29 of the SC Code (the "State Enabling Act") and the LMO. In

---

[2] Appeals were filed with both the Planning Commission and the BZA out of an abundance of caution, considering that the Town Staff, in past instances, has attempted to make determinations concerning the jurisdiction of the Planning Commission and the BZA.

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making the Decision, the LMO Administrator has improperly assumed the roles of gatekeeper and key master for access to the Planning Commission, and has wrongfully restricted Ephesian's lawful access to the Planning Commission, in violation of applicable provisions of the State Enabling Act and the LMO.

While the BZA clearly has jurisdiction to hear certain appeals, those appeals are limited by the State Enabling Act to matters that arise under "the zoning ordinance".[3] On the other hand, the Planning Commission has both the power and the duty to, among other things, "oversee the administration of the regulations [for the subdivision and development of land] that may be adopted as provided in [the State Enabling Act]."[4] The zoning ordinance portions of the LMO are not the same as the subdivision and land development regulations portions of the LMO, and merely combining the zoning ordinance with the subdivision and land development regulations in one unified ordinance, such as the LMO, cannot, and does not, extend the appeal jurisdiction of the BZA beyond what is authorized by the State Enabling Act; and to the extent that LMO Section 16-2-305(A) purports to grant the BZA appeal jurisdiction over anything other than the zoning ordinance portion of the LMO, it is contrary to the State Enabling Act.

V. CONCLUSION

Ephesian asks that the BZA (a) consider the issues raised in this Appeal and the pertinent provisions of the SC Code, the LMO, and other applicable law, (b) find that the Decision is wrong and in error, and reverse the Decision, (c) find that appeals of administrative decisions by the Administrator on land development plans must be made to the Planning Commission, and (d) order the Administrator to accept for filing as of the tender date the appeal to the Planning Commission previously delivered to the Administrator for filing on August 9, 2010.

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[3] See SC Code Section 6-29-800(A)(1).

[4] See SC Code Section 6-29-350(B)(2)(b).

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Ephesian reserves the right to submit additional materials, documents, and information to the Planning Commission in connection with this Appeal.

Respectfully submitted on behalf of Ephesian this 7th day of September, 2010.

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Exhibit A (1 Page)

TOWN OF HILTON HEAD ISLAND

One Town Center Court, Hilton Head Island, S.C. 29928
(843) 341-4600 Fax (843) 842-7728
www.hiltonheadislandsc.gov

Thomas D. Peeples
Mayor

Kenneth S. Heitzke
Mayor ProTem

Council Members

Willie (Bill) Ferguson
William D. Harkins
Drew A. Laughlin
John Safay
George W. Williams, Jr.

Stephen G. Riley
Town Manager

RECEIVED
AUG 2 3 2010

August 19, 2010

Mr. Chester C. Williams
17 Pope Avenue Executive Park Road
Unit 2
P.O. Box 6028
Hilton Head Island, SC 29938-6028

Dear Chet:

This letter is in response to APL100008 [an appeal to the Planning Commission of an administrative determination made by me in a letter to you dated July 28, 2010] which you submitted to the Town on August 9, 2010. I have reviewed your materials, the State Code and the Town's Land Management Ordinance (LMO) and have determined that this appeal should not be heard by the Planning Commission. My July 28th letter was clear that I was making an administrative determination and the LMO states that administrative determinations are appeals to the Board of Zoning Appeals. Further State Code states that approvals and disapprovals of land development plans may be appealed to the Planning Commission; my determination was clearly not an approval or disapproval of a land development plan.

I am returning the appeal materials to you and have requested a refund for the appeal application fee.

Sincerely,

TBLewis

Teri B. Lewis
LMO Official

Land Management Ordinance Sections used to make the administrative determination.

Sec. 16-3-309. Appeal
Staff approval or disapproval of a land development plan may be appealed to the Planning Commission by any party in interest. The Planning Commission must act on the appeal within 60 days of receipt of the appeal, and the action of the Planning Commission is final, except as appellate rights provided in section 6-29-1150(C) of the State Code of South Carolina.
(Revised 2/7/06--Ordinance 2006-02; Revised 1/15/08--Ordinance 2008-01; Revised 10/6/09--Ordinance 2009-33)

Sec. 16-3-607. Appeal
Staff approval or disapproval of a subdivision plan may be appealed to the Planning Commission by any party in interest. The Planning Commission must act on the appeal within 60 days of receipt of the appeal, and the action of the Planning Commission is final, except as appellate rights provided in section 6-29-1150(C) of the State Code of South Carolina.
(Revised 4/25/00--Ordinance 2000-13; Revised 1/15/08--Ordinance 2008-01; Revised 10/6/09--Ordinance 2009-33)

ARTICLE XX. APPEALS OF ADMINISTRATIVE DECISIONS

Sec. 16-3-2001. Who May Appeal
Any person aggrieved by a decision, interpretation or determination of the Administrator or the Planning Commission may bring an appeal to the Board of Zoning Appeals by filing an application with the Administrator. An aggrieved person is defined as any property owner within 350 feet of the property for which a decision or determination has been rendered, and may include persons owning property beyond 350 feet if it is determined by the Board of Zoning Appeals that such property owners may be affected by a decision or determination of the Administrator or the Planning Commission.

Sec. 16-3-2002. Deadline for Submission of Application
An application for appeal shall be filed (received by the Administrator or postmarked) within 14 calendar days of receipt of the decision being appealed in order to be considered by the Board of Zoning Appeals.
(Revised 1/15/08--Ordinance 2008-01)

Sec. 16-3-2003. Action by Board of Zoning Appeals
At the conclusion of the proceeding on the appeal, the Board of Zoning Appeals shall take one of the following actions and make written findings consistent with the provisions of this Article:
(Revised 9/5/06--Ordinance 2006-19)

A. Affirm the action of the Administrator or,
B. Modify the action of the Administrator, and to that end, the Board of Zoning Appeals shall have all the powers of the Administrator, and may issue a permit or direct that a permit be issued; provided however that the affirmative vote of a majority of the Board of Zoning Appeals shall be required to modify the Administrative decision; or,

C. Reverse the action of the Administrator, and to that end, the Board of Zoning Appeals shall have all the powers of the Administrator, and may issue a permit or direct that a permit be issued; provided however that the affirmative vote of a majority of the Board of Zoning Appeals shall be required to reverse the Administrative decision.

(Revised 4/2/02--Ordinance 2002-10)

Sec. 16-3-2004. Submission Requirements

An application for appeal shall consist of information necessary for the Board of Zoning Appeals to make a determination regarding the appeal request, including, but not limited to the following:

A. An application form as published by the Administrator and appropriate fee as required by Sec. 16-3-105.

B. A written narrative explaining in detail the appeal requested and the reasons why an appeal should be granted.

(Revised 5/4/04--Ordinance 2004-22)

State Code Sections used to make the administrative determination.

SECTION 6-29-340. Functions, powers, and duties of local planning commissions.

(A) It is the function and duty of the local planning commission, when created by an ordinance passed by the municipal council or the county council, or both, to undertake a continuing planning program for the physical, social, and economic growth, development, and redevelopment of the area within its jurisdiction. The plans and programs must be designed to promote public health, safety, morals, convenience, prosperity, or the general welfare as well as the efficiency and economy of its area of jurisdiction. Specific planning elements must be based upon careful and comprehensive surveys and studies of existing conditions and probable future development and include recommended means of implementation. The local planning commission may make, publish, and distribute maps, plans, and reports and recommendations relating to the plans and programs and the development of its area of jurisdiction to public officials and agencies, public utility companies, civic, educational, professional, and other organizations and citizens. All public officials shall, upon request, furnish to the planning commission, within a reasonable time, such available information as it may require for its work. The planning commission, its members and employees, in the performance of its functions, may enter upon any land with consent of the property owner or after ten days' written notification to the owner of record, make examinations and surveys, and place and maintain necessary monuments and marks on them, provided, however, that the planning commission shall be liable for any injury or damage to property resulting therefrom. In general, the planning commission has the powers as may be necessary to enable it to perform its functions and promote the planning of its political jurisdiction.

(B) In the discharge of its responsibilities, the local planning commission has the power and duty to:

(1) prepare and revise periodically plans and programs for the development and redevelopment of its area as provided in this chapter; and

(2) prepare and recommend for adoption to the appropriate governing authority or authorities as a means for implementing the plans and programs in its area:

(a) zoning ordinances to include zoning district maps and appropriate revisions thereof, as provided in this chapter;
(b) regulations for the subdivision or development of land and appropriate revisions thereof, and to oversee the administration of the regulations that may be adopted as provided in this chapter;
(c) an official map and appropriate revision on it showing the exact location of existing or proposed public street, highway, and utility rights-of-way, and public building sites, together with regulations to control the erection of buildings or other structures or changes in land use within the rights-of-way, building sites, or open spaces within its political jurisdiction or a specified portion of it, as set forth in this chapter;
(d) a landscaping ordinance setting forth required planting, tree preservation, and other aesthetic considerations for land and structures;
(e) a capital improvements program setting forth projects required to implement plans which have been prepared and adopted, including an annual listing of priority projects for consideration by the governmental bodies responsible for implementation prior to preparation of their capital budget; and
(f) policies or procedures to facilitate implementation of planning elements.

SECTION 6-29-800. Powers of board of appeals; variances; special exceptions; remand; stay; hearing; decisions and orders.

(A) The board of appeals has the following powers:
(1) to hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance;
(2) to hear and decide appeals for variance from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship. A variance may be granted in an individual case of unnecessary hardship if the board makes and explains in writing the following findings:
(a) there are extraordinary and exceptional conditions pertaining to the particular piece of property;
(b) these conditions do not generally apply to other property in the vicinity;
(c) because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
(d) the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.
(i) The board may not grant a variance, the effect of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a nonconforming use of land or to change the zoning district boundaries shown on the official zoning map. The fact that property may be utilized more profitably, if a variance is granted, may not be considered grounds for a variance. Other requirements may be prescribed by the zoning ordinance.

A local governing body by ordinance may permit or preclude the granting of a variance for a use of land, a building, or a structure that is prohibited in a given district, and if it does permit a variance, the governing body may require the affirmative vote of two-thirds of the local adjustment board members present and voting. Notwithstanding any other provision of this section, the local governing body may overrule the decision of the local board of adjustment concerning a use variance.

(ii) In granting a variance, the board may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the board may consider advisable to protect established property values in the surrounding area or to promote the public health, safety, or general welfare;

(3) to permit uses by special exception subject to the terms and conditions for the uses set for the for such uses in the zoning ordinance; and

(4) to remand a matter to an administrative official, upon motion by a party or the board's own motion, if the board determines the record is insufficient for review. A party's motion for remand may be denied if the board determines that the record is sufficient for review. The board must set a rehearing on the remanded matter without further public notice for a time certain within sixty days unless otherwise agreed to by the parties. The board must maintain a list of persons who express an interest in being informed when the remanded matter is set for rehearing, and notice of the rehearing must be mailed to these persons prior to the rehearing.

(B) Appeals to the board may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality or county. The appeal must be taken within a reasonable time, as provided by the zoning ordinance or rules of the board, or both, by filing with the officer from whom the appeal is taken and with the board of appeals notice of appeal specifying the grounds for the appeal. If no time limit is provided, the appeal must be taken within thirty days from the date the appealing party has received actual notice of the action from which the appeal is taken. The officer from whom the appeal is taken immediately must transmit to the board all the papers constituting the record upon which the action appealed from was taken.

(C) An appeal stays all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board, after the notice of appeal has been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property. In that case, proceedings may not be stayed other than by a restraining order which may be granted by the board or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(D) The board must fix a reasonable time for the hearing of the appeal or other matter referred to the board, and give at least fifteen days' public notice of the hearing in a newspaper of general circulation in the community, as well as due notice to the parties in interest, and decide the appeal or matter within a reasonable time. At the hearing, any party may appear in person or by agent or by attorney.

(E) In exercising the above power, the board of appeals may, in conformity with the provisions of this chapter, reverse or affirm, wholly or in part, or may modify the order, requirements, decision, or determination, and to that end, has all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit. The board, in the execution of the duties specified in this chapter, may subpoena witnesses and in case of contempt may certify this fact to the circuit court having jurisdiction.

(F) All final decisions and orders of the board must be in writing and be permanently filed in the office of the board as a public record. All findings of fact and conclusions of law must be separately stated in final decisions or orders of the board which must be delivered to parties of interest by certified mail.

TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Board of Zoning Appeals
FROM: Nicole Dixon, *Senior Planner*
DATE January 6, 2011
SUBJECT: Administrative Waivers

The Board of Zoning Appeals (BZA) requested that staff keep them informed of administrative waivers that are granted by staff based on the provisions in Section 16-7-106 of the Land Management Ordinance (LMO). This memo will be distributed every month at the regular BZA meetings and will be discussed under staff reports on the agenda. Even if there have been no waivers for the month, a memo will be included in the packet to inform the BZA members of that.

The following language is contained in Section 16-7-106 Waiver by Administrator which gives the Administrator the power to grant waivers for existing nonconforming structures and site features.

"The Administrator may waive any provision of Article III or IV dealing with nonconforming structures and site features, respectively, upon a determination that:

A. The proposed expansion, enlargement or extension does not encroach further into any required buffers or setbacks or increase the impervious area; and
B. The proposed expansion, enlargement, or extension does not occupy a greater footprint than the existing nonconforming site feature or structure; and
C. The proposed expansion, enlargement, or extension does not result in an increase in density greater than allowed per Sec. 16-4-1501, or the existing density, whichever is greater; and
D. The applicant agrees to eliminate nonconformities or provide site enhancements that the Administrator determines are feasible in scope and brings the site into substantial conformance with the provisions of this Title (e.g. meeting buffer, impervious area and open space requirements); and
E. The proposed expansion, enlargement or extension would not have a significant adverse impact on surrounding properties or the public health, safety and welfare; and
F. If an applicant requests to relocate a nonconforming structure on the same site, they must bring the structure into conformance to the extent deemed practicable by the Administrator."

The attached is a summary of the administrative waivers that have been granted by staff since the September Board of Zoning Appeals meeting.

Administrative Waivers

December

1. A project at 12 Brigantine, requested to add a pool onto the existing structure. A waiver was granted due to the expansion of an existing nonconforming structure. This waiver was granted with a condition to plant one (1) 6-8 ft sable palm (at time of planting) in the 20ft tidal buffer per the approved site plan. (plant in center of buffer where it lacks vegetation) The site will be inspected for compliance as part of the building permit issued for the project.