



**Town of Hilton Head Island  
Special Planning Commission Meeting  
Tuesday, March 29, 2011  
3:00 p.m. Benjamin M. Racusin Council Chambers  
AGENDA**

---

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

- 1. Call to Order**
- 2. Pledge of Allegiance to the Flag**
- 3. Roll Call**
- 4. 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.
- 5. Approval of Agenda**
- 6. Appearance by Citizens on Items Unrelated to Today's Agenda**
- 7. Unfinished Business**  
None
- 8. New Business**  
**Public Meeting**  
**APL100006:**  
Request for Appeal from Chester C. Williams on behalf of Ephesian Ventures, LLC. The Community Development Department issued a notice of action, approving the construction of a tabby walkway and brick areas at Edgewater on Broad Creek. The appellant contends that the Community Development Department erred in its decision to issue a notice of action and is requesting that the notice of action be declared void. *Presented by: Nicole Dixon*
- 9. Commission Business**
- 10. Chairman's Report**
- 11. Committee Reports**
- 12. Staff Reports**
- 13. Adjournment**

Please note that a quorum of Town Council may result if four (4) or more of  
Town Council members attend this meeting.



# **TOWN OF HILTON HEAD ISLAND**

*Community Development Department*

**TO:** Planning Commission  
**FROM:** Nicole Dixon, *Senior Planner*  
**VIA:** Teri B. Lewis, *AICP, LMO Official*  
**DATE:** March 11, 2011  
**SUBJECT:** APL100006 - Edgewater

---

Staff has received an appeal from Chester C. Williams on behalf of Ephesian Ventures, LLC, regarding the issuance of a Notice of Action for XDPR100013, which permits a tabby walkway and brick areas at Edgewater on Broad Creek.

The appellant is appealing this decision and seeks to have the Notice of Action voided. The record as attached consists of the following documents: Town Determination Letter, Appeal Application, Appellant's Narrative titled Attachment 1, XDPR100013 File and Notice of Action titled Exhibits A & B, Deed Information titled Exhibit C, Other Letters from the Town and Appellant titled Exhibits D-G, Cited Law Case Information titled Exhibit H. We reserve the right to submit additional items in connection with this appeal.

Per LMO Section 16-3-309, "Staff approval or disapproval of a land development plan may be appealed to the Planning Commission by any party in interest. The Planning Commission must act on the appeal within 60 days of receipt of the appeal, and the action of the Planning Commission is final, except as appellate rights provided in section 6-29-1150(C) of the State Code of South Carolina."

If you have any questions, feel free to contact me at 341-4686 or [nicoled@hiltonheadislandsc.gov](mailto:nicoled@hiltonheadislandsc.gov).



LAW OFFICE OF  
CHESTER C. WILLIAMS, LLC

17 Executive Park Road, Suite 2  
Post Office Box 6028  
Hilton Head Island, SC 29938-6028  
Telephone (843) 842-5411  
Telefax (843) 842-5412  
Email [Firm@CCWLaw.net](mailto:Firm@CCWLaw.net)

Chester C. Williams  
ALSO MEMBER LOUISIANA BAR

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

July 9, 2010

**HAND DELIVERED**

**and**

**VIA EMAIL TO [TeriL@HiltonHeadIslandSC.gov](mailto:TeriL@HiltonHeadIslandSC.gov)**

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

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

Dear Teri:

We are pleased to deliver to you herewith for filing with the Town's Planning Commission our appeal on behalf of our client, Ephesian Ventures, LLC, regarding the Town's issuance of the April 15, 2010 Notice of Action on Expedited Development Plan Review Application No. XDPR100013. Also enclosed is our check payable to the Town for the required filing fee for this appeal.

By way of his copy of this letter, we advise Alfred W. Vadnais, Esq., the Chairman of the Planning Commission, of our filing of this appeal to the Planning Commission on behalf of Ephesian Ventures, LLC.

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

Given the filing deadline requirements of the LMO and the Planning Commission's meeting schedule, we trust this appeal will be placed on the agenda for the September 1, 2010 Planning Commission meeting.



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

With best regards, we are

Very truly yours,

LAW OFFICE OF CHESTER C. WILLIAMS, LLC



This signature is an electronic reproduction

Chester C. Williams

CCW:skt

Enclosure

cc: Alfred W. Vadnais, Esquire  
Michael W. Mogil, Esquire  
Gregory M. Alford, Esquire



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

<b>FOR OFFICIAL USE ONLY</b>	
Date Received:	_____
Accepted by:	_____
App. #: APL	_____
Meeting Date:	_____

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

**APPEAL (APL) SUBMITTAL REQUIREMENTS**

- Digital Submissions may be accepted via e-mail by calling 843-341-4757.** The following items must be attached in order for this application to be complete:
- A detailed narrative stating the Town Official or Body the made the decision, the date of the decision you are appealing, the decision you are appealing, the basis for your right to appeal, the grounds of the appeal, and citing any LMO Section numbers relied upon; **and** a statement of the specific decision requested of the Board of Zoning Appeals. **See Attachment 1**
  - Any other documentation used to support the facts surrounding the decision. **See Attachment 1**
  - Filing Fee - \$100.00 cash or check made payable to the Town of Hilton Head Island.

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

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

Applicant/Agent Signature: \_\_\_\_\_ Date: July 9, 2010  
 Chester C. Williams, Attorney for the Applicant

Note: This is an appeal to the Planning Commission under LMO Section 16-3-309.

STATE OF SOUTH CAROLINA	)	BEFORE THE PLANNING COMMISSION
	)	OF THE TOWN OF HILTON HEAD
	)	ISLAND, SOUTH CAROLINA
	)	
	)	REQUEST FOR APPEAL
COUNTY OF BEAUFORT	)	NO. APL10000_____

**ATTACHMENT 1  
TO THE APPEAL APPLICATION OF  
EPHESIAN VENTURES, LLC**

**NARRATIVE**

**I. INTRODUCTION**

This Attachment 2 is part of the Request for Appeal (this “Appeal”) filed by Ephesian Ventures, LLC (“Ephesian”) in connection with the Notice of Action dated April 15, 2010 (the “Notice of Action”) signed by Nicole Dixon, Planner for the Town of Hilton Head Island (the “Town”), on the Expedited Development Plan Review Application No. XDPR100013 (the “XDPR Application”) filed on April 12, 2010 on behalf of Edgewater on Broad Creek, HPR (the “Edgewater HOA”).<sup>1</sup> The Notice of Action<sup>2</sup> purports to permit the construction of a tabby pathway on property which is subject to restrictive covenants and easements and other rights held by Ephesian. This Narrative is submitted to the Town as part of this Appeal, for inclusion in the record of this Appeal, and for review by the Town’s Planning Commission (the “Planning Commission”).

Ephesian owns a 16.01 acre tract adjacent to the property of Edgewater on Broad Creek Horizontal Property Regime (the “Regime”). The Regime was created by the recording of the Master Deed Establishing the Edgewater on Broad Creek Horizontal Property Regime (Phase I) on December 31, 2002 in

---

<sup>1</sup> A copy of the XDPR Application is attached to this Narrative as Exhibit A.

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



Beaufort County Record Book 1689 at Page 574 (the “Master Deed”).<sup>3</sup> The Master Deed submitted 7.64 acres of the Edgewater on Broad Creek property (the “Regime Property”) to the provisions of the South Carolina Horizontal Property Act, Section 27-31-10, *et seq.* of the Code of Laws of South Carolina (1976), as amended (the “SC Code”). Ephesian is the owner of property at Edgewater on Broad Creek (the “16.01 Acre Tract”) not included in the Regime Property.

Ephesian acquired the 16.01 Acre Tract by way of that certain deed from the Trustee in Bankruptcy for Broad Creek Edgewater, LP recorded on July 7, 2008 in Beaufort County Record Book 2742 at Page 2049.<sup>4</sup> Ephesian’s deed also conveys to Ephesian the rights of the Declarant under the Master Deed and numerous reserved easements and other interests in the Regime Property, as more fully discussed below.

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

This Appeal seeks to reverse the decision of the LMO Official and her Staff to issue the Notice of Action, and to void the Notice of Action.

## **II. BACKGROUND**

On or about April 9, 2010, the Edgewater HOA started site work and construction of a tabby pathway on a portion of the Regime Property, without seeking the consent of Ephesian for such work. That same day, Ms. Dixon, on behalf of the Town, ordered that such site work and construction activities

---

<sup>3</sup> The Master Deed as recorded, including all exhibits, is 91 pages. Ephesian has previously provided copies of the Master Deed to the Town Staff. Because of the size of the document, a copy of the Master Deed is not attached to this Narrative as an exhibit; however, Ephesian will have a copy of the Master Deed available at the hearing of this Appeal, and will readily provide a copy to any member of the Planning Commission upon request.

<sup>4</sup> A copy of Ephesian’s deed is attached to this Narrative as Exhibit C.



cease until the proposed work was properly permitted by the Town. Ephesian believes that, as a result of the Town's stop work order, the XDPR Application was filed with the Town on April 12, 2010.

By way of a letter to Ms. Dixon on April 15, 2010, the undersigned, on behalf of Ephesian, asked that Ms. Dixon provide Ephesian with notice of the filing of the XDPR Application, specifically for the purpose of reviewing the XDPR Application for compliance with applicable restrictive covenants.<sup>5</sup> However, Ephesian was not advised by Ms. Dixon of the filing of the XDPR Application until the undersigned received an email from Ms. Dixon on April 20, 2010,<sup>6</sup> in which Ms. Dixon advised the undersigned of the issuance of the Notice of Action. The undersigned and Ephesian did not receive copies of the XDPR Application and the Notice of Action until they were obtained from a review of the Town's file on the XDPR Application on April 26, 2010.

By way of a letter to Teri B. Lewis, AICP, the Town's LMO Official, on April 28, 2010, Ephesian, through the undersigned, notified the Town that the XDPR Application contained factual inaccuracies and was improperly issued.<sup>7</sup> That letter identified Ephesian as the holder of the rights of the Declarant (the "Declarant Rights") under the Master Deed by way of the Ephesian Deed, advised Mrs. Lewis and the Town of certain rights reserved under the Master Deed to the Declarant and held by Ephesian, further advised Mrs. Lewis and the Town of restrictive covenants contained in the Master Deed that are applicable to the Regime Tract, and informed the Town that the restrictive covenants applicable to the Regime Tract are contrary to, conflict with, or prohibit the activity permitted by the XDPR Application and the Notice of Action.

---

<sup>5</sup> A copy of the April 15, 2010 letter to Ms. Dixon is attached to this Narrative as Exhibit D.

<sup>6</sup> A copy of the April 20, 2010 email from Ms. Dixon is attached to this Narrative as Exhibit E.

<sup>7</sup> A copy of the April 28, 2010 letter to Ms. Lewis (without the two enclosures, which are the Master Deed and Ephesian's deed) is attached to this Narrative as Exhibit F.



On April 30, 2010, in her letter to IMC Resort Services, Inc., the Edgewater HOA's agent on the XDPR Application,<sup>8</sup> Mrs. Lewis, rescinded the Notice of Action, stating:

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

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

Ephesian alleges that the work authorized by the Notice of Action is not properly permitted, because the XDPR Application is factually inaccurate and is incomplete, and the Notice of Action is therefore invalid, as more fully explained below.

---

<sup>8</sup> A copy of Mrs. Lewis' April 30, 2010 letter to IMC Resort Services, Inc. is attached to this Narrative as Exhibit G.



### **III. DEVELOPMENT PLANS – ISSUANCE OF PERMITS**

Sections 16-2-101 and 16-10-201 of the LMO identify the Administrator as “the LMO Official or his/her designee”.

Section 6-29-1150(A) of the Code of Laws of South Carolina (1976), as amended (the “SC Code”), which is part of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (the “State Enabling Act”), says that “land development regulations adopted by [the Town] must include a specific procedure for the submission and approval or disapproval by the planning commission or designated staff.” Under LMO Section 16-2-102, the Administrator, who is part of the Town staff, has the authority to, among other things, review and take action on development plans.

Teri B. Lewis, AICP is the Town’s LMO Official, and Ms. Dixon is a Planner in the Town’s Community Development Department. Subject to the arguments for appeal set forth below, Ephesian has assumed, for purposes of this Appeal only, that the LMO Official has the legal authority to review and act on the XDPR Application and to issue the Notice of Action, and Ms. Dixon had appropriate delegated authority from Mrs. Lewis to do likewise.

### **IV. THE AUTHORITY AND POWER OF THE PLANNING COMMISSION – APPEALS OF STAFF ACTION ON LAND DEVELOPMENT PLANS**

Section 6-29-340(B) of the State Enabling Act charges the Planning Commission with the power and duty to, among other things, prepare and recommend for adoption to the Town Council regulations for the subdivision or development of land, and appropriate revisions thereof, and “to oversee the administration of the regulations that may be adopted [by the Town] as provided in [the State Enabling Act]”.

Section 6-29-1150(C) of the State Enabling Act says that, “Staff action, if authorized, to approve or disapprove a land development plan may be appealed



to the planning commission by any party in interest.” Further, LMO Section 16-3-309 says, “Staff approval or disapproval of a land development plan may be appealed to the Planning Commission by any party in interest.” As the holder of the Declarant Rights for the Regime Property under the Master Deed, Ephesian is clearly a “party in interest” with respect to the approval of the XDPR Application.

## **V. THE XDPR APPLICATION**

A review of the Town’s file on the XDPR Application clearly indicates that the XDPR Application was incomplete when filed and when the Notice of Action was issued. As more fully explained below, few, if any, of the items required by LMO Section 16-3-303 for a complete development plan application, other than the application form and fee, were submitted to the Town.

More importantly, the XDPR Application represents that there are no recorded private covenants and/or restrictions that are contrary to, conflict with, or prohibit the proposed request. As noted in the April 28, 2010 letter to Mrs. Lewis, and as confirmed in Mrs. Lewis’ April 30, 2010 letter, the representation made on behalf of the Association in the XDPR Application regarding recorded private covenants and/or restrictions is clearly factually inaccurate. Specifically, Mrs. Lewis said in her letter that “...misinformation was provided by you [the Edgewater HOA’s agent] as part of the application.”

## **VI. THE NOTICE OF ACTION**

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

Ephesian notes for the record that it has neither consented to nor approved of the filing of the XDPR Application as it relates to Ephesian’s interests in the Regime Property. Ephesian also notes for the record that it



categorically has not, and does not, consent to any work on the Regime Property that may have an adverse impact on its interests in the Regime Property, including the work purportedly permitted by the Notice of Action, absent specific written approval from Ephesian.

Ephesian asserts that Notice of Action was wrongfully and improperly issued by the Town to the Edgewater HOA. Ephesian is clearly aggrieved by the Notice of Action and the work undertaken by the Edgewater HOA pursuant to the Notice of Action, and therefore has filed this Appeal to the Planning Commission.

## **VII. STANDING**

Ephesian has standing to file this Appeal because the Appellant has easements and other rights in and to the Regime Property, including the Declarant Rights, under applicable restrictive covenants contained in the Master Deed, and is therefore clearly a “party in interest” under Section 6-29-1150(C) of the State Enabling Act. Ephesian also has standing to file this Appeal to the Planning Commission in order to invoke the Planning Commission’s power and duty to oversee the administration of the LMO pursuant to Section 6-29-340(B)(2) of the State Enabling Act. In addition, Ephesian has standing to file this Appeal under LMO Section 16-3-309.

## **VIII. NECESSARY PARTY**

The Edgewater HOA, as the permittee under the Notice of Action, is a necessary party to this Appeal. Accordingly, Ephesian asks that the Edgewater HOA receive notice of all matters and hearings associated with this Appeal.<sup>9</sup>

---

<sup>9</sup> See *Spanish Wells Property Owners Association, Inc. v. Board of Adjustment of the Town of Hilton Head Island*, 367 S.E.2d 160 (SC 1988), a copy of which is attached to this Narrative as Exhibit H.



## **IX. GROUNDS FOR APPEAL**

Ephesian alleges that the Notice of Action was wrongfully and improperly issued by the Town to the Edgewater HOA, because the XDPR Application was factually inaccurate and incomplete when filed and when the Notice of Action was issued, and the permitted activity is contrary to, conflicts with, or is prohibited by restrictive covenants applicable to the Regime Tract contained in the Master Deed.

## **X. EPHESIAN'S ARGUMENTS FOR APPEAL**

### **A. INVALIDITY OF THE NOTICE OF ACTION – INCOMPLETE APPLICATION**

Ephesian submits that the Notice of Action is invalid under LMO Sections 16-3-108 and 16-3-303 and, as the XDPR Application is incomplete.

LMO Section 16-3-303 sets forth the requirements for a complete development plan application, and LMO Section 16-3-108 requires that the Administrator notify an applicant if an application is incomplete.

A cursory review of the XDPR Application and the materials in the Town's file for same necessarily leads one to the conclusion that it was incomplete when submitted. Few, if any, of the items required by LMO Section 16-3-303 for a complete development plan application, other than the application form and fee, were submitted to the Town.<sup>10</sup> Even the minimal required items specified in the Expedited Development Plan Review Supplemental Application Form are incomplete. Specifically, the property owner's certification of consent is not notarized; there is no narrative describing the scope of the project; there is no survey of the area of the property being affected by the application

---

<sup>10</sup> Ephesian notes that the LMO does not seem to include any requirements or guidelines for an "expedited" development plan review application. In fact, it does not seem that the word "expedited" appears anywhere in the LMO.



showing existing topography, all trees six inches in diameter and larger, and other required matters; there is no landscape plan showing changes being proposed; and there are no copies of approvals from outside agencies.

Because the XDPR Application is incomplete under LMO Sections 16-3-108 and 16-3-303, the Notice of Action was issued in error, and is therefore invalid.

**B. INVALIDITY OF THE NOTICE OF ACTION – CONFLICT WITH RECORDED PRIVATE COVENANTS AND/OR RESTRICTIONS**

Ephesian further submits that the Notice of Action is invalid because the activity permitted by the Notice of Action is contrary to, conflicts with, or is prohibited by recorded private covenants and/or restrictions contained in the Master Deed.

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

The XDPR Application represents that there are no “recorded private covenants and/or restrictions that are contrary to, conflict with, or prohibit the proposed request”. Based on the covenants and restrictions contained in the Master Deed and the easements and other rights in and to the Regime Property



now held by Ephesian under the Master Deed, Ephesian submits that this representation is factually inaccurate.<sup>11</sup>

Section 6-29-1145(B)(3) of the State Enabling Act provides, in part,

(B) If a local planning agency has actual notice of a restrictive covenant on a tract or parcel of land that is contrary to, conflicts with, or prohibits the permitted activity:

(3) from any other source including, but not limited to, other property holders, the local planning agency must not issue the permit unless the local planning agency receives confirmation from the applicant that the restrictive covenant has been released for the tract or parcel of land by action of the appropriate authority or property holders or by court order.

But for the factual inaccuracy in the XDPR Application regarding recorded private covenants and/or restrictions, the Notice of Action would not, and legally could not, have been issued; and if notice of the filing of the XDPR Application had been timely given to Ephesian, or if Ephesian's easement and other rights in and to the Regime Property has been considered in the Town's review process, then the issue of conflict with recorded private covenants and/or restrictions could have been brought to the Town's attention.

The Town, through Mrs. Lewis, as the LMO Official, and the Town Attorney, Gregory M. Alford, Esq., as set forth in Mrs. Lewis' April 30, 2010 letter, is already on the record as agreeing with Ephesian that the XDPR Application contained "misinformation" regarding applicable restrictive covenants, that the project proposed by the XDPR Application "is in violation of the Master Deed", and that "Ephesian retains all rights that went with the property transfer as part of the bankruptcy."

---

<sup>11</sup> Ephesian has no reason to believe that this factual inaccuracy in the XDPR Application was an intentional misrepresentation by or on behalf of the Edgewater HOA; instead, Ephesian assumes this factual inaccuracy was a mistake on the part of the Edgewater HOA.



Because the XDPR Application was factually inaccurate when submitted, and because restrictive covenants on the Regime Tract are contrary to, conflict with, or prohibit the permitted activity, the Notice of Action should not have been issued, and therefore should be voided.

### **C. CONSTITUTIONAL ISSUES**

Ephesian further believes the Town's issuance of the Notice of Action was wrong because the work purportedly permitted by the Notice of Action has a material detrimental effect on protected property rights and interests of Ephesian in the Regime Property, without having afforded Ephesian the right to notice and an opportunity to be heard, in violation of the due process clauses of the United States Constitution and South Carolina Constitution. The actions of the Town surrounding the issuance of the Notice of Action were arbitrary and capricious, in derogation of Ephesian's protected property interests, and without a reasonable basis or justification in law or fact, for the reasons specified above.

## **XI. CONCLUSION**

Because the Notice of Action is based on the incomplete and factually inaccurate XDPR Application, and because the Edgewater HOA did not obtain Ephesian's consent before the project permitted by the Notice of Action was undertaken, the Notice of Action is invalid. The Notice of Action was issued in violation of the requirements of the LMO Section 16-3-106 and 16-3-303 for a complete application, and in violation of Section 6-29-1145(B)(3) of the State Enabling Act. Therefore, the Notice of Action was improperly issued, in an arbitrary and capricious manner, contrary to the explicit provisions of the State Enabling Act, the LMO, and federal and state constitutions. Accordingly, Ephesian asks that the Planning Commission (a) consider the issues raised in this Appeal and the pertinent provisions of the State Enabling Act, the LMO, and other applicable law, (b) find that the Notice of Action was improperly issued, and (c) reverse the decision of the LMO Official and her Staff to issue the Notice of Action, and declare the Notice of Action void.



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

Respectfully submitted on behalf of Ephesian Ventures, LLC this 9<sup>th</sup> day of July, 2010.



---

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



**TOWN OF HILTON HEAD ISLAND  
COMMUNITY DEVELOPMENT DEPARTMENT  
MASTER APPLICATION FORM**

**Exhibit A (4 Pages)**

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

Please TYPE or PRINT legibly

NAME OF DEVELOPMENT or BUSINESS EDGEWATER ON BROADCREEK, HPR

STREET ADDRESS 50 VERBENA LANE HHI, SC 29926

ZONING DISTRICT \_\_\_\_\_ OVERLAY DISTRICT \_\_\_\_\_

TAX DISTRICT \_\_\_\_\_ MAP \_\_\_\_\_ PARCEL (S) \_\_\_\_\_

LAND OWNER \_\_\_\_\_ APPLICANT \_\_\_\_\_ AGENT \_\_\_\_\_

EDGEWATER ON BROADCREEK, HPR EDGEWATER ON BROADCREEK, HPR IMC RESORT SERVICES, INC.

NAME N/A ← SAME SAME

COMPANY ← SAME ← SAME 2 CORPUS CHRISTIE PLACE, STE 302

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

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

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

EMAIL ADDRESS \_\_\_\_\_ EMAIL ADDRESS \_\_\_\_\_ ATB@IMCRESORTSERVICES.COM

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

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

Are there recorded private covenants and/or restrictions that are contrary to, conflict with, or prohibit the proposed request?

YES  NO

If so, a copy of the private covenants and/or restrictions must be submitted with this application.

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

[Signature]  
SIGNATURE

4-9-10  
DATE

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

[Signature]  
SIGNATURE

4-9-10  
DATE

<b>FOR OFFICIAL USE ONLY</b>	
DATE RECEIVED: <u>4/12/2010</u>	MASTER TRACKING NUMBER: _____
ACCEPTED BY: <u>[Signature]</u>	

COMMUNITY DEVELOPMENT DEPARTMENT  
**EXPEDITED DEVELOPMENT PLAN REVIEW**  
**SUPPLEMENTAL APPLICATION FORM**  
*THIS FORM MUST BE ACCOMPANIED BY A MASTER APPLICATION FORM.*

Please TYPE or PRINT legibly

PROJECT/DEVELOPMENT NAME: **EDGEWATER ON BROADCREEK, HPR**  
OWNER/AGENT SUBMITTING APPLICATION: **IMC RESORT SERVICES, INC - AGENT**  
NAME **AJ BUCKO**  
E-MAIL ADDRESS\* **AJB@IMCRESORTSERVICES.COM**  
PHONE NUMBER **843-301-3857**  
FAX NUMBER **843-785-3906**

**APPLICATION SUBMISSION REQUIREMENTS:**

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

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

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

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

\_\_\_\_\_  
SIGNATURE

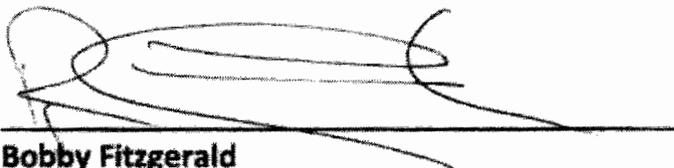
\_\_\_\_\_  
DATE

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

April 9, 2010

**Re: Expedited Development Plan Review Supplemental Application Form**

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



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

4/9/2010  
Date

# NOTICE OF ACTION

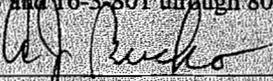
Exhibit B (2 Pages)

APPLICATION #

# XDPR100013

<b>Name of Development:</b> EDGEWATER ON BROADCREEK		<b>Location:</b> 50 VERBENA LANE
<b>Owner:</b> EDGEWATER ON BROADCREEK	<b>Applicant:</b> EDGEWATER ON BROADCREEK	<b>Agent:</b>
<b>Location and Development Information:</b>		
<b>Description:</b> 145FT TABBY WALKWAY, 2 BRICK CIRCLE SITING AREAS, 12FT & 6 FT.		
<b>Zoning District:</b> WMU <b>Overlay District(s):</b> 500 ft of OCRM Critical Line	<b>Tax District Map Parcel:</b> R51001100001770000	
<b>Approved Site Plan Information:</b>		
<b>Date of latest revision of approved site plan:</b>	<b>Based on Plans by:</b> IMC Resort Services <b>Plans Titled:</b> Edgewater on Broad Creek	
<b>Any deviation from the approved plans will require additional review.</b>		
<b>Case Manager:</b> NICOLE DIXON	<b>Sign:</b> 	
<b>Date Issued:</b> 04/15/2010	<b>Expiration Date:</b> 04/15/2011	

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

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

### Conditions of the Approval:

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

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

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



15 PB  
21  
700ER haw  
1489

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

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

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

Upon filing, please return  
to above address.

Exhibit C (15 Pages)

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )  
 )

QUIT CLAIM DEED

TO ALL WHOM THESE PRESENTS MAY COME:

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

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

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

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

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

See Exhibit A attached hereto and incorporated herein by reference.

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

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

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

1  
ADD DMP Record 7/15/2008 11:31:24 AM  
BEAUFORT COUNTY TAX MAP REFERENCE

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

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

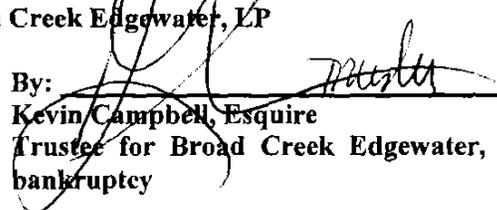
TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said Grantee, Ephesian Ventures, LLC, its successors and assigns, forever, so that the Grantor, Broad Creek Edgewater, LP, nor its successors and assigns, nor any other entity, person or persons, claiming under it, shall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

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

Signed, Sealed and Delivered  
in the Presence of:



Broad Creek Edgewater, LP

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

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

PROBATE

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

  
(witness)

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

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

**Exhibit A**  
**Property Description**

All that certain piece, parcel of tract of land, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing approximately 16.01 acres, shown as "Additional Property of Edgewater on Broad Creek" on that certain ALTA/ACSM LAND TITLE SURVEY prepared for Bear Properties, LLC, certified by Terry G. Hatchell of Surveying Consultants, Bluffton, SC, SCRLS No. 11059 dated May 16, 2008, to be recorded, and also the approximately 16.01 acres shown as "ADDITIONAL PROPERTY OF EDGEWATER ON BROAD CREEK" on that plat entitled "SURVEY OF :EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME-PHASE I" prepared by Surveying Services, Inc., certified to by James W. Edwards, SCRLS #15515, dated December 19, 2002, and recorded in Plat Book 91 at Page 5 in the Office of the ROD for Beaufort County on 12/31/02. *RS10-011-000-0004-0000*

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

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

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

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

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

**EXHIBIT B**

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

Case Number: 07-02546-DD

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

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

---

**FILED BY THE COURT  
05/27/2008**



Entered: 05/28/2008

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

US Bankruptcy Court Judge  
District of South Carolina

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IT IS SO ORDERED!

## EXHIBIT "A"

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

- a. A non-exclusive easement for ingress and egress over Seller's interest, if any, in the streets and highways, open or proposed, in front of or adjoining the land and across that certain tract of land containing 7.64 acres, more or less (the "Adjacent Tract") previously submitted to that certain Master Deed Establishing Edgewater on Broad Creek Horizontal Property Regime recorded on December 31, 2002, in the Office of the Register of Deeds for Beaufort County South Carolina in Record Book 1689 at Page 574 (the "Master Deed"); and
- b. all developmental rights, easements, rights of way, ponds, lagoons, waterways, privileges, permits, licenses, appurtenances and other rights pertaining thereto, if any, for the Property and the Adjacent Tract; and
- c. to the extent such exists, water and sewage capacity and spray field rights for the entire Project [which shall herein be used to describe the Property described in Exhibit A and the adjacent tract containing approximately 7.64 acres] and any remaining such rights and/or capacity in (including a capacity which at a minimum would allow a density of twelve units per acre); and
- d. the right to use all documents called for in this Agreement to be delivered to Purchaser in the same manner as Seller; and
- e. all rights and obligations as the Declarant (but none of the Declarant obligations, if any if such purported and alleged obligations: (a) arose following the recordation of the original Master Deed [which was recorded on December 31, 2002, in the Office of the Register of Deeds for Beaufort County South Carolina in Book 1689 at page 574] by action or inaction of the Seller and/or (b) have not been the subject of a valid amendment of said Master Deed recorded in the Office of the Register of Deeds for Beaufort County, South Carolina as of the date this Agreement is first executed by the Purchaser, which such purported and/or alleged obligations are set out in Exhibit G) under the Master Deed, and any other rights affecting the

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

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

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

**CERTIFICATE OF SERVICE**

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

User: douglass  
 Form ID: pdf01

Page 1 of 1  
 Total Served: 7

Date Rcvd: May 28, 2008

The following entities were served by first class mail on May 30, 2008.  
 aty +J. Ronald Jones, Jr., 126 Seven Farms Drive, Suite 200, Charleston, SC 29492-8144  
 aty +Michael H. Conrady, 890 Johnnie Dodds Blvd, PO Box 684, Mount Pleasant, SC 29465-0684  
 aty Michael W. Mogil, 303 Professional Building, Hilton Head Island, SC 29928  
 aty +R. Geoffrey Levy, 2300 Wayne Street, Columbia, SC 29201-2057  
 tr +Kevin Campbell, PO Box 684, Mount Pleasant, SC 29465-0684  
 ust +US Trustee's Office, Strom Thurmond Federal Building, 1835 Assembly St., Suite 953,  
 Columbia, SC 29201-2448  
 adb +BROAD CREEK EDGEWATER, LP, 389 Marshland Road, Hilton Head Island, SC 29926-2103

The following entities were served by electronic transmission.  
 NONE.

TOTAL: 0

\*\*\*\*\* BYPASSED RECIPIENTS \*\*\*\*\*

NONE.

TOTAL: 0

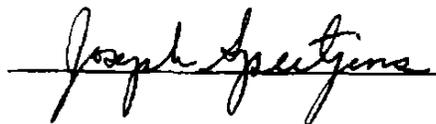
Addresses marked '-' were corrected by inserting the ZIP or replacing an incorrect ZIP.  
 USPS regulations require that automation-compatible mail display the correct ZIP.

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

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

Date: May 30, 2008

Signature:



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

Case Number: 071-2546

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

---

**FILED**

at \_\_\_ O'clock & \_\_\_ min \_\_\_ M

FILED BY THE COURT ON MAY 2 2 2008



United States Bankruptcy Court  
Columbia, South Carolina (23)

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

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

ENTERED: **ENTERED**

MAY 2 3 2008

R. S. S.

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

IN RE: )  
 ) Chapter 7  
Broad Creek Edgewater, L.P, )  
 ) Case No.: 07-02546-dd  
Debtor. )  
\_\_\_\_\_ )

ORDER APPROVING BIDDING PROCEDURES

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

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

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

The Applicant:

/s/ Kevin Campbell  
Kevin Campbell, Chapter 7 Trustee

**CERTIFICATE OF SERVICE**District/off: 0420-2  
Case: 07-02546User: shealy  
Form ID: pdf01Page 1 of 1  
Total Served: 6

Date Rcvd: May 23, 2008

The following entities were served by first class mail on May 25, 2008.

aty +John Timothy Stack, Office of the United States Trustee, 1835 Assembly Street Suite 953,  
Columbia, SC 29201-2448

aty +Joseph F. Buzhardt, III, Office of the United States Trustee, 1835 Assembly Street Suite 953,  
Columbia, SC 29201-2448

aty +Michael H. Conrady, 830 Johnnie Dodds Blvd, PO Box 684, Mount Pleasant, SC 29465-0684

tx +Kevin Campbell, PO Box 684, Mount Pleasant, SC 29465-0684

ust +US Trustee's Office, Strom Thurmond Federal Building, 1835 Assembly St., Suite 953,  
Columbia, SC 29201-2448

adb +BROAD CREEK EDGEWATER, LP, 389 Marshland Road, Hilton Head Island, SC 29926-2103

The following entities were served by electronic transmission.  
NONE.

TOTAL: 0

\*\*\*\*\* BYPASSED RECIPIENTS \*\*\*\*\*

NONE.

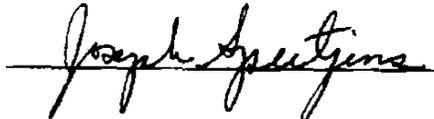
TOTAL: 0

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

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

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

Date: May 25, 2008

Signature: 



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

**Exhibit D (2 Pages)**

Chester C. Williams  
ALSO MEMBER LOUISIANA BAR

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

April 15, 2010

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

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

Dear Nicole:

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

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

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

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



LAW OFFICE OF  
CHESTER C. WILLIAMS, LLC

Ms. Nicole Dixon  
April 15, 2010  
Page 2

---

Thanking you for your consideration regarding this matter, we are

Very truly yours,

LAW OFFICE OF CHESTER C. WILLIAMS, LLC

Chester C. Williams

CCW:skt

## Exhibit E (1 Page)

---

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

Chet,

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

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

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

If you have received this email in error please notify the originator of the message.

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

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



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

**Exhibit F (3 Pages)**

Chester C. Williams  
ALSO MEMBER LOUISIANA BAR

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

April 28, 2010

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

**HAND DELIVERED**

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

Dear Teri:

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

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

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

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



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

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

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

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

(B) If a local planning agency has actual notice of a restrictive covenant on a tract or parcel of land that is contrary to, conflicts with, or prohibits the permitted activity:

(3) from any other source including, but not limited to, other property holders, the local planning agency must not issue the permit unless the local planning agency receives confirmation from the applicant that the restrictive covenant has been released for the tract or parcel of land by action of the appropriate authority or property holders or by court order.



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

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

With best regards, we are

Very Truly Yours,

LAW OFFICE OF CHESTER C. WILLIAMS, LLC

Chester C. Williams

CCW:skt  
Enclosures

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

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

RE: Edgewater on Broad Creek, tabby walkway  
XDPR10013

April 30, 2010

Dear Mr. Bucko:

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

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

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

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

Sincerely,



Teri Lewis, AICP  
LMO Official

Cc: Chester C. Williams

**H**

Supreme Court of South Carolina.  
 SPANISH WELLS PROPERTY OWNERS  
 ASSOCIATION, INC., Respondent,

v.

BOARD OF ADJUSTMENT OF the  
 TOWN OF HILTON HEAD ISLAND,  
 South Carolina, Petitioner.

In re CALIBOGUE SQUARE SUBDIVI-  
 SION.

**No. 22859.**

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

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

Reversed.

West Headnotes

**Zoning and Planning 414 ↪ 1602**

**414 Zoning and Planning**

**414X Judicial Review or Relief**

**414X(B) Proceedings**

**414k1600 Parties**

**414k1602 k. Necessary and indispensable parties. [Most Cited Cases](#)**

(Formerly 414k582.1, 414k582)

Party who was granted development permit was necessary party to appeal of its permit.

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

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

**\*68 PER CURIAM:**

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

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

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

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

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

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

is affirmed.

REVERSED.

S.C.,1988.

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

END OF DOCUMENT