



**Town of Hilton Head Island
Board of Zoning Appeals
Regular Meeting
Monday, August 22, 2016 - 2:30 p.m.
Benjamin M. Racusin Council Chambers
AGENDA**

1. **Call to Order**
2. **Pledge of Allegiance to the Flag**
3. **Roll Call**
4. **Freedom of Information Act Compliance**
Public notification of the Board of Zoning Appeals meeting has been published, posted and mailed in compliance with the Freedom of Information Act and the requirements of the Town of Hilton Head Island Land Management Ordinance.
5. **Swearing in Ceremony for New and Reappointed Board of Zoning Appeals Members**
6. **Election of Officers for the July 1, 2016 – June 30, 2017 term**
7. **Welcome and Introduction to Board Procedures**
8. **Approval of Agenda**
9. **Approval of the Minutes – May 23, 2016 Meeting**
10. **Unfinished Business**
11. **New Business**
Request from Chester C. Williams: Motion for Stay or Postponement - filed on behalf of Arbor Nature LLC, the Appellant in connection with Application for Appeal APL-001006-2016, which was originally scheduled to be heard by the BZA on June 27, 2016. The Appellant moves for a stay or postponement of further action by the BZA until the issues subject to the appeal are decided by the court in the pending lawsuit.
12. **Board Business**
13. **Staff Reports**
Waiver Report
14. **Adjournment**

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

TOWN OF HILTON HEAD ISLAND
Board of Zoning Appeals
Minutes of the May 23, 2016 2:30pm Meeting
Benjamin M. Racusin Council Chambers

Board Members Present: Chairman Glenn Stanford, Vice Chairman Jeffrey North, Steve Wilson, David Fingerhut, John White, Lisa Laudermilch, Jerry Cutrer

Board Members Absent: None

Council Members Present: None

Town Staff Present: Nicole Dixon, Senior Planner & Board Coordinator; Brian Hulbert, Staff Attorney; Teri Lewis, LMO Official; Teresa Haley, Secretary

1. Call to Order

2. Pledge of Allegiance to the Flag

3. Roll Call

4. Freedom of Information Act Compliance

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

5. Welcome and Introduction to Board Procedures

Chairman Stanford welcomed the public and introduced the Board's procedures for conducting the business meeting.

6. Approval of Agenda

Mr. Fingerhut made a motion to **approve** the agenda as submitted. Mr. North **seconded** the motion. The motion **passed** unanimously.

7. Approval of the Minutes

Mr. Cutrer noted the request by Ms. Haley to amend the minutes of the April 25, 2016 meeting to reflect Mr. White's excused absence. Mr. Cutrer made a motion to **approve** the minutes of the April 25, 2016 meeting as amended. Ms. Laudermilch **seconded** the motion. The motion **passed** unanimously.

8. New Business

PUBLIC HEARING

VAR-587-2016: Richard Schwartz, on behalf of Village Park Homes, is requesting a variance from LMO Sections 16-5-102, Adjacent Use Setbacks and 16-5-103, Adjacent Use Buffers, to

build a pool within the 20 foot adjacent use setback and buffer. The property is located at 27 Sandcastle Court and is identified as Parcel # 1116 on Beaufort County Tax Map# 9.

Chairman Stanford noted the letter that was included in the Board's packet from a law firm regarding restricted covenants and asked Mr. Hulbert for clarification as to the impact these may have on the Board's decision. Mr. Hulbert stated that the restricted covenants have no effect on the application for a variance before the Board today. The Board is to follow the State Code and the LMO that applies to granting a variance.

Ms. Dixon presented an in-depth review of the project as set forth in the staff report. Ms. Dixon noted the letters that she had received in opposition of the application and provided the Board with a copy of an additional opposition letter received after the packet was distributed. Ms. Dixon clarified concerns and answered questions by the Board. Staff recommends the Board of Zoning Appeals **disapprove** the application based on the Findings of Fact and Conclusions of Law contained in the staff report.

Chairman Stanford asked the applicant to present his position based on the applicable LMO criteria. The applicant presented his grounds for a variance as described in the staff report. The applicant answered questions by the Board.

Chairman Stanford opened the meeting for public comment. Mr. LaBruce spoke on behalf of the law firm in opposition of the application for a variance and further explained the LMO criteria as not being met. The Executive Director of the Hilton Head Island Beach & Tennis Resort expressed opposition to the variance on behalf of the homeowners and boards that are associated with the resort. One member of the public stated his opposition of the variance request and support for buffer requirements.

Chairman Stanford requested comments from the Board. The Board discussed the applicant's request to use the ten foot buffer option under the revised LMO and noted that even if this option was applied, that the property is still required to meet a twenty foot setback requirement and therefore, would not be able to construct the pool. The Board inquired as to the following: the contractor that cleared the buffer; the size of the home; and whether other swimming pools have been constructed in the subdivision. Chairman Stanford indicated concern for actions performed in contradiction of the LMO, and subsequent forgiveness is sought. Chairman Stanford stated that no explanation has been provided for the removal of the natural materials that were in the buffer.

Mr. Fingerhut made a motion to **disapprove** the application based on the Findings of Fact and Conclusions of Law contained in the staff report. Ms. Laudermilch **seconded** the motion. The motion **passed** with a vote of 7-0-0.

9. Board Business – None

10. Staff Reports

Waiver Report – Ms. Dixon indicated the Waiver Report was included in the packet.

Upcoming Meeting – Ms. Dixon indicated that currently she has received no applications for the Board's June meeting. If no applications are received by the deadline, then the June meeting may be cancelled due to lack of agenda items and appropriate notice will be provided.

11. Adjournment

The meeting was adjourned at 3:07p.m.

Submitted by:

Approved by:

Teresa Haley, Secretary

Glenn Stanford, Chairman

DRAFT



LAW OFFICE OF
CHESTER C. WILLIAMS, LLC

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

Chester C. Williams
ALSO MEMBER LOUISIANA BAR

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

22 July 2016

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

Hand Delivered

RE: ArborNature, LLC Application for Appeal APL-001006-2016 – Our File
No. 01802-001

Dear Teri:

As requested by C. Glenn Stanford, the Chairman of the Board of Zoning Appeals (the “BZA”), on behalf of our client, ArborNature, LLC, we are delivering to you herewith for filing with the BZA our Motion for Stay or Postponement. We trust that the BZA will hear this Motion at its regular meeting scheduled for 22 August 2016.

Please let us know if you or any members of the BZA have any questions or comments regarding this Motion, 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/
Enclosure

cc: Mr. and Mrs. Adam Congrove
C. Glenn Stanford, Esq.
Thomas C. Taylor, Esq.
Brian E. Hulbert, Esq.

<p>STATE OF SOUTH CAROLINA</p> <p>COUNTY OF BEAUFORT</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>BEFORE THE BOARD OF ZONING APPEALS OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA</p> <p>APPLICATION FOR APPEAL NO. APL-001006-2016</p>
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MOTION FOR STAY OR POSTPONEMENT

A. INTRODUCTION AND BACKGROUND

This Motion for Stay or Postponement is filed on behalf of ArborNature, LLC (the “Appellant”) in connection with Application for Appeal No. APL-001006-2016 (the “Appeal Application”) filed by the Appellant, which is pending before the Board of Zoning Appeals (the “BZA”) for the Town of Hilton Head Island (the “Town”).

The Appellant respectfully submits that:

1. The Appeal Application was filed by the Appellant on 27 May 2016 to appeal a determination made by Teri B. Lewis, AICP, the Town’s LMO Official, that the Appellant’s “principal use” of the location of its business is “the grinding of trees”, as set forth in the 13 May 2016 letter from Mrs. Lewis to Adam Congrove (the “Determination Letter”).¹ The Appeal Application was originally scheduled to be heard by the BZA on 27 June 2016.

2. Under cover of Mrs. Lewis’ 01 June 2016 memorandum to the BZA, the Town Staff delivered certain documents to the BZA as “the record upon which the action appealed from was taken.”²

¹ A copy of the Determination Letter is included as an attachment to the Narrative that is part of the Appeal Application.

² See Section 6-29-800(B) of the Code of Laws of South Carolina (1976), as amended.



3. By way of his letter of 08 June 2016 to C. Glenn Stanford, Esq., the Chairman of the BZA, the undersigned, as counsel for the Appellant, objected to the record as provided by Mrs. Lewis to the Board, advised Mr. Stanford that the Appellant would be seeking the issuance of subpoenas for witnesses for depositions, and requested a conference with Mr. Stanford, Thomas C. Taylor, Esq., litigation counsel for the Appellant, and appropriate Town Staff members to discuss how to proceed with further action on the Appeal Application.

4. Also on 08 June 2016, the undersigned, again as counsel for the Appellant, sent a letter to Mrs. Lewis requesting additional information regarding her and other Town Staff members' actions regarding the Appellant's use of the property at 76 Leg O'Mutton Road (the "Property"), the site of the Appellant's business, under the South Carolina Freedom of Information Act.

5. In addition, also on 08 June 2016, the undersigned received an email from Douglas W. MacNeille, Esq. with courtesy copies of pleadings filed by Mr. MacNeille in the Court of Common Pleas for the Fourteenth Judicial Circuit, Beaufort County on 03 June 2016 in a lawsuit by Indigo Run Community Owners Association, Inc. and Chew-Fisher Capital Business Park, LLC, as the plaintiffs, against the Mr. Congrove, Dennis Roy Congrove, and the Appellant, as the defendants (the "Pending Lawsuit")³ alleging, among other things, that the Appellant's operation of its business on the Property constitutes a nuisance and is in violation of the Town's Land Management Ordinance (the "LMO").

6. The summons and complaint in the Pending Lawsuit, along with a Motion for Temporary Injunction, were served on the Appellant on 09 June 2016. Mr. Taylor accepted service on behalf of Messrs. Congrove on 10 June 2016.

³ See the pleadings in the action styled *Indigo Run Community Owners Association, Inc., a South Carolina non-profit corporation and Chew-Fisher Capital Business Park, LLC, a Nebraska limited liability company v. Adam Congrove, Dennis Roy Congrove, and ArborNature, LLC, a South Carolina limited liability company*, Civil Action No. 2016-CP-07-1294 in the Court of Common Pleas for the Fourteenth Judicial Circuit, Beaufort County, South Carolina. Copies of the initial pleadings in the Pending Lawsuit are attached to this Motion as **Exhibit A**.



7. On 10 June 2016, Mr. Taylor served on Mr. MacNeille an Answer on behalf of the Appellant and Messrs. Congrove in the Pending Lawsuit, along with Interrogatories and a Request for Production of Documents. In addition, that same day, Mr. Taylor served a subpoena on Brian E. Hulbert, Esq., the Town Staff Attorney, seeking copies of all documents or objects in the Town's possession, custody, or control "referring to, relating to, or otherwise evidencing all communication, actions, meetings, discussions, staff review or the like, of that business known as ArborNature, LLC or the former business located at 76 Leg O'Mutton Road on Hilton Head Island, SC known as 'The Greenkeeper' dated January 1, 2010 until the present."

8. On 15 June 2016, by way of an email to Mr. Hulbert, Mr. Taylor began the process of scheduling a deposition of Mrs. Lewis in the Pending Lawsuit.

9. On 16 June 2016, Mr. Taylor served an Amended Answer, demanding a jury trial, in the Pending Lawsuit on Mr. MacNeille.

10. On 17 June 2016, the undersigned received a response letter from Mrs. Lewis listing the names of 17 current and former Town Staff members who have knowledge of the events occurring on the Property since the 2007 rezoning of the Property.

11. On 21 June 2016, Mr. Stanford met with the undersigned, Mr. Taylor, Mrs. Lewis, and Mr. Hulbert to discuss further action on the Appeal Application. Prior to that meeting, Mr. Stanford was not aware of the Pending Lawsuit. At that meeting, the undersigned and Mr. Taylor pointed out that the Appeal Application and the Pending Lawsuit had many issues in common; that discovery had begun in the Pending Lawsuit; that much of the additional information requested of Mrs. Lewis in the undersigned's 08 June 2016 letter to her would also have to be produced by the Town pursuant to the subpoena in the Pending Litigation; that no purpose would be served by the duplication of effort on the part of the Town Staff that would be necessary to prepare for a hearing on the Appeal Application and, at the same time, to respond to forthcoming discovery and depositions in the Pending Lawsuit; that a final ruling in the Pending Lawsuit adverse to the Appellant would likely render the Appeal Application moot; and that the undersigned and Mr.



Taylor were still awaiting further responses from Mrs. Lewis and the Town Staff to the request for additional information and the subpoena in the Pending Lawsuit. After hearing from the undersigned, Mr. Taylor, and Mrs. Lewis, Mr. Stanford, as the Chairman of the BZA, granted the Appellant's request for a postponement of the BZA hearing on the Appeal Application for three months.⁴

12. On 22 June 2016, the undersigned received a response letter from Mrs. Lewis regarding the issues raised in the 08 June 2016 letter to her. Many of Mrs. Lewis' responses referred to the information that would be produced by the Town in response to the subpoena issued in the Pending Lawsuit.

13. On 28 June 2016, the undersigned received a letter from Mr. Hulbert together with a CD containing approximately 193 electronic files of documents and emails in further response to the 08 June 2016 letter to Mrs. Lewis.

B. MOTION FOR STAY OR POSTPONEMENT

Pursuant to Article XI, Section 3, Paragraph 2 of the BZA's Rules of Procedure, the Appellant moves for a stay or postponement of further action by the BZA on the Appeal Application until such time as there is a final, non-appealable decision on the issues joined in the Pending Lawsuit.

In support of its motion for a stay or postponement, the Appellant respectfully submits that:

1. The Appeal Application and the Pending Lawsuit have many issues in common. The concepts of judicial economy and efficient allocation of resources mitigates against both the Appeal Application and the Pending Lawsuit proceeding at the same time, especially considering that the BZA and the Circuit Court could possibly come to conflicting decisions.

⁴ See Article XI, Section 3, and Paragraph 2 of the BZA's Rules of Procedure.



2. The court hearing the Pending Lawsuit is also the same court to which any decision by the BZA on the Appeal Application must be appealed. Given the common issues between the Appeal Application and the Pending Litigation, it makes no sense for the BZA to proceed with a hearing on the Appeal Application while the same issues are pending before what is, in essence, the BZA's appellate court.

3. Discovery has begun in the Pending Lawsuit. Much of the additional information requested of Mrs. Lewis in the undersigned's 08 June 2016 letter to her would also have to be produced by the Town pursuant to the subpoena in the Pending Litigation. In addition, the Appellant believes that depositions of witnesses in the Pending Litigation may provide important information that the BZA should have access to before it makes a decision on the Appeal Application. The litigation process of the Pending Lawsuit clearly allows for depositions of witnesses before trial. On the other hand, the BZA's administrative appeal process, which does allow for subpoenas for witnesses, neither expressly provides for subpoenas for pre-hearing depositions, nor expressly prohibits subpoenas for pre-hearing depositions. With the Pending Litigation providing a standard process for depositions of witnesses that may provide valuable information for later use in the BZA's hearing of the Appeal Application, it is appropriate for the BZA to defer action on the Appeal Application until the litigation process has been resolved.

4. No legitimate purpose is served by the duplication of effort on the part of the Town Staff or the Appellant that would be necessary to prepare for a hearing on the Appeal Application, and at the same time to respond to, or conduct, forthcoming discovery and depositions in the Pending Lawsuit.

5. A final ruling in the Pending Lawsuit adverse to the Appellant would likely render the Appeal Application moot. If the final decision in the Pending Lawsuit is adverse to the Appellant, *e. g.*, if the court rules that the Appellant's operation of its business on the Property is a nuisance or is in violation of the LMO,⁵ then the Appellant may be

⁵ Nothing herein is to be construed or interpreted as an admission by the Appellant that its business operation on the Property is, or may be, a nuisance, or that the Appellant's use of the Property is in violation of the LMO.



required to cease or modify its business operation on, or use of, the Property. If that comes to pass, then it does not matter whether the BZA determines that the Appellant's use of the Property is, or is not, in conformance with the provisions of the LMO, since the court will have rendered any decision by the BZA moot. Likewise, if the court issues the injunction requested by the plaintiffs in the Pending Lawsuit, the Appellant may have to cease or modify its business operation on, or use of, the Property while that injunction is in place. Again, if that comes to pass, the Appeal Application may become moot.

6. No legitimate purpose is served by requiring the members of the BZA to expend the considerable time and effort necessary to familiarize themselves with the record of the Appeal Application if a final decision of the court in the Pending Lawsuit will resolve the Appeal Application issues.

7. The practice of the Town in the past when faced with pending civil litigation and a pending administrative appeal, where the litigation and the appeal share common facts and circumstances, has been to agree to defer or stay action on the administrative appeal until the litigation is concluded. The undersigned is aware of at least two administrative appeals to the BZA and three administrative appeals to the Town's Planning Commission that have been stayed because of pending civil litigation.⁶

8. The Appellant has not had sufficient time to review the documents produced by the Town to determine what additional documents, if any, are necessary for inclusion in the record of the Appeal Application for consideration by the BZA.

⁶ See Appeal Application APL100006 filed with the Planning Commission on 09 July 2010, Appeal Application APL100007 filed with the BZA and Appeal Application APL100008 filed with the Planning Commission, both on 09 August 2010, and Appeal Application APL100009 filed with the Planning Commission and Appeal Application APL100010 filed with the BZA, both on 07 September 2010, which have all been stayed until the resolution of the action styled *Edgewater on Broad Creek Owners Association, Inc., et al. v. Ephesian Ventures, LLC*, Civil Action No. 2011-CP-07-02994 in the Court of Common Pleas for the Fourteenth Judicial Circuit, Beaufort County South Carolina.

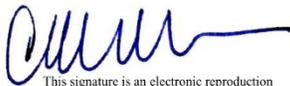


C. CONCLUSION

The Appellant asks that the BZA consider this Motion for Stay or Postponement, and issue an order staying any further action on the Appeal Application until at least thirty (30) days after written notice to Mrs. Lewis of a non-appealable final decision by a court of competent jurisdiction in the Pending Lawsuit.

The Appellant reserves the right to submit additional materials, documents, and information to the BZA in connection with this Motion for Stay or Postponement.

Respectfully submitted on behalf of the Appellant 22 July 2016.



This signature is an electronic reproduction

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



STATE OF SOUTH CAROLINA)

COUNTY OF BRAUFORT)

INDIGO RUN COMMUNITY OWNERS ASSOCIATION, INC, a South Carolina nonprofit corporation, and CHEW-FISHER CAPITAL BUSINESS PARK, LLC, a Nebraska limited liability company,

Plaintiff(s))

vs.)

ADAM CONGROVE, DENNIS ROY CONGROVE and ARBORNATURE, LLC, a South Carolina limited liability company

Defendant(s))

Submitted By: Douglas W. MacNeille, Esq.
Address: P.O. Drawer 5706
Hilton Head, SC 29938

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET



2016-CP - 07-1294

SC Bar #: 03520
Telephone #: 843-785-4251
Fax #: 843-686-5404
Other:
E-mail: douglas@ruthandmacneille.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action Is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts**
 - Constructions (100)
 - Debt Collection (110)
 - Employment (120)
 - General (130)
 - Breach of Contract (140)
 - Other (199)
- Torts - Professional Malpractice**
 - Dental Malpractice (200)
 - Legal Malpractice (210)
 - Medical Malpractice (220)
 - Previous Notice of Intent Case # 20__-CP-__-__
 - Notice/ File Med Mal (230)
 - Other (299)
- Torts - Personal Injury**
 - Assault/Slander/ Libel (300)
 - Conversion (310)
 - Motor Vehicle Accident (320)
 - Premises Liability (330)
 - Products Liability (340)
 - Personal Injury (350)
 - Wrongful Death (360)
 - Other (399) **NUISANCE**
- Real Property**
 - Claim & Delivery (400)
 - Condemnation (410)
 - Foreclosure (420)
 - Mechanic's Lien (430)
 - Partition (440)
 - Possession (450)
 - Building Code Violation (460)
 - Other (499)
- Inmate Petitions**
 - PCR (500)
 - Mandamus (520)
 - Habeas Corpus (530)
 - Other (599)
- Administrative Law/Relief**
 - Reinstate Drv. License (800)
 - Judicial Review (810)
 - Relief (820)
 - Permanent Injunction (830)
 - Forfeiture-Petition (840)
 - Forfeiture - Consent Order (850)
 - Other (899)
- Judgments/Settlements**
 - Death Settlement (700)
 - Foreign Judgment (710)
 - Magistrate's Judgment (720)
 - Minor Settlement (730)
 - Transcript Judgment (740)
 - Lis Pendens (750)
 - Transfer of Structured Settlement Payment Rights Application (760)
 - Confession of Judgment (770)
 - Petition for Workers Compensation Settlement Approval (780)
 - Other (799)
- Appeals**
 - Arbitration (900)
 - Magistrate-Civil (910)
 - Magistrate-Criminal (920)
 - Municipal (930)
 - Probate Court (940)
 - SCDO (950)
 - Worker's Comp (960)
 - Zoning Board (970)
 - Public Service Comm. (990)
 - Employment Security Comm (991)
 - Other (999)
- Special/Complex /Other**
 - Environmental (600)
 - Automobile Arb. (610)
 - Medical (620)
 - Other (699)
 - Pharmaceuticals (630)
 - Unfair Trade Practices (640)
 - Out-of State Depositions (650)
 - Motion to Quash Subpoena in an Out-of-County Action (660)
 - Sexual Predator (510)

Submitting Party Signature:



Date: June 2, 2016

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS FOR
)
) THE FOURTEENTH JUDICIAL CIRCUIT

INDIGO RUN COMMUNITY OWNERS
ASSOCIATION, INC., a South Carolina non-
profit corporation, CHEW FISHER CAPITAL
BUSINESS PARK, L.L.C, a Nebraska limited
liability company,

Plaintiffs,

vs.

ADAM CONGROVE, DENNIS ROY
CONGROVE and ARBORNATURE, L.L.C, a
South Carolina limited liability company,

Defendants.

SUMMONS

Case No.: 2016-CP-07- 1294

TO THE PARTIES ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, the original of which will be filed with the Clerk of Court for Beaufort County, South Carolina, and to serve a copy of your Answer to the said Complaint on the subscriber(s) at P.O. Drawer 5706, Hilton Head Island, South Carolina 29938, within thirty (30) days after service hereof, exclusive of the date of such service; and if you fail to answer the Amended Complaint within the time aforesaid, the Plaintiff will apply to the Court for relief demanded in the Complaint.

RUTH & MacNEILLE, P.A.

By: 

DOUGLAS W. MacNEILLE, ESQ.

Attorney for Plaintiffs

P.O. Drawer 5706

10 Office Way, Suite 200

Hilton Head Island, South Carolina 29938

(803) 785-4251

Hilton Head Island, SC
June 2, 2016

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS FOR
COUNTY OF BEAUFORT 2016 JUN -3 PM 9:45) THE FOURTEENTH JUDICIAL CIRCUIT

CLERK OF COURT
BEAUFORT COUNTY, S.C.

INDIGO RUN COMMUNITY OWNERS)
ASSOCIATION, INC., a South Carolina non-)
profit corporation, CHEW-FISHER)
CAPITAL BUSINESS PARK, LLC, a)
Nebraska limited liability company)

Plaintiffs.

vs.

ADAM CONGROVE, DENNIS ROY)
CONGROVE and ARBORNATURE, LLC.)
a South Carolina limited liability company,)

Defendants.

COMPLAINT
(Non-Jury)
(Damages and Injunctive Relief)

Docket No.: 2016-CP-07- 1294

The Plaintiffs, complaining of the Defendants above-named, would respectfully show unto this Court the following:

GENERAL ALLEGATIONS

1. Plaintiff, INDIGO RUN COMMUNITY OWNERS ASSOCIATION, INC., is a South Carolina non-profit Corporation with its principal business being the management of the property owners association and common properties and acting on behalf of the individual owners and members located within the Indigo Run community on Hilton Head Island, Beaufort County, South Carolina. INDIGO RUN COMMUNITY OWNERS ASSOCIATION, INC. is referred to herein as "Plaintiff IRCOA".

2. Plaintiff, CHEW-FISHER CAPITAL BUSINESS PARK, LLC is a Nebraska limited liability company lawfully organized and registered to do business in the State of South Carolina, in business as owner of commercial rental property located at 90 Capital Drive, Hilton Head Island.

Beaufort County, South Carolina. Plaintiff CHEW-FISHER CAPITAL BUSINESS PARK, LLC is hereinafter referred to as "Plaintiff Chew-Fisher").

3. Plaintiff IRCOA represents not less than eleven (11) individual members of this organization owning residential property in the vicinity of Whitney Place and Mead Lane in Indigo Run, and Plaintiff Chew-Fisher is a Plaintiff in its own right and represents the interests of two (2) tenants renting commercial property at 90 Capital Drive on Hilton Head Island, South Carolina.

4. Defendant, ADAM CONGROVE, is the fee simple owner of a 6.7 acre tract of land located at 76 Leg O' Mutton Road, Hilton Head Island, Beaufort County, South Carolina, whereupon Defendant operates a business known as "ArborNature Tree Experts". Defendant, DENNIS ROY CONGROVE, is the owner of a life estate in the above-referenced real property. These Defendants are collectively referred to as "Defendant Congrove" and the 6.7 acre parcel of land upon which Defendant Congrove conducts business is referred to as the "Congrove Tract".

5. Defendant, ARBORNATURE, LLC is a South Carolina limited liability company operated by Defendant Congrove and operates a business known as ArborNature Tree Experts on the property located at 76 Leg O' Mutton Road, Hilton Head Island, Beaufort County, South Carolina. ARBORNATURE, LLC is herein referred to as "Defendant ArborNature".

6. Subject matter jurisdiction, personal jurisdiction and venue properly rests with the Court of Common Pleas for Beaufort County, South Carolina.

7. Prior to and into 2006, Defendant Congrove operated a business on the Congrove Tract known as The Greenkeeper, which has been described as a wholesale landscaping nursery and landscape contracting business and a home occupation. Due to the growth of The Greenkeeper's business, in 2006 Town of Hilton Head Island determined that the extent of that business no longer qualified as a home occupation. On May 23, 2006 the Town notified Defendant Congrove that the

activity on the Congrove Tract was in violation of the approved Home Occupation business license and the Towns Land Management Ordinance (LMO).

8. Defendant ARBORNATURE, LLC was formed as a South Carolina limited liability company owned by Defendant Congrove in 2006 and took over the operation of the business on the Congrove Tract.

9. On October 20, 2006, Defendant Congrove filed an Application for Zoning Map Amendment with the Town of Hilton Head Island, seeking to amend the Official Zoning Map by rezoning 6.7 acres in the RM-4 , Low to Moderate Density Residential District into the Indigo Run Master Plan under the PD-1, Land Development Use District. The proposed zoning map amendment would allow up to 2.18 acres of the Congrove Tract to be developed as a wholesale landscape nursery with a landscape contractor's office and on-site storage at up to 6000 ft.² per net acre, or as a residential development at up to four (4) dwelling units per net acre, or up to eight (8) dwelling units per net acre under the Towns Moderate Income Housing Program.

10. On March 6, 2007, the Town of Hilton Head Island Town Council approved Defendant Congrove's application by issuing Town Ordinance No. 2007-08 (Proposed Ordinance 2006-33). A true and correct copy of the Ordinance is attached hereto as Exhibit "A".

11. Some time after the issuance of Town Ordinance No. 2007-08, Defendant Congrove commenced the operation of a business known as ArborNature Tree Experts (herein "ArborNature") on the Congrove Tract located at 76 Leg O' Mutton Road on Hilton Head Island, South Carolina.

12. On July 25, 2013, Anne Cyran of the Town of Hilton Head Island notified Defendants Congrove and ArborNature that, "Wood chipping would be considered a use or an accessory use of Manufacturing and production business", and that since manufacturing and production are not allowed uses on the property, "all wood chipping is in violation of [the LMO]." A copy of Ms.

Cyran's July 25 2013 correspondence is attached hereto as Exhibit "B". Thereafter, Ms. Cyran further reviewed the matter and confirmed that the composting and wood grinding operations, at least to the extent they were *then* taking place on the Congrove Tract, were permitted uses.

13. In 2014 there were complaints about noise coming from the Congrove Tract as a result of the activities taking place thereon, and the Defendants were asked to rearrange the site and relocate the grinder to the northwestern corner of the Congrove Tract.

14. Upon information and belief, during 2015 the Defendants, and each of them, substantially increased the volume of large tree hauling and wood grinding on the Congrove Tract. On May 13, 2015, a concerned citizen, resident of Indigo Run and member of Plaintiff IRCOA, Mr. Stetson Rowles, filed a complaint with the Town of Hilton Head Island reporting that Defendant Congrove and his business, ArborNature, were operating outside the scope of the wholesale nursery that had been approved by using heavy equipment, including industrial log shredders, several large front-end loaders, tractors, backhoes and 18 wheel tractor-trailers. A true and correct copy of Mr. Rowles' letter of May 13, 2015 is attached hereto as Exhibit "C".

15. These allegations were investigated by the Town of Hilton Head Island and, on May 21, 2015, the Town issued a warning to Defendants that their on-site storage had expanded and was exceeding the amount of on-site storage allowed per ZMA060013. True and correct copy of a Code Violation Notice dated May 21, 2015 is attached hereto as Exhibit "D".

16. On or about June 24, 2015, Defendant Chew-Fisher reported complaints about the activities conducted by Defendants Congrove and ArborNature on the Congrove Tract.

17. On July 22, 2015, Town of Hilton Head Island inspected the Congrove Tract and determined that the site was now *only* being used for the storage of wood logs, wood chips, and tree maintenance and removal equipment and found no evidence that the site was being used as a

wholesale landscape nursery. therefore, the Town determined that the site was in violation of the approved use of the property per ZMA060013. A true and correct copy of the July 22, 2015 letter from the Town of Hilton Head Island is attached hereto as Exhibit "E".

18. On September 4, 2015, Town LMO Official Anne Lewis again notified Defendants Congrove and ArborNature of a potential LMO violation as a result of Defendants wood grinding operation. A copy of the September 4, 2015 correspondence is attached hereto as Exhibit "F".

19. Thereafter, Defendants Congrove and Arbor Nature continued to operate an industrial pulp grinding operation, using heavy log moving equipment and machinery for up to 10 hours a day. On September 29, 2015, Mr. Stetson Rowles reported that there was a pattern showing that Defendants agreed to be a wholesale nursery but was actually operating a log grinding operation, resulting in "constant beeping noise of the log movers serenaded by the industrial machine pumping large trees accompanied by huge 18 wheelers coming in and out of the driveway to 76 Leg O' Mutton Road. A copy of Mr. Rowles letter to the Town dated September 29, 2015 is attached hereto as Exhibit "G".

20. On October 27, 2015, the Town of Hilton Head Island notified Defendants that the Town had determined that what was occurring on the Congrove Tract (storage and grinding of trees), would more appropriately be classified as Light Industrial, Manufacturing or Warehouse Use, which was *not* in compliance with the rezoning that had occurred and in violation of Town Land Management Ordinance ("LMO").

21. Thereafter, Defendants moved some plants and pavers onto the Congrove Tract in an effort to appear that he was actually operating a wholesale landscape nursery. The truth of the matter is that there was no evidence of retail or wholesale sales of any landscape nursery products, and that Defendants Congrove and ArborNature continued to and even increased the volume of his practice of

truck-hauling in large trees and grinding the trees to wood chips, then transporting the wood chips off-Island to an unknown site, presumably for use in paper manufacturing.

22. On October 28 and November 28, 2015, Plaintiff IRCOA member Roland Hill communicated with the Town of Hilton Head Island concerning the ArborNature problem, stating that, *"The noise of heavy equipment and heavy trucks continues every day including Thanksgiving day and frequently begins early in the morning before 7 AM. The piles of logs and wood scraps are even bigger now than they were a month ago. I see and hear no improvement in the last month and, if anything, it is worse."* True and correct copies of Roland Hill's email communication dated October 28 and November 28, 2015 are attached hereto as **Exhibit "H"**.

23. On January 8, 2016, Defendants received a citation for violation of LMO Section 16-8-103.T on the Congrove Tract. Defendants were cited for not having sufficient wholesale landscape nursery inventory on-site to support that use. A copy of the Town's January 8, 2016 citation is attached hereto as **Exhibit "I"**.

24. On April 19, 2016, Indigo Run resident and Plaintiff IRCOA member Roland Hill again communicated with the Town of Hilton Head Island concerning the Arbor Nature problem, stating, *"We are now approaching the end of April (three months beyond the promise completion date) and the promised actions have not been completed. The pile of logs, trees and wood chips is still massive and the noise from his grinding activity and movement of heavy equipment/trucks is on-going."* A true and correct copy of Roland Hill's email communication dated April 19, 2016 is attached hereto as **Exhibit "J"**.

25. The aforesaid activities of Defendants Congrove and ArborNature have caused and continue to cause residents and businesses in the Leg O' Mutton Road area, including Plaintiff IRCOA and its members and Plaintiff Chew-Fisher and its tenants unreasonable interference with the

use and enjoyment of their property, prospective business-related damages, the devaluation of real estate, and emotional distress. Representative photos taken between April 13 and May 13, 2016 and depicting the operations of Defendants Congrove and ArborNature on the Congrove Tract are attached hereto as Exhibit "K".

26. After meeting with the aggrieved residents and business owners in early May, 2016, the Town of Hilton Head Island notified Defendants that despite the addition of mulch bins, plants and pavers, the principal use is the grinding of trees", noting that (1) trucks from a site clearing company were bringing trees to the Congrove Tract for grinding which was unrelated to the trees that Arbor Nature removes as part of their business; (2) the area being used for the tree grinding was significantly larger than that of the wholesale landscape nursery; and (3) it appeared that the principal use of the property had become "Waste-Related Services Use Other than a Waste Treatment Plant." Based upon these findings, Defendants were notified that his site was *not* in conformance with the Town LMO. A true and correct copy of the May 13, 2016 Town of Hilton Head Island correspondence to Defendants is attached hereto as Exhibit "L".

FOR A FIRST CAUSE OF ACTION
(Violation of Statute - Damages)

27. Each and every allegation set forth in Paragraphs 1 through 26, inclusive, is hereby restated as though set forth verbatim herein.

28. At all relevant times from January 1, 2015 to present, Defendants, and each of them, have operated an industrial log hauling and tree grinding operation on the Congrove Tract.

29. At all relevant times from January 1, 2015 to present, Defendants, and each of them, have knowingly operated an industrial log hauling and tree grinding operation in violation of the

Town of Hilton Head Island Land Management Ordinance ("LMO") and in non-compliance with ZMA060013 (Ordinance No. 2007-08).

30. Defendants owe a duty to the citizens and residents of Hilton Head Island, and specifically those in the vicinity of Leg O' Mutton Road, to conduct his business activities in compliance with local statutes and regulations.

31. Defendants activities in violation of local statutes and regulations have caused and continues to cause damage to neighboring property owners, including each of the Plaintiffs herein.

32. The activities of the Defendants, and each of them, in violation of local statutes and regulations is knowing and intentional and, upon information and belief, Plaintiffs are entitled to recover damages incurred in connection with these activities in an amount to be proved at the trial of this action.

33. Despite the May 13, 2016 notice of noncompliance issued by the Town of Hilton Head Island, Defendants have continued to operate in violation, transporting large logs on semi-trailer logging trucks from off-Island and, with the use of heavy equipment on the Congrove Tract, grinding logs into wood scraps and transporting the scraps off-island. By way of example, see photos dated May 27, 2016 showing the arrival of the logging truck and the deposit of large piles of logs on the Congrove Tract attached hereto as Exhibit "M".

FOR A SECOND CAUSE OF ACTION
(Negligence and Gross Negligence - Damages)

34. Each and every allegation set forth in Paragraphs 1 through 33, inclusive, is hereby restated as though set forth verbatim herein.

35. Defendants owe a duty to the citizens and residents of Hilton Head Island, and specifically to the Plaintiffs herein, to operate his business in a lawful manner and to not unreasonably interfere with the Plaintiffs' businesses or the use and enjoyment of their property.

36. Defendants, and each of them, are and were, individually, jointly, and in combination, at the times and places above-mentioned, negligent, grossly negligent, wanton, willful, and careless in one or more of the following particulars:

a. In operating a commercial manufacturing and log hauling and grinding operation on the Congrove Tract and/or conducting waste-related services on the Congrove Tract which activities are in violation of Town of Hilton Head ordinances, statutes and regulations;

b. In conducting a commercial manufacturing and log hauling and grinding operation, including the operation of large 18-wheeler log hauling trucks and trailers and other heavy equipment including tractors, front loaders and industrial tree grinders in negligent, grossly negligent, wanton, willful and careless disregard of the rights of adjoining property owners, including these Plaintiffs; and

c. In failing to use the degree of care and caution that a reasonable and prudent person would have used under the circumstances then and there prevailing, all of which is the direct and proximate cause of the damages and injury suffered by the Plaintiffs herein, said actions being in violation of the statutory and common laws of the State of Carolina.

37. Since the activities and actions of Defendants are in violation of local ordinances, statutes and regulations, his actions and activities in disregard thereof should be considered as negligence *per se*. Upon information and belief, Defendants also has been cited by the South Carolina Department of Health & Environmental Control and the Hilton Head Island Fire Department.

38. By reason of the acts of Defendants as set forth above, the Plaintiffs are informed and believe that they are entitled to an award of actual damages in an amount to be proved at the trial of this action, together with punitive damages in an appropriate amount, and the costs of this action.

FOR A THIRD CAUSE OF ACTION
(Nuisance - Damages and Injunctive Relief (SCRCP Rule 65))

39. Each and every allegation set forth in Paragraphs 1 through 38, inclusive, is hereby restated as though set forth verbatim herein.

40. Defendant's use and maintenance of the property, as described in Paragraph 36, constitutes a common law private nuisance or nuisance "*per accidens*". It is injurious to the health of the Plaintiffs, and each of them, and offensive to Plaintiffs' senses, so as to obstruct the free use of Plaintiffs' property, and interferes with plaintiff's comfortable enjoyment of life, in the following particulars:

- a. Plaintiff IRCOA, in the interests of approximately eleven (11) property owners living on Mead Lane or Whitney Place in Indigo Run, all who are members of Plaintiff IRCOA, have experienced the constant pounding and grinding noises of the large logs being grinded to wood scraps, the incessant beeping noises of the equipment moving logs from trucks to the grinder, the sound of large logging trucks arriving with timber at least 10 hours per day and often more, and frequently the smell of smoldering timber resulting from the timber grinding process; these activities have seriously interfered with each of these Plaintiffs' reasonable use and enjoyment of their land since it is difficult to enjoy sitting on the porch or relaxing anywhere in the exterior of their property without being subjected to this unreasonable nuisance; further, at least one property owner is having second thoughts on building a home on his lot on Whitney Place and another owner has moved from his home and is selling his property partially as a result of this nuisance.
- b. Plaintiff Chew-Fisher, being the owner manager of a commercial building with both business condominium units and rental units, has been threatened with tenants refusing to pay rent and canceling their leases and moving from Plaintiff's building as a direct result of the incessant noise and vibration making it impossible for the building owners and tenants to conduct their business in a reasonable manner and violating their covenant of quiet enjoyment with their landlord, Plaintiff Chew-Fisher.

41. Each of the Plaintiffs' properties has been diminished in value as a further and proximate result of the nuisance created by Defendants Congrove and ArborNature in an amount according to proof at trial. Unless the nuisance created by Defendants is abated, Plaintiffs property will continue to diminish in value.

42. As a further and proximate result of the nuisance created by Defendants Congrove and

ArborNature, each Plaintiff, including their members and tenants, have suffered extreme mental anguish, incurring general damages in an amount to be determined by proof at trial.

43. Plaintiffs are informed and believe, and on the basis of that information and belief allege, that unless restrained or enjoined by Order of this Court, Defendants Congrove and ArborNature will continue to engage in and promote the activity constituting the nuisance described in Paragraph

44. Such conduct will result in irreparable harm to Plaintiffs, in that Plaintiffs will continue to be damaged due to the loss of use and enjoyment of their property as well as suffering ongoing economic diminution in value of their property.

45. Injuries and damages suffered by each Plaintiff constitute a "special injury" differing in kind and not merely in degree from that suffered by the general public, as more particularly described in Paragraph 36 above.

46. The threat of such irreparable and permanent damage justifies the issuance by this Court of a temporary restraining order, a temporary injunction, and a permanent injunction, as well as an award of money damages.

47. There exists a strong likelihood that the Plaintiffs will succeed on the merits due to the fact that the Defendants, and each of them, have in the past and continue to violate the statutes and ordinances of the Town of Hilton Head Island.

48. Plaintiffs have no adequate remedy at law for the injuries which Plaintiffs have suffered and will continue to suffer in the future.

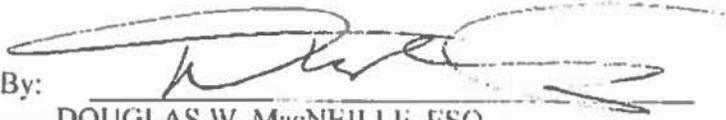
WHEREFORE, Plaintiffs request judgment against Defendants, and each of them, for the following:

- A. A temporary and permanent injunction enjoining Defendants Congrove and ArborNature from engaging in the activity of hauling logs to the Congrove Tract for the purpose of grinding logs to wood scraps as part of a commercial manufacturing

enterprise and/or waste-related services or engaging in any other activity in violation of the Town of Hilton Head Island's Land Management Ordinance;

- B. General damages according to proof;
- D. Special damages, according to proof;
- E. Punitive damages;
- F. Costs of suit; and
- G. Such other and further relief as the Court considers just and proper.

RUTH & MacNEILLE, P.A.

By: 

DOUGLAS W. MacNEILLE, ESQ.
Attorney for Plaintiffs
P.O. Drawer 5706
10 Office Way, Suite 200
Hilton Head Island, South Carolina 29938
(803) 785-4251

Hilton Head Island, SC
June 2, 2016

Exhibit "A"

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

ORDINANCE NO. 2007-08

PROPOSED ORDINANCE NO. 2006-33

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 A 6.7 ACRE PARCEL, IDENTIFIED AS PARCEL 275 ON BEAUFORT COUNTY TAX MAP #8, WITHIN THE RM-4, LOW TO MODERATE DENSITY RESIDENTIAL DISTRICT INTO THE INDIGO RUN MASTER PLAN UNDER THE PD-1, PLANNED DEVELOPMENT MIXED USE DISTRICT WITH SPECIFIC USE, HEIGHT, AND SETBACK AND BUFFER AREA STANDARDS; 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 to rezone 6.7 acres within the RM-4, Low to Moderate Density Residential District into the Indigo Run Master Plan under the PD-1, Planned Development Mixed Use District; 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 December 6, 2006, 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 unanimously to recommend to Town Council that the rezoning request be approved; and

WHEREAS, the Planning and Development Standards Committee held a public meeting on January 24, 2007, 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 to recommend to Town Council that the rezoning request be approved; and

WHEREAS, the Town Council now finds that, upon further review, it is in the public interest to further amend as set forth herein.

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 LMO, be, and the same hereby amended to rezone 6.7 acres within the RM-4, Low to Moderate Density Residential District into the Indigo Run Master Plan under the PD-1, Planned Development Mixed Use District with the following use, density, height, and setback and buffer area standards:

Area

6.7 acres as depicted on a plat entitled "Plat of Tracts A, B & 40' R/W Parcel, The Dennis Congrove Tract, a section of Ramsford Acres, Hilton Head Island, Beaufort County, South Carolina" prepared by Terry G. Hatchell and dated November 14, 2006

Permitted Land Use and Density

Tract A:

Residential at up to four (4) dwelling units per net acre, or up to eight (8) dwelling units per net acre under the Town's Moderate Income Housing Program, or Wholesale Landscape Nursery with a landscape contractor's office and onsite storage at up to 6,000 square feet per net acre

Tract B & 40' R/W Parcel:

Residential at up to four (4) dwelling units per net acre, or up to eight (8) dwelling units per net acre under the Town's Moderate Income Housing Program

Height

35 feet above the base flood elevation

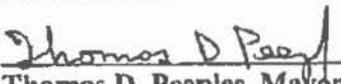
Setback and Buffer Areas

As delineated on the above referenced plat that was prepared by Terry G. Hatchell and dated November 14, 2006

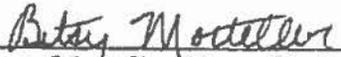
Section 2. Severability. If any section, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity 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 6 DAY OF MARCH 2007.

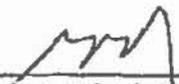

Thomas D. Peoples, Mayor

ATTEST:


Betsy Mosteller, Town Clerk

Public Hearing: December 6, 2006
First Reading: February 20, 2007
Second Reading: MARCH 6, 2007

Approved as to form:


Gregg Alford, Town Attorney

Introduced by Council Member: W. J. Mottel

Exhibit "B"



Exhibit B (7 Pages)

Adam Congrove <info@arbournature.com>

Wood Chipping Operations at 76 Leg O' Mutton Road

1 message

Cyran Anne <annec@hiltonheadislandsc.gov>
To: "info@arbournature.com" <info@arbournature.com>
Cc: Garcia Jonathan <jonathang@hiltonheadislandsc.gov>

Thu, Jul 25, 2013 at 5:52 PM

Adam,

After our phone call last week, I spoke with Jonathan Garcia about the site violations he discussed with you.

The Zoning Map Amendment approved in 2006 listed specific uses allowed on the site: a wholesale landscape nursery with a landscape contractor's office.

Per the Land Management Ordinance Section 16-4-1214.F, Industrial Use Categories - Wholesale Sales, wholesale sales firms are involved in the sale of products primarily intended for industrial, institutional or commercial businesses. The uses emphasize on-site sales are or order taking. Accessory uses include offices, product repair, warehouses, parking, minor fabrication services and repackaging of goods. Wood chipping, regardless of how frequently it occurs, would not be considered a use or accessory use associated with a wholesale landscape nursery.

Wood chipping would be considered a use or an accessory use of a Manufacturing and Production business. Per LMO Section 16-4-1214.C, Industrial Use Categories - Manufacturing and Production, manufacturing and production firms are involved in the manufacturing, processing, fabrication, packaging, or assembly of goods. Natural, man-made, raw, secondary, or partially completed materials may be used. Products may be finished or semi-finished and are generally made available for the wholesale market.

Since manufacturing and production are not allowed on this site, all wood chipping is in violation of LMO Section 16-8-102.G, Violations, which states it is a violation of the LMO to engage in the use of land requiring approval (in this case, zoning approval) without obtaining the required approval.

If you want to change the uses allowed on the site, you would need to obtain a Zoning Map Amendment (ZMA) for this property. The process would be the same as in 2006: you would need to submit an application per LMO Section 16-3-1502, Amendments to Zoning Map (Rezoning) -

Application, which will be reviewed by Planning Commission, then Town Council. Please be aware that the staff report for such an application would likely include a recommendation of denial because the wood chipping would be likely to cause a nuisance to neighboring properties. For further information on the ZMA process, see LMO Chapter 3, Article XV (attached).

Please contact me if you have further questions.

Sincerely,

Anne Cyran, AICP

Senior Planner

Town of Hilton Head Island

(843) 341-4697

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 McAfee.

 LMO Section 16-3-1501.pdf
225K

Exhibit "C"

May 13, 2015

HAND DELIVERED

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

RE: ARBOR NATURE - LEG-O-MUTTON ROAD

Dear Ms. Cyran:

As a follow up to our telephone conversation of this morning and our meeting of May 30, 2015 it is my belief that Arbor Nature is running a large log grinding operation and operating outside of the permitted uses. As requested, would you please provide any correspondence given to Mr. Congrove that has given him permission to operate a large scale tree grinding and pulping operation. I have lived at his address for over seven years and the scope of the work being done, emitting noise, and hours of operation has changed radically.

Specially Arbor Nature is:

1. Operating outside the scope of a wholesale nursery by using heavy equipment including industrial log shredders several large front end loaders, tractors, backhoes and 18 wheel tractor trailers. The log shredder is pulping logs that are 15-20 feet in length and diameters of 18-30" with stacks of several hundred logs. The shredder is emitting tremendous noise that disturbs the peace of the neighborhood.
2. The several pulped wood piles are oversized estimated at 40x60 feet at heights over 12 feet with the potential to create environmental problems to the groundwater system. This may not be in compliance with permitted storage as reference in ZMA 060013/76 of 6,000 ft per acre of Tract "A" (2.18 acres).
3. They are operating heavy equipment including shredders, front end loaders, and backhoes, that beep when in reverse, during night hours from 10:00PM-2:00AM. Please advise the hours that they are permitted to operate and a course of action to rectify the problem.
4. Large tractor trailers are entering and exiting the property at all hours of the day night to remove the pulped material. This is extremely bad for the road conditions on and to Leg-O-Mutton Road.

I look forward to hearing from you in the near future.

Sincerely,

Stetson Rowles
24 Whitney Pl
Hilton Head Island, SC 29926
stetsonrow@gmail.com

cc: Mr. Stephen G. Riley, Town Manager
Mr. Jonathan Garcia, Code Enforcement

Exhibit "D"

TOWN OF HILTON HEAD ISLAND

One Town Center Court, Hilton Head Island, SC 29928

843-341-4600 phone 843-842-7728 fax

www.hiltonheadislandsc.gov

CODE VIOLATION NOTICE

May 21, 2015

Adam Congrove
Arbor Nature
Sent to info@arbornature.com

Dear Adam:

This letter is regarding the expansion of the outdoor storage areas at Arbor Nature, 76 Leg O' Mutton Road, R510 008 000 0275 0000. This letter is also regarding noise complaints at this property.

The Town of Hilton Head Island Town Council approved Zoning Map Amendment ZMA060013 (Ordinance 2007-08, attached), which changed the zoning for Tract A of this property to allow a Wholesale Landscape Nursery with a landscape contractor's office and onsite storage and up to 6,000 square feet per net acre. Onsite storage areas were approved as part of Expedited Development Plan Review XDPR080018 (approved site plan attached). The approved site plan shows the maximum area of onsite storage allowed on Tract A.

At a site visit on Monday, May 18, 2015, Town staff discussed with you the fact that the onsite storage has expanded to the areas shown on the attached site plan. Since this expansion exceeds the amount of onsite storage allowed per ZMA060013, storage in these areas is prohibited by the Town of Hilton Head Island Land Management Ordinance (LMO) Section 16-8-103.F, Violations. **To resolve this violation, remove the materials stored outside of the approved storage areas (see attached site plan) no later than May 29, 2015.**

As we discussed with Jonathan Garcia, Code Enforcement Officer, on Monday, the Town has received complaints of noise from your site caused by grinding machines and the caution signal from trucks backing up. The Town Municipal Code allows the operation of landscape equipment during the daytime, which is defined as the hours between 7:00 a.m. and 10:00 p.m. You stated that you will not operate equipment outside of those hours. Jonathan will

TOWN OF HILTON HEAD ISLAND

One Town Center Court, Hilton Head Island, SC 29928

843-341-4600 phone 843-842-7728 fax

www.hiltonheadislandsc.gov

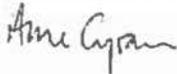
monitor the site periodically to ensure compliance with these regulations. Please note that future violations of the Noise Control standards in the Municipal Code may result in the issuance of citations.

As we also discussed on Monday, the Fire Marshal will be monitoring all landscape processing sites and nurseries to ensure compliance with International Fire Code requirements. The Fire Marshal didn't identify any violations on the site. The memo titled Fire Code Requirements for the Storage and Processing of Yard Waste is attached for your records.

Please contact me at (843) 341-4697 or at annec@hiltonheadislandsc.gov if you have any questions.

Thank you for your cooperation in resolving these violations.

Sincerely,



Anne Cyran, AICP
Senior Planner

cc: File

Joheida Fister, Fire Marshal, joheidaf@hiltonheadislandsc.gov

Jonathan Garcia, Code Enforcement Officer, jonathang@hiltonheadislandsc.gov

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

ORDINANCE NO. 2007-08

PROPOSED ORDINANCE NO. 2006-33

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 A 6.7 ACRE PARCEL, IDENTIFIED AS PARCEL 275 ON BEAUFORT COUNTY TAX MAP #8, WITHIN THE RM-4, LOW TO MODERATE DENSITY RESIDENTIAL DISTRICT INTO THE INDIGO RUN MASTER PLAN UNDER THE PD-1, PLANNED DEVELOPMENT MIXED USE DISTRICT WITH SPECIFIC USE, HEIGHT, AND SETBACK AND BUFFER AREA STANDARDS; 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 to rezone 6.7 acres within the RM-4, Low to Moderate Density Residential District into the Indigo Run Master Plan under the PD-1, Planned Development Mixed Use District; 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 December 6, 2006, 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 unanimously to recommend to Town Council that the rezoning request be approved; and

WHEREAS, the Planning and Development Standards Committee held a public meeting on January 24, 2007, 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 to recommend to Town Council that the rezoning request be approved; and

WHEREAS, the Town Council now finds that, upon further review, it is in the public interest to further amend as set forth herein.

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 LMO, be, and the same hereby amended to rezone 6.7 acres within the RM-4, Low to Moderate Density Residential District into the Indigo Run Master Plan under the PD-1, Planned Development Mixed Use District with the following use, density, height, and setback and buffer area standards:

Area

6.7 acres as depicted on a plat entitled "Plat of Tracts A, B & 40' R/W Parcel, The Dennis Congrove Tract, a section of Ramsford Acres, Hilton Head Island, Beaufort County, South Carolina" prepared by Terry G. Hatchell and dated November 14, 2006

Permitted Land Use and Density

Tract A:

Residential at up to four (4) dwelling units per net acre, or up to eight (8) dwelling units per net acre under the Town's Moderate Income Housing Program, or Wholesale Landscape Nursery with a landscape contractor's office and onsite storage at up to 6,000 square feet per net acre

Tract B & 40' R/W Parcel:

Residential at up to four (4) dwelling units per net acre, or up to eight (8) dwelling units per net acre under the Town's Moderate Income Housing Program

Height

35 feet above the base flood elevation

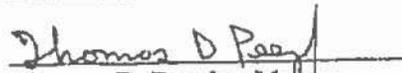
Setback and Buffer Areas

As delineated on the above referenced plat that was prepared by Terry G. Hatchell and dated November 14, 2006

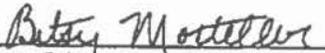
Section 2. Severability. If any section, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity 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 6 DAY OF MARCH 2007.


Thomas D. Peeples, Mayor

ATTEST:

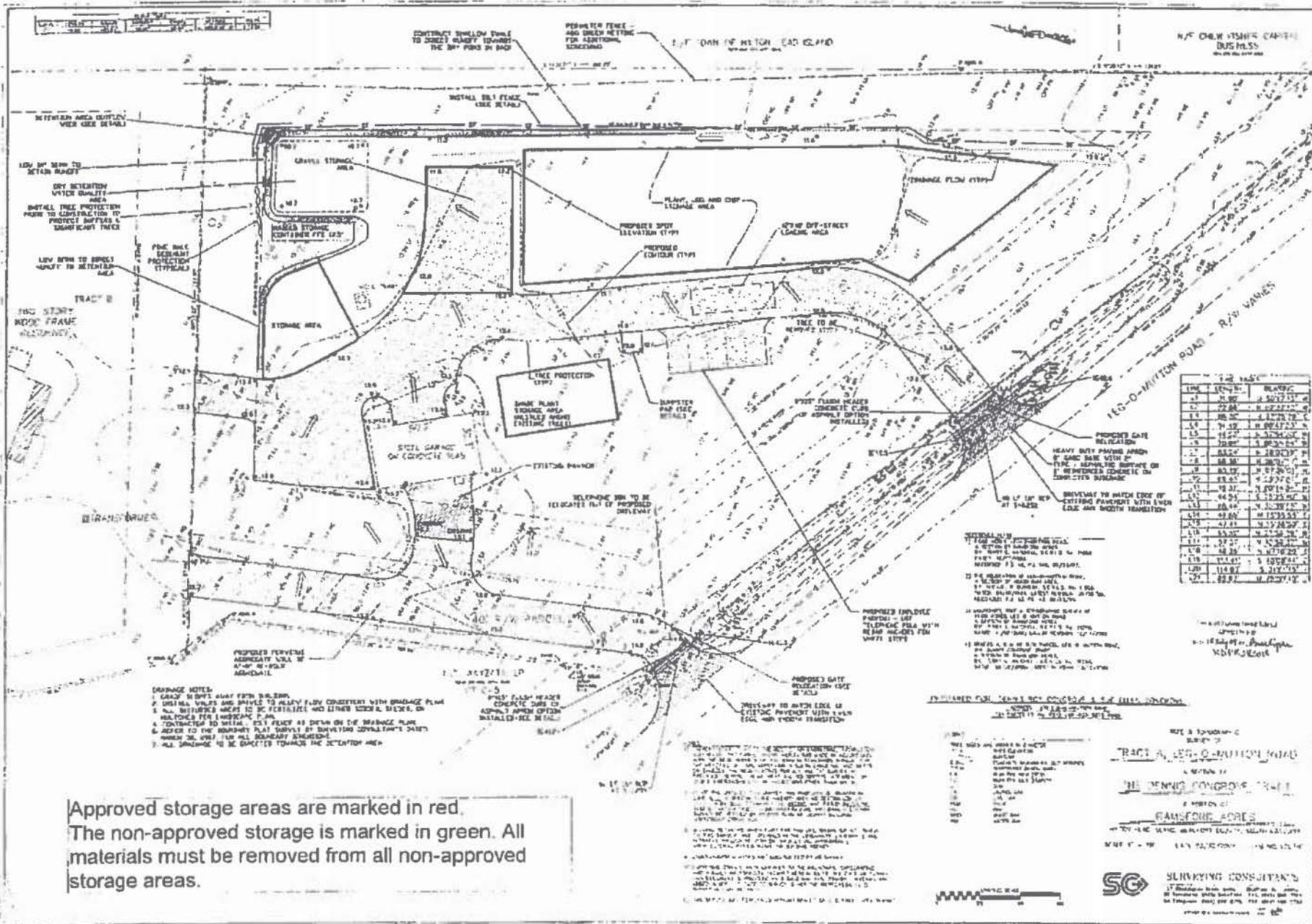

Betsy Mosteller, Town Clerk

Public Hearing: December 6, 2006
First Reading: February 20, 2007
Second Reading: MARCH 6, 2007

Approved as to form:


Gregg Alford, Town Attorney

Introduced by Council Member: W. J. Mottel



Approved storage areas are marked in red.
 The non-approved storage is marked in green. All materials must be removed from all non-approved storage areas.

KEY ENGINEERING, Inc.
 1111 W. 10th Street
 BLUMENFELD SOUTH CAROLINA 29610
 PHONE: 803-791-1111 FAX: 803-791-1112

GREENKEEPER
 1111 W. 10th Street
 BLUMENFELD SOUTH CAROLINA 29610
 PHONE: 803-791-1111 FAX: 803-791-1112

DRAINAGE PLAN

DATE: 11/11/11
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 PROJECT NO: [Number]

SG SURVEYING CONSULTANTS
 1111 W. 10th Street
 BLUMENFELD SOUTH CAROLINA 29610
 PHONE: 803-791-1111 FAX: 803-791-1112

DP

Exhibit "E"

TOWN OF HILTON HEAD ISLAND COMMUNITY DEVELOPMENT DEPARTMENT

One Town Center Court, Hilton Head Island, SC 29928
843-341-4600 phone 843-842-7728 fax
www.hiltonheadislandsc.gov

July 22, 2015

Stetson Rowles
Sent to stetsonrow@gmail.com

Dear Mr. Rowles:

This is a response to your June 23, 2015 letter regarding the operations of Arbor Nature, 76 Leg O' Mutton Road. It took staff longer than usual to respond because there was research and a site visit that needed to be conducted. Your letter specifically concerns the use of the property and the noise caused by grinding machines.

The approved use for the site is a "Wholesale Landscape Nursery with a landscape contractor's office and onsite storage at up to 6,000 square feet per net acre", per the 2006 Zoning Map Amendment (ZMA060013, Ordinance 2007-08). Previously, Town staff determined that the storage of yard trash and land-clearing debris, composting, and wood grinding operations could reasonably be considered part of a wholesale landscape nursery, especially one that also includes tree maintenance and removal, such as Arbor Nature. (See the attached letter sent to Adam Congrove on January 5, 2010.)

At a recent site visit, Town staff determined that the site is currently only being used for the storage of wood logs, wood chips, and tree maintenance and removal equipment. Staff found no evidence that the site was being used as a wholesale landscape nursery, which would include some or all of the following activities: storing plants, shrubs, trees, and similar live products on site; storing mulch, potting soil, pine straw, and similar materials on site; and storing rocks, stone, decorations, and similar materials on site. Since it isn't clear that the site is being used as a Wholesale Landscape Nursery, staff determined the site is in violation of the approved use of the property per ZMA060013.

Staff informed Mr. Congrove that the site must be brought into compliance by August 10, 2015.

Your letter states that the site is being used in violation of the approved site plan because materials are stored beyond the permitted capacity; the drainage flow channel is covered with

TOWN OF HILTON HEAD ISLAND COMMUNITY DEVELOPMENT DEPARTMENT

One Town Center Court, Hilton Head Island, SC 29928

843-341-4600 phone 843-842-7728 fax

www.hiltonheadislandsc.gov

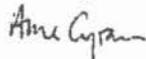
pulp and ground trees; material is being loaded outside of the designated loading zone; and heavy equipment is stored on site. Town staff previously discussed with Mr. Congrove the location of the approved storage areas on site. As of staff's most recent site visit, the logs and mulch had been moved into the appropriate storage locations.

The site plan shows the direction of drainage on the site, but doesn't require a drainage flow channel. The LMO requires a loading area to be shown on site plans to ensure that the materials can be loaded and unloaded on site, but loading isn't restricted to that single area. Heavy equipment can be stored on site; designated storage areas for such equipment aren't required.

Town staff discussed with Mr. Congrove the noise caused by the grinding operations. Since the Town Municipal Code allows the operation of landscape equipment during the daytime (between 7:00 a.m. and 10:00 p.m.), grinding logs during the approved hours is not a violation of the Municipal Code. The only way for Town staff to limit the noise from the grinding operations is to ensure the equipment operates only during the approved hours and to ask Mr. Congrove to move the equipment to the back of the site to reduce the amount of noise reaching neighboring properties. Mr. Congrove said he would voluntarily move the grinding equipment to the back of the site.

Please contact me at (843) 341-4697 or at anncc@hiltonheadislandsc.gov if you have any questions.

Sincerely,



Anne Cyran, AICP
Senior Planner

cc: File

Exhibit "F"

Exhibit F (1 Page)

TOWN OF HILTON HEAD ISLAND

One Town Center Court, Hilton Head Island, SC 29928

843-341-4600 phone 843-842-7728 fax

www.hiltonheadislandsc.gov

September 4, 2015

Adam Congrove

Arbor Nature

Sent to info@arbournature.com

Dear Adam:

This letter is regarding to Arbor Nature located at 76 Leg O' Mutton Road, R510 008 000 0275 0000. A thorough review of the Zoning Map Amendment that was approved for this property on March 6, 2007 indicates that Town Council approved a Wholesale Landscape Nursery with a landscape contractor's office and onsite storage. Additionally staff issued a letter to you on January 5, 2010 stating that wood grinding and composting were allowed as an accessory use to the approved Wholesale Landscape Nursery business.

Per the Town of Hilton Head Island's Land Management Ordinance (LMO), specifically Section 16-10-105, General Definitions, an accessory use is defined as, 'a use of a building, lot, or portion thereof, which is customarily incidental and subordinate to the principal use of the building or lot.

Based on recent site visits, it appears that the principal use of the subject parcel has changed from Wholesale Landscape Nursery to Wood Grinding and Composting. If this is the case, then your business is in violation of the zoning for the subject parcel.

Please submit to me, no later than **Friday, September 11, 2015**, a breakdown of your financials for Arbor Nature indicating the percentage that is attributed to the Wholesale Landscape Nursery and the percentage that is attributed to the Wood Grinding/Composting so that I can determine if your business is in compliance with the zoning for the property.

Please contact me at (843) 341-4698 or at teril@hiltonheadislandsc.gov if you have any questions.

Thank you for your cooperation in resolving this issue.

Sincerely,



Teri B. Lewis
LMO Official

Exhibit "G"

September 29, 2015

SENT VIA EMAIL

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

RE: ARBOR NATURE - LEG-O-MUTTON ROAD

Dear Ms. Cyran:

Thank you for your phone call of this morning advising that Ms. Lewis has requested accounting records of Arbor Nature to show what portion of their income is derived from a wholesale nursery versus the industrial pulping operation they are currently running.

While I would like to be optimistic that this will show what is self-evident Arbor Nature's patronizing history is somewhat troubling. A pattern shows that they agree to be a wholesale nursery and actually operate a grinding operation. They agree to move the industrial grinding machines to the rear of the property and they do not. They agree to abide by the storage area per the LMO and consistently exceed that necessitated by the large volume of trees to grind. There is the constant beeping noise of the log movers serenaded by the industrial machine pulping large trees. This is all accompanied by huge eighteen wheelers coming in and out of the driveway to Leg O' Mutton Road. I cannot believe this was the scenario envisioned when the town signed Ordinance 2006-33 on March 6, 2007, and your letter to Mr. Cosgrove of January 5, 2010 granted him permission to allow the "storage of yard trash and land-clearing debris and composting."

Enclosed please find three photos. Two taken this afternoon show the storage of logs immediately adjacent to Leg O' Mutton Road and the log mover operating outside the permitted designated area, and the other is a photo taken August 22, 2015 that also shows storage outside the permitted area. I guess my question is how often has the zoning officer visited this site and is it the responsibility of the citizens to police the enforcement of the permitted zoning. Weekly visits by the town seem necessary to keep Arbor Nature in compliance.

Finally, is Mr. Saba of Hovnanian Homes aware of the industrial complex and noise operating immediately adjacent to his proposed development and are they, and the town, prepared to make each potential buyer aware of the noise and machinery?

Please let me know how we can rectify this situation.

Sincerely,

S

Stetson Rowles
24 Whitney Pl
Hilton Head Island, SC 29926
843-363-5139
stetsonrow@gmail.com

cc: Ms. Terri Lewis

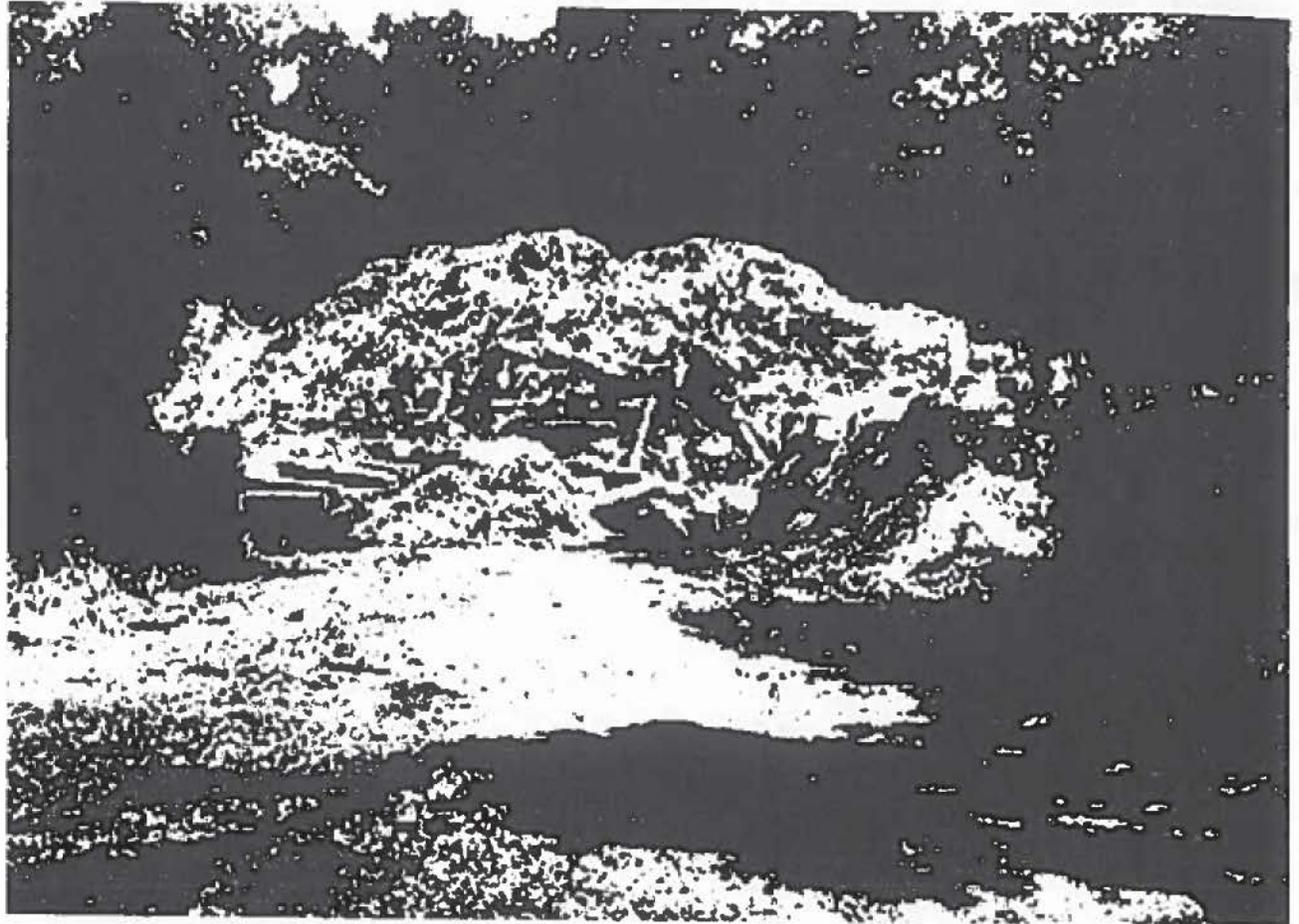
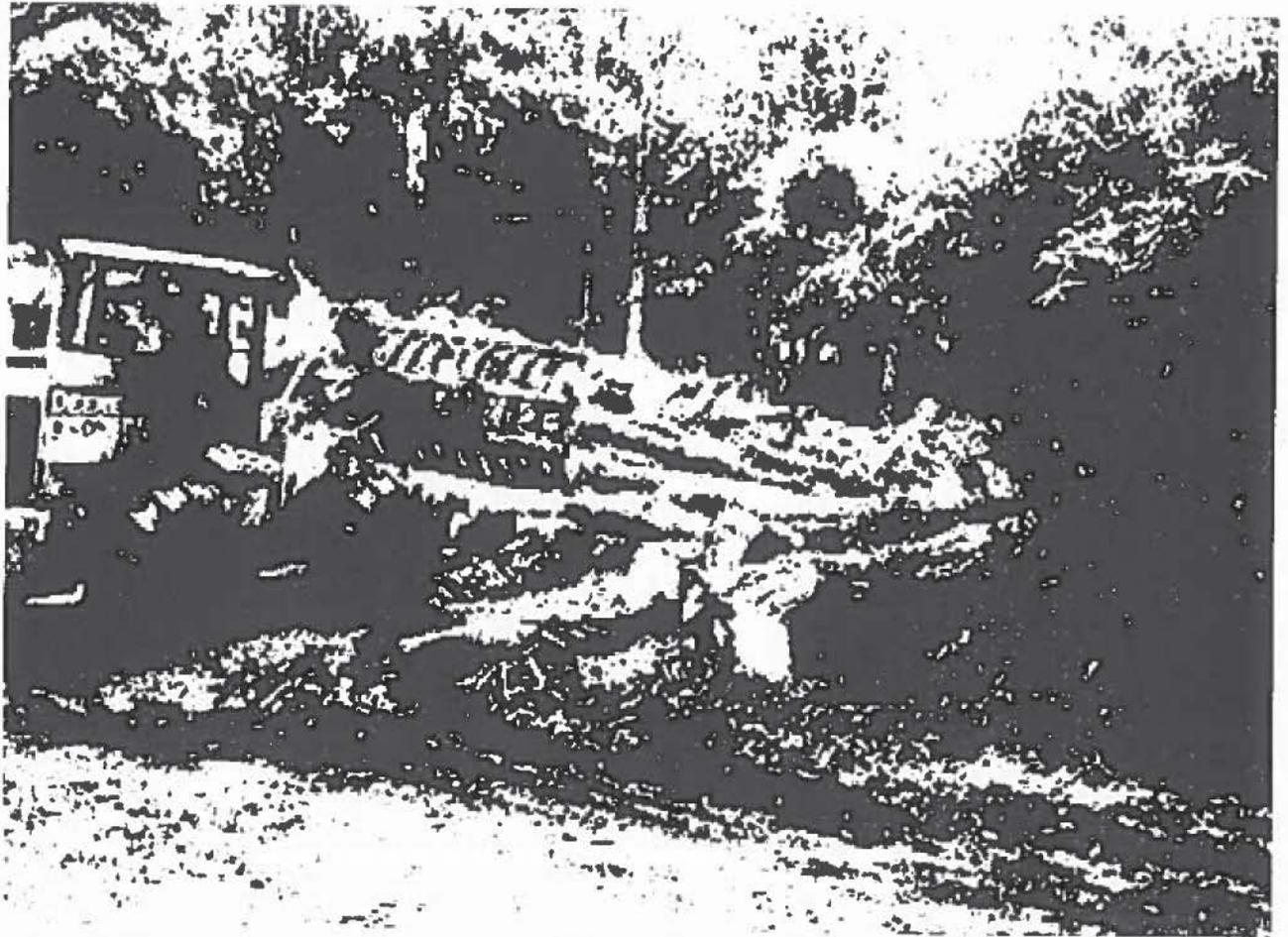


Exhibit "H"

It occurred to me that I should have forwarded the correspondences that I have had regarding the Arbor Nature problem. The first was in late October last year and several more. See you tomorrow,

Roland Hill

From: RMPJHill@aol.com
To: teril@hiltonheadislandsc.gov, annec@hiltonheadislandsc.gov
CC: stelsonrow@gmail.com, bphillips@indigoruncoa.org
Sent: 10/28/2015 11:26:13 A.M. Eastern Daylight Time
Subj: Arbor Nature Problem

Ms. Cryan and Ms. Lewis

I am a neighbor of Stetson Rowles and I am aware of the numerous correspondences that you have exchanged with him regarding the problems with Arbor Nature. The purpose of this message is to lend my support to his complaints.

The pile of logs and wood chips, which is apparently well outside the designated storage area, is getting bigger and getting closer to Leg-O-Mutton Road. The massive pile of several hundred cubic yards of wood chips, pulp, limbs and logs is much larger than it was a couple of months ago and yesterday a fire at the rear of the pile was sending clouds of smoke across the road.

Further, there is constant noise from the heavy machinery moving all of that material around that starts early in the morning and goes into the evening. Then, every several weeks a much larger piece of equipment is brought in to grind logs which increases the noise problem dramatically. One of your letters to Mr. Rowles said that Indigo Run was unaware of the problem but I talked several of our neighbors and Brad Phillips, the General Manager of Indigo Run, and he says that he is very familiar with our complaints.

I believe that Arbor Nature is a nuisance and is operating well outside of their approved scope of business and needs to be shut down or relocated. I appreciate any assistance you can provide to solve these problems.

Roland Hill
21 Whitney Place
Hilton Head Island, SC. 29926

Home: 843-802-4935

In a message dated 11/28/2015 1:07:42 P.M. Eastern Standard Time, RMPJHill@aol.com writes:

Ms. Lewis and Ms. Cryan,

This is a follow up on our earlier correspondence regarding Arbor Nature. Your letter to Mr. Congrove gave him four options to resolve the problems associated with his log grinding and storage operations. I don't know if he has petitioned you for rezoning or appeal. However, it is apparent that he is making no effort to bring his operation into compliance or relocate.

The noise of heavy equipment and heavy trucks continues every day including Thanksgiving day and frequently begins early in the morning before 7:00 am. The piles of logs and wood scraps are even bigger now than they were a month ago. I see and hear no improvement in the last month and, if anything, it is worse.

Can you let me know what's happening? I would appreciate any new information you can provide.

Thank you,

Roland Hill

21 Whitney Place

Hilton Head Island, SC. 29926

Home: 843-802-4935

Cell: 248-535-0305

RMPJHill@aol.com

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 McAfee.

Mr. Hill-

Exhibit "I"



Exhibit I (1 Page)

UNIFORM ORDINANCE SUMMONS

TOWN OF HILTON HEAD ISLAND VERSUS NO. 0359

Last Name <u>CORCORAN</u>	First Name <u>Adam</u>	Middle Name
Address <u>76 Ledy Middleton Drive (Aka: Victoria)</u>		
Social Security No.	or	Driver's License No.

YOU ARE SUMMONED TO APPEAR BEFORE THE MUNICIPAL JUDGE AT #3 TOWN CENTER COURT, HILTON HEAD ISLAND, SC 29928

ON

Date of Trial <u>02/19/16</u>	Time of Trial <u>10:30</u>	<input checked="" type="checkbox"/> AM <input checked="" type="checkbox"/> PM
----------------------------------	-------------------------------	--

FOR TRIAL FOR VIOLATION OF TOWN ORDINANCE:

Ordinance Section No. <u>16-8-103-T</u>	Date Issued <u>01/07/16</u>	Bond Amount (\$) <u>1692.50</u>
Description of Ordinance <u>Land Management Ordinance</u>		
Date of Violation <u>01/07/16</u>	Time of Violation <u>10:35</u>	Location of Violation
Name of Issuing Officer <u>Howard Williamson</u>	Title <u>Code Enforcement</u>	

Failure to appear in Court without first posting bond or obtaining a continuance is a misdemeanor punishable by fine up to Two Hundred Dollars (\$200.00) or imprisonment for up to thirty (30) days.

Post Bond Prior To Trial Date

The issuing officer cannot accept the bond. Bond must be posted by cash, certified check or money order (not personal check) made payable to Town of Hilton Head Island Municipal Court, and delivered to #3 Town Center Court, Hilton Head Island, SC 29928, or mailed to Town of Hilton Head Island Municipal Court, Post Office Drawer 7465, Hilton Head Island, SC 29938. Telephone No.: (803) 842-7640.

Requested Disposition

Indicate the disposition you desire and return this summons or a copy with the bond payment:

- Forfeit Bond - No Court Appearance
- Bond Posted - Trial by the Municipal Judge
- Bond Posted - Trial by Jury

Signature of Defendant

Date

01/07/16
DEFENDANT COPY

Exhibit "J"

RMPJHill@aol.com <RMPJHill@aol.com>
To: Douglas@ruthandmacneille.com

Mon, May 16, 2016 at 12:02 PM

Number 5

From: RMPJHill@aol.com
To: TeriL@hiltonheadislands.gov, annec@hiltonheadislands.gov
CC: stelsonrow@gmail.com
Sent: 4/19/2016 4:32:50 P.M. Eastern Daylight Time
Subj: Re: Arbor Nature Problem

<https://mail.google.com/mail/u/0/?ui=2&ik=191b416bb0&view=pt&c=hill&q=s=true&search=query&th=151ba493a51a55da&siml=151ba493a51a55da&siml=154b...> 9/17

Ms. Lewis,

This is a follow-up to our earlier correspondences regarding Arbor Nature. In your last letter dated January 12, 2016 (below) you stated that Mr. Congrove was given two weeks, until the end of January, to implement all of the action items outlined in your message including the grinding and/or removal of all of the logs/trees on the property.

We are now approaching the end of April (three months beyond the promised completion date) and the promised actions have not been completed. The pile of logs, trees and wood chips is still massive and the noise from his grinding activity and movement of heavy equipment/trucks is on-going.

Obviously Mr. Congrove has not performed as promised and is well past the completion date(s) specified in your letter. Can you tell me what's going on? I appreciate any information you can provide. Thank you,

Roland Hill
21 Whitney Place
Hilton Head Island, SC 29926

Home: 843-802-4935
Cell: 248-535-0305

RMPJHill@aol.com

[Quoted text hidden]

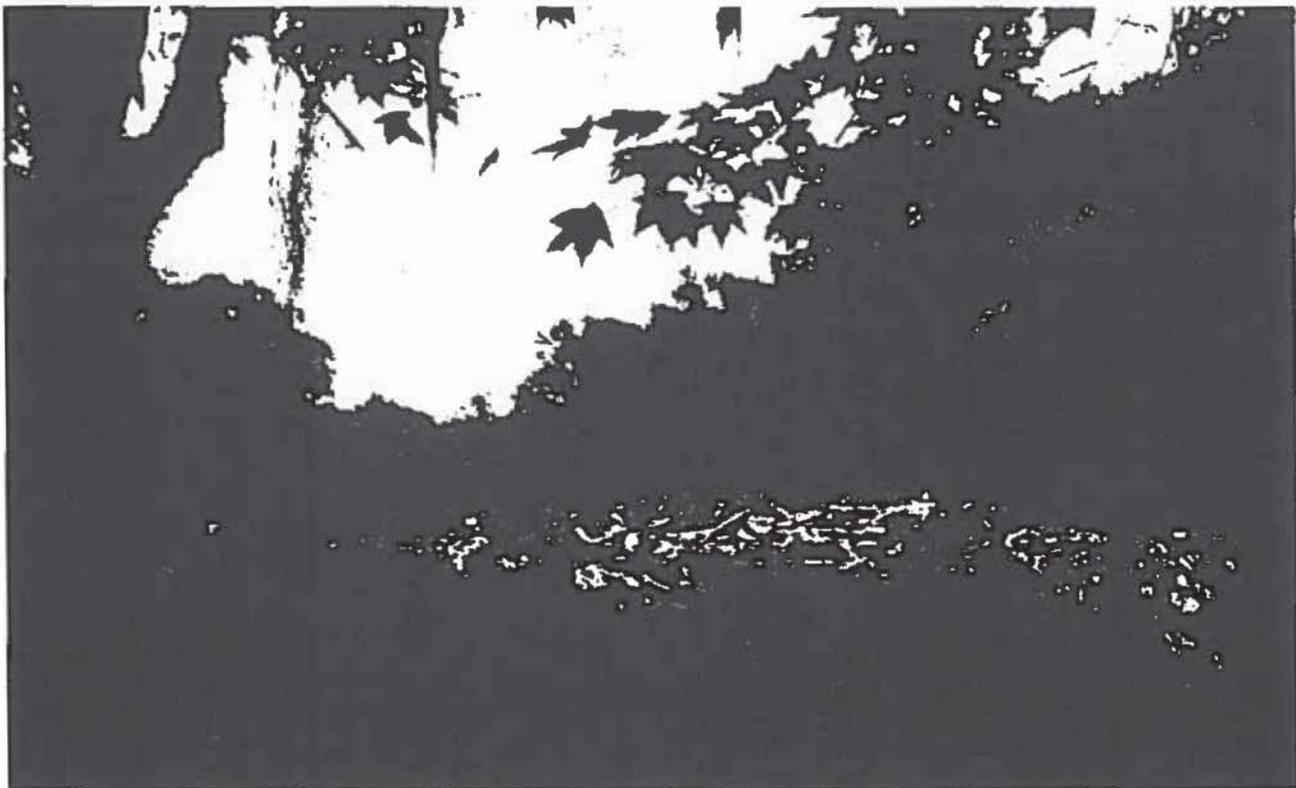
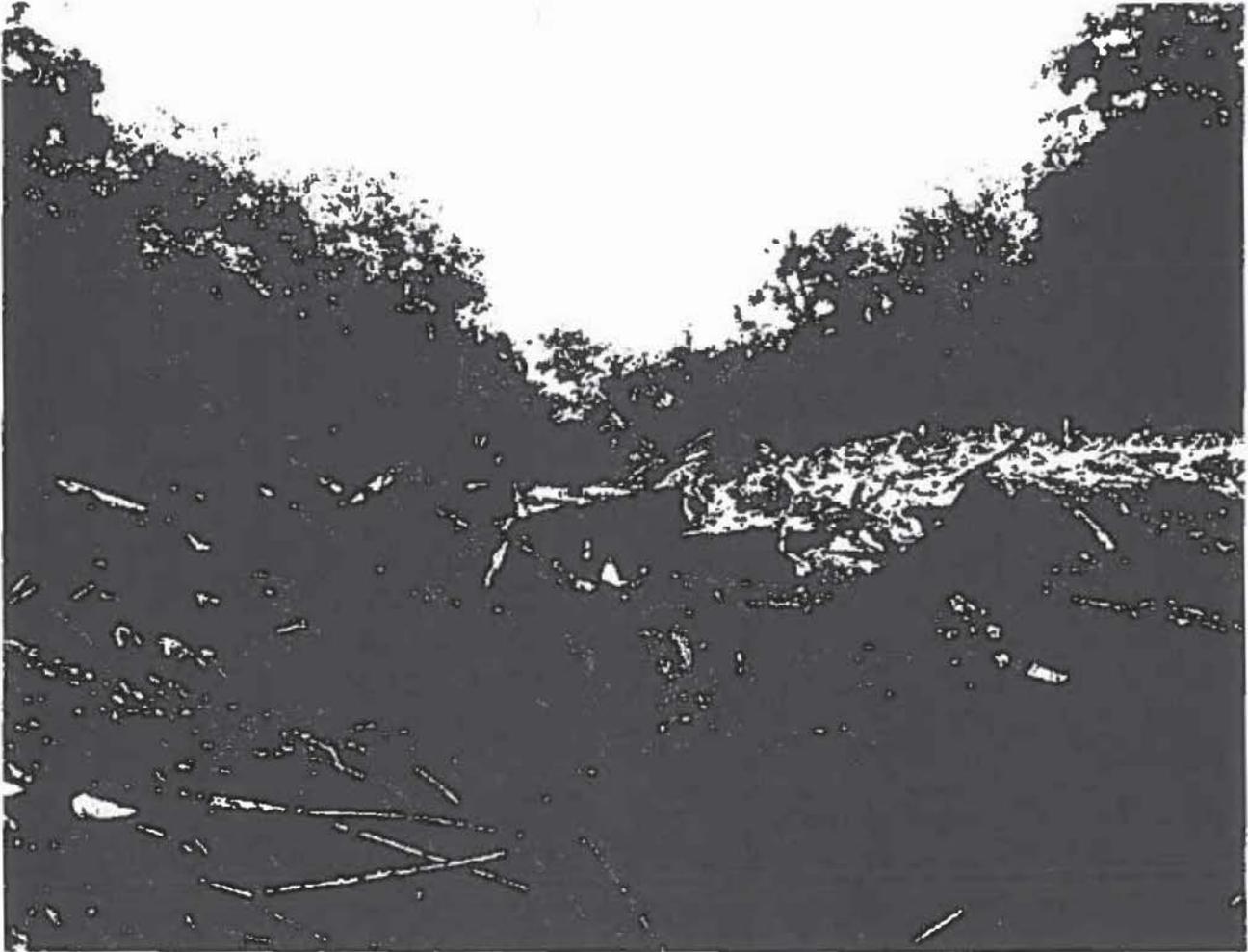
RMPJHill@aol.com <RMPJHill@aol.com>
To: douglas@ruthandmacneille.com

Mon, May 16, 2016 at 12:07 PM

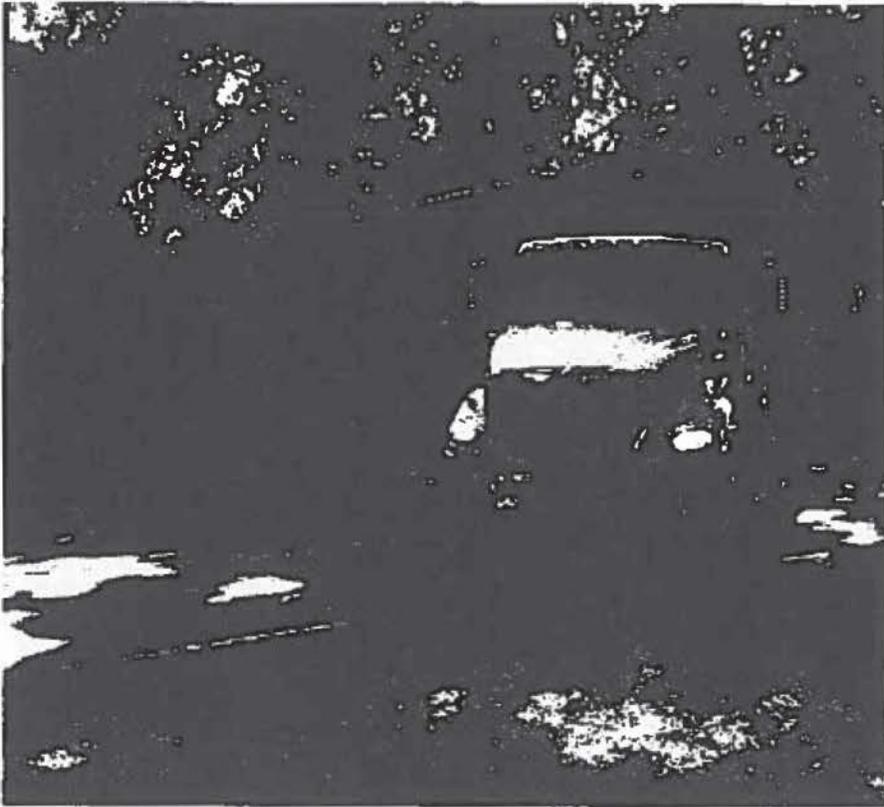
Number 6

From: RMPJHill@aol.com
To: TeriL@hiltonheadislands.gov
Sent: 4/19/2016 4:52:57 P.M. Eastern Daylight Time
Subj: Re: Arbor Nature Problem

Exhibit "K"



From April 21, 2016:



April 26, 2016:



May 13, 2016:



Wayne Johnson • Senior Partner

wdm HILTON HEAD | ORLANDO

o 843 686 2228 • wdm1.com

[wdm facebook](#)

[Quoted text hidden]

Douglas MacNeille <douglas@ruthandmacneille.com>

To: Wayne Johnson <wayne@wdm1.com>

Thu, Jun 2, 2016 at 1:31 PM

Excellent! Thanks Wayne

Best, Doug MacNeille

Exhibit "L"

TOWN OF HILTON HEAD ISLAND

One Town Center Court, Hilton Head Island, SC 29928

843-341-4600 phone 843-842-7728 fax

www.hiltonheadislandsc.gov

May 13, 2016

Mr. Adam Congrove
ArborNature Tree Experts
76 Leg O Mutton Road
Hilton Head Island, SC 29926

Dear Adam:

Town staff has continued to receive complaints about the ArborNature site located at 76 Leg O Mutton Road. Due to this fact, staff has taken a more thorough look at the specific uses permitted by ZMA060013 and the letter that was issued by staff in 2010 regarding composting and wood grinding on the subject site.

The uses allowed on the 2.18 acre portion of the property (Tract A) are residential at up to four dwelling units per net acre or Wholesale Landscape Nursery with a landscape contractor's office and onsite storage at up to 6,000 square feet per net acre. Based on the Tract A being 2.18 acres this would allow you 13,080 square feet of onsite storage. Tract B, which is 4.52 acres, is permitted for residential uses at up to four dwelling units per acre and a .19 acre right-of-way.

Tract A allows one of two principal uses, residential or Wholesale Landscape Nursery. A use is defined in the Town's Land Management Ordinance (LMO) Section 16-10-105 as, the purpose or activity of which the land or building is designed, arranged, or intended, or for which it is occupied or maintained. Accessory use is subordinate to the main or principal use of land or building." A principal use is defined as, "the primary purpose for which a lot or the main building thereon is designed, arranged, or intended and for which it is or may be used, occupied, or maintained." An accessory use is defined as, "a use of a building, lot, or portion thereof, which is customarily incidental and subordinate to the principal use of the building or lot.

Since Tract A is not being used for residential uses, the principal use on Tract A should be Wholesale Landscape Nursery per ZMA060013. Continued site visits by staff have led us to the conclusion that despite the addition of mulch bins, plants and pavers, the principal use is the grinding of trees. This determination was reached based on the following facts:

- Trucks from a site clearing company are bring trees to your site for grinding; all of the grinding is not related to the trees that ArborNature is removing as part of their business; and
- The area being used for the grinding is significantly larger than that of the wholesale landscape nursery; and
- Based on how your site is operating, it appears that the principal use of the property has become Waste-Related Services Use Other than a Waste Treatment Plant. A definition of waste-related service use is:
 - An establishment that receives solid or liquid wastes from others for disposal on the site or for transfer to another location, that collects sanitary wastes, or that manufactures or produces goods or energy from the composting of organic material. Uses include: waste transfer or composting centers; salvage and recycling facilities; resource recovery facilities; recycling drop-off centers; and water treatment plants. Accessory uses may include offices, outdoor storage, recycling of materials, and repackaging and transshipment of by products. Disposal of dirt, concrete, asphalt, and similar non-biodegradable materials is considered fill.

Waste-related services are not permitted on this site. At this time, based on the fact that you are receiving trees/yard debris from other companies, the area used for grinding is so much larger than any other use on the site and the fact that the principal use of the site no longer appears to be an approved use on the site, I am making the determination that your site is not in conformance with the LMO.

Should you wish to appeal this determination to the Town's Board of Zoning Appeals, please submit a complete appeal application (application enclosed) within 14 calendar days of receipt of this letter.

If you wish you discuss this issue further, please contact me at (843) 341-4698 or teril@hiltonheadislands.gov.

Sincerely,



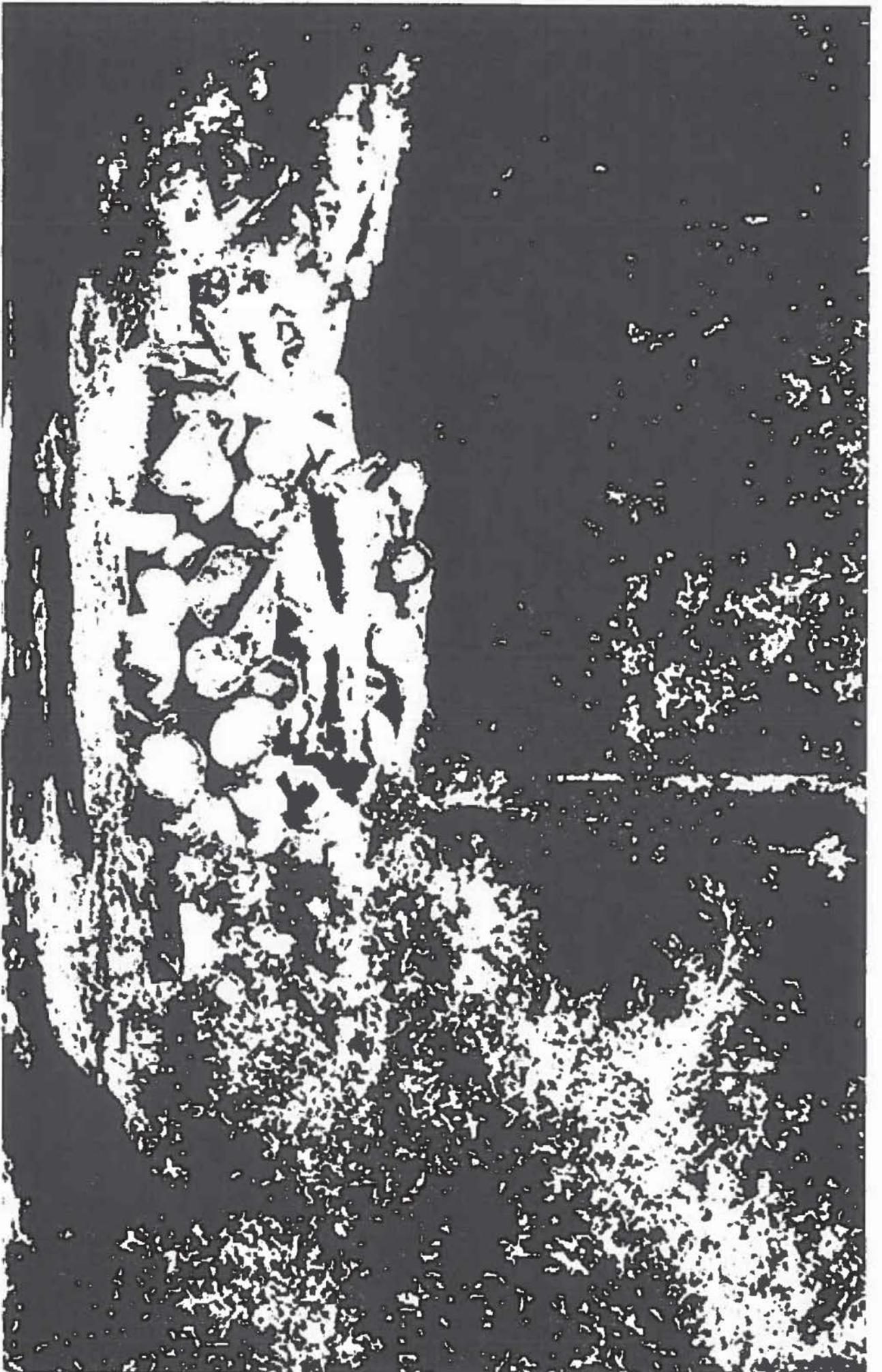
Teri B. Lewis
LMO Official

Exhibit "M"



May 27, 2016

B.H.



May 27, 2016
B.H.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 INDIGO RUN COMMUNITY OWNERS)
 ASSOCIATION, INC., a South Carolina non-profit)
 corporation and CHEW-FISHER CAPITAL)
 BUSINESS PARK, LLC. a Nebraska limited liability)
 company)
 Plaintiff)
)
 v.)
)
 ADAM CONGROVE, DENNIS ROY)
 CONGROVE And ARBORNATURE, LLC. A South)
 Carolina Limited Liability)
 Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.

2016 JUN -3 AM 9:49
 JERRI ANN ROSENEAU
 BEAUFORT COUNTY, S.C.
 CLERK OF COURT

2016-CP-07-~~4889~~-1254

MOTION AND ORDER INFORMATION
 FORM AND COVER SHEET

Plaintiff's Attorney: Douglas W. Macneille, Bar No. 03520 Address: P.O. Drawer 5706, Hilton Head, S 29938 phone: 843-785-4251 fax: 843-686-5404 e-mail: douglas@ruthandmacneille.com other:	Defendant's Attorney: . Bar No. Address: phone: fax: e-mail: other:
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	

SECTION I: Hearing Information

Nature of Motion: Injunctive Relief

Estimated Time Needed: 1 hour Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

- Written motion attached
- Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff / Defendant

May 31, 2016

Date submitted

SECTION III: Motion Fee

- PAID – AMOUNT: \$25.00
- EXEMPT:
 - Rule to Show Cause in Child or Spousal Support
 - (check reason) Domestic Abuse or Abuse and Neglect
 - Indigent Status State Agency v. Indigent Party
 - Sexually Violent Predator Act Post-Conviction Relief
 - Motion for Stay in Bankruptcy
 - Motion for Publication Motion for Execution (Rule 69, SCRCP)
 - Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
- Name of Court Reporter:
 - Other:

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order.
- Other:

JUDGE _____

CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____

- MOTION FEE COLLECTED: _____
- CONTESTED – AMOUNT DUE: _____

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS FOR
COUNTY OF BEAUFORT) THE FOURTEENTH JUDICIAL CIRCUIT

2016 JUN -3 AM 9:49
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

INDIGO RUN COMMUNITY OWNERS)
ASSOCIATION, INC., a South Carolina non-)
profit corporation. CHEW-FISHER CAPITAL)
BUSINESS PARK, LLC, a Nebraska limited)
liability company.)

Plaintiffs.)

vs.)

ADAM CONGROVE, DENNIS ROY)
CONGROVE and ARBORNATURE, LLC, a)
South Carolina limited liability company.)

Defendants.)

**MOTION FOR TEMPORARY
INJUNCTION**

Case No.: 2016-CP-07- 1294

COME NOW the Plaintiffs INDIGO RUN COMMUNITY OWNERS ASSOCIATION, INC. and CHEW-FISHER CAPITAL BUSINESS PARK, LLC and move this Honorable Court, pursuant to Rule 65(b) of the Carolina Rules of Civil Procedure, to issue a temporary restraining order prohibiting the Defendants above-named, or any business or entity acting in concert or participation with the Defendants above-named, *pending a trial on the merits*, from engaging in the activity of hauling logs to the Congrove Tract for the purpose of grinding logs to mulch as part of a commercial manufacturing and/or waste disposal enterprise or engaging in any other activity in violation of the Town of Hilton Head Island's Plan Management Ordinance. In support of this Motion, the Plaintiffs allege the following to the Court:

1. Immediate and irreparable injury, loss, and/or damages will result to the Plaintiffs unless the Defendant's are restrained from engaging in the activity of hauling logs to

the Congrove Tract for the purpose of grinding logs to mulch as part of a commercial manufacturing and/or waste disposal enterprise or engaging in any other activity in violation of the Town of Hilton Head Island's Plan Management Ordinance;

2. Such immediate and irreparable injury will result to the Plaintiffs because the activities conducted by Defendants on the Congrove Tract has rendered the real property of each of the Plaintiffs uninhabitable for either residential or commercial use, thereby resulting in significant diminution in value of such property if not rendering such property essentially worthless for the purpose for which it is intended;

3. Any legal remedy would be inadequate in this case because damages may be difficult to ascertain and, even in the event damages are awarded, this would not in any way lessen the deprivation of Plaintiffs reasonable use and enjoyment of their respective residential and commercial properties or the ongoing violation of Town of Hilton Head Island laws, codes and ordinances in this matter.

4. There is a strong likelihood of Plaintiffs' success on the merits in this action due to the fact that the Defendants have operated and continue to operate in violation of the Town of Hilton Head Island's statutes and ordinances.

5. In support of this Motion, Plaintiffs rely on the matters alleged in the Complaint filed and served together herewith, as well as any Affidavits, testimony and other evidence in support of this motion as may be presented at the time of hearing of this motion.⁶

6. Counsel for the Plaintiffs certifies that prior consultation with counsel for the Defendants about this motion was served no useful purpose.

WHEREFORE, the Plaintiffs move that the Court award the following relief:

A. Enter a Temporary Injunction prohibiting the Defendants, or any person or entity acting in concert or participation with the Defendants, from engaging in the activity of hauling logs to the Congrove Tract for the purpose of grinding logs to mulch as part of a commercial manufacturing and/or waste disposal enterprise or engaging in any other activity in violation of the Town of Hilton Head Island's Land Management Ordinance; and

B. Grant such other and further relief in favor of the Plaintiff says the Court deems just and appropriate.

RUTH & MacNEILLE, P.A.

By:



DOUGLAS W. MacNEILLE, ESQ.
Attorney for Plaintiffs
P.O. Drawer 5706
10 Office Way, Suite 200
Hilton Head Island, South Carolina 29938
(803) 785-4251

Hilton Head Island, SC
June 2, 2016



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Board of Zoning Appeals
FROM: Nicole Dixon, CFM, *Senior Planner*
DATE: August 8, 2016
SUBJECT: Substitutions of Nonconformities for Redevelopment

The Board of Zoning Appeals (BZA) requested that staff keep them informed of substitutions of nonconformities for redevelopment that are granted by staff. A memo is distributed every month at the regular BZA meetings and is discussed under staff reports on the agenda. Even if there have been no waivers for the month, a memo will be included in the packet to inform the BZA members.

The following language is contained in Section 16-7-101.F, Substitutions of Nonconformities for Redevelopment, which gives the Administrator the power to grant such substitutions for existing nonconforming structures and site features.

LMO Section 16-7-101.F:

“To provide flexibility and encourage redevelopment of sites with nonconforming features or structures, the Official is authorized to approve a Development Plan for such sites if the proposed development:

1. Will not include any new development that increases the amount of encroachment into any required buffer or setback;
2. Will not increase the impervious cover on the site over the maximum allowed for the district or the existing impervious cover, whichever is greater;
3. Will not result in a density in excess of what is allowed under this Ordinance, or the existing density, whichever is greater;
4. Will lessen the extent of existing nonconforming site features to the greatest extent possible;
5. Will not have an adverse impact on the public health, safety or welfare; and
6. Will lessen the extent of nonconformities related to any existing nonconforming structure on the site to the greatest extent possible.”

There have not been any Substitutions of Nonconformities for Redevelopment that have been granted by staff since the May 2016 Board of Zoning Appeals meeting.