



**Town of Hilton Head Island**  
**Board of Zoning Appeals Meeting**  
**Monday, March 28, 2011**  
**2:30 p.m. Council Chambers**  
**AGENDA**

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**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** – Special Meeting February 21, 2011
- 8. Unfinished Business**  
**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.  
  
**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.

**9. New Business**

**Public Hearing**

**VAR100005:** Request for variances from LMO Sections 16-4-1605, Maximum Impervious Coverage and Minimum Open Space, 16-5-704.A, Adjacent Use Setbacks, 16-5-806.A, Adjacent Use Buffers, 16-5-806.B Adjacent Street Buffers, 16-5-1201, Off-Street Parking Required, 16-5-1206, Parking Area Design and 16-5-1208, Schedule of Required Off-Street Parking. Stephen Couto is requesting variances from these requirements in order to allow several existing non-permitted and non-conforming site features and structures to remain on site. The property is located at 79 Arrow Road and is further identified as Parcel 841 on Beaufort County Tax Map 14.

**SER110002:** Request for Special Exception for an Other Retail Service use in the Office/Institutional Low Density (OL) Zoning District. Mark R. Sertl of S & C 278 Associates, Inc. is proposing to operate a cellular phone service business in an existing building at the subject location. The property is located at 3 Regency Parkway, and is further identified as Parcel 155A on Beaufort County Tax Map 11.

**10. Board Business**

**11. Staff Report**

Waiver Report - *Presented by: Nicole Dixon*

**12. Adjournment**

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3 **TOWN OF HILTON HEAD ISLAND**  
4 **Board of Zoning Appeals**  
5 **Minutes of the Special Meeting Monday, February 21, 2011**  
6 **2:30p.m– Benjamin M. Racusin Council Chambers** **DRAFT**  
7

8 Board Members Present: Chairman Roger DeCaigny, Vice Chairman Peter Kristian,  
9 Michael Lawrence, Jack Qualey and Stephen Murphy

10 Board Members Absent: Alan Brenner and Bob Sharp, excused

11 Council Members Present: Bill Ferguson

12  
13 Town Staff Present: Anne Cyran, Senior Planner  
14 Nicole Dixon, Senior Planner and Coordinator  
15 Heather Colin, Development Review Administrator  
16 Teri Lewis, LMO Official  
17 Brian Hulbert, Board Attorney  
18 Kathleen Carlin, Board Secretary  
19  
20

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21  
22 **1. CALL TO ORDER**

23 Chairman DeCaigny called today's special meeting to order at 2:30p.m.  
24

25 **2. ROLL CALL**  
26

27 **3. INTRODUCTION TO BOARD PROCEDURES**

28 Chairman DeCaigny stated the Board's procedures for conducting today's business meeting.  
29

30 **4. APPROVAL OF THE AGENDA**

31 Vice Chairman Kristian made a **motion** to approve the agenda as presented. Mr. Qualey  
32 **seconded** the motion and the motion **passed** with a vote of 5-0-0.  
33

34 **5. APPROVAL OF THE MINUTES**

35 Mr. Lawrence made a **motion** to **approve** the minutes of the January 24, 2011 meeting as  
36 presented. Vice Chairman Kristian **seconded** the motion and the motion **passed** with a vote of  
37 5-0-0.  
38

39 **6. UNFINISHED BUSINESS**

40 None  
41

42 **7. NEW BUSINESS**

43 **Public Hearing**

44 **SER110001**: Request for Special Exception for an Other Light Industrial Service use in the  
45 Commercial Center (CC) Zoning District. Scott T. Hamlin of MegaWatt Lasers is proposing  
46 to operate a laser manufacturing facility. The property is located at 89 Arrow Road, and is  
47 further identified as parcel 816A on Beaufort County Tax Map 14, and is owned by James and  
48 Opal Propes.

1  
2 Ms. Anne Cyran made the presentation on behalf of staff. The staff recommended that Special  
3 Exception Application SER110001 be approved.  
4

5 Ms. Cyran stated that MegaWatt Lasers, a laser manufacturing business, has operated at 18  
6 Hunter Road for the past 9 years. Late last year, Scott Hamlin, President of MegaWatt Lasers,  
7 approached Town staff about relocating their expanding business. The proposed location,  
8 which was previously occupied by Pro Photo, was selected due to its size, finished interior and  
9 existing utilities. The property is located at 89 Arrow Road and is bound by Arrow Road to the  
10 west, an undeveloped utility easement to the east, an undeveloped parcel to the south and  
11 Plantation Cabinetry to the north.  
12

13 Mr. Scott Hamlin, business owner, is requesting special exception approval for an Other Light  
14 Industrial Service use in the CC Zoning District per the requirements of LMO Section 16-4-  
15 1204, Use Table. The applicant states in the narrative that the business will operate in an  
16 existing vacant building and other than improving some neglected landscaping, no other  
17 alterations are proposed to the site. The applicant believes the proposed use will be compatible  
18 with surrounding uses because all activities will take place in the building and the proposed use  
19 will not generate noise, glare, smoke, dust, odor, fumes, water pollution or general nuisance.  
20

21 Staff concludes that this application meets the criteria as set forth in LMO Section 16-3-  
22 1805.C. The proposed use is compatible with and will not be a nuisance to the existing uses  
23 adjacent to and near the property. The subject property is separated from a nearby high  
24 intensity use, which limits traffic concerns.  
25

26 Ms. Cyran presented a review of the site. Ms. Cyran reviewed the Findings of Fact and  
27 Conclusions of Law. The application has met the required criteria. At the completion of the  
28 staff's presentation, Chairman DeCaigny requested that the applicant make his presentation.  
29

30 Mr. Scott Hamlin presented statements in support of the application. Mr. Hamlin stated that  
31 this business involves the assembly and manufacture of laser components. The applicant  
32 provided a sample of one of the components for the Board's review. The Board and Mr.  
33 Hamlin discussed the application. At the completion of the applicant's presentation, Chairman  
34 DeCaigny requested comments from the public.  
35

36 Mr. Joe Ryan, representative of the business owner at 84 Arrow Road, presented statements in  
37 possible concern of deliveries by large trucks. The applicant stated that this will not be an  
38 issue. At the completion of public comments, Chairman DeCaigny requested that a motion be  
39 made.  
40

41 Mr. Qualey made a **motion** to **approve** Special Exception Application SER 110001 as  
42 submitted because it is supported by the Findings of Fact and Conclusions of Law and has met  
43 the required criteria as stated by the staff. Mr. Kristian **seconded** the motion and the motion  
44 **passed** with a vote of 5-0-0.  
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**8. BOARD BUSINESS**

None

**9. STAFF REPORT**

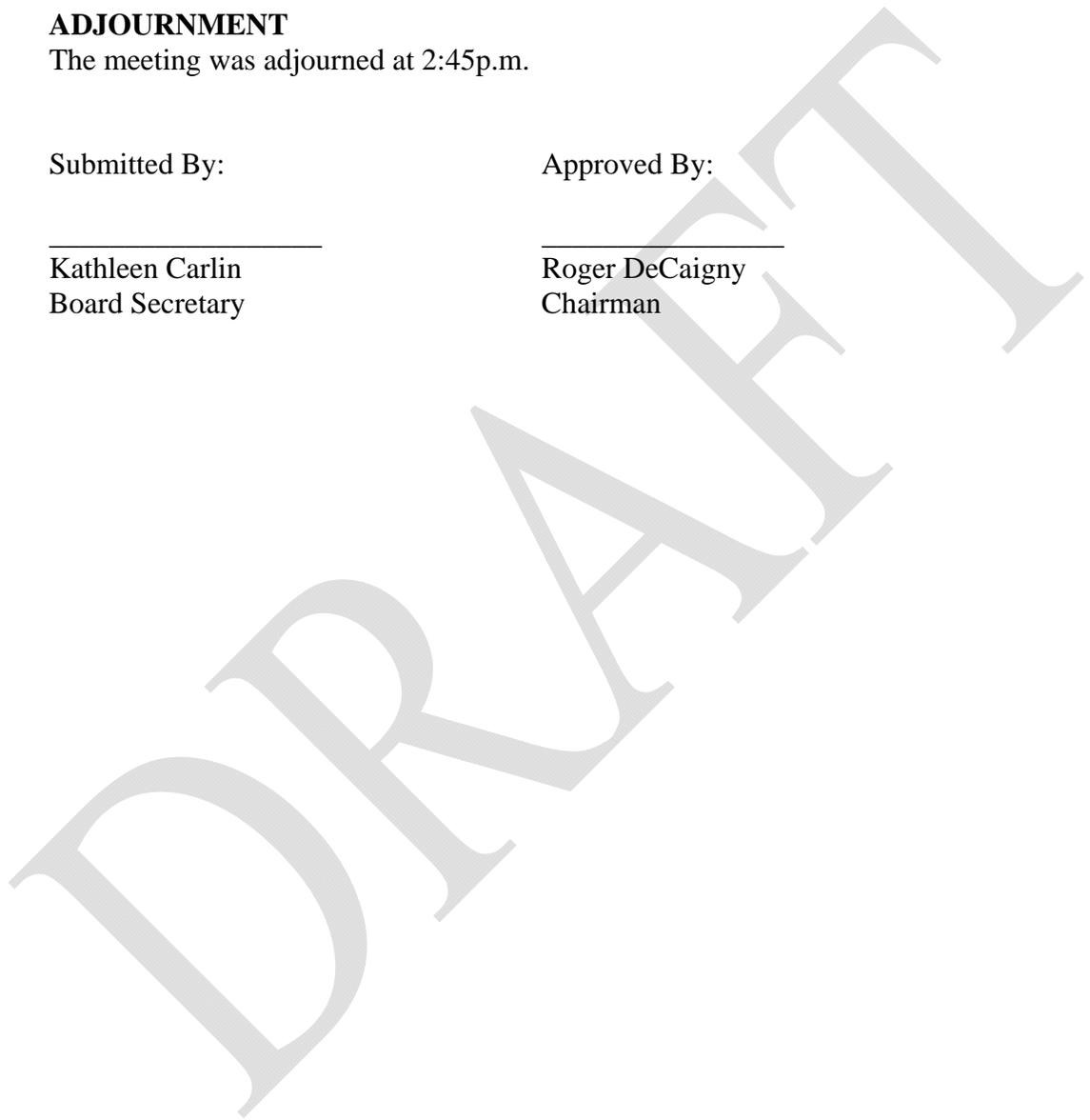
Waiver Report - Ms. Nicole Dixon stated that there are no new waivers to report.

**10. ADJOURNMENT**

The meeting was adjourned at 2:45p.m.

Submitted By:  
  
\_\_\_\_\_  
Kathleen Carlin  
Board Secretary

Approved By:  
  
\_\_\_\_\_  
Roger DeCaigny  
Chairman





# **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

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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](mailto: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](mailto: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](mailto: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](http://www.hiltonheadislandsc.gov)

FOR OFFICIAL USE ONLY	
Date Received:	9/7/10
Accepted by:	[Signature]
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: [Signature] Date: September 7, 2010  
 Chester C. Williams, Attorney for the Applicant



## 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.<sup>1</sup>

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

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<sup>1</sup> A copy of the August 19, 2010 letter from Mrs. Lewis is attached to this Narrative as Exhibit A.



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.<sup>2</sup> 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

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<sup>2</sup> 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.



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".<sup>3</sup> 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]."<sup>4</sup> 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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<sup>3</sup> See SC Code Section 6-29-800(A)(1).

<sup>4</sup> See SC Code Section 6-29-350(B)(2)(b).



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 7<sup>th</sup> day of September, 2010.



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



**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. Peebles  
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

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 28<sup>th</sup> 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,

A handwritten signature in cursive script, appearing to read "Teri B. Lewis".

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 and Board Coordinator*  
**VIA:** Teri B. Lewis, *AICP, LMO Official*  
**DATE:** March 10, 2011  
**SUBJECT:** APL100007 - Edgewater

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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](mailto: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](mailto: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](mailto: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.



LAW OFFICE OF  
CHESTER C. WILLIAMS, LLC

Teri B. Lewis, AICP  
August 9, 2010  
Page 2

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With best regards, we are

Very truly yours,

LAW OFFICE OF CHESTER C. WILLIAMS, LLC

This signature is an electronic reproduction

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](http://www.hiltonheadislandsc.gov)

<b>FOR OFFICIAL USE ONLY</b>	
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



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”)<sup>1</sup> 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”)<sup>2</sup> filed on April 12, 2010 on behalf of Edgewater on Broad Creek, HPR (the “Edgewater HOA”). The Notice of Action<sup>3</sup> 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”).<sup>4</sup> 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”) not included in the Regime Property.

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<sup>1</sup> A copy of the 07/26/10 Letter is attached to this Narrative as Exhibit A.

<sup>2</sup> A copy of the XDPR Application is attached to this Narrative as Exhibit B.

<sup>3</sup> A copy of the Notice of Action is attached to this Narrative as Exhibit C.

<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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<sup>5</sup> A copy of Ephesian's deed is attached to this Narrative as Exhibit D.

<sup>6</sup> 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,<sup>7</sup> 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.<sup>8</sup> 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,<sup>9</sup> Mrs. Lewis, 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

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<sup>7</sup> A copy of the April 20, 2010 email from Ms. Dixon is attached to this Narrative as Exhibit F.

<sup>8</sup> 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.

<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> 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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<sup>10</sup> A copy of Mrs. Lewis' June 25, 2010 letter to IMC Resort Services, Inc. is attached to this Narrative as Exhibit I.

<sup>11</sup> 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.<sup>12</sup>

## **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.<sup>13</sup>

## **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.

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<sup>12</sup> 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.

<sup>13</sup> 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.<sup>14</sup>

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 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.)

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<sup>14</sup> 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 9<sup>th</sup> day of August, 2010.



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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](mailto:Firm@CCWLaw.net)



**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  
MASTER APPLICATION FORM**

**Exhibit B (4 Pages)**

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 ← SAME ← SAME 2 CORPUS CHRISTIE PLACE, STE 302

MAILING ADDRESS HILTON HEAD SE 29928 ← SAME HILTON HEAD, SC 29928

CITY 843-785-4775 STATE X107 ZIP 843-785-3901 ← SAME 843-301-3857 / 843-785-3901

TELEPHONE \_\_\_\_\_ FAX \_\_\_\_\_ Bus License # 11152 Bus License# 2605

(For DRB, DR & SUB Only) (For DRB, DR & SUB Only)

EMAIL ADDRESS \_\_\_\_\_ EMAIL ADDRESS \_\_\_\_\_ ATB@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).**

- |   |  |
|---|--|
| <input type="checkbox"/> APPEAL *                       | <input type="checkbox"/> ZONING MAP AMENDMENT *    |
| <input type="checkbox"/> DEVELOPMENT PLAN REVIEW (DPR)* | <input type="checkbox"/> DESIGN REVIEW BOARD       |
| <input type="checkbox"/> PLANNED UNIT DEVELOPMENT *     | <input type="checkbox"/> PUBLIC PROJECT            |
| <input type="checkbox"/> SPECIAL EXCEPTION *            | <input type="checkbox"/> SIGN PERMIT               |
| <input type="checkbox"/> SUBDIVISION *                  | <input type="checkbox"/> TREE APPROVAL             |
| <input type="checkbox"/> VARIANCE *                     | <input type="checkbox"/> WETLAND ALTERATION        |
| <input type="checkbox"/> ABBREVIATED DPR*               | <input checked="" type="checkbox"/> 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.

*Al Bucher*  
SIGNATURE

4-9-10  
DATE

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.

*Al Bucher*  
SIGNATURE

4-9-10  
DATE

**FOR OFFICIAL USE ONLY**

DATE RECEIVED: 4/12/2010  
ACCEPTED BY: NO

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 **843-785-3906**

**APPLICATION SUBMISSION REQUIREMENTS:**

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

- 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.
- WRITTEN NARRATIVE DESCRIBING THE SCOPE OF THE PROJECT.
- 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.
- 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

<b>FOR OFFICIAL USE ONLY</b>	
DATE RECEIVED: <u>4/12/20</u>	TIME: <u>1:45 pm</u>
ACCEPTED BY: <u>NO</u>	APPLICATION NUMBER: <u>XDRR100013</u>

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).**



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

4/9/2010  
Date

# NOTICE OF ACTION

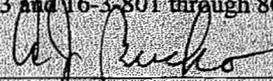
Exhibit C (2 Pages)

APPLICATION #

# XDPR100013

<b>Name of Development:</b> EDGEWATER ON BROADCREEK		<b>Location:</b> 50 VERBENA LANE	
<b>Owner:</b> EDGEWATER ON BROADCREEK		<b>Applicant:</b> EDGEWATER ON BROADCREEK	
<b>Agent:</b>			
<b>Location and Development Information:</b>			
<b>Description:</b> 145FT TABBY WALKWAY, 2 BRICK CIRCLE SITING AREAS, 12FT & 6 FT.			
<b>Zoning District:</b> WMU		<b>Tax District Map Parcel:</b> R51001100001770000	
<b>Overlay District(s):</b> 500 ft of OCRM Critical Line			
<b>Approved Site Plan Information:</b>			
<b>Date of latest revision of approved site plan:</b>		<b>Based on Plans by:</b> IMC Resort Services	
		<b>Plans Titled:</b> Edgewater on Broad Creek	
<b>Any deviation from the approved plans will require additional review.</b>			
<b>Case Manager:</b> NICOLE DIXON		<b>Sign:</b> 	
<b>Date Issued:</b> 04/15/2010		<b>Expiration Date:</b> 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:       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).



15 PB  
21  
700ER haw  
1489

RECORDED  
2008 Jul -18 12:59 PM  
*Sharon O. Burns*  
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

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

Upon filing, please return  
to above address.

Exhibit D (15 Pages)

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )  
 )

QUIT CLAIM DEED

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.

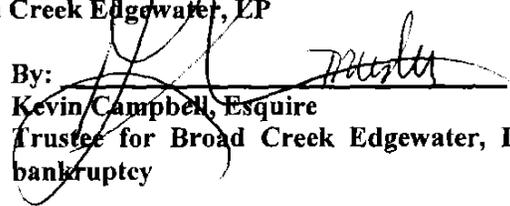
TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said Grantee, Ephesian Ventures, LLC, its successors and assigns, forever, so that the Grantor, Broad Creek Edgewater, LP, nor its successors and assigns, nor any other entity, person or persons, claiming under it, shall 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 7<sup>th</sup> 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 )  
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 Conway witnessed the execution thereof.

  
(witness)

SWORN to before me this 7<sup>th</sup> of July, 2008.

 (Seal)  
Notary Public 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. *RS10-011-000-0004-0000*

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

A handwritten signature in black ink, appearing to be "S. R. O.", written over a horizontal line.

US Bankruptcy Court Judge  
District of South Carolina

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

IN RE: )  
BROAD CREEK EDGEWATER, LP ) B/K Case No. 07-02546-DD  
Debtor. ) Chapter 7  
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 BEFORE 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".

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

**CERTIFICATE OF SERVICE**

District/off: 0420-2  
 Case: 07-02546

User: douglase  
 Form ID: pdf01

Page 1 of 1  
 Total Served: 7

Date Rcvd: May 28, 2008

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

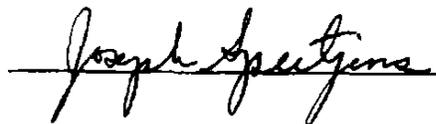
Addresses marked '-' were corrected by inserting the ZIP or replacing an incorrect ZIP.  
 USPS regulations require that automation-compatible mail display the correct ZIP.

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:



**U.S. BANKRUPTCY COURT  
District of South Carolina**

Case Number: 071-2546

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)

A handwritten signature in black ink, appearing to read "D. Duncan".

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

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

**CERTIFICATE OF SERVICE**

District/off: 0420-2  
 Case: 07-02546

User: shealy  
 Form ID: pdf01

Page 1 of 1  
 Total Served: 6

Date Rcvd: May 23, 2008

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, 830 Johnnie Dodds Blvd, PO Box 684, Mount Pleasant, SC 29465-0684  
 tx +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

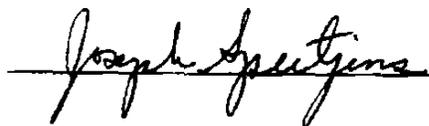
Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.  
 USPS regulations require that automation-compatible mail display the correct ZIP.

**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: \_\_\_\_\_





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](mailto: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.



LAW OFFICE OF  
CHESTER C. WILLIAMS, LLC

Ms. Nicole Dixon  
April 15, 2010  
Page 2

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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.

This message has been scanned for viruses and spam by MX Logic.



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](mailto: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

**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](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

**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](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.

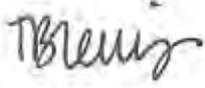
Based on the above section Staff should not have revoked the Notice of Action for XDPR100013 without prior notice and a public hearing.

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,

A handwritten signature in black ink, appearing to read "Teri Lewis". The signature is written in a cursive, flowing style.

Teri Lewis, AICP  
LMO Official

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



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](mailto:Firm@CCWLaw.net)

**Exhibit J (4 Pages)**

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](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

**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 SUBDIVI-  
 SION.

**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\(b\)\(7\), SCRCF](#), arguing that Calibogue was a necessary party to the appeal under [Rule 19, SCRCF](#). 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.

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



**TOWN OF HILTON HEAD ISLAND  
COMMUNITY DEVELOPMENT  
DEPARTMENT**

One Town Center Court	Hilton Head Island SC 29928	843-341-4757	FAX 843-842-8908
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**STAFF REPORT  
VARIANCE**

Case #	Name of Development	Public Hearing Date
VAR#100005	Precision Auto	March 28, 2011

Parcel Information	Owner & Applicant
<i>Tax Map ID:</i> Map 14, Parcel 841 <i>Street Address:</i> 79 Arrow Road <i>Zoning District:</i> CC (Commercial Center) <i>Overlay District:</i> Corridor Overlay	Stephen Couto 79 Arrow Road Hilton Head Island SC 29928

Application Summary
<p>The Community Development Department has received an application for a variance from Stephen Couto for the following Sections of the Land Management Ordinance (LMO):</p> <p align="center">             16-4-1605, Maximum Impervious Coverage and Minimum Open Space              16-5-704A, Adjacent Use Setbacks              16-5-806A, Adjacent Use Buffers              16-5-806B, Adjacent Street Buffers              16-5-1201, Off-Street Parking Required              16-5-1206, Parking Area Design              16-5-1208, Schedule of Required Off-Street Parking           </p> <p>The applicant is requesting the variance to allow several existing non-permitted and non-conforming site features and structures to remain on the property.</p>

Background
<p>The subject parcel is located at 79 Arrow Road in the CC (Commercial Center) Zoning District. The subject parcel is bounded by Wexford Plantation on the northeast, The Sunshine House (a childcare facility) on the northwest, Arrow Road on the southwest and an undeveloped lot on the southeast.</p> <p>The existing 7,716 square foot building was built on the 0.6 acre lot in 1987. The approved site plan for the property shows it was originally approved by the Town of Hilton Head Island on September 19, 1986. A revised plan was approved on December 8, 1986 to add a 205 square foot addition on the back of the building and to move four</p>

parking spaces closer to the back of the property to accommodate the addition. (See Attachment D, Approved Site Plan).

Early last year, Town staff began an effort to address outstanding code violations in the Arrow Road commercial area, which included comparing properties with apparent code violations to their approved site plans. Staff discovered that this property, among several others, had been significantly altered from the approved site plan without Town approval. (See Attachment E, As Built Survey). Specifically, the following changes were made:

1. The pavement in front of the building was expanded toward Arrow Road and five additional parking spaces were added. The new pavement is in the Arrow Road adjacent street buffer, in violation of LMO Section 16-5-806B. The parking spaces are irregularly shaped and the drive aisle and medians do not meet the requirements of LMO Section 16-5-1206.
2. The pavement at the entrance of the site has been expanded to create two new parallel parking spaces, one of which encroaches into the Arrow Road right-of-way, in violation of LMO Section 16-5-1201. Both of the spaces encroach into the adjacent street buffer and the adjacent use buffer in violation of LMO Sections 16-5-704B and 16-5-806A. The addition of the spaces reduced the width of the drive aisle (which becomes as narrow as 8 feet wide) in violation of LMO Section 16-5-1206.
3. Concrete was added to widen the drive aisle on the side of the building. An RV is currently stored in this area. This area encroaches into the adjacent use buffer in violation of LMO Section 16-5-806A.
4. Two previously grassed areas on the southern side of the building were covered with concrete. The parking and storage area behind the building, which was previously covered in gravel, was also covered with concrete. The addition of these impervious surfaces, as well as the pavement added to create the parking spaces in the adjacent street buffer and adjacent use buffer, increased the impervious surface area of the site to 69% in violation of LMO Section 16-4-1605. This section states that nonresidential properties in the CC Zoning District are limited to 65% impervious coverage.
5. A 138 square foot non-permitted shed was added to the back of the building. The shed encroaches into the adjacent use setback and the adjacent use buffer in violation of LMO Sections 16-5-704A and 16-5-806A.
6. The approved site plan shows a total of 16 parking spaces – six spaces in front of the building and ten spaces behind the building. The ten designated parking spaces behind the building are used for storage and a work area, not for parking. With the addition of the parking spaces in the adjacent street buffer, the total number of designated spaces on the site is now 11. This is a violation of LMO Section 16-5-1208, which requires 16 parking spaces for this use.

(Two sheds are also shown on the as built survey on each side of the back of the property. The owner moved these wheeled sheds after Town staff informed him that they were in violation of the LMO because they encroached into the adjacent use setbacks and buffers.)

There are no records that any of these alterations were approved or permitted by the

Town. The Town requires an as built survey of new or redeveloped properties prior to the receipt of a Certificate of Occupancy; however the Town's records do not include an as-built survey of the property when construction was complete in 1987. With no evidence that the site alterations were approved at the time of construction or after construction, staff concluded that the alterations were violations of the Land Management Ordinance.

Staff also concluded that the site plan for this property could not be revised to permit any of the alterations listed above because they all conflict with at least one section of the LMO. In February 2010, staff sent a letter to Stephen Couto, the property owner, notifying him of these violations. In the following months, staff met with Mr. Couto on several occasions to explain how the site was in violation of the approved site plan and what his options were to resolve the violations.

Staff suggested that Mr. Couto remove the non-permitted asphalt and concrete additions and clear the materials out from behind the building to use that area for parking, but with the exception of the two sheds on the sides of the property, Mr. Couto declined to alter the property. Staff also suggested that we would support a variance to use part of the adjacent use buffers behind the building for storage if the asphalt was removed from the adjacent street buffer, but Mr. Couto declined this proposal.

In October 2010, Mr. Couto applied for variances to keep the site in its current condition. Staff continued to discuss alternative resolutions with him, but an agreement could not be reached.

If the application is approved, staff recommends adding the condition that the area between the pavement and Arrow Road in the eastern corner of the site be planted with wax myrtles or similar native vegetation to screen the parking lot from Arrow Road. If the application is denied, Town staff will require that the applicant bring the site into compliance with the approved site plan by: removing the non-permitted pavement from the adjacent street buffer in the front parking lot; removing the non-permitted pavement from the adjacent use buffer on the eastern side of the property; removing the non-permitted addition behind the building; and removing the materials stored in the parking spaces behind the building.

#### **Applicant's Grounds for Variance, Summary of Facts and Conclusions of Law**

##### **Grounds for Variance**

The applicant is applying for variances from LMO Sections: 16-4-1605, Maximum Impervious Coverage and Minimum Open Space; 16-5-704A, Adjacent Use Setbacks; 16-5-806A, Adjacent Use Buffers; 16-5-806B, Adjacent Street Buffers; 16-5-1201, Off-Street Parking Required; 16-5-1206, Parking Area Design; and 16-5-1208, Schedule of Required Off-Street Parking. The applicant is requesting variances from these requirements in order to allow several existing non-permitted and non-conforming site features and structures to remain on the property.

##### **Summary of Facts**

1. The applicant seeks a variance from LMO 16-3-1901A(1), which includes

Maximum Impervious Coverage and Minimum Open Space in LMO Section 16-4-1605.

2. The applicant seeks a variance from LMO 16-3-1901A(2), which includes Adjacent Use Setbacks in LMO Section 16-5-704A, Adjacent Use Buffers in LMO Section 16-5-806A, Adjacent Street Buffers in LMO Section 16-5-806B, Off-Street Parking Required in LMO Section 16-5-1201, Parking Area Design in LMO Section 16-5-1206 and Schedule of Required Off-Street Parking in LMO Section 16-5-1208.

**Conclusion of Law**

1. Applicant may seek a variance from the requested LMO sections as set forth in LMO Sections 16-3-1901A(1) and 16-3-1901A(2).

**Staff Determination**

Staff recommends that the Board of Zoning Appeals **disapprove** the application based on the Findings of Facts and Conclusions of Law.

**Staff Summary of Facts and Conclusions of Law**

**Summary of Facts**

1. The application was submitted as set forth in LMO Section 16-3-1903.
2. Notice of the Application was published in the Island Packet on Sunday, February 20, 2011, as set forth in LMO Sections 16-3-110 and 16-3-111.
3. Notice of the Application was posted as set forth in LMO Sections 16-3-110 and 16-3-111.
4. Notice of the Application met the mailing criteria in LMO Sections 16-3-110 and 16-3-111.
5. Staff received an affidavit of compliance from the applicant as set forth in LMO Section 16-3-111.
6. The Board has authority to render the decision reached here under LMO Section 16-3-1905.

**Conclusions of Law**

1. The application is in compliance with the submittal requirements established in LMO Section 16-3-1903.
2. The application and notice requirements comply with the legal requirements established in LMO Sections 16-3-110 and 16-3-111.

*As provided in Section 16-3-1906, Criteria for Approval of Variances, staff has based its recommendation on analysis of the following criteria:*

**Staff Summary of Facts and Conclusions of Law**

*Criteria 1: There are extraordinary and exceptional conditions pertaining to the particular piece of property. (LMO Section 16-3-1906A(1))*

**Findings of Fact**

1. The parcel is 100 feet wide.
2. There is a 60 foot drainage and utility easement on the back of the property.
3. The site plan for the property was approved in 1986, prior to the adoption of the

LMO.

**Conclusion of Law**

1. This application meets the variance criteria as set forth in LMO Section 16-3-1906A(1) because the parcel is unusually narrow, a drainage and utility easement covers a large portion of the parcel and the site plan was approved with several site features that became legally non-conforming when the LMO was adopted a year later, in 1987.

**Staff Summary of Facts and Conclusions of Law**

*Criteria 2: These conditions do not generally apply to other properties in the vicinity. (LMO Section 16-3-1906A(2))*

**Findings of Fact**

1. Most nearby parcels are 100 feet wide.
2. The 60 foot drainage easement and utility easement applies to many properties on the northeast side of Arrow Road.
3. Many nearby properties were developed prior to the adoption of the LMO.

**Conclusion of Law**

1. This application does not meet the variance criteria as set forth in LMO Section 16-3-1906A(2) because most properties on Arrow Road are unusually narrow, the easement applies to many nearby properties and many nearby properties also have non-conforming site features because they were developed prior to 1987.

**Staff Summary of Facts and Conclusions of Law**

*Criteria 3: Because of these conditions, the application of the LMO to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property. (LMO Section 16-3-1906A(3))*

**Findings of Fact**

1. The approved site plan allows a 7,716 square foot building and has 16 designated parking spaces and a 15 foot wide drive aisle.
2. Per LMO Section 16-5-1208, Precision Auto is required to have 16 parking spaces.

**Conclusion of Law**

1. This application does not meet the variance criteria as set forth in LMO Section 16-3-1906A(3) because the approved site plan can accommodate the existing use without the illegally non-conforming site features.

**Staff Summary of Facts and Conclusions of Law**

*Criteria 4: This hardship is not the result of the applicant's own actions. (LMO Section 16-3-1906A(4)).*

**Findings of Fact**

1. The designated parking spaces behind the building are currently being used for storage.
2. An RV is being stored in the illegally non-conforming widened area of the drive

aisle.

**Conclusion of Law**

1. This application does not meet the variance criteria as set forth in LMO Section 16-3-1906A(4) because the owner could bring the site into compliance with the approved site plan by removing the stored materials behind the building and the RV from the drive aisle. If the applicant removed the stored materials from the parking spaces behind the building, the site would have the required 16 parking spaces, and the seven parking spaces that are currently encroaching into the adjacent street buffer and the adjacent use buffer could be removed. If the applicant removed the RV from the side of the property, the concrete encroaching in the adjacent use buffer could be removed.

**Staff Summary of Facts and Conclusions of Law**

*Criteria 5: Granting of the variance does not substantially conflict with the Comprehensive Plan and the purposes of the LMO. (LMO Section 16-3-1906A(5))*

**Findings of Fact**

**The Comprehensive Plan addresses this application in the following areas:**

1. Natural Resources Element Implementation Strategy 3.3 - Protect Quality of Life through Environmental Preservation.
  - A. Investigate incentives to encourage all property owners to replant native trees for those removed and keep 3 of their 4 buffers undisturbed in accordance with Design Review Guide.
2. Economic Development Element Section 7.5 - Potential Risks for Future Economy with Comprehensive Plan Implications  
“Flexibility” (where reasonable people may disagree but must find a solution) in the application of historic regulation and ordinance was called for to improve existing non conformities and future redevelopment.
3. Land Use Element Goal 8.6 – Build Out
  - A. Consider flexibility within the Land Management Ordinance to address future development and redevelopment of existing sites.

**The LMO addresses this application in the following areas:**

4. Section 16-4-1605, Maximum Impervious Coverage and Minimum Open Space, states that the maximum amount of impervious coverage allowed for a commercial site in the CC Zoning District is 65%. The addition of concrete on the site raised the amount of impervious surface on the site to 69%, in violation of this section.
5. Section 16-5-704A, Adjacent Use Setbacks, states that this site is required to have 20 foot setbacks on the sides and back of the property. The shed on the back of the building encroaches eight feet into the adjacent use setback, in violation of this section.

6. Section 16-5-806A, Adjacent Use Buffers, states that this site is required to have 20 feet buffers on the sides and back of the property. The shed on the back of the building encroaches eight feet into the adjacent use buffer. The concrete added to the east side of the site encroaches up to seven feet into the adjacent use buffer. Both of these encroachments are in violation of this section.
7. Section 16-5-806B, Adjacent Street Buffers, states that this site is required to have a 30 foot buffer from Arrow Road. The asphalt added to the front parking lot expands the existing legally non-conforming encroachment from 20 feet to 30 feet, in violation of this section.
8. Section 16-5-1201, Off-Street Parking Required, states that on-street parking may be used only for public parks. The parallel parking space closest to Arrow Road and two perpendicular parking spaces are partly located off site and encroach into the Arrow Road right-of-way, in violation of this section.
9. Section 16-5-1206, Parking Area Design, states that: there shall be adequate provision for ingress and egress to all parking spaces; angled parking should only be used when adjacent drive aisle serve one-way traffic or when there is sufficient width to allow two-way traffic; a drive aisle with 90 degree parking spaces shall be a minimum of 24 feet wide; wheel stops shall be located 18 inches from the back of the all parking spaces that don't abut curbs; a median of at least 15 feet in width shall be provided at the ends of each parking bay; and standard parking spaces must measure 18 feet long by 9 feet wide. The expanded parking area in front of the building meets none of these requirements: there is not sufficient room to maneuver vehicles into and out of the parking spaces; angled parking is being used off of a two-way drive aisle; the drive aisle is nine feet wide instead of 24 feet wide; wheel stops are provided in a few spaces but they are not set back 18 inches from the back of the spaces; there is no median at the western end of the row; the median at the eastern end of the row is only four feet long by five feet wide instead of 18 feet long by 15 feet wide; and two of the parking spaces are irregularly shaped and one measures only 10 feet long instead of 18 feet. All these features of the expanded parking area are in violation of this section.
10. Section 16-5-1208, Schedule of Required Off-Street Parking, states that this site should have 16 parking spaces to accommodate Precision Auto. If this application is approved, the site would only have 13 parking spaces, in violation of this section.

**Conclusion of Law**

1. This application does not meet the variance criteria as set forth in LMO Section 16-3-1906A(5). Though the Economic Development Element Section 7.5 and Land Use Element Goal 8.6 recommend increased flexibility for future redevelopment, these recommendations are outweighed by the fact that the application does not meet Natural Resources Element Implementation Strategy 3.3 and that it would violate the purposes of seven sections of the LMO. The approval of this application would move this property further out of compliance with the LMO.

**Staff Summary of Facts and Conclusions of Law**

*Criteria 6: The authorization of the variance will not be of substantial detriment of adjacent property or the public good, and the character of the district will not be harmed by the granting of the variance. (LMO Section 16-3-1906A(6)).*

**Findings of Fact**

1. This property is located in the Pope/Palmetto area Tax Increment Financing (TIF) District. The purpose of the TIF is to use infrastructure improvements to spur redevelopment of a specific area. The Town has recently invested approximately \$600,000 in infrastructure improvements in the Palmetto Bay Road/Target Road area, and the Capital Improvement Program (CIP) includes an additional \$1 million for planned infrastructure improvements in the Arrow Road/Dunnagan’s Alley area.
2. The Town began code enforcement action in the Arrow Road commercial corridor to improve the character of the district. This property was one of the sites visibly out of character with adjacent properties.

**Conclusion of Law**

This application does not meet the variance criteria as set forth in LMO Section 16-3-1906A(6) because the authorization of the variance will be a substantial detriment to the public good and to the character of the district. The Town’s investment of public funds in the area is meant to encourage redevelopment, whereas approving this application would discourage redevelopment of non-conforming properties. If the variance is approved, the property will remain out of character with the district due to its lack of adjacent street and adjacent use buffers.

**PREPARED BY:**

AC  
\_\_\_\_\_  
Anne Cyran, AICP  
Senior Planner

14 March 2011  
\_\_\_\_\_  
DATE

**REVIEWED BY:**

ND  
\_\_\_\_\_  
Nicole Dixon  
Senior Planner & BZA Coordinator

March 15, 2011  
\_\_\_\_\_  
DATE

**ATTACHMENTS:**

- A) Vicinity Map
- B) Aerial Photo
- C) Applicant’s Narrative
- D) Approved Site Plan
- E) As Built Survey
- F) Photos

Deleted: ¶



TOWN OF HILTON HEAD ISLAND  
ONE TOWN CENTER COURT  
HILTON HEAD ISLAND, S.C. 29928  
PHONE (843) 341- 4600

VAR100005 Precision Auto  
Vicinity Map  
Attachment A



This information has been compiled from a variety of unverified general sources at various times and as such is intended to be used only as a guide. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion.



79 Arrow Road

ARROW ROAD



TOWN OF HILTON HEAD ISLAND  
ONE TOWN CENTER COURT  
HILTON HEAD ISLAND, S.C. 29928  
PHONE (843) 341-6000

VAR100005 Precision Auto  
Aerial Photo  
Attachment B



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79 Arrow Road

ARROW ROAD



TOWN OF HILTON HEAD ISLAND  
ONE TOWN CENTER COURT  
HILTON HEAD ISLAND, S.C. 29928  
PHONE (843) 341-6000

VAR100005 Precision Auto  
Aerial Photo  
Attachment B



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# VAR100005 Precision Auto Attachment C

## Background

Our request for a variance is based on section 16-4-1505 Maximum Impervious Coverage and Minimum Open Space

Our business is an automotive repair shop which requires a fair amount of parking for customers coming to obtain estimates, customers being dropped off for vehicle pick up, storage parking for vehicles to be worked on, and an accessible place to park vehicle for after hours pick up. The Parking in the front of the building where the road buffer is in question has been that way ever since the property was inspected and passed said inspection for the business when it opened in 1986.

Being an automotive repair shop we have car parts that need to be returned on occasion and also car parts that are damaged which are waiting to be taken to the recycler. The area next to the building was concreted for two reasons, the first being the need to have the above parts organized to speed up the rotation process of getting the older more eroding metal and plastic parts to the proper recyclers as quickly as possible. The second reason being that with the small patch of soil there was wash away occurring which would have left a ditch and caused a safety hazard.

As most wrecked vehicles have a better chance of leaking fluids we found it necessary to use concrete in the storage/parking area in the back of the property to avoid even the slightest amount of chemical seepage (oil, transmission fluid, brake fluid, antifreeze et. al.) Had there been just the gravel the fluids could have gone into the soil and caused harm to the environment. Harming the environment is unacceptable to us. Also we would like to mention that this area is in the far back of the property where it is out of site from the road.

The last area the variance is being applied for is the adjacent lot buffer. The front area where it is paved has been that way ever since the business was opened after passing the inspection in 1986. The area where it has been concreted was an area that had wash away problems and was done for safety reasons. Workers could have lost footing there and vehicles could have slipped off the edge doing further damage to the vehicle that was there to be repaired.

The only additions since the property was inspected and passed said inspection back in 1986 have been the concrete in the back, side of the building and the adjacent buffer. After these additions the property is at 8,864 square feet of minimum open space. Our allotted amount of Minimum open space is 6,402.5 square feet.

Criteria 1 – There are extraordinary and exceptional conditions pertaining to the particular

piece of property.

There are extraordinary and exceptional conditions pertaining to the particular piece of property. These are briefly described above as being the wash out areas and the need to avoid fluid seepage from damaged vehicles there for repair.

Criteria 2 – These conditions do not generally apply to other properties in the vicinity.

These conditions do not generally apply to other properties in the vicinity. Not all the properties in the vicinity have as many areas that are constantly washing away after a rainstorm. Also it is the only autobody repair shop in the immediate vicinity giving access to repairs for those who want their vehicles repaired closer to their homes.

Criteria 3 – Because of these conditions the application of the LMO to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.

Because of these conditions the application of the LMO to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property. It would cause the business to take in less work and hinder its success.

Criteria 4 – The hardship is not the result of the applicant's own actions.

The hardship is not the result of the applicant's own actions concerning the front parking areas due to the inspector passing the property set up back in 1986 before the business license was issued. The hardship concerning the concrete additions is not the result of his own actions due to him having no control over what washed out after the rainstorms.

Criteria 5 – Granting of the variance does not substantially conflict with the comprehensive plan and the purpose of the LMO.

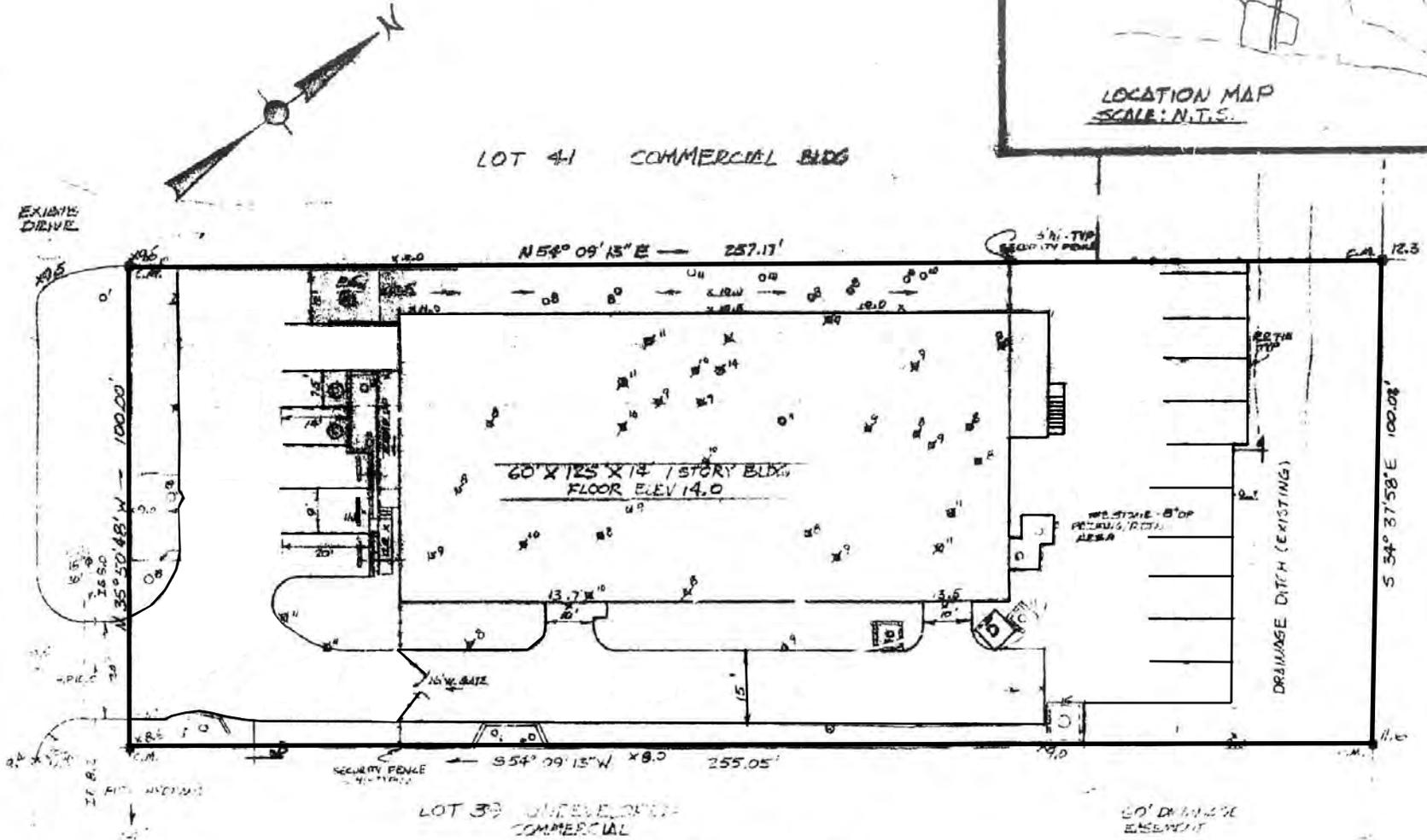
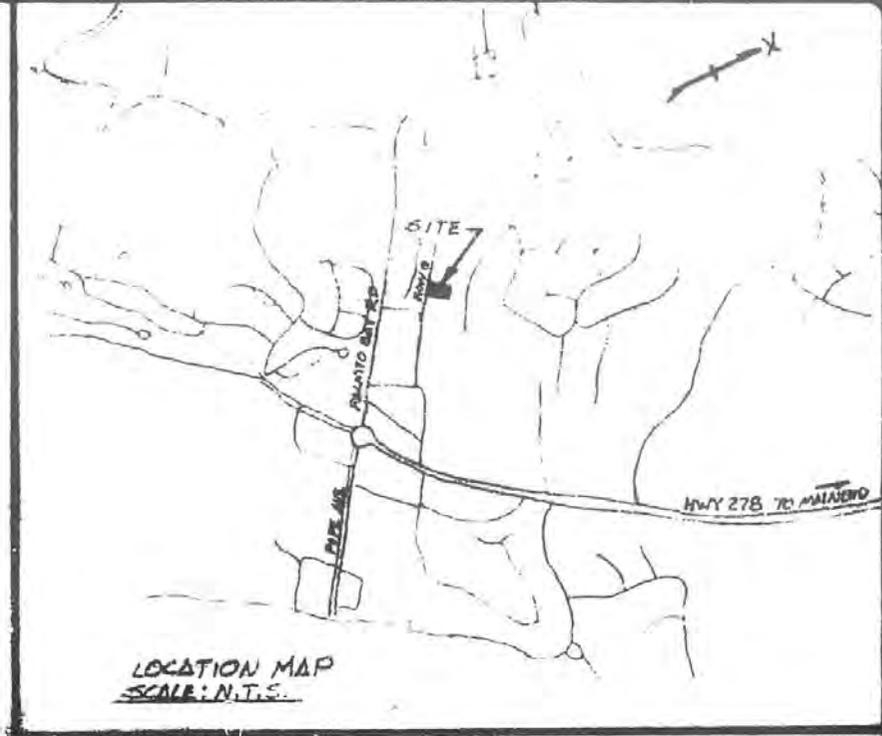
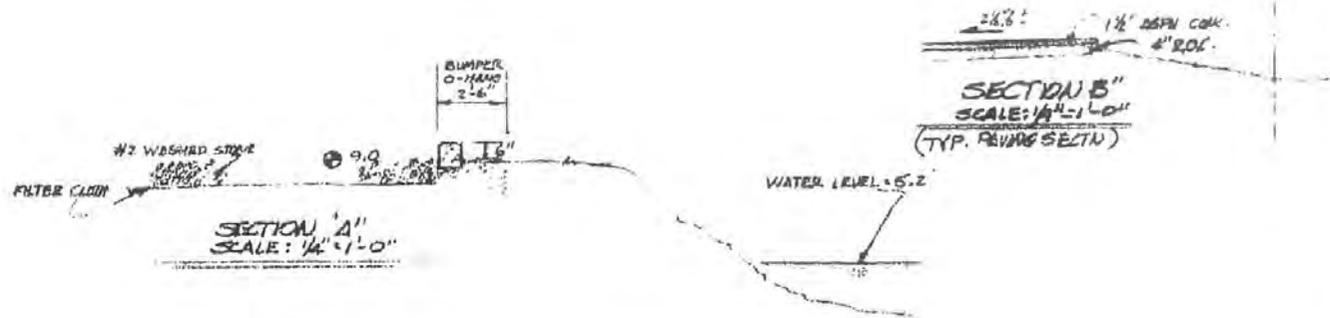
Granting of the variance does not substantially conflict with the comprehensive plan and the purpose of the LMO primarily due to being within the minimum open space requirements. It also does not conflict due to the concrete additions helping to protect the surrounding environment from contaminants, which in essence protects the surrounding properties and or those who occupy it's space.

Criteria 6 – The authorization of the variance will not be of substantial detriment of the adjacent property or the public good, and the character of the district will not be harmed by granting of the variance.

The authorization of the variance will not be of substantial detriment of the adjacent property or the public good, and the character of the district will not be harmed by granting of the variance. The property's appearance will not change in any adverse way. The front of the property, the most visible, has been unchanged since 1986.

1103

VAR100005 Precision Auto Attachment D



SEA PINES FOREST BEACH  
FIRE DEPARTMENT  
FIRE SAFETY DIVISION  
DRAWING REVIEW

Approved:   
 Approved As Noted:   
 Not Approved/Resubmit:

By: *[Signature]* Date: 9-12-86  
 Phone: 303-642-1113

N/E THE HILTON HEAD COMPANY

TOWN OF HILTON HEAD ISLAND  
- FINAL PLAN APPROVAL -

This certifies that the Town has found this site plan to be in compliance with the Town Development Standards Ordinance and has authorized issuance of a final development permit.

Date of Approval September 19, 1986  
 Development Permit No. D-00232  
 Certified By James H. Parke  
 Title PLANNER

This approval will expire one years from the above date of approval. The conditions set forth in section 16-7-11 of the development Standards Ordinance are met.

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 41 42 43 44 45 46 47 48 49 50  
 51 52 53 54 55 56 57 58 59 60

Revision to development permit - site plan 12/8/86; 205 addition (employee exercise room) & realigned four (4) parking spaces to accommodate this addition.

REVISIONS TO PERMIT  
 TOTAL PERMIT AREA  
 TOTAL PERMIT AREA  
 TOTAL PERMIT AREA

REVISIONS	BY
SEE SEVS 9/10/86	REL
RE. SEAL 11/15/86	REL

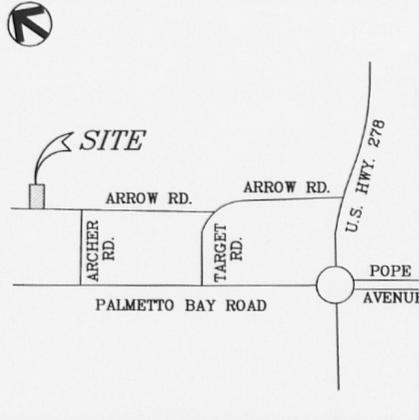


PREPARED BY:  
 ROBT L. JACOBS, P.E.  
 CONSULTING ENGINEER  
 7 LAGOON RD  
 HILTON HEAD ISLAND, S.C.  
 TEL: 803 786 8829

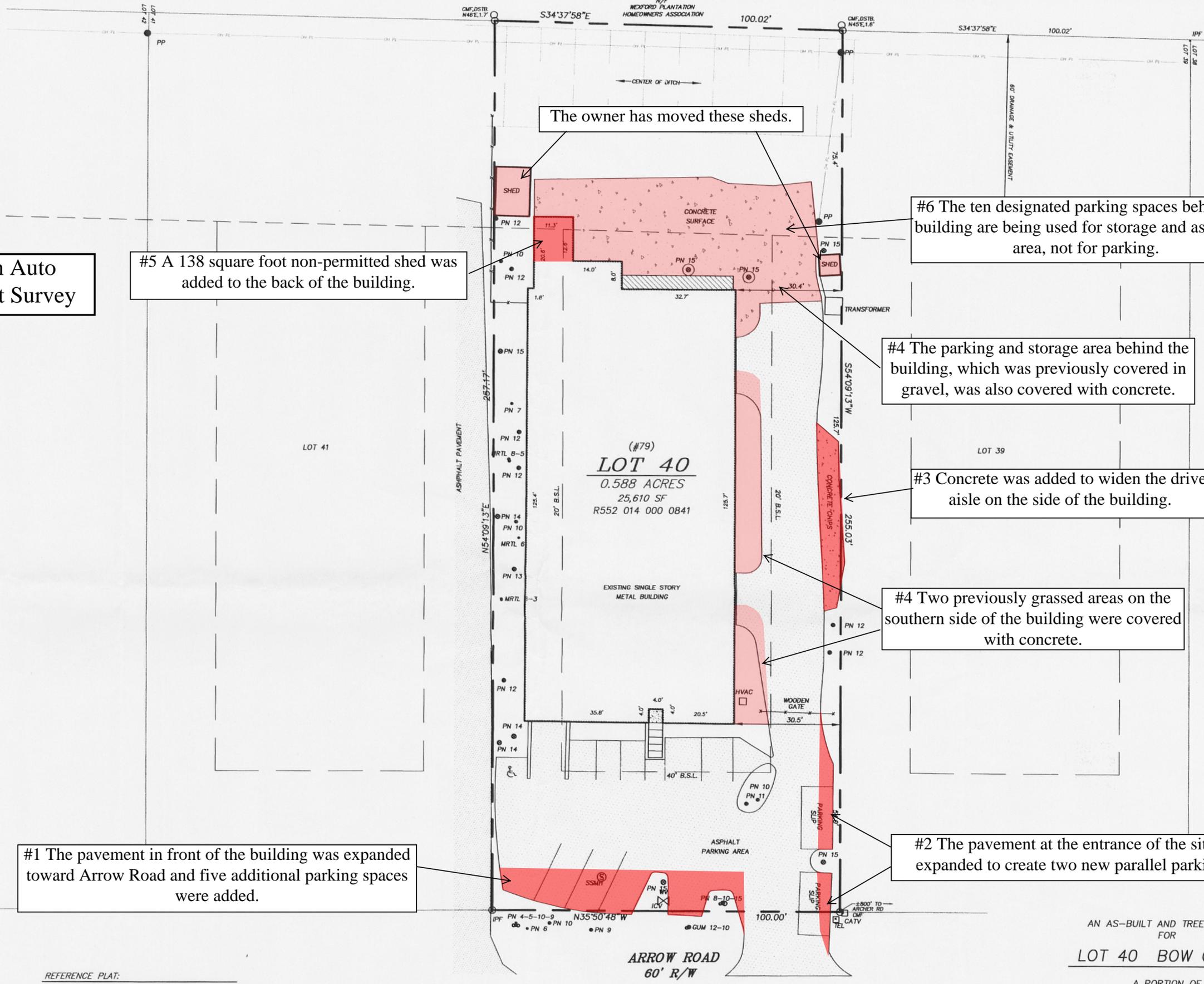
BUILDING FOR:  
 PRECISION AUTO  
 LOT 40  
 60' RADIUS  
 HILTON HEAD ISLAND, S.C.

RECEIVED  
 DEC 1 1986  
 And.....

DRAWN	REL
CHECKED	REL
DATE	3/17/86
SCALE	1"=20'
JOB NO	REL 75
SHEET	1



**VAR100005 Precision Auto Attachment E - As Built Survey**



#1 The pavement in front of the building was expanded toward Arrow Road and five additional parking spaces were added.

#5 A 138 square foot non-permitted shed was added to the back of the building.

The owner has moved these sheds.

#6 The ten designated parking spaces behind the building are being used for storage and as a work area, not for parking.

#4 The parking and storage area behind the building, which was previously covered in gravel, was also covered with concrete.

#3 Concrete was added to widen the drive aisle on the side of the building.

#4 Two previously grassed areas on the southern side of the building were covered with concrete.

#2 The pavement at the entrance of the site has been expanded to create two new parallel parking spaces.

REFERENCE PLAT:  
A PLAT OF PHASE I, PALMETTO BAY CENTER  
By: COASTAL SURVEYING CO., INC.  
RECORDED IN PLAT BOOK 28, PAGE 190

**LEGEND**

B.S.L.	BUILDING SETBACK LINE
CATV	CABLE TV PEDESTAL
CMF	CONCRETE MONUMENT FOUND
FH	FIRE HYDRANT
GUM	SWEET GUM
HVAC	AIR HANDLER
IPF	IRON PIN FOUND
MRTL	MYRTLE
PALM	PALM
PN	PINE
TELE PED	TELEPHONE PEDESTAL
WO	WATER OAK

- NOTES:**
1. THIS LOT LIES IN ZONE A-7, B.F.E. 14.0' PER F.I.R.M. PANEL 0013-D, COMMUNITY No. 450250, LAST REVISED: 9/29/86.
  2. THIS SURVEY DOES NOT CONSTITUTE A TITLE SEARCH BY THE SURVEYOR. NO INVESTIGATIONS FOR EASEMENTS, ENCUMBRANCES, RESTRICTIVE COVENANTS, OWNERSHIP, TITLE EVIDENCE, OR ANY OTHER FACTS HAVE BEEN MADE THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
  3. ALL BUILDING SETBACK REQUIREMENTS SHOULD BE VERIFIED WITH THE PROPER AUTHORITIES PRIOR TO DESIGN AND CONSTRUCTION.
  4. CERTIFICATIONS ARE NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS.

" I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN. ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN."

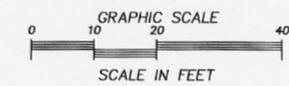
*Michael R. Dunigan*  
MICHAEL R. DUNIGAN  
S.C.R.L.S. No. 11,905

PREPARED FOR: STEPHEN CUOTO

**LABEL DESCRIPTIONS (TYP.)**

—●—	TREE LOCATION
—	GROUND ELEVATION
⊙	TREE SPECIES & DIAMETER (IN.)

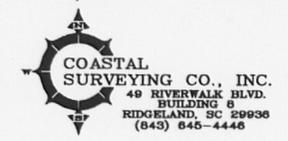
18.4  
PN 18



AN AS-BUILT AND TREE SURVEY FOR  
**LOT 40 BOW CIRCLE**  
A PORTION OF  
**PHASE I  
PALMETTO BAY CENTER**  
HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA

SCALE: 1" = 20'  
DATE: 07/29/10  
JOB No.: 45,438A

SURVEYED BY: LC  
DRAWN BY: MRD  
CHECKED BY: TWW













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**TOWN OF HILTON HEAD ISLAND  
COMMUNITY DEVELOPMENT DEPARTMENT**

One Town Center Court	Hilton Head Island, SC 29928	843-341-4757	FAX 843-842-8908
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**STAFF REPORT  
SPECIAL EXCEPTION**

Case #	Name of Development	Public Hearing Date
SER110002	Former Ronnie's Bakery Site	March 28, 2011

Parcel Data	Applicant
Address: 3 Regency Parkway Parcel #: R520 011 000 155A 0000 Zoning: Office/Institutional Low Density (OL), Corridor Overlay (COR) Acreage: 0.43	Mark R. Sertl S & C 278 Associates 10 Yorkshire Drive Hilton Head Island, SC 29925

Application Summary
Mark R. Sertl of S & C 278 Associates is proposing to operate a cellular phone service business, classified as an Other Retail Service use, in an existing vacant building in the Office/Institutional Low Density (OL) Zoning District, which requires special exception approval per Land Management Ordinance (LMO) Section 16-4-1204, Use Table.

Background
The applicant is proposing to operate a cellular phone service business in a vacant building, formerly known as Ronnie's Bakery. There is gas station/convenience store also located on the subject property. The property is surrounded by a hotel, a restaurant, a bank and the South Island Square shopping center across William Hilton Parkway.

Applicant's Grounds for Special Exception, Summary of Facts and Conclusions of Law
<p><b>Grounds for Special Exception:</b> Mark Sertl is requesting special exception approval for an Other Retail Service use in the OL Zoning District per the requirements of LMO Section 16-4-1204, Use Table. The applicant states in the narrative that the business will operate in an existing vacant building. The applicant believes the proposed use will be compatible with surrounding uses because all activities will take place in the building and the proposed use will not generate noise, glare, smoke, dust, odor, fumes, water pollution or general nuisance.</p> <p><b>Summary of Fact:</b></p> <ul style="list-style-type: none"> <li>The applicant seeks a special exception as set forth in LMO Section 16-3-1801.</li> </ul> <p><b>Conclusion of Law:</b></p> <ul style="list-style-type: none"> <li>The applicant may seek a special exception for the proposed use as set forth in LMO Section 16-3-1801.</li> </ul>

LMO Official Summary of Facts and Conclusions of Law
<b>Summary of Facts:</b>

- The application was submitted as set forth in LMO Section 16-3-1802.
- Notice of the Application was published in the Island Packet on February 20, 2011 as set forth in LMO Sections 16-3-110 and 16-3-111.
- Notice of the Application was posted and mailed as set forth in LMO Sections 16-3-110 and 16-3-111.
- The applicant submitted an affidavit stating they met the mailed notice requirements as set forth in LMO Section 16-3-111.
- The Board has authority to render the decision reached here under LMO Section 16-3-1804.

**Conclusions of Law:**

- The application is in compliance with the submittal requirements established in LMO Section 16-3-1802.
- The application and notice requirements comply with the legal requirements established in LMO Sections 16-3-110 and 16-3-111.

*As provided in **LMO Section 16-3-1805, Special Exception Review Criteria**, the BZA shall approve an application for use by special exception if and only if the applicant shall demonstrate that the proposed use and any associated development will be consistent with the following criteria.*

**LMO Official Summary of Facts and Conclusions of Law**

*Criteria 1: It will be in accordance with the Comprehensive Plan (LMO Section 16-3-1805.A):*

**Findings of Fact:**

The Comprehensive Plan addresses this application in the following areas:

**Economic Development Element:**

- **Section 7.5 – Potential Risks for Future Economy with Comprehensive Plan Implications**  
“Flexibility” (where reasonable people may disagree but must find a solution) in the application of historic regulation and ordinance was called for to improve existing nonconformities and future redevelopment.
- **Section 7.6 – Potential Strategies with Implication for Comprehensive Plan**  
Identify and prioritize areas in need of redevelopment, including any obsolete or run down commercial buildings. Incentivize the development of flexibility of streamlining in regulation of density caps, setbacks (and other controls) that enable a qualitative, principle based, asset revitalization that enhances the Island’s positive legacies.

**Land Use Element:**

- **Land Use Goal 8.10 – Zoning Changes**  
A. The goal is to provide appropriate modifications to the Zoning designations to meet market demands while maintaining the character of the Island.
- **Implementation Strategy 8.6 – Build-out**  
A. Consider flexibility within the Land Management Ordinance to address future development and redevelopment needs.

**Conclusions of Law:**

- Staff concludes that this application meets the criteria as set forth in LMO Section 16-3-1805(A).

- Granting a special exception for this use would facilitate reuse of an existing site and provide flexibility to encourage redevelopment, while preserving the existing character of the district.

**LMO Official Summary of Facts and Conclusions of Law**

*Criteria 2: It will be consistent with the 'character and purpose' statement of the applicable district (LMO Section 16-3-1805.B):*

**Findings of Fact:**

- Per LMO Section 16-4-216, “The Office/Institutional Low Density Zoning District was established between major commercial areas of the Island with the intent to limit the types of nonresidential uses permitted. The land uses permitted are office and institutional in order to minimize travel impacts on the street system, encourage better compatibility in and among land uses on the Island, provide balance among land use types in major corridors and improve visual appearance along major corridors.”
- The proposed use is a business that will generate minimal traffic.
- The surrounding uses are a gas station, hotel, bank and restaurant.

**Conclusions of Law:**

- Staff concludes that this application meets the criteria as set forth in LMO Section 16-3-1805(B).
- The proposed use will be consistent with the character and purpose statement of the OL Zoning District because the proposed use is not considered to be a heavy traffic generator and is compatible with the existing uses in the vicinity.

**LMO Official Summary of Facts and Conclusions of Law**

*Criteria 3: It will be compatible with the existing uses adjacent to and near the property (LMO Section 16-3-1805.C):*

**Finding of Fact:**

- The existing nearby uses include a bank, hotel, restaurant and gas station/convenience store.

**Conclusions of Law:**

- Staff concludes that this application meets the criteria as set forth in LMO Section 16-3-1805(C).
- The proposed use is compatible with the existing uses adjacent to and near the property.

**LMO Official Summary of Facts and Conclusions of Law**

*Criteria 4: It will not be hazardous, detrimental or disturbing to present surrounding land uses due to noise, glare, smoke, dust, odor, fumes, water pollution or general nuisance (LMO Section 16-3-1805.D):*

**Finding of Fact:**

- The applicant proposes to operate a cellular phone service business in a vacant building, which will not produce any exterior noise, glare, smoke, dust, odor, fumes, water pollution or general nuisance.

**Conclusions of Law:**

- Staff concludes that this application meets the criteria as set forth in LMO Section 16-3-1805(D).
- The proposed use will not be hazardous, detrimental or disturbing to surrounding land uses.

**LMO Official Summary of Facts and Conclusions of Law**

*Criteria 5: It will not otherwise adversely affect the development of the general neighborhood or of the district in which the use is proposed (LMO Section 16-3-1805.E):*

**Findings of Fact:**

- Per LMO Section 16-4-1204, the proposed use is categorized as Other Retail Service use, which is permitted in the OL Zoning District with special exception approval.
- The site is already developed and there are no alterations proposed to the site or the building to accommodate the proposed use.

**Conclusions of Law:**

- Staff concludes that this application meets the criteria as set forth in LMO Section 16-3-1805(E).
- The proposed use will not adversely affect the development of the general neighborhood or of the district in which the use is proposed because the business will be located within an existing building and the use will not produce any external impacts.

**LMO Official Summary of Facts and Conclusions of Law**

*Criteria 6: It will be consistent with existing and planned pedestrian and vehicular circulation adjacent to and near the property (LMO Section 16-3-1805.F):*

**Finding of Fact:**

- The subject property is located on William Hilton Parkway and Regency Parkway where there is an existing curb cut, a drive aisle and parking spaces.

**Conclusions of Law:**

- Staff concludes that this application meets the criteria as set forth in LMO Section 16-3-1805(F).
- The proposed use will be consistent with the existing circulation adjacent to and near the property because the current site has the appropriate infrastructure for vehicular circulation and no changes are proposed to the site.

**LMO Official Summary of Facts and Conclusions of Law**

*Criteria 7: It will have adequate water and sewer supply, storm water facilities, waste disposal and other public services (LMO Section 16-3-1805.G):*

**Findings of Fact:**

- Hilton Head Public Service District provides water and sewer services to the subject parcel.
- The proposed use will operate in an existing building on a developed site that has adequate storm water facilities and other public services in place.

**Conclusions of Law:**

- Staff concludes that this application meets the criteria as set forth in LMO Section 16-3-1805(G).
- The proposed use will have adequate water and sewer supply, storm water facilities, waste disposal and other public services because the subject property is already served with these utilities.

**LMO Official Summary of Facts and Conclusions of Law**

*Criteria 8: It will be developed in a way that will preserve and incorporate any important natural features that are a*

*part of the site (LMO Section 16-3-1805.H):*

**Findings of Fact:**

- The proposed use will be located in an existing building on a developed site.
- The applicant has no plans to alter the site.

**Conclusions of Law:**

- Staff concludes that this application meets the criteria as set forth in LMO Section 16-3-1805(H).
- The proposed use will preserve any important natural features that are a part of the site because no alterations are proposed to the existing site.

**LMO Official Summary of Facts and Conclusions of Law**

*Criteria 9: It will conform to any specific criteria or conditions specified for that use by special exception in the applicable district or for the proposed use, as set forth in Chapter 4 of this Title (LMO Section 16-3-1805.I):*

**Finding of Fact:**

- Per LMO Section 16-4-1342, only Retail Service uses are permitted in the OL Zoning District.

**Conclusions of Law:**

- Staff concludes that this application meets the criteria as set forth in LMO Section 16-3-1805(I).
- The proposed use will conform to the condition specified for Other Retail Sales and Service uses because the proposed cellular phone service business is classified as a retail service use.

**LMO Official Summary of Facts and Conclusions of Law**

*Criteria 10: It will not be contrary to the public health, safety and welfare, provided that a denial based exclusively on this language shall include explicit findings regarding the way in which granting the special exception would be contrary to the public health, safety and welfare (LMO Section 16-3-1805.J):*

**Findings of Fact:**

- Staff does not have any findings of facts to show that the proposed use will be contrary to the public health, safety or welfare.
- Staff has not received comments regarding this application.

**Conclusions of Law:**

- Staff concludes that this application meets the criteria as set forth in LMO Section 16-3-1805(J).
- The proposed use will not be contrary to the public health, safety or welfare because no evidence was produced to demonstrate that the proposed use will be detrimental and no negative comments were received regarding the application.

**LMO Official Determination**

**Based on the above Findings and Conclusions of law, the LMO Official determines that the request for a special exception should be granted to the applicant for the proposed cellular phone service business in the OL Zoning District because it is in conformance with the Comprehensive Plan and the Land Management Ordinance.**

**Staff Recommendation**

**Determination:** Staff recommends the Board of Zoning Appeals **approve** the application based on the above Findings of Fact and Conclusions of Law.

**BZA Determination and Motion**

The "powers" of the BZA over special exceptions are defined by the South Carolina Code, Section 6-29-800, and in exercising the power, the BZA may "permit uses by special exception subject to the terms and conditions for the uses set forth for such uses in the zoning ordinance..." or "may 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."

This State law is implemented by the Hilton Head Island Land Management Ordinance, Chapter 2, Article III and the Rules of Procedure for the BZA. A written Notice of Action is prepared for each decision made by the BZA based on findings of fact and conclusions of law.

**PREPARED BY:**

N.D.

\_\_\_\_\_  
Nicole Dixon  
*Senior Planner*

March 10, 2011

\_\_\_\_\_  
DATE

**REVIEWED BY:**

T.L.

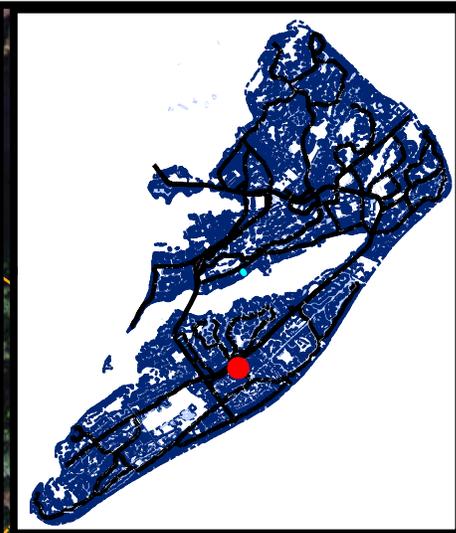
\_\_\_\_\_  
Teri B. Lewis, AICP  
*LMO Official*

March 10, 2011

\_\_\_\_\_  
DATE

**ATTACHMENTS:**

- A) Vicinity Map
- B) Applicant's Narrative and Attachments



TOWN OF HILTON HEAD ISLAND  
ONE TOWN CENTER COURT  
HILTON HEAD ISLAND, S.C. 29928  
PHONE (843) 341-6000

# Town of Hilton Head Island ATTACHMENT A

## Vicinity Map



This information has been compiled from a variety of unverified general sources at various times and as such is intended to be used only as a guide. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion.

# ATTACHMENT B

**S & C 278 Associates**  
**10 Yorkshire Dr.**  
**Hilton Head IS. S.C. 29928**  
**954-253-3086**  
**e-mail: [bistromezzaluna@gmail.com](mailto:bistromezzaluna@gmail.com)**

**2-15-2011**

Town of Hilton Head Island  
Community Development Department  
One Town Center Court  
Hilton Head Island, SC 29928

RE: Special Exception Submittal for 3 Regency Parkway (formerly Ronnies Bakery)

According to the LMO Section 16-3-1805, I am herewith requesting a hearing to review my request for special exception to utilize this property for a retail service store for the purpose of an office and retail service use related to cellular telephone equipment & related supplies and equipment as allowed by the LMO by Special Exception. This use is a mirror image of two other uses in the immediate area known as the Verizon Store and Hargray Telephone. Other commercial uses in the immediate area are Stack's Pancake House, Kangaroo Convenience Store, Red Roof Inn, a Bank, other Hotels, Shops and Stores located in S. Island Sq. thereby being compatible with other Retail & Office uses in the immediate area.

It is my belief that the intended use is not a generator of traffic, but one that utilizes existing traffic to service the operation its' business. It will have adequate water and sewer supply, storm water facilities, waste disposal and other public services already in existence.

Since 1986, when I developed Regency Park, this specific property was utilized by commercial tenants such as a Dunkin Donut Bakery and Restaurant and subsequently utilized by Ronnies Bakery and Restaurant up to present time, which are permitted then and now by then existing ordinances. I believe that it will not be detrimental of any sort nor adversely effect to any of the neighboring uses and will be consistent with the existing traffic patterns as in place nor contrary to the public health, safety and welfare of the general public.

In these trying economic times, I thank you in advance for your consideration and expeditious cooperation in this matter.

Sincerely Yours

Mark R. Sertl  
S & C 278 Associates



# **TOWN OF HILTON HEAD ISLAND**

## *Community Development Department*

**TO:** Board of Zoning Appeals  
**FROM:** Nicole Dixon, *Senior Planner*  
**DATE:** March 9, 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.”

There were no waivers granted by staff since the January Board of Zoning Appeals meeting.