



**Town of Hilton Head Island  
Planning & Development Standards Committee  
Regular Meeting  
Wednesday, May 22, 2013 3:00p.m.  
(Please note special start time)  
Benjamin M. Racusin Council Chambers  
Agenda**

- 1. Call to Order**
- 2. Freedom of Information Act Compliance**  
Public notification of this meeting has been published, posted, and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.
- 3. Review of Minutes** - Regular Meeting of April 24, 2013
- 4. Unfinished Business**  
None
- 5. New Business**  
**ZMA130003:** A request from Chester C. Williams on behalf of 217 Beach City Road, LLC proposing to amend the Official Zoning Map by changing the zoning designation of the property located at 1-16 and 20-70 Circlewood Drive from the RM-4 (Low Density Residential) Zoning District to the RM-12 (Moderate to High Density Residential) or WMU (Water Front Mixed Use) Zoning District. The properties are further identified on Beaufort County Tax Map 5, Parcels 8, 336 through 342, and 344 through 375.  
*Presented by: Jayme Lopko*
- 6. Committee Business**
- 7. Adjournment**

Please note that a quorum of Town Council may result if a majority of their members attend this meeting.

**TOWN OF HILTON HEAD ISLAND**  
**Planning and Development Standards Committee**  
**Minutes of the Wednesday, April 24, 2013 Meeting**  
**4:00pm – Benjamin M. Racusin Council Chambers**

Committee Members Present: Chairman John McCann and George Williams

Committee Members Absent: Bill Harkins

Council Members Present: None

Town Staff Present: Anne Cyran, Senior Planner  
Teri Lewis, LMO Official  
Kathleen Carlin, Administrative Assistant

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**1. Call to Order**

Chairman McCann called the meeting to order at 4:00p.m.

**2. Freedom of Information Act Compliance**

Public notification of this meeting has been published, posted and mailed in compliance with the Freedom of Information Act and Town of Hilton Head Island requirements.

**3. Approval of Minutes**

Mr. Williams made a **motion** to approve the February 27, 2013 meeting minutes as presented. Chairman McCann **seconded** the motion and the motion **passed** with a vote of 2-0-0.

**4. Unfinished Business**

None

**5. New Business**

**a) Additional United Way Signs Resolution**

Ms. Anne Cyran made the presentation on behalf of staff. Staff recommended that the Planning and Development Standards Committee forward the proposed Resolution to Town Council with a recommendation of *approval*.

In September 1996, the Town of Hilton Head Island Town Council approved Resolution 96-40 designating the United Way thermometer signs as official signs. The designation was subject to the following three conditions:

- 1) That only two such signs may be displayed, one adjacent to each of the Town's special event signs located at Town Hall and at the Northridge Tract;
- 2) That the signs be no larger than 16 square feet and that the design, materials, colors and copy layout be approved by the Town's Corridor Review Commission; and
- 3) That the signs not be displayed prior to September 1<sup>st</sup> of each year and that they be removed no later than the following December 15<sup>th</sup>.

Accordingly, two United Way thermometer fundraising signs have been displayed at the designated locations during each fundraising campaign since 1996. Given the population growth in the area since 1996 and the consequent increase in need for funds, the United Way of the Lowcountry would like to display two additional thermometer fundraising signs on Hilton Head Island to increase the public's awareness of the campaign.

The two proposed signs would be located next to Town of Hilton Head Island special event signs at Honey Horn Plantation and at the former Welcome Center site. All of the fundraising signs would still be required to meet conditions 2 and 3 of Resolution 96-40.

In March, the United Way of the Lowcountry asked Town staff if two additional thermometer fundraising signs could be displayed on the island to increase the public's awareness of their annual fundraising campaign.

The committee and Ms. Cyran discussed the existing locations and the proposed locations for United Way signs. Following their discussion, Chairman McCann requested public comments on the item and none were received. Chairman McCann then requested that a motion be made.

Mr. Williams made a **motion** to recommend that the Planning and Development Standards Committee **forward** the proposed Resolution to Town Council with a recommendation of **approval**. Chairman McCann **seconded** the motion and the motion **passed** with a vote of 2-0-0.

**6. Committee Business**

None

**7. ADJOURNMENT**

The meeting was adjourned at 4:15pm.

Submitted By:

Approved By:

\_\_\_\_\_  
Kathleen Carlin  
Administrative Assistant

\_\_\_\_\_  
John McCann  
Chairman



# TOWN OF HILTON HEAD ISLAND

*Community Development Department*

**TO:** Planning & Development Standards Committee  
**VIA:** Teri B. Lewis, *AICP, LMO Official*  
**FROM:** Jayme Lopko, *AICP, Senior Planner*  
**DATE:** May 13, 2013  
**SUBJECT:** ZMA130003 – Beach City Place

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**Recommendation:** The Planning Commission met on May 1, 2013 to review the attached application for Zoning Map Amendment (ZMA130003) and after a public hearing, voted 5-3-0 to forward the application to Town Council with a recommendation of approval, finding that the application is consistent with the Comprehensive Plan and serves to carry out the purposes of the Land Management Ordinance.

Staff recommends the Planning & Development Standards Committee forward the application to Town Council with a recommendation of denial, finding that the application is inconsistent with the Comprehensive Plan and does not serve to carry out the purposes of the Land Management Ordinance.

**Summary:** A request from Chester C. Williams on behalf of 217 Beach City Road, LLC proposing to amend the Official Zoning Map by changing the zoning designation of the property located at 1-16 and 20-70 Circlewood Drive from the RM-4 (Low Density Residential) zoning district to the RM-12 (Moderate to High Density Residential) or WMU (Water Front Mixed Use) zoning district. The properties are further identified on Beaufort County Tax Map 5, Parcels 8, 336 through 342, and 344 through 375.

On April 18, 2013, the applicant withdrew the portion of the application that seeks to rezone the properties to WMU.

**Background:** The subject properties are currently platted as a 32 lot single family subdivision with only one lot that has been sold and developed. This lot has been excluded from this rezoning application.

The existing subdivision was approved in June of 2009. Since that time one house has been completed within the subdivision. The subdivision has recently had an Order of Foreclosure issued against the owners of the properties. The applicant states that this rezoning application

is an attempt to avoid foreclosure by redeveloping the property into a high density multi-family development.

The properties are located within the Airport Overlay Zone Approach Path and Outer Hazard Zone, which places additional restrictions for height and use of the properties. The properties are far enough away from the airport primary surface that the height restrictions will not impact the redevelopment of the properties. Residential uses do not have special restrictions for use under the outer hazard zone regulations.

**AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND**

**ORDINANCE NO. 2013-**

**PROPOSED ORDINANCE NO. 2013-06**

**AN ORDINANCE TO AMEND TITLE 16, THE LAND MANAGEMENT ORDINANCE, OF THE MUNICIPAL CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, BY AMENDING SECTION 16-4-102, THE OFFICIAL ZONING MAP, SPECIFICALLY REZONING 8.56 ACRES IDENTIFIED AS PARCELS 8, 336 THROUGH 342, AND 344 THROUGH 375 ON BEAUFORT COUNTY TAX MAP 5 FROM RM-4, LOW DENSITY RESIDENTIAL TO RM-12 MODERATE TO HIGH DENSITY RESIDENTIAL AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, on July 21, 1998, the Town Council did amend Title 16 of the Municipal Code of the Town of Hilton Head Island by enacting a revised Land Management Ordinance (the "LMO"); and

**WHEREAS**, the Town Council now finds that, upon further review, it is in the public interest that the subject 8.56 acre parcels be rezoned from RM-4 (Low Density Residential) to RM-12 (Moderate to High Density Residential); and

**WHEREAS**, this zoning change would be compatible with surrounding land uses and neighborhood character, would not be detrimental to the public health, safety and welfare, and, further, would be in conformance with the Comprehensive Plan; and

**WHEREAS**, the Planning Commission held a public hearing on May 1, 2013, at which time a presentation was made by staff and an opportunity was given for the public to comment on the rezoning request; and

**WHEREAS**, the Planning Commission, after consideration of the staff report, public comments, and the criteria set forth in Section 16-3-1505 of the LMO, voted 5-3-0 to recommend to Town Council that the rezoning request be approved, finding that the application is consistent with the Comprehensive Plan and serves to carry out the purposes of the Land Management Ordinance; and

**WHEREAS**, the Planning and Development Standards Committee held a public meeting on May 22, 2013, at which time a presentation was made by staff and an opportunity was given for the public to comment on the rezoning request; and

**WHEREAS**, the Planning and Development Standards Committee, after consideration of the staff report, public comments, and the criteria set forth in Section 16-3-1505 of the LMO, voted <<MOTION>> to Town Council that the rezoning request be<<MOTION>>; and

**NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SC; AND IT IS ORDAINED BY SAID AUTHORITY OF COUNCIL:**

**Section 1. Amendment.** That the official zoning map of the Town of Hilton Head Island, as referenced by Section 16-4-102 of the Land Management Ordinance, be, and the same hereby amended as follows:

The 8.56 acres identified as parcels 8, 336 through 342, and 344 through 375 on Beaufort County Tax Map 5 be rezoned from RM-4, low density residential to RM-12 moderate to high density residential.

**Section 2. Severability.** If any section, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**Section 3. Effective Date.** This Ordinance shall be effective upon its adoption by the Town Council of the Town of Hilton Head Island, South Carolina.

**PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2013.**

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA

\_\_\_\_\_  
Drew Laughlin, Mayor

ATTEST:

\_\_\_\_\_  
Esther Coulson, Town Clerk

Public Hearing: May 1, 2013

First Reading:

Second Reading:

Approved as to form:

\_\_\_\_\_  
Gregory M. Alford, Town Attorney

Introduced by Council Member: \_\_\_\_\_



## TOWN OF HILTON HEAD ISLAND COMMUNITY DEVELOPMENT DEPARTMENT

One Town Center Court | Hilton Head Island, SC 29928 | 843-341-4757 | FAX 843-842-8908

### STAFF REPORT ZONING MAP AMENDMENT

Application Number	Name of Project	Public Hearing Date
ZMA130003	Beach City Place	May 1, 2013

Parcel Data or Location	Property Owner/ Applicant	Agent
<p><u>Existing Zoning District:</u> RM-4</p> <p><u>Proposed Zoning District:</u> RM-12 or WMU</p> <p><u>Applicable Overlay District(s):</u> Corridor Overlay Airport Overlay</p> <p><u>Parcel Affected:</u> Beaufort County Tax Map 5 Parcels 8, 336-342, &amp; 344-375</p>	<p>217 Beach City Road, LLC 70 Main Street, Suite 100 Hilton Head Island, SC 29926</p>	<p>Chester C. Williams P.O. Box 6028 Hilton Head Island, SC 29938</p>

#### **Application Summary:**

A request from Chester C. Williams on behalf of 217 Beach City Road, LLC proposing to amend the Official Zoning Map by changing the zoning designation of the property located at 1-16 and 20-70 Circlewood Drive from the RM-4 (Low Density Residential) zoning district to the RM-12 (Moderate to High Density Residential) or WMU (Water Front Mixed Use) zoning district. The properties are further identified on Beaufort County Tax Map 5, Parcels 8, 336 through 342, and 344 through 375.

The permitted uses and maximum impervious coverage requirements would not change as a result of rezoning to RM-12. The permitted uses would change significantly as a result of rezoning to WMU (see Attachment C). The impervious coverage requirements would increase from 35% to 50% coverage as a result of rezoning to WMU. There are other requirements that will change as a result of this rezoning as well, such as open space, density, height, and parking requirements.

**Staff Recommendation:**

Staff recommends that the Planning Commission find this application to be inconsistent with the Town's Comprehensive Plan and does not serve to carry out the purposes of the LMO, based on those Findings of Facts and Conclusions of Law as determined by the LMO Official and enclosed herein.

**Background:**

The applicant is proposing to change the zoning designation of the subject property from RM-4 (Low Density Residential) to the RM-12 (Moderate to High Density Residential) or WMU (Water Front Mixed Use) zoning district.

The subject properties are currently platted as a 32 lot single family subdivision with only one lot that has been sold and developed. This lot has been excluded from this rezoning application.

The properties are located within the Airport Overlay Zone Approach Path and Outer Hazard Zone, which places additional restrictions for height and use of the properties. The height restrictions move outward from the end of the airport primary surface at a rate of one foot upward for every 34 linear feet. The use restrictions are based on the occupant load of proposed use. Residential uses do not have an occupant load that will fall into one of the categories that have use restrictions.

The existing subdivision was approved in June of 2009. Since that time one house has been completed within the subdivision. The subdivision has recently had an Order of Foreclosure issued against the owners of the properties. The applicant states that this rezoning application is an attempt to avoid foreclosure by redeveloping the property into a high density multi-family development.

**Applicant's Grounds for ZMA:**

The applicant states in the narrative that the Beach City Place subdivision is a failed single family residential development. The properties have been in default for an extended period of time and an Order of Foreclosure has been rendered against the property owner by the lender. The property owner has secured a commitment to refinance the loan for the redevelopment of the property into a multi-family residential project, but only if the permitted density is increased.

The purpose of this application is to rezone the properties to support the successful redevelopment of the property. The applicant currently has the right to redevelop the property for multi-family residential at a density of 4 units per net acre; however, this scenario is not seen as any more economically viable than the failed single family residential development. The effect of this rezoning will increase the permitted density to 12 units per net acre in both the RM-12 and WMU zoning districts.

**Summary of Facts and Conclusions of Law:**

**Findings of Facts:**

- Notice of the Application was published in the Island Packet on March 24, 2013 as set forth in LMO (Land Management Ordinance) 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.
- A public hearing will be held on May 1, 2013 as set forth in LMO 16-3-1504A.
- The Commission has authority to render their decision reached here in LMO Section 16-3-1504.

**Conclusion of Law:**

- The application, notice requirements, and public hearing comply with the legal requirements as set forth in LMO 16-3-110, 16-3-111 and 16-3-1504.

*As set forth in **Section 16-3-1505, Zoning Map Amendment Review Criteria**, Planning Staff has based its recommendation on analysis of the following criteria:*

**Summary of Facts and Conclusions of Law:**

*Criteria 1: Consistency (or lack thereof) with the Comprehensive Plan (LMO Section 16-3-1505A):*

**Findings of Facts:**

The Comprehensive Plan addresses this application in the following areas:

**Land Use**

**Goal 8.1 - Existing Land Use**

- A. The goal is to have an appropriate mix of land uses to meet the needs of existing and future populations.

**Goal 8.4 - Existing Zoning Allocation**

- A. An appropriate mix of land uses to accommodate permanent and seasonal populations and existing market demands is important to sustain the Town's high quality of life and should be considered when amending the Town's Official Zoning Map.

**Goal 8.5 – Land Use Per Capita**

- A. The goal is to have an appropriate mix and availability of land uses to meet the needs of existing and future populations.

**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 8.10 - Zoning Changes**

- A. Review the appropriate locations of certain land uses in critical areas such as headlands, velocity zones, airport overlay, critical line for storm and the dune accretion zone.

- B. Consider focusing higher intensity land uses in areas with available sewer connections.

### **Transportation**

#### **Goal 9.6 – Air Transportation**

- B. The goal is to ensure that development surrounding the airport is designed and constructed to minimize the negative impacts of being located near the airport.

#### **Implementation Strategy 9.6 – Air Transportation**

- C. Continue to review development proposals within the Airport Hazard Overlay District to ensure the site is designed with the maximum safety possible for the occupants of the site.

### **1998 Ward One Master Land Use Plan**

The Future Land Use Map contained in the 1998 Ward One Master Land Use Plan, an appendix to the Town's Comprehensive Plan, identifies "Low-Moderate Residential Density Maximum Density 4-8 DU/AC" and "Density Transfer Within Airport Zone" as the desired development type for the subject property.

The Resident Desires in the 1998 Ward One Master Land Use Plan include: General preference to retain low-moderate residential densities, single family in character and Commercial, recreational, or high density residential or resort uses which increase traffic and conflict with low density character should be discouraged.

### **Conclusions of Law:**

Staff concludes that this application is not compatible with the Land Use and Transportation Elements or 1998 Ward One Master Land Use Plan, an Appendix, of the Town's Comprehensive Plan, for the following reasons:

- The proposed rezoning to WMU would not result in a more appropriate mix of land uses because it would permit high intensity uses intended for water front property. These properties are not water front and the high intensity uses permitted by this district would not be compatible with the surrounding low density residential properties.
- The proposed rezoning to RM-12 would not result in a more appropriate mix of land uses because it would permit the exact same uses, just at a higher density.
- The proposed rezoning will either bring more residents as a result of additional residential units or more visitors as a result of a commercial/industrial business, which is not minimizing the negative impacts the airport will have on the property.
- The proposed rezoning will result in an increased amount of density for development placing more occupants on a site within the Airport Approach Path, which is not ensuring the maximum safety possible for occupants of this site.
- The proposed rezoning would not be consistent with the 1998 Ward One Master Land Use Plan because both the RM-12 and WMU districts would allow a high density residential development. In addition the WMU district would allow high intensity commercial uses which would not be consistent with the single family character of the area.

**Summary of Facts and Conclusions of Law:**

*Criteria 2: Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood (LMO Section 16-3-1505B):*

**Findings of Facts:**

- LMO Section 16-4-206 describes the purpose of the existing RM-4 zoning district as: *“It is the intent of this residential district to protect and preserve the unique character of Native Islander areas and neighborhoods at densities up to four (4) dwelling units per net acre. This district is used to encourage a variety of residential opportunities.”*
- The subject properties are currently 31 vacant lots, the associated open space, and the infrastructure within a single family subdivision.
- The properties to the northwest and southwest are currently vacant. One of the properties to southwest is developed as single family residential, which is conforming in the RM-4 zoning district. The properties to the northeast are developed as both single family and multi-family residential uses, which are conforming in the RM-4 and WMU zoning districts.
- The property to the southwest is currently a light industrial use, a contractor’s office with outdoor storage, which is legally nonconforming to the RM-4 zoning district.

**Conclusion of Law:**

Staff concludes that the properties subject to the rezoning application are compatible with the present zoning, the conforming uses of nearby property and the character of the neighborhood as set forth in LMO Section 16-3-1505B because the properties are developed as a single family subdivision which is compatible with the surrounding residential character and uses.

**Summary of Facts and Conclusions of Law:**

*Criteria 3: Suitability of the property affected by the amendment for uses permitted by the district that would be made applicable by the proposed amendment (LMO Section 16-3-1505C):*

**Findings of Facts:**

- LMO Section 16-4-218 describes the purpose of the RM-12 zoning district as: *“to allow higher density residential uses in locations which are served by adequate infrastructure, while maintaining the unique character of Native Islander areas and neighborhoods at densities up to twelve (12) units per net acre.”*
- LMO Section 16-4-218 describes the purpose of the WMU zoning district as: *“to recognize certain areas of the Town that are special water oriented sites, and as such have a unique ability to provide an environment conducive to water oriented commercial and residential uses. In order to service the residents of these areas, and to serve the transient boat and minor tourist use component of the district, water oriented commercial uses are permitted.”*
- LMO Section 16-4-401 describes the applicability and regulation of the Airport Overlay District (AZ) as: *“Development activity within this district is subject to regulation primarily to mitigate safety and noise problems; however, land uses within this district also shall be regulated to mitigate their incompatibility with airport operations.”*
- The uses that would be permitted under the WMU zoning are high intensity and

density uses.

- The uses that would be permitted under the RM-12 zoning are the same as RM-4 except a high density of residential would be permitted.

**Conclusions of Law:**

- Staff concludes that the affected properties are not suitable for the uses that would be permitted by the proposed rezoning as set forth in LMO Section 16-3-1505C because the subject properties are adjacent to residential uses and many of the WMU uses are not compatible with the surrounding single family residential.
- Although the RM-12 district permits the same uses as the RM-4 district, the RM-12 district would permit a significantly higher density of residential units which would place more residential units, which is not suitable for properties within the Airport Approach Path.

**Summary of Facts and Conclusions of Law:**

*Criteria 4: Suitability of the property affected by the amendment for uses permitted by the district applicable to the property at the time of the proposed amendment (LMO Section 16-3-1505D):*

**Findings of Facts:**

- LMO Section 16-4-218 describes the purpose of the existing RM-4 zoning district as: *“It is the intent of this residential district to protect and preserve the unique character of Native Islander areas and neighborhoods at densities up to four (4) dwelling units per net acre. This district is used to encourage a variety of residential opportunities.”*
- LMO Section 16-4-401 describes the applicability of the Airport Overlay District (AZ) as: *“Development activity within this district is subject to regulation primarily to mitigate safety and noise problems; however, land uses within this district also shall be regulated to mitigate their incompatibility with airport operations.”*
- The subject properties are currently 31 vacant lots, the associated open space, and the infrastructure within a single family subdivision.

**Conclusion of Law:**

Staff concludes that the affected properties are suitable for the uses permitted by the RM-4 zoning district as set forth in LMO Section 16-3-1505D because the properties have been subdivided for single family residential development which is permitted in the RM-4 district.

**Summary of Facts and Conclusions of Law:**

*Criteria 5: Marketability of the property affected by the amendment for uses permitted by the district applicable to the property at the time of the proposed amendment (LMO Section 16-3-1505E):*

**Findings of Fact:**

- If the property is rezoned to WMU, there will be different uses and development opportunities available to the property owner to develop.

- If the property is rezoned to RM-12, the permitted uses will remain the same; however, there will be additional density available for development.

**Conclusion of Law:**

- Staff concludes that the marketability of the properties may change as set forth in LMO Section 16-3-1505E.

**Summary of Facts and Conclusions of Law:**

*Criteria 6: Availability of sewer, water and stormwater facilities generally suitable and adequate for the proposed use (LMO Section 16-3-1505F):*

**Findings of Facts:**

- The subject properties are currently served with water and sewer services by Hilton Head Public Service District.
- The subject properties currently have stormwater facilities adequate for the 32 lot single family subdivision.
- A Development Plan Review (DPR) application will be required for any development on the site and water, sewer and stormwater facilities will be addressed at that time.

**Conclusion of Law:**

- Staff concludes that the properties have available water, sewer and stormwater services suitable for the proposed use as set forth in LMO Section 16-3-1505F.

**LMO Official Determination**

**Determination:** Staff determines that this application is inconsistent with the Comprehensive Plan and does not serve to carry out the purposes of the LMO as based on the Findings of Fact and Conclusions of Law detailed in this report.

**Note: If the proposed amendment is approved by Town Council, such action shall be by ordinance to amend the Official Zoning Map. If it is denied by Town Council, such action shall be by resolution.**

**PREPARED BY:**

JL

\_\_\_\_\_  
 Jayme Lopko, AICP  
*Senior Planner & Planning Commission Board  
 Coordinator*

April 10, 2013

\_\_\_\_\_  
 DATE

**REVIEWED BY:**

TBL

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Teri B. Lewis, AICP  
*LMO Official*

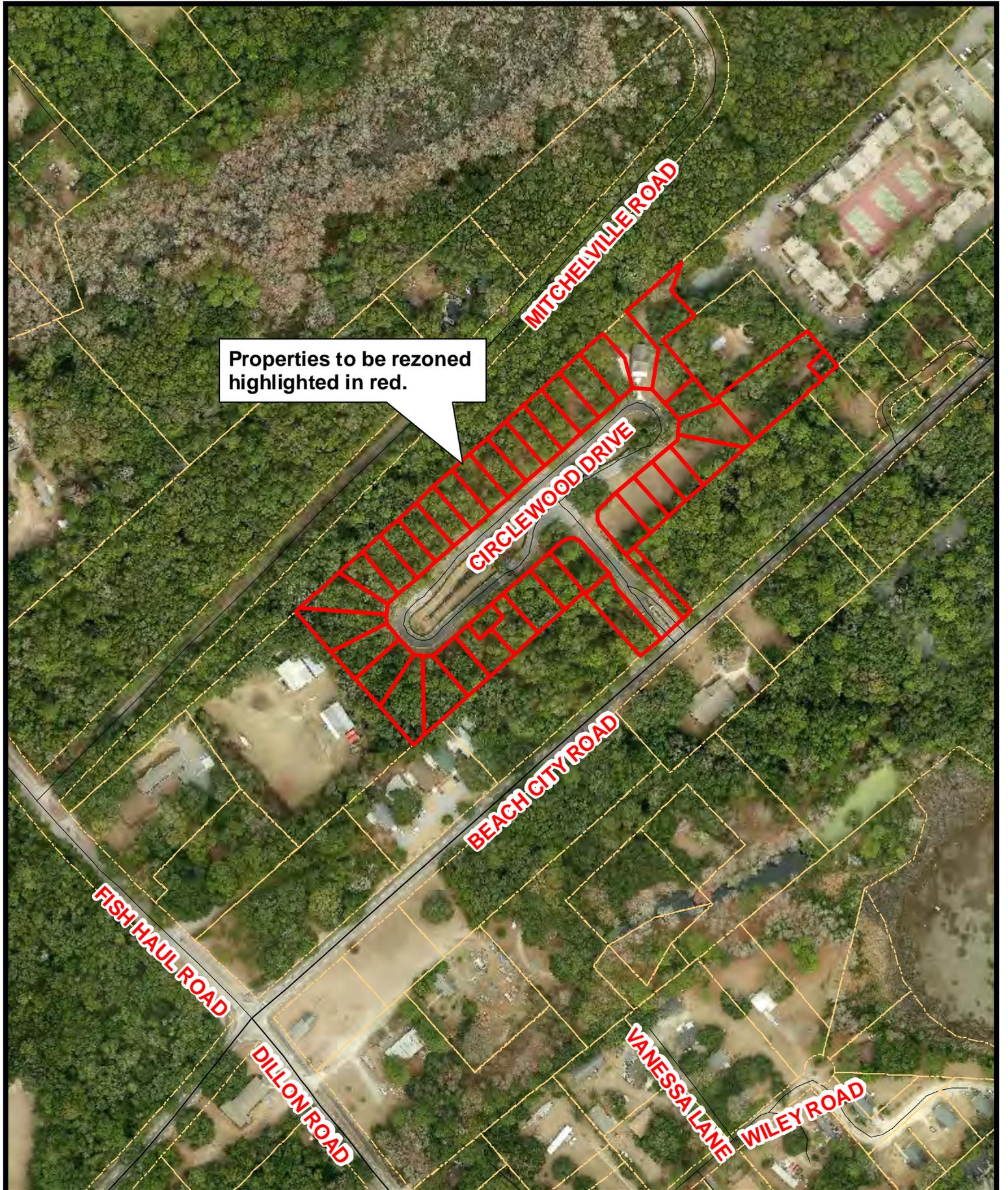
April 10, 2013

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DATE

**ATTACHMENTS:**

- A) Vicinity Map
- B) Zoning Map
- C) Use Table
- D) Applicant's Narrative
- E) Comment Letters



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

Town of Hilton Head Island  
 ZMA130003 - Vicinity Map  
 ATTACHMENT A



250 130 0 250 Feet

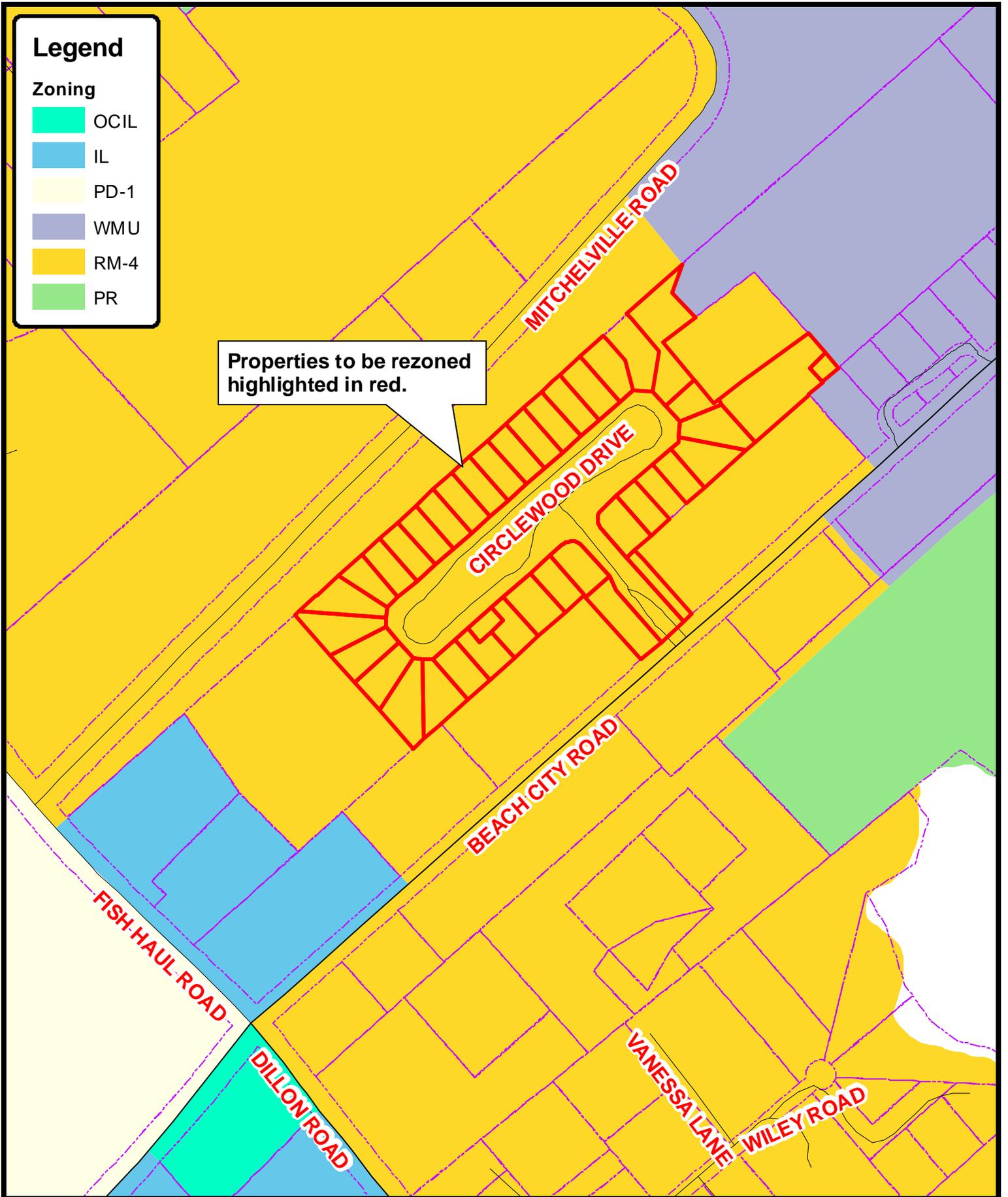
This information has been compiled from a variety of unverified general sources at various times and as such is intended to be used only as a guide. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion.

# Legend

## Zoning

- OCIL
- IL
- PD-1
- WMU
- RM-4
- PR

Properties to be rezoned highlighted in red.



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

### Town of Hilton Head Island ZMA130003 - Zoning Map ATTACHMENT B



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 date of completion.

## ATTACHMENT C

P = Permitted By Right    PC = Permitted With Conditions    SE = Special Exception

Specific Use	RM-4 & RM-12	WMU
Group Living	PC	
Single Family	P	P
Multifamily Residential	P	P
Mixed Use		PC
Manufactured Housing Park	PC	
Aviation/Surface Passenger Terminal		
Community Service	P	P
Day Care	PC	P
Colleges		
Schools, Public or Private	SE	
Government Facilities	PC	
Hospitals		
Religious Institutions	PC	
Other Institutions	SE	SE
Cemetery	P	P
Park, Community	SE	P
Park, Linear	P	P
Park, Mini	P	P
Park, Neighborhood	P	P
Park, Regional		
Park, Special Use	P	P
Major Utility	SE	SE
Minor Utility	P	P
Telecommunications Facility	PC	PC
Waste Treatment Plant	SE	SE
Restaurant With Drive-thru		
Restaurant With Seating, High Turnover		P
Restaurant With Seating, Low Turnover		P
Restaurant Without Seating		P
Indoor Recreation		SE
Indoor Entertainment		
Outdoor Recreation		

## ATTACHMENT C

P = Permitted By Right    PC = Permitted With Conditions    SE = Special Exception

Outdoor Entertainment		
Water Parks		
Health Services Except Hospitals		
Real Estate Sales/Rental		P
Other Offices		
Parking, Commercial		
Bed and Breakfast Inn	SE	PC
Central Reception or Check-in Facility		PC
Divisible Dwelling Unit		PC
Hotel or Motel		PC
Inn	SE	PC
Interval Occupancy		SE
RV Park		
Adult Entertainment		
Bank or Financial Institution		
Bicycle Shop (with outdoor storage)		PC
Community Theater		PC
Dance Studio		PC
Convenience Store		PC
Department or Discount Store		
Funeral Home		
Furniture Store		
Hardware, Paint, Glass, Wallpaper or Flooring Store		
Health Club or Spa		
Kennel, Boarding		
Landscape Nursery		
Liquor Store		
Nightclub or Bar		P
Open Air Sales		PC
Pet Store		
Shopping Center		
Souvenir or T-Shirt Store		
Supermarket		P

## ATTACHMENT C

P = Permitted By Right    PC = Permitted With Conditions    SE = Special Exception

Tattoo Facility		
Veterinary Hospital		
Watercraft Sales, Rental or Service		PC
Other Retail Sales or Service		P
Auto Rental		
Auto Repair		
Auto Sales		
Car Wash		
Gas Sales		
Taxicab Service		
Towing Service		
Truck or Trailer Rental		
Aviation Services		
Contractor's Office		
Other Light Industrial Service		
Seafood Processing		PC
Other Manufacturing and Production		
Limited Manufacturing		
Moving and Storage		
Self-Service Storage		
Warehousing		
Waste Related Service		
Contractor's Materials		
Wholesale Business		
Wholesale Business with Accessory Retail Outlet		
Agriculture	P	P
Docking Facility and Boat Ramp		PC
Marina		SE
Other Water Oriented Uses		P



LAW OFFICE OF  
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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)

15 March 2013

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

**HAND DELIVERED**

RE: Zoning Map Amendment Application of 217 Beach City Road, LLC for 8.56  
Acres, Beach City Road – Our File No. 01687-001

Dear Teri:

We are pleased to deliver to you herewith for filing an application we have prepared on behalf of our client, 217 Beach City Road, LLC, to amend the Town's Official Zoning Map and rezone an 8.56 acre tract located on Beach City Road from the currently applicable RM-4 District to either the RM-12 District or the WMU District. Also enclosed are our check in the amount of \$500.00 for the filing fee, and a copy of the list of property owners within 350 feet of the property who are to receive notices as required by the LMO.

As you will see from a review of the application, we are filing this application in an effort to allow for the redevelopment of a failed single family residential subdivision for multifamily residential use.

We assume you and your staff will be able to place this application on the agenda for the 01 May 2013 meeting of the Town's Planning Commission, and that you will let us know if you have any questions or comments regarding this matter, or if we may otherwise be of assistance.

With best regards, we are

Very Truly Yours,

LAW OFFICE OF CHESTER C. WILLIAMS, LLC

  
Chester C. Williams

CCW:

Enclosures

cc: Dr. Harinderjit Singh  
Rand E. Hanna, III, Esq.  
Town of Hilton Head Island Planning Commissioners (without enclosures)



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: 3/15/13  
 Accepted by: [Signature]  
 App # ZMA: 130003  
 Meeting Date: 5/1/13

Applicant/Agent Name: 217 Beach City Road, LLC / Chester C. Williams, Agent Company: 217 Beach City Road, LLC  
 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

Project Name: 217 Beach City Road Project Address: 217 Beach City Road  
 Parcel Number [PIN]: R See Attached List of Parcel Numbers  
 Zoning District: RM-4 Overlay District(s): AZ and COR Requested District: RM-12 or WMU  
 PD-1 Existing Land Use: N/A PD-1 Proposed Land Use: N/A

**ZONING MAP AMENDMENT (ZMA) 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:
- N/A Affidavit of Ownership and Hold Harmless Permission to Enter Property
  - XX A narrative that explains the reason(s) for the rezoning request and how the request meets the criteria of LMO Section 16-3-15D5 Review Criteria. **See Attachment 1**
  - XX A copy of correspondence providing notice of a public hearing to all land owners of record within three hundred and fifty (350) feet on all sides of the parcel(s) being considered for the zoning map amendment. Such notice shall be mailed by first class mail thirty days (30) prior to the Planning Commission meeting per LMO Section 16-3-11C Mailed Notice. A sample letter can be obtained at the time of submittal. Also provide a list of owners of record to receive notification. The Town can assist in providing this listing by calling 843-341-4757. **See Attachment 2**
  - N/A Where applicable, a copy of correspondence requesting written comments from the appropriate property owners' association regarding the requested amendment per LMO Section 16-3-15D2B. The Town can assist in providing this information by calling 843-341-4757.
  - XX A boundary map prepared and sealed by a registered land surveyor. Submit an 11X17 inch (or smaller) reproducible copy of the plan. **See Attachment 3**
  - XX Filing Fee - \$500 cash or check made payable to the Town of Hilton Head Island

Are there recorded private covenants and/or restrictions that are contrary to, conflict with, or prohibit the proposed request? If yes, a copy of the private covenants and/or restrictions must be submitted with this application.  YES  NO  
 Not applicable. No permit requested.

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.

SIGNATURE: [Signature]  
 Harinderjit Singh, Manager

DATE: March 15, 2013

STATE OF SOUTH CAROLINA ) BEFORE THE PLANNING COMMISSION  
 ) OF THE  
 ) TOWN OF HILTON HEAD ISLAND, SC  
COUNTY OF BEAUFORT ) ZMA 13000\_\_

**ATTACHMENT 1**  
**TO**  
**THE ZONING MAP AMENDMENT APPLICATION**  
**OF**  
**217 BEACH CITY ROAD, LLC**  
**REGARDING**  
**8.56 ACRES, BEACH CITY ROAD**

This Attachment 1 is part of the Zoning Map Amendment Application (this "Application") of 217 Beach City Road, LLC (the "Applicant"), and is submitted by the Applicant to the Planning Commission of the Town of Hilton Head Island (the "Town") to address the zoning map amendment criteria set forth in Section 16-3-1505 of the Town's Land Management Ordinance (the "LMO"). This Application seeks approval to amend the Official Zoning Map<sup>1</sup> of the Town by changing the base zoning district applicable to an 8.56 acre tract (the "Property") located on Beach City Road in the Town of Hilton Head Island, from the currently applicable RM-4 – Low Density Residential District to either the RM-12 – Moderate to High Density Residential District or the WMU – Water Front Mixed Use District.

**I. NARRATIVE – INTRODUCTION**

The Applicant is the owner of the Property located at 217 Beach City Road. The Property is comprised of forty (40) separate tax parcels, designated in the Beaufort County property tax records as TMS District 510, Map 5,

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<sup>1</sup> See LMO Section 16-4-102.



Parcels 0008, 0336 through 0342, and 0344 through 0375.<sup>2</sup> The Applicant acquired the Property by deeds recorded on February 12, 2009.<sup>3</sup>

The Property is part of the largely underdeveloped residential area on Beach City Road west of Dillon Road and generally north of the Hilton Head Island Airport. The Applicant is now seeking to amend the Town's Official Zoning Map to move the Property from the RM-4 District to either the RM-12 District or the WMU District.

## **II. NARRATIVE – BACKGROUND**

### **A. THE PROPERTY**

The Property is the site of a failed single family residential development styled "Beach City Place", which was permitted by the Town and developed as a community of thirty-two (32) small lots to be utilized for single family residences.<sup>4</sup> One of the lots in Beach City Place was sold prior to the failure of the development, and is the site of an existing single family home. The Property has a paved entrance road providing access to Beach City Road, a paved oval shaped road known as Circlewood Drive providing access to the individual lots in the development, and completed infrastructure for water, electrical, cable, and sanitary sewer utilities.

The mortgage securing the loan that provided the capital for development of Beach City Place on the Property has been in default for an extended period, and an Order for foreclosure has been rendered in a lawsuit filed by the lender against the Applicant.<sup>5</sup> The Applicant is seeking the requested rezoning in

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<sup>2</sup> The Beach City Place subdivision, shown on the survey included with this Application contains a total of 8.75 acres. One of the 38 single family lots in the subdivision was previously conveyed out by the Applicant, and is not included in this Application.

<sup>3</sup> See the copy of the deed recorded in Beaufort County Record Book 2811 at Page 2231 which is attached as Exhibit A.

<sup>4</sup> See the Town's records on Subdivision Application SUB070008.

<sup>5</sup> See the records of that certain action styled *Bank of North Carolina as Successor in Interest to Beach First National Bank v. 217 Beach City Road, LLC, et al.*, Case No. 2010-CP-07-6059 in the Court of Common Pleas for the Fourteenth Judicial Circuit.



order to allow for the redevelopment of the failed single family subdivision as a multifamily residential project because the Applicant has secured a commitment to refinance the defaulted loan and provide additional capital for the redevelopment of the Property, but only if the density on the Property is increased. The Applicant's lender has agreed to delay a foreclosure sale of the Property for a limited time in order to give the Applicant time to pursue this Application.

The Property is currently located in the RM-4 District, the COR – Corridor Overlay District, and the AZ – Airport Overlay District. The current base zoning restrictions applicable to the Property under the RM-4 District clearly have not supported successful development of the Property. The purpose of this Application is to rezone the Property to support successful redevelopment of the Property.

## **B. THE REQUESTED REZONING**

The Applicant is requesting that the Official Zoning Map be amended to change the base zoning district of the Property from currently applicable RM-4 District to either the RM-12 District or the WMU District.

## **III. NARRATIVE – CURRENT AND PROPOSED PERMITTED USE AND DENSITY**

The base zoning district currently applicable to the Property is the RM-4 District. By-right permitted uses in the RM-4 District are restricted to single family and multi-family residential, community services, cemeteries, certain parks, minor utilities, and agriculture. Conditional and special exception uses in the RM-4 District include group living, manufactured housing park, day care, schools, government facilities, institutions, community park, certain utilities, bed and breakfast, and inn.<sup>6</sup> The maximum permitted residential density in the RM-4 District is four (4) density units per net acre, non-residential development is limited to 6,000 square feet per net acre, and resort

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<sup>6</sup> See Use Table at LMO Section 16-4-1204.



accommodations are limited to ten rooms per net acre.<sup>7</sup> The maximum impervious coverage in the RM-4 District is 35%, and the minimum open space requirements are 55% for non-residential development, 16% for major residential subdivisions, and 65% for other residential development.<sup>8</sup> The maximum height of structures in the RM-4 District is limited to thirty-five (35') feet.<sup>9</sup>

The by-right, conditional, and special exception uses allowed in the RM-12 District are exactly the same as those in the RM-4 District.<sup>10</sup> The maximum permitted residential density in the RM-12 District is twelve (12) density units per net acre, and non-residential development is limited to 6,000 square feet per net acre, just like the RM-4 District; however, curiously, no resort accommodation density is provided for RM-12 District.<sup>11</sup> The maximum impervious coverage in the RM-12 District is identical to that allowed in the RM-4 District, and the minimum open space requirements are 13% for major residential subdivisions, and 50% for other development.<sup>12</sup> The maximum height of structures in the RM-12 District is limited to forty-five (45') feet.<sup>13</sup>

The Property is contiguous to a portion of The Spa on Port Royal Sound, an existing multifamily residential development that is located in the WMU District. By-right permitted uses in the WMU District include single family and

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<sup>7</sup> See the Density Standards Table at LMO Section 16-4-1601.

<sup>8</sup> See the Maximum Impervious Coverage and Minimum Open Space Table at LMO Section 16-4-1606. Note, also that the minimum open space requirements for the RM-4 District also refer to residential development at over 4 units per net acre; however, this provision seems to be a no longer applicable provision from times past when bonus densities were available in the RM-4 District.

<sup>9</sup> See the Maximum Structure Height Table at LMO Section 16-4-1701.

<sup>10</sup> Again, see the Use Table at LMO Section 16-4-1204.

<sup>11</sup> Again, see the Density Standards Table at LMO Section 16-4-1601.

<sup>12</sup> Again, see the Maximum Impervious Coverage and Minimum Open Space Table at LMO Section 16-4-1606.

<sup>13</sup> Again, see the Maximum Structure Height Table at LMO Section 16-4-1701.



multi-family residential, community services, day care, government facilities cemeteries, parks, minor utilities, eating establishments without seating, real estate sales and rentals, certain retail sales and services, and agriculture. Conditional and special exception uses in the WMU District include mixed use, certain institutions, certain utilities, indoor recreation, resort accommodations other than RV park, certain retail sales and services, and seafood processing.<sup>14</sup> The maximum permitted residential density in the WMU District is twelve (12) density units per net acre, non-residential development is limited to 8,000 square feet per net acre, and resort accommodations are limited to twenty (20) rooms per net acre.<sup>15</sup> The maximum impervious coverage in the WMU District is 50%, and the minimum open space requirements are 13% for major residential subdivisions, and 50% for other development.<sup>16</sup> The maximum height of structures in the (RM-12 - Moderate to High Density Residential District) is limited to seventy-five (75') feet.<sup>17</sup> WMU

Given the RM-4 District limitations, the Applicant currently has the right to redevelop the Property for multifamily residential use, but only at a density of 4 units per net acre. As a practical matter, the Applicant sees that redevelopment scenario as no more economically viable than the failed single family development on the Property. Therefore, the Applicant is proposing to amend the Official Zoning Map as set forth above to incorporate the Property into the RM-12 District or, alternatively, into the WMU District. The effect of this zoning change will be to increase the permitted density on the property, and change the associated impervious coverage, open space, and height requirements applicable to the Property.

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<sup>14</sup> See Use Table at LMO Section 16-4-1204.

<sup>15</sup> Again, see the Density Standards Table at LMO Section 16-4-1601.

<sup>16</sup> Again, see the Maximum Impervious Coverage and Minimum Open Space Table at LMO Section 16-4-1606.

<sup>17</sup> Again, see the Maximum Structure Height Table at LMO Section 16-4-1701.



#### IV. NARRATIVE – REZONING CRITERIA

LMO Section 16-3-1505 sets forth the criteria which the Planning Commission is to address in making a recommendation to the Town Council on this rezoning request, as follows:

##### A. Consistency (or lack thereof) with the Comprehensive Plan.

The **Natural Resources Vision** of the Comprehensive Plan directs the Town to protect Hilton Head Island's diverse natural resources, which are pivotal to the economic well being of the community and the high quality of life on the Island.<sup>18</sup> The Applicant is seeking to amend the Official Zoning Map in a manner that will not change the permitted uses on the Property if it is rezoned to the RM-12 District.<sup>19</sup> In fact, the implementation of the Applicant's proposed redevelopment of the Property for multifamily residential use in either the RM-12 District or the WMU District will result in an increase of minimum open space from the current 16% to 50%, a three-fold increase in required open space. The Applicant's proposed amendment of the Official Zoning Map will not negatively impact the Town's Natural Resources Vision since the development permitting process mandated by the LMO will fully address any natural resource issues that may arise.

The **Population Vision** of the Comprehensive Plan is to maintain a diverse population in the Town, which is given the opportunity to be well educated, financially secure, and enjoy a high quality of life.<sup>20</sup> The Comprehensive Plan recognizes that the Town will continue to experience significant population growth. Goal 4.2 of the Population Vision of the Comprehensive Plan seeks to create a community that is less dependent

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<sup>18</sup> See the May 4, 2010 Hilton Head Island Comprehensive Plan (the "Comprehensive Plan"), at Page 19.

<sup>19</sup> The Applicant does acknowledge that the permitted uses on the Property will be expanded if the Property is rezoned to the WMU District.

<sup>20</sup> See the Comprehensive Plan, at Page 32.



on workforce residing on the mainland.<sup>21</sup> Achieving Goal 4.2 will require additional housing for permanent residents of the Town, and approval of this Application will specifically support Goal 4.2 by permitting additional density, and therefore housing units, in a location appropriate for such redevelopment. Implementation Strategy 4.3(D) of the Population Vision of the Comprehensive Plan calls for creating "... incentives for redevelopment that opt for a planned community approach with goals of diversity in housing cost ...".<sup>22</sup>

The **Housing Vision** of the Comprehensive Plan seeks to promote entrepreneurial housing initiatives that will result in the development of diverse housing types for all income levels, and to support affordable housing initiatives in the region to supplement housing on the Island.<sup>23</sup> The Comprehensive Plan recognizes that "... the availability of various housing types is important for the housing market viability to accommodate the diverse needs of the Island's population."<sup>24</sup>

More specifically, the Comprehensive Plan recognizes the long-term requirements for workforce and affordable housing. The Comprehensive Plan also recognizes the "... lack of development incentives, such as increased density, decreased parking, increased height standards, etc., which allow the developer to build more than otherwise allowed by Town regulations and requirements do not exist in current codes and may, when coupled with other barriers, also become a barrier in itself to the construction or availability of affordable housing."<sup>25</sup> This Application will provide flexibility for the redevelopment of the Property and support the Housing Vision of the Comprehensive Plan by providing housing diversity

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<sup>21</sup> See the Comprehensive Plan, at Page 47.

<sup>22</sup> See the Comprehensive Plan, at Page 48.

<sup>23</sup> See the Comprehensive Plan, at Page 49

<sup>24</sup> See the Comprehensive Plan, at Page 53.

<sup>25</sup> See the Comprehensive Plan, at Page 56.



in the Town, without requiring any further incentive for such development activity such as that recognized by the Comprehensive Plan.

Goal 5.1(A) of the Housing Vision of the Comprehensive Plan states, "The goal is to encourage redevelopment of multi-family residential structures to meet market demands and new trends."<sup>26</sup> Likewise, Goal 5.2(A) of the Housing Vision of the Comprehensive Plan supports projects that encourage affordable and workforce housing.<sup>27</sup> This Application specifically supports Goals 5.1(A) and 5.2(A) of the Housing Vision of the Comprehensive Plan. The Beach City Place single family development was a financial failure. The Applicant submits that flexibility in zoning to permit additional multi-family density will support meeting the market demand for housing variety on Hilton Head Island.

The **Community Facilities Vision** of the Comprehensive Plan is for the Town to provide facilities for the residents and visitors of Hilton Head Island which are maintained at the highest levels of service and efficiency consistent with facilities of a world class community.<sup>28</sup> The approval of this Application will not negatively impact the Town's Community Facilities, but rather will provide additional use of the Town's parks located in the Beach City Road and Mitchelville areas by the residents of the Property's development. The basic infrastructure required for redevelopment a of the Property, including water and sewer, storm water drainage, electric, telephone, and cable services and roadways, is already in place, and additional work by the Applicant will be required only to modify the existing infrastructure on the Property for multifamily residential use.

The **Economic Development Vision** of the Comprehensive Plan looks to define, foster, and enhance the economic environment that

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<sup>26</sup> See the Comprehensive Plan, at Page 57.

<sup>27</sup> See the Comprehensive Plan, also at Page 57.

<sup>28</sup> See the Comprehensive Plan, at Page 59.



sustains Hilton Head Island's unique way of life.<sup>29</sup> In particular, the Comprehensive Plan recognizes that "A sustainable workforce will become essential to the future economic potential of the Island and is essential to support the social economic population mixing that is vital for a vibrant and sustainable economy."<sup>30</sup> A sustainable workforce requires housing diversity, and housing diversity involves various levels of density in housing opportunities. As discussed below, the current mix of housing opportunities in the Town is heavily weighted towards the less dense zoning districts. Approval of this Application will provide a small step in addressing that imbalance and provide additional multi-family housing opportunities for Island residents.

The Applicant's desire to protect and enhance its investment in the Property is a primary reason for this Application. Clearly, putting the Applicant in the best possible position to maintain a successful and attractive multi-family development is consistent with the Economic Development Vision of the Comprehensive Plan, and is in the best interests of the Town.

The **Land Use Element** of the Comprehensive Plan seeks a high quality of life by planning for population growth, public and private development and redevelopment and the proper distribution, location, and intensity of land uses with adequate levels of services while maintaining and protecting the natural resources, residential neighborhoods and overall character of the Town.<sup>31</sup> The sustainable workforce identified by the Economic Development Vision of the Comprehensive Plan requires substantial diversity in housing opportunities. In this regard, Table 8.3 of the Land Use Vision of the Comprehensive Plan informs us that a mere 78.2 acres of the Island's

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<sup>29</sup> See the Comprehensive Plan, at Page 88.

<sup>30</sup> See the Comprehensive Plan, at Page 91.

<sup>31</sup> See the Comprehensive Plan, at Page 100.



total 19,925.3 acres, only 0.39%, are in the RM-12 District.<sup>32</sup> This very small percentage of the total acreage of the Town dedicated to relatively high-density housing explains, in part, the continuing issue of housing unavailability for the Island workforce, except for those in the very high income segments. Approval of this Application will address this imbalance in housing diversity opportunities in a very direct way.

Implementation Strategy 8.4(A) of the Land Use Vision of the Comprehensive Plan is to “Determine if there is an adequate amount and location of current zoning districts through review of existing zoning district classifications.”<sup>33</sup> This Application will directly address the paucity of RM-12 District acreage in the Town. In addition, Implementation Strategy 8.10(B) of the Economic Development Vision of the Comprehensive Plan is to “Focus higher intensity land uses in areas with available sewer connections.”<sup>34</sup> Sanitary sewer service through Hilton Head Public Service District is currently available to Property.

Given the history of the Property, the existing infrastructure facilities already serving the Property, and the current imbalance of more dense multi-family housing opportunities on the Island, the requested rezoning will not have an adverse effect on the natural resources, community facilities, or existing development in the area of the Property, and will encourage the orderly redevelopment of the Property, all in accordance with the Comprehensive Plan.

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<sup>32</sup> See the Comprehensive Plan, at Page 104. Also, note that only 252.2 acres, just 1.27%, are currently in the WMU District.

<sup>33</sup> See the Comprehensive Plan, at Page 110.

<sup>34</sup> See the Comprehensive Plan, at Page 111.



**B. Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood.**

The current use on the Property is a failed single family residential development, with only one of 38 lots having a home some four years after the subdivision of the Property was approved. The nearby properties to the northeast along Beach City Road include The Spa on Port Royal Sound, a multi-family development established some thirty years ago, another failed single family residential development (Trail Beach Manor), several undeveloped parcels, a single family dwelling,<sup>35</sup> and Fish Haul Creek Park. Undeveloped parcels front on Beach City Road on both sides of the Property's entrance. Directly across Beach City Road from the Property are an undeveloped parcel, a single family dwelling, a 2 acre undeveloped parcel, and another single family dwelling. The Golf Cottages at Mitchellville, five single family dwellings now used as dormitory housing for the Junior Players Golf Academy is located to the southwest of the Property on Beach City Road. Also to the southwest of the Property, and adjacent to it, are a veterinary hospital, a kennel, and a former contractor's storage yard, all with access to Fish Haul Road.<sup>36</sup> The Property is bordered on the north by undeveloped parcels fronting on unpaved Mitchellville Road. The existing uses on these nearby properties are a mix of residential and commercial, with one large multi-family development directly to the northeast of the Property.

Given the existing predominately multifamily residential and commercial uses on the various properties in the vicinity of the Property, the Applicant believes the use of the Property for low density single family residential use is less compatible with the present zoning and conforming uses of those nearby properties, and with the character of the neighborhood, than a higher density multifamily residential use on the Property would be.

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<sup>35</sup> These properties are located in the WMU District.

<sup>36</sup> The veterinary hospital and the kennel are in the IL – Light Industrial District, and the former contractor's storage yard is in the RM-4 District.



**C. Suitability of the property affected by the amendment for uses permitted by the district that would be made applicable by the proposed amendment.**

The Property which is the subject of this rezoning request is uniquely suitable for the use permitted by the proposed RM-12 District or the proposed WMU District. The Property is located in a largely underdeveloped area. More specifically, the Property is adjacent to a large multi-family development directly to the northeast in the WMU District, and commercial development directly to the southwest in the IL District. The Property is to the north of the Hilton Head Island Airport, in an area that is more conducive to multi-family development than single family development. The failure of Beach City Place development is a testament to the general unsuitability of the area for low density single family residential development.

The Property has electrical, water, sewer, and storm drainage facilities in place. The Property fronts on Beach City Road, a minor arterial road with good road connections to William Hilton Parkway via Beach City Road or Dillon Road. Nearby properties include only three (3) single family residential uses, one of which is part of the failed development on the Property.

The Applicant believes that the Property is suitable for the more dense residential uses that would be permitted for the parcel under the RM-12 District or the WMU District if this Application is approved.

**D. Suitability of the property affected by the amendment for uses permitted by the district applicable to the property at the time of the proposed amendment.**

While the permitted uses in the RM-4 District are the same as the permitted uses in the RM-12 District, as evidenced by the failed single family residential development currently on the Property, and possibly as a result of the proximity of the Hilton Head Island Airport, the Applicant in all likelihood would have a difficult time successfully redeveloping the Property for any use at the low density permitted in the RM-4 District.



Accordingly, the Applicant believes that the Property is generally unsuitable for the uses permitted under, and at the density allowed by, the RM-4 District.

**E. Marketability of the property affected by the amendment for uses permitted by the district applicable to the property at the time of the proposed amendment.**

The failure of the Beach City Place development on the Property, and the failure of Trail Beach Manor just northeast of the Property are clear evidence that the marketability of the Property is, at best, challenged by its current classification in the RM-4 District. In the current Hilton Head Island real estate market, the availability of multi-family housing options, particularly in an area where there are not very many single family dwellings, but with existing utilities and transportation access, will likely be very marketable and attractive. In particular, such housing options will be attractive to the Island workforce, and encourage those workers to live on the Island side of the bridges to the mainland.

The Applicant believes the approval of this Application will undoubtedly increase the marketability of the Property. In addition, the Applicant believes that the approval of this Application will not have an adverse effect on the marketability of other properties in the vicinity. Indeed, if the other properties in the area can be made available for more dense development, those properties will very likely dramatically increase in marketability.

**F. Availability of sewer, water and stormwater facilities generally suitable for the proposed use.**

Because the Property was originally permitted and developed as the Beach City Place development, basic sewer, water, and storm water facilities serving the Property are in place. Depending upon final design and approval of the redevelopment of the Property for multifamily residential use, modifications to the existing sewer, water, and storm water facilities may be necessary.



Hilton Head Public Service District currently provides potable water and sanitary sewer service to the Property, and will continue to do so if this Application is approved.

The storm drainage system on the Property was approved by the Town as part of the major subdivision approval for the now failed Beach City Place development. Any redevelopment of the Property for multifamily residential use will likewise require approval by the Town of the stormwater facilities serving the Property.

## **V. NARRATIVE – CONCLUSION**

The Applicant believes the foregoing narrative demonstrates that this Application is in conformance with the LMO and the Town's Comprehensive Plan, and meets the criteria set forth in LMO Section 16-3-1505. Accordingly, the Applicant respectfully requests that the Planning Commission (a) consider this Application and the testimony and supporting documentation which will be entered into the record; (b) find:

1. That this Application and the supporting testimony and documentation establish that the requested zoning map amendment is consistent with the Town's Comprehensive Plan; and

2. That this Application and the supporting testimony and documentation establish that while the current use on the Property is consistent with the present zoning, that current use has failed economically, and the proposed rezoning is also consistent with conforming uses of nearby properties and with the character of the neighborhood around the Property; and

3. That this Application and the supporting testimony and documentation establish that the Property is suitable for the uses permitted by the zoning district that would be made applicable to the Property by the requested zoning map amendment; and

4. That this Application and the supporting testimony and documentation establish that the Property is not economically suitable for



the uses permitted by the zoning district that is currently applicable to the Property; and

5. That this Application and the supporting testimony and documentation establish that the marketability of the Property for uses permitted by the zoning district that is currently applicable to the Property will be increased by the approval of the requested zoning map amendment; and

6. That this Application and the supporting testimony and documentation establish that there will be no material change in the Property's requirements for sewer, water and storm water facilities, and that such services generally suitable and adequate for the existing use of the Property under the requested zoning map amendment are available to the Property; and

(c) Recommend to the Town Council that they approve this Application and the rezoning of the Property to the RM-12 District or, in the alternative, to the WMU District.

Respectfully submitted on behalf of the Applicant this 15<sup>th</sup> day of March, 2013.



This signature is an electronic reproduction

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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





BEING the same property conveyed to Beach City Properties, Inc. from D and N Realty Partnership by deed dated July 19, 2006 and recorded on July 24, 2006 in the Register of Deeds for Beaufort County, South Carolina in Book 2411 at Page 864.

This Deed was prepared in the Law Offices of McNair Law Firm, P.A., Post Office Drawer 3, Hilton Head Island, South Carolina 29938, by Robert M. Deeb, Jr.

**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 Grantee, its successors and assigns forever.

**AND** Grantor does hereby bind itself and its successors and assigns to warrant and forever defend all and singular the said premises unto the Grantee, its successors and assigns, against the Grantor and its successors and assigns, and all persons whomsoever lawfully claiming or to claim the same, or any part thereof.

*[Signatures on Following Page]*

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name by its duly authorized officer and its seal to be hereto affixed, this 17<sup>th</sup> day of February, 2009.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

Stephan Blaw  
[Signature]

BEACH CITY PROPERTIES, INC.

By: [Signature]  
Eugene J. Laurich, Its: President

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF BEAUFORT        )

ACKNOWLEDGMENT

I, the undersigned Notary Public, do hereby certify that Eugene J. Laurich, its President of Grantor, by and on behalf of the Corporation personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 17<sup>th</sup> day of February, 2009.

[Signature]  
Notary Public for South Carolina  
My Commission Expires: 8-27-2017

# ZMA Application Attachment 2



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)

\_\_\_\_\_, 2013

Name  
Address  
City, State, Zip Code

RE: Zoning Map Amendment Application of 217 Beach City Road, LLC for 8.56  
Acres, Beach City Road – Our File No. 01687-001

Dear Sir or Madam:

As required by Sections 16-3-110 and 16-3-111(C)(1) of the Land Management Ordinance of the Town of Hilton Head Island, you are notified that there will be a public hearing before the Town's Planning Commission on 01 May 2013 at 9:00 A.M. in Town Council Chambers at Town Hall, One Town Center Court, Hilton Head Island, South Carolina on the zoning map amendment application filed byf 217 Beach City Road, LLC for property located on Beach City Road. The property is also known as Beaufort County Tax District 510, Map 5, Parcels 008, 336 through 342, and 344 through 375. The proposed zoning map amendment seeks to rezone the property from the RM-4 – Low Density Residential District to either the RM-12 – Moderate to High Density Residential District or the WMU – Water Front Mixed Use District. A copy of a survey showing the property is enclosed. The property is currently located in the RM-4 – Low Density Residential District. Any interested party may appear at the public hearing.

If you require additional information regarding this application, please contact the undersigned at the telephone number on the letterhead above, or contact the Town of Hilton Head Island Planning Staff at (843) 341-4601.

With best regards, we are

Very Truly Yours,

LAW OFFICE OF CHESTER C. WILLIAMS, LLC

Chester C. Williams

CCW/  
Enclosure

cc: Dr. Harinderjit Singh  
Rand E. Hanna, III, Esq.  
Teri B. Lewis, AICP

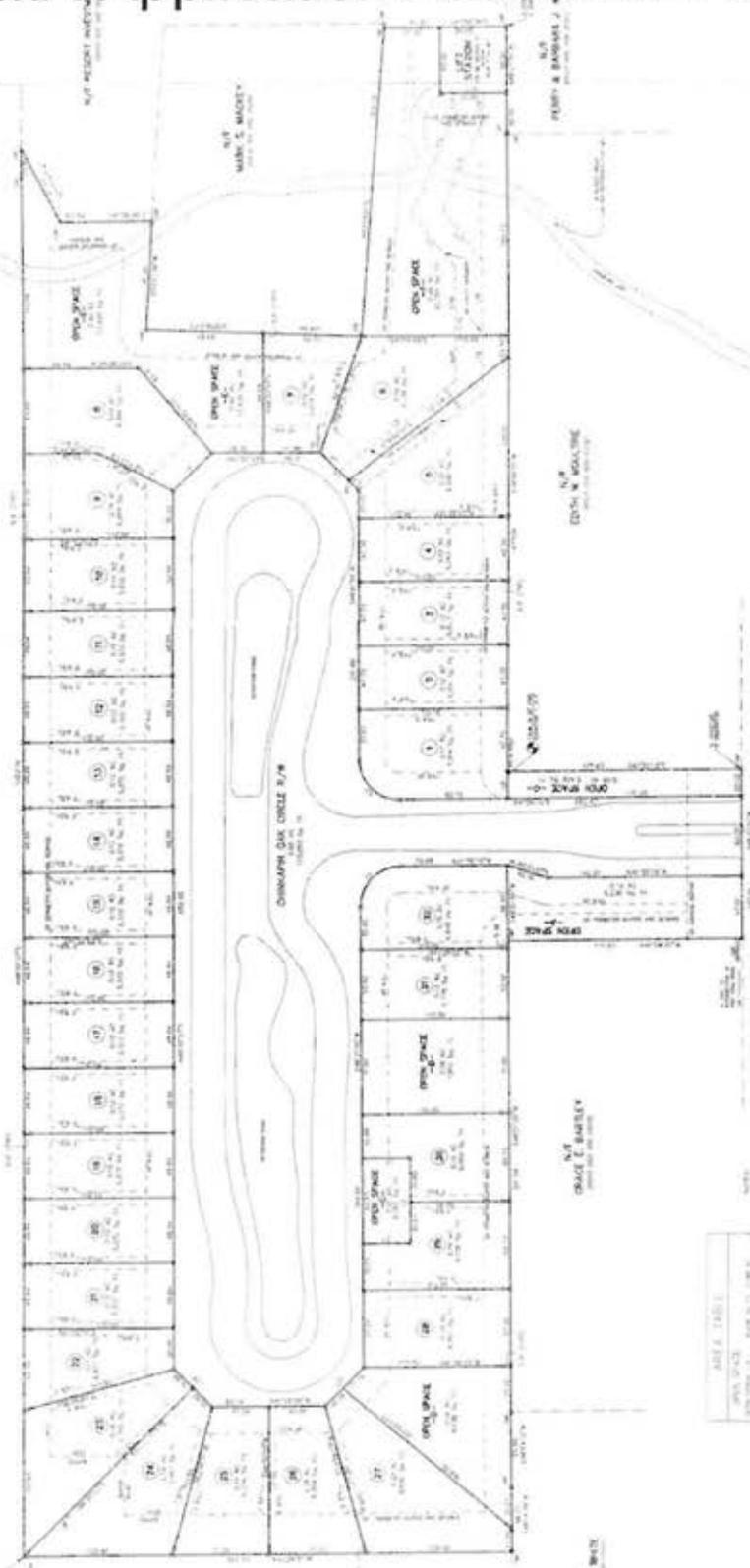
# ZMA Application Attachment 3



**PROPERTY LIST**

Parcel No.	Area (Ac.)	Owner
1	0.15	State of South Carolina
2	0.15	State of South Carolina
3	0.15	State of South Carolina
4	0.15	State of South Carolina
5	0.15	State of South Carolina
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99	0.15	State of South Carolina
100	0.15	State of South Carolina

N/T  
ROSE YOUNG & SAGE M. HARRISON  
PLANNING AND ARCHITECTURE



N/T  
HUMAN E. ANDERSON &  
TERRY S. JOHNSON  
PLANNING AND ARCHITECTURE

N/T  
DORALINE WHITE  
PLANNING AND ARCHITECTURE

N/T  
TRACE E. HARLEY  
PLANNING AND ARCHITECTURE

N/T  
EDNA W. WOLINE  
PLANNING AND ARCHITECTURE

N/T  
FRANK & BRADLEY J.  
PLANNING AND ARCHITECTURE

N/T  
MARK S. MADDY  
PLANNING AND ARCHITECTURE

SUBDIVISION MAP OF  
**BEACH CITY PLACE**  
BEACH CITY ROAD, PELTON HEAD ISLAND  
BEAUFORT COUNTY, SOUTH CAROLINA  
PREPARED FOR BEACH CITY PLACE, LLC



DATE: 08/08/2018  
SCALE: 1" = 40'



**AREA TABLE**

Lot No.	Area (Ac.)	Total Area (Ac.)
1	0.15	0.15
2	0.15	0.30
3	0.15	0.45
4	0.15	0.60
5	0.15	0.75
6	0.15	0.90
7	0.15	1.05
8	0.15	1.20
9	0.15	1.35
10	0.15	1.50
11	0.15	1.65
12	0.15	1.80
13	0.15	1.95
14	0.15	2.10
15	0.15	2.25
16	0.15	2.40
17	0.15	2.55
18	0.15	2.70
19	0.15	2.85
20	0.15	3.00
21	0.15	3.15
22	0.15	3.30
23	0.15	3.45
24	0.15	3.60
25	0.15	3.75
26	0.15	3.90
27	0.15	4.05
28	0.15	4.20
29	0.15	4.35
30	0.15	4.50
31	0.15	4.65
32	0.15	4.80
33	0.15	4.95
34	0.15	5.10
35	0.15	5.25
36	0.15	5.40
37	0.15	5.55
38	0.15	5.70
39	0.15	5.85
40	0.15	6.00
41	0.15	6.15
42	0.15	6.30
43	0.15	6.45
44	0.15	6.60
45	0.15	6.75
46	0.15	6.90
47	0.15	7.05
48	0.15	7.20
49	0.15	7.35
50	0.15	7.50
51	0.15	7.65
52	0.15	7.80
53	0.15	7.95
54	0.15	8.10
55	0.15	8.25
56	0.15	8.40
57	0.15	8.55
58	0.15	8.70
59	0.15	8.85
60	0.15	9.00
61	0.15	9.15
62	0.15	9.30
63	0.15	9.45
64	0.15	9.60
65	0.15	9.75
66	0.15	9.90
67	0.15	10.05
68	0.15	10.20
69	0.15	10.35
70	0.15	10.50
71	0.15	10.65
72	0.15	10.80
73	0.15	10.95
74	0.15	11.10
75	0.15	11.25
76	0.15	11.40
77	0.15	11.55
78	0.15	11.70
79	0.15	11.85
80	0.15	12.00
81	0.15	12.15
82	0.15	12.30
83	0.15	12.45
84	0.15	12.60
85	0.15	12.75
86	0.15	12.90
87	0.15	13.05
88	0.15	13.20
89	0.15	13.35
90	0.15	13.50
91	0.15	13.65
92	0.15	13.80
93	0.15	13.95
94	0.15	14.10
95	0.15	14.25
96	0.15	14.40
97	0.15	14.55
98	0.15	14.70
99	0.15	14.85
100	0.15	15.00

**COMMENTS:**

1. THIS MAP IS A SUBDIVISION MAP AS DEFINED IN SECTION 14-2-100 OF THE SOUTH CAROLINA ZONING AND SUBDIVISION ACT.
2. THIS MAP IS A PRELIMINARY MAP AND IS NOT TO BE USED FOR CONVEYANCE OF ANY INTEREST IN ANY OF THE LOTS SHOWN HEREON.
3. THE LOTS SHOWN HEREON ARE SUBJECT TO ALL EXISTING EASEMENTS, RIGHTS-OF-WAY, AND OTHER INTERESTS IN THE LAND.
4. THE LOTS SHOWN HEREON ARE SUBJECT TO ALL EXISTING DEEDS, CONTRACTS, AND OTHER INSTRUMENTS AFFECTING THE LAND.
5. THE LOTS SHOWN HEREON ARE SUBJECT TO ALL EXISTING TAXES AND LIENS.
6. THE LOTS SHOWN HEREON ARE SUBJECT TO ALL EXISTING REGULATIONS AND ORDINANCES.
7. THE LOTS SHOWN HEREON ARE SUBJECT TO ALL EXISTING ZONING AND SUBDIVISION ACTS.
8. THE LOTS SHOWN HEREON ARE SUBJECT TO ALL EXISTING PLANNING AND ARCHITECTURE AGREEMENTS.
9. THE LOTS SHOWN HEREON ARE SUBJECT TO ALL EXISTING ENVIRONMENTAL REGULATIONS.
10. THE LOTS SHOWN HEREON ARE SUBJECT TO ALL EXISTING HISTORIC PRESERVATION REGULATIONS.

**APPROVED:**

DATE: 08/08/2018

SCALE: 1" = 40'

**GIS** The Geospatial Systems, LLC  
1000 W. BROADWAY  
SUITE 100  
BEAUFORT, SOUTH CAROLINA 29516  
TEL: 843.733.1111  
WWW.GIS-SC.COM

ADAMS KENNETH F ANNETTE T JTROS		9565 RED BIRD LANE	ALPHARETTA	GA	30022
AHR ERNEST THERESA JTROS		38 HAUL WAY	HILTON HEAD ISL	SC	29928
ALLEN ROBERT TRUSTEE ALLEN CATHERINE		21016 ALPINE AVENUE	PORT CHARLOTTE	FL	33952
ANAYA REBECCA B	ANAYA ERNEST J	1112 LA PALOMA CT	SOUTHLAKE	TX	76092
ANDERSON MICHAEL		239 BEACH CITY RD APARTMENT 2322	HILTON HEAD ISL	SC	29926
ANDERSON NANCY HERRON		239 BEACH CITY RD UNIT 1201	HILTON HEAD ISLAND	SC	29926
ANITO LAWRENCE F JR		38 AUERLITZ STREET	CHATHAM	NY	12037
ARINOLDO CARL G LINDA D JTROS		314 POND PATH	SETAUKET	NY	11733
BAILEY JOE % ALICE B JONES		PO BOX 22641	HILTON HEAD	SC	29925
BAKER SHELBY L JR DOROTHY I TRUSTEES		239 BEACH CITY RD #1330	HILTON HEAD ISL	SC	29926
BANACH JOSEPH L III HELEN B JTROS		3609 HOMEWOOD DRIVE	POWDER SPRINGS	GA	31027
BANNON RICHARD B NORMA C JTROS		300 PINE FOREST RD EXT	SPARTANBURG	SC	29303
BARTHOLOMEW JEFFREY J KIMBERLY A J		460 SHANE AVENUE	WAYNESBURG	OH	44688
BKH LLC		PO BOX 23526	HILTON HEAD ISLAND	SC	29925
BLUST DAVID R CYNTHIA B JTROS		3105 THE SPA ON PORT ROYAL SOUND	HILTON HEAD ISL	SC	29928
BOTHA NICOLAAS J	BOTHA GERTRUDA P	1802 HARBOR PLACE	WOODSTOCK	GA	30189
BOWEN JAMIE A	BOWEN JILL A	2210 PARK RD	TOWNVILLE	SC	29689
BRAY YALE W KAREN L JTROS		39 WICKLOW DR	HILTON HEAD ISLAND	SC	29928
BRENDEL TOMMY A	BRENDEL AUDREY K	1431 MOUNTAIN MEADOW DR	HENDERSONVILLE	NC	28739
BRENER HOWARD	BRENER SHARON	3912 UPLAND WAY	MARIETTA	GA	30066
BRESLIN THOMAS K PINKHAM JULIE B J		55 ISLAND AVENUE	QUINCY	MA	02169
BROWN ROSS E IVA S		311 SOUTH AVE	WESTON	MA	02493
BROWN SANDRA L		100 COTTONS WAY	PENROSE	NC	28766
BULLA FRANK A DIRUOCCO PHILLIP J		150 WHITE PLAINS RD SUITE 202	TARRYTOWN	NY	10591
BURGESS KARL REICHELDERFER JILL JT		5210 COUNTRY LAKE COURT	LILBURN	GA	30047
BURRELL MICHAEL K SR REBECCA G JTRO		749 BROOKWOOD DRIVE	STATESBORO	GA	30461
CANAAN LAND PROPERTIES INC		712 W CHERRY STREET	JESUP	GA	31545
CAROL CAPPIELLO LIVING TRUST		3 MANGIN RD	COMMACK	NY	11725
CARR KENNETH R	CARR DONNA L	225 W SMOKETREE TERR	JOHNS CREEK	GA	30005 7212
CARTER CAROLE		239 BEACH CITY RD #2303	HILTON HEAD ISLAND	SC	29926
CHAMP PETER E PATTY K		16149 S EAGLE RIDGE DR	TINLEY PARK	IL	60477-8296
CHANDLER LUCINDA STEDFELD THOMAS DEN		6325 GAY WIND DR	CHARLOTTE	NC	28226
CHRISTINE LYNCH 2009 REVOCABLE TRUST	THERESA M TURANO REVOCABLE LIVING TR	224 RIVERWOOD DRIVE	NEW HOPE	PA	18938
CILURSO EDWARD	CILURSO KAREN	51 LETITIA LN	HADDONFIELD	NJ	08033
CLARK WILFRED V JANET M		107 A DEER PARK ROAD	DIX HILLS	NY	11746-4926
COMBS CURTIS J	COMBS VANESSA E	5375 214TH CT	BOCA RATON	FL	33486

CONDON JOHN		1030 JENKINS RD	CHARLESTON	SC	29407
CONKLIN DEBRA E		68 LACKAWANNA TRAIL	SUFFERN	NY	10901
COOL SPRINGS PROPERTIES LLC		39 BISHOP ST	BLUFFTON	SC	29909
COSTLOW DAVID L PAULA S JTROS		PO BOX 96	READINGTON	NJ	08870-0096
COX BETTY M		371 BARNESLEY DRIVE	EVANS	GA	30809
CREATIVE HOME INTERIORS LLC		17 DOLPHIN POINT LN	HILTON HEAD	SC	29926
D'AMICO SIMON VANESSA LECY JTROS		239 BEACH CITY RD # 1308	HILTON HEAD ISLAND	SC	29926
DAUGHERTY HILL LLC		5105 OLD ELLIS POINTE	ROSWELL	GA	30076
DAVIS ROBERT DAVIS		PO BOX 356	KERSHAW	SC	29067
DAVIS ROBERT W		PO BOX 356	KERSHAW	SC	29067-0356
DAVISON ANDREW R		239 BEACH CITY ROAD APT 3109	HILTON HEAD ISL	SC	29926
DEMPSEY GERARD W	DEMPSEY JULIE	25 LILY LAKE RD	HIGHLAND	NY	12528
DESELLIER JAMES R THOMAS J		402 ROCK CREEK ROAD	CLEMSON	SC	29631-1944
DESIANO FRANK M PATRICIA M JTROS		57 MANDALAY DRIVE	POUGHKEEPSIE	NY	12603
DIBLASI PAUL S		PO BOX 22137	HILTON HEAD	SC	29926
DIGEORGE JOHN F LORRAINE JTROS		93 PORTSMOUTH DRIVE	TOMS RIVER	NJ	08957
DOCKUM DAVID L SMITH WALDO A JTROS		1 HONEY LOCUST CIR	HILTON HEAD ISL	SC	29926
DREW-BROOK MAUREEN WINSOME	DREW-BROOK GEOFFREY COOK	233 SANDFORD RD	MOUNT ALBERT	ON	LOG1M0
DUNES SPA LLC		1836 HWY 54 WEST	FAYETTEVILLE	GA	30214
DWYER KIERAN P		239 BEACH CITY RD #3110	HILTON HEAD ISL	SC	29926
EINFELDT SAM W JUDY		22 WILLOW DR	RANDOLPH	NJ	07869-4747
FARR JEFF RICE PATRICK JTROS		73 CHESTER HILL RD	WARWICK	NY	10990
FBO SHEILA R LEGGETT IRA		130 KENNEDY ST	ELLENBORO	NC	28040
FEDERAL NATIONAL MORTGAGE ASSOCIATIO		PO BOX 650043	DALLAS	TX	75265
FERNANDEZ ALEJANDRO D		239 BEACH CITY RD APT 3116	HILTON HEAD ISLAND	SC	29926
FITSCHEN DAWN DUCA BRIAN		25 LUDDINGTON ROAD	WEST ORANGE	NJ	07052
FORD SHIRLEY A WILLIAMS VIOLA B MIL		22 PEACHTREE ST	CHARLESTON	SC	29403
FORTSON HALEY W		3236 THE SPA	HILTON HEAD ISL	SC	29928
FOSTER WILLIAM J		70 PADDLEBOAT LN APT 302-D	HILTON HEAD ISLAND	SC	29928
FREUND HOLDINGS LLC		907 SPRING TREE ST	ROUND ROCK	TX	78681
GAUJOT PAUL A		709 LESLIE AVENUE	GLASGOW	KY	42141
GENGHINI FRANK J PATRICIA S JTROS		10 DOE RUN DRIVE	WARRINGTON	PA	18976
GHIZZONI RYAN C		6017 HERONS CIRCLE	AUSTINTOWN	OH	44515
GONZALES DAVID A		79 REGENT AVE	BLUFFTON	SC	29910
GRUBB ROGER DALE		27 FERNLAKES DRIVE	BLUFFTON	SC	29910
GUIDO MARK F	GUIDO RANDI SUE	5442 RIDGEMOOR DR	BRASELTON	GA	30517

GUIENDON JOSEPH R MARY M JTROS		132 MARSH VIEW DRIVE	RICHMOND HILL	GA	31324
GUISTI RICHARD SR ROBIN L JTROS		131 LONGMEADOW DR	WOLCOTT	CT	06716
H & H AUTO BODY LLC		17 CARDINAL ROAD	HILTON HEAD ISLAND	SC	29926
HAB LLC % HEATHER ANN C BARTOLOTTO		PO BOX 2856	BLUFFTON	SC	29910
HAGEMAN ALAN E	HAGEMAN SUSAN I	208 SILVER LAKE RD E	COLUMBIA	SC	29223
HAROUNLAN RUGS INTERNATIONAL INC		261 FIFTH AVE	NEW YORK	NY	10016
HAUSER DONALD H	BEARD MARSHA C	4122 HOODRIDGE LN	MINT HILL	NC	28227
HEANEY JAMES PAUL	HEANEY CHRISTINA E	PO BOX 2299	BLAIRSVILLE	GA	30514
HENDRICKS REGINALD L SHAROLD L JTRO		148 RUNNER RD	SAVANNAH	GA	31410
HENGEMUHLE SCOTT		107 AVENIDA	WYLIE	TX	75098
HENNESSEY CURTIS BLAIR LYNETTE M J		12 WIDEWATER	HILTON HEAD ISL	SC	29926
HEW & ASSOCIATES		36 PRIVATE DRIVE 10461	PROCTORVILLE	OH	45669
HILTON HEAD PROPERTIES C/O TERRY CHU		861 BLUE RIDGE RD	PITTSBURGH	PA	15239
HJH GROUP OF COMPANIES LLC UNIT		55 MALLORY AVE #25	JERSEY CITY	NJ	07305
HOGAN MARK D SABA ROBERT J JTROS		13 PARK ALY N	SARATOGA SPGS	NY	12866-1436
HORN JOHN K Jr	VAN HORN SUSAN K	402 MIDDLECREEK RD	HONESDALE	PA	18431
HUFENBECHER CHRISTINE A	HUFENBECHER PATRICIA	1 AVE AT PORT IMPERIAL APT 1113	WEST NEW YORK	NJ	07093-8303
HUONG LE TRAN	TRAN HUONG DUONG Q	115 FIELDSTONE WAY	FAYETTEVILLE	GA	30215-8166
HUTCHISON KENNETH P GRIER KIMBERLY A		12 EXETER RD	AVONDALE ESTATES	GA	30002-1335
IANNAZZO ELIZABETH F IANNAZZO ANTHON		25 MITCHELVILLE ROAD	HILTON HEAD ISL	SC	29926
JACKSON DAVID	JACKSON ALETHEA W	108 LINCOLN RD	HEMPSTEAD	NY	11550
JOHNSON BARNEY L Jr	JOHNSON JANICE M	3146 SURREY RD	THOMSON	GA	30824
JOHNSON BERNADETTE F	F/B/O TRUST MICHAEL LOWE JOHNSON U/W	10 FLAMINGO CV	LADYS ISLAND	SC	29907
JOHNSON LENIAH		230 PORTER AVE	SEASIDE HEIGHTS	NJ	08751
JONES MARY JOAN		239 BEACH CITY RD APT 1107	HILTON HEAD ISL	SC	29926
JORGENSEN CHRISTOPHER A		PO BOX 802813	MIAMI	FL	33280-2813
JOSTWORTH THOMAS C		11745 HIGHLAND COLONY DR	ROSWELL	GA	30545
JOYCE CHARLES RICHARD	JOYCE TAMMY AKERS	3150 OLD BAYWOOD RD	GALAX	VA	24333
JUNIOR PLAYERS GOLF ACADEMY INC		154 BEACH CITY RD	HILTON HEAD ISLAND	SC	29926
KAIL BRADEN E	KAIL SUZANNE R	PO BOX 722	WAYNESBURG	OH	44688-0722
KAPTUROWSKI PAUL F		235 HORN TASSLE CT	INDIAN TRAIL	NC	28079
KENNEDY CLAUDIA J		4 MAGAZINE PLACE	HILTON HEAD ISLAND	SC	29928
KEVIN SUMNER AND THERESA SUMNER LIVI		123 BROLA RD	MIDDLETOWN	NY	10940
KEVLIN ALLAN S		20 TWISTED CAY LANE	HILTON HEAD ISL	SC	29926
KOSMATKA KENT	KOSMATKA DELORA	210 SYCAMORE ST	GOODLAND	KS	67735
KRECKER GREGORY S		239 BEACH CITY RD #2202	HILTON HEAD ISL	SC	29926

KROPIEWNICKI JOSEPH		90 GLOUCESTER RD # 1202	HILTON HEAD ISL	SC	29928
KUNDRAT JOHN J		239 BEACH CITY RD APT 2310	HILTON HEAD IS	SC	29926-4714
LAMBERT EDWARD D LORINDA ANN JTROS		8 FISH HAUL RD	HILTON HEAD ISLAND	SC	29926
LAMMERT KARL KEVIN JTROS		30 MATTHEWS DR #113	HILTON HEAD ISL	SC	29926
LANEY KERMI QUINTON JR MARY ANN JT		1093 FISHING CREEK ESTATES RD	LINCOLNTON	GA	30817
LARKIN DARRYLL		145 WILSON AVENUE	ELIZABETHTON	TN	37643
LAURENTIS SEMINA DE		66 QUAIL RUN	TORRINGTON	CT	06790
LEEWE JAMES F JR REBECCA S JTROS		3643 FORT PEYTON CIRCLE	ST AUGUSTINE	FL	32086
LEYVA NOELIA		PO BOX 5412	HILTON HEAD ISL	SC	29938
LIMPIPHIPHATN ESTER C LIMPIPHIPHATN		1145 STONEWOLF TRAIL	FAIRVIEW HEIGHTS	IL	62208
LOVELL JOHN WILLIAM		PO BOX 35941	TUCSON	AZ	85740
LUCIANI JOHN M	LUCIANI CONSTANCE M	119 SETTLERS PT	GUYTON	GA	31312
LYNCH ROBERT F CATHY S JTROS		7390 POSSUM STREET	MT VERNON	OH	43050
LYNN GEORGE K JR PEGGY LEE JTROS		91 CLUB COURSE DR	HILTON HEAD ISLAND	SC	29928
MACCHIAVERNA JUNE R		1212 W SHERWIN AVE	CHICAGO	IL	60626-2218
MACKEY MARK STEPHEN		233 BEACH CITY ROAD	HILTON HEAD ISL	SC	29926
MACNEIL PAUL D		30 LADYS ISLAND DR	BEAUFORT	SC	29907
MALLEY MICHAEL P SHARON E JTROS		3 MCQUEEN BLVD	FARMINGSALE	NJ	07727
MANZINO CHARLES P		17956 HOLLY BROOK DR	TAMPA	FL	33647
MARIANO DOROTHY H ARMAND M JTROS		36 CROSSROAD LANE	GLASTONBURY	CT	06033
MATTHEWS EUGENE VERMELLE J CO-TRUSTE		168 LITTLE CAPERS RD	BEAUFORT	SC	29902
MAURICE THREE LLC % MAURICE MALIN		45 HALE PLACE	TAPPAN	NY	10983
MAZAKOV DARIN	MAISAK LARYSA	PO BOX 1634	ALEXANDRIA	VA	22313
MCARDLE THOMAS J		83 MAPLE AVENUE	WEST PATERSON	NJ	07424-0875
MCCAFFREY CORNELIUS		42 BRIARWOOD LN	MILLERTON	NY	12546
MCCALL FAMILY TRUST U/T/A LOIS M MCC		43 WEXFORD CLUB DR	HILTON HEAD ISLAND	SC	29928
MCCLARNON KEVIN DALE	MCCLARNON KIM MARIE	13112 MYRTLE DRIVE	BURNSVILLE	MN	55337
MCCLESKY MARGARET P		43 STONEY CREEK RD	HILTON HEAD ISL	SC	29928
MCCLURE JACKIE L	MCCLURE MARIA S	48 OVERLOOK CT	AIKEN	SC	29805
MCCORMICK EDWARD L BEATRICE F		106 KING DRIVE	POUGHKEEPSIE	NY	12603-3210
MEARS FRANKLIN H		PO BOX 14548	AUGUSTA	GA	30919
MELICK DIANA	MELICK GARY	235 ARDSLEY LN	ALPHARETTA	GA	30005
MICHAUD MATTHEW		3 DRISCOLL LN	MATTAPOISETT	MA	02739
MIKOUCHI PATRICIA A MIKOUCHI-LOPEZ T		5 LADSON CT	HILTON HEAD ISLAND	SC	29926
MILLER DAVE		1094 E CHOCTAW DR	LONDON	OH	43140
MONCADA JULIO H		239 BEACH CITY RD NO. 3329	HILTON HEAD ISLAND	SC	29926

MOORE JUDITH G		239 BEACH CITY RD #1322	HILTON HEAD ISLAND	SC	29926
MOORER DOLORES P		5146 TOREY LN	SUMMERVILLE	SC	29485
MOSES THOMAS E		1807 RIVER CHASE RD	HIXSON	TN	37343-3433
MOULTRIE EDITH W		103 E LATHROP AVE	SAVANNAH	GA	31401
MOULTRIE EDITH W WHITE NATHANIEL JO		103 EAST LATHROP AVE	SAVANNAH	GA	31401
MULLINS MARGARET R MOORE VICKI MULLI		4297 HIGHBORNE DRIVE	MARIETTA	GA	30066
MURPHY RAYMOND A PATRICIA A JTROS		36 RIDGE LANE	HILLSDALE	NY	12529
MUSA ANN FLORENCE TRUSTEE (EDWARD F		4 MT VIEW DR	PLEASANT VALLEY	NY	12569
NABEL PATRICIA BENNETT		1321 ROBIN HOOD RD	HIGH POINT	NC	27262
NATIONAL ALLIANCE FOR THE MENTALLY I		PO BOX 24128	HILTON HEAD ISLAND	SC	29925
NICHOLSON ANTHONY SCOTT MARY JONES J		239 BEACH CITY RD #1110	HILTON HEAD ISLAND	SC	29926
NIEHAUS THOMAS J		92 PHEASANT LANE	FAIRFIELD	CT	06824
NITZA KATHLEEN MURPHY		239 BEACH CITY RD #1128	HILTON HEAD ISLAND	SC	29926
OBERMAN STUART J JOANNE M JTROS		6218 GREENS MILL RIDGE	LOGANVILLE	GA	30052
O'SHEA THOMAS M		1206 THE SPA	HILTON HEAD ISL	SC	29928
PACE EDWIN STEPHEN III LINDA A JT		315 ABBEY RD	KINGSPORT	TN	37663
PANKEY PATRICK ALAN	PANKEY MARILYN	1231 FERNCREEK DR	WATKINSVILLE	GA	30677
PARRA MILTON H DIANE P JTROS		17100 NABLICK LANE	CORNWLIUS	NC	28031
PASQUALINO JOHN A	PASQUALINO LISA	738 NORLAND AVE	CARNEGIE	PA	15106
PEEPLES BENNIE L	PEEPLES SANDRA H	PO BOX 22316	HILTON HEAD ISLAND	SC	29925
PEISER JOHN F	PEISER KATHRYN L	33-20 214 PLACE	BAYSIDE	NY	11361
PENNINGROTH ERIC L ROSEANNE JTROS		2310 COLLINGWOOD RD	ALEXANDRIA	VA	22308
PENSCO TRUST CO F/B/O CHRISTINE HANS		78 JIB SAIL CT	HILTON HEAD ISLAND	SC	29928
PERRINE DAVID MICHAEL KAY ELLEN JT		1404 BELLE MEADE ROAD	AKRON	OH	44321
PERRY LINDA HRS OF % ROBERT GREENE		608 POWELL STREET	BROOKLYN	NY	11212-5334
PETERS CLIFTON L III		PO BOX 3025	SAN BERNARDINO	CA	92413
PETERSON ALLEN D		233 HITCHING POST CRES	BLUFFTON	SC	29910
PETTIT STACY P		239 BEACH CITY RD APT 1101	HILTON HEAD ISLAND	SC	29926-4708
PIMENTEL RICHARD M DIANE A JTROS		43 VAIL ROAD	BETHEL	CT	06801
PRIOR MICHAEL	PRIOR MICHELE	3750 WINCHESTER TRAIL	MARTINEZ	GA	30907
QUINTON MAUREEN A TRUSTEE		1232 BLAKE COURT	YORK	PA	17403-9114
RAHMANI BRUCE R HOSSEINIAN ALI		17240 BROOKDALE LANE	ROUNS HILL	VA	20141
RAMEIZL JAMES	RAMEIZL PHYLLIS	55 RED CEDAR ST	BLUFFTON	SC	29910 8926
RAMEY CHERYL JEAN	RAMEY WILBUR JAMES	301 CENTRAL AVE 341	HILTON HEAD ISLAND	SC	29926
REILLY CHRISTOPHER BARBARA J REILLY		239 BEACH CITY ROAD APT 2104	HILTON HEAD ISL	SC	29926
REILLY SEAN		5 STONEFIELD LANE	BLUFFTON	SC	29910

REILLY SEAN PATRICK		239 BEACH CITY RD VILLA 3311	HILTON HEAD ISL	SC	29926
RESORT INVESTMENT CORP		PO BOX 11496	COLUMBIA	SC	29211-1496
RETREAT PET SUITES LLC % STUART W CA		9 BIG WOODS DRIVE	HILTON HEAD ISL	SC	29926
RICE JOSHUA FRANKLIN JOHNNA LINDA		2288 WICKINGHAM DR NE	MARIETTA	GA	30066-3083
RITZLER JAMES R JUDITH A JTROS		PO BOX 7122	HILTON HEAD ISLAND	SC	29938
RIVERS NATHAN ETHEL		PO BOX 21063	HILTON HEAD ISL	SC	29925
ROBERSON IRENE	LAUNIERE RENEE KATHERINE	619 NORFLEET RD	ATLANTA	GA	30305
RODNEY W BYRD AND JOYCE K BYRD REVOC	RODNEY W BYRD AND JOYCE K BYRD REVOC	481 HARBOR DR	LEBANON	OH	45036
ROMEO THOMAS M	ROMEO NANCY L	12 REACH LN	HIGH FALLS	NY	12440
ROTE DENNIS	ROTE LINDA L	354 PACES FERRY RD	AUGUSTA	GA	30907
RUNGE GARY L		6175 BISHOP BEND RD	UNION	KY	41091
RUNGE LARY		130 MCCULLUM RD	INDEPENDENCE	KY	41051
RUNGE VICTORIA M	BISHOP RONNIE L	239 BEACH CITY RD #1205	HILTON HEAD ISLAND	SC	29926
RUSH DALE H		1408 ROSEMOUND AVE	JONESBORO	AR	72401
RUSH DALE Jr	RUSH PATIENCE J	3829 BAUM ST SE	CANTON	OH	44707
RUTLEDGE JOHN W SUSAN K JTROS		30 GAGE COURT	TAPPAN	NY	10983
SAKONCHICK JAMES		1272 NOTCH RD	CHESHIRE	CT	06410
SAMARGHANDI MAJID H SUZANNE H JTR		11679 WINDY HILL CT	LOVELAND	OH	45140
SANDERS ALFRIDA J WILLIAM P		PO BOX 5394	HILTON HEAD ISL	SC	29938
SANTA MARIA RICHARD LINDA JTROS		7 PERSIMMON PLACE	HILTON HEAD ISLAND	SC	29926
SAPEZINSKAS SAULIUS SAPEZINSKIENE JO		5 WOODSIDE DR	BLUFFTON	SC	29910
SAUERS GERALD L		219 O'HARA MANOR DRIVE	PITTSBURGH	PA	15238
SAUNDERS BRUCE H		239 BEACH CITY RD VILLA 1220	HILTON HEAD ISLAND	SC	29926
SAYLOR WALTER P		239 BEACH CITY RD	HILTON HEAD ISLAND	SC	29926-4234
SCHAFFER DAVID RUTH ANN JTROS		1515 SCHAFFER CORNER RD	VARNVILLE	SC	29944
SCHIEDER NICHOLAS MOWRY CAROLINE S J		908 N MANGUM ST	DURHAM	NC	27701
SCHMEDES JOHN B	SCHMEDES BARBERA SECRIST	292 GRANVILLE COURT	MARIETTA	GA	30064
SCHOCK RICHARD SUSAN JTROS		1063 VALLEY WOODS DR	BATAVIA	OH	45103
SCHRAMM CHARLES W		2998 YELLOWOOD COURT	BREMEN	IN	46506
SCOTTO CHRISTOPHER J		9716 B REA ROAD 133	HILTON HEAD ISLAND	SC	29926
SCRI LLC		PO BOX 10	HILTON HEAD ISLAND	SC	29938
SEVASTOS JOHN P URANIA C JTROS		29400 FAIRMONT BLVD	PEPPER PIKE	OH	44124
SH ENTERPRISES INC		4 OTRANTO CT	HILTON HEAD ISLAND	SC	29928
SHEARS OUIDA T MAYHEW EVA T		355 CAMEL STREET	MOBILE	AL	36610
SHOCKLEY ANDREW G PATRICIA H		603 VILLA CREST DR	KNOXVILLE	TN	37923-6018
SMALSTIG RICHARD KATHY CONWAY HARRIE		216 MOREWOOD RD	GLENSHAW	PA	15116

SMITH LANISE KEITH		630 CREIGHTON DR	TAYLORS	SC	29687
SMITH RANELL ENTRUST OF TAMPA BAY LL		PO BOX 22386	HILTON HEAD ISLAND	SC	29925
SMITH WALDO A DOCKUM DAVID A JTROS		1728 KINGS MANOR COURT	MATTHEWS	NC	28105
SOLOMON ROBERT T	SOLOMON GERLINDE E	101 OXFORD CIR	RINCON	GA	31326
SPA ON PORT ROYAL SOUND HORIZONTAL P		239 BEACH CITY RD #1127	HILTON HEAD ISLAND	SC	29926
SPA ON PORT ROYAL SOUND HORIZONTAL P		239 BEACH CITY ROAD 1212	HILTON HEAD ISLAND	SC	29926
SPA ON PORT ROYAL SOUND HORIZONTAL P		239 BEACH CITY ROAD	HILTON HEAD ISLAND	SC	29926
SPA ON PORT ROYAL SOUND HPR COUNCIL		239 BEACH CITY RD	HILTON HEAD ISLAND	SC	29926
SPA ON PORT ROYAL SOUND HPR INC		239 BEACH CITY RD	HILTON HEAD ISLAND	SC	29926
STERNAD KENNETH B MURPHY KEVIN J ETA		5832 CATAUMET COURT	ST LOUIS	MO	63128
Stevens, Cornelia Groover Ruby Oliv		P. O. Box 21087	Hilton Head Island	SC	29928
TAYLOR MONTIE E MARTIN ALTON LEROY J		447 PAIGE POINT BLF	SEABROOK	SC	29940
TERMEI FARID AGHA ROYA JTROS		3631 OAK ST	DULUTH	GA	30096
THOMPSON DONNA S		14591 ELKIN HIGHWAY 268	RONDA	NC	28670
TODD MARK D		1815 LAKE ROAD XXX	WEBSTER	NY	14580
TOLTON DEBORAH		239 BEACH CITY RD 3332 THE SPA	HILTON HEAD ISL	SC	29926
TOMASELLI STEPHEN JAMES SKALA ALLISO		2462 WINDY HILL DR	PEPPER PIKE	OH	44124
TOOGOOD CAROL A		239 BEACH CITY RD VILLA 1208	HILTON HEAD ISLAND	SC	29926
TOWN OF HILTON HEAD (THE)		ONE TOWN CENTER CT	HILTON HEAD ISLAND	SC	29928
TRUANO FRANCIS I NOEL J JTROS		22 SOVEREIGN DR	HILTON HEAD ISL	SC	29928
TURNER RICK T	TURNER BEVERLY J	PO BOX 1700	DANVILLE	KY	40423
TZELLAS LISA M		18 RED OAK LN	WEST BARNSTABLE	MA	02668
V B BRADLEY CORP		1160 S BUNN RD	HILLSDALE	MI	49242-8330
VALENZUELA REINA I		2 KATHERINE AVE	FAIR LAWN	NJ	07410
VAN HORN FAMILY TRUST UNDER THE WILL		402 MIDDLECREEK RD	HONESDALE	PA	18431
VAN HORN FAMILY TRUST UNDER WILL ELI		402 MIDDLE CREEK RD	HONESDALE	PA	18431
VAN HORN JOHN H JR SUSAN K JTROS		402 MIDDLE CREEK RD	HONESDALE	PA	18431
VERDERBER ROBERT W		3 DARIEN PLACE	EAST NORTHPORT	NY	11731
WALSH FRANK J		4010 CROWN POINTE STREET	CHARLESTON	SC	29492
WARD IRENE F WILLIAM L TRUSTEES (IR		21 SAXONY LANE	WOODBURY	CT	06798
WATTS ALONZO L KAREN E JTROS ETAL		225 WALTON MEADOW LN	ROSWELL	GA	30075
WEAVER CAROL P		112 WILLOW RUN	NORTH AUGUSTA	SC	29841
WEAVER HAROLD J CAY Z JTROS		670 BEACH ISLAND TRACE	DADEVILLE	AL	36853
WECKHORST GERALD K NANCI P		PO BOX 22645	HILTON HEAD ISLAND	SC	29925-2645
WECKHORST GERALD NANCI % NAN-SEAS		PO BOX 22645	HILTON HEAD ISLAND	SC	29925
WEGENER THOMAS B EVE JTROS		27 HERITAGE PKWY	SCOTIA	NY	12302

WELCH THOMAS F ROBIN S JTROS		5 PINEFIELD ROAD	HILTON HEAD ISL	SC	29926
WELLMAN SAMUEL W	WELLMAN KELLY C	575 TUDOR BRANCH	GROVETOWN	GA	30813
WHITE PERRY BARBARA J		PO BOX 21031	HILTON HEAD ISL	SC	29925
WHITSON MICHAEL D	WHITSON LOLA R	298 COMFORT PLACE	BURNSVILLE	NC	28714-4543
WIKE PROPERTIES LLC		113 SHANTY RIDGE LANE	BANNER ELK	NC	28604
WILCOX MICHAEL C REED FRANCES BOOGHE		239 BEACH CITY RD APT 2113	HILTON HEAD ISL	SC	29926
WILKEN LYNNE D		40 FOLLY FIELD RD	HILTON HEAD ISLAND	SC	29928
WILSON DIANNE R		13 VICTORIA CIR	COLLEGEVILLE	PA	19426
WOOD BRIAN S KRUEGER SARAH L JTRO		239 BEACH CITY RD #1103	HILTON HEAD ISLAND	SC	29926
WOODS JAMES M	WOODS VICTORIA E	48 SALT MARSH DR	HILTON HEAD ISLAND	SC	29926
WOODS PATRICIA J		239 BEACH CITY RD UNIT 3111	HILTON HEAD ISLAND	SC	29928
YOUNG CHARLES EDWARD		2627 MOORINGS PKWY	SNELLVILLE	GA	30039
YOUNG VICTOR P KATHARINE JTROS		1 SMOKE CANDLES PLACE	PALM COAST	FL	32164



LAW OFFICE OF  
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**Chester C. Williams**  
ALSO MEMBER LOUISIANA BAR

**Thomas A. Gasparini**  
ALSO MEMBER CALIFORNIA BAR  
(inactive)  
ALSO MEMBER OHIO BAR  
(inactive)

April 18, 2013 <sup>25</sup> *cc*

Ms. Kathleen Carlin  
Planning Commission Secretary  
Town of Hilton Head Island  
One Town Center Court  
Hilton Head Island, SC 29928

**VIA email to [KathleenC@hiltonheadislandsc.gov](mailto:KathleenC@hiltonheadislandsc.gov)  
and  
Hand Delivered**

RE: 217 Beach City Road, LLC - Zoning Map Amendment Application  
ZMA130003 - Our File No. 01687-001

Dear Kathleen:

Enclosed for filing in the record for Zoning Map Amendment Application ZMA130003 and immediate distribution to the Planning Commissioners is a Second Supplement to that application.

We anticipate the filing of a Third Supplement soon, and we reserve the right to do so on behalf of our client, 217 Beach City Road, LLC.

With best regards,

Very truly yours,

LAW OFFICE OF CHESTER C. WILLIAMS, LLC

This signature is an electronic reproduction

Chester C. Williams

CCW\skt  
Enclosure

cc: Dr. Harinderjit Singh  
Rand E. Hanna, III, Esq.  
Teri B. Lewis, AICP  
Jayme D. Lopko, AICP  
Ms. Gail A. Quick

STATE OF SOUTH CAROLINA ) BEFORE THE PLANNING COMMISSION  
 ) OF THE  
 ) TOWN OF HILTON HEAD ISLAND, SC  
COUNTY OF BEAUFORT ) ZMA130003

**SECOND SUPPLEMENT  
TO  
THE ZONING MAP AMENDMENT APPLICATION  
OF  
217 BEACH CITY ROAD, LLC  
REGARDING  
8.56 ACRES, BEACH CITY ROAD**

This Second Supplement to Zoning Map Amendment Application ZMA130003 (the "Application") of 217 Beach City Road, LLC (the "Applicant") is submitted by the Applicant to the Planning Commission of the Town of Hilton Head Island (the "Town") to supplement the Application. The Application as originally filed seeks approval to amend the Official Zoning Map of the Town by changing the base zoning district applicable to an 8.56 acre tract (the "Property") located on Beach City Road in the Town of Hilton Head Island, from the currently applicable RM-4 – Low Density Residential District to either the RM-12 – Moderate to High Density Residential District or the WMU – Water Front Mixed Use District.

This Second Supplement (1) revises the Application to withdraw those portions of the Application that seek to rezone the Property to the WMU – Water Front Mixed Use District, and (2) addresses certain issues that may be raised as a result of comments on the Application by the Federal Aviation Administration, the South Carolina Aeronautics Commission, and Beaufort County.



## **I. WITHDRAWAL OF THE WMU – WATER FRONT MIXED USE DISTRICT REZONING REQUEST**

The Applicant has previously withdrawn those portions of the Application that seek to rezone the Property to the WMU – Water Front Mixed Use District,<sup>1</sup> and hereby confirms that withdrawal.

## **II. THE AIRPORT OVERLAY DISTRICT**

As noted on the Application form, the Property is located in the AZ – Airport Overlay District (the “Airport Overlay District”), which provides for land use controls and restrictions on properties in the vicinity of the Hilton Head Island Airport (the “Airport”). The Airport Overlay District regulations are in Chapter 4, Article IV of the Town’s Land Management Ordinance (the “LMO”).

The Airport Overlay District<sup>2</sup> includes five subdistricts, namely, the Discretionary Noise Level (also referred to as the LDN 60 area), the Significant Noise Level (also referred to as the LDN 65 area), the Approach Path, the Inner Hazard Zone, and the Outer Hazard Zone. The Property is located wholly within the LDN 60 area and the Approach Path, and partly within the Outer Hazard Zone.<sup>3</sup>

As explained below, there is nothing in the Airport Overlay District restrictions that prohibits, or even discourages, residential development on the Property at heights up to, and even exceeding, the 45 feet maximum height allowed in the RM-12 District.

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<sup>1</sup> See the April 18, 2013 letter from the undersigned to Teri B. Lewis, AICP, the Town’s LMO Official.

<sup>2</sup> See the November 3, 1999 Airport Overlay District Map, which is part of the Town’s Official Zoning Map.

<sup>3</sup> See the marked up excerpt from the Airport Overlay District Map, which shows the outline of the Property in red, attached to this Second Supplement as Exhibit A.



## **A. LDN 60 AREA**

The LDN 60 area includes the entire area within the Airport Overlay District.<sup>4</sup> The only Airport Overlay District restrictions on lands in the LDN 60 area are that no use of any land or water be made in a manner as (a) to create electrical interference with navigational signals or radio communication between the airport and aircraft, (b) to make it difficult for pilots to distinguish between airport lights and other lights (*i. e.*, colors and patterns), (c) to result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, (d) to create bird strike hazards, or (e) to otherwise in any way endanger or interfere with the landing, takeoff or maneuvering of aircraft intending to use the Airport.<sup>5</sup>

Note there is no prohibition on residential development in the LDN 60 area (indeed, the currently permitted single family residential subdivision on the Property is in the LDN 60 area), though noise mitigation measures are encouraged for all proposed residential development.

Note, also, there are no restrictions on height for any proposed development, residential or otherwise, in the LDN 60 area regulations.

## **B. THE APPROACH PATH**

The Approach Path subdistrict of the Airport Overlay District, which generally includes the areas extending out from the north and south ends of the Airport runway, was established to insure that development near the Airport will not pose safety problems due to vertical protrusions. Its main focus is a height limitation that increases as the linear distances from the runway ends increase. Within the Approach Path, no building, structure, utility pole or protrusion of any kind thereof shall be permitted to extend to a height measured from the mean elevation of the airport runway that exceeds the limits established in LMO Section 16-4-402(C)(a). With respect to the north

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<sup>4</sup> See LMO Section 16-4-402(A)(1). The other four subdistricts in the AZ Overlay District are “subsections of the Discretionary Noise Level.”

<sup>5</sup> See LMO Section 16-4-403(A).



end of the Airport runway, the maximum permitted height increases by a ratio of 1:34 (*i. e.*, for every 34 feet one moves away from the end of the runway, the maximum height increases by 1 foot).

As the Planning Commissioners will recall, this height limitation has over the last several years been the topic of much discussion as it relates to Beaufort County's tree trimming and removal activities on and in the vicinity of the Airport. As part of one of its tree trimming and removal permit applications to the Town, Beaufort County commissioned the preparation of very detailed plans showing the height limitations of the Approach Path area. Those plans show that by the time one reaches the Property, the height limitations of the Approach Path allow for construction and development on the Property at a height exceeding 80 feet.<sup>6</sup>

### **C. THE OUTER HAZARD ZONE**

The Outer Hazard Zone is an area that demonstrates a higher statistical probability of aircraft accidents occurring.<sup>7</sup> Restrictions on development in the Outer Hazard Zone are limited to required construction techniques and occupancy loads, and include a prohibition on uses designed to serve children or those with low effective mobility, such as day care centers, hospitals, assisted living facilities, and nursing homes.

There is nothing in the Outer Hazard Zone restriction that prohibits, or even discourages, residential use. Further, as evidenced by the existing single family residential subdivision on the Property, there is nothing in the Outer Hazard Zone restriction that leads one to believe that residential use on the property is incompatible with the operations of the Airport.

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<sup>6</sup> See the Construction Plans for Runway 21 Offsite Tree Obstruction Removal Project at Hilton Head Island Airport (HXD) prepared by Wilbur Smith Associates, Charles F. Stearns, PE, dated June 28, 2011 (the "Wilbur Smith Plans"). A reduced size copy of Page 4 of the Wilbur Smith Plans is attached to this Second Supplement as Exhibit B. Note the Property is not actually shown on Page 4 of the Wilbur Smith Plans, as it is located further north of the Airport, outside the scope of Page 4 of the Wilbur Smith Plans.

<sup>7</sup> See LMO Section 16-4-402(A)(5).



### **III. THE AIRPORT AND THE COMPREHENSIVE PLAN**

The Airport is referred to in several places in the Town's Comprehensive Plan, including the following:

1. Sections 7.5 and 7.6 of the Economic Development Element acknowledge that the Airport is limited in capacity (around 4% of visitors to the Town historically arrive by air), and that the expansion capability of the Airport is limited. Figures 7.3 and 7.4 in the Economic Development Element shows that both monthly tower operations at the Airport and total passenger arrivals at the Airport seem to have peaked in 2007, and were declining in 2008 and 2009.
2. Implementation Strategy 8.10(A) in the Land Use Element calls for a review of the appropriate locations of certain land uses in areas such as the Airport Overlay District.
3. Section 9.6 of the Transportation Element discusses the Airport and air transportation. Goal 9.6 of the Transportation Element is to ensure that Airport operations remain safe while providing air travel to the Town, and to ensure that development surrounding the Airport is designed and constructed to minimize the negative impacts of being located near the Airport.
4. Implementation Strategy 9.6(C) of the Transportation Element calls for review development proposals within the Airport Overlay District to ensure the site is designed with the maximum safety possible for the occupants of the site.

The Applicant readily acknowledges that any redevelopment of the Property under the RM-12 District, if the Application is approved, must be undertaken in a manner that will fully and completely comply with the requirements of the Airport Overlay District, thereby assuring compliance with the provisions of the Comprehensive Plan relating to the Airport.



#### **IV. COMMENTS ON THE APPLICATION BY THE FEDERAL AVIATION ADMINISTRATION, THE SOUTH CAROLINA AERONAUTICS COMMISSION, AND BEAUFORT COUNTY**

The Town Staff apparently solicited, and has now received, comments concerning the Application from the Federal Aviation Administration (the “FAA”), the South Carolina Aeronautics Commission (the “Aeronautics Commission”), and Beaufort County, SC (“Beaufort County”). Beaufort County is the owner of the Airport.

##### **A. THE FAA’S COMMENTS**

The FAA provided comments concerning the Application by way of the March 28, 2013 letter from Parks Preston, Program Manager for the FAA Atlanta Airports District Office to Teri B. Lewis, AICP (the “FAA Letter”).<sup>8</sup> The FAA Letter states that the FAA “... encourages land uses that are considered to be incompatible with airports (such as residential, schools, and churches) to locate away from airports, and encourages land uses that are more compatible (such as industrial and commercial uses) to locate around airports.” The FAA also asserts that the “... area in question ... is directly under the final approach to Runway 21.”

The FAA provides no supporting documents or other references concerning its assertion that residential development on the Property is “considered to be incompatible” with airports. The FAA Letter does not identify who, or what, determines what the FAA does, and does not, consider to be incompatible with airports.

Notwithstanding the FAA’s position, the LMO does not take a similar position, as residential use on the Property has already been approved and permitted.

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<sup>8</sup> A copy of the FAA letter is attached to this Second Supplement as Exhibit C.



## **B. THE AERONAUTICS COMMISSION'S COMMENTS**

The Aeronautics Commission provided comments on the Application in a March 29, 2013 email from Mihir Shah, PE, AICP, Airport Planning & Environmental Engineer, to Gary Kubic, Beaufort County Administrator (the "Aeronautics Commission Email").<sup>9</sup> The Aeronautics Commission Email asserts that rezoning the Property to allow for higher residential density is incompatible with the Airport for several reasons:

1. The Aeronautics Commission Email first says the Property "... is located just outside the Airport's existing Runway Protection Zone (RPZ) for Runway End 21", and that higher density residential land uses "are to be strongly discouraged in the inner approach area."
2. The Aeronautics Commission Email next says the Property "... would be located at the very edge of the Airport's future Runway End 21 RPZ based on the FAA-approved Airport Layout Plan updated in 2011, which depicts Runway 21 being extended in the direction of [the Property]."
3. Third, the Aeronautics Commission Email says the Aeronautics Commission "... is currently drafting statewide airport land use policies ... [that] will almost certainly consider dense residential developments ... as incompatible [with airports]."

To understand and evaluate the assertions made in the Aeronautics Commission Email, it is important to be familiar with what is referred to as the Airport Layout Plan for the Airport. There are three versions of the Airport Layout Plan for the Airport included in the Hilton Head Island Airport Master Plan Update prepared by Talbert & Bright dated September 8, 2011 (the "Airport Master Plan"). Each of those Airport Layout Plans (the Current

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<sup>9</sup> A copy of the Aeronautics Commission Email is attached to this Second Supplement as Exhibit D.



Configuration, the Phase 1 Development, and the Ultimate Development)<sup>10</sup> show, among other things, the boundary of the Runway Protection Zone<sup>11</sup> at the north end of the Airport Runway.

The Airport Layout Plan (Current Configuration) shows current conditions at the Airport. While the Applicant admits that the Property is certainly in the vicinity of the Airport, it is clear from the Airport Layout Plan (Current Configuration) that the Property is not in the existing Runway Protection Zone for Runway End 21. In fact, contrary to the assertion made in the Aeronautics Commission Email, the Property is not “just outside” the existing Runway Protection Zone; instead the southeastern corner of the Property is approximately 1,100 feet from the northern end of the Runway Protection Zone.

The Airport Layout Plan (Phase 1 Development) shows the conditions at the Airport assuming the runway is lengthened from the current 4,300 feet to 5,000. Again, it is clear from the Airport Layout Plan (Phase 1 Development) that the Property is well outside the future Runway Protection Zone, being located some 800 feet from the northern end of the Runway Protection Zone.

In the Applicant’s opinion, it is not necessary to address any issues raised by virtue of the Airport Layout Plan (Ultimate Development), which

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<sup>10</sup> Reduced size copies of the Airport Layout Plan (Current Configuration), the Airport Layout Plan (Phase 1 Development), and the Airport Layout Plan (Ultimate Development), all dated September 1, 2011, marked up to show the outline of the Property in red near the bottom of each page, are attached to this Second Supplement as Exhibits E, F, and G, respectively. Note the versions of the three Airport Layout Plans included in the Airport Master Plan are based on aerial photographs of the area of the Airport. The versions of the Airport Layout Plans attached to this Second Supplement as Exhibits E, F, and G do not include the aerial photograph information, and were obtained from the Aeronautics Commission’s web site. Similar to Page 4 of the Wilbur Smith Plans referred to in Footnote 4 above, the majority of the Property is not shown on the Airport Layout Plans, as it is, for the most part, outside the scope of the Airport Layout Plans.

<sup>11</sup> The Airport Master Plan refers to the Runway Protection Zone in some places as the Approach Runway Protection Zone, to distinguish it from the Departure Runway Protection Zone. The three Airport Layout Plans all show both the Runway Protection Zone and the Departure Runway Protection Zone, each as different areas. The Aeronautics Commission Email refers only to the Runway Protection Zone, and does not refer to the Departure Runway Protection Zone.

shows the conditions at the Airport assuming the runway is lengthened even further to 5,400 feet, because a runway of that length is currently not permitted under the LMO.<sup>12</sup> Nevertheless, even if the Airport runway was lengthened to 5,400 feet, as the Aeronautics Commission Email acknowledges, the Property would still not be located in the Runway Protection Zone.<sup>13</sup>

The Applicant is puzzled by the further assertion in the Aeronautics Commission Email that allowing denser residential development on the Property would seriously impact the viability of any planned future extension of the Airport runway due to incompatible land uses, and could potentially affect grant funding related to that extension, especially considering that the Property is excluded from the areas under consideration in the Airport Master Plan.

The Aeronautics Commission Email also advises that the Aeronautics Commission is currently drafting statewide airport land use policies to guide local governments as required by Section 55-13-5 of the Revised Title 55 enabling legislation,<sup>14</sup> and then asserts, without any documentary or other support, that the as yet unfinished land use standards “will almost certainly consider dense residential developments ... as incompatible [with airports].” Not only is this assertion wholly unsupported by any reference of any sort, it is, at least at this time, mere speculation about what those policies may contain

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<sup>12</sup> See LMO Section 16-4-1307. The Airport, or more specifically, an Aviation/Surface Passenger Terminal, is a Special Exception Use, with a condition that the length of the runway is limited to 5,000 linear feet. Absent an amendment of the LMO, it is illegal for the Airport runway to be lengthened to 5,400 feet.

<sup>13</sup> The Airport Layout Plan (Ultimate Development) shows that if the Airport runway is at some point lengthened to 5,400 feet, the Property would still be located approximately 800 feet from the northern end of the Runway Protection Zone, though the Applicant does acknowledge that Airport Layout Plan (Ultimate Development) shows that the Property would be located at the edge of the Departure Runway Protection Zone. On this point, the Aeronautics Commission Email is wrong: the Property will not be located “at the very edge of the Airport’s future Runway End 21 RPZ”; instead, the Property will be located at the edge of the Airport’s future Runway 21 DPRZ, or Departure Runway Protection Zone.

<sup>14</sup> See Title 55, Chapter 13, Section 5 of the Code of Laws of South Carolina (1976), as amended (the “SC Code”).



when finalized.<sup>15</sup> In response to a request by counsel for the Applicant for copies of the draft airport-compatible land use standards, the Aeronautics Commission advised that they are in the process of creating the required regulations and maps, which are currently under review by a technical advisor consultant firm, attorneys, city and county planning organizations, and the Aeronautics Commission, and they are “unable to provide land use drawings to county and city officials to supplement Beaufort County and Hilton Head land use ordinances.”<sup>16</sup>

In other words, the Aeronautics Commission is arguing against the Application based on draft regulations and maps that are not approved or adopted, and that the Aeronautics Commission will not share. Because the Applicant has no way to review the underpinnings of the Aeronautics Commission’s arguments, due process and fairness seems to require that the Planning Commission disregard those assertions, which are not only unsupported by any available evidence, but are, in fact, contradicted by the FAA-approved Airport Layout Plans.

The Aeronautics Commission urges the Town to “... appropriately manage land use around Hilton Head Airport ...” in order to protect the public investment in the Airport. The Applicant believes the Town has done exactly that, as evidenced by the LMO’s Airport Overlay District regulations. However, it seems clear to the Applicant that the Aeronautics Commission now is not happy with what has served the Town well for many years, and wants more. The Applicant should not be the one to pay the price sought by the Aeronautics Commission.

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<sup>15</sup> Note that SC Code Section 55-13-5 was enacted effective June 18, 2012 and even now, ten (10) months later, the Aeronautics Commission has not yet created the required airport maps. Until the required maps are completed, approved, and published, nothing pertaining to those maps is pertinent to the Application.

<sup>16</sup> See the copy of the April 9, 2013 email from Paul Werts, the Executive Director of the South Carolina Aeronautics Commission, attached to this Second Supplement as Exhibit H.



### C. BEAUFORT COUNTY'S COMMENTS

The April 3, 2013 letter from Mr. Kubic to Mrs. Lewis (the "County Letter")<sup>17</sup> merely parrots the recommendations of the FAA and the Aeronautics Commission without further discussion, or documentary or evidentiary support.

### V. THE SOUTH CAROLINA AIRPORTS ACT

Originally enacted in 1962 and amended in 2012, as noted above, the South Carolina Airports Act is set out in SC Code Section 55-9-10, *et seq.* (the "Airports Act"). Section 55-9-260 of the Airports Act specifically empowers a municipality that has an airport hazard area within its territorial limits to adopt, administer, and enforce, consistent with the Airports Act, zoning regulations for the airport hazard area, including specifying land uses permitted, and regulating and restricting, for the purpose of preventing airport hazards, the heights of structures and trees. SC Code Section 55-9-330 addresses the permitted contents of airport zoning regulations. More particularly, SC Code Section 55-9-330(A) provides

All airport zoning regulations adopted pursuant to this chapter shall be reasonable and none shall impose any requirement or restriction which is not necessary to effectuate the purposes of this chapter. [Emphasis added.]

### VI. DISCUSSION

The Airport Act requires that all airport zoning regulations be reasonable, and not impose any requirement or restriction on land uses which is not necessary. The Applicant submits that the LMO's Airport Overlay District regulations do exactly that. However, when it comes to the Property and the

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<sup>17</sup> A copy of the County Letter is attached to this Second Supplement as Exhibit I.



Application, that no longer seems to be good enough for the FAA, the Aeronautics Commission, and Beaufort County.

At their core, the arguments against the Application contained in the FAA Letter, the Aeronautics Commission Email, and the County Letter are apparently based upon safety concerns, and the possible future extension of the Airport runway. Residential uses on the Property are “considered to be incompatible”, and are “strongly discouraged”. Considering the numerous references to the “final approach to Runway 21”, and the “Runway Protection Zone”, and the “inner approach area”, the most likely basis for the positions taken by the FAA, the Aeronautics Commission, and Beaufort County for their opposition to the Application is safety. It is interesting to note, however, that none of the comments in opposition to the Application actually use the word “safety” in connection with the proposed rezoning of the Property; rather, the FAA and the SC Aeronautics Commission prefer to use the terms “incompatible” and “strongly discouraged” to characterize their concerns.

At the end of the day, the area past the end of Runway 21 is either “safe”, or it is “unsafe”. With regard to any land in the vicinity of any airport, safety is not a matter of degree. If the Property is “safe” for single family and multi-family residential development in the RM-4 District, adding additional density cannot make it “unsafe”. The area is either “safe” for residential uses, or it is not.

Finally, the arguments against the Application contained in the FAA Letter, the Aeronautics Commission Email, and the County Letter come down to this: The Application should not be approved because to do so might have an adverse impact on something the Airport might do at some time in the future. The FAA and the Aeronautics Commission Email both argue that residential use on the Property is “incompatible” with the Airport, but neither the LMO nor the Town’s Comprehensive Plan support that assertion. In fact, not only is residential use currently permitted on the Property under the currently applicable RM-4 zoning, residential use is essentially the only currently permitted use on the Property. It seems almost specious for the FAA, the Aeronautics Commission, and Beaufort County to argue that what is the only economically viable permitted use on the Property is “incompatible” with



the Airport, and should not be allowed on the Property, or should not be allowed to expand on the Property.

The Applicant notes that neither the FAA, the Aeronautics Commission, nor Beaufort County have cited any provisions of the LMO or the Town's Comprehensive Plan in support of their arguments against approval of the Application.

The Applicant suspects that the true reason why the FAA, the Aeronautics Commission, and Beaufort County all oppose the Application is because of some perceived notion that allowing an increase in the density available to the Property may have an adverse impact on future plans to lengthen the Airport's Runway 21 in the direction of the Property. If that is the case, then the Applicant submits that the as yet unapproved and unpermitted plans of a property owner in the vicinity of the Property, which may or may not ever come to pass, is not a proper reason to deny the Application.

The fact is, the Property has been zoned for essentially only residential use for at least 13 years, ever since the October 5, 1999 adoption by the Town Council of the amendments to the LMO that implemented the Ward One Master Land Use Plan. Further, the fact is, substantial parcels in the immediate vicinity of the Property have been zoned for up to 12 residential density units per acre for at least 13 years, again ever since the 1999 implementation of the Ward One Master Land Use Plan. It's a little late now for the FAA, the Aeronautics Commission, and Beaufort County to be arguing against residential use on the Property.

## **VII. CONCLUSION**

The Applicant continues to believe the Application is in conformance with the LMO and the Town's Comprehensive Plan, and meets the criteria set forth in LMO Section 16-3-1505. Accordingly, the Applicant again respectfully requests that the Planning Commission (a) consider this Application and the testimony and supporting documentation which will be entered into the record; (b) find:



1. That the Application and the supporting testimony and documentation establish that the requested zoning map amendment is consistent with the Town's Comprehensive Plan; and

2. That the Application and the supporting testimony and documentation establish that while the current use on the Property is consistent with the present zoning, that current use has failed economically, and the proposed rezoning is also consistent with conforming uses of nearby properties and with the character of the neighborhood around the Property; and

3. That the Application and the supporting testimony and documentation establish that the Property is suitable for the uses permitted by the zoning district that would be made applicable to the Property by the requested zoning map amendment; and

4. That the Application and the supporting testimony and documentation establish that the Property is not economically suitable for the uses permitted by the zoning district that is currently applicable to the Property; and

5. That the Application and the supporting testimony and documentation establish that the marketability of the Property for uses permitted by the zoning district that is currently applicable to the Property will be increased by the approval of the requested zoning map amendment; and

6. That the Application and the supporting testimony and documentation establish that there will be no material change in the Property's requirements for sewer, water and storm water facilities, and that such services generally suitable and adequate for the existing use of the Property under the requested zoning map amendment are available to the Property; and

(c) Recommend to the Town Council that they approve this Application and the rezoning of the Property to the RM-12 District.



Respectfully submitted on behalf of the Applicant this 25<sup>th</sup> day of April,  
2013.



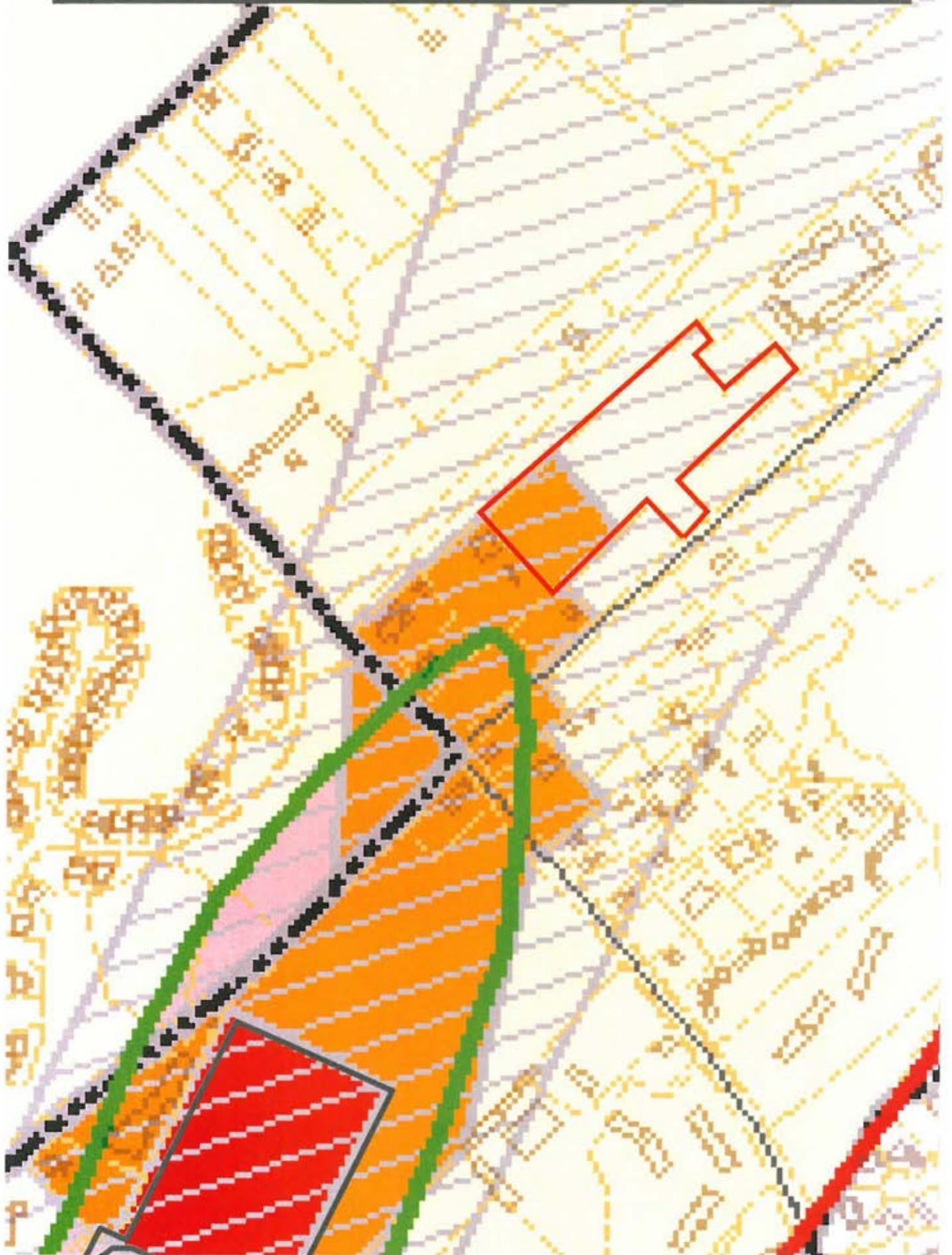
This signature is an electronic reproduction

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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



Exhibit A to Second Supplement (1 Page)







# Exhibit C to Second Supplement (2 Pages)

U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

Federal Aviation Administration  
Atlanta Airports District Office

1701 Columbia Avenue  
Campus Building, Suite 2-260  
College Park, Georgia 30337

March 28, 2013

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

RE: Proposed Rezoning near the Hilton Head Island Airport

Dear Ms. Lewis:

The Hilton Head Island Airport (HXD) forwarded your message regarding the rezoning application for the property located at Circlewood Drive (also known as Beach Place Subdivision). FAA understands that the property is currently zoned RM-4 (Low Density Residential) and the applicant is proposing to rezone the property to either RM-12 (Moderate to High Density Residential) or WMU (Waterfront Mixed Use). FAA encourages land uses that are considered to be incompatible with airports (such as residential, schools, and churches) to locate away from airports and encourages land uses that are more compatible (such as industrial and commercial uses) to locate around airports. The area in question (see attachment) is directly under the final approach to Runway 21. We recommend that the area **not** be rezoned to "Moderate to High Density Residential."

If you should have any questions or need additional information, please call me at 404-305-7149 or [Parks.Preston@faa.gov](mailto:Parks.Preston@faa.gov). Thank you.

Sincerely,

Parks Preston  
Program Manager

Cc: Gary Kubic, Beaufort County Administrator  
Robert McFee, P.E., Director of Engineering & Infrastructure  
James Stephens, SCAC  
Judy Elder, TB&E



CLUBWAY DR

WILDBIRD LANE

HUNTER POINT

BEACH CITY ROAD

SEASIDE DR

KERRY HILL LANE

WINDY HILL DRIVE

SUMMIT LANE

WUTCA DRIVE

BAYGAL ROAD

BLUFF ROAD

WILLOW ROAD

KIDSWAY

OUTPOST BLVD

TABER ROAD

RAMPART LANE

FORT WICK DRIVE

# Exhibit D to Second Supplement (2 Pages)

Judy Elder

**From:** Shah, Mihir <mshah@aeronautics.sc.gov>  
**Sent:** Friday, March 29, 2013 4:24 PM  
**To:** gkubic@bcgov.net  
**Cc:** Werts, Paul; Stephens, James; Parks.Preston@faa.gov; teril@hiltonheadislandsc.gov; rmcfee@bcgov.net; Judy Elder  
**Subject:** Proposed Rezoning near HHI Airport & Compatible Land Use

Dear Mr. Kubic:

The Federal Aviation Administration has forwarded to us a message from Ms. Teri B. Lewis, LMO Official for the Town of Hilton Head Island, regarding a rezoning application for the property located at Circlewood Drive (also known as Beach Place Subdivision), and located approximately 3,000 feet north of Runway End 21 at Hilton Head Island Airport. The message states that the applicant proposes to rezone the property from the current RM-4 (Low Density Residential) to either RM-12 (Moderate to High Density Residential) or WMU (Waterfront Mixed Use). The SC Aeronautics Commission emphasizes and promotes compatible land use and development around publicly-owned airports in the state, as per our as per new airport-related land use provisions in our agency's revised enabling legislation (Title 55 of the South Carolina Code of Laws). Ensuring compatible land use around the Airport will protect the investments made and anticipated to be made in the facility.

The proposed rezoning to higher residential densities would be considered by SC Aeronautics to be a land use that is **incompatible** with Hilton Head Island Airport, for the following reasons:

- The proposed rezoning is located just outside the Airport's existing Runway Protection Zone (RPZ) for Runway End 21. As per current FAA guidance, industry research, and typical airport zoning ordinances which regulate land uses outside the RPZ, residential land uses, especially higher-density ones, are to be strongly discouraged in the inner approach area. Concentrations of people in this area pose a major safety and quality of life (noise) risk because of aircraft flying in low proximity to the ground.
- The proposed rezoning would be located at the very edge of the Airport's future Runway End 21 RPZ based on the FAA-approved Airport Layout Plan updated in 2011, which depicts Runway End 21 being extended in the direction of the subject property. Allowing denser residential development would seriously impact the viability of any planned future extension due to incompatible land uses, and could potentially affect grant funding related to that extension.
- SC Aeronautics is currently drafting statewide airport land use policies, specifically airport-compatible land use standards to guide local governments, and land use notification and procedures as required by Section 55-13-5 of the revised Title 55 enabling legislation. Both the land use standards and notification and review procedures will almost certainly consider dense residential developments such as the Circlewood Drive proposal as incompatible.

In summary, SC Aeronautics encourages Beaufort County and the Town of Hilton Head Island to appropriately manage land use around Hilton Head Island Airport, especially considering its recent Airport Layout Plan update showing a planned lengthening of the runway. Moreover, the Airport has and will likely continue to receive FAA and state grant money; as such, the County and the Town are expected to use zoning, building permits, and other land use techniques to protect the public investment in the facility.

Should you have any questions or comments regarding the Airport, please do not hesitate to contact me.

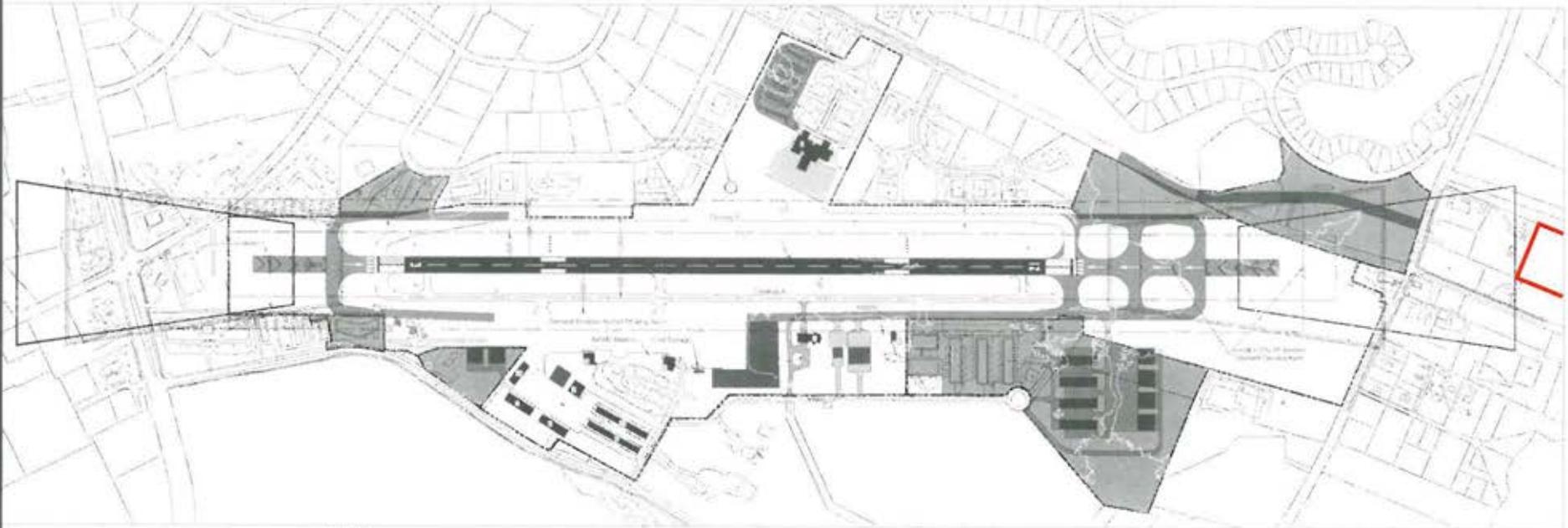
Regards,  
Mihir Shah



**Mihir P. Shah, PE, AICP**  
*Airport Planning & Environmental Engineer*  
*South Carolina Aeronautics Commission*  
*2553 Airport Boulevard*  
*West Columbia, South Carolina 29170*  
*Tel: 803-896-6257 Fax: 803-896-6266*  
*Cell: 803-719-6531*  
*E-mail: [mshah@aeronautics.sc.gov](mailto:mshah@aeronautics.sc.gov)*  
*Websites: [www.scaeronautics.com](http://www.scaeronautics.com)*







**LEGEND**

- CURRENT PHASE TERMINAL BUILDING DEVELOPMENT
- CURRENT PHASE PARKING DEVELOPMENT
- PHASE I RUNWAY PROPERTY ACQUISITION
- PHASE I RUNWAY AND TAXIWAY DEVELOPMENT
- THIS SNA# 2011-00-000-000
- ULTIMATE PHASE PROPERTY ACQUISITION FOR RUNWAY DEVELOPMENT
- ULTIMATE PHASE RUNWAY AND TAXIWAY DEVELOPMENT
- ULTIMATE PROPERTY ACQUISITION
- FUTURE AIRPORT TERMINAL PARKING DEVELOPMENT
- FUTURE GARAGE DEVELOPMENT
- FUTURE TAXIWAY DEVELOPMENT
- FUTURE APRON DEVELOPMENT
- FUTURE ROADWAY AND PARKING DEVELOPMENT
- ULTIMATE RUNWAY PROTECTION ZONE (RPZ)
- ULTIMATE DISMOUNTED RUNWAY PROTECTION ZONE (DRPZ)
- ULTIMATE RUNWAY SAFETY AREA
- ULTIMATE RUNWAY OBJECT FREE AREA
- ULTIMATE GRADIENT FREE ZONE
- ULTIMATE BUILDING RESTRICTION LINE
- RUNWAY OBJECT FREE AIRCRAFT BUILDING RESTRICTION LINE
- ULTIMATE RUNWAY SAFETY AREA OBJECT FREE ZONE
- AIRPORT PROPERTY LINE
- PHASE I AIRPORT PROPERTY LINE
- ULTIMATE AIRPORT PROPERTY LINE
- AIRPORT BUILDING

**AIRPORT BUILDINGS**

NO.	NAME	ACRES
1	Terminal Building	10.2
2	Passenger Service Building	10.1
3	Control Tower	10.0
4	Fixed Base Operations Building	10.0
5	Flight Deck	10.0
6	Hangar	10.0
7	Garage	10.0
8	Warehouse	10.0
9	Office Building	10.0
10	Warehouse	10.0
11	Warehouse	10.0
12	Warehouse	10.0
13	Warehouse	10.0
14	Warehouse	10.0
15	Warehouse	10.0
16	Warehouse	10.0
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 THE INFORMATION ON THIS DOCUMENT IS FOR INFORMATIONAL PURPOSES ONLY. IT IS NOT TO BE USED FOR ANY OTHER PURPOSE. THE USER OF THIS DOCUMENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE USER OF THIS DOCUMENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.



**CONDITIONALLY APPROVED**  
 FEDERAL AVIATION ADMINISTRATION  
 APPROVAL SUBJECT TO COMMENTS IN AIRPORT LAYOUT PLAN  
 7/3/11  
 AIRPORT SAFETY AREA

BEAUFORT COUNTY, SOUTH CAROLINA  
 COUNTY ADMINISTRATION  
 DATE 9/7/11

WILSON HEARSH SLACK AIRPORT  
 WILSON FIELD BOARD, WILSON COUNTY, SOUTH CAROLINA  
 1000 WILSON FIELD ROAD  
 WILSON, SOUTH CAROLINA 29389-0001  
 (803) 785-3444

**Airport Layout Plan (Ultimate Development)**  
**TALBERT & BRIGHT** Columbia, South Carolina  
 707 JEFFERSON STREET, SUITE 1000  
 COLUMBIA, SOUTH CAROLINA 29204  
 (803) 799-1111  
 SHEET 4 OF 14

# Exhibit H to Second Supplement (1 Page)

**From:** Werts, Paul <pwerts@aeronautics.sc.gov>  
**Sent:** Tuesday, April 09, 2013 3:50 PM  
**To:** firm@ccwlaw.net  
**Subject:** HXD - Hilton Head Airport

Law Office of Chester Williams –

Per your request, the airport layout plan of the Hilton Head Airport approved by the Federal Aviation Administration and the South Carolina Aeronautics Commission (SCAC) is too large to e-mail. Please go to our web page [www.scaeronautics.com](http://www.scaeronautics.com) and click on the ftp link at the bottom of the page. Your user name: aeroguest1 password: xGSR8qyr. The drawings are located in the Hilton Head folder. The firm also requested land use maps per chapter 13 of Title 55. As discussed, the Division of Aeronautics is in the process of creating regulations and maps per the code as approved in July 2012. Currently, maps and land use minimum standards are under review by a technical advisor consultant firm, attorneys, city and county planning organizations, and SCAC. At this time, we are unable to provide land use drawings to county and city officials to supplement Beaufort County and Hilton Head land use ordinances.

Regards,

Paul Werts  
Executive Director  
South Carolina Aeronautics Commission  
2553 Airport Blvd.  
West Columbia, SC 29170  
Office - 803-896-6262  
Cell - 803-429-6818  
[www.scaeronautics.com](http://www.scaeronautics.com)

# Exhibit I to Second Supplement (1 Page)

## OFFICE OF THE COUNTY ADMINISTRATOR COUNTY COUNCIL OF BEAUFORT COUNTY

GARY T. KUBIC  
COUNTY ADMINISTRATOR

CHERYL HARRIS  
EXECUTIVE ASSISTANT

ADMINISTRATION BUILDING  
100 RIBAUT ROAD  
POST OFFICE DRAWER 1228  
BEAUFORT, SOUTH CAROLINA 29901-1228  
TELEPHONE: (843) 255-2026  
FAX: (843) 255-9403  
[www.beaufort.net](http://www.beaufort.net)

BRYAN J. HILL  
DEPUTY COUNTY ADMINISTRATOR

JOSHUA A. GRUBER  
STAFF ATTORNEY

April 3, 2013

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

RE: Proposed Rezoning of Circlewood Drive (also known as Beach City Place Subdivision)

Dear Ms. Lewis:

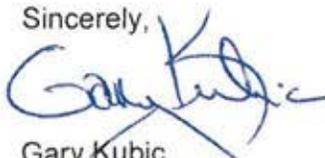
The purpose of this letter is to respond to your email of March 27, 2013, regarding the proposed rezoning of the property on Circlewood Drive from the current RM-4 (Low Density Residential) to either RM-12 (Moderate to High Density Residential) or WMU (Waterfront Mixed Use). The property in question is located approximately 3,000 feet north of the end of Runway 21 at Hilton Head Island Airport and within the approach to Runway 21.

FAA has sent a letter recommending that the Town not rezone the property as residential property is considered incompatible with airport operations. The South Carolina Aeronautics Commission (SCAC) has also provided input stating that the proposed rezoning to higher residential densities would be considered by SCAC to be a land use that is incompatible with Hilton Head Island Airport.

Beaufort County concurs with the FAA and SCAC, and respectfully requests that the Town not approve the rezoning request.

Should you have any questions regarding these matters, please do not hesitate to contact me.

Sincerely,



Gary Kubic  
County Administrator

GK:ch

cc: Rob McFee, Division Director, Engineering and Infrastructure



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)

April 25, 2013

Ms. Kathleen Carlin  
Planning Commission Secretary  
Town of Hilton Head Island  
One Town Center Court  
Hilton Head Island, SC 29928

**VIA email to [KathleenC@hiltonheadislandsc.gov](mailto:KathleenC@hiltonheadislandsc.gov)  
and  
Hand Delivered**

RE: 217 Beach City Road, LLC - Zoning Map Amendment Application  
ZMA130003 - Our File No. 01687-001

Dear Kathleen:

Enclosed for filing in the record for Zoning Map Amendment Application  
ZMA130003 and immediate distribution to the Planning Commissioners is a  
Third Supplement to that application.

With best regards,

Very truly yours,

LAW OFFICE OF CHESTER C. WILLIAMS, LLC

This signature is an electronic reproduction  
Chester C. Williams

CCW\skt  
Enclosure

cc: Dr. Harinderjit Singh  
Rand E. Hanna, III, Esq.  
Teri B. Lewis, AICP  
Jayme D. Lopko, AICP  
Ms. Gail A. Quick

**STATE OF SOUTH CAROLINA** ) **BEFORE THE PLANNING COMMISSION**  
 ) **OF THE**  
 ) **TOWN OF HILTON HEAD ISLAND, SC**  
**COUNTY OF BEAUFORT** ) **ZMA130003**

**THIRD SUPPLEMENT**  
**TO**  
**THE ZONING MAP AMENDMENT APPLICATION**  
**OF**  
**217 BEACH CITY ROAD, LLC**  
**REGARDING**  
**8.56 ACRES, BEACH CITY ROAD**

This Third Supplement to Zoning Map Amendment Application ZMA130003 (the "Application") of 217 Beach City Road, LLC (the "Applicant") is submitted by the Applicant to the Planning Commission of the Town of Hilton Head Island (the "Town") to supplement the Application. The Application as originally filed seeks approval to amend the Official Zoning Map of the Town by changing the base zoning district applicable to an 8.56 acre tract (the "Property") located on Beach City Road in the Town of Hilton Head Island, from the currently applicable RM-4 – Low Density Residential District to either the RM-12 – Moderate to High Density Residential District or the WMU – Water Front Mixed Use District.

The Second Supplement to the Application (1) revises the Application to withdraw those portions of the Application that seek to rezone the Property to the WMU – Water Front Mixed Use District, and (2) addresses certain issues that may be raised as a result of comments on the Application by the Federal Aviation Administration (the "FAA"), the South Carolina Aeronautics Commission (the "Aeronautics Commission"), and Beaufort County.

This Third Supplement addresses certain issues raised in the Staff Report of the Town Community Development Department dated April 10, 2013



(the "Staff Report").<sup>1</sup> The sections of this Third Supplement refer to the same sections of the Staff Report. This Third Supplement ignores those portions of the Staff Report directed at the rezoning of the Property to the WMU – Mixed Waterfront District, since those portions of the Application have been withdrawn.<sup>2</sup>

## **I. THE APPLICATION SUMMARY**

The Staff Report accurately recognizes that the only real issue with regard to the Application is development density on the Property. The permitted uses in the existing RM-4 District and the proposed RM-12 District are exactly the same.

## **II. BACKGROUND**

The Staff Report correctly characterizes the Property as located in the Airport Overlay Zone and in the Outer Hazard Zone.<sup>3</sup> The Staff Report also correctly identifies the height restriction imposed by the Airport Overlay Zone as a 1:34 increase, measured from the end of the runway primary surface.

The Staff Report also correctly summarizes the marketability history of the Property by acknowledging the existence on the Property of a failed single family residential development.

The Applicant notes the attachment to the Staff Report, without comment by the Town Staff, of letters from the FAA and Beaufort County, and an email from the Aeronautics Commission. The content of these

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<sup>1</sup> Although dated April 10, 2013, the Staff Report was first published on April 22, 2013.

<sup>2</sup> See the April 18, 2013 letter from the undersigned to Teri B. Lewis, AICP, the Town's LMO Official.

<sup>3</sup> The Staff Report does not mention that only a portion of the Property is located in the Outer Hazard Zone.



communications is discussed at length in the Second Supplement to this Application.

### **III. CONSISTENCY WITH THE COMPREHENSIVE PLAN**

The Staff Report identifies five (5) Goals, and two (2) Implementation Strategies from the Town's May 4, 2010 Comprehensive Plan (the "Comprehensive Plan") as being relevant to the Application. The original Application addressed two (2) of the Goals (8.1 – Existing Land Use, and 8.4 – Existing Zoning Allocation) and one (1) of the Implementation Strategies (8.10 – Zoning Changes) identified in the Staff Report, although with different conclusions.

The Applicant notes that the Town Staff apparently has been unable to find anything at all in the Comprehensive Plan that supports the approval of the Application.<sup>4</sup> Further, and surprisingly, the Staff Report does not address the Application's citations to the provisions of the Natural Resources Element, the Population Element, the Housing Element, the Community Facilities Element, or the Economic Development Elements of the Comprehensive Plan that support the approval of the Application. Since those portions of the Application are not challenged by the Staff Report, the Applicant urges the Planning Commission to accept those portions of the Application as offered.

#### **A. THE TRANSPORTATION ELEMENT**

The original Application did not directly address the Transportation Element of the Comprehensive Plan, because the Application and the rezoning

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<sup>4</sup> One of the obvious obligations of the Town Staff in reviewing a rezoning application is to do so fairly and evenhandedly. Although in practice the Town Staff typically prepares its reports on rezoning applications as if the rezoning process was an adversarial proceeding, pointing out to the Planning Commission only those provisions of the Comprehensive Plan that support the Town's Staff's recommendation, in truth, the Town Staff should point out all the strengths and all the weaknesses of an application, in a detached, professional manner, rather than taking on the role of being an advocate for a particular position. The Town Staff represents the citizens of and property owners in the Town, as do the Planning Commission and the Town Council, including the Applicant, and each should exercise its responsibilities with an even hand.



process are properly focused on the Property, and not on the Hilton Head Island Airport. Nevertheless, the Applicant submits that Goal 9.6 – Air Transportation of the Comprehensive Plan supports the Application. Goal 9.6 is “... to ensure that development surrounding the airport is designed and constructed to minimize the negative impacts of being located near the Airport.” Goal 9.6 is, clearly, focused on lands in the vicinity of the Airport, not on the Airport itself. Moreover, Goal 9.6 does not discourage development near the Airport; instead, it seeks to “minimize the negative impacts” on the properties in the vicinity of the Airport. As will be discussed in more detail below, the development contemplated by the Application will indeed “minimize the negative impacts” of the location of the Property.

Implementation Strategy 9.6 specifically identifies “maximum safety” as a consideration in the review of development proposals within the Airport Overlay District. The Staff Report concludes that

The proposed rezoning will result in an increased amount of density for development placing more occupants on a site within the Airport Approach Path, which is not ensuring the maximum safety possible for occupants of this site.<sup>5</sup>

As discussed at length in the Second Supplement, increasing density does not decrease safety. Property in the Outer Hazard Zone, or, for that matter, in any part of the Airport Overlay District, is either safe, or it is not safe. If the Outer Hazard Zone is safe, increased density simply means that more people are located in a safe area. If the Outer Hazard Zone is not safe, then in order to be consistent with the Comprehensive Plan and ensure “maximum safety”, no development should be permitted in the unsafe areas.<sup>6</sup>

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<sup>5</sup> See the Staff Report at Page 4.

<sup>6</sup> If “maximum safety” is the Implementation Strategy, and the reader agrees with the Staff Report assertion that more density is less safe, one wonders why the existing 32 lot single family residential subdivision development on the Property was permitted in 2009.



## **B. THE LAND USE ELEMENT**

With regard to Goal 8.1 – Existing Land Use, the Staff Report concludes that “The proposed rezoning to RM-12 would not result in a more appropriate mix of land uses because it would permit the exact same uses, just at a higher density.” This conclusion relies on the strictest possible definition of “uses”. While the “uses” for the purposes of the LMO for RM-4 and RM-12 are, indeed, the same, any reasonable analysis of the Application would conclude that more dense multifamily development would, as a practical matter, change the mix of “uses” in the area from primarily single-family to more dense multi-family residential.

With regard to the 1998 Ward One Master Land Use Plan (the “Ward One Plan”), the Applicant notes that both the RM-4 District and the RM-12 District was added to the LMO specifically as a result of the Ward One Plan. Further, the Staff Report neglects to point out that the primary reason for the difference between the maximum densities allowed in the RM-4 District as opposed to the RM-12 District is the availability of adequate infrastructure necessary to support higher density development.<sup>7</sup> The Staff Report also neglects to point out that the Ward One Plan acknowledged that the lower density of the RM-4 District was intended to address the general lack of sanitary sewer service in the Ward One area fifteen years ago, and that bonus densities were to be available if sanitary sewer service was available for tracts of greater than three acres.

## **IV. SUITABILITY OF THE PROPERTY AFFECTED BY THE AMENDMENT FOR USES PERMITTED BY THE DISTRICT THAT WOULD BE MADE APPLICABLE BY THE PROPOSED AMENDMENT**

The Staff Report recognizes that the Property is compatible with the present zoning, the conforming uses of nearby property and the character of

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<sup>7</sup> See the purpose statements of the RM-4 District and the RM-12 District in LMO Sections 16-4-206 and 16-4-208, respectively.



the neighborhood, and suitable for the uses permitted by the RM-4 District. Despite the fact that the uses in the proposed zoning RM-12 District are exactly the same as in the current RM-4 District, the Staff Report concludes that

... the RM-12 district would permit a significantly higher density of residential units, which would place more residential units, which is not suitable for properties within the Airport Approach Path.

The Staff Report therefore is arguing that while the currently permitted multifamily residential use on the Property is “compatible”, a more dense multifamily residential use is “not suitable” for the Property. This argument can only be based upon the safety concerns discussed above. Again, if the Property is not “safe”, or “compatible”, or “suitable” for twelve units per acre (the RM-12 permitted density), how can it be “safe”, or “compatible”, or “suitable” for 4 density units per acre?<sup>8</sup>

The Town Staff’s position is even more confusing when one considers that the regulations applicable to the Approach Path subdistrict of the Airport Overlay District contain no density limitations.

The Applicant also notes that the height restriction for the proposed RM-12 District is 45 feet. The Airport Overlay Zone, based upon its 1:34 height restriction ratio, would permit development on the Property to be in excess of 80 feet, or almost twice the maximum height permitted by the RM-12 District. The 45 foot height limit provides a reduction of almost fifty (50%) percent from the height otherwise deemed to be safe by the FAA, the Aeronautics Commission, and the LMO.

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<sup>8</sup> One wonders how residents of The Spa on Port Royal Sound, the multifamily residential development directly adjacent to the Property to the northeast, and also located in the Airport Overlay District’s Approach Path, will feel about the Town Staff, the FAA, the Aeronautics Commission, and Beaufort County concerns about safety in connection with the Application.



## **V. MARKETABILITY**

The Staff Report determines that "... the marketability of the properties may change as set forth in LMO Section 16-3-1505E. LMO Section 16-3-1505E states that marketability on one of the criteria to be considered when reviewing a rezoning application.

In this case, the Staff Report acknowledges the failure of the existing single family residential development on the Property, yet the Staff Report makes no comment on whether the marketability of the Property will be increased by allowing additional density. It should be obvious in these circumstances that the marketability of the Property will be increased with the approval of the Application, and the Staff Report should reflect that fact.

## **VI. AVAILABILITY OF SEWER, WATER AND STORMWATER FACILITIES GENERALLY SUITABLE AND ADEQUATE FOR THE PROPOSED USE**

The Staff Report concedes that this criterion is met by the Application.

## **VII. THE LMO OFFICIAL'S DETERMINATION**

Not surprisingly, based on what seems to be an uneven review of the criteria for reviewing a rezoning application, the Town Staff determined that the Application is inconsistent with the Comprehensive Plan and does not serve to carry out the purposes of the LMO.

## **VIII. DISCUSSION**

LMO Section 16-4-208, which was added to the LMO in 1999 as part of the Ward One Plan implementation, states the intent of the RM-12 District:



It is the intent of this residential district to allow higher density residential uses in locations which are served by adequate infrastructure, while maintaining the unique character of Native Island areas and neighborhoods at densities up to twelve (12) units per net acre. This district is used to encourage a variety of residential opportunities.

The Applicant notes that the words “maintaining the unique character of Native Island areas and neighborhoods” and “encourage a variety of residential opportunities” above also appear in LMO Section 16-4-206, the definition of the RM-4 – Low Density Residential District. Read together, and particularly in connection with the Comprehensive Plan, it is clear that the density proposed by the Application is specifically contemplated for the Ward One area, and is particularly suited for the Property, given the admittedly adequate infrastructure available for such development.

Finally, the Applicant suspects that the communications from the FAA, the Aeronautics Commission, and Beaufort County may be the real basis, or at least a substantial part of the basis, for the LMO Official’s Determination and, as such, they all merited comprehensive, critical review and comment by the Town Staff.

The Applicant also suspects that the true reason why the FAA, the Aeronautics Commission, Beaufort County, and now the Town Staff, all oppose the Application is because of their perceived notion that allowing an increase in the density available to the Property may somehow have an adverse impact on future plans to lengthen the Airport’s Runway 21 in the direction of the Property. If that is the case, then the Applicant submits that the as yet unapproved and unpermitted plans of another property owner in the vicinity of the Property (Beaufort County), which may or may not be consistent with the Comprehensive Plan,<sup>9</sup> and which may never come to pass, is not a proper reason to deny the Application.

The fact is, the Property has been zoned for essentially residential use for at least 13 years, ever since the October 5, 1999 adoption by the Town Council

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<sup>9</sup> See Section 9.6 of the Comprehensive Plan at Pages 129 through 131.



of the amendments to the LMO that implemented the Ward One Master Land Use Plan. Further, the fact is, substantial parcels in the immediate vicinity of the Property, one adjacent to the Property and under the runway flight path, have been zoned for up to 12 residential density units per acre for at least 13 years, again ever since the 1999 implementation of the Ward One Master Land Use Plan.

## **IX. CONCLUSION**

The Applicant continues to believe the Application is in conformance with the LMO and the Town's Comprehensive Plan, and meets the criteria set forth in LMO Section 16-3-1505. Accordingly, the Applicant again respectfully requests that the Planning Commission (a) consider this Application and the testimony and supporting documentation which will be entered into the record; (b) find:

1. That the Application and the supporting testimony and documentation establish that the requested zoning map amendment is consistent with the Town's Comprehensive Plan; and

2. That the Application and the supporting testimony and documentation establish that while the current use on the Property is consistent with the present zoning, that current use has failed economically, and the proposed rezoning is also consistent with conforming uses of nearby properties and with the character of the neighborhood around the Property; and

3. That the Application and the supporting testimony and documentation establish that the Property is suitable for the uses permitted by the zoning district that would be made applicable to the Property by the requested zoning map amendment; and

4. That the Application and the supporting testimony and documentation establish that the Property is not economically suitable for the uses permitted by the zoning district that is currently applicable to the Property; and

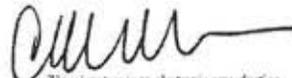


5. That the Application and the supporting testimony and documentation establish that the marketability of the Property for uses permitted by the zoning district that is currently applicable to the Property will be increased by the approval of the requested zoning map amendment; and

6. That the Application and the supporting testimony and documentation establish that there will be no material change in the Property's requirements for sewer, water and storm water facilities, and that such services generally suitable and adequate for the existing use of the Property under the requested zoning map amendment are available to the Property; and

(c) Recommend to the Town Council that they approve this Application and the rezoning of the Property to the RM-12 District.

Respectfully submitted on behalf of the Applicant this 25<sup>th</sup> day of April, 2013.



This signature is an electronic reproduction

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Chester C. Williams, Esquire  
Law Office of Chester C. Williams, LLC  
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Hilton Head Island, SC 29938-6028  
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OFFICE OF THE COUNTY ADMINISTRATOR  
COUNTY COUNCIL OF BEAUFORT COUNTY

GARY T. KUBIC  
COUNTY ADMINISTRATOR

CHERYL HARRIS  
EXECUTIVE ASSISTANT

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BRYAN J. HILL  
DEPUTY COUNTY ADMINISTRATOR

JOSHUA A. GRUBER  
STAFF ATTORNEY

April 3, 2013

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

RE: Proposed Rezoning of Circlewood Drive (also known as Beach City Place Subdivision)

Dear Ms. Lewis:

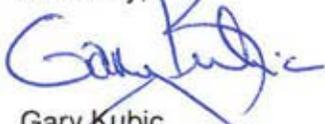
The purpose of this letter is to respond to your email of March 27, 2013, regarding the proposed rezoning of the property on Circlewood Drive from the current RM-4 (Low Density Residential) to either RM-12 (Moderate to High Density Residential) or WMU (Waterfront Mixed Use). The property in question is located approximately 3,000 feet north of the end of Runway 21 at Hilton Head Island Airport and within the approach to Runway 21.

FAA has sent a letter recommending that the Town not rezone the property as residential property is considered incompatible with airport operations. The South Carolina Aeronautics Commission (SCAC) has also provided input stating that the proposed rezoning to higher residential densities would be considered by SCAC to be a land use that is incompatible with Hilton Head Island Airport.

Beaufort County concurs with the FAA and SCAC, and respectfully requests that the Town not approve the rezoning request.

Should you have any questions regarding these matters, please do not hesitate to contact me.

Sincerely,



Gary Kubic  
County Administrator

GK:ch

cc: Rob McFee, Division Director, Engineering and Infrastructure

## Judy Elder

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**From:** Shah, Mihir <mshah@aeronautics.sc.gov>  
**Sent:** Friday, March 29, 2013 4:24 PM  
**To:** gkubic@bcgov.net  
**Cc:** Werts, Paul; Stephens, James; Parks.Preston@faa.gov; teril@hiltonheadislandsc.gov; rmcfee@bcgov.net; Judy Elder  
**Subject:** Proposed Rezoning near HHI Airport & Compatible Land Use

Dear Mr. Kubic:

The Federal Aviation Administration has forwarded to us a message from Ms. Teri B. Lewis, LMO Official for the Town of Hilton Head Island, regarding a rezoning application for the property located at Circlewood Drive (also known as Beach Place Subdivision), and located approximately 3,000 feet north of Runway End 21 at Hilton Head Island Airport. The message states that the applicant proposes to rezone the property from the current RM-4 (Low Density Residential) to either RM-12 (Moderate to High Density Residential) or WMU (Waterfront Mixed Use). The SC Aeronautics Commission emphasizes and promotes compatible land use and development around publicly-owned airports in the state, as per our as per new airport-related land use provisions in our agency's revised enabling legislation (Title 55 of the South Carolina Code of Laws). Ensuring compatible land use around the Airport will protect the investments made and anticipated to be made in the facility.

The proposed rezoning to higher residential densities would be considered by SC Aeronautics to be a land use that is **incompatible** with Hilton Head Island Airport, for the following reasons:

- The proposed rezoning is located just outside the Airport's existing Runway Protection Zone (RPZ) for Runway End 21. As per current FAA guidance, industry research, and typical airport zoning ordinances which regulate land uses outside the RPZ, residential land uses, especially higher-density ones, are to be strongly discouraged in the inner approach area. Concentrations of people in this area pose a major safety and quality of life (noise) risk because of aircraft flying in low proximity to the ground.
- The proposed rezoning would be located at the very edge of the Airport's future Runway End 21 RPZ based on the FAA-approved Airport Layout Plan updated in 2011, which depicts Runway End 21 being extended in the direction of the subject property. Allowing denser residential development would seriously impact the viability of any planned future extension due to incompatible land uses, and could potentially affect grant funding related to that extension.
- SC Aeronautics is currently drafting statewide airport land use policies, specifically airport-compatible land use standards to guide local governments, and land use notification and procedures as required by Section 55-13-5 of the revised Title 55 enabling legislation. Both the land use standards and notification and review procedures will almost certainly consider dense residential developments such as the Circlewood Drive proposal as incompatible.

In summary, SC Aeronautics encourages Beaufort County and the Town of Hilton Head Island to appropriately manage land use around Hilton Head Island Airport, especially considering its recent Airport Layout Plan update showing a planned lengthening of the runway. Moreover, the Airport has and will likely continue to receive FAA and state grant money; as such, the County and the Town are expected to use zoning, building permits, and other land use techniques to protect the public investment in the facility.

Should you have any questions or comments regarding the Airport, please do not hesitate to contact me.

Regards,  
Mihir Shah



**Mihir P. Shah, PE, AICP**  
*Airport Planning & Environmental Engineer*  
*South Carolina Aeronautics Commission*  
*2553 Airport Boulevard*  
*West Columbia, South Carolina 29170*  
*Tel: 803-896-6257 Fax: 803-896-6266*  
*Cell: 803-719-6531*  
*E-mail: [mshah@aeronautics.sc.gov](mailto:mshah@aeronautics.sc.gov)*  
*Websites: [www.scaeronautics.com](http://www.scaeronautics.com)*



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

Federal Aviation Administration  
Atlanta Airports District Office

1701 Columbia Avenue  
Campus Building, Suite 2-260  
College Park, Georgia 30337

March 28, 2013

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

RE: Proposed Rezoning near the Hilton Head Island Airport

Dear Ms. Lewis:

The Hilton Head Island Airport (HXD) forwarded your message regarding the rezoning application for the property located at Circlewood Drive (also known as Beach Place Subdivision). FAA understands that the property is currently zoned RM-4 (Low Density Residential) and the applicant is proposing to rezone the property to either RM-12 (Moderate to High Density Residential) or WMU (Waterfront Mixed Use). FAA encourages land uses that are considered to be incompatible with airports (such as residential, schools, and churches) to locate away from airports and encourages land uses that are more compatible (such as industrial and commercial uses) to locate around airports. The area in question (see attachment) is directly under the final approach to Runway 21. We recommend that the area **not** be rezoned to "Moderate to High Density Residential."

If you should have any questions or need additional information, please call me at 404-305-7149 or [Parks.Preston@faa.gov](mailto:Parks.Preston@faa.gov). Thank you.

Sincerely,

Parks Preston  
Program Manager

Cc: Gary Kubic, Beaufort County Administrator  
Robert McFee, P.E., Director of Engineering & Infrastructure  
James Stephens, SCAC  
Judy Elder, TB&E



DAVID AND ALETHEA W. JACKSON  
108 Lincoln Road  
Hempstead, NY 11550

April 22, 2013

Ms. Teri B. Lewis, AICP  
TOWN OF HILTON HEAD ISLAND  
One Town Center Court  
Hilton Head Island, SC 29928

RE: Application for Zoning Map Amendment  
of 217 Beach City Road, LLC

Dear Ms. Lewis:

We are David and Alethea W. Jackson, and we are the homeowners of property in the "Beach City Place" subdivision off of Beach City Road. Our property is Lot 8 in the subdivision, and we have built a home on the lot.<sup>1</sup> As of today, we are the only owner within the "Beach City Place" subdivision other than 217 Beach City Road, LLC.

We are writing to express our strong opposition to the pending application to re-zone the "Beach City Place" subdivision property from "RM-4" to "RM-12" or "Waterfront Mixed Use", for the following reasons:

1. A change in the zoning from "RM-4 to RM-12 or WMU would be detrimental to our substantial investment in "Beach City Place" subdivision. When we purchased our lot, our expectation, based on the representations of 217 Beach City Road, LLC, was that our home would be in a restricted single family neighborhood.
2. We have rights in the open areas and road rights of way in the "Beach City Place" subdivision shown on the subdivision plat for "Beach City Place" that would likely be negatively affected by a change from "RM-12" or "Waterfront Mixed Use", because it is doubtful a higher density development plan would keep the same layout of roads and open space within the subdivision.
3. 217 Beach City Road, LLC, has obligations to us arising from our contract to purchase Lot 8 in "Beach City Place" that would be violated by this proposed change in the zoning.

We purchased Lot 8 from 217 Beach City Road in 2009, and our house was built that

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<sup>1</sup> Our Lot 8 can be seen on Attachment 3 to the Application of 217 Beach City Road, LLC. Our lot is Lot 8.

Ms. Teri B. Lewis  
April 22, 2013  
Page 2

same year. At the time we purchased Lot 8, 217 Beach City Road, LLC, represented to us that the "Beach City Place" subdivision would be a single family subdivision, and would be restricted to single family homes with recorded covenants. A copy of the contract between us and 217 Beach City Road, LLC, is attached as Exhibit "A". We direct your attention to Article 10 of the contract, which reads:

ASSOCIATION COVENANTS AND RESTRICTIONS. It is expressly understood and agreed by Purchaser that the Property shall be conveyed subject to matters reflected on the Plat and subject to the general easements, equitable restrictions, limitation on use, affirmative obligations, and the covenants and restrictions relating to Beach City Place and the Beach City Place Homeowner's Association, Inc., all of which shall be recorded by Seller in the Beaufort County Records ("Covenants"). A copy of the Covenants will be provided to Purchaser after being drafted. Purchaser is under no obligation to purchase until Purchaser has had an opportunity to review the Covenants.

The Covenants for Beach City Place subdivision were drafted and provided to us by 217 Beach City Road, LLC. A copy of the Covenants is attached hereto as Exhibit "B". In the Covenants, Article 6.3 reads as follows, in relevant part:

6.3 Single Family Residential Use of Lots. All Lots shall be used for single family residential purposes only and no commercial activity of any nature whatsoever shall be conducted thereon.

We have now been made aware that 217 Beach City Road, LLC, never recorded the Covenants despite its obligation to record the Covenants and its representations to us that it would record the Covenants. It is our further understanding that 217 Beach City Road, LLC, would not be able to change the zoning as it now seeks to do if changing the zoning would violate existing recorded covenants.<sup>2</sup>

We believe that the failure of 217 Beach City Road, LLC, to record the Covenants is a violation of its obligations to us under our contract with 217 Beach City Road, LLC. 217 Beach City Road, LLC, should not now be allowed to profit or gain any advantage as a result of its failure to honor its contractual obligations to us, particularly when such would be a serious and material detriment to us and our investment in the "Beach City Place" subdivision.

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<sup>2</sup> On its Application, 217 Beach City Road, LLC, did not answer the question inquiring about whether the requested action would violate any "recorded private covenants and/or restrictions". Rather, it typed the following under the question: "Not Applicable. No Permit Requested". As we stated above, 217 Beach City Road, LLC, did not record the Covenants, but it is obligated to do so under its contract with us.

In addition to our contract with 217 Beach City Road, LLC, to purchase Lot 8, we also contracted for the construction of the house. As a result of the purchase of Lot 8 and the construction of the house, our investment in the "Beach City Place" subdivision is Four Hundred Thousand (\$400,000.00) Dollars. Having purchased the property and built the house, our reasonable investment backed expectation is that our house would be in a restricted neighborhood of single family homes, not in an unrestricted neighborhood of apartments, duplexes or any other multi-family use.

We would also point out that when 217 Beach City Road, LLC, advertised the lots in Beach City Place for sale to the public, the advertisements described Beach City Place as a development of single family homes.

We made a significant change in our position and spent Four Hundred Thousand and no/100 (\$400,000.00) Dollars in reliance on the representations of 217 Beach City Road, LLC, that we were purchasing a lot and house in a restricted single family residential neighborhood, and that 217 Beach City Road, LLC, would record the Covenants for "Beach City Place" subdivision.

The conveyance of Lot 8 to us from 217 Beach City Place, LLC, was made with reference to the recorded plat for the "Beach City Place" subdivision. A copy of our deed from 217 Beach City Road, LLC, is attached as Exhibit "C". A copy of the recorded subdivision plat referred to in our deed is attached as Exhibit "D". Because Lot 8 was conveyed to us with reference to the recorded subdivision plat, we have rights in both the open spaces and road right of way shown on the subdivision plat.

In the case of *Epps v. Freeman*, 261 S.C. 375, 200 S.E.2d 235 (S.C. 1973), the South Carolina Supreme Court stated the law of South Carolina to be:

Generally, where property sold is described in the conveyance with reference to a plat or map on which streets, alleys, parks, and other open areas are shown, an easement therein is created in favor of the grantee. Such an easement is deemed a part of the property to which the grantee is entitled and of which he cannot be divested except by due process of law.

As you can see from the subdivision plat, the open spaces and road rights of way comprise a substantial portion of the total area of the subdivision. The Application of 217 Beach City Place, LLC, makes no mention of our rights in the open space and road rights of way, and makes no provision for the protection of our rights at all.<sup>3</sup>

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<sup>3</sup> If the Planning Commission approves the Application, we will be forced to assert our rights in Court. We should not be placed in the position of having to spend more money to defend rights that we have already paid 217 Beach City Road, LLC, for.

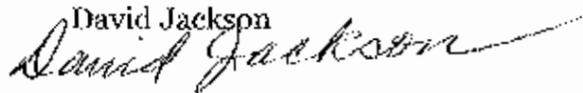
Ms. Teri B. Lewis  
April 22, 2013  
Page 4

It is unfortunate, but we will be unable to personally attend the Planning Commission hearing scheduled for May 1, 2013. We have a matter pending in the Court of Common Pleas and a matter has been scheduled for that same day in Charleston, South Carolina. We asked the representatives of 217 Beach City Road, LLC, for a postponement of the hearing before the Planning Commission, but they advised that they were under time constraints that could not be met if they agreed to a postponement.

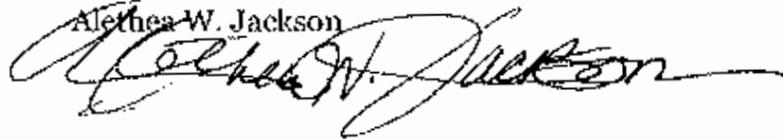
For the reasons stated above, we object to the application of 217 Beach City Road, LLC, to re-zone the "Beach City Place" subdivision property. We thank you for your attention this matter, and your consideration of our views. We are,

Sincerely,

David Jackson



Alethea W. Jackson



cc: Ms. Jayme Lopko, AICP  
Town of Hilton Head Island  
Planning Commission

EXHIBIT "A" TO APRIL 22, 2013, LETTER FROM DAVID AND ALETHEA W.  
JACKSON AND DAVID JACKSON TO TERI B. LEWIS

## BEACH CITY PLACE SALES AGREEMENT

**THIS SALES AGREEMENT** ("Agreement") is executed effective April 14, 2009, by and between 217 Beach City Road, LLC, a South Carolina limited liability company, whose address is 70 Main Street, Suite 100, Hilton Head Island, South Carolina, 29926 ("Seller") and:

Name: David and Alethea Jackson  
Address: 108 Lincoln Road  
Hempstead, NY 11550  
Telephone: (516) 292-1203 (collectively "Purchaser").

**WHEREAS**, Purchaser desires to purchase, and Seller desires to sell, the Property described below in accordance with the following terms and conditions;

**NOW, THEREFORE**, for and in consideration of the terms and conditions of this Contract and other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby expressly acknowledged, the parties hereto do hereby covenant and agree as follows:

1. **PROPERTY DESCRIPTION.** Purchaser shall buy and Seller shall sell the real estate described as Lot 8, being a portion in the development known as Beach City Place ("Property") , located on Hilton Head Island, Beaufort County, South Carolina ("Project") as shown on the plat recorded in the Beaufort County Register of Deeds Office in Plat Book (bkd) at Page (bpd) ("Plat"). Notwithstanding anything else contained herein, this Agreement shall not be effective until Purchaser has provided Seller with notification of the Plat recording information. Upon Purchaser's notification to Seller of the recording information of the Plat, this Agreement shall be fully enforceable and binding upon both Purchaser and Seller.
2. **PURCHASE PRICE.** The Purchaser agrees to pay as the purchase price of the Property the sum of TWO HUNDRED THOUSAND and 00/100 DOLLARS (\$200,000.00) ("Purchase Price") payable as follows:
  - a. \$ 10,000.00 due on the date hereof as an earnest money deposit to be held by the Escrow Agent pending Closing.
  - b. \$ 190,000.00 representing the balance of the Purchase Price to be paid in certified funds at Closing.
3. **FINANCING.** This Contract is subject to Purchasers obtaining a construction loan commitment from a lending institution for a construction loan in the amount of at least Three Hundred Thousand and No/100 Dollars (\$300,000.00) with interest at the prevailing rate at Closing. Such construction loan shall obligate the lender to disburse no less than \$160,000.00 upon the acquisition of the Property with the balance of the construction loan to be disbursed by contractor order draws during the course of the construction of the improvements on the property. Purchaser will endeavor in good faith to obtain a loan upon said terms from a local lender customarily making such loans in Beaufort County. The financing contingency described herein is a limited one and must be satisfied by Purchaser within ten (10) days of the date of this Contract. In the event the Purchaser is unable to obtain financing by that date, Purchaser shall have the affirmative obligation to notify Seller in writing that the financing contingency has not been satisfied. Such notice must be received by Seller no more than five (5) days after the financing contingency date specified herein. If no such notice is received by Seller, the financing contingency shall be waived. Upon receipt of notice from Seller of a cancellation of Contract for failure to obtain financing, the Escrow Agent shall return to Purchaser all earnest money deposits and upon such payment, this Contract shall have no further force or affect and neither party shall have any further rights hereunder.
4. **CLOSING DATE.** It is agreed by and between the parties hereto that the terms of this Contract shall be complied with and the closing of this transfer shall take place seven days after acceptance of Contract ("Closing" or "Closing Date"). In the event the Plat is not recorded by such date, Closing shall be no later than seven (7) calendar days following Purchaser's notification to Seller of the Plat recording information. Closing shall be held at the offices of McNair Law Firm, P.A., 23-B Shelter Cove Lane, Suite 400, Hilton Head Island, SC 29928 unless otherwise agreed by the parties.

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5. **CONVEYANCE OF PROPERTY.** At Closing, Seller shall convey insurable and marketable title to the Property to Purchaser in fee simple by limited warranty deed, free from encumbrances except such as are herein agreed to be assumed by Purchaser. If an owner's title commitment can be issued by an ALTA title insurance company without any unusual or extraordinary exceptions for property on Hilton Head Island, title shall be considered insurable and marketable title.
6. **TITLE.** Purchaser agrees to notify Seller in writing of any defects in title rendering title unmarketable and/or uninsurable as soon as reasonably possible and in any event not later than ten (10) days from the date of execution of this Contract by Seller. In case legal steps are necessary to perfect the title, such action must be taken by Seller promptly at Seller's sole expense. If there is found to be any defect in the title which cannot be corrected within thirty (30) days, the earnest money deposited by Purchaser is to be returned to Purchaser. This Contract shall terminate, and neither party shall have any further obligations or rights hereunder.
7. **CLOSING EXPENSES.** Seller shall be responsible for paying the Deed Recording Fee as required by Section 12-24 of the Code of Laws of South Carolina 1976, as amended. Purchaser shall be responsible for the Town of Hilton Head Island Transfer Fee. Purchaser shall be responsible for Purchaser's closing costs which shall include title examination, title insurance premiums, any loan document preparation, and applicable attorney fees. Seller shall be responsible for its attorneys' fees. In no event shall Seller be responsible for any lender imposed charges or fees. Purchaser shall be responsible for any costs of title examination, title insurance premiums, loan documentation preparation, settlement statement computation and Closing disbursements if Escrow Agent does not provide those services.
8. **PRORATIONS.** All county property taxes, applicable water and sewer charges, maintenance assessments and other applicable charges shall be prorated as of the Closing Date.
9. **MORTGAGE RELEASE.** Seller agrees that it will obtain upon payment of the Purchase Price by Purchaser, appropriate releases releasing the Property described herein from the lien of all mortgages or other blanket encumbrances, if any, which may cover the Property.
10. **ASSOCIATION COVENANTS AND RESTRICTIONS.** It is expressly understood and agreed by Purchaser that the Property shall be conveyed subject to matters reflected on the Plat and subject to the general easements, equitable restrictions, limitation on use, affirmative obligations, and the covenants and restrictions relating to Beach City Place and the Beach City Place Homeowners' Association, Inc., all of which shall be recorded by Seller in the Beaufort County Records ("Covenants"). A copy of the Covenants will be provided to Purchaser after being drafted. Purchaser is under no obligation to purchase until Purchaser has an opportunity to review the Covenants.
11. **ASSOCIATION ASSESSMENTS.** In order to provide for the preservation, maintenance and operation of amenities and common areas within Beach City Place Homeowner's Association, Inc., as well as to provide the owners of lots within the Property with services for the use and benefit of said owners, there has been created Beach City Place Homeowner's Association, Inc. ("Association"). Subject to the provisions set forth in the Covenants providing for the Association and contained in the Articles and By-Laws of the Association, the Association is granted the right to assess property owners within the Property to carry out its prescribed functions. Purchaser hereby acknowledges that it is aware of the rights of the Association to levy and enforce assessments against it, and Purchaser hereby agrees to pay promptly all such assessments which are properly made against it by the Association.
12. **ARCHITECTURAL REQUIREMENTS.** Purchaser understands that set forth in the Covenants are architectural approval and controls where it is stated that no building, fence, sign or other structure will be created, placed or altered on the Property until the proposed building plan and site plan, including parking, have been approved in writing by Beach City Place Architectural Review Committee ("ARC"). Purchaser agrees that the actual construction of the Property will have no material variation from the plans approved by the ARC unless the ARC shall have also approved these variations in writing. The ARC may grant or deny approval of Purchaser's plans on any grounds, including purely aesthetic consideration. Provisions pertaining to the architectural approval and controls are set forth in the Covenants.

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13. **WATER AND SEWER SERVICE.** The parties hereto acknowledge that arrangements for water and sewer service must be made by Purchaser independently with Hilton Head PSD #1 subject to their established rates and charges as approved from time to time by the South Carolina Public Service Commission. Purchaser further expressly acknowledges that no wells may be drilled on the Property.
14. **CONDITION OF PROPERTY.** Purchaser purchases, and Seller sells the Property in an "as-is" condition, and neither Seller nor its agents has made any commitments or accepted any obligations for work on the Property or in the Project, other than as required by the Town of Hilton Head Island. Purchaser acknowledges that neither Seller nor its agents, employees, or attorneys have made any pledges, covenants or commitments in regard to the development of the Project which has induced the purchase of the Property except as stated in this Contract, the Covenants, and the recorded plat.
15. **ESCROW AGENT.** The Escrow Agent hereinabove referred to shall be the law firm of McNair Law Firm, P.A. The Escrow Agent shall not be charged with any knowledge until such facts are communicated to the Escrow Agent in writing. The Escrow Agent shall not be required to institute or maintain any litigation unless indemnified to its satisfaction for its counsel fees, costs, disbursements and all other expenses and liabilities to which it may, in its judgment, be subjected in connection with this action. The Seller and Purchaser shall at all times indemnify the Escrow Agent against all actions, proceedings, claims or demands arising out of this transaction. Upon the failure of Purchaser to comply with the requirements as set forth herein, Escrow Agent shall be empowered to dispose of the earnest money as provided for in this Contract without incurring any liability. In the event of a dispute by and between the Seller and Purchaser which cannot be resolved, Escrow Agent shall have the option of depositing the earnest money deposit into the Office of the Clerk of Court for Beaufort County, South Carolina pending resolution of the disposition of said funds and, upon depositing said funds, Escrow Agent shall bear no further responsibility.
16. **INTERSTATE LAND SALES ACT EXEMPTION.** This Agreement and the Project lots are exempt from the Interstate Land Sales Act 15 U.S.C. 42 §1701 et seq. pursuant to §1702(b)(1). By executing this Agreement, the Purchaser verifies that it has personally inspected the Property.
17. **BROKERAGE FEES.** The Seller and the Purchaser acknowledge that the \_\_\_\_\_ (not applicable) are the only real estate brokers involved in this transaction. Seller shall pay \_\_\_\_\_ a commission of \$ \_\_\_\_\_ of the Purchase Price at Closing. Purchaser shall not be responsible for or Sellers commission responsibilities. Purchaser holds Seller harmless from any claims of commissions from other real estate broker with whom Purchaser may have dealt, and the Seller holds Purchaser harmless from any claims for commission from any other real estate broker with whom the Seller may have dealt.
18. **DEFAULT.** Upon the failure of Purchaser to comply with the terms hereof, and after receipt of notice of said default with a ten-day (10-day) right to cure, it is understood and agreed by and between the parties hereto that Seller may: (a) at its option because of the difficulty in ascertaining actual resulting damages, retain the earnest money deposit as partial liquidated damages, (b) enforce this performance of this Contract by specific performance, and/or (c) sue for damages. It is understood by and between the parties hereto that upon a default by Seller, and after notice with a ten (10) day right to cure, Purchaser may cancel the Contract and obtain a refund of the earnest money deposit as its sole and exclusive remedy. Notwithstanding the preceding, the ten (10) day right to cure shall not apply to Purchaser's default of its obligation to Close on the Closing Date.
19. **BINDING EFFECT.** This Contract is binding upon the heirs, personal representatives, successors and assigns of the parties.
20. **ASSIGNABILITY.** The rights of Purchaser pursuant to this Contract may not be assigned or otherwise transferred without the express written consent of Seller, which consent may be withheld for any reason. Any attempt by Purchaser to assign this Contract without the express written consent of Seller shall be deemed a default of Purchaser, and Seller shall not be bound by any such assignment.

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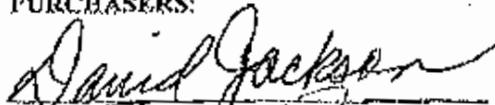
- 21. **SURVIVAL OF CLOSING.** This Contract and all the terms and conditions hereof shall survive the Closing of the transaction contemplated hereby and shall thereafter continue to bind the parties to this Contract. This Contract shall be executed in duplicate originals.
- 22. **ENFORCEABILITY.** Should any provisions of this Contract be void or become unenforceable at law or in equity, the remaining provisions shall remain in full force and effect and shall not in any manner be affected or impaired thereby.
- 23. **ENFORCEMENT.** In the event of litigation relating to the enforcement of rights under this Contract, the prevailing party shall be entitled to recover all litigation expenses, including attorneys' fees and court costs, from the non-prevailing party.
- 24. **NO WAIVER.** No failure of a party to exercise any power or right granted hereunder or to insist upon strict compliance with any obligation specified herein, and not practice at variance with the terms hereof, shall constitute a waiver of said power or right unless expressly authored in writing by the affected party.
- 25. **WAIVER OF CONFLICT OF INTEREST.** Purchaser is a member of WSI II, LLC, which is a member of Seller. Purchaser and Seller understand their inherent conflicts of interests in buying a piece of property from a company in which one has an interest. Purchaser acknowledges that Purchaser has the opportunity to seek representation to advise Purchaser of this transaction.

SIGNED AND SEALED BY PURCHASER AS OF THE DAY AND YEAR FIRST WRITTEN ABOVE.

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

PURCHASERS:

  
 \_\_\_\_\_  
 DAVID JACKSON

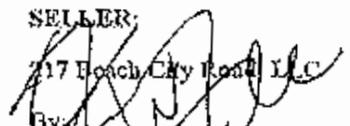
  
 \_\_\_\_\_  
 ARTHUR JACKSON

SIGNED AND SEALED BY SELLER AS OF THE DAY AND YEAR FIRST WRITTEN ABOVE.

WITNESSES:

  
\_\_\_\_\_

SELLER:

  
 \_\_\_\_\_  
 217 Beach City Road LLC  
 By: \_\_\_\_\_  
 Edward W. Flynn, Manager

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EXHIBIT "B" TO APRIL 22, 2013, LETTER FROM DAVID AND ALETHEA W.  
JACKSON AND DAVID JACKSON TO TERI B. LEWIS

DECLARATION  
OF  
COVENANTS, CONDITIONS  
AND RESTRICTIONS  
FOR  
BEACH CITY PLACE  
HILTON HEAD ISLAND  
SOUTH CAROLINA

Jackson

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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
BEACH CITY PLACE**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** ("Declaration") is made on this \_\_\_\_\_ day of July, 2009 by 217 Beach City Road, LLC, a South Carolina limited liability company having an address of 70 Main Street, Suite 100, Hilton Head Island, South Carolina 29926 (the "Declarant"):

**WHEREAS**, Declarant is the owner of real property generally known as Beach City Place on Hilton Head Island, Beaufort County, South Carolina as more particularly described on Exhibit "A", and

**WHEREAS**, Declarant developed Beach City Place into a thirty-two (32) lot single family residential community and wishes to submit Beach City Place to the provisions of this Declaration

**NOW THEREFORE**, Declarant hereby declares that the real property described on Exhibit "A" of this Declaration generally known as Beach City Place, including any improvements which may be constructed on Beach City Place, is subjected to the provisions of this Declaration. All property within Beach City Place shall be held, sold, transferred, conveyed, used, occupied, mortgaged, or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens contained in this Declaration. The provisions of this Declaration shall run with all the property within Beach City Place and subject all that property to this Declaration. This Declaration shall benefit, and be binding upon, all persons having any right, title or interest in any portion of Beach City Place, their respective heirs, legal representatives, successors, successors-in-title, and assigns

**SECTION I  
DEFINITIONS**

The following words used in this Declaration shall have the following meanings.

1.1. "Area of Common Responsibility" shall mean the roadway known as Chincapin Oak Circle, a right of way within a 2.60 acre parcel depicted on the plat described on Exhibit "A" attached hereto. Area of Common Responsibility shall also mean all seven areas labeled "Open Space", said areas also labeled A, B, C, D, E, F, and G on the plat described on Exhibit "A" attached hereto along with any hardscape, drainage, roadways, or landscaping within said areas of Common Responsibility. Area of Common Responsibility shall also mean such areas for which the Association has responsibility pursuant to this Declaration.

1.2. "Association" shall mean Beach City Place Homeowners Association, Inc., a South Carolina nonprofit corporation, its successors and assigns.

1.3. "Board of Directors" or "Board" shall mean the appointed or elected board of directors, as applicable, of the Association.

1.4. "Bylaws" shall refer to the Bylaws of the Association, as may be amended.

1.5. "Common Property" shall mean all property described in the definition of Area of Common Responsibility, along with all improvements thereon, including all roadways, drainage and utility infrastructure not conveyed to utility companies, and associated hardscape and landscaping within the Area of Common Responsibility.

1.5. "Beach City Place" shall mean all the real property described on Exhibit "A" generally known as Beach City Place. All Beach City Place shall be subject to the buffers, easements and setback lines, as well as any other matters, depicted on the plat described on Exhibit "A" attached hereto

1.6. "Beach City Place Standards" shall mean the standard of conduct, maintenance, or other activity generally prevailing in Beach City Place. Such standards may be more specifically determined by the Board of Directors and must be consistent with Beach City Place Standards originally established by the Declarant

1.7. "Declarant" shall mean Beach City Properties, Inc. The Declarant may appoint and designate a successor Declarant by designating such appointment or designation in a Supplemental Declaration filed in the Beaufort County Register of Deeds Office.

1.8. "Declaration" shall include this Declaration and any Supplemental Declaration.

1.9. "Lot" shall mean any single family residential lot of land within Beach City Place, whether or not improvements are constructed on that land, which constitutes a single-family dwelling site as shown on the plat recorded in the Beaufort County Register of Deeds Office described on Exhibit "A". The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, all of the right, title, and interest of an Owner in the Common Property and membership in the Association.

1.10. "Mortgage" shall mean any mortgage used for the purpose of encumbering real property in Beach City Place as security for the payment or satisfaction of an obligation.

1.11. "Mortgagee" shall mean the holder of a Mortgage.

1.12. "Occupant" shall mean any Person occupying all or any portion of a Lot or other property located within Beach City Place for any period of time, regardless of whether such Person is a tenant or the Owner of such property.

1.13. "Owner" shall mean the record owner, whether one or more Persons, of the fee simple title to any Lot, excluding any Person holding such interest merely as security for the performance or satisfaction of any obligation.

1.14. "Person" shall mean a natural person, corporation, limited liability company, partnership, association, trust, or other legal entity.

1.15. "Supplementary Declaration" means an amendment or supplement to this Declaration which subjects additional restrictions and obligations on Beach City Place or adds additional land to Beach City Place or assigns the Declarant's rights under this Declaration.

1.16. "Total Association Vote," means all of the votes attributable to members of the Association. If the Total Association Vote is taken during a time while Declarant has the right to appoint members of the Board of Directors, a Total Association Vote approving some item or proposition must contain the affirmative vote of Declarant or the item or proposition will be deemed not to have been approved

## SECTION 2

### PROPERTY SUBJECT TO THIS DECLARATION

2.1. Property Subjected To This Declaration. All real property in Beach City Place is subject to the covenants and restrictions contained in this Declaration is the real property depicted on the plat described in Exhibit "A".

## SECTION 3

### ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

3.1. Membership. Every Owner shall be deemed to have a membership in the Association. If a Lot is owned by more than one Person, there shall be only one (1) membership per Lot, and the votes and rights of use and enjoyment shall be as provided in this Declaration and in the Bylaws. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The rights and privileges of membership, including the right to vote and to hold office in the Association, may be exercised by a Member or the Member's spouse or written designee, but in no event shall more than one (1) vote be cast nor office held for each Lot owned.

3.2. Voting. Members shall be entitled to one (1) vote for each Lot owned. When more than one (1) Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as those Owners themselves determine and advise the Association prior to any meeting. The Lot's vote shall be suspended in the event more than one (1) Person seeks to exercise it. Additionally, the Declarant shall have one (1) vote for each vote held by Members other than Declarant until the Declarant ceases to own one (1) Lot or more, or January 1, 2020, whichever occurs first. These votes of Declarant shall be in addition to the votes Declarant receives due to its ownership of Lots.

3.3. Association Board. As long as the Declarant owns one (1) or more lots in Beach City Place, Declarant shall have the power to appoint a majority of the Board of Directors of the Association.

#### SECTION 4 ASSESSMENTS

4.1. Purpose of Assessment. The assessments provided for in this Declaration shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Lots, as may be authorized from time to time by the Board.

4.2. Creation of the Lien and Personal Obligation for Assessments. Each Owner agrees to timely pay to the Association: (a) annual assessments or charges; (b) special assessments; and (c) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration. Each Owner also agrees to pay to the Association reasonable fines as may be imposed in accordance with the terms of this Declaration.

4.3. Late Charges. All assessments shall accrue late charges and shall accrue interest not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum on the principal amount due. Additionally, the costs of collection shall be added to any amount due, which costs of collection shall include without limitation reasonable attorney's fees incurred by the Association. The assessments and charges shall be a continuing lien upon the Lot against which each assessment is made, and shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment fell due.

4.4. Personal Liability. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Lot, and each grantee of an Owner shall be jointly and severally liable for the assessments which are due at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings.

4.5. Accounting of Payment. The Association shall, within ten (10) business days after receiving a written request, furnish a written accounting setting forth whether the assessments on a specified Lot have been paid. Such written accounting shall be binding upon the Association as of the date of issuance. The Board shall have the right to impose a reasonable charge for providing this accounting.

4.6. Annual Assessments. Annual assessments shall be levied equally on all Lots and shall be paid in such manner and on such dates as may be fixed by the Board. The Board may allow annual assessments to be paid in periodic payments, and the Board shall have the right to accelerate any unpaid





5.1.4. The Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without Beach City Place if the Board determines that such maintenance would benefit the Owners

5.1.5. The Association shall not be responsible for the maintenance, repair or replacement of any roadways and associated infrastructure within Beach City Place which has been conveyed to the Town of Hilton Head Island, Beaufort County or another governmental body, public service district, or utility company

5.1.6. The Association shall not be responsible for any utility infrastructure which is not owned by the Association including, without limitation, water, sewer, electricity, telephone, cable television, or propane gas infrastructure

5.1.7. In the event that the Association determines that the need for maintenance, repair, or replacement of Common Property is caused through the willful or negligent act of an Owner, or the family, guests, lessees, or invitees of any Owner or Occupant, then the Association may perform such maintenance, repair or replacement at such Owner's sole cost and expense, and all costs thereof shall be a specific assessment against such Owner subject to the Association's lien and collection rights provided for in this Declaration.

5.2. Owner's Responsibility. With the exception of the roadway, associated drainage, bridge, and landscaping and hardscaping which is Common Property, all maintenance of Lots and all structures, parking areas, landscaping, and other improvements on each lot shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Beach City Place Standards and this Declaration. In the event the Board determines that any Owner has failed or refused to properly maintain, repair, or replace items for which such Owner is responsible, the Association may perform such maintenance, repair or replacement for the Owner at the expense of the Owner. Except in an emergency situation, the Association shall give the Owner prior written notice of the Association's intent to provide such necessary maintenance, repair, or replacement. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have seven (7) days after receipt of such notice within which to complete such maintenance, repair, or replacement. If such maintenance, repair, or replacement is not capable of completion within the seven (7) day period, the Owner must commence such work within seven (7) days and shall complete such work within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at such Owner's sole cost and expense, and all costs shall be an assessment against such Owner and its Lot.

## SECTION 6 USE RESTRICTIONS AND RULES

6.1. General. All Owners and Occupants must comply with these use restrictions and rules. These use restrictions may only be amended as provided in this Declaration. In addition, the Board may, from time to time, without consent of the Members, promulgate, modify, or delete other rules and regulations applicable to Beach City Place. So long as the rules and regulations do not conflict with the terms of this Declaration, Such rules and regulations shall be distributed to all Owners and Occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled, or modified in a regular or special meeting by a majority of the Total Association Vote.

6.2. Fines for Covenant, Rule and Regulation Violations. The Association may adopt fines to enforce the provisions of these Covenants and the published rules and regulations of the Association. Such fines may be adopted and amended from time to time by a majority vote of the Association Board of Directors. Association fines may not be levied against any Owner until the fines and rules and regulations have been mailed to all Owners to the addresses on record with the Association. Revised fines shall not take effect until mailed to all Owners similarly. Fines levied against Owners for violations of these Covenants, or the Association rules and regulations, shall be a charge against the Lot owned by the Owner in violation of the Covenant, rule or regulation, and shall be a charge and continuing lien on the subject Lot, as well as a personal obligation of the Owner, as set forth in Section 4 above. Owners shall have the right to appeal any Association fine. All appeals shall be in writing and shall be heard by the Board, or a committee selected by the Board. The determinations by the Board, or the Board's appeal committee, of all appeals shall be made in the Board's, or the Board's appeal committees', sole discretion. Such determinations shall be final adjudications of all fines and shall not be subject to any further appeal whatsoever. The Board may promulgate rules governing the fine appeal process.

6.3. Single Family Residential Use of Lots. All Lots shall be used for single family residential purposes only and no commercial activity of any nature whatsoever shall be conducted thereon. Residential purposes shall include home businesses or business activities which do not maintain advertising on a Lot, or invite customers or clients within Beach City Place. Residential purposes include the sale and leasing of Lots. The Board may issue rules and regulations regarding permitted business activities, so long as the rules and regulations do not conflict with the terms of this Declaration. The Declarant shall have the right to operate a sales office and a construction office from one or more Lots within Beach City Place. No garage or part of a garage may be used for business purposes so as to prevent occupant's vehicles from being parked in the garage.

6.4. Architectural Standards for Improvements to Lots. No exterior improvement, alteration, addition, or erection whatsoever shall be commenced or placed upon any Lot, unless installed by the Declarant, or as approved in accordance with this Declaration. All improvements to Lots, except driveways and other non-vehicle improvements, must be constructed outside of all buffers, setbacks and easements depicted on the plat described in Exhibit "A" attached hereto, unless such vehicle improvements have the written consent of the Board. No exterior construction, addition, erection, or alteration shall be made unless and until plans and specifications showing at least the nature, kind, shape, height, materials, and location shall have been submitted in writing to and approved by an Architectural Review Committee to be established by the Board.

6.4.1. The Architectural Review Committee may be established and shall have jurisdiction over modifications and new construction on Lots.

6.4.2. The Board may employ architects, engineers, or other persons as it deems necessary to enable the Architectural Review Committee to perform its review.

6.4.3. The Architectural Review Committee may impose application fees and deposits for any submission to the Architectural Review Committee, such fees and deposits to be decided by the Architectural Review Committee with approval from the Board in its sole discretion.

6.4.4. The Architectural Review Committee may, from time to time, delegate any of its rights or responsibilities hereunder to one (1) or more duly licensed architects or other qualified Persons, which shall have full authority to act on behalf of the committee for all matters delegated.

6.4.5. Written design guidelines and procedures may be promulgated for the exercise of this review, which guidelines may provide for a review fee.

6.4.6. So long as the Declarant owns any property for development or sale in Beach City Place, the Declarant shall have the right to appoint all members of the Architectural Review Committee. Upon the expiration of earlier surrender in writing of such right, the Board shall appoint the members of the Architectural Review Committee.

6.4.7. If the Architectural Review Committee fails to approve or to disapprove submitted plans and specifications within thirty (30) days after the plans and specifications have been submitted to it, approval will not be required, and this Section will be deemed to have been fully complied with. As a condition of approval under this Section, each Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement, and insurance to and on any change, modification, addition, or alteration. The Architectural Review Committee shall be the sole arbiter of such plans and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. Any member of the Board or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any Lot to inspect for the purpose of ascertaining whether or not these Persons shall not be deemed guilty of trespass by reason of such entry.

6.4.8. Plans and specifications are not approved for engineering or structural design or quality of materials, and by approving such plans and specifications neither the Architectural Review Committee, the members thereof, nor the Association assumes liability or responsibility therefor, nor for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, the Architectural Review Committee, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any owner of property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications and every owner agrees that such person or owner will not bring any action or suit against Declarant, the Association, the Architectural Review Committee, the Board, or the officers, directors, members, employees, and agents of any board, or the officers, directors, members, employees, and agents of any of them to recover any damages and hereby releases, remises, and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

6.4.9. Signs. No sign of any kind shall be erected by an Owner or Occupant within Beach City Place without the prior written consent of the Architectural Review Committee. Notwithstanding the foregoing, the Board and the Declarant shall have the right to erect reasonable and appropriate signs. The Declarant shall have the right to erect and maintain "For Sale" signs on any Lot in its sole discretion. Signs required by legal proceedings may be erected upon any Lot. The provisions of this Section shall not apply to any Person holding a Mortgage who becomes the Owner of any Lot as purchaser at a judicial or foreclosure sale conducted with respect to a first Mortgage or as transferee pursuant to any proceeding in lieu thereof.

6.4.9.1 No boat, motor home, trailer, or recreational vehicle or trailer may be left upon any portion of Beach City Place unless the same is stored within a garage. The Association shall have the right to remove any such boat, motor home, trader, or recreational vehicle if not moved by the Owner within one (1) day's notice, and the costs of such removal shall be an assessment against such Owner.

6.4.9.2 All single-family detached homes shall contain a garage; carports shall not be permitted. All vehicles shall be parked within the driveway or garage of each Lot. Garages shall not be altered to include living space. The term "vehicles," as used herein, shall include motorcycles, minibikes, scooters, go-carts, trucks, vans and automobiles.

6.4.9.3 No unlicensed vehicle shall be left upon any portion of Beach City Place. The Association shall have the right to remove any such vehicle if not removed by the Owner within ten (10) days of notice, and the costs of such removal shall be an assessment against such Owner.

6.4.10. Leasing. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, Bylaws, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, the Board, in addition to any other remedies available to it, may evict the tenant on behalf of the owner and specifically assess all costs associated therewith against the Owner and the Owner's lot.

6.4.11. Occupants Bound. All provisions of the Declaration, Bylaws, and of any rules and regulations, use restrictions or design guidelines promulgated pursuant to this Declaration shall apply to all Occupants of Lots even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be levied against the Owner.

6.4.12. Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exception of dogs, cats or other usual and common household pets. No pets shall be kept, bred or maintained for any commercial purpose. Dogs shall be kept on a leash when outside of a Lot. All Owners shall remove their pets' waste from Common Areas and Lots.

6.4.13. Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her lot. No Lot within Beach City Place shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within Beach City Place.

6.4.14. Antennas. No exterior antennas of any kind, including, without limitation, satellite dishes, shall be placed, allowed, or maintained upon any portion of Beach City Place, including any Lot, without the prior written consent of the Architectural Review Committee. Satellite Dishes which are dark in color and are 18 inches or less in diameter shall be allowed, provided they are not visible from the street, installed upon or adjacent to a residence, and are integrated with the surrounding landscape.

6.4.15. Tree Removal. No trees that are more than four (4) inches in diameter at a point two (2) feet above the ground shall be removed without the prior written consent of the Architectural Review Committee. However, no flowering trees, including, without limitation, dogwood trees, regardless of their diameter, shall be removed without the prior written consent of the Architectural Review Committee.

6.4.16. Drainage. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may alter, obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains, the right to alter same being expressly reserved to Declarant.

6.4.17. Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

6.4.18. Garbage Cans, Woodpiles, Etc. All garbage cans, woodpiles, hot tubs, spas, and related equipment, and other similar items shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate.

6.4.19. Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Architectural Review Committee. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots owned by Declarant. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning

regulations. Declarant's right to replat any Lot shall include the right to change the configuration of streets and otherwise make changes on the final plat for Beach City Place as to how the streets and common areas in Beach City Place are laid out.

6.4.20. Guns. The use or discharge of firearms in Beach City Place is prohibited. The term "firearms" includes rifles, pistols, "BB" guns, pellet guns, and small firearms of all types.

6.4.21. Fences. No fence or fencing type barrier of any kind shall be placed, created, allowed, or maintained upon any Lot without the prior written consent of the Architectural Review Committee. Notwithstanding the foregoing, the Declarant shall have the right to erect fencing of any type, at any location, on any Lot during the period that such Lot is being used by Declarant as a model home. The Board shall have the right to erect fencing of any type considered appropriate or desirable by the Board at any location on the Common Property.

6.4.22. Artificial Vegetation and Exterior Sculptures. No artificial vegetation shall be permitted on the exterior of any Lot. Exterior sculptures, fountains, flags and similar exterior ornamental items must be approved by the Architectural Review Committee.

6.4.23. Lighting. Except as may be permitted by the Architectural Review Committee, exterior lighting visible from the street shall not be permitted except for (a) approved lighting as originally installed on a Lot; (b) One (1) decorative post light; (c) street lights in conformity with an established street lighting program for Beach City Place; or (d) seasonal decorative lights.

6.4.24. Mailboxes. All mailboxes located on Lots shall be of a similar style approved by the Architectural Review Committee. Mailboxes shall be kept painted and in good repair by the Owners. Replacement mailboxes may be installed after the type has been approved in writing by the Architectural Review Committee.

6.4.25. Exteriors. Any change to the exterior color of any improvement located on a Lot, including, without limitation, the dwelling, must be approved by the Architectural Review Committee.

6.4.26. Clothesline. No exterior clotheslines of any type shall be permitted upon any Lot.

6.4.27. Storage Sheds and Garages. Construction, installation or placement of a storage shed, tree house, play house, detached garage, or a building separate from the main house on the Lot is not permitted without the prior written consent of the Architectural Review Committee, in its sole discretion. All plans (which must include the length, width, height, materials, colors, and location) must be submitted to the Architectural Review Committee for written approval prior to obtaining building permits or starting construction. The structure must be constructed, installed or placed in a location inconspicuous as much as possible from public view. All materials used in the construction of such buildings must match the main dwelling located on the Lot.

## SECTION 7

### INSURANCE AND CASUALTY LOSSES

7.1. Insurance on Common Property. The Board of Directors or the duly authorized agent of the Association shall have the authority to and shall obtain insurance for all insurable improvements whether or not located on the Common Property which the Association is obligated to maintain. This insurance shall provide fire and extended coverage, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

7.2. Liability Insurance. The Board shall obtain a general commercial liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of

at least One Million Dollars (\$1,000,000.00). If available, the Board is authorized to obtain directors, and officers, liability insurance coverage.

7.3. Other Insurance. In addition to the other insurance required by this Section 7, the Board shall obtain workers' compensation insurance to the extent necessary to satisfy the requirement of South Carolina law. The Board shall also obtain a fidelity bond or bonds on Association directors, officers, employees, and other persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall be in an amount no less than three (3) month's prorated Assessments plus any reserves. Bonds shall contain a waiver of all defenses based upon the exclusion or person serving without compensation and may not be canceled, subjected to nonrenewal or substantially modified without at least thirty (30) days prior written notice to the Association. The Association shall also obtain construction code endorsements, also known as law and ordinance endorsements, and flood insurance if necessary, and to the extent necessary, to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U.S. Department of Veterans Affairs, or the U.S. Department of Housing and Urban Development.

7.4. Declarant. The Board is authorized to obtain the insurance coverage required hereunder through the Declarant and to reimburse Declarant for the cost thereof. The Board shall not be required to comply with the provisions of this Section if the Board has contracted for or otherwise arranged to obtain the required insurance coverage through the Declarant.

7.5. Premiums. Premiums for all insurance shall be common expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

7.6. Miscellaneous. All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee for the respective benefited parties, as further identified below. Such insurance shall comply with these provisions:

7.6.1. All policies shall be written with an insurance company authorized to do business in South Carolina.

7.6.2. Exclusive authority to settle losses under policies obtained by the Association shall be vested in the Board; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

7.6.3. In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

7.6.4. All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed annually by the Board.

7.6.5. The Board shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

7.6.5.1 a waiver of subrogation by the insurer as to any claims against the Board, its manager, the Owners and their respective agents, tenants and guests;

7.6.5.2 a waiver by the insurer of its rights to repair and reconstruct instead of paying a cash settlement;

7.6.5.3 that no policy may be canceled, invalidated, or suspended on account of any one or more individual Owners;

7.6.5.4 that no policy may be canceled, subjected to nonrenewal, invalidated, or suspended on account of any defect or the conduct of any Board member, Association officer or employ, or employee of the authorized manager of the Association without prior demand in writing deliver to the Association to cure any defect or to cease the conduct and the allowance or

a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;

7.6.5.5 that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

7.6.5.6 that no policy may be canceled, subjected to nonrenewal or substantially modified without at least thirty (30) days prior written notice to the Association.

7.7. Individual Insurance for Lot Owners. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots, and each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket "all-risk" casualty insurance on the Lot and all structures constructed thereon and a liability policy covering damage or injury occurring on a Lot. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an "all-risk" policy, if reasonably available, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. If all-risk coverage is not reasonably available, Owners shall obtain, at a minimum, fire and extended coverage. The policies required hereunder shall be in effect at all times. Authority to adjust losses under policies obtained by an Owner shall be vested in the Owner. The losses under policies obtained by an Owner shall be vested in the Owner. The Association shall have the right, but not the obligation, at the expense of the Owner, to acquire the insurance required to be maintained by the Owner if the Owner fails to provide a valid policy to the Association with a prepaid receipt within ten (10) days after receipt by the Owner of a written request from the Association. If the Association does acquire insurance on behalf of any Owner, the cost thereof shall be assessed against the Owner and the Lot as a specific assessment.

7.8. Damage and Destruction ... Property Insured by Association. Immediately after damage or destruction by any casualty to any improvement covered by Association insurance, the Board or its authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost or repair or reconstruction of the damaged property. Repair or reconstruction, as used in this Section 7, means repairing or restoring the property to substantially the same condition and location that existed prior to the casualty, allowing for changes necessitated by changes in applicable ordinances. Repair or reconstruction procedures shall be as follows

7.8.1. Any damage to property covered by Association insurance shall be repaired or reconstructed unless seventy-five percent (75%) or the Total Association Vote agree otherwise in a vote taken at a duly called Association meeting held sixty (60) days after the casualty. If for any reason the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such sixty (60) day period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) day.

7.8.2. If the insurance proceeds are insufficient to pay for the repair or reconstruction, the Board shall, without the necessity of a vote of the Owners, levy a special assessment against all Owners in proportion to the number of Lots owned by each Owner. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs or repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association.

7.8.3. If the Association votes not to repair or reconstruct damage improvements, and no alternatives are authorized by the Association, then the property shall be restored to its natural state and maintained as an undeveloped portion of Beach City Place in a neat and attractive condition.

7.9. Damage and Destruction to Improvements on Lots ... Insured by Owners. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within ninety (90) days after such damage or destruction or, where repairs cannot be completed within ninety (90) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Lot and remove all debris therefrom within ninety (90) days after such damage or destruction. In the event of noncompliance with this provision, the Board shall have all enforcement powers specified in this Declaration.

7.10. Insurance Deductible. The deductible for any casualty insurance policy carried by the Association shall be paid by the Association or be allocated among the Persons who are responsible for the damage or destruction.

## **SECTION 8 MORTGAGEE PROVISIONS**

8.1. Mortgagee Provisions. The following provisions are for the benefit of holders of first Mortgages on Lots in Beach City Place. The provisions of this Section 8 apply to both this Declaration and the Bylaws, notwithstanding any other provisions contained therein.

8.2. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association, such request to state the name and address of such holder, insurer, or guarantor and the Lot number, therefore becoming an "eligible holder", will be entitled to timely written notice of:

8.2.1. any condemnation loss or any casualty loss which affects a material portion of Beach City Place or which affects any Lot on which there is a first Mortgage held, insured or guaranteed by such eligible holder;

8.2.2. any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage or such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by the Owner of an unencumbered Lot of any obligation under the Declaration or the Bylaws which is not cured within sixty (60) days;

8.2.3. any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

8.3. No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

8.4. Notice to Association. Upon request, each Lot Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

8.5. Applicability of Section Nothing contained in this Section shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or South Carolina law for any of the acts set out in this Section.

## **SECTION 9** **EASEMENTS**

9.1. Easements for Use and Enjoyment. Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to each Lot. Any Owner may delegate such Owner's right of use and enjoyment in and to the Common Property to the members of the Owner's family and to such Owner's tenants and guests. Such delegation shall be deemed when any Owner leases its Lot. The Owners' easements for use and enjoyment shall be subject to the following provisions:

9.1.1. the right of the Association to suspend a Lot Owners' voting rights and the right to use the Common Property for any period during which any assessment against such Owner remains unpaid, or for a reasonable period of time for a violation of this Declaration, Bylaws or the Associations rules or regulations;

9.1.2. Regarding any docks within the Area of Common Responsibility, the right of the Association to charge reasonable admission and other fees for the use of such Common Property, to limit the number of guests of Owners and tenants who may use the Common Property, and to provide for the exclusive use and enjoyment of specific portions of the Common Property by an Owner, its guests and invitees, at designated times for special events upon such Owner's payment to the Association of a reasonable use charge, as set by the Board in its sole discretion, and the right of the Association to promulgate rules and regulations for the use of such docks.

9.1.3. the right of the Association to borrow money for the purpose of improving the Common Property, or for construction, repairing or improving any facilities located on the Common Property, and to give as security for the payment of any such loan a Mortgage encumbering the Common Property; provided, however, the lien and encumbrance of any such Mortgage shall be subject and subordinate to the provisions of this Declaration. Any such Mortgage on the Common Property shall be approved by at least two thirds (2/3) of the Total Association Vote. The exercise of any rights held by any mortgagee of Common Property shall not cancel or terminate any provisions of this Declaration, or the holder of any Mortgage on any Lot.

9.1.4. the right of the Association to dedicate or grant licenses, permits or easement over, under and through the Common Property to governmental entities for public purposes; and

9.1.5. the right of the Association to dedicate or transfer all or any portion of the Common Property subject to the such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless approved by at least two thirds (2/3) of the Total Association Vote.

9.2. Easements for Utilities. There is hereby reserved to the Declarant and the Association blanket easements upon, across, above and under all property within Beach City Place, including all Lots, for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving Beach City Place or any portion thereof. This easement shall include, without limitation, gas, water, sanitary sewer, telephone, electricity, cable television, security, as well as storm drainage and any other service or system which the Declarant or the Association might decide to have installed to service Beach City Place. It shall be expressly permissible for the Declarant, the Association, or the designee of either, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, pipes, cables and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or

easement by separate recordable document, the Declarant or the Board, as the case may be, shall have the right to grant such easement.

9.3. Easement for Drainage. Declarant hereby reserves a perpetual easement across all Beach City Place property for the purpose of altering drainage and water across all Beach City Place property for the purpose of altering drainage and water flow. This right shall include, but is not limited to, altering swales, installing drains, drainage ditches, pipes, inlets, headwalls, and altering channeling, or piping waterflow across any Lot or any property in Beach City Place. Rights exercised pursuant to this reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

9.4. Easement for Entry. In addition to the other rights reserved to Declarant and the Association, the Declarant or the Association shall have the right (but not the obligation) to enter upon any property or Lot within Beach City Place for emergency, security, and safety reasons. This right may be exercised by the Declarant or its designee, any officer of the Board, and all governmental employees, policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. This right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard or condition in the event an Owner or Occupant fails or refuses to cure the condition upon request by the Board.

9.5. Easement for Maintenance. Declarant hereby expressly reserves a perpetual easement for the benefit of Declarant or the Association across such portions of Beach City Place, determined in the sole discretion of the Declarant and the Association, as are necessary to allow for the maintenance required by this Declaration. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Owners' property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

9.6. Easement for Entry Features. There is hereby reserved to the Declarant and the Association an easement for ingress, egress, installation, construction landscaping and maintenance of entry features and similar streetscapes for Beach City Place, over and upon each Lot within the 40' private access easement as is depicted on the recorded subdivision plat for Beach City Place described on Exhibit "A" attached hereto.

9.7. Construction and Sale Period Easement. Notwithstanding any provisions contained in the Declaration, the Bylaws, any rules and regulations, design guidelines, and any amendments thereto, so long as Declarant owns any Lot in Beach City Place for development or sale, Declarant reserves an easement across Beach City Place for Declarant and any builder or developer approved by Declarant to maintain and carry on, upon such portion of Beach City Place as Declarant may reasonably deem necessary. This reserved easement shall include an easement for such utilities, facilities and activities which, in the sole opinion of Declarant, may be required, convenient, or incidental to the development, construction, and sales activities related to property within or near Beach City Place. This easement shall include, without limitation:

9.7.1. the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in any portion of Beach City Place as well as any Lot in Beach City Place;

9.7.2. the right to tie into any portion of Beach City Place with driveways, parking areas and walkways;

9.7.3. the right to tie into or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services;



**SECTION 10**  
**GENERAL PROVISIONS**

10.1. Enforcement. Each Owner and Occupant shall comply strictly with the Bylaws, the rules and regulations, the use restrictions, as they may be lawfully amended or modified from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration. The Board may impose fines or other sanctions, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the Bylaws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board of Directors, on behalf of the Association, or in a proper case, by an aggrieved Owner. Failure by the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Board shall have the right to record in the appropriate land records a notice of lien, a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions, or design guidelines and to assess the cost of recording and removing such notice against the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

10.2. Self-Help. In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon any Lot or any other portion of Beach City Place to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates this Declaration, the Bylaws, the rules and regulations, or the use restriction. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten (10) days written notice of its intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after reasonable notice. All costs of self-help, including reasonable attorney's fees, shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.

10.3. Condemnation. In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been constructed, then, unless within sixty (60) days after such taking, at least seventy-five percent (75%) of the Total Association Vote shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Property to the extent lands are available therefor. The provisions of this Declaration applicable to Common Property improvements damage, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

10.4. Duration. The covenants and restrictions of this Declaration shall run with and bind Beach City Place, and shall inure to the benefit of and shall be enforceable by Declarant, the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent provided by South Carolina law. If South Carolina law limits the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, after which time any such provision shall be automatically extended for successive periods of ten (10) years, unless a written instrument reflecting disapproval signed by the then Owners of 2/3 of the Lots and the Declarant (if the Declarant still owns any property in Beach City Place or has the right to annex additional property) is recorded within the year immediately preceding the beginning of a ten (10) year renewal period.

10.5. Annexation. So long as the Declarant owns one (1) or more Lots, the Declarant may unilaterally annex additional property under this Declaration by filing a Supplemental Declaration to this Declaration referencing this Declaration and giving the legal description of the additional property. Such Supplemental Declaration shall define the rights and obligations of the owners of the additional property regarding Common Property, Assessments, and rights in the Association. Such Supplemental Declaration may, in the discretion of the Declarant, give the owners of the additional property only usage rights to

specified Common Property in consideration of a portion of the Assessment(s) charged to Lot Owners. Any property annexed to this Declaration shall be within the boundaries of the Town of Hilton Head Island.

10.6. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association, HUD, the VA, or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or private insurance company to insure or guarantee Mortgage Loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely and materially affect the title to any Owner's Lot unless any such Lot Owner shall consent in writing. Further, so long as Declarant has the right unilaterally to subject additional property to this Declaration, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Lot Owners hereunder, nor shall it adversely affect title to any Lot without the consent of the affected Lot Owner.

In addition to the above, this Declaration may be amended:

10.6.1.1 For so long as the Declarant owns any property in Beach City Place or has the right to annex additional property, with the affirmative written consent of the Declarant and upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least one half (1/2) of the Lots not owned by Declarant;

10.6.1.2 If the Declarant no longer owns any Property in Beach City Place and no longer has the right to annex additional property, upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least two-thirds (2/3) of the Lots

10.7. Partition. The Common Property shall remain undivided, and no Owner nor any other Person shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within Beach City Place and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not necessarily limited to, the Lots located within Beach City Place.

10.8. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

10.9. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end, the provisions of this Declaration are declared to be severable.

10.10. Captions. The captions are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

10.11. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such









EXHIBIT "C" TO APRIL 22, 2013, LETTER FROM DAVID AND ALETHEA W.  
JACKSON AND DAVID JACKSON TO TERI B. LEWIS



**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 Grantees, as joint tenants with the right of survivorship and not as tenants in common, their heirs and assigns forever; subject, however, to the rights, conditions and restrictions that constitute covenants running with the land, all as set forth herein.

**AND** Grantor does hereby bind itself and its successors and assigns to warrant and forever defend all and singular the said premises unto the Grantees, their heirs and assigns, against the Grantor and its successors and assigns, and all persons whomsoever lawfully claiming or to claim the same, or any part thereof.

*[Signatures on Following Page]*



EXHIBIT "D" TO APRIL 22, 2013, LETTER FROM DAVID AND ALETHEA W.  
JACKSON AND DAVID JACKSON TO TERI B. LEWIS



Frank Mangan  
16 Adventure Galley Lane  
Hilton Head SC 29926



May 8, 2013

Ms. Jayme Lopko,

Senior Planner

Town of Hilton Head Island

Re: Proposed Rezoning of 217 Beach City Road LLC Property

Dear Ms. Lopko,

The Island Packet reports the HHI Planning and Development Standards Committee is considering a rezoning of the above property.

This letter is to express a variety of concerns I believe are relevant to this as well as my strong opposition to this action. Those reasons include:

-The Town should not be in the business of "picking winners".

As I understand it the investing group successfully worked to set up an LLC, determine infrastructure needs, commit capital, work through P&Z regulations and approval processes and receive outside financing. In other words they, and their successors, are sophisticated investors who set out to make a profit within the existing Town guidelines. At no time did they propose, nor were they required to offer, to share any of their financial success with the Town.

While it is unfortunate their anticipated profit failed to materialize why is the Town now considering changes which will enrich investors? How does this not create precedent for the Town to then do this for other, perhaps, favored developers?

-The Town has no reason to "give away" assets which belong to taxpayers.

The possible number of home sites will be tripled from 32 to, apparently, 96. Since each of the new 64 building lots has a monetary value, why is the Town proposing to give them - at zero cost - to an investor group? How can the Town justify this free exchange of what are taxpayer assets?

If the Town strongly believes this density is appropriate why are taxpayers not being compensated at fair market value for the loss of their asset?

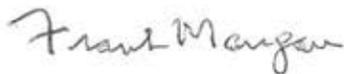
-The Town should not ignore its own experts, including those who drafted the Master Plan, plus the opinions of affected, relevant, parties as the FAA, SCAC and, importantly, the non-support of Town staff.

-The density level considered by the Town conflict with other, voter approved, priority goals of the Town.

Large majorities of the voting population have routinely approved the expenditure of tens of millions of dollars for the acquisition, creation and preservation of open land and environmentally sensitive sites. If the Town believes greater density, despite reservations of affected parties as above, is a priority shouldn't that be put before the voters in a referendum?

I would appreciate your presenting my views for discussion and review at the May 22 meeting of the Subcommittee and, at the June 18<sup>th</sup> Town Council meeting. If I can provide additional information please phone at the above number.

Cordially,



CC: Mr. William D. Harkins

Town Council Member, Ward Two

## Email Comments – ZMA130003

As owners at The Spa on Port Royal Sound on Beach City Road, we would oppose any effort to rezone on the grounds that it will change the character of the neighborhood and overly tax the existing infrastructure.

Respectfully,  
Dale and Patience Rush

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Just who's interest is the rezoning commission looking out for?

The FAA, SC Aeronautics Commission, Beaufort County government and the town of Hilton Head Island staff all opposed the approval of the rezoning request and several area local residents spoke out against this rezoning at the meeting.

Despite all of this opposition, the rezoning commission, after an Executive Session to discuss this among themselves, voted to approve the increased density request.

The only people in favor of this were the individuals who stand to make a financial gain on the sale of the property after rezoning. Several of the individuals do not even live on the island.

And what kind of property will go here? Apparently apartments will go here and its location under the landing approach will be subject to extremely high noise levels, especially since the rezoning will allow about three stories to be built. Certainly a noise study should be done and before any apartments are built.

The potential lives at risk building high density apartments under the airport approach is high, especially considering landings and take offs are the most dangerous times of flight.

Hopefully the Planning Review Board and Town Council will take a hard look at this ill-advised decision and overturn it.

Gary Runge

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As owners at The Spa on Port Royal Sound on Beach City Road, we would oppose any effort to rezone on the grounds that it will change the character of the neighborhood and overly tax the existing infrastructure.

Respectfully,  
Jeff and Kim Bartholomew

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It has come to my attention that a public meeting will be held on May 1, 2013 regarding rezoning of the Beach City Place development. I am a full-time resident of The Spa on Beach City Road Villa 1104. I chose to make The Spa and Hilton Head Island my permanent home because of its natural beauty and character. I will be out of town during this meeting, however, I wish voice my objections to this proposed zoning change that will permit mobile/modular homes in the Beach City Place development. This change will not only effect the aforementioned. It will also significantly effect the area's infrastructure as well as the economic impact of possible loss of tourist rentals at The Spa. Additionally, this will detract from the many accomplishments of the city such as the buffer zones, Mitchelville Project, and the beach replenishment project.

Thank you for your time and consideration.

Respectfully,  
Dale H. Rush Sr.

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