



Town of Hilton Head Island
Board of Zoning Appeals Meeting
Monday, May 21, 2012
2:30 p.m. Council Chambers
AGENDA

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** – Regular Meeting of April 23, 2012
8. **Unfinished Business**
None
9. **New Business**
Public Meeting
APL120001: Request for Appeal from Thomas C. Taylor. The appellant is appealing the Town's decision (made on August 4, 2011) that the parking supply at Broad Creek Marina is in compliance with the Land Management Ordinance (LMO). *Presented by: Teri Lewis*
10. **Board Business**
11. **Staff Report**
Waiver Report - *Presented by: Teri Lewis*
12. **Adjournment**

Please note that a quorum of Town Council may result if four or more Town Council members attend this meeting.

1 **TOWN OF HILTON HEAD ISLAND**
2 **Board of Zoning Appeals**
3 **Minutes of the Monday, April 23, 2012 Meeting**
4 **2:30p.m. - Benjamin M. Racusin Council Chambers**

DRAFT

5
6
7 Board Members Present: Chairman Roger DeCaigny, Alan Brenner, Stephen Murphy
8 and Glenn Stanford
9
10 Board Members Absent: Vice Chairman Peter Kristian; Michael Lawrence, Excused
11
12 Council Members Present: Bill Ferguson
13
14 Town Staff Present: Nicole Dixon, Senior Planner & Board Coordinator
15 Heather Colin, Development Review Administrator
16 Joheida Fister, Fire Marshal
17 Teri Lewis, LMO Official; Brian Hulbert, Staff Attorney
18 Kathleen Carlin, Board Secretary

19
20
21 **1. CALL TO ORDER**

22 Chairman DeCaigny called the meeting to order at 2:30p.m.
23

24 **2. ROLL CALL**

25
26 **3. INTRODUCTION TO BOARD PROCEDURES**

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

29 **4. APPROVAL OF THE AGENDA**

30 Mr. Stanford made a **motion** to **approve** the agenda as presented. Mr. Brenner **seconded** the
31 motion and the motion **passed** with a vote of 4-0-0.
32

33 **5. APPROVAL OF THE MINUTES**

34 Mr. Brenner made a **motion** to **approve** the minutes of the March 26, 2012 meeting as
35 presented. Mr. Stanford **seconded** the motion and the motion **passed** with a vote of 4-0-0.
36

37 **6. UNFINISHED BUSINESS**

38 None
39

40 **7. NEW BUSINESS**

41 **Public Hearing**

42 **VAR120001:** Request for variance from LMO Section 16-6-402, Preservation of Trees and
43 Native Vegetation. John Ware, with Heritage Villas, is requesting a variance to remove a
44 specimen tree in order to re-align the drive aisle for safety reasons. The property is located at
45 107 Lighthouse Road, and is further identified as Parcel 1083 on Beaufort County Tax Map
46 17. Chairman DeCaigny opened the public hearing for the application and requested that
47 staff make their presentation. Ms. Nicole Dixon made the presentation on behalf of staff.

1 The staff recommended that the Board of Zoning Appeals *approve* the application with the
2 condition that the applicant plant three (3) Category 1 trees to mitigate for the loss of the 36-
3 inch Live Oak specimen tree, based on the Findings of Facts and Conclusions of Law stated
4 in the LMO Official Determination.
5

6 Ms. Dixon presented an overhead review of the vicinity map, the proposed site plan and
7 photos of the site including the tree proposed for removal. The applicant is requesting a
8 variance to remove a specimen tree in order to re-align the drive aisle for pedestrian and
9 vehicular safety. The applicant submitted an Expedited Development Plan Review
10 application for drive aisle and parking lot improvements. While reviewing the site plan, staff
11 identified that the proposed improvements, which include the realignment of the drive aisle,
12 would result in the removal of a specimen tree. Staff informed the applicant that a specimen
13 tree could not be removed without a variance.
14

15 Staff met on site as part of the application review process. During the site visit, staff
16 discussed alternatives that could be presented to the applicant that would improve access to
17 the site without having to remove the specimen tree. Fire & Rescue staff voiced their
18 concern with the alignment of the existing drive aisle, and had a fire truck maneuver the turn
19 into the development. The fire truck was able to turn into the drive aisle, but had to make a
20 very wide turn and while coming through the entrance, blocked the entire drive aisle. If there
21 was a vehicle sitting at the entrance waiting to pull out, the truck would not have been able to
22 pull into the development. Fire & Rescue staff supports removal of the tree so that the drive
23 aisle can be re-aligned and brought into compliance for safety reasons.
24

25 The alternative staff discussed and presented to the applicant, was the possibility of creating
26 a one way in and one way out drive aisle, creating a median in between the two drive aisles
27 to save the trees. But after discussing this alternative with the applicant, it was brought to
28 staff's attention that there are three manhole vaults in the area that cannot be removed or
29 relocated, making the creation of a new one way drive exit not feasible. The applicant
30 decided that the alternative ideas have been exhausted and that they need to request the
31 variance to remove the tree for safety reasons.
32

33 Ms. Joheida Fister, Fire Marshal, presented statements in support of the application on behalf
34 of Fire & Rescue. The Board and the staff discussed plans for realignment of the drive aisle.
35 At the completion of staff's presentation, Chairman DeCaigny requested that the applicant
36 make his presentation.
37

38 Mr. John Ware, Board President of Heritage Villas, presented statements in support of the
39 application. The Board and the applicant discussed the realignment plan and the staff's
40 recommended mitigation plan. Following final discussion, Chairman DeCaigny requested
41 public comments and the following were received: Citizen, Mr. Kent James, presented
42 statements in opposition to removal of the specimen tree. All possible options should be
43 explored to save the tree. Following public comments, Chairman DeCaigny stated that the
44 public hearing for this application is closed. Following final discussion by the Board,
45 Chairman DeCaigny requested that a motion be made.
46
47
48

1 Mr. Stanford made a **motion to approve** Request for Variance Application, VAR120001, as
2 presented by staff subject to the mitigation requirements imposed by the staff for replacement
3 trees and landscaping. Mr. Brenner **seconded** the motion and the motion **passed** with a vote
4 of 4-0-0.
5

6 **Public Hearing**

7 **SER120001**: Mr. Martin Olsen is requesting a special exception for an Other Light
8 Industrial Service use in the Commercial Center (CC) Zoning District pursuant to LMO
9 Section 16-4-1204 to operate a property management office and commercial cleaning
10 service. The property is located at 87 Arrow Road and is further identified as parcel 837 on
11 Beaufort County Tax Map 14.
12

13 Ms. Nicole Dixon made the presentation on behalf of Ms. Anne Cyran, case manager, for the
14 application. The staff recommended that the Board approve the application based on the
15 Findings of Fact and Conclusions of Law contained in the staff report. The LMO Official
16 states that the application for special exception should be granted to the applicant because it
17 is in conformance with the Comprehensive Plan and the Land Management Ordinance.
18

19 In February 2012, the applicant asked staff about the requirements for opening a property
20 management and commercial laundry service in an existing, unoccupied building at 87
21 Arrow Road. Staff informed the applicant that the commercial laundry service use would
22 require a special exception.
23

24 The applicant is requesting special exception approval to operate a commercial cleaning
25 service (classified as Other Light Industrial Service) in the Commercial Center (CC) Zoning
26 District. The applicant states in the narrative that the business will operate in an existing
27 building and that no structural changes will be required to accommodate the use. The
28 applicant believes the proposed use will be compatible with surrounding uses because all
29 activities will take place in the building and the proposed use will not generate noise, glare,
30 smoke, dust, odor, fumes, water pollution or general nuisance. Ms. Dixon stated that the
31 application complies with the Summary of Facts and Conclusions of Law. Following the
32 staff's presentation, Chairman DeCaigny requested that the applicant make his presentation.
33

34 The applicant, Mr. Martin Olsen, presented statements in support of the application. The
35 applicant stated that they have washers and dryers only with no dry cleaning performed.
36 They are more of a housekeeping service rather than commercial cleaning service.
37 Following the applicant's presentation, Chairman DeCaigny requested public comments and
38 none were received. Chairman DeCaigny stated that the public hearing for the application is
39 closed. Following final comments by the Board, Chairman DeCaigny requested that a
40 motion be made.
41

42 Mr. Stanford made a **motion to approve** Application for Special Exception SER120001 as
43 presented by the staff. Mr. Brenner **seconded** the motion and the motion **passed** with a vote
44 of 4-0-0.
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46 **8. Staff Report**

47 None
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9. ADJOURNMENT

The meeting was adjourned at 3:30p.m.

Submitted By:

Approved By:

Kathleen Carlin
Secretary

Roger DeCaigny
Chairman

DRAFT



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Board of Zoning Appeals
VIA: Nicole Dixon, CFM, *Senior Planner and Board Coordinator*
FROM: Teri Lewis, *LMO Official*
DATE: May 3, 2012
SUBJECT: Appeal 120001

Staff has received an appeal from Thomas C. Taylor regarding the March 19, 2012 letter stating that the decision regarding the parking supply at Broad Creek Marina was made in August 2011 and further affirmed in September 2011 and therefore the appeal period is over. The appellant is appealing the Town's decision (made on August 4, 2011) that the parking supply at Broad Creek Marina is in compliance with the Land Management Ordinance (LMO) and is asking that the Board reverse the decision of the LMO Official and find that the parking supply at Broad Creek Marina is not in compliance with the LMO.

The record as attached consists of the following documents: Appeal Application, Appellant's Narrative, Determination Letter titled Exhibit A, Letter from the Appellant to the LMO Official titled Exhibit B, Broad Creek Marina Zip Line DPR Narrative titled Exhibit C, Broad Creek Marina Zip Line DPR Parking Calculations titled Exhibit D, Letter from the Appellant to Anne Cyran titled Exhibit E, Letter from Anne Cyran to the Appellant titled Exhibit F, Letter from the Appellant to Charles Cousins titled Exhibit G and a Letter from the Appellant to the LMO Official titled Exhibit H.

Staff is not submitting any documents at this time because we believe the submitted appeal is improper; the applicant should have appealed the decision that the appeal period related to the August 2011 determination was over. Staff reserves the right to submit additional documents.

If you have any questions, please contact Teri Lewis at 341-4698 or teril@hiltonheadislandsc.gov.

LAW OFFICE OF
THOMAS C. TAYLOR, LLC

22 BOW CIRCLE
SUITE A
HILTON HEAD ISLAND, SC 29928

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P.O. BOX 5550
HILTON HEAD ISLAND, SC
29938

CERTIFIED CIRCUIT
COURT MEDIATOR

ALSO ADMITTED
GEORGIA BAR

March 28, 2012

Via Hand-Delivery

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

Re: Appeal of Administrative Determination Regarding Parking at Broad Creek Marina

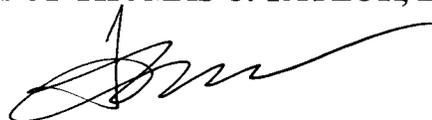
Dear Ms. Lewis:

I am pleased to deliver to you herewith for filing with the Town's Board of Zoning Appeals, my appeal regarding the Administrative determination made in your letter of March 19, 2012 to me. Also enclosed is my check for \$100.00 payable to the Town for the required fee for this appeal.

I ask that you and Chairman DeCaigny note that my initial letter of Complaint dated February 2, 2012, was quite clear in explaining that I was filing the Complaint as a citizen of the Town who uses the parking at Broad Creek Marina regularly. As such, I am clearly entitled to the protection of the appeal process set forth in Section 16-3-2001 of the LMO, and this Notice of Appeal is being filed in clear compliance with all of the requirements of the Town's ordinances.

Please let me know if you or the BZA require any further information. I look forward to seeing you on May 21, 2012 for the BZA meeting.

Cordially yours,
LAW OFFICE OF THOMAS C. TAYLOR, LLC



Thomas C. Taylor

TCT/dpt
Enclosure(s)



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

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

Applicant/Agent Name: Thomas C. Taylor Company: _____
 Mailing Address: P.O. Box 5550 City: Hilton Head Is. State: SC Zip: 29938
 Telephone: 785-5050 Fax: 785-5030 E-mail: tom@thomastaylorlaw.com

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.
 - Any other documentation used to support the facts surrounding the decision.
 - 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: March 28, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
)
)
_____)

**BEFORE THE BOARD OF ZONING
APPEALS OF THE TOWN OF HILTON
HEAD ISLAND, SOUTH CAROLINA**

REQUEST FOR APPEAL

NARRATIVE

This Narrative is part of the Request For Appeal (this “Appeal”) filed on behalf of Thomas C. Taylor personally 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 Town’s Land Management Ordinance (the “LMO”) regarding the required parking for the new “Zip Line” attraction being constructed at the Broad Creek Marina and earlier approved by the Town per application XDPR 110016.

The Decision, which relates to the August 4, 2011 Notice of Action on Expedited Development Review Application No. 110016 finding that the parking spaces currently existing at Broad Creek Marina are in compliance with the Land Management Ordinance, is set forth in the March 19, 2012 letter from Ms. Lewis to the undersigned Thomas C. Taylor. A copy of that letter, along with the Taylor letter of Complaint dated February 2, 2012, are attached to this Narrative as Exhibits A and B.

This appeal seeks relief from the Decision by Ms. Lewis that “the parking supply at Broad Creek Marina is in compliance with the Land Management Ordinance [LMO] and therefore no additional action is necessary from the Town at this time per LMO Section 16-8-103.C.”

This Appeal presents both questions of correct findings of fact and conclusions of law.

BACKGROUND

Truitt Rabun Associates, as the representative of Broad Creek Marina, made an application to the Town for “expedited approval” of a “Broad Creek Marina Eco Tourism Park” on or about June 10, 2011. It was assigned project number 110016. As part of the application, Broad Creek Marina in the DPR Narrative submitted June 10, 2011, represented to the Town that there then existed at Broad Creek Marina 139 parking spaces that “will accommodate the existing uses and the proposed zip line tour.” (See page 5 of Exhibit C attached hereto.) Broad Creek Marina further represented to the Town that under the LMO, only 128 parking spaces were actually required. To buttress those calculations, the applicant attached a “Broad Creek Marina Zip Line & Eco –Tourism Park DPR Parking Calculations” summary (also dated June 10, 2011 and attached hereto as Exhibit D). According to that document, the “existing” Water Sports and Tours operating at Broad Creek Marina generated “100 persons” during the day and thus supposedly required under the LMO calculations, only 34 allocated parking spaces of the 139 spaces that were then supposedly available. This was a gross under-calculation of usage. And, unfortunately, neither the DPR Parking Calculations nor the DPR Narrative advised the Town that Broad Creek Marina was contractually obligated, per a 99 year lease agreement, to provide fifty (50) of its 139 spaces to J & W Corporation of Greenwood, effectively leaving the Applicant with 89 existing spaces BEFORE any additional parking requirements were created by the proposed Zip Line.

On August 4, 2011, the Town issued a permit to Broad Creek Marina to proceed with construction of the new Eco Park, including the Zip Line. No mention of parking or increased spaces was included in the Town’s approval.

On August 26, 2011, the undersigned contacted the Town on behalf of the lessee of 50 of the supposedly available 139 parking spaces at Broad Creek Marina, J & W Corporation of Greenwood, and advised the Town of the 99 year lease and its dedication of the 50 parking spaces to J & W. The letter, a copy of which is attached as Exhibit E, also advised the Town as follows:

- a. That there were not actually 139 spaces currently available;
- b. That the “parking calculations” presented to the Town were very understated, and provided the Town with the actual numbers from J & W, which were of an average of 200 people per day on J & W’s ferry boats; and,
- c. That the other two current water based operations, the dolphin watch cruises and the kayak rentals, probably drew another 200 persons per day on average.

The August 26, 2011 letter requested the Town investigate the parking situation, make its own calculations, deduct the dedicated 50 spaces leased to J & W, and determine the amount of spaces actually required under the LMO for parking at Broad Creek Marina with the addition of the proposed Zip Line.

On August 30, 2011, the Town responded to the Taylor letter of August 26, 2011, ignored the request to perform a count of the existing spaces and a calculation of the actual spaces required under the LMO pursuant to the actual usage of the existing businesses, and instead, advised that on several occasions, a staff member had “noticed many available parking spaces on site.” Further, the Town’s representative ignored the factual information provided by one of the main businesses at Broad Creek Marina, J & W Corporation, as to actual numbers of current visitors, declined to undertake any type of independent analysis or even examination of the actual LMO requirements and instead referred to the “DPR Parking Calculations” prepared by the applicant’s representative and submitted on June 10, 2011, stating that “I determined that a sufficient number of spaces are available to support the all (sic) existing activities and the proposed zip line tour. (Please refer to the attached document summarizing the parking requirement.)” See attached Exhibit F.

On August 31, 2011, J & W’s counsel made one more good faith effort to raise the red flag to the Town as to the Broad Creek Marina parking situation, via a letter to Charles Cousins, once again asking that the Town fulfill its duty to undertake an analysis of the actual usage being made of all the businesses operating at Broad Creek Marina, “deduct the 50 spaces allocated to J & W by the lease, and then determine the appropriateness of the existing spaces and the

appropriateness of the request for the new business (the zip line).” See attached Exhibit G. By that letter, J & W also made a formal request under the South Carolina Freedom of Information Act, for copies of all documents relating to the Town’s review and analysis of the application by Broad Creek Marina for the Eco Park, to include the parking calculations (if any) actually performed by a Town staff member.

The Town responded by letter dated September 16, 2011, advised that the Town had conducted an investigation and advised that “as previously determined on August 4, 2011 as evidenced by the Notice of Action issued for XPDR 110016 [Broad Creek Marina Zip Line] the parking supply at Broad Creek Marina is in compliance with the Land Management Ordinance [LMO] and therefore no additional action is necessary from the Town at this time per LMO Section 16-8-103.C.” See Exhibit H. That responsive letter did not address the issue of actual usage, did not address the issue of the 50 leased spaces, did not address the issue of what additional spaces were required under the LMO for the additional parking demand to be generated by the opening of the Zip Line, and ignored the Freedom of Information Act request. Construing the Town’s letter as a continuing bad faith refusal to perform the required parking analysis, and believing there to be no reason to waste precious time lodging an appeal when the Town clearly had no intention of undertaking any serious investigation of the parking situation, J & W filed suit in the Beaufort County Court of Common Pleas seeking a Writ of Mandamus compelling the Town to perform its administrative duties. Discovery proceeds in that case.

On February 2, 2012, the undersigned filed a personal Complaint with the Town pursuant to LMO Section 16-8-103. See Exhibit B. On March 19, 2012, the Town denied the Complaint. See Exhibit A. This appeal follows within 14 days of the denial dated March 19, 2012.

GROUND FOR APPEAL

The LMO requires that each development of land on Hilton Head provide certain minimum parking spaces for anticipated usage. LMO Section 16-5-1201. It is a violation of the LMO to use or attempt to use land or a building in any way not consistent with the requirements of the LMO. Section 16-8-102. It is further a violation of 16-8-102 to erect a building or other structure in any way not consistent with the requirements of the LMO.

A simple review of the letters attached to this Appeal show that the Town has willfully and without reason failed to follow the requirements of the LMO regarding the required parking spaces for the proposed new Zip Line project at the Broad Creek Marina. For more than six months, the Town has been aware of the undisputed fact that the applicant's representation as to available parking spaces were inflated by 50 spaces—the 50 that Broad Creek Marina is contractually obligated to provide to J & W Corporation of Greenwood. In addition, J & W, which has been in operation at the Marina for more than 20 years, has provided the Town with uncontradicted figures showing that the actual usage of the existing “water sports and tours” at Broad Creek Marina is, on average, around 400 persons per day during the peak summer season, as opposed to the “100” persons suggested by the developer's representative in its parking space calculations submitted with the proposal to the Town for expedited approval. As best the evidence shows at this point, the Town has never performed any type of independent analysis whatsoever of the current parking situation nor the anticipated future parking increases to be necessitated by the Zip Line opening. Absolutely no data such as a shared parking analysis or other appropriate standards has been submitted, and thus the Administrator may not rely upon such under Section 16-5-1210.

The Town of Hilton Head Island must enforce its ordinances in a fair and uniform manner, free of discrimination or favoritism. It may not choose to enforce its parking space requirements under the LMO in some instances, but not others. Nor may it do so in considering some new projects but not others. I respectfully ask the Board of Zoning Appeals pursuant to Section 16-3-2003 (B) and/or (C), to either reverse or modify the action of the Administrator in declining to perform an independent analysis of the current situation and future needs, and to direct the LMO Administrator to undertake a bona fide analysis of current business activity at Broad Creek Marina, the current number of parking spaces available, and determine a good faith projection of the increased usage once the Zip Line is open. Once that information is gathered, the Administrator should be directed to independently evaluate and determine the number of additional parking spaces, if any, which shall be required prior to the opening of the Zip Line attraction.

CONCLUSION

The Town of Hilton Head Island, for reasons that cannot be reasonably explained, has failed to undertake a legitimate analysis of the current and future parking requirements at Broad Creek Marina. A Complaint having been filed on February 2, 2012 by the undersigned, and the Town having declined to undertake a good faith investigation and analysis of the situation, the Board of Zoning Appeals should exercise its authority under Section 16-3-2003 to step in to the shoes of the Administrator and see that the proper, required investigation and analysis is performed. To do less risks creating a totally unworkable parking situation at Broad Creek Marina when the full tourist season arrives.

LAW OFFICE OF THOMAS C. TAYLOR, LLC

By: 
THOMAS C. TAYLOR
P.O. Box 5550
Hilton Head Isl., SC 29938
Telephone: (843)785-5050
Facsimile: (843)785-5030
Email: tom@thomastaylorlaw.com

Hilton Head Island, South Carolina
March 28th 2012

Exhibit A

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

Drew A. Laughlin
Mayor

Kenneth S. Heitzke
Mayor ProTem

Council Members

Wm. Lee Edwards
Willie (Bill) Ferguson
William D. Harkins
Kimberly W. Likins
George W. Williams, Jr.

Town Manager

March 19, 2012

Mr. Thomas C. Taylor
Law Office of Thomas C. Taylor, LLC
22 Bow Circle
Suite A
Hilton Head Island, SC 29928

Dear Mr. Taylor:

This letter is in response to your correspondence dated February 2, 2012 related to the Broad Creek Marina zip line project. I apologize for the delay in my response – I was under the impression that you were trying to work out a compromise with the owner of Broad Creek Marina so I delayed responding while that was in the works. I understand that effort has fallen through which is why I am providing this response now. As I stated to you in my response on September 16, 2011, the Town (as previously determined on August 4, 2011 as evidenced by the Notice of Action issued for XPDR110016 - Broad Creek Marina Zip Line) has already determined that the parking supply at Broad Creek Marina is in compliance with the Land Management Ordinance [LMO] and therefore no additional action is necessary from the Town at this time per LMO Section 16-8-103-C.

I am simply re-affirming a determination that was made back in August 2011 so at this time there is no recourse to appeal. The appeal period is already over.

Sincerely,



Teri B. Lewis
LMO Official

cc: XDPR110016 file
Charles Cousins
Steve Riley
Gregg Alford

Exhibit B

CERTIFIED CIRCUIT
COURT MEDIATOR

ALSO ADMITTED
GEORGIA BAR

LAW OFFICE OF
THOMAS C. TAYLOR, LLC
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P.O. BOX 5550
HILTON HEAD ISLAND, SC
29938

February 2, 2012

Via US Mail

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

**Re: Applicant: Broad Creek Marina (Zip Line)
XDPR 110016**

Dear Ms. Lewis:

As a resident of Hilton Head and a frequent visitor to Broad Creek Marina for business, I am very concerned about the current lack of available parking at Broad Creek Marina and believe that if the “zip line” project currently under construction is opened, the increased parking demand will make an already bad situation, much worse. I believe the projected parking numbers given to the Town by the project planners are dramatically understated, especially in light of the 50 spaces that are leased to J & W Corporation of Greenwood, by the owner of the Marina, who I believe is the developer of the zip line. And as I think the Town knows, the actual daily use of the varied water sports and tours already operating on the premises is probably more like 400 persons rather than the 100 stated by the project planners.

Pursuant to LMO Section 16-8-103, I hereby personally make this formal Complaint that the parking spaces being permitted to serve the Broad Creek Marina “Zip Line” are at variance with the requirements of the LMO relating to parking. See Section 16-5-1209. I incorporate by reference my earlier letter to Ms. Cyran written on behalf of the J & W Corporation of Greenwood and the allegations set forth therein as to the actual number of guests at BCM for the different current activities. Specifically Section 16-5-1209 requires one space for every 3 persons that the facilities are designed to accommodate when fully utilized...” As noted in my letter to Ms. Cyran, I believe that number is more like 400 than the 100 set forth by the developer’s representative.

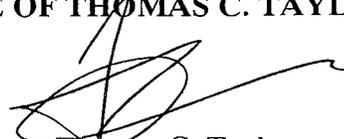
Ms. Teri B. Lewis
February 2, 2012
Page 2

I ask that the Town follow its ordinance, properly record this Complaint, and immediately investigate to determine the validity of the charge and take whatever action is necessary to assure compliance with this Title. It seems to me that the only reasonable way to properly investigate would be to undertake an analysis of the actual usage being made of all the businesses operating at Broad Creek Marina, deduct the 50 spaces allocated to J & W by the long term lease that the Town is aware of, and then determine the appropriateness of the existing spaces and the appropriateness of the request for the new business (the zip line). Anything less than an analysis of the actual numbers based on reports by the businesses, would be, in my opinion, less than the LMO requires.

Thank you for your assistance. Please let me know if there is anything I can do to assist in your investigation. I can and will provide you with numbers from J & W's activities at the Marina. I look forward to hearing from you.

Finally, please send me a copy of the appeal "application form" noted in Section 16-3-2004 of the Ordinance, and advise me of the amount of the "appropriate fee" as supposedly required by Section 16-3-105, if your reply to this Complaint is that the Town believes the parking situation at Broad Creek Marina with the addition of the zip line, is within the requirements of the LMO. Thank you again.

Cordially yours,
LAW OFFICE OF THOMAS C. TAYLOR, LLC



Thomas C. Taylor

TCT/dpt
Attachment
cc: Greg Alford, Esq.

BROAD CREEK MARINA
ECO TOURISM PARK ZIP LINE CANOPY TOUR
DPR NARRATIVE
June 10, 2011

Applicant: Broad Creek Marina of Hilton Head, LLC

Site Location: 15.4 +/- Acres, 18 Simmons Road, Hilton Head Island, SC

Project Number: DR110012

PINs:

- R510 011 000 007F 0000 - 6.53 Acre Broad Creek Marina Site
- R510 011 000 0006 0000 - 3.85 Acre Broad Creek Marina Village Lots
- R510 011 000 0183 0000 - 1.72 Acre Broad Creek Marina Village Parking Easement & R/W
- R510 011 000 0379 0000 - 2.38 Acre Broad Creek Marina Village Open Space 1
- R510 011 000 0380 0000 - 0.51 Acre Broad Creek Marina Village Open Space 2
- R510 011 000 0381 0000 - 0.04 Acre Broad Creek Marina Village Open Space 3
- R510 011 000 0382 0000 - 0.10 Acre Broad Creek Marina Village Lot 1
- R510 011 000 0383 0000 - 0.10 Acre Broad Creek Marina Village Lot 2
- R510 011 000 0384 0000 - 0.10 Acre Broad Creek Marina Village Lot 3

Note: PINs total 15.33 Acres

Zoning: Waterfront Mixed-Use (WMU) / Corridor Overlay District (COR)

Agent for the Applicant: Truitt Rabun / Truitt Rabun Associates, Inc.

BACKGROUND

Broad Creek Eco-Tourism Park is conceived to create a low impact waterfront oriented park, offering several of the world's most popular adventure and recreational activities that are not on HHI at this time. This is an expansion of the existing waterfront mixed-use activities at Broad Creek Marina and capitalizes on the natural beauty of the area while offering eco-friendly, family-friendly and team-building appeal.

A zip line canopy tour is planned for the initial adventure activity at the Eco-Tourism Park. Zip line canopy tours are extremely popular around the world and are now at resorts in Maui, Costa Rica, Utah's Olympic Park/Park City, Golden Gate Bridge, and Heavenly, CA/Tahoe among hundreds of others. In the Southeast, successful zip lines can be found in the Blue Ridge Mountains, the U.S. Olympic training center/Charlotte and in the Atlanta area.

This adventure is designed for a participant to enjoy the aerial beauty of the site's trees and views of the Broad Creek beyond, as well as the thrill of the experience. The participant is attached by harness to a pulley and propelled by gravity to traverse the tree canopy from the top to the bottom of various platform stations on a suspended cable.

The zip line will share the existing Calibogue Cruises and kayak tour ticketing/storage building for its ticketing and storage needs. The cruises and kayak tours will remain in operation. If there is proven success with the zip line, then the potential for other

activities increases, including activities such as an outdoor dining and entertainment pavilion, a ropes course, bungee jump, climbing wall and new ticketing/storage facilities.

The Broad Creek Eco Tourism Park encompasses the unsold portion of adjacent Broad Creek Marina Village residential subdivision property. Lots 1, 2 and 3 on the right side of the entry are the only properties that have been sold. The owners of these lots have given the Applicant permission to change the POA to allow any type of commercial development.

While Broad Creek Marina Village will be utilized for a portion of the Eco Tourism Park, the Applicant requests the underlying subdivision plat and future use remain in-place in case the site is converted back to residential subdivision use in the future. In the meantime, since the Broad Creek Marina Village and Broad Creek Marina properties will be treated as one property, it is the Applicant's understanding that the adjacent use buffers and setbacks between the Village and Marina properties will not be in effect. Should the Broad Creek Marina Village property be converted back to a residential subdivision, the adjacent use buffers and setbacks will go back into effect.

DPR Pre-Application Meeting and Subsequent DPR Application Requirements Meeting:

On January 3, 2011, the Applicant and Applicant's design consultants met with Town staff for the zip line DPR Pre-Application (PAPP100016) review. Designs proceeded following the staff's Pre-Application comments and by May the Applicant requested a meeting with Town staff to review the requirements for the zip line DPR Application. That meeting was held May 10, 2011. This DPR Application addresses comments received during that meeting.

Engineering Pre-Design Conference with Town Engineer:

The Engineering Pre-Design Conference was also held May 10, 2011. A subsequent meeting was held June 3, 2011 to review construction access stabilization options. This DPR Application addresses comments received during those meetings.

DRB Approvals:

The DRB reviewed the Broad Creek Marina Eco-Tourism Park Zip Line Conceptual Plans on February 22, 2011. The Conceptual Application was "Approved with Specific Conditions", with the Notice dated February 22, 2011.

The Final DRB Application, dated June 10, 2011 has been submitted simultaneously with this DPR Application submittal.

LMO Text Amendment:

After the DPR Pre-Application review meeting (January 3, 2011), Town staff confirmed that the proposed adventure facilities, including the zip line, will be in the Outdoor Recreation use category and that the LMO does not permit Outdoor Recreation as a use in the Waterfront Mixed-Use (WMU) district. Following that determination the Town staff has marshaled an LMO text amendment request through the Planning Commission's LMO Committee; the Planning Commission; and, the Town Council's Planning and Development Standards Committee. At present, the P&DS Committee Report has been presented to Town Council and the text amendment is scheduled for First and Second Readings with adoption at the July 5, 2011 meeting.

Therefore, DBR and DPR approvals are subject to the Town's adoption of the proposed LMO text amendment.

DPR REQUIREMENTS

The following addresses DPR Application Requirements and Staff comments based on the DPR Review Submittal Requirements mark-up received at the review meeting of May 10, 2011. Items are listed in the order of the Town's Application Requirements document.

Written Narrative:

This DPR Narrative is included in the Application submittal, dated June 10, 2011.

Landscape & Site Lighting Plans:

The Eco Tourism Park landscape will be unstructured and natural reflecting the informal character of the marina and the natural forests. Shaded areas and areas under tree canopies that are disturbed during construction will be mulched with shredded native tree bark and left to be covered with natural leaf litter over time. Areas subject to bright sun will be repaired with coastal Bermudagrass to control erosion and left to naturalize over time. Marsh buffers will be clearly delineated with interpretive signage and protected from intrusion. Selective pruning of buffer understory to open views to Broad Creek in more heavily used areas will be coordinated with Town staff.

The zip line tour will start at Platform A across from the existing Up the Creek Pub. The tour has eight sections culminating at Tower J. The site's existing picnic benches will be used to accommodate waiting zip line tour participants.

In addition to the zip line, this Application includes replacing with gravel the worn grass area where boats park for service adjacent to the dry stack storage shop. This area is already screened from Simmons Road with shrubs and trees. Existing shrubs against the building and clustered in the worn grass (ligustrum, viburnum, oleander, one crape myrtle) will be transplanted to increase the Simmons Road screen. These transplanted shrubs will be temporarily irrigated with above the ground soakers or by extending the existing drip irrigation. See attached "Site Development Plan", "Site Plan B-B" (Sheet 4 of 6).

No additional irrigation or additional site lighting is proposed.

The concept is to change as little as possible while providing for the zip line tour facilities.

Boundary Survey (with updated tree survey and OCRM critical line):

See attached Boundary, Tree, Topographic & Asbuilt Survey (2 Sheets) (Rev. May 2, 2011 / Andrews & Burgess).

Site Development Plan:

The purpose of the Broad Creek Marina zip line to provide participants the opportunity to enjoy the aerial beauty of the site's trees and views of the Broad Creek beyond, as well as the thrill of the experience, lends itself to conformity with the goals the Hilton Head

Island Design Guide. Most important, the success of the zip line depends in part on the participant's discovery of and encountering the site's natural canopy environment.

To that end, after the January 3, 2011, DPR Pre-Application review meeting, on January 24, 2011 and March 9, 2011, Signature Research (the design/build contractor for the zip line); the Applicant; the Applicant's land planner, certified arborist, engineer and land surveyor met on-site with Town staff members to site the zip line route. Platforms were located in the field, their locations surveyed and included on the Site Development Plan.

The zip line design calls for:

- Careful placement of ten (10) zip line Platforms (labeled A through J) to minimize impact to the forest's trees and the tree canopy with minimal tree removal and careful pruning of limbs as preliminarily determined in the field.
- Zip line tour route starting at Platform A and culminating at Platform J.
- One-pole and two-pole platforms ranging from approximately twenty seven-feet (27') to seventy-five (75') in height.
- Platforms consisting of treated utility poles to support the zip line, with the zip line accessed by a treated timber structure of stair-steps and landings. The support poles will be guyed. The treated utility poles and timber step/platform structures will be paint-stained to blend into the surrounding forests.
- Platform plans submitted for the Building Permit will be certified by a SC licensed structural engineer according to Town requirements.
- All tree removal and limb pruning will be under the supervision of a Town approved certified arborist and all work will be Town staff reviewed and approved on-site during construction.

In addition to the zip line, this Application includes replacing with gravel the worn grass area where boats park for service adjacent to the dry stack storage shop. (See Landscape & Site Lighting Plans, above.)

Erosion control consists of strategically placed sediment tubes downstream of the construction sites for the zip line platforms, and at all curb inlets on Broad Creek Way. The locations of the sediment tubes are coordinated with the locations of the tree protection fencing and both are shown on the site development and erosion control plans.

After review with the office of the Town Engineer, it was agreed that more damage would be done in installing and removing "stabilized construction access" roadbeds than to not install them for the very limited amount of access involved in the construction of the zip line. Instead it was agreed that sediment tubes will be placed at all curb inlets on Broad Creek Way where eight construction access points are provided to the zip line platform sites. There is one additional access point off the existing parking area west of the dry-stack storage building. The Town will maintain the right to require 12' wide by 30' long "gravel stabilized construction access" points, if in the Town's opinion there is too much earth being tracked on adjacent roads due to the construction.

The zip line tour does not required additions or modifications to the existing site sanitary sewer system, potable water system, power or telephone service. Existing fire hydrants should be adequate to cover any fire protection requirements for the platforms.

See attached "Zip Line Canopy Tour Site Development Plan" and "Sediment & Erosion Control & Grading Plan".

Parking Calculations and Traffic Generation Projections:

Parking Calculations:

The attached DPR Parking Calculations indicate Broad Creek Marina's existing parking spaces will accommodate the existing uses and the proposed zip line tour. The Applicant will delay construction of the previously approved and not yet built Building #2 dry stack storage (98 boats) (DPR 040030) as long as parking is required for the Eco Tourism Park activities or additional parking is provided.

In summary, using LMO Chapter 5, Sec. 16-5-1208 Required Off-Street Parking:

139	Existing Broad Creek Marina Parking Spaces
<u>128</u>	<u>Spaces Required (peak demand which is during the day)</u>
11	Excess Spaces (8% of Total Spaces)

Traffic Generation Projections:

Traffic generated by the zip line will not require traffic improvements (for example a traffic lane at the Broad Creek Way access onto Marshland Road). However, in order to conceptually assess the potential impacts of future adventure and recreational activities at Broad Creek Marina, at the Town Traffic Engineer's request, traffic generation projections have been prepared for Phase 1 Uses (the existing Broad Creek Marina uses with the zip line tour added) and for Conceptual Future Uses. The Applicant will prepare more detailed traffic studies for the impact of future uses, if warranted at the time. Until that time, any estimates on future uses are only conceptually speculative at best. See the attached Traffic Generation Projections (June 10, 2011 / SRS Engineering).

Impervious Surface and Open Space Calculations:

The impervious surface coverage and open space calculations are calculated as a percentage of the base area for the site, which is 654,764 SF (15.032 acres). The total base area is the same as the "Project Uplands". With the exception of lands within the critical area, there are no wetlands on the site. The total base area ("Project Uplands") is determined as follows:

Total Property	676,628 SF	15.533 Acres
Less Lots 1, 2, 3	13,230 SF	0.303 Acres
<u>Less Critical Area</u>	<u>8,634 SF</u>	<u>0.198 Acres</u>
Base Area	654,764 SF	15.032 Acres

The Broad Creek Eco Tourism Park encompasses the unsold portion of adjacent Broad Creek Marina Village residential subdivision property. Lots 1, 2 and 3, totaling 0.303 acres, on the right side of the entry are the only properties that have been sold, therefore are not included in the impervious surface calculations.

The 15.533 acre total property area includes 0.198 acres within the critical area, which is also not included in the impervious coverage calculations.

See attached Boundary, Tree, Topographic & Asbuilt Survey.

A zoning variance granted April 28, 2008 (VAR # 080003) allowed the dry-stack storage shop to encroach on the setback from a Town staff requested connection road's 50' R/W.

The variance also removed the need for a 50' R/W for the connection since the connection is internal to the marina site's parking and simply serves as parking access to two roads each with 50' R/W's (Simmons Road on the east and Broad Creek Way on the west). Since the Tree, Topographic & Asbuilt Survey still indicates a 50' R/W for the connector (albeit not fully aligned with the connector), reference is made to this variance on the attached Site Development Plan, Post Construction Impervious Coverage Plan and Post Construction Open Space Plan. The Post Construction Open Space Plan calculations do not include the 50' R/W for the connector. With the Town's permission, the Applicant would like to have this 50' R/W removed from the survey.

Impervious Coverage:

Post-zip line construction, the impervious surface coverage is 25% of the base area. See attached Post Construction Impervious Coverage Plan.

Open Space:

Post-zip line construction, the open space is 72% of the base area. See attached Post Construction Open Space Plan.

Setback and Buffer Areas:

Since the Broad Creek Marina Village and Broad Creek Marina properties will be treated as one property, the adjacent use buffers and setbacks between the Village and Marina properties will not be in effect. Should the Broad Creek Marina Village property be converted back to a residential subdivision, the adjacent use buffers and setbacks will go back into effect.

See the Impervious Surface and Open Space Calculations narrative above for an interpretation the effect of the zoning variance granted April 28, 2008 (VAR # 080003) on the setback to the marina parking lot connector's 50' R/W shown on the Tree, Topographic & Asbuilt Survey.

The zip line canopy tour's construction (platforms and zip line corridors) is clear of all remaining setbacks and buffers, including the Broad Creek marsh wetland buffers.

FEMA Flood Zone Information:

According to FIRM Community Panel Number 450250 0007 D, the project site is within the following three flood zones:

- Zone C
- Zone A7 Elevation 14
- Zone A7 Elevation 15

The zip line canopy tour does not incorporate habitable space, therefore is not subject to FEMA construction rules.

Tree Protection:

The zip line canopy tour is designed to minimize impact on the site's trees and tree canopy. To that end, after the January 3, 2011, DPR Pre-Application review meeting, on January 24, 2011 and March 9, 2011, Signature Research (the design/build contractor for the zip line); the Applicant; the Applicant's land planner, certified arborist, engineer and land surveyor met on-site with Town staff members to site the zip line route. Platforms

were located in the field, their locations surveyed and included on the Site Development Plan.

All tree removal and limb pruning will be under the supervision of a Town approved certified arborist and all work will be Town staff reviewed and approved on-site during construction. Note the locations for tree protection fencing were determined in the field and these locations are coordinated with the location of sediment tubes placed in the platform construction areas.

See attached "Site Development Plan", "Tree Protection, Pruning & Removal Plan" (Sheet 5 of 6). This plan lists the trees to be removed by LMO category, with species and sizes DHB. Per Town staff, due to the nature of the zip line construction, Tree Tally's are not required for this DPR Application.

OCRM Approvals:

Critical Line:

The Broad Creek Marina's critical line was re-surveyed for the current Tree, Topographic & Asbuilt Survey and the delineation approved by SCDHEC-OCRM March 15, 2011. The survey carries OCRM's stamp. This delineation expires three years hence on March 15, 2014.

Stormwater Permit:

In a letter received by Andrews & Burgess on April 28, 2011, SCDHEC-OCRM determined that a Plan Modification received by OCRM January 28, 2011 will be considered minor and will not require a formal modification of the Stormwater Permit. See attached SCDHEC Stormwater NOI / NOI Submittal Plans / SCDHEC-OCRM Stormwater Permit letter to Andrews & Burgess, dated April 28, 2011.

Wetlands Determination Letter:

A freshwater wetland assessment prepared by Newkirk Environmental Consultants indicates that "the project site does not contain area(s) that would be, at the time of the investigation, identified as freshwater wetlands". See attached Freshwater Wetlands Assessment (May 31, 2011 / Newkirk Environmental Consultants)

For additional copies of the enclosures or other information, please contact:

Truitt Rabun
Truitt Rabun Associates
P 843.342.7777
F 843.342.7701
C 843.384.2270
trabun@trabunassociates.com

Enclosures (PDF file format):

- DRB Submittal Form
- DRB Narrative (June 10, 2011)
- DPR Parking Calculations (June 10, 2011)
- Zip Line Canopy Tour Site Development Plan (June 10, 2011 / TRA)
 - Title Sheet (Sheet 1 of 6)
 - Site Plan (Sheet 2 of 6)

- Site Plan A-A (Sheet 3 of 6)
- Site Plan B-B (Sheet 4 of 6)
- Tree Protection, Pruning & Removal Plan (Sheet 5 of 6)
- Details (Sheet 6 of 6)
- Zip Course Layout & Site Plan (10 Sheets) (April 4, 2011 / Signature Research)
- Sediment & Erosion Control & Grading Plan (1 Sheet) (June 3, 2011 / Andrews & Burgess)
- Boundary, Tree, Topographic & Asbuilt Survey (2 Sheets) (Rev. May 2, 2011 / Andrews & Burgess)
- Traffic Generation Projections (June 10, 2011 / SRS Engineering)
- Post Construction Impervious Coverage Plan (June 10, 2011 / TRA)
- Post Construction Open Space Plan (June 10, 2011 / TRA)
- SCDHEC Stormwater NOI / NOI Submittal Plans / SCDHEC-OCRM Stormwater Permit letter to Andrews & Burgess, dated April 28, 2011.
- Freshwater Wetlands Assessment (May 31, 2011 / Newkirk Environmental Consultants)

Enclosures (submitted by hand delivery)

- Application Fee Check for \$100

**BROAD CREEK MARINA
ZIP LINE & ECO-TOURISM PARK
DPR PARKING CALCULATIONS**

June 10, 2011

Note the Applicant will delay construction of the previously approved and not yet built Building #2 dry stack storage (98 boats) (DPR 040030) as long as parking is required for the Eco-Tourism Park activities. Conceptual Future Phases call for the previously permitted Ship's Store (DPR 040030) to be replaced by the proposed Waterfront Open Air Restaurant.

PARKING REQUIREMENTS & UTILIZATION PER LMO:

Use	Square Feet, Slips/Racks, or Number of Persons at Peak Capacity	LMO Chapter 5, Sec. 16-5-1208 Required Off-Street Parking (*with estimates for uses not covered)	Parking Requirement & Utilization (Spaces)				
			Total	% Day	Day Spaces	% Night	Night Spaces
Phase 1							
Marina Wet Slips	46 Slips	1 Space / 3 Slips	15	100%	15	5%	2
Building #1 Boat Storage	200 Racks + 3,200 SF Repair w/ 5 Workers	1 Space / 5 Boats + *1 Space / Boat Repair Worker	40 5	100% 100%	40 5	5% 0%	4 0
Up the Creek Pub & Grill	1,955 SF Gross Kitchen, Interior Dining & Deck + 510 SF Office	1 Space / 100 SF Gross Floor Area + 1 Space / 350 SF Office	20 2	50%	11	100%	22
Water Sports & Tours	100 Persons + Existing 1,010 SF Ticketing/Storage	1 Space / 3 Persons + 1 Space / 200 SF	34 5	100%	34 5	0% 50%	0 3
Zip Line/ Canopy Tour	50 Persons (Ticketing/Storage shared with Water Sports & Tours)	1 Space / 3 Persons	17	100%	17	50%	9
Phase 1 Total	-	-	138	N/A	128	N/A	39
Conceptual Future Phases							
Ropes Course	30 Persons	1 Space / 3 Persons	10	100%	10	50%	5
Bungee Jump Course	30 Persons	1 Space / 3 Persons	10	100%	10	50%	5
Rock Climbing Wall	30 Persons	1 Space / 3 Persons	10	100%	10	50%	5
Open Air Restaurant	1,050 SF Kitchen, etc. + 4,100 SF Dining = 5,150 SF Gross	1 Space / 100 SF Gross Floor Area	52	50%	26	100%	52
Ticketing, Storage, etc.	3,000 SF	1 Space / 200 SF	15	100%	15	50%	8
Concept. Future Total	-	-	97	N/A	71	N/A	75
Phases 1 & Conceptual Future Phases							
Phase 1 Total	-	-	138	-	128	-	39
Concept. Future Total	-	-	97	-	71	-	75
Overall Total	-	-	235	N/A	199	N/A	114

Exhibit E

LAW OFFICE OF
THOMAS C. TAYLOR, LLC

22 BOW CIRCLE
SUITE A
HILTON HEAD ISLAND, SC 29928

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TELECOPIER 843-785-5030
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CERTIFIED CIRCUIT
COURT MEDIATOR
ALSO ADMITTED
GEORGIA BAR

MAILING ADDRESS
P.O. BOX 5550
HILTON HEAD ISLAND, SC
29938

August 26, 2011

Via Hand Delivery

Ms. Anne Cyran
Senior Planner—DRZ
Town of Hilton Head Island
One Town Center Court
Hilton Head Island, SC 29928

Re: Applicant: Broad Creek Marina (Zip Line)
XDPR 110016

Dear Ms. Cyran:

I represent J & W Corporation of Greenwood, which is a party to a 99 year lease agreement with Hilton Head Island Marina, LP, the predecessor in interest to Broad Creek Marina of Hilton Head, LLC. J & W operates a large, busy ferry boat operation, serving both the public, tourists and Daufuskie residents, from Broad Creek Marina pursuant to the terms and conditions of the aforesaid Lease Agreement, recorded at PB 654, P 228 in the RMC office. As part of the Lease Agreement, J & W is to be provided with a minimum of 50 parking spaces by the Landlord, Broad Creek Marina. Because J & W's business has grown, J & W has also leased from Charlie Simmons a portion of the Fish Camp parking lot, and we routinely park our "overflow" guests and Daufuskie residents in that area.

The purpose of my letter today is to advise the Town that J & W is very concerned about the impact to the current parking situation that the new "zip line" attraction will cause. Because of this concern, Wick Scurry, President of J & W, asked me to review the plans and bring to your attention some serious potential misunderstandings about parking numbers. J & W is supportive of any legitimate business expansion that will assist Broad Creek, but it appears to J & W that there is a miscommunication or misunderstanding by the Town as to the parking issue.

First, J & W does not believe there are actually 139 parking spaces currently available, as is represented in the June 10, 2011 Broad Creek Marina Zip Line & Eco-Tourism Park DPR Parking Calculations submitted by SRS. And critically important, the representation as to the number of persons using the "Water Sports and Tours" is very understated. J & W alone has been moving approximately 200 people per day on our ferry boats. We believe that the Dolphin Cruise business probably averages at least a 100 people per day during the summer, and the Water Dog kayak service, probably another 100 people per day. We do not have a good feel for the numbers of the Jet Ski Rental operation, but I am sure a representative from the Town could

easily gather that information. In sum, the average summer numbers for the lumped together “Water Sports & Tours” is probably more like 400 than 100 per day.

Although the specific calculations for the Up The Creek Pub & Grill may be accurate on a square foot basis, we also have observed a higher usage than can be served by the 22 spaces supposedly it justifies. We routinely observe overflow parking from the Pub moving to our privately leased lot near the Fish Camp.

I think the only legitimate way the Town can truly evaluate the parking situation at Broad Creek is to verify the numbers I have approximated, and then analyze the usage, with a reduction of the 50 spaces that are dedicated to J & W’s usage and legally are our spaces. Looking at those numbers, we do not believe there are currently sufficient parking spaces under the LMO, and the addition of further cars for the zip line/canopy tours attraction will only exacerbate the situation.

I ask that the Town investigate this situation, make its own calculations as to currently available and required LMO parking, and reconsider the requirements the Town will impose on Broad Creek Marina to provide parking for the increased level of cars once the zip line/canopy tour is open. If the Town does not undertake this analysis, I am afraid that a bad parking situation is going to be made worse, thereby impacting the ability of all businesses at Broad Creek Marina to function at an optimal standard.

On behalf of J & W, I thank you for your consideration of this request and ask that you contact me if you have any questions. We are glad to share with the Town any information we have concerning numbers of visitors and ferry boat riders over the year.

Cordially yours,
Law Office of Thomas C. Taylor, LLC



Thomas C. Taylor

Cc: Heather Colin, Development Review Administrator

TOWN OF HILTON HEAD ISLAND

One Town Center Court, Hilton Head Island, SC 29928
(843) 341-4600 Fax (843) 842-7228
<http://www.hiltonheadislandsc.gov>

August 30, 2011

Thomas Taylor
Law Office of Thomas Taylor, LLC
Sent to tom@thomastaylorlaw.com

Re: XDPR110016 Broad Creek Marina Zip-Line Project

Dear Mr. Taylor:

This is a response to your letter dated August 26, 2011 regarding the effect of the proposed zip line on the available parking supply at Broad Creek Marina. Your letter states that your client, J&W Corporation of Greenwood, is concerned that there is currently a lack of available parking at Broad Creek Marina and that there will not be enough parking spaces available once the zip line is open for use. I have investigated these concerns:

- On several visits to the site over the past five months, I have noticed many available parking spaces on site. The gravel spaces on the side of the dry storage building are usually half empty.
- I reviewed the Town's Code Enforcement Division records for this area and found no violations or complaints regarding overcrowded or illegal parking.
- I contacted Jehuda Fisher, the Town's Chief Marshal, who was not aware of any emergency access problems or concerns in this area.
- The review of the Expedited Developmental Plan Review (XDPR) application for this project included an analysis of the parking space requirements for all of the uses on this site. I determined that a sufficient number of spaces are available to support the all existing uses and the proposed zip line tour. (Please refer to the attached document regarding the parking requirements.)

Please contact me at (843) 341-4697 or annec@hiltonheadislandsc.gov if your client has further concerns.

Sincerely,



Anne Cyran, AICP
Senior Planner

cc: File

Roger Freedman, Broad Creek Marina

Exhibit G

CERTIFIED CIRCUIT
COURT MEDIATOR

ALSO ADMITTED
GEORGIA BAR

LAW OFFICE OF
THOMAS C. TAYLOR, LLC

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HILTON HEAD ISLAND, SC
29938

August 31, 2011

Via US Mail and E-Mail Attachment

Mr. Charles Cousins
Director of Community Development
Town of Hilton Head Island
One Town Center Court
Hilton Head Island, SC 29928

**Re: Applicant: Broad Creek Marina (Zip Line)
XDPR 110016**

Dear Charles:

I represent J & W Corporation of Greenwood and Wick Scurry, its owner. I am writing today in follow up to my letter August 26, 2011 to Anne Cyran, to make a Freedom of Information Act request, and to lodge an official complaint with the Town of Hilton Head as to the above referenced project, and specifically, as to its parking plan.

As you can see from the attached copy of my letter to Ms. Cyran, J & W is very concerned about the current lack of available parking at Broad Creek Marina and believes that if the "zip line" project is opened, its increased parking demand will make an already bad situation, much worse. As my letter indicates, we believe the projected parking numbers given to the Town by the project planners are dramatically understated, especially in light of the 50 spaces that are leased to J & W from the existing spaces. And as noted to Ms. Cyran, we believe the actual use of the varied water sports and tours already operating on the premises are probably more like 400 persons rather than the 100 stated by the project planners.

When I wrote Ms. Cyran, I pointed out this problem with the project developer's numbers versus the actual usage, and suggested that the Town should perform its own investigation as to the true numbers to avoid a serious problem once the attraction opens. In reply, by letter dated August 30, 2011, Ms. Cyran basically said she has not observed any parking problems, and that the Town's Code Enforcement division does not report any problems. Then she provided me with a copy of the development application "analysis" that I was questioning, and stated that "I determined that a sufficient number of spaces are available to support the all (sic) existing activities and the proposed zip line tour." Needless to say, I do not find that response to meet either the letter or spirit of the Town's responsibilities under the LMO. Thus, this letter.

Mr. Charles Cousins
Page 2
August 31, 2011

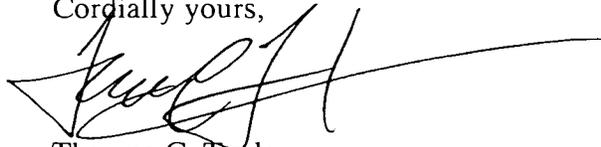
On behalf of J & W, pursuant to LMO Section 16-8-103, I hereby make this formal Complaint that the parking spaces being permitted to serve the Broad Creek Marina "Zip Line" are at variance with the requirements of the LMO relating to parking. See Section 16-5-1209. I incorporate by reference my earlier letter to Ms. Cyran and the allegations set forth therein as to the actual number of guests at BCM for the different current activities. Specifically Section 16-5-1209 requires "one space for every 3 persons that the facilities are designed to accommodate when fully utilized..." As noted in my letter to Ms. Cyran, we believe that number is more like 400 than the 100 set forth by the developer's representative.

I ask that the Town follow its ordinance, properly record this Complaint, and immediately investigate to determine the validity of the charge and take whatever action is necessary to assure compliance with this Title. That may include, in the proper circumstances, issuance of a stop order. It seems to me that the only reasonable way to properly investigate would be to undertake an analysis of the actual usage being made of all the businesses operating at Broad Creek Marina, deduct the 50 spaces allocated to J & W by the lease, and then determine the appropriateness of the existing spaces and the appropriateness of the request for the new business (the zip line). Anything less than an analysis of the actual numbers based on reports by the businesses, would be, in my opinion, less than the LMO requires.

I ask that you also consider this letter a formal request pursuant to the South Carolina Freedom of Information Act, for copies of any and all documents that refer to, relate to, or otherwise evidence any work or actions the Town undertook to review, verify or analyze the parking calculations set forth in the June 10, 2011 "DPR Parking Calculations" document attached to Ms. Cyran's letter to me dated August 30, 2011. Further, I ask for copies of all documents that refer to, relate to, or otherwise evidence the professional work undertaken by Ms. Cyran or anyone else in her department, upon which she relied in determining "that a sufficient number of spaces are available to support the all existing activities and the proposed zip line tour." (See Cyran letter of August 30, 2011 to the undersigned.)

Thank you for your assistance. On behalf of J & W, I stand ready to assist the Town in any appropriate way with its investigation, and we will gladly share our actual ferry boarding numbers with a representative of the Town.

Cordially yours,



Thomas C. Taylor

TCT/dpt
Attachment

cc: Steve Riley, Town Manager
Greg Alford, Esq.

TOWN OF HILTON HEAD ISLAND

One Town Center Court, Hilton Head Island, S.C. 29928

(843) 341-4600 Fax (843) 842-7728

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Drew A. Laughlin
Mayor

Kenneth S. Heitzke
Mayor ProTem

Council Members

Wm. Lee Edwards
Willie (Bill) Ferguson
William D. Harkins
Kimberly W. Likins
George W. Williams, Jr.

Stephen G. Riley
Town Manager

September 16, 2011

Mr. Thomas C. Taylor
Law Office of Thomas C. Taylor, LLC
22 Bow Circle
Suite A
Hilton Head Island, SC 29928

Dear Mr. Taylor:

This letter is in response to your correspondence to Charles Cousins dated August 31, 2011 which filed a written complaint with the Town regarding parking at Broad Creek Marina. As the Administrator, I recorded the complaint and immediately [with the assistance of other staff members] conducted an investigation to determine the validity of the charge.

As previously determined on August 4, 2011 as evidenced by the Notice of Action issued for XPDR110016 [Broad Creek Marina Zip Line] the parking supply at Broad Creek Marina is in compliance with the Land Management Ordinance [LMO] and therefore no additional action is necessary from the Town at this time per LMO Section 16-8-103.C.

Sincerely,



Teri B. Lewis
LMO Official

cc: XDPR110016 file
Charles Cousins
Steve Riley
Gregg Alford



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Board of Zoning Appeals
FROM: Nicole Dixon, CFM, *Senior Planner*
DATE: May 4, 2012
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 April Board of Zoning Appeals meeting.