Town of Hilton Head Island
Board of Zoning Appeals
Special Meeting
Monday, January 9, 2017 – 9:00 a.m.
BENJAMIN M. RACUSIN COUNCIL CHAMBERS
AGENDA

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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**

6. **Approval of Agenda**

7. **Unfinished Business**

   Hearing
   Motion to Reconsider APL 1006-2016: ArborNature LLC and Adam Congrove are requesting that the Board of Zoning Appeals reconsider their decision to uphold the decision of the Official related to APL 1006-2016.

8. **New Business**

   Hearing
   APL-001910-2016 – Request for Appeal from Chester C. Williams and Thomas C. Taylor on behalf of Adam Congrove, owner of ArborNature, LLC. The appellant is appealing staff's determination, dated September 29, 2016, that the subject property located at 76 Leg O Mutton Road is in violation of the Town's Land Management Ordinance (LMO).

9. **Board Business**

10. **Adjournment**

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

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)

23 September 2016

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

Via Email and Hand Delivered

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

Dear Teri:

On behalf of our client, ArborNature, LLC, in accordance with Article XI, Section 1 of the Rules of Procedure of the Board of Zoning Appeals (the "BZA"), we enclose herewith a Petition for Reconsideration of the Appeal.

We are filing this Petition today because we feel compelled to do so, notwithstanding the fact that the five day filing in the BZA Rule Article XI, Section 1(2) does not expire until tomorrow. Typically, one would except that when a filing deadline falls on a weekend or legal holiday, then the filing period is extended to the next regular business day; however, based on the peculiar time calculation method in LMO Section 16-10-101.D.1, the reverse is applicable, and you have taken the position that the filing period for this Petition is shortened to the immediately prior business day, *i.e.*, today.

We understand from our telephone conversations today with you and Brian Hulbert that upon the filing of this Petition, you intend to amend the agenda for the Monday 26 September 2016 BZA meeting to include consideration of this Petition by the BZA at the meeting on Monday, based on BZA Rule Article XI, Section 1(4), which states that a Petition for Reconsideration shall be presented to the BZA at the next regular scheduled meeting following the filing of the Petition after compliance with the public notice requirements for a BZA public meeting per the LMO. We object to being required to present this Petition to the BZA on Monday because it is evident that BZA Rule Article XI, Section 1(4) does not take into consideration such timing as is applicable to this particular Appeal. While the timing of BZA Rule Article XI, Section 1(4) would not normally present a hardship to an appellant whose application was heard and decided by the BZA at a regular scheduled

meeting, because the BZA's decision on the Appeal was rendered at a special meeting held just four days ago, the timing of BZA Rule Article XI, Section 1(4) and its requirement that this Petition be presented to the BZA on Monday does present a clear hardship for our client in this case.

We have prepared this Petition based on the best information available to us at this time; however, we have not had sufficient time since this past Monday to obtain a transcript from our court reporter of the many hours of testimony at the 19 September 2016 BZA hearing on the Appeal, and it is only fair that we have a reasonable opportunity to review that transcript before arguing this Petition for Reconsideration. Therefore, we ask that the hearing on this Petition be scheduled for the 24 October 2016 meeting of the BZA in order to afford us sufficient time to prepare fully for a hearing on this Petition.

We also object to the amendment of the agenda for the 26 September 2016 meeting of the BZA to include this Petition on the grounds that such an amendment does not comply with the minimum public meeting notice requirements of SC Code Section 30-4-80.

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

This signature is an electronic reproduction

Chester C. Williams

CCW/
Enclosure
cc: Mr. and Mrs. Adam Congrove
C. Glenn Stanford, Esq.
Thomas C. Taylor, Esq.
Brian E. Hulbert, Esq.
Nicole Dixon, CFM

STATE OF SOUTH CAROLINA	)	**BEFORE THE BOARD OF ZONING**
	)	**APPEALS OF THE TOWN OF**
	)	**HILTON HEAD ISLAND, SC**
	)	
COUNTY OF BEAUFORT	)	**APPLICATION FOR APPEAL**
		APL-001006-2016

PETITION FOR RECONSIDERATION

This Petition for Reconsideration (this "Petition") is made by ArborNature, LLC (the "Appellant") pursuant to Article XI, Section 1 of the Rules of Procedure for the Board of Zoning Appeals (the "BZA") of the Town of Hilton Head Island (the "Town") in connection with Application for Appeal APL-001006-2016 (the "Appeal"), and is submitted by the Appellant to the BZA to seek reconsideration of the decision rendered by the BZA on 19 September 2016 in the Appeal upholding the determination made by Teri B. Lewis, AICP in her letter of 13 May 2016 to Adam Congrove (the "Determination"). The motion to uphold the Determination passed by a 4-1 vote of the BZA.

I. INTRODUCTION

The Appeal seeks to either reverse the Determination, or direct Mrs. Lewis to advise the Appellant as to the action necessary to correct the alleged violation of the Town's Land Management Ordinance (the "LMO") that resulted in the Determination.

On 19 September 2016, the BZA held a hearing on the Appeal. Presentations were made by the Town Staff and the Appellant, and following questions and discussion, a motion was made and seconded to deny the Appeal. That motion passed by a 4-1 vote.

II. RECONSIDERATION

Article XI of the Board of Zoning Appeals Rules of Procedure adopted 27 July 2015 (the "BZA Rules") provides for reconsideration of any decision made

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under Section 16-2-104(T) of the LMO.[1] Any Petition for Reconsideration must be filed with the LMO Administrator[2] within five (5) days of the date of the hearing.[3] The Petition for Reconsideration must to be in writing, and it must state with particularity the points alleged to have been overlooked or misinterpreted by the BZA.[4]

This Petition is timely filed, and sets forth with particularity the points that the Appellant believes were overlooked or misinterpreted by the BZA.

III. BASES FOR RECONSIDERATION

The Appellant submits there are at least five separate bases for this Petition.

A. THE STIPULATION

The BZA ignored or improperly discounted the sworn testimony, under oath, of Mrs. Lewis, the LMO Official, and Anne Cyran, a Senior Planner for the Town, contained in the Stipulation to Agreed Facts and Law for the Appeal Application of ArborNature, LLC (the "Stipulation").[5] The Stipulation is an agreement between the Town and the Appellant with regard to the matters contained therein, and, as Glenn Stanford, the Chairman of the BZA, stated at the beginning of the BZA's hearing on the Appeal, is binding on the BZA for purposes of the Appeal. Therefore, the BZA must accept the contents of the Stipulation as settled matters of fact and law. Those facts, which are undisputed by any testimony at the hearing on the Appeal, and are not subject to rebuttal, include:

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[1] See BZA Rules Article XI, Section 1.

[2] With the adoption of the current version of the LMO on 07 October 2014, the LMO Administrator is now known as the LMO Official.

[3] See BZA Rules Article XI, Section 2.

[4] See BZA Rules Article XI, Section 3.

[5] The Stipulation is included in the record of the Appeal

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1. Ms. Cyran, issued a written determination, appealable to the BZA, dated 05 January 2010 to Adam Congrove that states, "Based upon the allowed uses for Tract A, staff confirms that composting and wood grinding operations are in accordance with the Town of Hilton Head Island Land Management Ordinance."

2. Some three years later, Ms. Cyran sent an email to Mr. Congrove in which she again confirmed that "composting and wood grinding operations are permitted uses on Tract A."

3. Mrs. Lewis testified under oath that the grinding of trees and logs on the Appellant's property is a permitted use on the Appellant's property, not as an accessory use but rather as part and parcel of the permitted principal use of the property for a wholesale landscape nursery with a landscape contractor's office under the applicable zoning and the requirements of the LMO.

4. Mrs. Lewis testified under oath that the LMO contains no provision or requirement that prevents or prohibits the Appellant from accepting or receiving trees and logs from third parties for grinding on the Property.

Taken together, these stipulated facts, which Mrs. Lewis acknowledged under oath long after she wrote the Determination, directly address the issue brought before the BZA by the Appeal: Is the Appellant's business being operated in conformance with the LMO? If the grinding of trees and logs is permitted on the Appellant's property, and the LMO does not prohibit the Appellant from accepting or receiving trees and logs from third parties for grinding on the Property, then, based on the Stipulation and the sworn testimony at the hearing on the Appeal, the Appellant is operating its business on the Property in conformance with the LMO.

There is no doubt that, as stipulated, the Appellant is permitted by the applicable zoning to grind trees and logs on its property. Such being the case, it is irrelevant to the LMO who does that grinding. If grinding is permitted, it can be done by the Appellant, or it can be done by a

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contractor hired by the Appellant; and it can be done using a large grinder, a small grinder, a portable grinder, or any type of grinder.

The unchallenged stipulated facts on these points requires that the Appeal be resolved in favor of the Appellant.

The Stipulation also makes it clear that under LMO Section 16-2-103.R.6, all "written interpretations shall be binding on subsequent decisions by the [LMO] Official in applying the same provisions of [the LMO] in the same circumstances." Therefore, the Town has acknowledged that the 05 January 2010 determination by Ms. Cyran is binding on future determinations on the same facts. The Appeal presented the same facts as the 05 January 2010 letter from Ms. Cyran. The BZA cannot disregard the binding nature of Ms. Cyran's determination, and, in fact, and in law, the BZA's decision on the Appeal was required to be consistent with that earlier determination.

The BZA simply is not free to disregard undisputed, stipulated facts, particularly without stating why it has, or has not, taken those facts into account in its decision. Doing so constitutes a misinterpretation of the undisputed facts and law applicable to the Appeal. Therefore, the Appellant submits that the BZA must grant this Petition, and reconsider and grant the Appeal.

B. THE NATURE OF THE APPELLANT'S BUSINESS

The Town's witnesses and Mrs. Lewis testified at the hearing that, in their opinions, the nature of the Appellant's business has changed over the years; however, those witnesses, including Mrs. Lewis, did not, and could not, offer any credible, competent evidence to support their opinions.

Without doubt, the Appellant's business has become more active over the years, but that increase in activity is not a legitimate reason to declare that the Appellant's use of its property has become nonconforming with the LMO. The LMO contains no restrictions on the time of operation of the Appellant's business, nor does it contain any limits on the volume of the Appellant's business.

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In his closing remarks, Chairman Stanford stated, "I have a note that ArborNature, that Mr. Congrove testified that the nature of his business has changed some over the years". However, a review of the audio recording of the hearing on the Appeal shows that during Mr. Congrove's testimony, in response to David Fingerhut asking, "So would it be fair to say that since January 5, 2010 the circumstances of your business have somewhat changed?", Mr. Congrove stated, "Honestly, no. They are pretty much similar to what it's been for however many years." With all due respect to Chairman Stanford, the Appellant believes he inadvertently misstated Mr. Congrove's testimony, and used that misstatement as a reason to uphold the Determination.

If the Appellant can legally grind trees and logs on its property, it necessarily follows that the Appellant can, and indeed, must, dispose of the wood chips that result from the grinding. It is difficult to understand how, if the Appellant can legally grind trees and logs on its property, then the method of disposal of the resulting wood chips affects how the Appellant's business is classified. The Appellant can sell the wood chips as mulch, sell the wood chips for other uses, or simply haul the wood chips to the Hickory Hill landfill site and pay to throw them away. In any event, the Appellant must have a method or methods of removing the wood chips from its property. The fact that it has several different ways of disposing of the wood chips does not mean that the nature of its business has changed, or has somehow become nonconforming.

The Determination was based on two assertions by Mrs. Lewis about the Appellant's use of its property, *i. e.*, the delivery of trees to the Appellant's site for grinding by a site clearing company other than the Appellant, and that the area of the property being used for grinding was significantly larger than that of the permitted wholesale landscape nursery.

Mrs. Lewis since then agreed under oath and in the Stipulation that there is no prohibition in the LMO against the Appellant accepting or receiving trees and logs from third parties for grinding on the property. Clearly, if there is no prohibition against the Appellant accepting or

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receiving trees and logs from third parties for grinding on the property, then it is legal for the Appellant to do so.

Further, the Determination's reference to the portion of the property being used for grinding was likely based on the grinding of trees and logs on the property being an "accessory use" of the property that overshadowed the permitted principal use of the property, a position that Mrs. Lewis has since disavowed. She now acknowledges, as stated in the Stipulation, that the grinding of trees and logs on the Appellant's property is permitted on the property as part of the permitted use of the property as a wholesale landscape nursery with a landscape contractor's office.

Given the Stipulation, Mrs. Lewis' position as stated in the Determination seems to have changed substantially. That change in Mrs. Lewis's position was apparently overlooked by the BZA at its hearing on the Appeal. Therefore, the Appellant asks that the BZA grant this petition and reconsider the Appeal

C. TESTIMONY AT THE HEARING

The BZA cannot legally base its decision on the Appeal on the testimony of the witnesses called by the Town. Even though two of the Town's witnesses testified as to some matters they observed on the Appellant's property, none of those witnesses provided any credible testimony as to the day to day operation of the Appellant's business, and how that business has changed over the years, other than to say that they think it has increased over the years, that they did not like it, and that it was wrong to allow the Appellant to continue in business on its property.

In his closing remarks, Chairman Stanford noted that Wayne Johnson testified that the nature of the Appellant's business has changed dramatically, but Mr. Johnson's testimony was, for the most part hearsay testimony, which was noted by Chairman Stanford.

Ben Ham, one of the Town's witnesses, testified that he has personally observed large timber trucks bringing logs to the Appellant's

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property; however, Mr. Congrove testified that no logs are delivered to the property by large timber trucks; instead, the large timber trucks seen by witnesses on the property were actually transporting large logs away from the property.

Mr. Congrove's uncontradicted testimony is that approximately ninety percent of the trees and logs that arrive on the Appellant's property are the result of the Appellant's landscape contract business, and that the grinding of trees and logs was only about ten percent of the Appellant's business. No witness offered by the Town, including Mrs. Lewis, refuted Mr. Congrove's testimony on those points. Yet, it is clear that at least some members of the BZA simply chose not to believe Mr. Congrove's testimony. For example, Jerry Cutrer stated in his closing remarks that he found Mr. Congrove's testimony on the trees and logs arriving at the Appellant's property hard to believe.

None of the Town's witnesses are qualified by training, profession, or experience to provide relevant evidence that addressed any of the issues raised by the Appeal. In addition, while the Town's witnesses testified that they were annoyed by the Appellant's use of its property, they did not offer any evidence regarding noncompliance by the Appellant with the applicable zoning and the LMO. At best, the testimony of the Town's witnesses was nothing more than anecdotal evidence.

The testimony of the Town's witnesses, while perhaps emotionally appealing, should not have been afforded the weight that it clearly was given by the four members of the BZA who voted to uphold the Determination. There was no testimony offered by the Town with regard to whether the operations of the Petitioner violated the provisions of the LMO <u>other than the Stipulation, which concedes that the Appellant's use of its property for grinding of trees and logs does not violate the LMO</u>.

As recently as 19 February 2016, in an email to Ric Fisher, after a site visit to the Appellant's property the previous day, Mrs. Lewis stated, "I found that based on the addition of an area with plants and trees offered for sale and three large mulch bins Mr. Congrove is now in conformance with the zoning for the property." This finding of

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conformance was based on Mrs. Lewis's previously stated criteria for a wholesale landscape nursery, that to be classified as such, the business must offer for sale plants, pavers, pots, mulch, and the like. Those are objective criteria that can be easily understood and followed by an operator of a wholesale landscape nursery. However, there was no testimony at the BZA hearing on the Appeal that the Appellant is no longer stocking such items for sale. Instead, Mrs. Lewis, when questioned by Mr. Taylor simply stated, "I don't believe it functions as a wholesale landscape nursery and what I would classify as a landscape contractor's office. It really appears to be a tree service business." Mrs. Lewis did not, and could not, offer any objective reason why she now thinks the Appellant's business is "a tree service business", which itself is a use that is not defined in the LMO.

The record of the BZA hearing on the Appeal is devoid of any credible evidence whatsoever that the Appellant's use of its property violates the LMO, other than Mrs. Lewis' statements of opinion unsupported by facts that the property no longer appears to be what she would consider a wholesale landscape nursery.

Because the decision of the BZA is contrary to the credible, competent evidence and sworn testimony, without any explanation by the BZA of its reasoning for its decision, the BZA has either overlooked some of, or misinterpreted some of, the testimony at the hearing on the Appeal, and the Appellant asks that the BZA grant this Petition and reconsider the Appeal.

D. LMO VIOLATION

The Appellant argued in the Appeal that the Determination, if correct, evidences a violation of the LMO by the Appellant, which, under LMO Section 16-8-105.C, requires that the LMO Official inform the Appellant of the action necessary to correct the violation.

The BZA, in exercising its appellate review authority over decisions of the LMO Official, has "all the powers of the [LMO] Official".[6] Therefore,

[6] See LMO Section 16-2-103.T.4.d.i.02.

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it is incumbent on the BZA to provide the direction the Appellant requires in order to correct any violation of the LMO that resulted in the Determination. The BZA overlooked its obligation to provide the required direction to the Appellant. Therefore, the Appellant asks that the BZA grant this Petition and do so.

E. THE NOTICE OF ACTION

The Appellant received a Notice of Action of the BZA's decision on the Appeal by certified mail on 22 September 2016. A copy of that Notice of Action is attached to this Petition as **Exhibit A**. It does not contain any findings of fact or conclusions of law.

Section 6-29-800(F) of the Code of Laws of South Carolina (1976), part of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, requires that all final decisions and orders of the BZA must be in writing and be permanently filed in the office of the BZA as a public record, and that all findings of fact and conclusions of law must be separately stated in final decisions or orders of the BZA, which must be delivered to parties of interest by certified mail. Further, LMO Section 16-2-103.T.4.d.ii, regarding appeals of administrative decisions and written interpretations of the LMO to the BZA, requires that the BZA's final decision on an appeal "shall be in writing and shall include findings of fact and conclusions of law separately stated."

At the hearing on the Appeal, the BZA did not address the Appellant's requests for findings of fact contained in the application for the Appeal and for specific decisions concerning the Appellant's operations and the LMO, nor did it do so in the Notice of Action.

The motion by Mr. Cutrer, seconded by Mr. Fingerhut, to uphold the Determination did not include any reference to findings of fact or conclusions of law, and the Notice of Action likewise does not. Therefore, on its face, the Notice of Action is defective, and is insufficient to document the BZA's decision on the Appeal.

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The Appellant deserves to know, and has the right to know, the facts and law that form the basis of the BZA's decision to uphold the Determination. Because the BZA overlooked its obligation to state the required findings of fact and conclusions of law necessary to support its decision to uphold the Determination in the Notice of Action, or misinterpreted its obligation to do so, the Appellant asks that the BZA grant this Petition and reconsider the Appeal.

IV. CONCLUSION

In light of the Stipulation, the Appeal presented a straightforward issue of compliance with the requirements of the LMO. The Stipulation provided all of the facts required for the BZA to reach a decision. The BZA is required to find the facts contained in the Stipulation, and is also bound by the agreements of the Town and the Petitioner concerning matters of law in the Stipulation. It is clear from the decision of the BZA on the Appeal that the BZA failed to adopt the facts set forth in the Stipulation and, accordingly, reached an incorrect decision on the Appeal.

The Stipulation also makes it clear that Mrs. Lewis has disavowed the bases for the Determination, which was also overlooked by the BZA at the hearing of the Appeal.

The only credible, competent testimony sufficient to form a basis for the BZA's decision on the Appeal was that of the Stipulation and the Appellant's witnesses. That testimony was uncontroverted, and should have been given full weight by the BZA.

If the Appellant is in violation of the LMO, it deserves to know what action is necessary to correct that violation.

Neither the motion to uphold the Determination nor the Notice of Action on the Appeal contain the required findings of fact and conclusions of law.

This Petition provides the BZA with the opportunity to correct the record and decide the Appeal based upon the Stipulation, the uncontradicted credible

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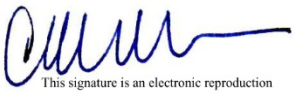
testimony at the hearing, and the requirements of the State Enabling Act and the LMO.

Respectfully submitted on behalf of the Appellant on 23 September 2016.



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

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Exhibit A to Petition (2 Pages)

TOWN OF HILTON HEAD ISLAND
COMMUNITY DEVELOPMENT DEPARTMENT

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

BOARD OF ZONING APPEALS
NOTICE OF ACTION

Case #:	Name of Development:	Public Hearing Date:
APL1006-2016	ArborNature LLC	September 19, 2016

Parcel or Location Data:	Applicant	Agent
R510 008 000 0275 0000	Adam R. Congrove	Adam R. Congrove

Brief Description:

Staff has received an Appeal from Chester C. Williams on behalf of Adam Congrove and ArborNature LLC. The appellant is appealing staff's determination, dated May 13, 2016, that the Appellant's use of the property is not in conformance with the zoning for the subject property.

BZA Action:

At their meeting on September 19, 2016, the Board voted to deny APL1006-2016 and uphold the determination of the LMO Official.

Appeal To Circuit Court:

If you believe the Board erred in its decision, you have the right to appeal the decision to Circuit Court. You have two options to appeal to Circuit Court:

1. You may file a petition with the clerk of court in and for the county, in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed within 30 days after the decision of the Board is mailed (South Carolina Code of Laws 6-29-820A). The mailing date of this decision is **September 20, 2016**.

2. You may file a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with South Carolina Code of Laws Section 6-29-825. Any notice of appeal and request for pre-litigation mediation must be filed within 30 days after the decision of the board is postmarked.

Chairman of BZA: _____ **Date:** 9/19/16

Maker of Motion: _____ **Date:** 9/19/16

Second to Motion: _____ **Date:** 9/19/2016

Note: This decision must be delivered to the parties of interest via certified mail.

TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Board of Zoning Appeals
VIA: Nicole Dixon, *Senior Planner and Board Coordinator*
FROM: Teri Lewis, *LMO Official*
DATE January 3, 2017
SUBJECT: APL #1910-2016

Staff has received an appeal from Chester C. Williams on behalf of Adam Congrove, owner of ArborNature, LLC. Mr. Congrove is appealing the Notice of Violation that was issued on September 29, 2016 in regard to activities occurring at 76 Leg O Mutton Road. This appeal was scheduled to be heard at the December 19, 2016 BZA meeting but will now be heard at a special BZA meeting on January 9, 2017.

Per the Code of Laws of South Carolina, specifically 6-29-800.B, staff submitted the below documents to the Board on November 9, 2016.

- Appellant Submittal
- Staff File
    - 9/29/16 Notice of Violation
    - Approved Zoning Map Amendment
    - Approved Site Plan
    - January 5, 2010 Determination Letter
    - Section from Municipal Code – Noise Control

Staff reserves the right to submit additional documents.

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

7015 1520 0001 4165 8518

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HILTON HEAD ISLAND, SC 29928

Certified Mail Fee $ $3.30	0100
Extra Services & Fees *(check box, add fee as appropriate)* $ $2.70	
☐ Return Receipt (hardcopy) $ $0.00	
☐ Return Receipt (electronic) $ $0.00	
☐ Certified Mail Restricted Delivery $ $0.00	
☐ Adult Signature Required $ $0.00	
☐ Adult Signature Restricted Delivery $	
Postage $ $1.57	
Total Postage and Fees $ $7.57	10/11/2016

MAR 10 OCT 11 2016 Postmark Here

Sent To Teri Lewis, LMO Official, Town of HHI

Street and Apt. No., or PO Box No. One Town Center Court

City, State, ZIP+4® Hilton Head Is., SC 29928

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

To: Teri Lewis, LMO Official
Town of Hilton Head Island
Community Development Department
One Town Center Court
Hilton Head Is., SC 29928

Re: Appeal by Adam Congrove and Arbornature, LLC of Notice of Violation dated September 29, 2016

Date: October 11, 2016

Dear Ms. Lewis:

On behalf of Adam Congrove and ArborNature, LLC, I am hereby filing this 11th day of October, our appeal of the Notice of Violation dated September 29, 2016. Service is being made by US Mail and I attest that this package contains the following, and was placed in the US Mail, first class postage paid, on this 11th of October, 2016.

The package contains:

a. The formal BZA appeal application signed by my co-counsel Chester C. Williams, on behalf of Adam Congrove & Arbor Nature, LLC;

b. An attached narrative, which I expect to be updated and amended after the hurricane evacuation is lifted; and,

c. A check from my personal checking account for $100 as the appeal application fee.

Thank you. Please contact me if you have any questions.

Law Office of Thomas C. Taylor, LLC

P. O. Box 5550
Hilton Head Island, SC 29938
843-785-5050
tom@thomasctaylorlaw.com
October 11, 2016

Town of Hilton Head Island

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

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

Applicant/Agent Name: Adam R. Congrove Company: ArborNature, LLC
Mailing Address: C/O Chester C. Williams, PO Box 6028 City: Hilton Head Island State: SC Zip: 29938
Telephone: 843-842-5411 Fax: 843-842-5412 E-mail: Firm@CCWLaw.net

APPEAL (APL) SUBMITTAL REQUIREMENTS

If you are interested in submitting your appeal electronically please call 843-341-4757 for more information.

The following items must be attached in order for this application to be complete:

XX A detailed narrative stating the Town Official or Body who made the decision, the date of the decision being appealed, the decision being appealed, the basis for the right to appeal, the grounds of the appeal, cite any LMO Section numbers relied upon; **and** a statement of the specific decision requested of the review body. See the Narrative at Attachment 1

XX Any other documentation used to support the facts surrounding the decision.*
*See exhibits attached to the Narrative

XX Filing Fee - $100.00 cash or check made payable to the Town of Hilton Head Island.

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

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

Applicant/Agent Signature: This signature is an electronic reproduction Date: 11 October 2016
Adam R. Congrove, by
Chester C. Williams, Attorney

REQUEST FOR APPEAL
PROCEDURES

Appeal of Administrative Decisions Request

This is a request to appeal to the Board or Commission by any person aggrieved by a decision, interpretation or determination of the Official. An aggrieved person is defined as any property owner within 350 feet of the property for which a decision or determination has been rendered, and may include persons owning property beyond 350 feet if it is determined by the Board or Commission that such property owners may be affected by a decision or determination of the Official or the Board or Commission. An application for appeal shall be filed (received by the Official or postmarked) not later than 14 calendar days after receipt of the decision being appealed in order to be considered by the Board or Commission.

PROCEDURES

A. Submission of Application

1. Submit the application by the deadline indicated for each meeting on the appropriate Public Hearing Schedule.

2. For an appeal of administrative decisions request, please submit the Appeal Application Form, along with the items listed as submittal requirements on that form.

3. An application check-in conference is required for all applications to determine whether the application meets the minimum requirements for acceptance. The application check-in conference must be scheduled by appointment with the Community Development Department staff.

B. Public Notice Requirements

1. Public notice to be published is required for an appeal request.

2. **Published Notice** - A Public Notice shall be placed by the Official in a local newspaper of general circulation within the Town for not less than 30 calendar days prior to the meeting for the purpose of notifying the public.

C. Staff Review and Report

1. In an appeal, the Official will prepare a staff report which provides in detail staff's decision/interpretation of the Land Management Ordinance or Town Design Guide.

2. The Official shall provide a copy of the report to the Board or Commission and the appellant (applicant) before the scheduled meeting.

D. Meeting Conduct

1. The Board of Zoning Appeals is comprised of seven members, appointed by Town Council.
   The Planning Commission is comprised of nine members, appointed by Town Council.
   The Design Review Board is comprised of seven members, appointed by Town Council.

2. The Chairman of the Board or Commission opens the meeting and reads the procedures to be followed during the meeting.

3. In an appeal, staff will present the Official's interpretation of the LMO or the Design Guide. The applicant will then have an opportunity to present why they are appealing staff's decision.

4. The Board or Commission may have questions for Town staff or the applicant.

5. The Board or Commission will then deliberate until a decision is reached. During the deliberations, members may address questions to staff or the applicant, but no person shall participate in these discussions unless addressed by the Chairman or a Board or Commission member.

6. The Chairman will then ask for a motion.

7. In an appeal, at the conclusion of the proceeding on the appeal, the Board or Commission will either: affirm the action of the Official, modify the action of the Official, or reverse the action of the Official.

E. Written Notification of Decision

1. Within 10 calendar days after a decision has been made by the Board or Commission, a copy of the written decision shall be sent to the applicant or appellant and the property owner.

2. A copy of the notice shall be filed in the office of the Official, where it shall be available for public inspection during regular office hours.

F. Appeals from the Decision of the Board or Commission

1. A person who may have a substantial interest in any decision of the Board or Commission, or an officer or agent of the appropriate governing authority may appeal from a decision of the Board or Commission to the Circuit Court of Beaufort County. The appeal must be filed within 30 days after the decision of the Board or Commission is mailed.

2. A property owner whose land is the subject of a decision of the Board or Commission may appeal to the Circuit Court of Beaufort County or by filing a notice with the circuit court accompanied by a request for pre-litigation in mediation. The notice of appeal and request for pre-litigation in mediation must be filed within 30 days after the decision of the board is mailed.

STATE OF SOUTH CAROLINA	)	BEFORE THE BOARD OF ZONING APPEALS
	)	OF THE TOWN OF HILTON HEAD ISLAND,
	)	SOUTH CAROLINA
	)	
	)	APPLICATION FOR APPEAL
COUNTY OF BEAUFORT	)	NO. APL-_____-2016

ATTACHMENT 1

TO THE APPEAL APPLICATION OF

ARBORNATURE, LLC

NARRATIVE

I. INTRODUCTION

This Attachment 1 is part of the Application for Appeal (this "Appeal") filed by ArborNature, LLC (the "Appellant") in connection with a Notice of Violation issued by Teri B. Lewis, AICP, the LMO Official for the Town of Hilton Head Island (the "Town") on September 29, 2016 alleging that the Appellant's grinding of wood products (trees, trunks, branches and limbs) received at its principal place of business at 76 Leg O'Mutton Road, Hilton Head Island, South Carolina (the "Property"), from third parties (not generated by ArborNature's employees in their normal course of business), is in violation of ArborNature, LLC's permitted property uses.

The Appellant disagrees with the Notice of Violation issued by Mrs. Lewis about the Appellant's use of the Property (the "Notice of Violation"), alleges that Mrs. Lewis erred in issuing the Notice of Violation, and seeks relief from the Notice of Violation by this Appeal. The issue presented in this Appeal is whether or not the Appellant's grinding of wood products generated by third parties on the Property is, or is not, in conformance with the uses permitted on the Property under the Town's Land Management Ordinance (the "LMO").

II. BACKGROUND

Prior to and into 2006, the Appellant's predecessor, The Greenkeeper, operated a wholesale landscaping nursery and landscape contracting business on the Property as a home occupation. Because of the growth of The Greenkeeper's business, in 2006 the Town determined that the extent of that business no longer qualified as a home

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occupation. As a result of that determination, an application to rezone the Property from the RM-4 Low to Moderate Density District to the PD-1 Planned Development Indigo Run Master Plan district was filed and in due course approved by the Town Council on 06 March 2007. Upon the approval of that rezoning (the "2007 Rezoning"), the permitted uses on the Property were set as, and limited to, "Residential at up to four (4) 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."

With the approval of the 2007 Rezoning, The Greenkeeper's business on the Property became a conforming use. However, because that business was started on the Property as a home occupation, the use of the Property for a wholesale landscape nursery and a landscape contractor's office with onsite storage had never been the subject of the LMO's development plan review process or the LMO's design review process.[1] Accordingly, the Town required The Greenkeeper to apply for design review approval and development plan review approval for its use of the Property, which it did. The end result of those applications was the approval by Anne Cyran, then a Planner on the Town Staff, on 18 July 2009 of Expedited Development Plan Review Application XDPR080018 for the Property.

As part of the approval of the development plan approval for the Property, on that same day, 18 July 2009, Ms. Cyran stamped as "Approved" a set of plans for the Property that include a Drainage Plan, Construction Details, and a Landscape Plan (the "Approved Plans").

Prior to and after the approval of the 2007 Rezoning, the Property was, and has been, used as a landscape contractor's office with outdoor storage, first by The Greenkeeper[2] and subsequently by the Appellant. A substantial part of the landscape contractor work performed by both The Greenkeeper and the Appellant was, and continues to, be the trimming, cutting, and removal of trees for off-site customers. That work is done by the Appellant's employees at the customer's property using the Appellant's trucks and other equipment. Tree limbs, branches, and small trees are reduced to wood chips at the customer's site using mobile wood chippers. Felled trees that are too large to be fed into the on-site mobile wood chipper are removed from the customer's site and transported to the Property using the Appellant's trucks, where they

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[1] Because the Property is on Leg O Mutton Road, which is a minor arterial road under the LMO's street hierarchy, the Property is located in the LMO's COR Corridor Overlay District, and is therefore subject to the jurisdiction of the Town's Design Review Board.

[2] The 2006 Notice to The Greenkeeper says, "... you have a considerable amount of outdoor storage of company equipment, landscape debris and building(s). In addition, you have employees coming and going from the property. In addition, an outdoor nursery was also noted on the parcel."

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are also reduced to wood chips using a wood grinder.[3] This portion of the Appellant's business was provided for on the Approved Plans, which show an area on the Property described as "PLANT, LOG AND CHIP STORAGE AREA".

By way of her determination letter of 05 January 2010 to Adam Congrove[4] (the "2010 Determination Letter"), Ms. Cyran confirmed that the Property "is zoned to allow the storage of yard trash and land-clearing debris and composting", and that, based on the allowed uses for the Property as a result of the approval of the rezoning of the Property in 2007, "[Town] staff confirms that composting and wood grinding operations are in accordance with the Town of Hilton Head Island Land Management Ordinance (LMO)."

The Appellant took over The Greenkeeper's landscape contractor business in June 2011, and operated the business without incident until mid-2013, when the Appellant's use of the Property was called into question as a result of an inspection (likely in response to a complaint to the Town) by Jonathan Garcia, a Code Enforcement Officer for the Town. By way of an email on 25 July 2013, Ms. Cyran told Mr. Congrove 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]." However, after further review of the Appellant's operations on the Property, by way of a subsequent email on 11 September 2013 to Mr. Congrove, copied to Mr. Garcia, Ms. Cyran determined and confirmed that "composting and wood grinding operations are permitted uses on Tract A."[5] In that email, Ms. Cyran also instructed Mr. Garcia "that any further complainants should be informed that these are permitted uses [on the Property]." Mr. Garcia's response to Ms. Cyran was simply, "Duly noted!"

The Appellant has continued to operate its business on the Property since then. At one point in 2014, at the request of Ms. Cyran and in an effort to address noise complaints, the Appellant rearranged the site to relocate the grinder from the southern portion of the Property to the northwestern corner of the Property.

The Appellant's 2015 Town Business License, issued on 16 April 2015, lists the permitted uses on the Property as, "Tree & Landscaping Service to include tree pruning

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[3] A wood grinder is a machine that does the same thing as the Appellant's mobile wood chippers, but on a larger scale, reducing whole tree logs to wood chips.

[4] Mr. Congrove is the sole member of and the owner of the Appellant.

[5] The Property is referred to in the 2007 Rezoning approval as Tract A.

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& removal, cabling & lighting protection, fertilization & plant healthcare, tree grinding, wood chip recycling & wood recycling".

As a result of complaints to the Town about the Appellant's use of the Property, on 21 May 2015 Ms. Cyran sent Mr. Congrove a notice of violation of the 2007 Rezoning because the area used for outdoor storage on the Property had expanded beyond what is allowed by the 2007 Rezoning. That letter also cited complaints of noise from the Property.[6] Ms. Cyran included with her letter a marked version of the first sheet of the Approved Plans showing the areas on the Property that are approved for the onsite storage permitted on the Property as part of the landscape contractor's office use. At that time, the Appellant had logs resulting from its landscape contractor business stored on the Property outside of the designated storage areas shown on the Approved Plans. The Appellant successfully resolved this violation by relocating the logs to the approved storage areas, and no further action was taken by the Town.

Likely as a result of continued complaints to the Town about the Appellant's operations on the Property, on 04 September 2015, Mrs. Lewis sent Mr. Congrove an LMO violation notice letter in which she cited the 2007 Rezoning and the 2010 Determination Letter. In that letter, Mrs. Lewis misquoted the substance of the 2010 Determination Letter by saying it stated "that wood grinding and composting were allowed as an accessory use to the approved Wholesale Landscape Nursery business."[7] Mrs. Lewis went on in that letter to say that based on recent site visits, it appeared that the principal use of the Property had changed from Wholesale Landscape Nursery to Wood Grinding and Composting.[8] In order to give Mr. Congrove an opportunity to take action necessary to correct the alleged violation of the LMO, Mrs. Lewis asked that Mr. Congrove submit financial data for ArborNature showing percentages attributable to the wholesale landscape nursery and the wood grinding and composting so she could determine if the Appellant's business was in compliance with the zoning for the Property. In response, Mitchell W. Wade, CPA wrote to Mrs. Lewis on 11 September 2015 to tell her that the Appellant's 2014 revenue from wood grinding

---

[6] The Town's noise ordinance, Title 17, Chapter 4 of the Town's Municipal Code, is not part of the LMO.

[7] The 2010 Determination Letter does not use the term "accessory use" in referring to the permitted wood grinding and composting uses on the Property. Instead, it says, "Based on the allowed uses for Tract A, staff confirms that composting and wood grinding operations are in accordance with the Town of Hilton Head island Land Management Ordinance (LMO)."

[8] The LMO prior to the repeal and adoption of the current LMO on 07 October 2014 included a specific land use designated "Landscape Nursery". The current version of the LMO 2010 does not include that specific use. It appears that neither the previous versions nor the current version of the LMO refer at all to "wood grinding" as a land use.

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and composting was less than 1% of its gross revenue. In response, by way of her 22 September 2015 letter to Mr. Congrove, Mrs. Lewis sought more detail on the Appellant's finances, asking for "a specific breakdown by category of how the remaining 99% of your revenue is generated." In further response, on 01 October 2015 Mr. Wade again wrote to Mrs. Lewis. That letter is marked as "Confidential" because it includes highly confidential financial information about the Appellant's business.

During this process, on or about 11 September 2015 Mr. Congrove received a citation for a violation of the Fire Code on the Property. That citation was successfully resolved by the Appellant taking corrective action to comply with the Fire Code, and by the payment of a fine that was reduced because of the Appellant's cooperation and corrective action.

Apparently the detailed financial information on the Appellant's business revenue provided by Mr. Wade was not sufficient for the Town, because Mrs. Lewis' violation notice letter of 27 October 2015 to Mr. Congrove followed soon thereafter. In that letter, Mrs. Lewis reiterated her position that the Appellant's use of the Property was in violation of the LMO, and she offered Mr. Congrove four ways to correct that violation.

On 08 January 2016, Mr. Congrove received a citation for violation of LMO Section 16-8-103.T on the Property. Specifically, the Appellant was cited for not having sufficient wholesale landscape nursery inventory on site to support that use. That citation, along with the violation notices sent on 04 September 2015 and 27 October 2015, were successfully resolved by the Appellant taking corrective action to stock more on-site inventory of wholesale landscape nursery inventory and materials to comply with the LMO, and by the payment of a fine that was also reduced because of the Appellant's cooperation and corrective action. In multiple subsequent site visits to the Property, Mrs. Lewis and other Town staff members confirmed to Mr. Congrove and his employees that the Appellant's use of the Property for a wholesale landscape nursery with a landscape contractor's office with on-site storage was in conformance with the LMO.

In preparation for making a substantial investment in equipment to be used by the Appellant as part of its landscape contractor business,[9] the Appellant again recently sought assurances from the Town that its business operations, as currently conducted on the Property, are in conformance with the 2007 Rezoning and the LMO. During an

[9] The Appellant recently bought a large truck to use in its landscape contractor business at a cost of approximately $130,000.00. In addition, in order to help manage the logs and wood chips on the Property, since late 2015, the Appellant has bought an excavator costing $160,000.00 and a wood grinder costing $255,000.00, all in reliance on the prior determinations by the Town that its use of the Property was in conformance with the LMO.

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on-site visit at the Property in March 2016, a Town staff member told Natasha Seguin, an employee of the Appellant, that the Appellant's use of the Property was in conformance with all LMO requirements. Further, Chester C. Williams, as counsel for the Appellant, in a discussion at Town Hall with Mrs. Lewis on 14 April 2016, asked Mrs. Lewis if the Appellant's operation of its business on the Property was in conformance with the 2007 Rezoning and the provisions of the LMO, and Mrs. Lewis confirmed that, yes, the Appellant's operation of its business on the Property was in conformance. At the request of Mr. Williams, Mrs. Lewis said she would send the undersigned a zoning conformance letter regarding the Property. By way of an email on 23 April 2016 to Mrs. Lewis, the undersigned inquired as to the status of the zoning conformance letter. Needless to say, the Appellant was quite surprised when Mrs. Lewis sent a Determination Letter instead of the expected zoning conformance letter. That Determination Letter has been appealed to the Board of Zoning Appeals and is in the process of being appealed to Circuit Court.

The Appellant's 2016 Business License No. 13657, issued by the Town on 19 May 2016 (but not posted to the Appellant until 01 June 2016),[10] states that the Property is

> Zoned for wholesale landscape nursery**Accessory uses must be incidental & subordinate to wholesale landscape nursery**Services allowed to the extent they are incidental & subordinate to the primary use of wholesale landscape nursery are:
>
> Tree pruning & removal; cabling & lighting protection; fertilization & plant healthcare; and tree grinding, woodchip recycling & wood recycling**Tree grinding, woodchip recycling & wood recycling are limited to trees removed by principal business only.

Note that the limitation in the 2016 Business License No. 13657 on the Appellant's use of the Property for tree grinding, woodchip recycling and wood recycling to only trees removed by the Appellant's principal business only was not included in the Appellant's 2015 Business License No. 13657.

More importantly, also note that the Appellant's 2016 Business License No. 13657 is dated and was issued by the Town after the date of the Determination Letter.

Thereafter, based on discussions between the undersigned and Susan Simmons, the Town's Director of Finance, the Appellant's 2016 Business License No. 13657 was amended, and a revised 2016 Business License No. 13657, also dated 19

[10] The Appellant did not receive its 2016 Business License until after this Appeal was filed.

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May 2016, was issued for the Appellant.[11] The only change in the Appellant's revised 2016 Business License No. 13657 from the original 2016 Business License No. 13657 is the recognition by the Town that the Property is "Zoned for wholesale landscape nursery with a landscape's [sic] contractor office & onsite storage up to 6000 Sq Ft per net acre."

III. ADMINISTRATIVE DETERMINATIONS

LMO Appendix A, Section A-1 identifies the LMO Official as the person who is designated by the Town Manager "who administers and enforces" the LMO. Mrs. Lewis the LMO Official. LMO Appendix A, Section A-1.A.3 authorizes the LMO Official to make written interpretations of the LMO, as provided for in LMO Section16-2-103.R. LMO Section 16-10-101.F authorizes the LMO Official to delegate her authority as the LMO Official to a professional-level employee under the LMO Official's authority or control.

Mrs. Lewis is the Town's LMO Official in the Town's Community Development Department, and Ms. Cyran is now a Senior Planner in the Town's Community Development Department, under the authority and control of the LMO Official, with delegated authority from Mrs. Lewis to act on her behalf.

The Appellant notes in particular that LMO Section 16-2-103.R.6 provides that "written interpretations shall be binding on subsequent decisions by the [LMO] Official in applying the same provisions of [the LMO] in the same circumstances."

IV. THE AUTHORITY AND POWER OF THE BZA

Section 6-29-800(A)(1) of the Code of Laws of South Carolina (1976), as amended (the "SC Code"), which is part of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (the "State Enabling Act"), grants the BZA the power and duty to hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance portions of the LMO. When hearing and deciding appeals, the BZA may subpoena witnesses, and may reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination, and to that end shall have all the powers of the officer from whom the appeal is taken, and may issue or direct the issuance of a permit,[12] and is authorized to make findings of fact and

[11] Again, the Appellant did not receive the Revised 2016 Business License until after an Appeal was filed.

[12] See SC Code Section 6-29-800(D).

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conclusions of law.[13]

On the local level, LMO Appendix A, Section A-3.A provides that the BZA hears and decides appeals on written interpretations of the LMO Official on zoning regulations where it is alleged there is an error in an order, requirement, decision or determination made by an administrative official in the enforcement of the zoning ordinance.

V. APPEALS OF DETERMINATIONS

Section 6-29-800(B) of the SC Code, referring to the BZA, says that, "Appeals to the board may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality or county."

Again on the local level, consistent with the State Enabling Act, LMO Section 16-2-103.T.2.a provides that a decision or written interpretation made by the LMO Official or other administrative official pursuant to the LMO may be appealed to the BZA by any person aggrieved by the decision or interpretation who alleges that the LMO Official or other administrative official erred in making the decision or interpretation.

Ms. Lewis issued the Notice of Violation on September 29, 2016. This Appeal has followed.

VI. THE NOTICE OF VIOLATION

The Notice of Violation addresses the Appellant's use of the Property. Specifically, it alleges that the Appellant's grinding of wood products brought on to the Property by third parties, is a violation of ArborNature's permitted use of the Property.

The Appellant disagrees with the Notice of Violation and alleges that the Notice of Violation is incorrect, is in error, is arbitrary and capricious, is contrary to the LMO, is contrary to the 2007 Rezoning, is contrary to prior binding determinations made by the LMO Official and her authorized staff, and is contrary to the provisions of the State Enabling Act and the LMO. The Appellant further alleges that Mr. Congrove and the Appellant have relied to their detriment on prior written and verbal determinations by the LMO Official and her authorized staff regarding the permitted uses on the Property and the conformance of the Appellants operations on the Property with the LMO, and that the LMO Official and the Town are therefore estopped from making or enforcing the Notice of Violation. The Appellant further alleges that the Notice of Violation is in violation of its constitutional rights to due process, equal protection, and protection of its

[13] See SC Code Section 6-29-800(E).

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property rights. The Appellant is aggrieved by the Notice of Violation, and therefore has filed this Appeal to the BZA.

VII. GROUNDS FOR APPEAL

The Appellant alleges that the Notice of Violation was improperly made, and is in error, because it is arbitrary and capricious, and is contrary to the explicit provisions of the LMO. In issuing the Notice of Violation, the LMO Official has reversed multiple prior specific determinations made by her and her staff regarding the Appellant's use of the Property, and has failed to follow applicable requirements of the LMO.

VIII. THE APPELLANT'S ARGUMENTS FOR APPEAL

The Appellant submits that a thorough review of the history of the Appellant's use of the Property and prior determinations made by the Mrs. Lewis and her authorized staff leads to the conclusion that the Notice of Violation is wrong and should be reversed.

A. APPLICABLE SOUTH CAROLINA CASE LAW

Initially, the Appellant notes that the South Carolina courts have consistently held that zoning ordinances, being in derogation of the common law, are strictly construed against the governing authority and in favor of the property owner so as to allow the freest and broadest use of one's property. See, for example, *Keane/Sherratt Partnership v. Hodge*, 357 S.E.2d 193 (S.C.App. 1987), citing *Purdy v. Moise*, 75 S.E.2d 605 (S.C. 1953).

Further, when construing a statute, its words must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. *City of Myrtle Beach v. Juel P. Corporation*, 543 S.E.2d 538 (S.C. 2001).

The settled law in South Carolina is that compliance with a required time limit for filing an appeal is jurisdictional. *Vulcan Materials Co. v. Greenville County Board of Zoning Appeals*, 536 S.E.2d 892 (S.C.App. 2000).

B. NOTICE OF VIOLATION

The Appellant believes that the preponderance of the evidence clearly establishes that it is authorized to conduct wood grinding operations on the Property without any previously established limits as to the amount of grinding authorized or the origin of the products to be grinded into mulch. The LMO contains no provision

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addressing or limiting the amount of wood products that an entity such as ArborNature can grind on the Property. And it is basically undisputed that the grinding of trees on the Property is an integral part of the Appellant's landscape contractor business, and, as confirmed in writing Ms. Cyran on more than one occasion, a permitted use on the Property.operation on the Property.

Considering The Greenkeeper's and the Appellant's consistent, historic use of the Property, the Appellant asks that the BZA find that the grinding of third party generated wood products on the Property by ArborNature is a permitted use on the Property as part of its principal use of the Property, and that the LMO does not restrict in any way the source of the wood products to be ground by ArborNature, LLC.

C. DETRIMENTAL RELIANCE AND ESTOPPEL

Based on the written determinations by the Town staff of the Appellant's use of the Property being in compliance with the 2007 Rezoning and the LMO and the subsequent verbal representations to the Appellant and the undersigned confirming that compliance, the Appellant has since late 2015 spent over $500,000.00 buying equipment used in the operation of its business on the Property. The Appellant alleges that if it had not received those determinations and representations by the Town staff, it would not have incurred the substantial expenses for that equipment. The Appellant acted in reliance on those determinations and representations by the Town staff to its detriment.

IX. CONCLUSION

South Carolina law provides local governments with wide latitude to enact ordinances regulating what people can do with their property, but those ordinances must be drafted in such a manner that people can have a clear understanding as to what is permitted and what is not. Otherwise, such ordinances must be construed to allow people to use their property so as to realize its highest utility.[14] In other words, a property owner must be able to read the zoning ordinance and the subdivision and land development regulations and know what can and cannot be done, and also what he must do; the Town Staff cannot make up their own rules and regulations, or ignore mandatory requirements, nor can the Town Staff, reacting to public pressure, force a property owner into an untenable position.

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[14] See, again, *Keane/Sherratt Partnership v. Hodge*, 357 S.E.2d 193 (S.C.App. 1987).

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The record shows that the Appellant is properly permitted to conduct wood grinding operations on the Property. There was never any restriction placed upon the Appellant as to the origin of the wood products to be ground, nor is there anything in the LMO in any way limiting the Appellant's source of wood to be ground.

The Appellant askes that the BZA consider this Appeal, the record of this matter, the testimony and materials to be introduced into the record of this Appeal at the hearing, and hold that the Appellant has the by right permitted use of the property to grind wood products produced by it or by any third parties on the Property.

Respectfully submitted this 11th day of October,2016.

Law Office of Thomas C. Taylor, LLC

Thomas C. Taylor
P.O. Box 5050
Hilton Head Island, SC 29938
843-785-5050
tom@thomastaylorlaw.com

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

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TOWN OF HILTON HEAD ISLAND

One Town Center Court, Hilton Head Island, S.C. 29928
(843) 341-4600 Fax (843) 842-7728
www.hiltonheadislandsc.gov

David Bennett
Mayor

William D. Harkins
Mayor ProTem

Council Members

David Ames
Marc A. Grant
Thomas W. Lennox
Kim W. Likins
John J. McCann

Stephen G. Riley
Town Manager

NOTICE OF VIOLATION

September 29, 2016

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

Dear Adam:

Per the Town's Land Management Ordinance (LMO), specifically Section 16-8-105.C, I am providing you with this written Notice of Violation. Town staff conducted a site visit to your property (ArborNature) at 76 Leg O'Mutton Road on September 28, 2016; while we were there we met with you and discussed the below violations:

- The mulch and logs on the property are outside of the approved storage area.
- The shade plant storage area is almost nonexistent and the mulch bins are not accessible to the public; these two facts mean your site is out of compliance with the requirement of the zoning for your property which requires that there be a wholesale landscape nursery on site.

To resolve the above violations you must do the following:

- Ensure that the logs and mulch are only located within the approved storage area.
- Restore the shade plant storage area.
- Restore access to the mulch bins and ensure that they contain mulch that would be purchased by the public.

The deadline to resolve all of the above violations is Thursday, October 6, 2016.

Additionally, as I stated during the BZA special meeting on September 19, 2016, when staff wrote the January 5, 2010 determination letter regarding grinding at the subject property, we based that determination on the presumption that you would only be grinding materials that ArborNature removed as part of ArborNature's landscape contracting business. This means that you may not grind materials from any third parties, including but not limited to, tree service and tree removal companies, landscaping companies and contractors, site preparation companies and Tropical Trash or other waste hauling companies.

As you are aware, during our site visit on September 28, 2016, staff took noise readings at the adjacent property lines per Title 17, Chapter 4 (Noise Control) of the Town's Municipal Code. The noise readings while the grinder was running indicated that the decibels were above the decibel level permissible allowed in the zoning district where ArborNature is located. This is not a problem during the week (Monday through Friday, 7 a.m. until 10 p.m.) since commercial tree grinding is exempt from the noise ordinance during that time period; however, if you grind during the weekend you may be in violation of the noise ordinance and if determined to be in violation you would be subject to a citation.

Staff will conduct a site visit on Friday, October 7, 2016 to determine if you have corrected the violations stated in this letter. Failure to comply may result in code enforcement action.

Sincerely,

Teri B. Lewis
LMO Official

cc: Chet Williams
Tom Taylor

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

ALSO MEMBER LOUISIANA BAR

October 20, 2006

Charles F. Cousins, AICP
Director of Planning
Town of Hilton Head Island
One Town Center Court
Hilton Head Island, SC 29928

HAND DELIVERED

RE: Zoning Map Amendment Application of Dennis R. Congrove Regarding 6.7 Acres, 76 Leg O'Mutton Road (the "Property") – Our File No. 01385-001

Dear Charles:

We are pleased to deliver to you herewith for filing an application we have prepared on behalf of our client, Dennis R. Congrove, to amend the Indigo Run Master Plan so as to include therein the 6.7 acre tract located at 76 Leg O'Mutton Road, which is the site of Mr. Congrove's home and his business, The Greenkeeper, Inc., and to specify permitted uses, maximum densities, and buffer standards. Also enclosed is our check in the amount of $500.00 for the filing fee, along with copies of the Beaufort County tax records for all property owners within 350 feet of the property who are to receive notices as required by the LMO, an authorization letter from our client, and a copy of the proposed Mailed Notice required by LMO Section 16-3-111. In addition, enclosed is a letter to you from Mr. Congrove by which Mr. Congrove has withdrawn Zoning Map Amendment Application No. ZMA060009 effective with the acceptance of the enclosed application.

As you will see from a review of the application, we are filing this application in an effort to amend the Indigo Run Master Plan so as to allow for the continued operation of Mr. Congrove's business on the Property.

We assume you and your staff will be able to place this application on the agenda for the December 6, 2006 meeting of the Town's Planning Commission, and that you will let us know if you have any questions or comments regarding this matter, or if we may otherwise be of assistance.

With best regards, we are

Very Truly Yours,

LAW OFFICE OF CHESTER C. WILLIAMS, LLC

Chester C. Williams

CCW:jm
Enclosures
cc: Mr. Dennis R. Congrove

TOWN OF HILTON HEAD ISLAND PLANNING DEPARTMENT

MASTER APPLICATION FORM

ONE TOWN CENTER COURT • HILTON HEAD ISLAND, SC 29928 • 843-341-4681 • FAX 843-842-8908

Please TYPE or PRINT legibly

NAME OF DEVELOPMENT Dennis R. Congrove / The Greenkeeper, Inc.

STREET ADDRESS 76 Leg O'Mutton Road, Hilton Head Island, SC 29926

ZONING DISTRICT RM-4 OVERLAY DISTRICT COR

TAX DISTRICT 510 MAP 8 PARCEL (S) 275

LAND OWNER	APPLICANT	AGENT
Dennis R. Congrove	Same as Land Owner	Chester C. Williams, Esq.
NAME		Law Office of Chester C. Williams, LLC
COMPANY 76 Leg O'Mutton Road		Post Office Box 6028
MAILING ADDRESS Hilton Head Island, SC 29926		Hilton Head island, SC 29938
CITY STATE ZIP 843-681-8955		843-842-5411 843-842-5412
TELEPHONE FAX		
	Bus License # (For DRB, DR & SUB Only)	Bus License# (For DRB, DR & SUB Only)

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

- [ ] APPEAL *
- [ ] DEVELOPMENT PLAN REVIEW *
- [ ] PLANNED UNIT DEVELOPMENT *
- [ ] SPECIAL EXCEPTION *
- [ ] SUBDIVISION *
- [ ] VARIANCE *
- [ ] ABBREVIATED DEVELOPMENT PLAN REVIEW*
- [x] ZONING MAP AMENDMENT *
- [ ] DESIGN REVIEW BOARD
- [ ] PUBLIC PROJECT
- [ ] SIGN PERMIT
- [ ] TREE APPROVAL
- [ ] WETLAND ALTERATION

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

SIGNATURE Dennis R. Congrove DATE 10-20-06

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

SIGNATURE Dennis R. Congrove DATE 10-20-06

FOR OFFICIAL USE ONLY

DATE RECEIVED: 10/20/06 TIME: 2:15 pm

ACCEPTED BY: VD MASTER TRACKING NUMBER: ZMA 060013

PLANNING DEPARTMENT

ZONING MAP AMENDMENT
SUPPLEMENTAL APPLICATION FORM

TOWN OF HILTON HEAD ISLAND

THIS FORM MUST BE ACCOMPANIED BY A MASTER APPLICATION FORM.

Please TYPE or PRINT legibly

NAME OF DEVELOPMENT: Dennis R. Congrove / The Greenkeeper, Inc.

CURRENT ZONING DISTRICT: RM-4

ZONING DISTRICT BEING REQUESTED: PD-1 Indigo Run Master Plan

THE FOLLOWING ITEMS MUST BE ATTACHED FOR THIS APPLICATION TO BE COMPLETE. SEE LMO SECTION 16-3-1502 FOR MORE INFORMATION.

- [✓] NARRATIVE ADDRESSING REASONS FOR REZONING AND HOW THE REQUEST MEETS THE CRITERIA OF 16-3-1505 See Attachment 1
- [✓] A BOUNDARY MAP OF SUBJECT PROPERTY PREPARED AND SEALED BY A REGISTERED LAND SURVEYOR. A REPRODUCIBLE COPY OF THIS MAP, NO LARGER THAN 11" X 17", MUST ALSO BE SUBMITTED. See Attachment 2
- [✓] A COPY OF CORRESPONDENCE SOLICITING COMMENTS FROM ANY PROPERTY OWNERS ASOCIATION PER 16-3-1502-A.3. See Attachment 3
- [ ] CERTIFICATION OF OWNER'S CONSENT. Not applicable; the Applicant is the Owner
- [✓] FILING FEE - $500.00

FOR OFFICIAL USE ONLY

DATE RECEIVED: 10/20/06 TIME: 2:15 pm

ACCEPTED BY: ND MASTER TRACKING NUMBER:

DENNIS R. CONGROVE
76 Leg O'Mutton Road
Hilton Head Island, SC 29926
843-681-8955

October 20, 2006

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

Re: Zoning Map Amendment Application No. ZMA060009 for 6.7 Acres, 76 Leg O'Mutton Road

Dear Mr. Cousins

I am the owner of the 6.7 acre tract located at 76 Leg O'Mutton Road on Hilton Head Island.

I previously authorized Daniel A. Saxon, Esq., as my agent, to file the above referenced Zoning Map Amendment Application.

I have authorized Chester C. Williams, Esq., as my agent, to file a revised zoning map amendment application on my behalf regarding 76 Leg O'Mutton Road for the purpose of amending the Indigo Run Master Plan so include my property therein.

Please accept this letter as my official withdrawal of Zoning Map Amendment Application No. ZMA060009 upon the acceptance for filing of the new application being filed by Mr. Williams.

Very Truly Yours,

Dennis R. Congrove

Dennis R. Congrove

cc: Mr. Chester C. Williams
Mr. Daniel A. Saxon

DENNIS R. CONGROVE
76 Leg O'Mutton Road
Hilton Head Island, SC 29926
843-681-8955

October 20, 2006

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

Re: Zoning Map Amendment Application for 6.7 Acres, 76 Leg O'Mutton Road

Dear Mr. Cousins

I am the owner of the 6.7 acre tract located at 76 Leg O'Mutton Road on Hilton Head Island.

I have authorized Chester C. Williams, Esq., as my agent, to file a zoning map amendment application on my behalf regarding 76 Leg O'Mutton Road for the purpose of amending the Indigo Run Master Plan so include my property therein.

Very Truly Yours,

Dennis R. Congrove

Dennis R. Congrove

cc: Mr. Chester C. Williams

STATE OF SOUTH CAROLINA	)	**BEFORE THE PLANNING COMMISSION OF**
	)	**THE TOWN OF HILTON HEAD ISLAND, SC**
	)	
COUNTY OF BEAUFORT	)	**ZMA 06000___**

ATTACHMENT 1
TO THE ZONING MAP AMENDMENT APPLICATION
OF DENNIS R. CONGROVE

This Attachment is attached to and is part of the Zoning Map Amendment Application (this "Application") of Dennis R. Congrove (the "Applicant"), and is submitted by the Applicant to the Planning Commission of the Town of Hilton Head Island (the "Town") to address the zoning map amendment criteria set forth in Section 16-3-1505 of the Town's Land Management Ordinance (the "LMO"). This Application seeks approval to amend the official zoning map of the Town so as to change the zoning district applicable to the real property owned by the Applicant by amending the Indigo Run Master Plan (the "IR Master Plan").[1]

I. NARRATIVE – INTRODUCTION

The Applicant is the owner of a tract of land located at 76 Leg O'Mutton Road containing approximately 6.7 acres, designated as Beaufort County Tax Parcel 275, District 510, Map 8 (the "Property").[2] The Property is currently located in the RM-4 Low to Moderate Density Residential Zoning District, in between and adjacent to the PD-1 Indigo Run Master Plan Zoning District and an IL Light Industrial Zoning District.[3]

---

[1] This Application is being submitted to the Town in place of Zoning Map Amendment Application No. ZMA060009 filed by the Applicant on August 18, 2006, which is being withdrawn upon the acceptance for filing of this Application.

[2] The Applicant acquired the Property in 1992 by way of the deed recorded in the Office of the Register of Deeds for Beaufort County South Carolina in Record Book 602 at Page 2380, a copy of which is attached hereto as Exhibit A. Thereafter, the Applicant conveyed a 0.32 acre portion of his land to the Town in 1996 for the widening and realignment of Leg O'Mutton Road, leaving him with the 6.7 acres that is the Property.

[3] See the Town's Official Zoning District Map.

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The Property is the site of the Applicant's home. In addition, the Applicant has for some nine (9) years operated his business, The Greenkeeper, Inc. (the "Business"), a landscape nursery and landscaping contracting business, on the Property as a home occupation. Over the years, the Business has expanded to the point where it now requires the outside storage of equipment and landscaping, and the Town Planning Staff has determined that the Business no longer qualifies as a home occupation use under the provisions of LMO Section 16-4-1302. In accordance with an agreement between the Applicant and the Town Planning Staff, the Applicant is now seeking to rezone the Property in a manner that will allow the continued operation of the Business on the Property. To that end, the Applicant is seeking to amend the IR Master Plan and the accompanying text so as to (1) bring the Property into the PD-1 Indigo Run Zone as two tracts under the IR Master Plan, and (2) provide for site-specific uses, maximum densities, and site development buffer standards for the Property under the IR Master Plan.

II. NARRATIVE – BACKGROUND

The Applicant acquired the Property in 1992 as a site for his home and the Business. However, the Business has now grown to the point where it no longer qualifies as a home occupation. As an alternative to completely relocating the Business, the Town Planning Staff has afforded the Applicant the opportunity to seek approval to rezone the Property in a manner that will allow the Applicant to continue operating the Business on the Property.

Under the RM-4 Zoning District restrictions currently applicable to the Property, the available uses on the Property are primarily residential or public and civic uses, at four (4) units per acre for residential use.[4] Properties in the RM-4 Zoning Districts is also able to participate in the Town's Moderate Income Housing Program under Chapter 4, Article XVII of the LMO,[5] allowing for up to eight (8) units per acre for residential use. Nonresidential uses in the RM-4

[4] See the Use Table at LMO Section 16-4-1104. Most permitted uses in the RM-4 Zone other than residential uses and parks are either conditional uses or special exception uses.

[5] See Ordinance No. 2006-17 which was approved by the Town Council on September 5, 2006.

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Zoning District are limited to 6,000 square feet per net acre.

The Business is a use that is permitted by right in only the IL Light Industrial Zoning District. While the Applicant's first application to rezone the Property sought to reclassify a portion of the Property as part of the IL Zoning District, it seems evident that there are certain uses permitted in the IL Zoning District that might not be acceptable or compatible uses on the Property.

The primary reason for the Applicant's request that the entirety of the Property be included in the IR Master Plan is to continue to provide for residential uses and the availability for the Property to participate in the Town's Moderate Income Housing Program, and to allow for the continued operation of the Business on the Property while at the same time prohibiting other uses that would otherwise be allowed on the Property if it was rezoned to be part of the IL Zoning District.[6] To that end, the Applicant is now seeking to amend the IR Master Plan so as to designate the Property as two tracts under the IR Master Plan, and provide for site-specific uses, maximum densities, and site development standard for the Property under the IR Master Plan.

II. NARRATIVE – THE REQUESTED REZONING

The current primary by-right permitted use on the Property is up to four (4) residential units per acre under the RM-4 Zoning District regulations, and up to eight (8) residential units per acre by participation in the Town's Moderate Income Housing Program.

The Applicant is proposing to rezone the Property so as to (a) include it within the IR Master Plan; (b) (i) designate the 4.33 acre portion of the Property labeled "Tract B" and the 0.19 acre portion of the Property labeled "40' R/W Parcel" on the proposed subdivision plat of the Property attached to this Application as Attachment 2 (the "Subdivision Plat") for residential use

[6] Additionally, if the whole of the Property is included in the IR Master Plan, then the Applicant may be able to utilize the existing stormwater drainage system within the IR Master Plan area for the Property's stormwater management requirements, thereby alleviating the need to cut additional trees on the Property for on-site stormwater retention.

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at four (4) units per acres by right, and eight (8) units per acre by participation in the Town's Moderate Income Housing Program, and (ii) designate the 2.18 acre portion of the Property labeled "Tract A" on the Subdivision Plat for the same residential uses and for use as a landscape nursery and a landscaping contractor's office with on-site storage, at up to 6,000 square feet per net acre; and (c) require a minimum adjacent use setback and buffer on Tract A of thirty (30') feet if Tract A is used for a landscape nursery and a landscaping contractor's office with on-site storage along any common property line with a tract permitted for residential use.[7]

III. NARRATIVE – REZONING CRITERIA

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

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

The **Natural Resources Vision** of the Comprehensive Plan directs the Town to support low impact economic development. The Applicant is seeking to change the zoning applicable to the Property to one consistent zone with appropriate permitted uses that will allow for the continued operation of the Business on the Property, while at the same time assuring adequate buffering between the Business and surrounding residential areas. Currently, the Property is permitted for residential uses with at least four (4) and as many as eight (8) units per acre, with nonresidential uses capped at 6,000 square feet per acre. The PD-1 Zoning District that includes the IR Master Plan allows up to 10,000 square feet per acre for nonresidential uses. The approval of this Application will maintain the low to moderate density for residential uses and the low density for nonresidential uses currently allowed on the Property. The Applicant's proposed amendment of the IR Master Plan will therefore help foster low impact economic

[7] Under LMO Section 16-5-804(A)(3), any and all development on the Property will have to comply with all applicable standards of the LMO, including site specific standards as to open space, impervious coverage, setbacks, buffers and density.

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development by maintaining the current densities permitted on the Property. This low impact development will allow the Applicant to maintain the residential nature of the majority of the Property while continuing to be able to operate the Business on a portion of the Property. Furthermore, encouraging and fostering low density institutional and residential development helps to assure a lower future impact on the roadway and other infrastructure requirements of the Town by helping to minimize new traffic trips.

Providing for the continued ability to utilize all or part of the Property for residential development will further the **Housing Vision** of the Comprehensive Plan. In addition, the Applicant's proposal to allow for participation in the Town's Moderate Income Housing Program complies with the **Housing Vision** of the Comprehensive Plan.

The **Community Facilities Vision** of the Comprehensive Plan seeks to maintain the highest levels of service and efficiency in the delivery of standard community services. The Applicant's proposal to cap nonresidential development on the Property at 6,000 square feet per acre, as opposed to the 10,000 square feet per acre allowed in the IL Zoning District or generally in the PD-1 Zoning District, will go a long way towards furthering this aspect of the Comprehensive Plan by reducing the future potential impact on the Town's roadway, water and sewer and similar infrastructure and facilities by lowering future demand.

The **Land Use Vision** of the Comprehensive Plan calls for a high quality of life by planning for population growth, public and private development and redevelopment and the proper distribution, location, and intensity of land uses with adequate levels of services while maintaining and protecting the natural resources, residential neighborhoods and overall character of the island. Some of the land use goals which foster this vision are development in areas which have in place appropriate infrastructure capacity to accommodate growth in an environmentally acceptable manner, maintenance of existing residential areas, and

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encouragement of redevelopment, all of which are furthered by this Application. More specifically, Goal 1 of the Land Use Element of the Comprehensive Plan requires the direction of development in areas which have in place appropriate infrastructure capacity to accommodate growth in an environmentally acceptable manner. This goal is met by this Application, in that the Leg O'Mutton Road area around the Property already has in place roadways, storm drainage systems, and water and sewer and other utility service lines, allowing for further development in an area of the Town which already has in place the infrastructure necessary to support the planned development.

The Applicant believes the approval of this Application is consistent with and in conformance with the foregoing visions and goals set forth in the Comprehensive Plan, and would foster the implementation of many of the Comprehensive Plan's policies. Given the existing infrastructure facilities in the area of the Property, and the fact that the Business has been operating on the Property for some nine (9) years now, the development of Property for low to moderate density residential use, and the continued use of the Property for the operation of the Business with adequate minimum buffer standards, will not have an adverse effect on the natural resources in the area or on any existing residential neighborhoods in the area.

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

The Applicant's original application to rezone the Property presented some problematic issues with compatibility with nearby properties and the character of the neighborhood, as it would have allowed a wide range of light industrial uses on the Property. This Application seeks to address that concern by strictly limiting the uses on the Property to residential and landscape nursery and landscaping contractor's office with on-site storage.

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Clearly, the use of the Property for low to moderate residential development is compatible with the present zoning and conforming and other uses of nearby properties and with the character of the neighborhood.

Limiting nonresidential use of the Property to Tract A and further to only landscape nursery and landscaping contractor's office with on-site storage at a density not to exceed 6,000 square feet per net acre, coupled with the enhanced buffering requirements suggested by the Applicant will, in the Applicant's opinion, also be compatible with present zoning, and also with the proposed zoning, and with the uses on nearby properties and the character of the neighborhood.

Conforming uses on nearby properties that are compatible with the proposed residential and nonresidential uses on the Property include the religious institutional use on the Christian Renewal Church site that is adjacent to the Property, single family residential along Leg O'Mutton Road, including Victoria Square, and multifamily residential near the intersection of Leg O'Mutton Road and Gardner Drive, and planned for adjacent tracts along Leg O'Mutton Road.[8] The various properties that are immediately adjacent to the Property are all located in either the PD-1 Indigo Run Zone or the RM-4 Residential Zone. Given the mixed use requirement of the PD-1 zoning district, it seems the rezoning of the Property to move it entirely within the PD-1 Indigo Run Zone is compatible with the present zoning and uses of nearby properties and with the character of the neighborhood.

With respect to traffic generation, the use of the entire 6.7 acres of the Property for residential use will generate between 153 and 508 weekday traffic

[8] In addition, the vacant tract across Leg O'Mutton Road in the vicinity of the Property is currently owned by the Applicant of Jesus Christ of Latter Day Saints, and may be developed for religious institutional uses. Further, the vacant tract along the eastern boundary of the Property is, for the most part, a freshwater wetlands owned by the Town.

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trips, for multifamily residential at four (4) units per acre and single family residential at eight (8) units per acre, respectively. On the other hand, the continued use of the 2.18 acres that is Tract A as a landscape nursery and landscaping contractor's office, together with the future development of the remainder of the Property for residential use will generate between 149 and 399 weekday traffic trips, again for multifamily residential at four (4) units per acre and single family residential at eight (8) units per acre, respectively.[9] Therefore, the Applicant would submit that rezoning the Property in a manner that will allow the Business to continue operating on the Property will result in reduced traffic in the area, as the Business generates less traffic on a per acre basis than the residential uses.

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

Again, the Applicant's original application to rezone the Property presented some difficult issues with suitability of the Property for uses permitted in the IL Zoning District, especially considering the relatively wide range of permitted uses in the IL Zoning District.

This Application, however, attempts to address those concerns by limiting any "light industrial" use on the Property to the currently existing landscape nursery and landscaping contractor's office, at a lower maximum density than that allowed in the IL Zoning District or in the PD-1 Zoning District.

The Applicant submits that the proposed residential use on the Property, which is identical to the currently permitted residential use on the Property, is wholly suitable for the Property. The rezoning requested by this Application will

[9]See ITE Land Uses 210, 230, and 818 in *Trip Generation*, 6th Ed.

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result in a change in the applicable zoning district for the Property from the RM-4 Zone to the PD-1 Indigo Run Zone. However, for the most part, if this Application is approved as presented, there will be no material change in the actual use of the Property. So, the approval of this Application will neither increase nor decrease the actual uses currently on the Property; instead, the approval of this Application will allow the Applicant to legally continue the operation of the Business on the Property. Therefore, because the proposed uses on the Property are the same as the current actual uses on the Property, it seems the Property is well suited for the uses that will be permitted by the proposed amendment to the IR Master Plan.

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

Again, the change to the IR Master Plan requested by this Application will not result in any increase in the actual uses on the Property; instead, the permitted uses available on the Property will actually decrease, as uses other than residential and landscape nursery and landscaping contractor's office that are currently on the Property will be removed.[10] The Property has presumably long been suited for the uses permitted under the currently applicable zoning, and those uses will either remain or decrease upon the approval of this Application. So, the approval of this Application will merely allow the existing actual and permitted uses on the Property to continue or be reduced.[11]

---

[10] Among other things, the specific Bed and Breakfast and Inn uses under the Resort Accommodation use category in the LMO's Use Table are uses permitted by special exception in the RM-4 Zone that will no longer be available on the Property if this Application is approved. See LMO Section 16-4-1104.

[11] In addition to the number of permitted uses on the Property being reduced by the approval of this Application, the permitted density for nonresidential uses will remain at the 6,000 square feet per net acre as it currently is under the RM-4 Zoning District, and will not increase to the maximum density allowed in either the IL Zoning District or the PD-1 Zoning District.

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

As mentioned above, the permitted uses on the Property will be reduced if this Application is approved, and the permitted density of nonresidential uses on the Property will remain as is. While some may argue that a reduction in the number of available land uses on the Property may reduce the value or the marketability of the Property, the Applicant believes that any possible reduction in the marketability of the Property by the approval of this Application will be more than offset by the ability to continue operating the Business on the Property. Therefore, the Applicant believes that the approval of this Application will not have a detrimental effect on the marketability of the Property. In addition, the Applicant believes that the approval of this Application, with the enhanced buffer requirements on Tract A, will not have an adverse effect on the marketability of other properties in the vicinity.

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

Hilton Head Public Service District (the "PSD") currently provides potable water and sanitary sewer service to the Gardner Drive and Leg O'Mutton Road area where the Property is located, as well as to the entirety of the IR Master Plan area. Because the rezoning of the Property so that it is entirely within the PD-1 Indigo Run zone will not result in any different or more intense use of the Property than that which currently exists or is permitted on the Property, the approval of this Application should not result in any increase in demand on the water and sewer infrastructure that is currently in place. In addition, because the Applicant will still be required to obtain a Development Plan Review approval of the continued operation of the Business on the Property if this Application is approved, the storm water management requirements of the LMO will have to be

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addressed to the satisfaction of the Town Planning and Engineering Staffs at that time.

IV. NARRATIVE – CONCLUSION

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

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

2. That this Application and the supporting testimony and documentation establish that the requested zoning map amendment is consistent with the present zoning and conforming uses of nearby properties and with the character of the neighborhood around the Property; and

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

4. That this Application and the supporting testimony and documentation establish that the Property is also suitable for the uses permitted by the zoning district that is currently applicable to the Property; and

5. That this Application and the supporting testimony and documentation establish that the marketability of the Property for uses permitted by the zoning district that is currently applicable to the Property will not be adversely affected by the approval of the requested zoning map amendment; and

6. That this Application and the supporting testimony and documentation establish that sewer, water and stormwater facilities generally suitable and adequate for the proposed use of the Property under the requested zoning map amendment are available to the Property;

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and (c) recommend to the Town Council that they approve the Application.

Respectfully submitted on behalf of the Applicant, October 20, 2006.

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

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Exhibit A (4 Pages)

1677

Form 14 – Title to Real Estate
Walker, Evans & Cogswell Co., Chas., S.C. 67850 Revised 1976

2436

STATE OF SOUTH CAROLINA,

County of Beaufort

YOUR TAX NOTICE WILL BE SENT TO THE ADDRESS SHOWN ON YOUR DEED IF YOUR DEED WAS RECORDED BY SEPTEMBER 15. IF THE ADDRESS IS INCORRECT, PLEASE NOTIFY THE COUNTY ASSESSOR.

KNOW ALL MEN BY THESE PRESENTS, THAT

DENNIS ROY CONGROVE and SUE ELLEN CONGROVE,

in the State aforesaid ——— for and ——— in consideration of the sum of Nine Thousand Dollars and 00/100 ($9,000.00) ——— DOLLARS, to us in hand paid at and before the sealing of these presents by **THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA**, One Town Center Court, Hilton Head Island, South Carolina 29928

in the State aforesaid ——— for which ——— the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said **THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, its** Successors and Assigns, forever, in fee simple, the following-described real property, to-wit:

ALL that certain piece, parcel or lot of land known and described as **Parcel "B" containing 0.35 acres, more or less**, on a plat entitled "Boundary Plat of the Relocation of **Leg O' Mutton Road**", with said plat being prepared by Michael R. Dunigan, S.C.R.L.S. Number 110905, and being recorded in the Office of the Register of Mesne Conveyances for Beaufort County, South Carolina in Plat Book 53 at Page 43.

This being a portion of the same property conveyed to the within Grantors by Quit-Claim Deed of Federal Deposit Insurance Corporation, as Receiver for Hilton Head Bank & Trust Company dated the 9th day of July, 1992, and recorded in the Office of the Register of Mesne Conveyances for Beaufort County, South Carolina on the 16th day of July, 1992, in Deed Bok 602 at Page 2380.

This Deed was prepared in the Law Offices of Biel, Clark & Johnson, P.A., 31 Bow Circle, Post Office Box 7788, Hilton Head Island, South Carolina 29938, by Jack H. Biel, Esquire.

Tax Map Reference No.: District 510; Map 8; Parcel 275.

Dist.	Map	Sub	Parcel	Pt.
510	8		412	

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said **THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA,** its Successors and Assigns, forever, in fee simple.

AND we do hereby bind ourselves and our Heirs, Assigns, Executors and Administrators, to warrant and forever defend, all and singular, the said Premises unto the said **THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA**, its..... Successors and Assigns, against us and our Heirs, and all persons whomsoever _____ lawfully claiming, or to claim the same or any part thereof.

WITNESS our Hands and Seals, this 10th day of January, in the year of our Lord one thousand nine hundred and ninety-six, and in the two hundred and twentieth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

(2) _____
First Witness

(3) _____
Second Witness (notary public)

(1) _____
DENNIS ROY CONGROVE

(1) _____
SUE ELLEN CONGROVE

. . . . . .

THE STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF (4) BEAUFORT)

PERSONALLY appeared before me (5) BARBARA L. BRESSERS and made oath that s/he saw the within-named **DENNIS ROY CONGROVE and SUE ELLEN CONGROVE** sign, seal and as their act and deed, deliver the within-written Deed, and that s/he together with (6) JACK H. BIEL witnessed the execution thereof.

(7) _____
First Witness (same as #2 and #5 above)

SWORN TO before me this 10th
day of January, 1996.

(8) _____
Notary Public for the State of South Carolina
My Commission Expires: 07/21/97

(Same as #3 and #6 above)

4443 Coltrane

/MAL

828 2436

RECORDED THIS 6th DAY
OF February 1994
IN BOOK AC PAGE 50

Mary B. Grant
REGISTER OF DEEDS

TOWN OF HILTON HEAD ISLAND

Planning Department

TO: Stephen G. Riley, AICP, *Town Manager*
VIA: Jill Foster, AICP, *Deputy Planning Director*
FROM: Teri B. Lewis, AICP, *Manager of Development Review and Zoning*
DATE: February 7, 2007
SUBJECT: Proposed Ordinance No. 2006-33
ZMA060013 / 76 Leg-O-Mutton Road

Recommendation: Staff recommends that Town Council approve the attached application for Zoning Map Amendment. The Planning and Development Standards Committee met on January 24, 2007 to review the application to rezone 6.7 acres within the RM-4 district into the Indigo Run Master Plan with specific use, density, height, and setback and buffer area standards. After hearing a report by staff, comments from the public and testimony from the applicant, the Planning and Development Standards Committee voted unanimously to recommend approval of ZMA060013. The Planning Commission reviewed this application on December 6, 2006 and voted unanimously to recommend approval of ZMA060013.

Summary: An application has been submitted by the Law Office of Chester C. Williams, LLC on behalf of Dennis R. Congrove. This application seeks 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, Planned Development Mixed Use District. The zoning map amendment would allow 2.18 acres of the property ("Tract A") to be developed as a wholesale landscape nursery with a landscape contractor's office and onsite storage at up to 6,000 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 Town's Moderate Income Housing Program. The remaining 4.52 acres ("Tract B") could be developed as a 0.19 acre right-of-way and a 4.33 acre residential development 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. The following uses would no longer be permitted on Tract A or Tract B as a result of this rezoning application: Community Service, Day Care, Schools, Government Facilities, Religious and Other Institutions, Cemetery, Community Park, Linear Park, Mini Park, Neighborhood Park, Special Use Park, Major Utility, Minor Utility, Telecommunications Facility, Waste Treatment Plant, Bed and Breakfast Inn, Inn, and Agriculture. The property is located at 76 Leg-O-Mutton Road and is further identified on Beaufort County Tax Map # 8 as Parcel 275.

Background: Dennis R. Congrove owns 6.7 acres at 76 Leg-O-Mutton Road. This property is the location of Mr. Congrove's single family residence and landscape business, The Greenkeeper, Inc. Mr. Congrove received Town approval in 1997 to locate his business to this location as a home occupation. The subject property has been zoned for residential uses since the Town

adopted its first zoning map on January 10, 1987. Home occupations are permitted within residential districts as long as they comply with the following conditions:

Sec. 16-4-1302. Home Occupations

A home occupation as defined by this Title shall be deemed an accessory use provided that such home occupation:

1. Is conducted entirely within a dwelling or integral part thereof and has no outside storage of any kind related to the home occupation or in the case where activities take place away from the dwelling such activities are in full compliance with the provisions of this Title;
2. Is clearly incidental and secondary to the principal use of the dwelling;
3. Is conducted only by persons residing on the premises (nonresident employees are not permitted);
4. Does not necessitate or cause the exterior appearance of any structure to be other than residential and is not disruptive of the residential character of the neighborhood;
5. Has no advertising of the home occupation on the site or structures;
6. Creates no disturbing or offensive noise, vibration, smoke, dust, odor, heat, glare, unhealthy or unsightly condition, traffic or parking problem; and
7. Does not involve retail sales or services that bring more than 10 customers per day to the dwelling.

The Greenkeeper, Inc. has been expanded to a point where it no longer complies with conditions 1-6 of the above criteria; consequently, the Town's Code Enforcement Department notified Mr. Congrove on May 23, 2006 that his business is in violation of the land use requirements of the RM-4 zoning district.

On August 17, 2006, Daniel A. Saxon, Esq. submitted an application [ZMA060009] on behalf of Dennis R. Congrove to rezone 2.18 acres at 76 Leg-O-Mutton Road from RM-4 to IL. On October 4, 2006, the Planning Commission held a public hearing, heard a report from staff, comments from the public, and testimony from the applicant before making the recommendation that Town Council deny ZMA060009 based on staff's recommendation and the six criteria that were used to review the application to amend the Official Zoning Map. The Planning Commission was specifically concerned about the impact to the area's roadway network and the compatibility of some of the uses which are permitted in the IL district, but not permitted in the existing RM-4 district.

On October 20, 2006, Mr. Congrove withdrew ZMA060009 and authorized Chester C. Williams, Esq. to file a new application [ZMA060013] requesting approval to rezone the entire 6.7 acre parcel into the Indigo Run Master Plan 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 (Attachment C, Applicant's Submittal)

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

Please note that if Town Council finds this application to be in conformance with the review criteria found in Chapter 3, Article XV, *Amendments to Zoning Map*, of the Land Management Ordinance, the applicant will still be required to receive Development Plan Review and Design Review Board approval from the Town.

TOWN OF HILTON HEAD ISLAND

Planning Department

Application for Zoning Map Amendment—ZMA060013

Proposed Ordinance #: 2006-33

APPLICATION SUMMARY	PARCEL DATA
Submitted by the Law Office of Chester C. Williams, LLC on behalf of Dennis R. Congrove, this application seeks 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, Planned Development Mixed Use District. This rezoning would allow 2.18 acres of the property ("Tract A") to be developed as a wholesale landscape nursery with a landscape contractor's office and onsite storage at up to 6,000 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 Town's Moderate Income Housing Program. The remaining 4.52 acres ("Tract B") could be developed as a 0.19 acre right-of-way and a 4.33 acre residential development 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. The following uses would no longer be permitted on Tract A or Tract B as a result of this rezoning application: Community Service, Day Care, Schools, Government Facilities, Religious and Other Institutions, Cemetery, Community Park, Linear Park, Mini Park, Neighborhood Park, Special Use Park, Major Utility, Minor Utility, Telecommunications Facility, Waste Treatment Plant, Bed and Breakfast Inn, Inn, and Agriculture. The property is located at 76 Leg-O-Mutton Road and is further identified on Beaufort County Tax Map # 8 as Parcel 275.	**Existing Zoning District & Density** RM-4, Low to Moderate Density Residential District 4 to 8 residential dwelling units per net acre 6,000 square feet of nonresidential per net acre **Proposed Zoning District & Density** PD-1, Planned Development Mixed Use District Indigo Run Master Plan 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 **Applicable Overlay District** Corridor Overlay District

REVIEW & RECOMMENDATION(S)

	DATE	RECOMMENDATION
Planning Staff	November 20, 2006	Staff recommends **approval** of this Application for Zoning Map Amendment based on analysis of the Review Criteria outlined in Section 16-3-1505 of the Land Management Ordinance and the written findings provided in this staff report.
Planning Commission	December 6, 2006	
Planning & Development Standards Committee		
Town Council - First Reading		
Town Council – Second Reading		

BACKGROUND INFORMATION

Dennis R. Congrove owns 6.7 acres at 76 Leg-O-Mutton Road (Attachment A, Vicinity Map). This property is the location of Mr. Congrove's single family residence and landscape business, The Greenkeeper, Inc. Mr. Congrove received Town approval in 1997 to locate his business to this location as a home occupation. The subject property has been zoned for residential uses since the Town of Hilton Head Island (the "Town") adopted its first zoning map on January 10, 1987. Home occupations are permitted within residential districts as long as they comply with the following conditions:

Sec. 16-4-1302. Home Occupations

A home occupation as defined by this Title shall be deemed an accessory use provided that such home occupation:

1. Is conducted entirely within a dwelling or integral part thereof and has no outside storage of any kind related to the home occupation or in the case where activities take place away from the dwelling such activities are in full compliance with the provisions of this Title;
2. Is clearly incidental and secondary to the principal use of the dwelling;
3. Is conducted only by persons residing on the premises (nonresident employees are not permitted);
4. Does not necessitate or cause the exterior appearance of any structure to be other than residential and is not disruptive of the residential character of the neighborhood;
5. Has no advertising of the home occupation on the site or structures;
6. Creates no disturbing or offensive noise, vibration, smoke, dust, odor, heat, glare, unhealthy or unsightly condition, traffic or parking problem; and
7. Does not involve retail sales or services that bring more than 10 customers per day to the dwelling.

The Greenkeeper, Inc. has been expanded to a point where it no longer complies with conditions 1-6 of the above criteria (Attachment B, Site Photo); consequently, the Town's Code Enforcement Department notified Mr. Congrove on May 23, 2006 that his business is in violation of the land use requirements of the RM-4 zoning district.

On August 17, 2006, Daniel A. Saxon, Esq. submitted an application [ZMA060009] on behalf of Dennis R. Congrove to rezone 2.18 acres at 76 Leg-O-Mutton Road from RM-4 to IL. On October 4, 2006, the Planning Commission held a public hearing, heard a report from staff, comments from the public, and testimony from the applicant before making the recommendation that Town Council deny ZMA060009 based on staff's recommendation and the six criteria that were used to review the application to amend the Official Zoning Map. The Planning Commission was specifically concerned about the impact to the area's roadway network and the compatibility of some of the uses which are permitted in the IL district, but not permitted in the existing RM-4 district.

On October 20, 2006, Mr. Congrove withdrew ZMA060009 and authorized Chester C. Williams, Esq. to file a new application [ZMA060013] requesting approval to rezone the entire 6.7 acre parcel 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 (Attachment C, Applicant's Submittal)

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

Please note that if Town Council finds this application to be in conformance with the review criteria found in Chapter 3, Article XV, *Amendments to Zoning Map*, of the Land Management Ordinance (the "LMO"), the applicant will still be required to receive Development Plan Review and Design Review Board approval from the Town.

ANALYSIS OF REQUIRED FINDINGS

Chapter 3, Article XV, *Amendments to Zoning Map*, of the LMO outlines the review criteria by which the Administrator and the Planning Commission must evaluate proposals to amend the Official Zoning Map. Staff's recommendation and written findings are based on analysis of the criteria listed in Section 16-3-1505 of the LMO.

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

Finding: This zoning map amendment is consistent with all of the needs, goals and implementation strategies of the Comprehensive Plan.

The Planning Commission found the original rezoning application [ZMA060009] that was submitted on August 17, 2006 in conflict with the Housing and Transportation Elements of the Comprehensive Plan. The following will explain how the applicant has addressed these concerns.

Housing Element

The Planning Commission was concerned that rezoning Tract A from RM-4 to IL would be in conflict with the Housing Element of the Comprehensive Plan, since the IL district does not permit affordable housing developments. The Housing Element identifies the need for affordable housing on the island. This Element states that a lack of affordable housing is a "problem not just for those who do not have access to housing but also to the entire community." The Element further explains that "perhaps this is not more evident than in a resort community such as Hilton Head Island." The Implementation Strategies of the Housing Element direct the Town to develop flexible and innovative strategies, such as density bonuses, to encourage private development of affordable housing. The Town's Moderate Income Housing Program [Section 16-4-1701 of the LMO] permits a 100% increase in residential density in the RM-4 district if at least 50% of the bonus units qualify as moderate income housing. Tract A and Tract B are located in the RM-4 district and would be an appropriate location for a moderate income housing development. Since ZMA060013 would allow Tract A and Tract B to be developed at up to eight (8) dwelling units per net acre under the Town's Moderate Income Housing Program, the needs and goals of the Housing Element are satisfied by this rezoning application.

Transportation Element

The Planning Commission was concerned about the potential impact on the Town's roadway network if Tract A was rezoned from RM-4 to IL. It was noted at the public hearing on October 4, 2006, that although a 2.18 acre landscape business would not have a negative impact on the Town's transportation system, expanding the IL district would permit higher trip generating uses than what is currently permitted in the RM-4 district. Additionally, if Tract A was rezoned to IL, there could be a case to rezone the vacant parcels northwest of Tract A from RM-4 to IL. According to the Town's Traffic and Transportation Engineer, this would negatively impact already traffic sensitive areas such as the Beach City Road traffic light and the Mathews/Marshland intersection. The Transportation Element of the Comprehensive Plan emphasizes the importance of traffic management on the island. Need 1 of the Transportation Element states that "future traffic volumes may exceed the capacity of the Town's road network, impacting both the efficiency and safety of the roads."

This application addresses the above concerns by limiting the permitted uses on Tract A to either a residential development not to exceed eight (8) dwelling units per net acre, or a wholesale landscape nursery with a landscape contractor's office and onsite storage not to exceed 6,000 square feet per net acre. The application also seeks to remove all nonresidential uses from Tract B while maintaining the existing residential density at a maximum of eight (8) dwelling units per net acre. Approving ZMA060013 will not increase the number of trips that could be generated on the subject property; therefore, the needs and goals of the Transportation Element are satisfied by this rezoning application.

The following calculations, based on the 7th Edition of the Institute of Transportation Engineers Trip Generation manual ("ITE"), illustrate the potential reduction in weekday trip generation on Tract A as a result of this application. These calculations are based on a 2.18 acre parcel and demonstrate that some of the uses that are currently permitted in the RM-4 district generate significantly more weekday trips than a 2.18 acre wholesale nursery.

Land Use	Weekday trip generation
Single Family detached, 8 units per acre (ITE Land Use 210)	204
Condominium/Townhouse, 8 units per acre (ITE Land Use 230)	142
Church, 6,000 square feet per acre (ITE Land Use 560)	119
Single Family detached, 4 units per acre (ITE Land Use 210)	102
Wholesale Nursery, 2.18 acres (ITE Land Use 818)	43

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

Finding: Rezoning the subject 6.7 acre property from RM-4 into the Indigo Run Master Plan is compatible with the present zoning and conforming uses of nearby property and with the character of the neighborhood.

This application seeks to divide the 6.7 acre property into Tract A and Tract B with specific use, density, height, and setback and buffer standards for each tract. Tract B has a considerable amount of wetlands on the northern portion of the property (Attachment A, Vicinity Map). The wetlands are bordered to the north by the Christian Renewal Church, which has an Institutional/Residential land use within the Indigo Run Master Plan. The eastern and western sides of the wetlands border vacant parcels within the RM-4 district. On September 15, 2006, the Town received an application for conceptual review [PAPP060038] for a 52 unit moderate income housing project on the vacant parcels directly west of the wetlands. The developable portion of Tract B also borders three of the four parcels planned for the moderate income housing project to the north and west; the eastern side borders vacant property owned by the Town; the southern portion borders Tract A. Rezoning Tract B to only permit residential uses is compatible with all surrounding properties and with the character of the neighborhood.

Tract A is bordered to the north by Mr. Congrove's Tract B and single family residence. The property is bound to the east and west by vacant property, which is zoned RM-4. The southwestern section of the property fronts on Leg-O-Mutton Road. Across Leg-O-Mutton Road is a section of the Indigo Run Master Plan, which is designated with a residential land use. The southeastern section of the property borders Lot 9 of the Capital Business Park, which is zoned IL and houses a light industrial services

building with accessory office space. The Capital Business Park is a 19 lot subdivision in the IL zoning district. Rezoning Tract A to permit residential uses or a wholesale landscape nursery with accessory office space and onsite storage is compatible with all surrounding properties and with the character of the neighborhood.

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

Finding: Tract B is suitable for residential development and Tract A is suitable for either residential development or a wholesale landscape nursery with accessory office space and onsite storage.

Rezoning the 6.7 acre property from RM-4 to PD-1 with specific use, density, height, and setback and buffer standards would allow the entire site to be developed as residential or the 2.18 acre Tract A to be developed as a low intensity landscape business. Although the land uses that are currently allowed on Tract A under the RM-4 zoning are appropriate for the property, staff believes that a landscape business could be equally as appropriate. Before the development would be permitted on the property, applications would have to be submitted to the Town and approved by the Design Review Board and staff. After receiving these approvals, Tract A would then serve as a transition zone between the higher intensity light industrial land uses in the Capital Business Park and the residential land uses anticipated for the vacant parcels north and west of the property.

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

Finding: Although the property is suitable for all of the uses that are currently permitted under the RM-4 district, the property is equally suitable for the uses proposed by this zoning map amendment.

Tract A and Tract B have been designated for residential and civic uses since the Town adopted its first zoning map in 1987. As discussed in Criteria B, the location of the property coupled with the predominantly RM-4 designation of adjacent properties support the existing zoning of the property. Tract A, however, has been developed as a landscape business without a permit. Section 16-4-1104 of the LMO only permits this type of business in the IL district; consequently, the applicant originally applied to rezone the property to IL. After the Planning Commission unanimously recommended denial of ZMA060009, the applicant withdrew his request and submitted ZMA060013. The applicant's agents prepared this revised application in order to address the concerns of surrounding property owners, the Planning Commission, and the requirements of the LMO. By zoning the property into the Indigo Run Master Plan, the applicant can apply for development approval to legally operate his landscape business on 2.18 acres of his property. As mentioned in Criteria C, Tract A would then serve as a transition zone between the Capital Business Park and properties north and west of Tract A.

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

Finding: The marketability of the property will not change substantially as a result of this zoning map amendment.

Mr. Congrove believes that this rezoning will have a positive impact on the marketability of his property since it will allow him to continue operating his landscape business on Tract A (Attachment C, Applicant's Submittal). Staff does not believe that there will be a significant impact on the marketability of the property since the entire 6.7 acres could be marketed as a residential development at up to eight (8) dwelling units per net acre.

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

Finding: There are existing utility services available to serve the property. This site does not have an approved stormwater management plan since it was developed without a permit.

The property currently has access to potable water and is served by an onsite sewage disposal system. If this application is found to be in conformance with all of the above review criteria, the applicant will then be required to receive development approval from the Town, at which time an approved stormwater plan would be required. If Town Council finds this application not in conformance with any of the above review criteria, the applicant will have to cease operations of his landscape business at 76 Leg-O-Mutton Road.

Analysis of Findings

Based on the six criteria that were used to review this application to amend the Official Zoning Map, staff recommends approval of ZMA060013.

ATTACHMENTS:

A) Vicinity Map
B) Site Photo
C) Applicant's Submittal

PREPARED BY:

Ben Brown

Ben Brown, AICP
Senior Planner

11/20/06
DATE

REVIEWED BY:

Teri B. Lewis, AICP
Manager of Development Review and Zoning

11/20/06
DATE

TOWN OF HILTON HEAD ISLAND
ONE TOWN CENTER COURT
HILTON HEAD ISLAND, S.C. 29928
PHONE (843) 341-4681

Town of Hilton Head Island

ZMA060009

Attachment A, Vicinity Map

0 200 400 800 800 Feet

1 inch equals 407 feet

N W E S

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

TERI,
FYI
BB

Victoria Square Property Owners' Association

79 Victoria Square Drive
Hilton Head Island, SC 29926

November 29, 2006

Mr. Ben Brown
Senior Planner
Development Review and Planning
Town of Hilton Head Island
One Town Center Court
Hilton Head Island, SC 29928

Re: Requests for Planning Commission to Have LMO Subcommittee to Review Town Land Management Ordinance Street and Pathway Standards

Article IV, Sec.16-5-409 Access to Streets, Subsection E Frontage Required

Dear Mr. Brown:

This section of Article IV states that "all nonresidential development shall have frontage and access directly onto a street meeting the standards of Sec. 16-5-404." It says nothing about allowing additional access onto a second street from the same property.

Capital Business Park has six properties with frontage access onto Capital Drive that also back onto Leg O' Mutton Drive. Currently there are no industrial or commercial businesses with driveways onto Leg O' Mutton Drive, just ninety-six single-family homeowners accessing on this street. The Victoria Square Property Owners' Association strongly opposes allowing any driveways from Capital Business Park onto Leg O' Mutton Drive because it would unnecessarily increase traffic and reduce the safety and property values of our ninety-five homeowners. Such driveways would be counter to the business park covenants, Town Comprehensive Plan and Land Management Ordinance.

Capital Business Park was designed, developed and sold to be a separate business park. All the properties have frontage access onto Capital Drive to take traffic off Marshland Road and Leg O' Mutton Drive. All the property owners purchased and developed their property with driveway access only on Capital Drive. They did not make an application to add a driveway onto Leg O' Mutton Drive when they developed their property. The Town of Hilton Head approved this business park design and the individual property plans as fitting into the Town's Comprehensive Plan. So all are designed to effectively use Capital Drive only and all keep traffic off of Marshland and Leg O' Mutton Drive. So any requests to have a second driveway onto Leg O' Mutton Drive would be for convenience, not necessity. Any such request would unnecessarily add traffic to a secondary road. The Town already approved the business park to keep traffic off of these two roads to be consistent with the Town Comprehensive Plan and Land Management Ordinance.

Victoria Square development of ninety-five homes accesses only onto Leg O' Mutton Drive opposite Capital Business Park. Homeowners all purchased homes with the expectation that the light industrial zoned Capital Business Park was on a separate street and not connected to Leg O' Mutton Drive. Adding unnecessary driveways onto this street would only increase traffic, reduce traffic safety and negatively affect property values. This is a residential street with only a church and 96 residences that ingress/egress onto the street. The Town is currently considering approving 52 more residences that will ingress/egress onto Leg O' Mutton Drive. The Planning Commission recently turned down an application for IL rezoning on this street to maintain the residential nature of the street. The Town recently purchased the Coastal Concrete property and plans to rezone it to be more compatible with residential use. If the option for a pre-school is realized on this property, traffic and safety will become a much greater issue. Allowing any commercial access onto the street would be inconsistent with the Comprehensive Plan and previous Commission actions, especially if it is not a necessary access. The Land Management Ordinance requires properties to have frontage access directly onto a street (Article IV, Sec.16-5-409 Access to Streets). It says nothing about allowing additional secondary access just because a property backs or sides onto another street.

`For the reasons stated above, the Victoria Square Property Association Board of Directors is asking that the Town of Hilton Head Planning Commission consider amending the Town standards to not allow secondary street access and go on record that no Capital Business Park property bordering Leg O' Mutton Drive will be granted a second driveway for convenience onto Leg O' Mutton Drive.

Respectfully submitted,

Kenneth L Hiatt

Kenneth L. Hiatt
Director
Victoria Square Property Owners' Association

Victoria Square Property Owners' Association

79 Victoria Square Drive
Hilton Head Island, SC 29926

November 29, 2006

Mr. Chester C. Williams
17 Pope Avenue Executive Park Road, Unit 2
Post Office Box 6028
Hilton Head Island, SC 29938-6028

Re: Dennis R. Congrove, New Rezoning Application for 6.7 Acres on Leg O 'Mutton Road; Zoning Map Application No. zma060013 – Your File No. 01385-001

Dear Mr. Williams:

Thank you for taking the time to send us your November 16, 2006 letter.

The Victoria Square Property Owners' Association does not object to Mr. Congrove's landscaping business on his property on Leg O' Mutton Road. We did strongly object to rezoning with more undesirable light industrial options in the future. Your present request to use the property only as a wholesale landscape nursery and landscape contractor's office is agreeable with us.

There are several issues of concern that were not covered in your letter or application. What additional building(s) are planned to meet the 6,000 square feet requested? Would any additional building be no higher than the present equipment building?

Mr. Congrove has constructed a second unapproved, non-compliant driveway from his property onto Leg O' Mutton Road. This has created dangerous ingress and egress situations with trucks with equipment trailers pulling on and off the road. He is only entitled to one driveway from his parcel. With only one resident and limited traffic, a second driveway is unnecessary. Can you confirm that he will reconstruct one compliant driveway to serve his home and landscaping business?

Would Mr. Congrove add more landscaping along his fence and closed driveway to shield his landscaping business from view on Leg O' Mutton Road?

If these questions can be answered and requests made affirmatively, the Victoria Square Property Owners' Association will be in full support of your application.

Very Truly Yours,,

Kenneth L. Hiatt
Director
Victoria Square Property Owners' Association

Cc: Benjamin I. Brown, AICP

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

Thomas D. Peeples, Mayor

ATTEST:

Betsy Mosteller

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

TOWN OF HILTON HEAD ISLAND

Planning Department

TO: Stephen G. Riley, AICP, *Town Manager*
VIA: Jill Foster, AICP, *Deputy Planning Director*
FROM: Teri B. Lewis, AICP, *Manager of Development Review and Zoning*
DATE: February 7, 2007
SUBJECT: Proposed Ordinance No. 2006-33
ZMA060013 / 76 Leg-O-Mutton Road

Recommendation: Staff recommends that Town Council approve the attached application for Zoning Map Amendment. The Planning and Development Standards Committee met on January 24, 2007 to review the application to rezone 6.7 acres within the RM-4 district into the Indigo Run Master Plan with specific use, density, height, and setback and buffer area standards. After hearing a report by staff, comments from the public and testimony from the applicant, the Planning and Development Standards Committee voted unanimously to recommend approval of ZMA060013. The Planning Commission reviewed this application on December 6, 2006 and voted unanimously to recommend approval of ZMA060013.

Summary: An application has been submitted by the Law Office of Chester C. Williams, LLC on behalf of Dennis R. Congrove. This application seeks 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, Planned Development Mixed Use District. The zoning map amendment would allow 2.18 acres of the property ("Tract A") to be developed as a wholesale landscape nursery with a landscape contractor's office and onsite storage at up to 6,000 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 Town's Moderate Income Housing Program. The remaining 4.52 acres ("Tract B") could be developed as a 0.19 acre right-of-way and a 4.33 acre residential development 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. The following uses would no longer be permitted on Tract A or Tract B as a result of this rezoning application: Community Service, Day Care, Schools, Government Facilities, Religious and Other Institutions, Cemetery, Community Park, Linear Park, Mini Park, Neighborhood Park, Special Use Park, Major Utility, Minor Utility, Telecommunications Facility, Waste Treatment Plant, Bed and Breakfast Inn, Inn, and Agriculture. The property is located at 76 Leg-O-Mutton Road and is further identified on Beaufort County Tax Map # 8 as Parcel 275.

Background: Dennis R. Congrove owns 6.7 acres at 76 Leg-O-Mutton Road. This property is the location of Mr. Congrove's single family residence and landscape business, The Greenkeeper, Inc. Mr. Congrove received Town approval in 1997 to locate his business to this location as a home occupation. The subject property has been zoned for residential uses since the Town

adopted its first zoning map on January 10, 1987. Home occupations are permitted within residential districts as long as they comply with the following conditions:

Sec. 16-4-1302. Home Occupations

A home occupation as defined by this Title shall be deemed an accessory use provided that such home occupation:

1. Is conducted entirely within a dwelling or integral part thereof and has no outside storage of any kind related to the home occupation or in the case where activities take place away from the dwelling such activities are in full compliance with the provisions of this Title;
2. Is clearly incidental and secondary to the principal use of the dwelling;
3. Is conducted only by persons residing on the premises (nonresident employees are not permitted);
4. Does not necessitate or cause the exterior appearance of any structure to be other than residential and is not disruptive of the residential character of the neighborhood;
5. Has no advertising of the home occupation on the site or structures;
6. Creates no disturbing or offensive noise, vibration, smoke, dust, odor, heat, glare, unhealthy or unsightly condition, traffic or parking problem; and
7. Does not involve retail sales or services that bring more than 10 customers per day to the dwelling.

The Greenkeeper, Inc. has been expanded to a point where it no longer complies with conditions 1-6 of the above criteria; consequently, the Town's Code Enforcement Department notified Mr. Congrove on May 23, 2006 that his business is in violation of the land use requirements of the RM-4 zoning district.

On August 17, 2006, Daniel A. Saxon, Esq. submitted an application [ZMA060009] on behalf of Dennis R. Congrove to rezone 2.18 acres at 76 Leg-O-Mutton Road from RM-4 to IL. On October 4, 2006, the Planning Commission held a public hearing, heard a report from staff, comments from the public, and testimony from the applicant before making the recommendation that Town Council deny ZMA060009 based on staff's recommendation and the six criteria that were used to review the application to amend the Official Zoning Map. The Planning Commission was specifically concerned about the impact to the area's roadway network and the compatibility of some of the uses which are permitted in the IL district, but not permitted in the existing RM-4 district.

On October 20, 2006, Mr. Congrove withdrew ZMA060009 and authorized Chester C. Williams, Esq. to file a new application [ZMA060013] requesting approval to rezone the entire 6.7 acre parcel into the Indigo Run Master Plan 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 (Attachment C, Applicant's Submittal)

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

Please note that if Town Council finds this application to be in conformance with the review criteria found in Chapter 3, Article XV, *Amendments to Zoning Map*, of the Land Management Ordinance, the applicant will still be required to receive Development Plan Review and Design Review Board approval from the Town.

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

ALSO MEMBER LOUISIANA BAR

October 20, 2006

Charles F. Cousins, AICP
Director of Planning
Town of Hilton Head Island
One Town Center Court
Hilton Head Island, SC 29928

HAND DELIVERED

RE: Zoning Map Amendment Application of Dennis R. Congrove Regarding 6.7 Acres, 76 Leg O'Mutton Road (the "Property") – Our File No. 01385-001

Dear Charles:

We are pleased to deliver to you herewith for filing an application we have prepared on behalf of our client, Dennis R. Congrove, to amend the Indigo Run Master Plan so as to include therein the 6.7 acre tract located at 76 Leg O'Mutton Road, which is the site of Mr. Congrove's home and his business, The Greenkeeper, Inc., and to specify permitted uses, maximum densities, and buffer standards. Also enclosed is our check in the amount of $500.00 for the filing fee, along with copies of the Beaufort County tax records for all property owners within 350 feet of the property who are to receive notices as required by the LMO, an authorization letter from our client, and a copy of the proposed Mailed Notice required by LMO Section 16-3-111. In addition, enclosed is a letter to you from Mr. Congrove by which Mr. Congrove has withdrawn Zoning Map Amendment Application No. ZMA060009 effective with the acceptance of the enclosed application.

As you will see from a review of the application, we are filing this application in an effort to amend the Indigo Run Master Plan so as to allow for the continued operation of Mr. Congrove's business on the Property.

We assume you and your staff will be able to place this application on the agenda for the December 6, 2006 meeting of the Town's Planning Commission, and that you will let us know if you have any questions or comments regarding this matter, or if we may otherwise be of assistance.

With best regards, we are

Very Truly Yours,

LAW OFFICE OF CHESTER C. WILLIAMS, LLC

Chester C. Williams

CCW:jm
Enclosures
cc: Mr. Dennis R. Congrove

TOWN OF HILTON HEAD ISLAND PLANNING DEPARTMENT

MASTER APPLICATION FORM

ONE TOWN CENTER COURT • HILTON HEAD ISLAND, SC 29928 • 843-341-4681 • FAX 843-842-8908

Please TYPE or PRINT legibly

NAME OF DEVELOPMENT Dennis R. Congrove / The Greenkeeper, Inc.

STREET ADDRESS 76 Leg O'Mutton Road, Hilton Head Island, SC 29926

ZONING DISTRICT RM-4 OVERLAY DISTRICT COR

TAX DISTRICT 510 MAP 8 PARCEL (S) 275

LAND OWNER	APPLICANT	AGENT
Dennis R. Congrove	Same as Land Owner	Chester C. Williams, Esq.
NAME		Law Office of Chester C. Williams, LLC
COMPANY 76 Leg O'Mutton Road		Post Office Box 6028
MAILING ADDRESS Hilton Head Island, SC 29926		Hilton Head island, SC 29938
CITY STATE ZIP 843-681-8955		843-842-5411 843-842-5412
TELEPHONE FAX		
	Bus License # (For DRB, DR & SUB Only)	Bus License# (For DRB, DR & SUB Only)

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

- [ ] APPEAL *
- [ ] DEVELOPMENT PLAN REVIEW *
- [ ] PLANNED UNIT DEVELOPMENT *
- [ ] SPECIAL EXCEPTION *
- [ ] SUBDIVISION *
- [ ] VARIANCE *
- [ ] ABBREVIATED DEVELOPMENT PLAN REVIEW*
- [x] ZONING MAP AMENDMENT *
- [ ] DESIGN REVIEW BOARD
- [ ] PUBLIC PROJECT
- [ ] SIGN PERMIT
- [ ] TREE APPROVAL
- [ ] WETLAND ALTERATION

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

SIGNATURE Dennis R. Congrove DATE 10-20-06

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

SIGNATURE Dennis R. Congrove DATE 10-20-06

FOR OFFICIAL USE ONLY

DATE RECEIVED: 10/20/06 TIME: 2:15 pm

ACCEPTED BY: VD MASTER TRACKING NUMBER: ZMA 060013

PLANNING DEPARTMENT

ZONING MAP AMENDMENT
SUPPLEMENTAL APPLICATION FORM

TOWN OF HILTON HEAD ISLAND

THIS FORM MUST BE ACCOMPANIED BY A MASTER APPLICATION FORM.

Please TYPE or PRINT legibly

NAME OF DEVELOPMENT: Dennis R. Congrove / The Greenkeeper, Inc.

CURRENT ZONING DISTRICT: RM-4

ZONING DISTRICT BEING REQUESTED: PD-1 Indigo Run Master Plan

THE FOLLOWING ITEMS MUST BE ATTACHED FOR THIS APPLICATION TO BE COMPLETE. SEE LMO SECTION 16-3-1502 FOR MORE INFORMATION.

- [✓] NARRATIVE ADDRESSING REASONS FOR REZONING AND HOW THE REQUEST MEETS THE CRITERIA OF 16-3-1505 See Attachment 1
- [✓] A BOUNDARY MAP OF SUBJECT PROPERTY PREPARED AND SEALED BY A REGISTERED LAND SURVEYOR. A REPRODUCIBLE COPY OF THIS MAP, NO LARGER THAN 11" X 17", MUST ALSO BE SUBMITTED. See Attachment 2
- [✓] A COPY OF CORRESPONDENCE SOLICITING COMMENTS FROM ANY PROPERTY OWNERS ASOCIATION PER 16-3-1502-A.3. See Attachment 3
- [ ] CERTIFICATION OF OWNER'S CONSENT. Not applicable; the Applicant is the Owner
- [✓] FILING FEE - $500.00

FOR OFFICIAL USE ONLY

DATE RECEIVED: 10/20/06 TIME: 2:15 pm

ACCEPTED BY: ND MASTER TRACKING NUMBER:

DENNIS R. CONGROVE
76 Leg O'Mutton Road
Hilton Head Island, SC 29926
843-681-8955

October 20, 2006

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

Re: Zoning Map Amendment Application No. ZMA060009 for 6.7 Acres, 76 Leg O'Mutton Road

Dear Mr. Cousins

I am the owner of the 6.7 acre tract located at 76 Leg O'Mutton Road on Hilton Head Island.

I previously authorized Daniel A. Saxon, Esq., as my agent, to file the above referenced Zoning Map Amendment Application.

I have authorized Chester C. Williams, Esq., as my agent, to file a revised zoning map amendment application on my behalf regarding 76 Leg O'Mutton Road for the purpose of amending the Indigo Run Master Plan so include my property therein.

Please accept this letter as my official withdrawal of Zoning Map Amendment Application No. ZMA060009 upon the acceptance for filing of the new application being filed by Mr. Williams.

Very Truly Yours,

Dennis R. Congrove

Dennis R. Congrove

cc: Mr. Chester C. Williams
Mr. Daniel A. Saxon

DENNIS R. CONGROVE
76 Leg O'Mutton Road
Hilton Head Island, SC 29926
843-681-8955

October 20, 2006

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

Re: Zoning Map Amendment Application for 6.7 Acres, 76 Leg O'Mutton Road

Dear Mr. Cousins

I am the owner of the 6.7 acre tract located at 76 Leg O'Mutton Road on Hilton Head Island.

I have authorized Chester C. Williams, Esq., as my agent, to file a zoning map amendment application on my behalf regarding 76 Leg O'Mutton Road for the purpose of amending the Indigo Run Master Plan so include my property therein.

Very Truly Yours,

Dennis R. Congrove

Dennis R. Congrove

cc: Mr. Chester C. Williams

STATE OF SOUTH CAROLINA	)	**BEFORE THE PLANNING COMMISSION OF**
	)	**THE TOWN OF HILTON HEAD ISLAND, SC**
	)	
COUNTY OF BEAUFORT	)	**ZMA 06000___**

ATTACHMENT 1
TO THE ZONING MAP AMENDMENT APPLICATION
OF DENNIS R. CONGROVE

This Attachment is attached to and is part of the Zoning Map Amendment Application (this "Application") of Dennis R. Congrove (the "Applicant"), and is submitted by the Applicant to the Planning Commission of the Town of Hilton Head Island (the "Town") to address the zoning map amendment criteria set forth in Section 16-3-1505 of the Town's Land Management Ordinance (the "LMO"). This Application seeks approval to amend the official zoning map of the Town so as to change the zoning district applicable to the real property owned by the Applicant by amending the Indigo Run Master Plan (the "IR Master Plan").[1]

I. NARRATIVE – INTRODUCTION

The Applicant is the owner of a tract of land located at 76 Leg O'Mutton Road containing approximately 6.7 acres, designated as Beaufort County Tax Parcel 275, District 510, Map 8 (the "Property").[2] The Property is currently located in the RM-4 Low to Moderate Density Residential Zoning District, in between and adjacent to the PD-1 Indigo Run Master Plan Zoning District and an IL Light Industrial Zoning District.[3]

---

[1] This Application is being submitted to the Town in place of Zoning Map Amendment Application No. ZMA060009 filed by the Applicant on August 18, 2006, which is being withdrawn upon the acceptance for filing of this Application.

[2] The Applicant acquired the Property in 1992 by way of the deed recorded in the Office of the Register of Deeds for Beaufort County South Carolina in Record Book 602 at Page 2380, a copy of which is attached hereto as Exhibit A. Thereafter, the Applicant conveyed a 0.32 acre portion of his land to the Town in 1996 for the widening and realignment of Leg O'Mutton Road, leaving him with the 6.7 acres that is the Property.

[3] See the Town's Official Zoning District Map.

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The Property is the site of the Applicant's home. In addition, the Applicant has for some nine (9) years operated his business, The Greenkeeper, Inc. (the "Business"), a landscape nursery and landscaping contracting business, on the Property as a home occupation. Over the years, the Business has expanded to the point where it now requires the outside storage of equipment and landscaping, and the Town Planning Staff has determined that the Business no longer qualifies as a home occupation use under the provisions of LMO Section 16-4-1302. In accordance with an agreement between the Applicant and the Town Planning Staff, the Applicant is now seeking to rezone the Property in a manner that will allow the continued operation of the Business on the Property. To that end, the Applicant is seeking to amend the IR Master Plan and the accompanying text so as to (1) bring the Property into the PD-1 Indigo Run Zone as two tracts under the IR Master Plan, and (2) provide for site-specific uses, maximum densities, and site development buffer standards for the Property under the IR Master Plan.

II. NARRATIVE – BACKGROUND

The Applicant acquired the Property in 1992 as a site for his home and the Business. However, the Business has now grown to the point where it no longer qualifies as a home occupation. As an alternative to completely relocating the Business, the Town Planning Staff has afforded the Applicant the opportunity to seek approval to rezone the Property in a manner that will allow the Applicant to continue operating the Business on the Property.

Under the RM-4 Zoning District restrictions currently applicable to the Property, the available uses on the Property are primarily residential or public and civic uses, at four (4) units per acre for residential use.[4] Properties in the RM-4 Zoning Districts is also able to participate in the Town's Moderate Income Housing Program under Chapter 4, Article XVII of the LMO,[5] allowing for up to eight (8) units per acre for residential use. Nonresidential uses in the RM-4

[4] See the Use Table at LMO Section 16-4-1104. Most permitted uses in the RM-4 Zone other than residential uses and parks are either conditional uses or special exception uses.

[5] See Ordinance No. 2006-17 which was approved by the Town Council on September 5, 2006.

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Zoning District are limited to 6,000 square feet per net acre.

The Business is a use that is permitted by right in only the IL Light Industrial Zoning District. While the Applicant's first application to rezone the Property sought to reclassify a portion of the Property as part of the IL Zoning District, it seems evident that there are certain uses permitted in the IL Zoning District that might not be acceptable or compatible uses on the Property.

The primary reason for the Applicant's request that the entirety of the Property be included in the IR Master Plan is to continue to provide for residential uses and the availability for the Property to participate in the Town's Moderate Income Housing Program, and to allow for the continued operation of the Business on the Property while at the same time prohibiting other uses that would otherwise be allowed on the Property if it was rezoned to be part of the IL Zoning District.[6] To that end, the Applicant is now seeking to amend the IR Master Plan so as to designate the Property as two tracts under the IR Master Plan, and provide for site-specific uses, maximum densities, and site development standard for the Property under the IR Master Plan.

II. NARRATIVE – THE REQUESTED REZONING

The current primary by-right permitted use on the Property is up to four (4) residential units per acre under the RM-4 Zoning District regulations, and up to eight (8) residential units per acre by participation in the Town's Moderate Income Housing Program.

The Applicant is proposing to rezone the Property so as to (a) include it within the IR Master Plan; (b) (i) designate the 4.33 acre portion of the Property labeled "Tract B" and the 0.19 acre portion of the Property labeled "40' R/W Parcel" on the proposed subdivision plat of the Property attached to this Application as Attachment 2 (the "Subdivision Plat") for residential use

[6] Additionally, if the whole of the Property is included in the IR Master Plan, then the Applicant may be able to utilize the existing stormwater drainage system within the IR Master Plan area for the Property's stormwater management requirements, thereby alleviating the need to cut additional trees on the Property for on-site stormwater retention.

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at four (4) units per acres by right, and eight (8) units per acre by participation in the Town's Moderate Income Housing Program, and (ii) designate the 2.18 acre portion of the Property labeled "Tract A" on the Subdivision Plat for the same residential uses and for use as a landscape nursery and a landscaping contractor's office with on-site storage, at up to 6,000 square feet per net acre; and (c) require a minimum adjacent use setback and buffer on Tract A of thirty (30') feet if Tract A is used for a landscape nursery and a landscaping contractor's office with on-site storage along any common property line with a tract permitted for residential use.[7]

III. NARRATIVE – REZONING CRITERIA

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

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

The **Natural Resources Vision** of the Comprehensive Plan directs the Town to support low impact economic development. The Applicant is seeking to change the zoning applicable to the Property to one consistent zone with appropriate permitted uses that will allow for the continued operation of the Business on the Property, while at the same time assuring adequate buffering between the Business and surrounding residential areas. Currently, the Property is permitted for residential uses with at least four (4) and as many as eight (8) units per acre, with nonresidential uses capped at 6,000 square feet per acre. The PD-1 Zoning District that includes the IR Master Plan allows up to 10,000 square feet per acre for nonresidential uses. The approval of this Application will maintain the low to moderate density for residential uses and the low density for nonresidential uses currently allowed on the Property. The Applicant's proposed amendment of the IR Master Plan will therefore help foster low impact economic

[7] Under LMO Section 16-5-804(A)(3), any and all development on the Property will have to comply with all applicable standards of the LMO, including site specific standards as to open space, impervious coverage, setbacks, buffers and density.

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development by maintaining the current densities permitted on the Property. This low impact development will allow the Applicant to maintain the residential nature of the majority of the Property while continuing to be able to operate the Business on a portion of the Property. Furthermore, encouraging and fostering low density institutional and residential development helps to assure a lower future impact on the roadway and other infrastructure requirements of the Town by helping to minimize new traffic trips.

Providing for the continued ability to utilize all or part of the Property for residential development will further the **Housing Vision** of the Comprehensive Plan. In addition, the Applicant's proposal to allow for participation in the Town's Moderate Income Housing Program complies with the **Housing Vision** of the Comprehensive Plan.

The **Community Facilities Vision** of the Comprehensive Plan seeks to maintain the highest levels of service and efficiency in the delivery of standard community services. The Applicant's proposal to cap nonresidential development on the Property at 6,000 square feet per acre, as opposed to the 10,000 square feet per acre allowed in the IL Zoning District or generally in the PD-1 Zoning District, will go a long way towards furthering this aspect of the Comprehensive Plan by reducing the future potential impact on the Town's roadway, water and sewer and similar infrastructure and facilities by lowering future demand.

The **Land Use Vision** of the Comprehensive Plan calls for a high quality of life by planning for population growth, public and private development and redevelopment and the proper distribution, location, and intensity of land uses with adequate levels of services while maintaining and protecting the natural resources, residential neighborhoods and overall character of the island. Some of the land use goals which foster this vision are development in areas which have in place appropriate infrastructure capacity to accommodate growth in an environmentally acceptable manner, maintenance of existing residential areas, and

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encouragement of redevelopment, all of which are furthered by this Application. More specifically, Goal 1 of the Land Use Element of the Comprehensive Plan requires the direction of development in areas which have in place appropriate infrastructure capacity to accommodate growth in an environmentally acceptable manner. This goal is met by this Application, in that the Leg O'Mutton Road area around the Property already has in place roadways, storm drainage systems, and water and sewer and other utility service lines, allowing for further development in an area of the Town which already has in place the infrastructure necessary to support the planned development.

The Applicant believes the approval of this Application is consistent with and in conformance with the foregoing visions and goals set forth in the Comprehensive Plan, and would foster the implementation of many of the Comprehensive Plan's policies. Given the existing infrastructure facilities in the area of the Property, and the fact that the Business has been operating on the Property for some nine (9) years now, the development of Property for low to moderate density residential use, and the continued use of the Property for the operation of the Business with adequate minimum buffer standards, will not have an adverse effect on the natural resources in the area or on any existing residential neighborhoods in the area.

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

The Applicant's original application to rezone the Property presented some problematic issues with compatibility with nearby properties and the character of the neighborhood, as it would have allowed a wide range of light industrial uses on the Property. This Application seeks to address that concern by strictly limiting the uses on the Property to residential and landscape nursery and landscaping contractor's office with on-site storage.

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Clearly, the use of the Property for low to moderate residential development is compatible with the present zoning and conforming and other uses of nearby properties and with the character of the neighborhood.

Limiting nonresidential use of the Property to Tract A and further to only landscape nursery and landscaping contractor's office with on-site storage at a density not to exceed 6,000 square feet per net acre, coupled with the enhanced buffering requirements suggested by the Applicant will, in the Applicant's opinion, also be compatible with present zoning, and also with the proposed zoning, and with the uses on nearby properties and the character of the neighborhood.

Conforming uses on nearby properties that are compatible with the proposed residential and nonresidential uses on the Property include the religious institutional use on the Christian Renewal Church site that is adjacent to the Property, single family residential along Leg O'Mutton Road, including Victoria Square, and multifamily residential near the intersection of Leg O'Mutton Road and Gardner Drive, and planned for adjacent tracts along Leg O'Mutton Road.[8] The various properties that are immediately adjacent to the Property are all located in either the PD-1 Indigo Run Zone or the RM-4 Residential Zone. Given the mixed use requirement of the PD-1 zoning district, it seems the rezoning of the Property to move it entirely within the PD-1 Indigo Run Zone is compatible with the present zoning and uses of nearby properties and with the character of the neighborhood.

With respect to traffic generation, the use of the entire 6.7 acres of the Property for residential use will generate between 153 and 508 weekday traffic

[8] In addition, the vacant tract across Leg O'Mutton Road in the vicinity of the Property is currently owned by the Applicant of Jesus Christ of Latter Day Saints, and may be developed for religious institutional uses. Further, the vacant tract along the eastern boundary of the Property is, for the most part, a freshwater wetlands owned by the Town.

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trips, for multifamily residential at four (4) units per acre and single family residential at eight (8) units per acre, respectively. On the other hand, the continued use of the 2.18 acres that is Tract A as a landscape nursery and landscaping contractor's office, together with the future development of the remainder of the Property for residential use will generate between 149 and 399 weekday traffic trips, again for multifamily residential at four (4) units per acre and single family residential at eight (8) units per acre, respectively.[9] Therefore, the Applicant would submit that rezoning the Property in a manner that will allow the Business to continue operating on the Property will result in reduced traffic in the area, as the Business generates less traffic on a per acre basis than the residential uses.

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

Again, the Applicant's original application to rezone the Property presented some difficult issues with suitability of the Property for uses permitted in the IL Zoning District, especially considering the relatively wide range of permitted uses in the IL Zoning District.

This Application, however, attempts to address those concerns by limiting any "light industrial" use on the Property to the currently existing landscape nursery and landscaping contractor's office, at a lower maximum density than that allowed in the IL Zoning District or in the PD-1 Zoning District.

The Applicant submits that the proposed residential use on the Property, which is identical to the currently permitted residential use on the Property, is wholly suitable for the Property. The rezoning requested by this Application will

[9]See ITE Land Uses 210, 230, and 818 in *Trip Generation*, 6th Ed.

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result in a change in the applicable zoning district for the Property from the RM-4 Zone to the PD-1 Indigo Run Zone. However, for the most part, if this Application is approved as presented, there will be no material change in the actual use of the Property. So, the approval of this Application will neither increase nor decrease the actual uses currently on the Property; instead, the approval of this Application will allow the Applicant to legally continue the operation of the Business on the Property. Therefore, because the proposed uses on the Property are the same as the current actual uses on the Property, it seems the Property is well suited for the uses that will be permitted by the proposed amendment to the IR Master Plan.

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

Again, the change to the IR Master Plan requested by this Application will not result in any increase in the actual uses on the Property; instead, the permitted uses available on the Property will actually decrease, as uses other than residential and landscape nursery and landscaping contractor's office that are currently on the Property will be removed.[10] The Property has presumably long been suited for the uses permitted under the currently applicable zoning, and those uses will either remain or decrease upon the approval of this Application. So, the approval of this Application will merely allow the existing actual and permitted uses on the Property to continue or be reduced.[11]

---

[10] Among other things, the specific Bed and Breakfast and Inn uses under the Resort Accommodation use category in the LMO's Use Table are uses permitted by special exception in the RM-4 Zone that will no longer be available on the Property if this Application is approved. See LMO Section 16-4-1104.

[11] In addition to the number of permitted uses on the Property being reduced by the approval of this Application, the permitted density for nonresidential uses will remain at the 6,000 square feet per net acre as it currently is under the RM-4 Zoning District, and will not increase to the maximum density allowed in either the IL Zoning District or the PD-1 Zoning District.

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

As mentioned above, the permitted uses on the Property will be reduced if this Application is approved, and the permitted density of nonresidential uses on the Property will remain as is. While some may argue that a reduction in the number of available land uses on the Property may reduce the value or the marketability of the Property, the Applicant believes that any possible reduction in the marketability of the Property by the approval of this Application will be more than offset by the ability to continue operating the Business on the Property. Therefore, the Applicant believes that the approval of this Application will not have a detrimental effect on the marketability of the Property. In addition, the Applicant believes that the approval of this Application, with the enhanced buffer requirements on Tract A, will not have an adverse effect on the marketability of other properties in the vicinity.

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

Hilton Head Public Service District (the "PSD") currently provides potable water and sanitary sewer service to the Gardner Drive and Leg O'Mutton Road area where the Property is located, as well as to the entirety of the IR Master Plan area. Because the rezoning of the Property so that it is entirely within the PD-1 Indigo Run zone will not result in any different or more intense use of the Property than that which currently exists or is permitted on the Property, the approval of this Application should not result in any increase in demand on the water and sewer infrastructure that is currently in place. In addition, because the Applicant will still be required to obtain a Development Plan Review approval of the continued operation of the Business on the Property if this Application is approved, the storm water management requirements of the LMO will have to be

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addressed to the satisfaction of the Town Planning and Engineering Staffs at that time.

IV. NARRATIVE – CONCLUSION

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

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

2. That this Application and the supporting testimony and documentation establish that the requested zoning map amendment is consistent with the present zoning and conforming uses of nearby properties and with the character of the neighborhood around the Property; and

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

4. That this Application and the supporting testimony and documentation establish that the Property is also suitable for the uses permitted by the zoning district that is currently applicable to the Property; and

5. That this Application and the supporting testimony and documentation establish that the marketability of the Property for uses permitted by the zoning district that is currently applicable to the Property will not be adversely affected by the approval of the requested zoning map amendment; and

6. That this Application and the supporting testimony and documentation establish that sewer, water and stormwater facilities generally suitable and adequate for the proposed use of the Property under the requested zoning map amendment are available to the Property;

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and (c) recommend to the Town Council that they approve the Application.

Respectfully submitted on behalf of the Applicant, October 20, 2006.

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

©2006 Chester C. Williams, LLC

Exhibit A (4 Pages)

1677

Form 14 – Title to Real Estate
Revised 1976

2436

STATE OF SOUTH CAROLINA,

County of Beaufort

YOUR TAX NOTICE WILL BE SENT TO THE ADDRESS SHOWN ON YOUR DEED IF YOUR DEED WAS RECORDED BY SEPTEMBER 15. IF THE ADDRESS IS INCORRECT, PLEASE NOTIFY THE COUNTY ASSESSOR.

KNOW ALL MEN BY THESE PRESENTS, THAT

DENNIS ROY CONGROVE and SUE ELLEN CONGROVE,

in the State aforesaid ——— for and ——— in consideration of the sum of Nine Thousand Dollars and 00/100 ($9,000.00) ——— DOLLARS, to us in hand paid at and before the sealing of these presents by **THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA**, One Town Center Court, Hilton Head Island, South Carolina 29928

in the State aforesaid ——— for which ——— the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said **THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA**, its Successors and Assigns, forever, in fee simple, the following-described real property, to-wit:

ALL that certain piece, parcel or lot of land known and described as **Parcel "B" containing 0.35 acres, more or less**, on a plat entitled "Boundary Plat of the Relocation of **Leg O' Mutton Road**", with said plat being prepared by Michael R. Dunigan, S.C.R.L.S. Number 110905, and being recorded in the Office of the Register of Mesne Conveyances for Beaufort County, South Carolina in Plat Book 53 at Page 43.

This being a portion of the same property conveyed to the within Grantors by Quit-Claim Deed of Federal Deposit Insurance Corporation, as Receiver for Hilton Head Bank & Trust Company dated the 9th day of July, 1992, and recorded in the Office of the Register of Mesne Conveyances for Beaufort County, South Carolina on the 16th day of July, 1992, in Deed Bok 602 at Page 2380.

This Deed was prepared in the Law Offices of Biel, Clark & Johnson, P.A., 31 Bow Circle, Post Office Box 7788, Hilton Head Island, South Carolina 29938, by Jack H. Biel, Esquire.

Tax Map Reference No.: District 510; Map 8; Parcel 275.

Dist.	Map	Subdiv.	Parcel	Bl.
510	8		412	

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said **THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA,** its Successors and Assigns, forever, in fee simple.

AND we do hereby bind ourselves and our Heirs, Assigns, Executors and Administrators, to warrant and forever defend, all and singular, the said Premises unto the said **THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA**, its..... Successors and Assigns, against us and our Heirs, and all persons whomsoever _____ lawfully claiming, or to claim the same or any part thereof.

WITNESS our Hands and Seals, this 10th day of January, in the year of our Lord one thousand nine hundred and ninety-six, and in the two hundred and twentieth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

(2) _____
First Witness

(3) _____
Second Witness (notary public)

(1) _____
DENNIS ROY CONGROVE

(1) _____
SUE ELLEN CONGROVE

. . . . . .

THE STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF (4) BEAUFORT)

PERSONALLY appeared before me (5) BARBARA L. BRESSERS and made oath that s/he saw the within-named **DENNIS ROY CONGROVE and SUE ELLEN CONGROVE** sign, seal and as their act and deed, deliver the within-written Deed, and that s/he together with (6) JACK H. BIEL witnessed the execution thereof.

(7) _____
First Witness (same as #2 and #5 above)

SWORN TO before me this 10th
day of January, 1996.

(8) _____
Notary Public for the State of South Carolina
My Commission Expires: 07/21/97

(Same as #3 and #6 above)

4443 Coltrane

/Mall

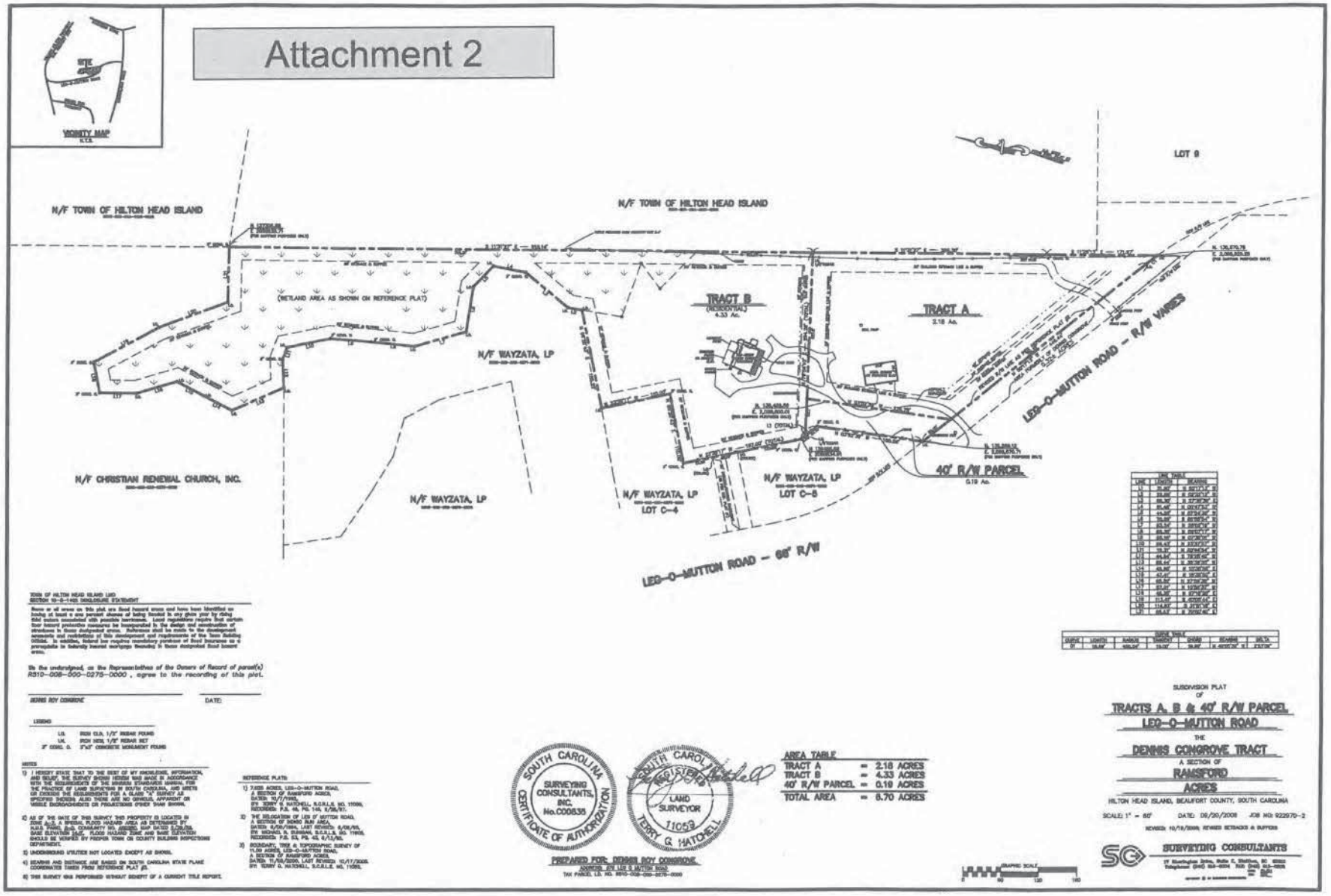
828 2436

RECORDED THIS 6th DAY
OF February 1996
IN BOOK AC PAGE 50

Mary B. Grant
REGISTER OF DEEDS

2439

Attachment 2



LINE TABLE		
LINE	LENGTH	BEARING
L1	31.84'	S 60°17'14" E
L2	24.84'	S 29°42'46" W
L3	26.34'	S 57°30'34" E
L4	81.48'	S 05°57'14" W
L5	44.84'	S 67°54'46" E
L6	70.48'	S 22°05'14" W
L7	23.51'	S 29°05'46" E
L8	89.34'	S 05°57'14" W
L9	89.34'	S 67°30'34" E
L10	26.42'	S 22°05'14" W
L11	19.31'	S 22°05'14" W
L12	44.84'	S 29°05'46" E
L13	85.42'	S 38°36'46" E
L14	40.84'	S 10°30'46" E
L15	43.41'	S 10°30'46" E
L16	60.84'	S 67°30'34" E
L17	57.41'	S 67°30'34" E
L18	62.84'	S 67°30'34" E
L19	111.47'	S 42°05'46" E
L20	114.84'	S 29°05'46" E
L21	66.42'	S 20°02'46" E

CURVE TABLE						
CURVE	LENGTH	RADIUS	TANGENT	CHORD	BEARING	DELTA
C1	18.84'	1000.00'	18.84'	18.84'	S 60°06'34" E	1°21'00"

TOWN OF HILTON HEAD ISLAND LMO
SECTION 16-5-1405 DISCLOSURE STATEMENT

Some or all areas on this plat are flood hazard areas and have been identified as having at least a one percent chance of being flooded in any given year by rising tidal waters accompanied with possible overtopping. Local regulatory agents that contain flood hazard protective measures be incorporated in the design and construction of structures in these designated areas. Reference shall be made to the development covenants and restrictions of this development and requirements of the Town Building Official. In addition, federal law requires mandatory purchase of flood insurance as a prerequisite to federally insured mortgage financing in these designated flood hazard areas.

We the undersigned, as the Representatives of the Owners of Record of parcel(s) R510-008-000-0275-0000, agree to the recording of this plat.

DENNIS ROY CONGROVE — DATE:

LEGEND

I.S.	IRON OLD, 1/2" REBAR FOUND
I.N.	IRON NEW, 1/2" REBAR SET
3" CONC. O.	3"x3" CONCRETE MONUMENT FOUND

NOTES

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

2) AS OF THE DATE OF THIS SURVEY THIS PROPERTY IS LOCATED IN ZONE AE, A SPECIAL FLOOD HAZARD AREA AS DETERMINED BY FIRM PANEL 0-0, COMMUNITY NO. 450250, MAP DATED 5/20/05. BASE ELEVATION DATE, FLOOD HAZARD ZONE AND BASE ELEVATION SHOULD BE VERIFIED BY PROPER TOWN OR COUNTY BUILDING INSPECTIONS DEPARTMENT.

3) UNDERGROUND UTILITIES NOT LOCATED EXCEPT AS SHOWN.

4) BEARING AND DISTANCE ARE BASED ON SOUTH CAROLINA STATE PLANE COORDINATES TAKEN FROM REFERENCE PLAT #1.

5) THIS SURVEY WAS PERFORMED WITHOUT BENEFIT OF A CURRENT TITLE REPORT.

REFERENCE PLATS:

1) 7.000 ACRES, LEO-O-MUTTON ROAD, A SECTION OF RAMSFORD ACRES, DATED: 10/7/1998, BY: TERRY G. HATCHELL, S.C.R.L.S. NO. 11059, RECORDED: P.B. 46, PG. 146, 6/26/97.

2) THE RELOCATION OF LEO O' MUTTON ROAD, A SECTION OF BONEO RUN AREA, DATED: 6/05/1984, LAST REVISED: 6/06/95, BY: MICHAEL R. BURNHAM, S.C.R.L.S. NO. 11905, RECORDED: P.B. 53, PG. 43, 6/13/95.

3) BOUNDARY, TREE & TOPOGRAPHIC SURVEY OF 11.69 ACRES, LEO-O-MUTTON ROAD, A SECTION OF RAMSFORD ACRES, DATED: 11/05/2003, LAST REVISED: 10/17/2005, BY: TERRY G. HATCHELL, S.C.R.L.S. NO. 11059.

SOUTH CAROLINA SURVEYING CONSULTANTS, INC. No.C00835 CERTIFICATE OF AUTHORIZATION

SOUTH CAROLINA REGISTERED LAND SURVEYOR 11059 TERRY G. HATCHELL

PREPARED FOR: DENNIS ROY CONGROVE
ADDRESS: 270 LEO O MUTTON ROAD
TAX PARCEL I.D. NO. R510-008-000-0275-0000

AREA TABLE		
TRACT A	=	2.18 ACRES
TRACT B	=	4.33 ACRES
40' R/W PARCEL	=	0.19 ACRES
TOTAL AREA	=	6.70 ACRES

GRAPHIC SCALE 0 60 120 180

SUBDIVISION PLAT OF

TRACTS A, B & 40' R/W PARCEL
LEO-O-MUTTON ROAD
THE
DENNIS CONGROVE TRACT
A SECTION OF
RAMSFORD ACRES

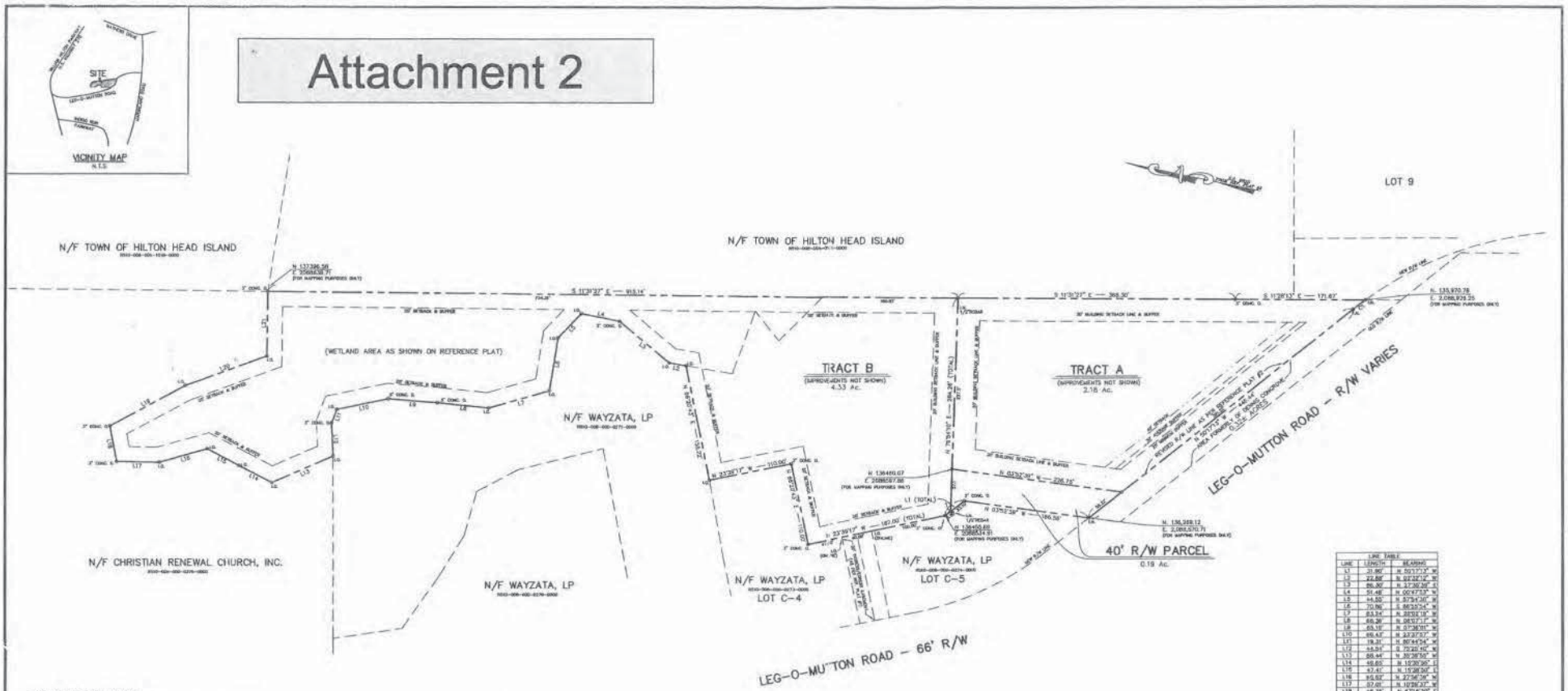
HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA

SCALE: 1" = 60' DATE: 06/20/2008 JOB NO: 922970-2

REVISED: 10/15/2008, REVISED SETBACKS & BUFFERS

SURVEYING CONSULTANTS
17 Huntington Drive, Suite C, Bluffton, SC 29910
Telephone: (843) 815-4014 Fax: (843) 815-4016

Attachment 2



LINE TABLE		
LINE	LENGTH	BEARING
L1	31.90'	N 70°17'12" W
L2	22.88'	N 69°32'12" W
L3	86.90'	N 27°30'38" E
L4	51.48'	N 00°47'53" W
L5	44.50'	N 57°41'30" W
L6	70.96'	S 86°33'24" W
L7	83.54'	N 30°01'19" W
L8	66.38'	N 06°07'17" W
L9	65.19'	N 07°36'55" W
L10	66.43'	N 23°37'07" W
L11	19.31'	N 80°44'54" W
L12	44.91'	S 70°20'15" W
L13	88.44'	N 35°38'50" W
L14	49.65'	N 10°30'30" E
L15	47.41'	N 15°28'06" E
L16	95.52'	N 27°56'26" W
L17	57.61'	N 10°36'37" W
L18	46.35'	N 67°15'20" E
L19	113.41'	S 40°06'44" E
L20	114.82'	S 31°31'18" E
L21	85.63'	N 70°07'40" E

CURVE TABLE						
CURVE	LENGTH	RADIUS	TANGENT	CHORD	BEARING	DELTA
C1	19.91'	465.04'	10.00'	19.88'	N 49°55'38" W	2°37'09"

TOWN OF HILTON HEAD ISLAND LMO
SECTION 16-5-1402 DISCLOSURE STATEMENT

Some or all areas on this plat are flood hazard areas and have been identified as having at least a one percent chance of being flooded in any given year by rising tidal waters associated with possible hurricanes. Local regulations require that certain floor hazard protective measures be incorporated in the design and construction of structures in these designated areas. Reference shall be made to the development covenants and restrictions of this development and requirements of the Town Building Official. In addition, federal law requires mandatory purchase of flood insurance as a prerequisite to federally insured mortgage financing in these designated flood hazard areas.

We the undersigned, as the Representatives of the Owners of Record of parcel(s) R510-008-000-0275-0000, agree to the recording of this plat.

DENNIS ROY CONGROVE DATE:

LEGEND:

I.O. IRON OLD, 1/2" REBAR FOUND
I.N. IRON NEW, 1/2" REBAR SET
3" CONC. D. 3"x3" CONCRETE MONUMENT FOUND

NOTES:

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

2) AS OF THE DATE OF THIS SURVEY THIS PROPERTY IS LOCATED IN ZONE A-7, A SPECIAL FLOOD HAZARD AREA AS DETERMINED BY FLUD, PANEL B-B, COMMUNITY NO: 450250, MAP DATED: 6/26/86, BASE ELEVATION 16.6', FLOOD HAZARD ZONE AND BASE ELEVATION SHOULD BE VERIFIED BY PROPER TOWN OR COUNTY BUILDING INSPECTIONS DEPARTMENT.

3) UNDERGROUND UTILITIES NOT LOCATED EXCEPT AS SHOWN.

4) BEARING AND DISTANCE ARE BASED ON SOUTH CAROLINA STATE PLANE COORDINATES TAKEN FROM REFERENCE PLAT #3.

5) THIS SURVEY WAS PERFORMED WITHOUT BENEFIT OF A CURRENT TITLE REPORT.

REFERENCE PLATS:

1) 7.035 ACRES, LEG-O-MUTTON ROAD, A SECTION OF RAMSFORD ACRES, DATED: 10/7/1982, BY: TERRY G. HATCHELL, S.C.R.L.S. NO. 11009, RECORDED: P.B. 46, PG. 146, 6/26/97.

2) THE RELOCATION OF LEG O' MUTTON ROAD, A SECTION OF INGSO RUN AREA, DATED: 9/06/1984, LAST REVISED: 6/26/95, BY: MICHAEL R. DUNIGAN, S.C.R.L.S. NO. 11805, RECORDED: P.B. 53, PG. 43, 6/13/95.

3) BOUNDARY, TREE & TOPOGRAPHIC SURVEY OF 11.00 ACRES, LEG-O-MUTTON ROAD, A SECTION OF RAMSFORD ACRES, DATED: 11/08/2006, LAST REVISED: 10/17/2005, BY: TERRY G. HATCHELL, S.C.R.L.S. NO. 11009.

NOTES FOR:
ZONING MAP AMENDMENT
APPLICATION NO. ZMA000013

1. Area
6.70 acres consisting of Tract A, Tract B, and 40' R/W Parcel, as shown on this plat.

2. Permitted Land Uses 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 and landscape contractor's office with onsite storage at up to 0.000 square feet per net acre.

Tract B and 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.

3. Maximum Height:
37 feet above the base flood elevation.

4. Setback and Buffer Areas:
As delineated on this plat.

AREA TABLE		
TRACT A	=	2.18 ACRES
TRACT B	=	4.33 ACRES
40' R/W PARCEL	=	0.19 ACRES
TOTAL AREA	=	6.70 ACRES

SOUTH CAROLINA SURVEYING CONSULTANTS, INC. No.C000835 CERTIFICATE OF AUTHORIZATION

SOUTH CAROLINA REGISTERED LAND SURVEYOR 11009 TERRY G. HATCHELL

PREPARED FOR: DENNIS ROY CONGROVE
ADDRESS: 876 LEG O MUTTON ROAD
TAX PARCEL I.D. NO. R510-008-000-0275-0000

GRAPHIC SCALE
0 60 120 180

PLAT
OF
TRACTS A, B & 40' R/W PARCEL
LEG-O-MUTTON ROAD
THE
DENNIS CONGROVE TRACT
A SECTION OF
RAMSFORD
ACRES
HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA

SCALE: 1" = 60' DATE: 11/14/2006 JOB NO: 922970-2

SURVEYING CONSULTANTS
17 Huntington Drive, Suite C, Bluffton, SC 29910
Telephone: (843) 815-3004 FAX: (843) 815-8005

LAW OFFICE OF
CHESTER C. WILLIAMS, LLC
Suite A108 Sapelo Building
21 Office Park Road
Post Office Box 6028
Hilton Head Island, SC 29938-6028
Telephone (843) 842-5411
Telefax (843) 842-5412
Email Firm@CCWLaw.net

Attachment 3

ALSO MEMBER LOUISIANA BAR

October 20, 2006

Ms. Terry Leary
General Manager
Indigo Run Community Owners Association, Inc.
103 Indigo Run Drive
Hilton Head Island, SC 29926

RE: Rezoning Application for Dennis R. Congrove, 6.7 Acres, 76 Leg O'Mutton Road (the "Property") – Our File No. 01385-001

Dear Ms. Leary:

We represent Dennis R. Congrove, the owner of the 6.7 acre tract located at 76 Leg O'Mutton Road, which is the site of Mr. Congrove's home and his business, The Greenkeeper, Inc. We are today filing on behalf of our client an application for a zoning map amendment to move the Property from the RM-4 Low to Moderate Density Residential zoning district into the PD-1 Indigo Run Master Plan zoning district and to specify permitted uses, maximum densities, and buffer standards for the Property. The primary purpose for this rezoning application is to allow for the continued operation of Mr. Congrove's business on the Property. A copy of that application is enclosed. This application is a replacement application in lieu of the rezoning application for the Property previously filed by Mr. Congrove on August 18, 2006, which was recently reviewed by the Town's Planning Commission.

Section 16-3-1502(A)(3) of the Land Management Ordinance of the Town of Hilton Head Island requires an applicant for a rezoning or master plan amendment to solicit written comments from appropriate property owners' associations regarding the requested amendment. This letter is for that purpose. We would encourage you to direct any comments you may have regarding this application to Charles F. Cousins, AICP, the Town's Director of Development, at One Town Center Court, Hilton Head Island, South Carolina 29928, within fourteen days of your receipt of this letter.

We will be happy to discuss this matter further with you or any other representatives of the Indigo Run COA at your convenience in an effort to address any specific concerns you may have with this application.

We trust you will let us know if you have any questions or comments regarding this matter, or if we may otherwise be of assistance.

With best regards, we are

Very truly yours,

LAW OFFICE OF CHESTER C. WILLIAMS, LLC

Chester C. Williams

CCW:jm
Enclosure
cc: Mr. Dennis R. Congrove
Charles F. Cousins, AICP

LAW OFFICE OF
CHESTER C. WILLIAMS, LLC
Suite 2
17 Pope Avenue Executive Park Road
Post Office Box 6028
Hilton Head Island, SC 29938-6028
Telephone (843) 842-5411
Telefax (843) 842-5412
Email firm@ccwlaw.net

RECEIVED
NOV 6 2006

ALSO MEMBER LOUISIANA BAR

November 3, 2006

Town of Hilton Head Island
South Carolina
1 Town Center Ct
Hilton Head Isl, SC 29928

CERTIFIED MAIL

RE: Zoning Map Amendment Application of Dennis R. Congrove for 6.7 Acres, 76 Leg O'Mutton Road – Our File No. 01385-001

Dear Sir or Madam:

As required by Sections 16-3-110 and 16-3-111(C)(1) of the Land Management Ordinance of the Town of Hilton Head Island, you are notified that there will be a public hearing before the Town's Planning Commission on Wednesday, December 6, 2006 at 9:00 A.M. in Town Council Chambers at Town Hall, One Town Center Court, Hilton Head Island, South Carolina on the zoning map amendment application filed by Dennis R. Congrove for the 6.7 acre tract located at, 76 Leg O'Mutton Road. The property is also known as Beaufort County Tax District 510, Map 8, Parcel 275. The proposed zoning map amendment seeks to include the property in the PD-1 Indigo Run Master Plan, and to specify permitted uses, maximum densities, and buffer standards. A copy of a survey showing the property is enclosed. The property is located within the RM-4 Low to Moderate Residential Zoning District. Any interested party may appear at the public hearing.

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

With best regards, we are

Very Truly Yours,

LAW OFFICE OF CHESTER C. WILLIAMS, LLC

This signature is an electronic reproduction
Chester C. Williams

CCW/rcg
Enclosure
cc: Mr. Dennis R. Congrove
Charles F. Cousins, AICP
Teri B. Lewis, AICP
Benjamin I. Brown, AICP

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

ALSO MEMBER LOUISIANA BAR

November 14, 2006

Benjamin I. Brown, AICP
Senior Planner -- Development Review and Zoning
Town of Hilton Head Island
Planning Department
One Town Center Court
Hilton Head Island, SC 29928

HAND DELIVERED

RE: Subdivision Application for Dennis R. Congrove; Subdivision Application No. SUB060012 – Our File No. 01385-001

Dear Ben:

Following-up on our conversation of yesterday morning regarding the above matter, and as authorized by Dennis Congrove, considering the re-casting of the rezoning application for Mr. Congrove's property to include the entirety of the property, please accept this letter as formal notice that the subdivision application previously filed by Dan Saxon on behalf of Mr. Congrove, as Subdivision Application No. SUB060012, is hereby withdrawn by Mr. Congrove.

We trust you will let us know if you have any questions or comments regarding this matter, or if we may otherwise be of assistance.

With best regards, we are

Very truly yours,

LAW OFFICE OF CHESTER C. WILLIAMS, LLC

Chester C. Williams

CCW:skt
cc: Mr. Dennis Congrove
Daniel A. Saxon, Esquire

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

ALSO MEMBER LOUISIANA BAR

November 14, 2006

Benjamin I. Brown, AICP
Senior Planner -- Development Review and Zoning
Town of Hilton Head Island
Planning Department
One Town Center Court
Hilton Head Island, SC 29928

HAND DELIVERED

RE: Congrove Rezoning Application; Zoning Map Amendment Application No. ZMA060013 – Our File No. 01385-001

Dear Ben:

Following-up on our conversations regarding the above matter, enclosed herewith are (a) the revised narrative that takes into account the revisions we discussed with you yesterday morning, and (b) the revised survey of the property that includes, among other things, the note we discussed regarding the proposed rezoning. We would appreciate you substituting the revised narrative for the narrative originally attached to the application we filed on behalf of Mr. Congrove, and substituting the revised survey for the survey that was originally included with the application as Attachment 2.

Please let us know if you have any questions or comments regarding this matter, or if we may otherwise be of assistance.

With best regards, we are

Very truly yours,

LAW OFFICE OF CHESTER C. WILLIAMS, LLC

Chester C. Williams

CCW:skt
Enclosure
cc: Mr. Dennis Congrove

LAW OFFICE OF
CHESTER C. WILLIAMS, LLC
Suite A108 Sapelo Building
21 Office Park Road
Post Office Box 6028
Hilton Head Island, SC 29938-6028
Telephone (843) 842-5411
Telefax (843) 842-5412
Email Firm@CCWLaw.net

ALSO MEMBER LOUISIANA BAR

November 16, 2006

Ms. Terry Leary
General Manager
Indigo Run Community Owners Association, Inc.
103 Indigo Run Drive
Hilton Head Island, SC 29926

RE: Rezoning Application for Dennis R. Congrove, 6.7 Acres, 76 Leg O'Mutton Road (the "Property") – Our File No. 01385-001

Dear Ms. Leary:

As you know from our October 20, 2006 letter to you and subsequent telephone conversation regarding the above matter, we represent Dennis R. Congrove.

As a result of your discussions with Ben Brown, and our further discussions with Ben, we have revised the narrative to our rezoning application for Mr. Congrove, and have also revised the survey of the property included with the application, all to address concerns that Ben had with our initial proposal on behalf of Mr. Congrove.

In addition to the proposed restrictions on Mr. Congrove's property included with the original application, the application now limits the height of structures on the property, and specifies that the landscape nursery business that may be operated on the property is limited to a wholesale landscape nursery business.

We trust you will let us know if you have any further questions or comments regarding this application, 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:skt
Enclosure
cc: Mr. Dennis R. Congrove
Benjamin I. Brown, AICP

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

ALSO MEMBER LOUISIANA BAR

November 16, 2006

Mr. Kenneth Hiatt
Victoria Square Property Owners Association
79 Victoria Square Drive
Hilton Head Island, SC 29926

RE: Dennis R. Congrove, New Rezoning Application for 6.7 Acres Leg O'Mutton Road; Zoning Map Application No. ZMA060013 – Our File No. 01385-001

Dear Mr. Hiatt:

As you may know, we represent Dennis R. Congrove regarding the above matter.

The original rezoning application filed on behalf of Mr. Congrove for his property on Leg O'Mutton Road has been withdrawn, and we have submitted a new rezoning application on behalf of Mr. Congrove to the Town of Hilton Head Island. We understand you have discussed this matter recently with Benjamin I. Brown, AICP, of the Town Planning Staff.

Enclosed for your review is a copy of the new rezoning application we have filed on behalf of Mr. Congrove. We believe this application addresses all the concerns that Mr. Brown and the Town had with the original application, especially with respect to the various uses that might otherwise be permitted on Mr. Congrove's property if it was rezoned to the IL-Light Intensity Industrial Zoning District. Admittedly, such a rezoning could have possibly resulted in permitted uses on Mr. Congrove's property that might be undesirable, given the property's location on Leg O'Mutton Road.

The new application we have filed on behalf of Mr. Congrove limits permitted uses on the property to residential and wholesale landscape nursery and landscape contractor's office with onsite storage. The intent of this application is to allow Mr. Congrove to continue operating his current business from the property, but at the same time not allow other industrial uses on the property.

We would appreciate you taking the time to review the enclosed application, and letting us know if you have any questions or comments regarding same, or if we may otherwise be of assistance.

With best regards, and

Very Truly Yours,

LAW OFFICE OF CHESTER C. WILLIAMS, LLC

Chester C. Williams

CCW/skt
Enclosure
Cc: Mr. Dennis R. Congrove
Benjamin I. Brown, AICP

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

Thomas D. Peeples, Mayor

ATTEST:

Betsy Mosteller

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

TOWN OF HILTON HEAD ISLAND

Planning Department

Application for Zoning Map Amendment—ZMA060013

Proposed Ordinance #: 2006-33

APPLICATION SUMMARY	PARCEL DATA
Submitted by the Law Office of Chester C. Williams, LLC on behalf of Dennis R. Congrove, this application seeks 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, Planned Development Mixed Use District. This rezoning would allow 2.18 acres of the property ("Tract A") to be developed as a wholesale landscape nursery with a landscape contractor's office and onsite storage at up to 6,000 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 Town's Moderate Income Housing Program. The remaining 4.52 acres ("Tract B") could be developed as a 0.19 acre right-of-way and a 4.33 acre residential development 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. The following uses would no longer be permitted on Tract A or Tract B as a result of this rezoning application: Community Service, Day Care, Schools, Government Facilities, Religious and Other Institutions, Cemetery, Community Park, Linear Park, Mini Park, Neighborhood Park, Special Use Park, Major Utility, Minor Utility, Telecommunications Facility, Waste Treatment Plant, Bed and Breakfast Inn, Inn, and Agriculture. The property is located at 76 Leg-O-Mutton Road and is further identified on Beaufort County Tax Map # 8 as Parcel 275.	**Existing Zoning District & Density** RM-4, Low to Moderate Density Residential District 4 to 8 residential dwelling units per net acre 6,000 square feet of nonresidential per net acre **Proposed Zoning District & Density** PD-1, Planned Development Mixed Use District Indigo Run Master Plan 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 **Applicable Overlay District** Corridor Overlay District

REVIEW & RECOMMENDATION(S)

	DATE	RECOMMENDATION
Planning Staff	November 20, 2006	Staff recommends **approval** of this Application for Zoning Map Amendment based on analysis of the Review Criteria outlined in Section 16-3-1505 of the Land Management Ordinance and the written findings provided in this staff report.
Planning Commission	December 6, 2006	
Planning & Development Standards Committee		
Town Council - First Reading		
Town Council – Second Reading		

BACKGROUND INFORMATION

Dennis R. Congrove owns 6.7 acres at 76 Leg-O-Mutton Road (Attachment A, Vicinity Map). This property is the location of Mr. Congrove's single family residence and landscape business, The Greenkeeper, Inc. Mr. Congrove received Town approval in 1997 to locate his business to this location as a home occupation. The subject property has been zoned for residential uses since the Town of Hilton Head Island (the "Town") adopted its first zoning map on January 10, 1987. Home occupations are permitted within residential districts as long as they comply with the following conditions:

Sec. 16-4-1302. Home Occupations

A home occupation as defined by this Title shall be deemed an accessory use provided that such home occupation:

1. Is conducted entirely within a dwelling or integral part thereof and has no outside storage of any kind related to the home occupation or in the case where activities take place away from the dwelling such activities are in full compliance with the provisions of this Title;
2. Is clearly incidental and secondary to the principal use of the dwelling;
3. Is conducted only by persons residing on the premises (nonresident employees are not permitted);
4. Does not necessitate or cause the exterior appearance of any structure to be other than residential and is not disruptive of the residential character of the neighborhood;
5. Has no advertising of the home occupation on the site or structures;
6. Creates no disturbing or offensive noise, vibration, smoke, dust, odor, heat, glare, unhealthy or unsightly condition, traffic or parking problem; and
7. Does not involve retail sales or services that bring more than 10 customers per day to the dwelling.

The Greenkeeper, Inc. has been expanded to a point where it no longer complies with conditions 1-6 of the above criteria (Attachment B, Site Photo); consequently, the Town's Code Enforcement Department notified Mr. Congrove on May 23, 2006 that his business is in violation of the land use requirements of the RM-4 zoning district.

On August 17, 2006, Daniel A. Saxon, Esq. submitted an application [ZMA060009] on behalf of Dennis R. Congrove to rezone 2.18 acres at 76 Leg-O-Mutton Road from RM-4 to IL. On October 4, 2006, the Planning Commission held a public hearing, heard a report from staff, comments from the public, and testimony from the applicant before making the recommendation that Town Council deny ZMA060009 based on staff's recommendation and the six criteria that were used to review the application to amend the Official Zoning Map. The Planning Commission was specifically concerned about the impact to the area's roadway network and the compatibility of some of the uses which are permitted in the IL district, but not permitted in the existing RM-4 district.

On October 20, 2006, Mr. Congrove withdrew ZMA060009 and authorized Chester C. Williams, Esq. to file a new application [ZMA060013] requesting approval to rezone the entire 6.7 acre parcel 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 (Attachment C, Applicant's Submittal)

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

Please note that if Town Council finds this application to be in conformance with the review criteria found in Chapter 3, Article XV, *Amendments to Zoning Map*, of the Land Management Ordinance (the "LMO"), the applicant will still be required to receive Development Plan Review and Design Review Board approval from the Town.

ANALYSIS OF REQUIRED FINDINGS

Chapter 3, Article XV, *Amendments to Zoning Map*, of the LMO outlines the review criteria by which the Administrator and the Planning Commission must evaluate proposals to amend the Official Zoning Map. Staff's recommendation and written findings are based on analysis of the criteria listed in Section 16-3-1505 of the LMO.

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

Finding: This zoning map amendment is consistent with all of the needs, goals and implementation strategies of the Comprehensive Plan.

The Planning Commission found the original rezoning application [ZMA060009] that was submitted on August 17, 2006 in conflict with the Housing and Transportation Elements of the Comprehensive Plan. The following will explain how the applicant has addressed these concerns.

Housing Element

The Planning Commission was concerned that rezoning Tract A from RM-4 to IL would be in conflict with the Housing Element of the Comprehensive Plan, since the IL district does not permit affordable housing developments. The Housing Element identifies the need for affordable housing on the island. This Element states that a lack of affordable housing is a "problem not just for those who do not have access to housing but also to the entire community." The Element further explains that "perhaps this is not more evident than in a resort community such as Hilton Head Island." The Implementation Strategies of the Housing Element direct the Town to develop flexible and innovative strategies, such as density bonuses, to encourage private development of affordable housing. The Town's Moderate Income Housing Program [Section 16-4-1701 of the LMO] permits a 100% increase in residential density in the RM-4 district if at least 50% of the bonus units qualify as moderate income housing. Tract A and Tract B are located in the RM-4 district and would be an appropriate location for a moderate income housing development. Since ZMA060013 would allow Tract A and Tract B to be developed at up to eight (8) dwelling units per net acre under the Town's Moderate Income Housing Program, the needs and goals of the Housing Element are satisfied by this rezoning application.

Transportation Element

The Planning Commission was concerned about the potential impact on the Town's roadway network if Tract A was rezoned from RM-4 to IL. It was noted at the public hearing on October 4, 2006, that although a 2.18 acre landscape business would not have a negative impact on the Town's transportation system, expanding the IL district would permit higher trip generating uses than what is currently permitted in the RM-4 district. Additionally, if Tract A was rezoned to IL, there could be a case to rezone the vacant parcels northwest of Tract A from RM-4 to IL. According to the Town's Traffic and Transportation Engineer, this would negatively impact already traffic sensitive areas such as the Beach City Road traffic light and the Mathews/Marshland intersection. The Transportation Element of the Comprehensive Plan emphasizes the importance of traffic management on the island. Need 1 of the Transportation Element states that "future traffic volumes may exceed the capacity of the Town's road network, impacting both the efficiency and safety of the roads."

This application addresses the above concerns by limiting the permitted uses on Tract A to either a residential development not to exceed eight (8) dwelling units per net acre, or a wholesale landscape nursery with a landscape contractor's office and onsite storage not to exceed 6,000 square feet per net acre. The application also seeks to remove all nonresidential uses from Tract B while maintaining the existing residential density at a maximum of eight (8) dwelling units per net acre. Approving ZMA060013 will not increase the number of trips that could be generated on the subject property; therefore, the needs and goals of the Transportation Element are satisfied by this rezoning application.

The following calculations, based on the 7th Edition of the Institute of Transportation Engineers Trip Generation manual ("ITE"), illustrate the potential reduction in weekday trip generation on Tract A as a result of this application. These calculations are based on a 2.18 acre parcel and demonstrate that some of the uses that are currently permitted in the RM-4 district generate significantly more weekday trips than a 2.18 acre wholesale nursery.

Land Use	Weekday trip generation
Single Family detached, 8 units per acre (ITE Land Use 210)	204
Condominium/Townhouse, 8 units per acre (ITE Land Use 230)	142
Church, 6,000 square feet per acre (ITE Land Use 560)	119
Single Family detached, 4 units per acre (ITE Land Use 210)	102
Wholesale Nursery, 2.18 acres (ITE Land Use 818)	43

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

Finding: Rezoning the subject 6.7 acre property from RM-4 into the Indigo Run Master Plan is compatible with the present zoning and conforming uses of nearby property and with the character of the neighborhood.

This application seeks to divide the 6.7 acre property into Tract A and Tract B with specific use, density, height, and setback and buffer standards for each tract. Tract B has a considerable amount of wetlands on the northern portion of the property (Attachment A, Vicinity Map). The wetlands are bordered to the north by the Christian Renewal Church, which has an Institutional/Residential land use within the Indigo Run Master Plan. The eastern and western sides of the wetlands border vacant parcels within the RM-4 district. On September 15, 2006, the Town received an application for conceptual review [PAPP060038] for a 52 unit moderate income housing project on the vacant parcels directly west of the wetlands. The developable portion of Tract B also borders three of the four parcels planned for the moderate income housing project to the north and west; the eastern side borders vacant property owned by the Town; the southern portion borders Tract A. Rezoning Tract B to only permit residential uses is compatible with all surrounding properties and with the character of the neighborhood.

Tract A is bordered to the north by Mr. Congrove's Tract B and single family residence. The property is bound to the east and west by vacant property, which is zoned RM-4. The southwestern section of the property fronts on Leg-O-Mutton Road. Across Leg-O-Mutton Road is a section of the Indigo Run Master Plan, which is designated with a residential land use. The southeastern section of the property borders Lot 9 of the Capital Business Park, which is zoned IL and houses a light industrial services

building with accessory office space. The Capital Business Park is a 19 lot subdivision in the IL zoning district. Rezoning Tract A to permit residential uses or a wholesale landscape nursery with accessory office space and onsite storage is compatible with all surrounding properties and with the character of the neighborhood.

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

Finding: Tract B is suitable for residential development and Tract A is suitable for either residential development or a wholesale landscape nursery with accessory office space and onsite storage.

Rezoning the 6.7 acre property from RM-4 to PD-1 with specific use, density, height, and setback and buffer standards would allow the entire site to be developed as residential or the 2.18 acre Tract A to be developed as a low intensity landscape business. Although the land uses that are currently allowed on Tract A under the RM-4 zoning are appropriate for the property, staff believes that a landscape business could be equally as appropriate. Before the development would be permitted on the property, applications would have to be submitted to the Town and approved by the Design Review Board and staff. After receiving these approvals, Tract A would then serve as a transition zone between the higher intensity light industrial land uses in the Capital Business Park and the residential land uses anticipated for the vacant parcels north and west of the property.

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

Finding: Although the property is suitable for all of the uses that are currently permitted under the RM-4 district, the property is equally suitable for the uses proposed by this zoning map amendment.

Tract A and Tract B have been designated for residential and civic uses since the Town adopted its first zoning map in 1987. As discussed in Criteria B, the location of the property coupled with the predominantly RM-4 designation of adjacent properties support the existing zoning of the property. Tract A, however, has been developed as a landscape business without a permit. Section 16-4-1104 of the LMO only permits this type of business in the IL district; consequently, the applicant originally applied to rezone the property to IL. After the Planning Commission unanimously recommended denial of ZMA060009, the applicant withdrew his request and submitted ZMA060013. The applicant's agents prepared this revised application in order to address the concerns of surrounding property owners, the Planning Commission, and the requirements of the LMO. By zoning the property into the Indigo Run Master Plan, the applicant can apply for development approval to legally operate his landscape business on 2.18 acres of his property. As mentioned in Criteria C, Tract A would then serve as a transition zone between the Capital Business Park and properties north and west of Tract A.

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

Finding: The marketability of the property will not change substantially as a result of this zoning map amendment.

Mr. Congrove believes that this rezoning will have a positive impact on the marketability of his property since it will allow him to continue operating his landscape business on Tract A (Attachment C, Applicant's Submittal). Staff does not believe that there will be a significant impact on the marketability of the property since the entire 6.7 acres could be marketed as a residential development at up to eight (8) dwelling units per net acre.

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

Finding: There are existing utility services available to serve the property. This site does not have an approved stormwater management plan since it was developed without a permit.

The property currently has access to potable water and is served by an onsite sewage disposal system. If this application is found to be in conformance with all of the above review criteria, the applicant will then be required to receive development approval from the Town, at which time an approved stormwater plan would be required. If Town Council finds this application not in conformance with any of the above review criteria, the applicant will have to cease operations of his landscape business at 76 Leg-O-Mutton Road.

Analysis of Findings

Based on the six criteria that were used to review this application to amend the Official Zoning Map, staff recommends approval of ZMA060013.

ATTACHMENTS:

A) Vicinity Map
B) Site Photo
C) Applicant's Submittal

PREPARED BY:

Ben Brown

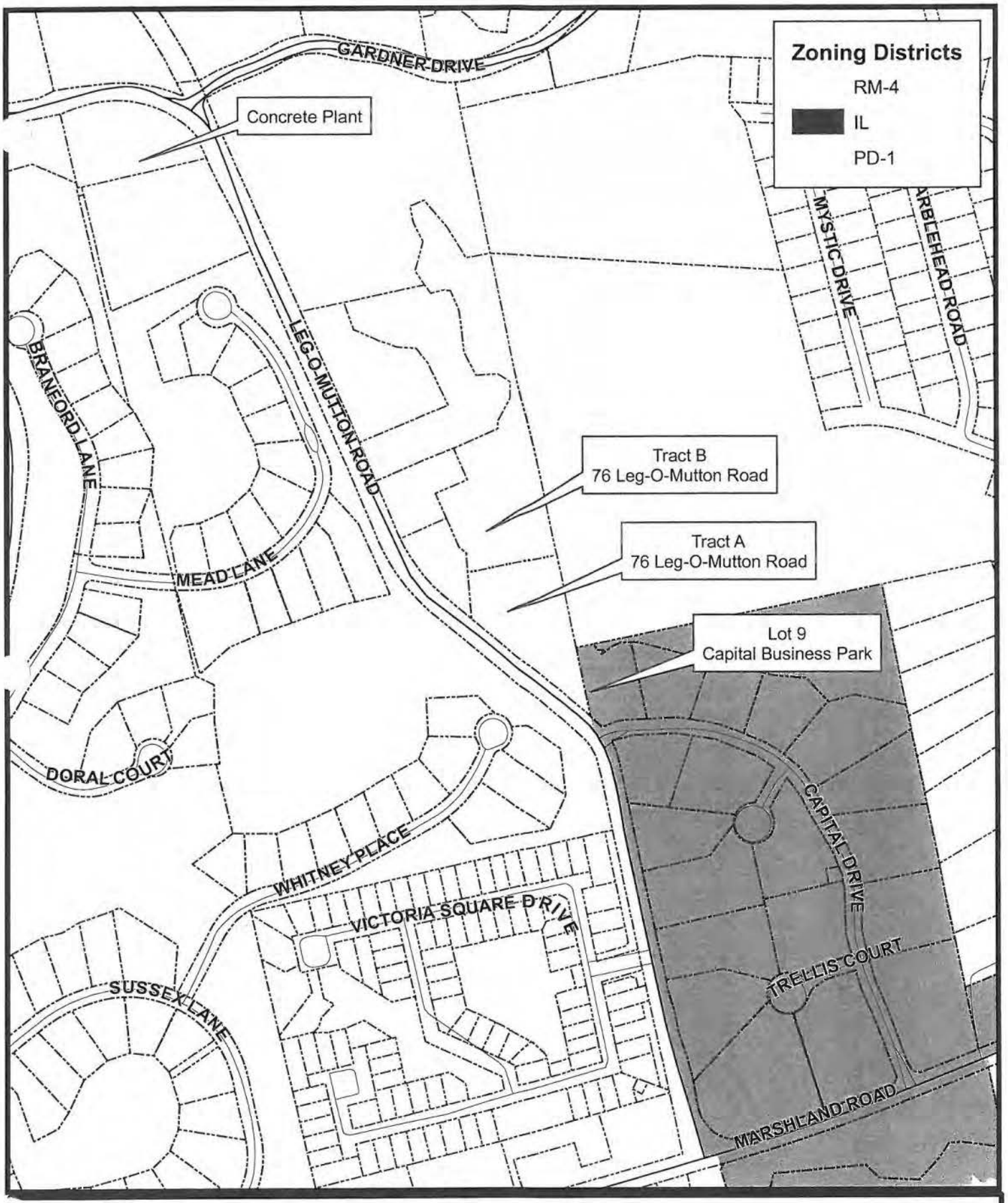
Ben Brown, AICP
Senior Planner

11/20/06
DATE

REVIEWED BY:

Teri B. Lewis, AICP
Manager of Development Review and Zoning

11/20/06
DATE



TOWN OF HILTON HEAD ISLAND
ONE TOWN CENTER COURT
HILTON HEAD ISLAND, S.C. 29928
PHONE (843) 341-4681

Town of Hilton Head Island

ZMA060009

Attachment A, Vicinity Map

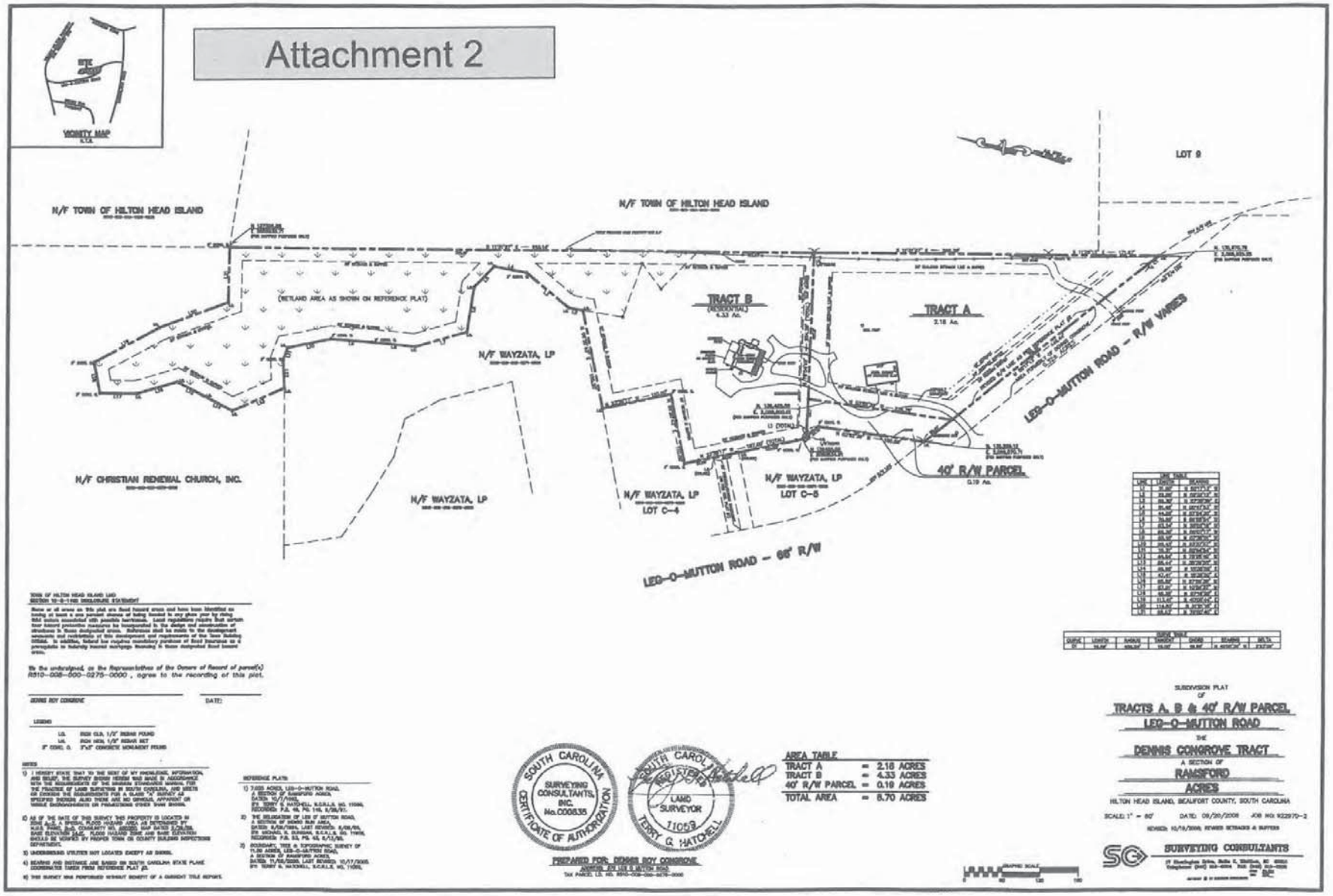
0 200 400 600 800 Feet

1 inch equals 407 feet

N W E S

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

Attachment 2



LINE TABLE		
LINE	LENGTH	BEARING
L1	20.00'	S 88°21'11" E
L2	24.00'	N 00°38'12" E
L3	20.00'	S 00°38'12" W
L4	20.00'	S 00°21'11" E
L5	24.00'	N 00°21'11" W
L6	24.00'	S 00°38'12" W
L7	20.00'	N 00°38'12" E
L8	20.00'	S 00°21'11" E
L9	20.00'	N 00°21'11" W
L10	20.00'	S 00°38'12" W
L11	20.00'	N 00°38'12" E
L12	20.00'	S 00°21'11" E
L13	20.00'	N 00°21'11" W
L14	20.00'	S 00°38'12" W
L15	20.00'	N 00°38'12" E
L16	20.00'	S 00°21'11" E
L17	20.00'	N 00°21'11" W
L18	20.00'	S 00°38'12" W
L19	20.00'	N 00°38'12" E
L20	20.00'	S 00°21'11" E
L21	20.00'	N 00°21'11" W
L22	20.00'	S 00°38'12" W
L23	20.00'	N 00°38'12" E
L24	20.00'	S 00°21'11" E
L25	20.00'	N 00°21'11" W
L26	20.00'	S 00°38'12" W
L27	20.00'	N 00°38'12" E
L28	20.00'	S 00°21'11" E
L29	20.00'	N 00°21'11" W
L30	20.00'	S 00°38'12" W
L31	20.00'	N 00°38'12" E
L32	20.00'	S 00°21'11" E
L33	20.00'	N 00°21'11" W
L34	20.00'	S 00°38'12" W
L35	20.00'	N 00°38'12" E
L36	20.00'	S 00°21'11" E
L37	20.00'	N 00°21'11" W
L38	20.00'	S 00°38'12" W

CURVE TABLE							
CURVE	LENGTH	RADIUS	DELTA	CHORD	BEARING	DELTA
C1	10.00'	10.00'	90.00°	10.00'	S 00°21'11" E	90.00°

TOWN OF HILTON HEAD ISLAND LMO
SECTION 10-8-140 DEDICATION STATEMENT

None or all areas on this plat are flood hazard areas and have been identified as being at least a one percent chance of being located in any given year by rising tidal waters accompanied with possible hurricanes. Land regulations require that certain flood hazard preventive measures be incorporated in the design and construction of structures in these designated areas. Reference shall be made to the development covenants and restrictions of this development and requirements of the Town Building Official. In addition, federal law requires mandatory purchase of flood insurance as a prerequisite to federally insured mortgage financing in these designated flood hazard areas.

We the undersigned, as the Representatives of the Owners of Record of parcel(s) R510-008-000-0275-0000, agree to the recording of this plat.

DENNIS ROY CONGROVE DATE:

LEGEND

I.S.	IRON OLD, 1/2" REBAR FOUND
I.N.	IRON NEW, 1/2" REBAR SET
8" CONC. O.	3"x3" CONCRETE MONUMENT FOUND

NOTES

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

2) AS OF THE DATE OF THIS SURVEY THIS PROPERTY IS LOCATED IN ZONE AE, A SPECIAL FLOOD HAZARD AREA AS DETERMINED BY FLOOD MAPS, FIRM, COMMUNITY NO. 450250, MAP DATED 5/24/2010. BASE ELEVATION (BFE), FLOOD HAZARD ZONE AND BASE ELEVATION SHOULD BE VERIFIED BY PROPER TOWN OR COUNTY BUILDING INSPECTIONS DEPARTMENT.

3) UNDERGROUND UTILITIES NOT LOCATED EXCEPT AS SHOWN.

4) BEARING AND DISTANCE ARE BASED ON SOUTH CAROLINA STATE PLANE COORDINATES TAKEN FROM REFERENCE PLAT #1.

5) THIS SURVEY WAS PERFORMED WITHOUT BENEFIT OF A CURRENT TITLE REPORT.

REFERENCE PLATS:

1) 7.085 ACRES, LEG-O-MUTTON ROAD, A SECTION OF RAMSFORD ACRES, DATED 10/7/1993, BY: TERRY G. HATCHELL, S.C.R.L.S. NO. 11059, RECORDED: P.B. 48, PG. 116, 5/26/97.

2) THE RELOCATION OF LEG O' MUTTON ROAD, A SECTION OF BOHAN RUN AREA, DATED: 8/08/1984, LAST REVISED: 8/08/84, BY: MICHAEL E. BURNHAM, S.C.R.L.S. NO. 11869, RECORDED: P.B. 53, PG. 48, 6/13/96.

3) BOUNDARY, TREE & TOPOGRAPHIC SURVEY OF 71.08 ACRES, LEG-O-MUTTON ROAD, A SECTION OF RAMSFORD ACRES, DATED: 11/08/2005, LAST REVISED: 10/17/2005, BY: TERRY G. HATCHELL, S.C.R.L.S. NO. 11059.

SOUTH CAROLINA SURVEYING CONSULTANTS, INC. No.C00835 CERTIFICATE OF AUTHORIZATION

SOUTH CAROLINA REGISTERED LAND SURVEYOR 11059 TERRY G. HATCHELL

PREPARED FOR: DENNIS ROY CONGROVE
ADDRESS: 20 LEG O MUTTON ROAD
TAX PARCEL I.D. NO. R510-008-000-0275-0000

AREA TABLE

TRACT A	=	2.18 ACRES
TRACT B	=	4.33 ACRES
40' R/W PARCEL	=	0.19 ACRES
TOTAL AREA	=	6.70 ACRES

GRAPHIC SCALE 0 40 80 160

SUBDIVISION PLAT OF

TRACTS A, B & 40' R/W PARCEL
LEG-O-MUTTON ROAD

THE

DENNIS CONGROVE TRACT

A SECTION OF

RAMSFORD ACRES

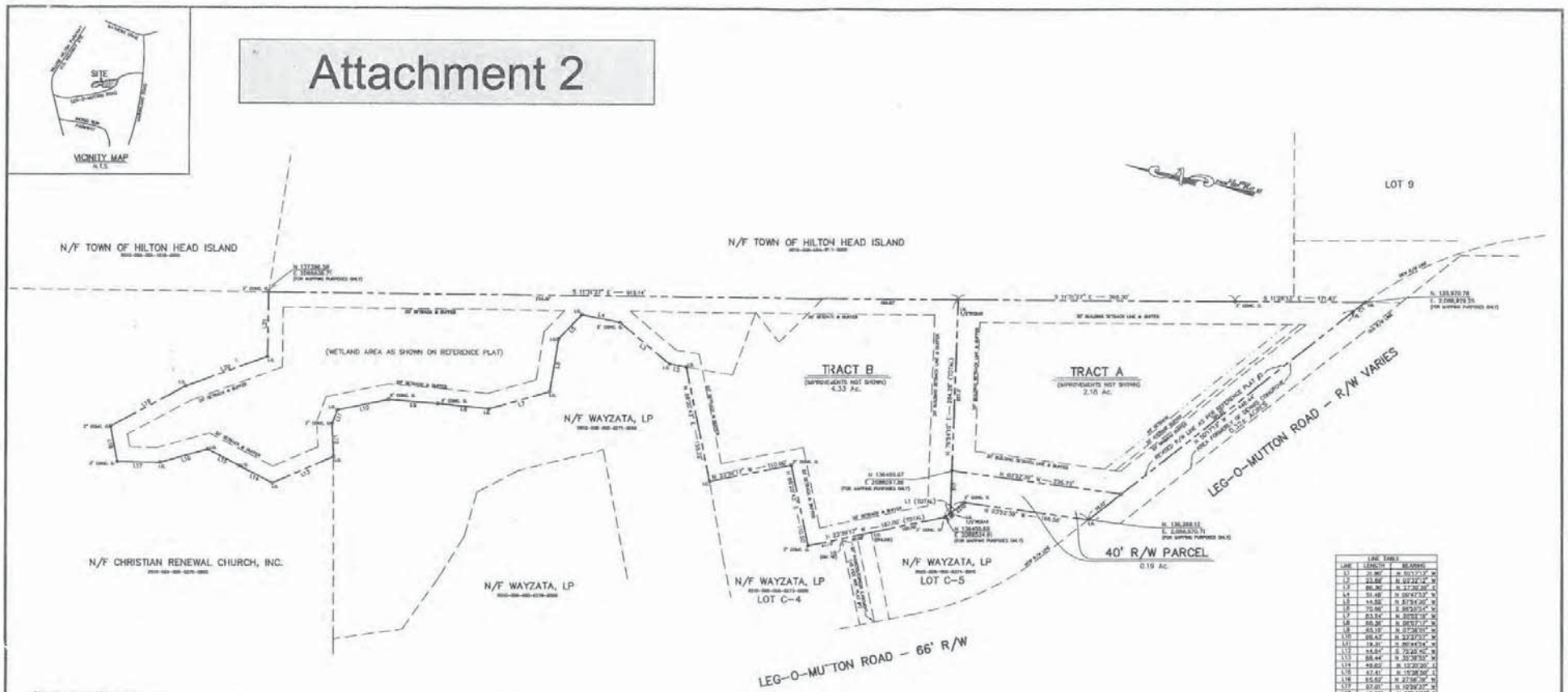
HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA

SCALE: 1" = 80' DATE: 08/20/2008 JOB NO: K22970-2

REVISED: 10/16/2008; REVISED SETBACKS & BUFFERS

SURVEYING CONSULTANTS
17 Huntington Drive, Suite 4, Bluffton, SC 29910
Telephone: (843) 815-4004 Fax: (843) 815-4005
SCL@SC-SURVEYING.COM

Attachment 2



TOWN OF HILTON HEAD ISLAND LMO
SECTION 16-5-1402 DISCLOSURE STATEMENT

Some or all areas on this plat are flood hazard areas and have been identified as having at least a one percent chance of being flooded in any given year by rising tidal waters associated with possible hurricanes. Local regulations require that certain flood hazard protective measures be incorporated in the design and construction of structures in these designated areas. Reference must be made to the development covenants and restrictions of this development and requirements of the Town Building Official. In addition, federal law requires mandatory purchase of flood insurance as a prerequisite to federally insured mortgage financing in these designated flood hazard areas.

We the undersigned, as the Representatives of the Owners of Record of parcel(s) R510-008-000-0275-0000, agree to the recording of this plat.

DENNIS ROY CONGROVE DATE:

LEGEND

I.O. IRON OLD, 1/2" REBAR FOUND
I.N. IRON NEW, 1/2" REBAR SET
3" CONC. O. 3"x3" CONCRETE MONUMENT FOUND

NOTES:

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

2) AS OF THE DATE OF THIS SURVEY THIS PROPERTY IS LOCATED IN ZONE A+7, A SPECIAL FLOOD HAZARD AREA AS DETERMINED BY HUD, FIRM, B.F. COMMUNITY NO. 450250, MAP DATED 9/29/86, BASE ELEVATION 11.0', FLOOD HAZARD ZONE AND BASE ELEVATION SHOULD BE VERIFIED BY PROPER TOWN OR COUNTY BUILDING INSPECTIONS DEPARTMENT.

3) UNDERGROUND UTILITIES NOT LOCATED EXCEPT AS SHOWN.

4) BEARING AND DISTANCE ARE BASED ON SOUTH CAROLINA STATE PLANE COORDINATES TAKEN FROM REFERENCE PLAT #3.

5) THIS SURVEY WAS PERFORMED WITHOUT BENEFIT OF A CURRENT TITLE REPORT.

REFERENCE PLATS:

1) 7.025 ACRES, LEG-O-MUTTON ROAD, A SECTION OF RAMSFORD ACRES, DATED: 10/7/1985, BY: TERRY G. HATCHELL, S.C.R.L.S. NO. 11089, RECORDED: P.B. 46, PG. 146, 6/26/97.

2) THE RELOCATION OF LEG O' MUTTON ROAD, A SECTION OF INGRID RUN AREA, DATED: 5/06/1994, LAST REVISED: 8/28/95, BY: MERNET, R. DUNIGAN, S.C.R.L.S. NO. 11905, RECORDED: P.B. 53, PG. 43, 8/13/95.

3) BOUNDARY, TREE & TOPOGRAPHIC SURVEY OF 11.00 ACRES, LEG-O-MUTTON ROAD, A SECTION OF RAMSFORD ACRES, DATED: 11/06/2000, LAST REVISED: 10/17/2005, BY: TERRY G. HATCHELL, S.C.R.L.S. NO. 11089.

NOTES FOR
ZONING MAP AMENDMENT
APPLICATION NO. ZMA040013

1. Area
6.70 acres consisting of Tract A, Tract B, and 40' R/W Parcel, as shown on this plat.

2. Permitted Land Uses 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 and landscape contractor's office with outside storage at up to 5,000 square feet per net acre.

Tract B and 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.

3. Maximum Height:
35 feet above the base flood elevation.

4. Setback and Buffer Areas:
As delineated on this plat.

PREPARED FOR: DENNIS ROY CONGROVE
ADDRESS: 8/9 LEG O MUTTON ROAD
TAX PARCEL I.D. NO. R510-008-000-0275-0000

AREA TABLE

TRACT A	=	2.18 ACRES
TRACT B	=	4.33 ACRES
40' R/W PARCEL	=	0.19 ACRES
TOTAL AREA	=	6.70 ACRES

SOUTH CAROLINA SURVEYING CONSULTANTS INC. No. C00635 CERTIFICATE OF AUTHORIZATION

SOUTH CAROLINA REGISTERED LAND SURVEYOR 11089 TERRY G. HATCHELL

GRAPHIC SCALE 0 60 120 180

LINE TABLE

LINE	LENGTH	BEARING
L1	21.96'	N 50°17'17" W
L2	22.68'	N 22°22'14" W
L3	86.30'	N 27°30'30" E
L4	51.48'	N 00°47'13" W
L5	14.52'	N 57°54'00" W
L6	70.96'	S 85°23'21" W
L7	83.34'	N 30°05'18" W
L8	66.30'	N 06°07'17" W
L9	63.19'	N 07°38'05" W
L10	69.47'	N 23°27'01" W
L11	19.31'	N 80°44'24" W
L12	44.84'	S 75°20'40" W
L13	88.44'	N 30°39'50" W
L14	49.60'	N 12°30'30" E
L15	67.41'	N 15°38'38" E
L16	95.62'	N 27°06'16" W
L17	67.01'	N 10°29'07" W
L18	46.10'	N 47°16'20" E
L19	113.61'	S 50°00'44" E
L20	114.83'	S 31°31'18" E
L21	85.62'	S 10°29'40" E

CURVE TABLE

CURVE	LENGTH	RADIUS	TANGENT	CHORD	BEARING	DELTA
C1	19.92'	480.01'	10.00'	19.92'	N 49°55'28" W	2°37'00"

PLAT
OF
TRACTS A, B & 40' R/W PARCEL
LEG-O-MUTTON ROAD
THE
DENNIS CONGROVE TRACT
A SECTION OF
RAMSFORD
ACRES
HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA

SCALE: 1" = 60' DATE: 11/14/2006 JOB NO: 922970-2

SURVEYING CONSULTANTS
17 Huntington Drive, Suite C, Bluffton, SC 29910
Telephone: (843) 815-3004 FAX: (843) 815-8002

LAW OFFICE OF
CHESTER C. WILLIAMS, LLC
Suite A108 Sapelo Building
21 Office Park Road
Post Office Box 6028
Hilton Head Island, SC 29938-6028
Telephone (843) 842-5411
Telefax (843) 842-5412
Email Firm@CCWLaw.net

Attachment 3

ALSO MEMBER LOUISIANA BAR

October 20, 2006

Ms. Terry Leary
General Manager
Indigo Run Community Owners Association, Inc.
103 Indigo Run Drive
Hilton Head Island, SC 29926

RE: Rezoning Application for Dennis R. Congrove, 6.7 Acres, 76 Leg O'Mutton Road (the "Property") – Our File No. 01385-001

Dear Ms. Leary:

We represent Dennis R. Congrove, the owner of the 6.7 acre tract located at 76 Leg O'Mutton Road, which is the site of Mr. Congrove's home and his business, The Greenkeeper, Inc. We are today filing on behalf of our client an application for a zoning map amendment to move the Property from the RM-4 Low to Moderate Density Residential zoning district into the PD-1 Indigo Run Master Plan zoning district and to specify permitted uses, maximum densities, and buffer standards for the Property. The primary purpose for this rezoning application is to allow for the continued operation of Mr. Congrove's business on the Property. A copy of that application is enclosed. This application is a replacement application in lieu of the rezoning application for the Property previously filed by Mr. Congrove on August 18, 2006, which was recently reviewed by the Town's Planning Commission.

Section 16-3-1502(A)(3) of the Land Management Ordinance of the Town of Hilton Head Island requires an applicant for a rezoning or master plan amendment to solicit written comments from appropriate property owners' associations regarding the requested amendment. This letter is for that purpose. We would encourage you to direct any comments you may have regarding this application to Charles F. Cousins, AICP, the Town's Director of Development, at One Town Center Court, Hilton Head Island, South Carolina 29928, within fourteen days of your receipt of this letter.

We will be happy to discuss this matter further with you or any other representatives of the Indigo Run COA at your convenience in an effort to address any specific concerns you may have with this application.

We trust you will let us know if you have any questions or comments regarding this matter, or if we may otherwise be of assistance.

With best regards, we are

Very truly yours,

LAW OFFICE OF CHESTER C. WILLIAMS, LLC

Chester C. Williams

CCW:jm
Enclosure
cc: Mr. Dennis R. Congrove
Charles F. Cousins, AICP

LAW OFFICE OF
CHESTER C. WILLIAMS, LLC
Suite 2
17 Pope Avenue Executive Park Road
Post Office Box 6028
Hilton Head Island, SC 29938-6028
Telephone (843) 842-5411
Telefax (843) 842-5412
Email firm@ccwlaw.net

RECEIVED
NOV 6 2006

ALSO MEMBER LOUISIANA BAR

November 3, 2006

Town of Hilton Head Island
South Carolina
1 Town Center Ct
Hilton Head Isl, SC 29928

CERTIFIED MAIL

RE: Zoning Map Amendment Application of Dennis R. Congrove for 6.7 Acres, 76 Leg O'Mutton Road – Our File No. 01385-001

Dear Sir or Madam:

As required by Sections 16-3-110 and 16-3-111(C)(1) of the Land Management Ordinance of the Town of Hilton Head Island, you are notified that there will be a public hearing before the Town's Planning Commission on Wednesday, December 6, 2006 at 9:00 A.M. in Town Council Chambers at Town Hall, One Town Center Court, Hilton Head Island, South Carolina on the zoning map amendment application filed by Dennis R. Congrove for the 6.7 acre tract located at, 76 Leg O'Mutton Road. The property is also known as Beaufort County Tax District 510, Map 8, Parcel 275. The proposed zoning map amendment seeks to include the property in the PD-1 Indigo Run Master Plan, and to specify permitted uses, maximum densities, and buffer standards. A copy of a survey showing the property is enclosed. The property is located within the RM-4 Low to Moderate Residential Zoning District. Any interested party may appear at the public hearing.

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

With best regards, we are

Very Truly Yours,

LAW OFFICE OF CHESTER C. WILLIAMS, LLC

This signature is an electronic reproduction
Chester C. Williams

CCW/rcg
Enclosure
cc: Mr. Dennis R. Congrove
Charles F. Cousins, AICP
Teri B. Lewis, AICP
Benjamin I. Brown, AICP

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

ALSO MEMBER LOUISIANA BAR

November 14, 2006

Benjamin I. Brown, AICP
Senior Planner -- Development Review and Zoning
Town of Hilton Head Island
Planning Department
One Town Center Court
Hilton Head Island, SC 29928

HAND DELIVERED

RE: Subdivision Application for Dennis R. Congrove; Subdivision Application No. SUB060012 – Our File No. 01385-001

Dear Ben:

Following-up on our conversation of yesterday morning regarding the above matter, and as authorized by Dennis Congrove, considering the re-casting of the rezoning application for Mr. Congrove's property to include the entirety of the property, please accept this letter as formal notice that the subdivision application previously filed by Dan Saxon on behalf of Mr. Congrove, as Subdivision Application No. SUB060012, is hereby withdrawn by Mr. Congrove.

We trust you will let us know if you have any questions or comments regarding this matter, or if we may otherwise be of assistance.

With best regards, we are

Very truly yours,

LAW OFFICE OF CHESTER C. WILLIAMS, LLC

Chester C. Williams

CCW:skt
cc: Mr. Dennis Congrove
Daniel A. Saxon, Esquire

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

ALSO MEMBER LOUISIANA BAR

November 14, 2006

Benjamin I. Brown, AICP
Senior Planner -- Development Review and Zoning
Town of Hilton Head Island
Planning Department
One Town Center Court
Hilton Head Island, SC 29928

HAND DELIVERED

RE: Congrove Rezoning Application; Zoning Map Amendment Application No. ZMA060013 – Our File No. 01385-001

Dear Ben:

Following-up on our conversations regarding the above matter, enclosed herewith are (a) the revised narrative that takes into account the revisions we discussed with you yesterday morning, and (b) the revised survey of the property that includes, among other things, the note we discussed regarding the proposed rezoning. We would appreciate you substituting the revised narrative for the narrative originally attached to the application we filed on behalf of Mr. Congrove, and substituting the revised survey for the survey that was originally included with the application as Attachment 2.

Please let us know if you have any questions or comments regarding this matter, or if we may otherwise be of assistance.

With best regards, we are

Very truly yours,

LAW OFFICE OF CHESTER C. WILLIAMS, LLC

Chester C. Williams

CCW:skt
Enclosure
cc: Mr. Dennis Congrove

LAW OFFICE OF
CHESTER C. WILLIAMS, LLC
Suite A108 Sapelo Building
21 Office Park Road
Post Office Box 6028
Hilton Head Island, SC 29938-6028
Telephone (843) 842-5411
Telefax (843) 842-5412
Email Firm@CCWLaw.net

ALSO MEMBER LOUISIANA BAR

November 16, 2006

Ms. Terry Leary
General Manager
Indigo Run Community Owners Association, Inc.
103 Indigo Run Drive
Hilton Head Island, SC 29926

RE: Rezoning Application for Dennis R. Congrove, 6.7 Acres, 76 Leg O'Mutton Road (the "Property") – Our File No. 01385-001

Dear Ms. Leary:

As you know from our October 20, 2006 letter to you and subsequent telephone conversation regarding the above matter, we represent Dennis R. Congrove.

As a result of your discussions with Ben Brown, and our further discussions with Ben, we have revised the narrative to our rezoning application for Mr. Congrove, and have also revised the survey of the property included with the application, all to address concerns that Ben had with our initial proposal on behalf of Mr. Congrove.

In addition to the proposed restrictions on Mr. Congrove's property included with the original application, the application now limits the height of structures on the property, and specifies that the landscape nursery business that may be operated on the property is limited to a wholesale landscape nursery business.

We trust you will let us know if you have any further questions or comments regarding this application, 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:skt
Enclosure
cc: Mr. Dennis R. Congrove
Benjamin I. Brown, AICP

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

ALSO MEMBER LOUISIANA BAR

November 16, 2006

Mr. Kenneth Hiatt
Victoria Square Property Owners Association
79 Victoria Square Drive
Hilton Head Island, SC 29926

RE: Dennis R. Congrove, New Rezoning Application for 6.7 Acres Leg O'Mutton Road; Zoning Map Application No. ZMA060013 – Our File No. 01385-001

Dear Mr. Hiatt:

As you may know, we represent Dennis R. Congrove regarding the above matter.

The original rezoning application filed on behalf of Mr. Congrove for his property on Leg O'Mutton Road has been withdrawn, and we have submitted a new rezoning application on behalf of Mr. Congrove to the Town of Hilton Head Island. We understand you have discussed this matter recently with Benjamin I. Brown, AICP, of the Town Planning Staff.

Enclosed for your review is a copy of the new rezoning application we have filed on behalf of Mr. Congrove. We believe this application addresses all the concerns that Mr. Brown and the Town had with the original application, especially with respect to the various uses that might otherwise be permitted on Mr. Congrove's property if it was rezoned to the IL-Light Intensity Industrial Zoning District. Admittedly, such a rezoning could have possibly resulted in permitted uses on Mr. Congrove's property that might be undesirable, given the property's location on Leg O'Mutton Road.

The new application we have filed on behalf of Mr. Congrove limits permitted uses on the property to residential and wholesale landscape nursery and landscape contractor's office with onsite storage. The intent of this application is to allow Mr. Congrove to continue operating his current business from the property, but at the same time not allow other industrial uses on the property.

We would appreciate you taking the time to review the enclosed application, and letting us know if you have any questions or comments regarding same, or if we may otherwise be of assistance.

With best regards, and

Very Truly Yours,

LAW OFFICE OF CHESTER C. WILLIAMS, LLC

Chester C. Williams

CCW/skt
Enclosure
Cc: Mr. Dennis R. Congrove
Benjamin I. Brown, AICP

TERI,
FYI
BB

Victoria Square Property Owners' Association

79 Victoria Square Drive
Hilton Head Island, SC 29926

November 29, 2006

Mr. Ben Brown
Senior Planner
Development Review and Planning
Town of Hilton Head Island
One Town Center Court
Hilton Head Island, SC 29928

Re: Requests for Planning Commission to Have LMO Subcommittee to Review Town Land Management Ordinance Street and Pathway Standards

Article IV, Sec.16-5-409 Access to Streets, Subsection E Frontage Required

Dear Mr. Brown:

This section of Article IV states that "all nonresidential development shall have frontage and access directly onto a street meeting the standards of Sec. 16-5-404." It says nothing about allowing additional access onto a second street from the same property.

Capital Business Park has six properties with frontage access onto Capital Drive that also back onto Leg O' Mutton Drive. Currently there are no industrial or commercial businesses with driveways onto Leg O' Mutton Drive, just ninety-six single-family homeowners accessing on this street. The Victoria Square Property Owners' Association strongly opposes allowing any driveways from Capital Business Park onto Leg O' Mutton Drive because it would unnecessarily increase traffic and reduce the safety and property values of our ninety-five homeowners. Such driveways would be counter to the business park covenants, Town Comprehensive Plan and Land Management Ordinance.

Capital Business Park was designed, developed and sold to be a separate business park. All the properties have frontage access onto Capital Drive to take traffic off Marshland Road and Leg O' Mutton Drive. All the property owners purchased and developed their property with driveway access only on Capital Drive. They did not make an application to add a driveway onto Leg O' Mutton Drive when they developed their property. The Town of Hilton Head approved this business park design and the individual property plans as fitting into the Town's Comprehensive Plan. So all are designed to effectively use Capital Drive only and all keep traffic off of Marshland and Leg O' Mutton Drive. So any requests to have a second driveway onto Leg O' Mutton Drive would be for convenience, not necessity. Any such request would unnecessarily add traffic to a secondary road. The Town already approved the business park to keep traffic off of these two roads to be consistent with the Town Comprehensive Plan and Land Management Ordinance.

Victoria Square development of ninety-five homes accesses only onto Leg O' Mutton Drive opposite Capital Business Park. Homeowners all purchased homes with the expectation that the light industrial zoned Capital Business Park was on a separate street and not connected to Leg O' Mutton Drive. Adding unnecessary driveways onto this street would only increase traffic, reduce traffic safety and negatively affect property values. This is a residential street with only a church and 96 residences that ingress/egress onto the street. The Town is currently considering approving 52 more residences that will ingress/egress onto Leg O' Mutton Drive. The Planning Commission recently turned down an application for IL rezoning on this street to maintain the residential nature of the street. The Town recently purchased the Coastal Concrete property and plans to rezone it to be more compatible with residential use. If the option for a pre-school is realized on this property, traffic and safety will become a much greater issue. Allowing any commercial access onto the street would be inconsistent with the Comprehensive Plan and previous Commission actions, especially if it is not a necessary access. The Land Management Ordinance requires properties to have frontage access directly onto a street (Article IV, Sec.16-5-409 Access to Streets). It says nothing about allowing additional secondary access just because a property backs or sides onto another street.

`For the reasons stated above, the Victoria Square Property Association Board of Directors is asking that the Town of Hilton Head Planning Commission consider amending the Town standards to not allow secondary street access and go on record that no Capital Business Park property bordering Leg O' Mutton Drive will be granted a second driveway for convenience onto Leg O' Mutton Drive.

Respectfully submitted,

Kenneth L Hiatt

Kenneth L. Hiatt
Director
Victoria Square Property Owners' Association

Victoria Square Property Owners' Association

79 Victoria Square Drive
Hilton Head Island, SC 29926

November 29, 2006

Mr. Chester C. Williams
17 Pope Avenue Executive Park Road, Unit 2
Post Office Box 6028
Hilton Head Island, SC 29938-6028

Re: Dennis R. Congrove, New Rezoning Application for 6.7 Acres on Leg O 'Mutton Road; Zoning Map Application No. zma060013 – Your File No. 01385-001

Dear Mr. Williams:

Thank you for taking the time to send us your November 16, 2006 letter.

The Victoria Square Property Owners' Association does not object to Mr. Congrove's landscaping business on his property on Leg O' Mutton Road. We did strongly object to rezoning with more undesirable light industrial options in the future. Your present request to use the property only as a wholesale landscape nursery and landscape contractor's office is agreeable with us.

There are several issues of concern that were not covered in your letter or application. What additional building(s) are planned to meet the 6,000 square feet requested? Would any additional building be no higher than the present equipment building?

Mr. Congrove has constructed a second unapproved, non-compliant driveway from his property onto Leg O' Mutton Road. This has created dangerous ingress and egress situations with trucks with equipment trailers pulling on and off the road. He is only entitled to one driveway from his parcel. With only one resident and limited traffic, a second driveway is unnecessary. Can you confirm that he will reconstruct one compliant driveway to serve his home and landscaping business?

Would Mr. Congrove add more landscaping along his fence and closed driveway to shield his landscaping business from view on Leg O' Mutton Road?

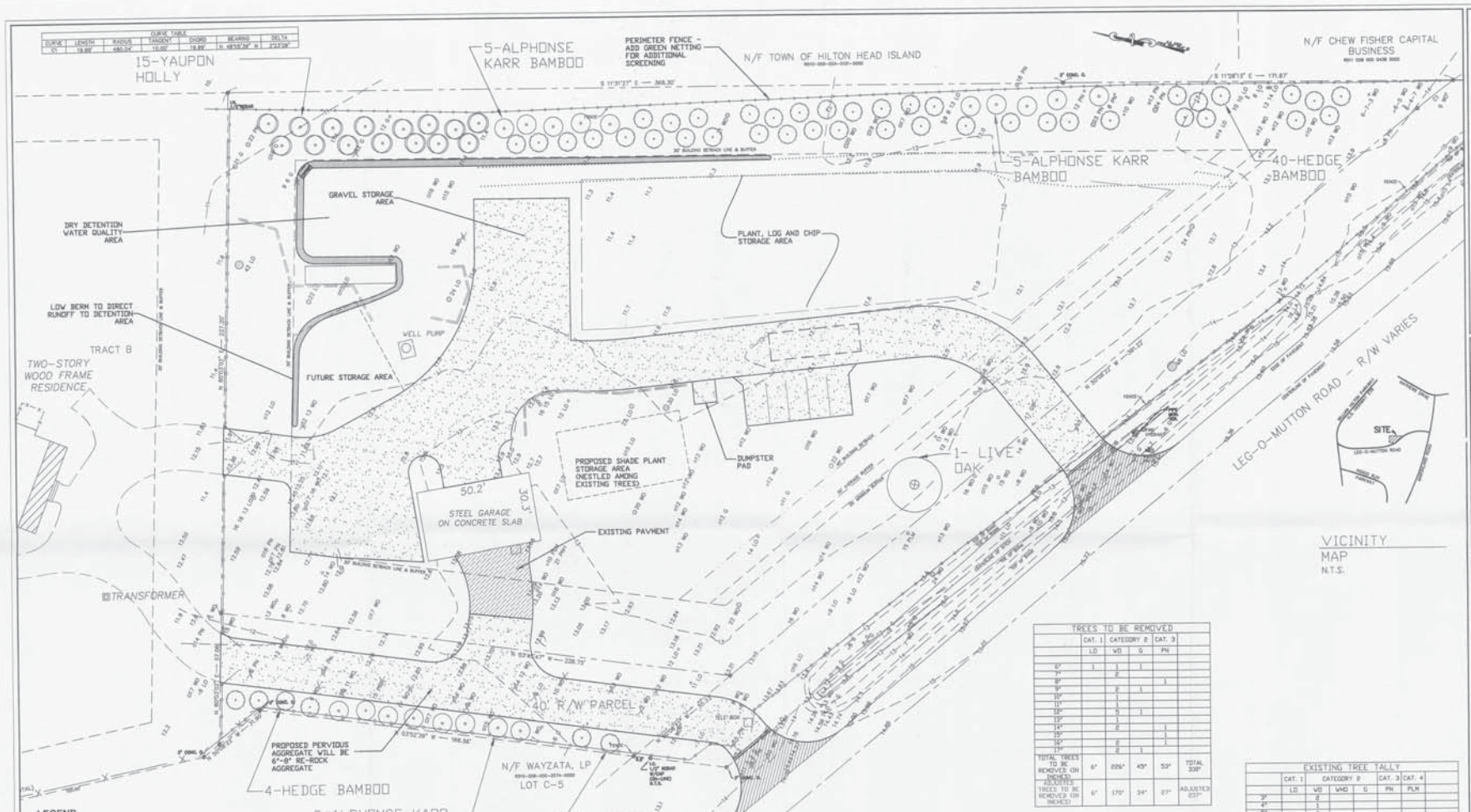
If these questions can be answered and requests made affirmatively, the Victoria Square Property Owners' Association will be in full support of your application.

Very Truly Yours,,

Kenneth L Hiatt

Kenneth L. Hiatt
Director
Victoria Square Property Owners' Association

Cc: Benjamin I. Brown, AICP



CURVE TABLE						
CURVE	LENGTH	RADIUS	TANGENT	CHORD	BEARING	DELTA
C1	13.89'	480.04'	13.00'	13.89'	N 46°06'26" W	2°12'39"

LEGEND

22 WO	TREES TO BE REMOVED
G	GUM
LA	LAUREL OAK
LO	LIVE OAK
PLM	PALM
PN	PINE
WHO	WHITE OAK
VO	WATER OAK

PROJECT AREA SUMMARY	
ZONING DISTRICT:	PD-1
TAX DISTRICT:	510
MAP:	8
OVERLAY DISTRICT:	CDR
PARCEL:	275
CONTRACTOR'S OFFICE:	1,500 SF
PARKING STD:	1 SPACES/ 350 SF
REQUIRED PARKING:	5 SPACES

TOTAL ACRES	2.47 AC
TOTAL IMPERVIOUS ACRES	-1.11 AC
TOTAL PERVIOUS ACRES	1.36 AC
MINIMUM ACI PER ACRE	x 900
MINIMUM ACI REQUIRED	**1,224 ACI**
PRE-DEVELOPMENT	
TOTAL ACI	**1,361 ACI**
POST-DEVELOPMENT	
TOTAL ACI REMOVED	-237 ACI
TOTAL ACI REMAINING	**1,124 ACI**
ACI TO BE REPLACED: 1,224-1,124=100 X .3	= 30"

TOTAL REPLACEMENT REQUIRED 30"

TREES TO BE REMOVED					
	CAT. 1	CATEGORY 2		CAT. 3	
	LO	VO	G	PN	
6"	1	1	1		
7"		2			
8"				1	
9"		2	1		
10"		1			
11"		1			
12"		5	1		
13"		2			
14"		2		1	
15"				1	
16"		2		1	
17"		2	1		
TOTAL TREES TO BE REMOVED ON INCHES:	6"	286"	43"	53"	TOTAL 338"
ADJUSTED TREES TO BE REMOVED ON INCHES:	6"	179"	34"	27"	ADJUSTED 237"

EXISTING TREE TALLY								
	CAT. 1	CATEGORY 2			CAT. 3	CAT. 4		
	LO	VO	WHO	G	PN	PLM		
2"		2						
4"		1						
5"		1						
6"	3	5		2				
7"		4						
8"	1	2			2			
9"	1	2		1				
10"	2	3				1		
11"	1	7		1				
12"	3	14		3	1			
13"	3	4	1		1			
14"	3	7			1			
15"	3	3			1			
16"	3	8			2			
17"	1	8		1	1			
18"								
19"		1						
20"		2						
22"		1		1	1			
23"	2	2			1			
23"					1			
24"	1				2			
30"	1							
40"	1							
TOTAL EXISTING TREES (IN INCHES)	433	913	13	124	274	18	TOTAL 1,767"	
ADJUSTED EXISTING TREES (IN INCHES)	433	685	18	93	137	3	ADJUSTED 1,361"	

PLANT SCHEDULE						
Quantity	Botanical Name	Common Name	Height	Spread	Container	Notes
48	Bambusa multiplex	Hedge Bamboo	4-6'	3'	cont.	To match existing bamboo , or approved equal
18	Bambusa multiplex 'Alphonse Karr'	Alphonse Karr Bamboo	4-6'	3'	cont.	To match existing bamboo , or approved equal
1	Quercus virginiana	Live Oak	10' min		2" cal. min.	
15	Ilex Vomitoria	Yaupon Holly	10' min.		2 cal. min.	

NOTE: PLANTINGS TO BE ADDED AS NEEDED TO SUPPLEMENT EXISTING BAMBOO

GRAPHIC SCALE 0 20 40 80

GREENKEEPER

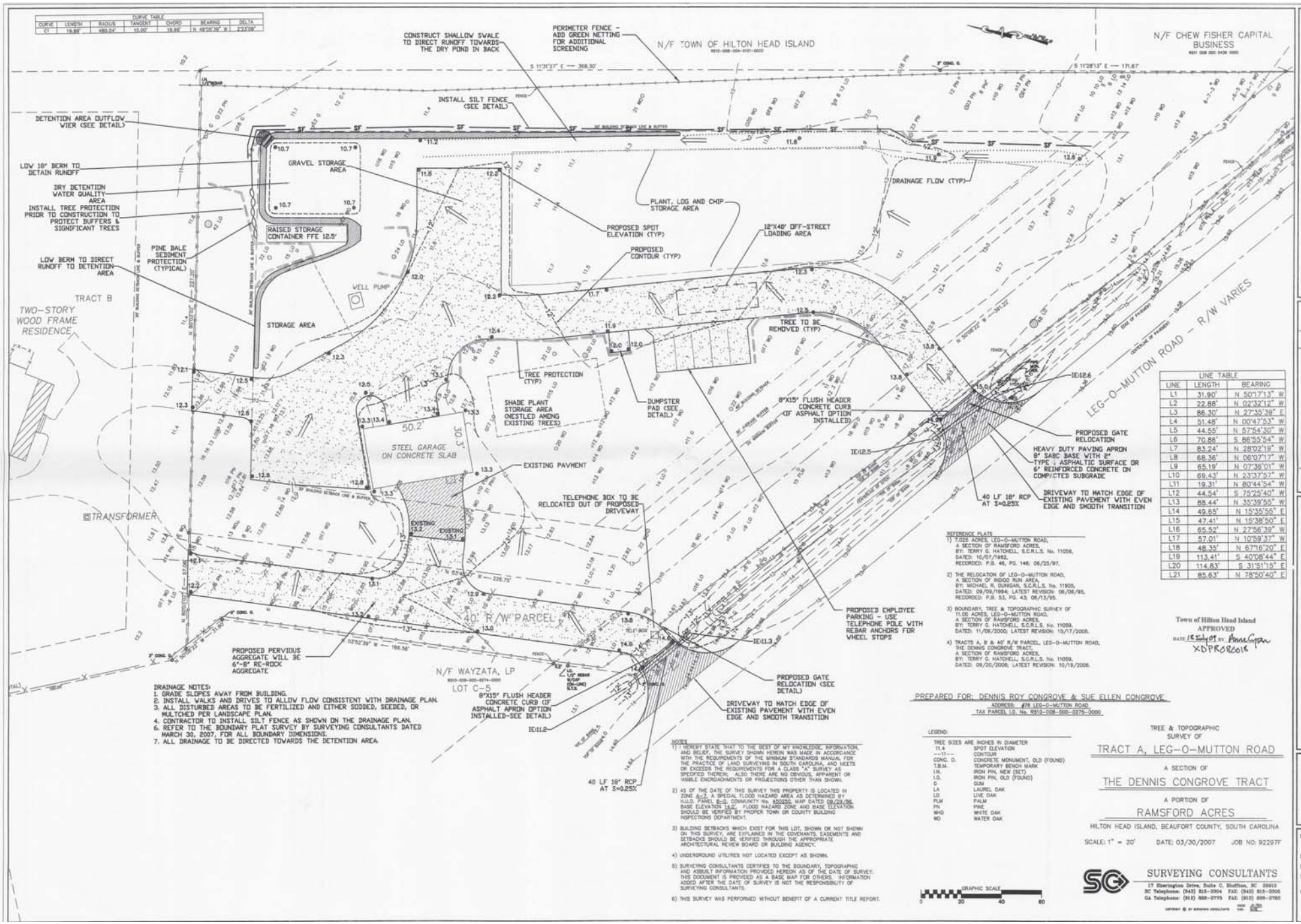
HILTON HEAD ISLAND, SOUTH CAROLINA
PREPARED FOR MR. DENNIS CONGROVE

LANDSCAPE PLAN

DESIGNED BY:
DRAWN BY:
DATE:
SCALE:
PROJECT NO.:

LP

CURVE TABLE						
CURVE	LENGTH	RADIUS	TANGENT	CHORD	BEARING	DELTA
C1	19.89'	480.04'	10.00'	19.89'	N 48°05'39" W	2°23'39"



DRAINAGE NOTES:
1. GRADE SLOPES AWAY FROM BUILDING.
2. INSTALL WALKS AND DRIVES TO ALLOW FLOW CONSISTENT WITH DRAINAGE PLAN.
3. ALL DISTURBED AREAS TO BE FERTILIZED AND EITHER SODDED, SEEDED, OR MULTCHED PER LANDSCAPE PLAN.
4. CONTRACTOR TO INSTALL SILT FENCE AS SHOWN ON THE DRAINAGE PLAN.
6. REFER TO THE BOUNDARY PLAT SURVEY BY SURVEYING CONSULTANTS DATED MARCH 30, 2007, FOR ALL BOUNDARY DIMENSIONS.
7. ALL DRAINAGE TO BE DIRECTED TOWARDS THE DETENTION AREA.

LINE TABLE		
LINE	LENGTH	BEARING
L1	31.90'	N 50°17'13" W
L2	22.88'	N 02°32'12" W
L3	86.30'	N 27°35'39" E
L4	51.48'	N 00°47'53" W
L5	44.55'	N 57°54'30" W
L6	70.86'	S 86°55'54" W
L7	83.24'	N 28°02'19" W
L8	68.36'	N 06°07'17" W
L9	65.19'	N 07°36'01" W
L10	69.43'	N 23°37'57" W
L11	19.31'	N 80°44'54" W
L12	44.54'	S 75°25'40" W
L13	88.44'	N 35°39'55" W
L14	49.65'	N 15°35'55" E
L15	47.41'	N 15°38'50" E
L16	65.52'	N 27°56'39" W
L17	57.01'	N 10°59'37" W
L18	48.35'	N 67°16'20" E
L19	113.41'	S 40°08'44" E
L20	114.83'	S 31°51'15" E
L21	85.63'	N 78°50'40" E

REFERENCE PLATS
1) 7.025 ACRES, LEG-O-MUTTON ROAD, A SECTION OF RAMSFORD ACRES, BY: TERRY G. HATCHELL, S.C.R.L.S. No. 11059, DATED: 10/07/1982, RECORDED: P.B. 46, PG. 146; 06/23/97.
2) THE RELOCATION OF LEG-O-MUTTON ROAD, A SECTION OF INDIGO RUN AREA, BY: MICHAEL R. DUNIGAN, S.C.R.L.S. No. 11905, DATED: 09/09/1994; LATEST REVISION: 06/06/95, RECORDED: P.B. 53, PG. 43; 06/13/95.
3) BOUNDARY, TREE & TOPOGRAPHIC SURVEY OF 11.00 ACRES, LEG-O-MUTTON ROAD, A SECTION OF RAMSFORD ACRES, BY: TERRY G. HATCHELL, S.C.R.L.S. No. 11059, DATED: 11/06/2000; LATEST REVISION: 10/17/2005.
4) TRACTS A, B & 40' R/W PARCEL, LEG-O-MUTTON ROAD, THE DENNIS CONGROVE TRACT, A SECTION OF RAMSFORD ACRES, BY: TERRY G. HATCHELL, S.C.R.L.S. No. 11059, DATED: 09/20/2006; LATEST REVISION: 10/19/2006.

Town of Hilton Head Island
APPROVED
DATE 5/5/09 BY Anne Cupan
XDPR080016

PREPARED FOR: DENNIS ROY CONGROVE & SUE ELLEN CONGROVE
ADDRESS: #76 LEG-O-MUTTON ROAD
TAX PARCEL I.D. No. R510-008-000-0275-0000

NOTES
1) I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN. ALSO THERE ARE NO OBVIOUS, APPARENT OR VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.
2) AS OF THE DATE OF THIS SURVEY THIS PROPERTY IS LOCATED IN ZONE A07, A SPECIAL FLOOD HAZARD AREA AS DETERMINED BY H.U.D. FIRM, B-D, COMMUNITY No. 450250, MAP DATED 09/29/86, BASE ELEVATION 15.0', FLOOD HAZARD ZONE AND BASE ELEVATION SHOULD BE VERIFIED BY PROPER TOWN OR COUNTY BUILDING INSPECTIONS DEPARTMENT.
3) BUILDING SETBACKS WHICH EXIST FOR THIS LOT, SHOWN OR NOT SHOWN ON THIS SURVEY, ARE EXPLAINED IN THE COVENANTS, EASEMENTS AND SETBACKS SHOULD BE VERIFIED THROUGH THE APPROPRIATE ARCHITECTURAL REVIEW BOARD OR BUILDING AGENCY.
4) UNDERGROUND UTILITIES NOT LOCATED EXCEPT AS SHOWN.
5) SURVEYING CONSULTANTS CERTIFIES TO THE BOUNDARY, TOPOGRAPHIC AND ASBUILT INFORMATION PROVIDED HEREON AS OF THE DATE OF SURVEY. THIS DOCUMENT IS PROVIDED AS A BASE MAP FOR OTHERS. INFORMATION ADDED AFTER THE DATE OF SURVEY IS NOT THE RESPONSIBILITY OF SURVEYING CONSULTANTS.
6) THIS SURVEY WAS PERFORMED WITHOUT BENEFIT OF A CURRENT TITLE REPORT.

LEGEND:
TREE SIZES ARE INCHES IN DIAMETER

11.4	SPOT ELEVATION
--11--	CONTOUR
CONC. O.	CONCRETE MONUMENT, OLD (FOUND)
T.B.M.	TEMPORARY BENCH MARK
I.N.	IRON PIN, NEW (SET)
I.O.	IRON PIN, OLD (FOUND)
G	GUM
LA	LAUREL OAK
LO	LIVE OAK
PLM	PALM
PN	PINE
WHO	WHITE OAK
WO	WATER OAK

GRAPHIC SCALE
0 20 40 80

TREE & TOPOGRAPHIC SURVEY OF
TRACT A, LEG-O-MUTTON ROAD
A SECTION OF
THE DENNIS CONGROVE TRACT
A PORTION OF
RAMSFORD ACRES
HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA

SCALE: 1" = 20' DATE: 03/30/2007 JOB NO: 92297F

SURVEYING CONSULTANTS
17 Sherington Drive, Suite C, Bluffton, SC 29910
SC Telephone: (843) 815-3504 FAX: (843) 815-3506
GA Telephone: (912) 826-2775 FAX: (912) 826-2785

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KEY ENGINEERING, Inc.
P.O. BOX 2569
BLUFFTON, SOUTH CAROLINA 29910
PH (843) 227-3031 / FAX (843) 757-9031

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No.	REVISION	BY	DATE

GREENKEEPER
HILTON HEAD ISLAND, SOUTH CAROLINA
PREPARED FOR MR. DENNIS CONGROVE.
DRAINAGE PLAN

STATE OF SOUTH CAROLINA
REGISTERED PROFESSIONAL ENGINEER
No. 16580
04/15/09

DESIGNED BY:	BDP
DRAWN BY:	BDP
DATE:	4/2/09
SCALE:	1"=20'
PROJECT NO:	KE09009

DP

Appendix C

TOWN OF HILTON HEAD ISLAND
One Town Center Court, Hilton Head Island, SC 29928
(843) 341-4600 Fax (843) 842-7228
http://www.hiltonheadislandsc.gov

January 5, 2010

Adam Congrove
The Greenkeeper
76 Leg O' Mutton Road
Hilton Head Island SC 29928

Re: Zoning Verification for The Greenkeeper, 76 Leg O' Mutton Road

Dear Adam:

This letter is a response to your request for written confirmation that the parcel where the Greenkeeper operates, addressed as 76 Leg O' Mutton Road (R510 008 000 0275 0000), is zoned to allow the storage of yard trash and land-clearing debris and composting. The property is currently zoned as PD-1, Planned Development Mixed Use District. The parcel was rezoned in 2006 and the permitted uses for Tract A (where the Greenkeeper currently operates) include a Wholesale Landscape Nursery with a landscape contractor's office and onsite storage at up to 6,000 square feet per net acre. (See attached Proposed Ordinance 2006-33).

Based on the allowed uses for Tract A, staff confirms that composting and wood grinding operations are in accordance with the Town of Hilton Head Island Land Management Ordinance (LMO).

Please contact me at (843) 341-4697 or at [illegible]@hiltonheadislandsc.gov if you have further questions.

Sincerely,

Anne Cyran

Anne Cyran
Planner

Attachment
cc: File

Chapter 4 - NOISE CONTROL[2]

Footnotes:

--- (**2**) ---

Cross reference— Barking dogs, § 17-1-115.

Sec. 17-4-111. - Horns and signal devices.

No person shall sound any horn or audible signal device of any motor vehicle, boat, engine, machine or other stationary boiler of any kind while not in motion, nor shall such horn or signal device be sounded under any circumstances except as required by law, or as a danger warning or in the event of an emergency, nor shall it be sounded for any unnecessary or unreasonable period of time. This section shall not be construed as forbidding the use of a signal device on an emergency vehicle as a warning signal during the use thereof.

(Ord. No. 85-10, § 1, 5-20-85)

Sec. 17-4-112. - Disturbing the public peace.

It shall be unlawful for any person to:

(1) Use, operate or play any transistor or electronic device which produces, reproduces or amplifies sound; or

(2) Attempt to attract the attention of the public to any political or commercial activity by the use of a loudspeaker or other sound amplification device; or

(3) Engage in personal conduct of an excessively loud nature;

for any purpose so as to unreasonably disturb the peace, quiet, comfort or repose of any person in his home or dwelling, or in any public area or place of public accessibility, including but not limited to the beach and commercial establishments; provided, however, that upon application to and approval by the town manager, written permits may be granted to responsible organizations to broadcast programs of music, speeches, general entertainment or announcements as a part of and incident to community celebrations of national, state or municipal occasions, or public festivals, provided that traffic on the streets is not obstructed by reason thereof.

(Ord. No. 85-10, § 1, 5-20-85)

Sec. 17-4-113. - Definitions.

The following definitions apply to the provisions of this chapter:

A-weighted sound level. The sound pressure level in decibels (dB) as measured on a sound level meter using the A-weighting network.

Alarm. Any device designed and intended to produce a sound signal as a method of providing a warning.

Ambient noise. The total of all sound normally associated with a particular location or environmental surrounding.

Daytime. That portion of each day beginning at 7:00 a.m. and ending at 10:00 p.m.

Decibel, also dB. A unit for measuring the relative intensity of a sound, equal to twenty (20) times the logarithm to the base 10 of the ratio of the pressure of the sound measures to the reverence pressure, which is twenty (20) micropascals (twenty (20) micronewtons per square meter). In terms of human perception of continuous sound, a three (3) dB change is clearly perceptible, and a ten (10) dB change is perceived as a doubling or halving of loudness.

Emergency vehicle. Any ambulance, rescue vehicle, fire truck or police vehicle operated by the police department, highway patrol, any authorized emergency rescue service or the fire department, when operated in the performance of their official duty.

Emitter. Any person, group of persons, amplifier, horn, machine, animal, musical instrument, vehicle, radio, television, phonograph or any other thing which produces sound and the person having dominion, custody or control over any such thing.

Excessively loud sound. Any sound which, in light of the surrounding circumstances, including the normal level of ambient noise, is unreasonably loud, or which would annoy or disturb a person of reasonable sensibilities.

Frequency. One of the identifying characteristics of sound. The number of cycles per second imparted into the air by a vibrating body.

Impulsive sound. Sound of short duration, with an abrupt onset and rapid decay, characterized by sound meter reading changes at a rate greater than ten (10) dBA within a five (5) second interval.

Nighttime. That portion of each day beginning at 10:01 p.m. and ending at 6:59 a.m.

Noise. Any excessively loud sound; any sound level in excess of the standards contained in this chapter; any sound which endangers, injures or interferes with the physical well-being or the safety of human beings or animals; or any sound which threatens to cause actual, physical harm to personal or real property, or which causes actual, physical harm to personal or real property.

Sound. An oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces. "Sound" as defined herein may include any characteristic of sound, including, but not limited to, duration, pitch, frequency, intensity and loudness.

Sound level. The weighted sound pressure level obtained by the use of a Type 1 or Type 2 sound level meter and frequency weighting network such as A, B or C as specified in the current American National Standards Institute specifications for sound level meters (currently: ANSI S1.4-1983). If the frequency weighting to be employed is not indicated in any provision hereof, the A-weighting shall apply.

Sound level meter. An instrument which includes a microphone, amplifier, RMS detector, integrator or time averages, output meter and weighting network used to measure sound pressure levels.

Sound pressure. The instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space, as produced by sound energy.

Sound pressure level. Twenty (20) times the logarithm to the base 10 of the ratio of the RMS sound pressure to the reference pressure of twenty (20) micropascals (20×10^{-6} N/m^2). The sound pressure level is expressed in decibels.

(Ord. No. 94-22, § 1, 7-19-94)

Sec. 17-4-114. - Prohibited acts.

The following acts are declared to be nuisances hereunder and are hereby declared to be unlawful and in violation of the provisions hereof:

(1) The willful creation or causing of any excessively loud sound. The creation or causing of any excessively loud sound shall be deemed to be "willful" if upon notice to the emitter of any excessively loud sound, the emitter fails or refuses to cease the creation or causing of the excessively loud sound.

(2) The erection, including construction, excavation, demolition, alteration or repair work, or the permitting or causing thereof, of any building or other structure, or the operation or the permitting or causing the operation of any tools or equipment used in construction, excavation, drilling, demolition, alteration or repair work; or the performance of landscape maintenance and the operation of tools and equipment customarily used in connection with landscape maintenance:

a. Other than during the daytime; or

b. In such a manner as to create noise levels greater than 95 dBA at the property line of the property where such activity occurs.

c. This section shall not apply in cases of extreme and urgent necessity in the interest of public safety and convenience, and then only by permit obtained from, and issued by, town manager.

(3) The operation of any automobile, motorcycle, boat, vehicle, machine, machinery or equipment with a nonfunctioning or disabled muffler.

(4) a. On any property located within the following zones: RSF-3, RSF-5, RSF-6, RM-4, RM-8 and RM-12, as defined in title 16, specifically section 16-3-104, Residential Base Zoning Districts, the making of any noise during the daytime, wherein the sound level from any operation, use or occupancy exceeds the sound level limits specified in the octave band or the A-scale measurement indicated in the following table when measured from any other property under separate ownership.

Octave Band Center Frequency (Hertz)	63	125	250	500	1000	2000	4000	8000	A-Scale
Sound Level Limit (dB re: 0.0002 microbar)	76	66	59	54	50	47	44	42	60

b. The daytime sound level limits are to be reduced by five (5) dB during the nighttime.

c. The sound level limits set forth in subsections (4)a. and (4)b. above are to be reduced by five (5) dB in the case of impulsive sound.

(5) a. On any property located within the following zones: NC, PD-1, S, MF, WMU, CR, and RD, as defined in title 16, specifically section 16-3-105, Mixed-Use and Business Districts, the making or allowing or causing to be made of any noise, wherein the sound level from any operation, use or occupancy exceeds the sound level limits specified in the octave band indicated or the A-scale measurement indicated in the following table when measured from any other property under separate ownership.

Octave Band	63	125	250	500	1000	2000	4000	8000	A-Scale

Center Frequency (Hertz)									
Sound Level Limit (dB re: 0.0002 microbar)	81	71	66	61	57	54	52	49	67

b. The daytime sound level limits are to be reduced by five (5) dB during the nighttime.

c. The sound level limits set forth in subsections (5)a. and (5)b. above are to be reduced by five (5) dB in the case of impulsive sound.

(6) a. On any property located within the following zones: LC, MS, MED, MV, SPC, CC, IL, and PR, as defined in title 16, specifically [section] 16-3-105, Mixed-Use and Business Districts, and the Shelter Cove and Harbour Town multiple use areas (as defined on the maps which are found at the end of this chapter), the making or allowing or causing to be made of any noise, wherein the sound level from any operation, use or occupancy exceeds the sound level limits specified in the octave band or the A-scale measurement indicated in the following table when measured from any other property under separate ownership.

Octave Band Center Frequency (Hertz)	63	125	250	500	1000	2000	4000	8000	A-Scale
Sound Level Limit (dB re: 0.0002 microbar)	83	74	69	64	62	57	54	52	69

b. The daytime sound level limits are to be reduced by five (5) dB during the nighttime.

c. The sound level limits set forth in subsections (6)a. and (6)b. above are to be reduced by five (5) dB in the case of impulsive sound.

(Ord. No. 94-22, § 1, 7-19-94; Ord. No. 95-25, § 1, 11-8-95; Ord. No. 04-42, § 1, 12-21-04; Ord. No. 2009-08, § 1, 3-17-09; Ord. No. 2015-14, § 1(Exh. 1), 6-16-15)

Sec. 17-4-115. - Exceptions.

(a) The provisions of this chapter shall not apply to:

(1) The sounding of an alarm, or the utilization of a siren or other emission of sound for the purpose of alerting persons to the existence of an emergency or the approach of an emergency vehicle;

(2) Sound produced by an aircraft approaching, landing at, taking off from or utilizing the taxiways or runways of the Hilton Head Airport;

(3) Sound produced by a vehicle (not including sound produced by an emitter within any such vehicle) while the vehicle is moving on a public right-of-way or public waterway, or is otherwise being lawfully operated;

(4) Sound produced by a governmental body in the performance of a governmental function; or

(5) Sound produced by church bells or chimes, whether produced by the striking of a church bell or chime, or a recording thereof.

(6) Sound produced by persons and machinery engaged in landscape maintenance, cleanup or tree shaping or removal, during the daytime.

(7) Sound produced by persons and machinery engaged in the lawful and permitted construction, excavation, renovation or demolition of any structure, including the installation of utilities and paving, during the daytime.

(8) Sounds produced by parades or athletic events, and permitted fireworks.

(9) Sounds produced by maintenance or repair activity within boat yards, during the daytime.

(10) Sounds produced by the commercial sawing or grinding of tree trunks, branches or other organic matter into mulch during the daytime on Monday through Friday; and sounds produced by the noncommercial sawing or grinding of tree trunks, branches or other organic matter into mulch during the daytime on Monday through Saturday.

(11) Sounds produced by golf course or tennis maintenance or watering equipment.

(b) Applications for a semi-annual permit for relief from the noise restrictions designated in this chapter on the basis of undue hardship may be made to the town manager or his duly authorized representative. The relief requested may be granted upon a good and sufficient showing:

(1) That additional time is necessary for the applicant to alter or modify his activity or operation to comply with the provisions of this chapter;

(2) That the activity, operation or noise will be of temporary duration and cannot reasonably be done in a manner that would comply with this chapter; or

(3) That no reasonable alternative is available to the applicant.

(c) The permit application shall be responded to conclusively within five (5) business days from the receipt of the application. If granted, the permit shall be in writing and contain all conditions upon which such permit is granted, including, but not limited to, the effective dates, and any time of day, location, sound pressure level or equipment limitation. The town manager or his duly authorized representative may prescribe any reasonable conditions or requirements deemed necessary to minimize adverse effects upon the community or the surrounding area.

(Ord. No. 94-22, § 1, 7-19-94)

Sec. 17-4-116. - Method of noise measurement.

Whenever portions of this chapter prohibit sound over a certain decibel limit, either with reference to a specific decibel band or the A-Scale measurement the measurement of such sound shall be made as follows:

(1) Utilizing a Type 1 or Type 2 sound level meter or octave band analyzer meeting the current standards prescribed by the American National Standards Institute; and,

(2) The Type 1 or Type 2 sound level meter or octave band analyzer shall be maintained in proper calibration and good working order; and,

(3) Where applicable, octave band corrections may be employed in meeting the response specification; and,

(4) A calibration check shall be made of the Type 1 or Type 2 sound level meter or octave band analyzer immediately prior to the time of any sound measurement; and

(5) Measurement records shall be taken in compliance with the most current version of ASTM Standard E-1014-90, Standard Guide for Measurement of Outdoor A-Weighted Sound Levels, so as to provide a proper representation of the sound. During measurement the microphone shall be positioned so as not to create any unnatural enhancement or diminution of the measured sound. A windscreen for the microphone shall be used when required. Corrections for ambient noise shall be provided in ASTM Standard E-1014-90, Standard Guide for Measurement of Outdoor A-Weighted Sound Levels.

(Ord. No. 94-22, § 1, 7-19-94)

Sec. 17-4-117. - Administrative stop order.

(a) In addition to the penalties provided in section 17-4-118, infra., the town manager or his designee may issue an administrative stop order to any emitter, requiring the emitter to halt immediately any sound which exposes any person, except those excluded in subsection (b)(2) below, to sound levels in excess of those set forth in section 17-4-114(3), (4) or (5), supra. Upon the issuance of such administrative stop order, the town manager or his duly authorized representative may apply to the appropriate court for an injunction to replace the administrative stop order.

(b) No stop order shall be issued if the only persons exposed to sound levels in excess of those set forth in section 17-4-114(3), (4) and (5), supra., are exposed as a result of:

(1) Trespass; or

(2) Invitation upon private property by the person causing or permitting the sound.

(c) Prior to issuing any citation for a violation hereof, the code enforcement officer shall obtain a written complaint, signed by the individual making the complaint.

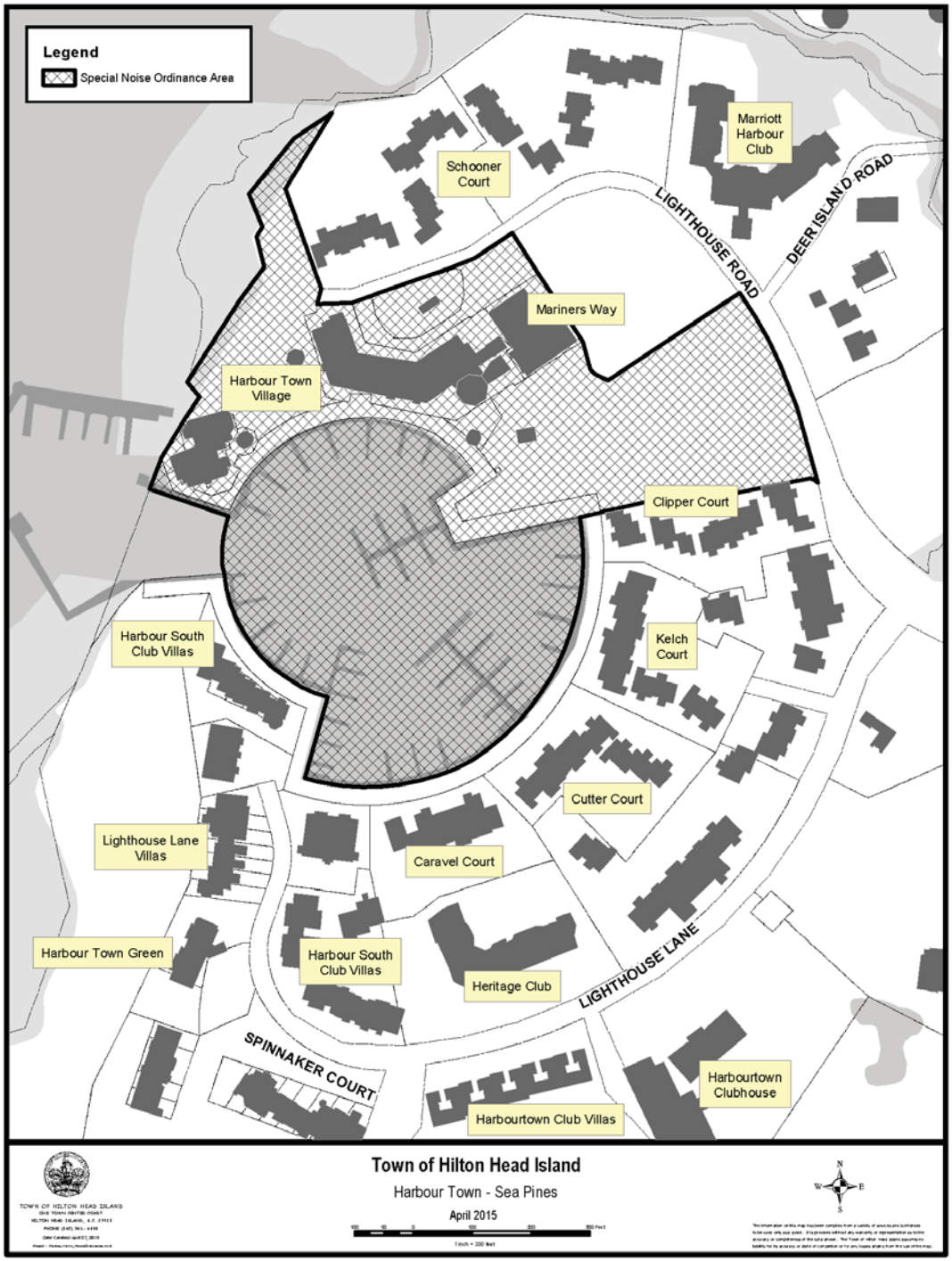
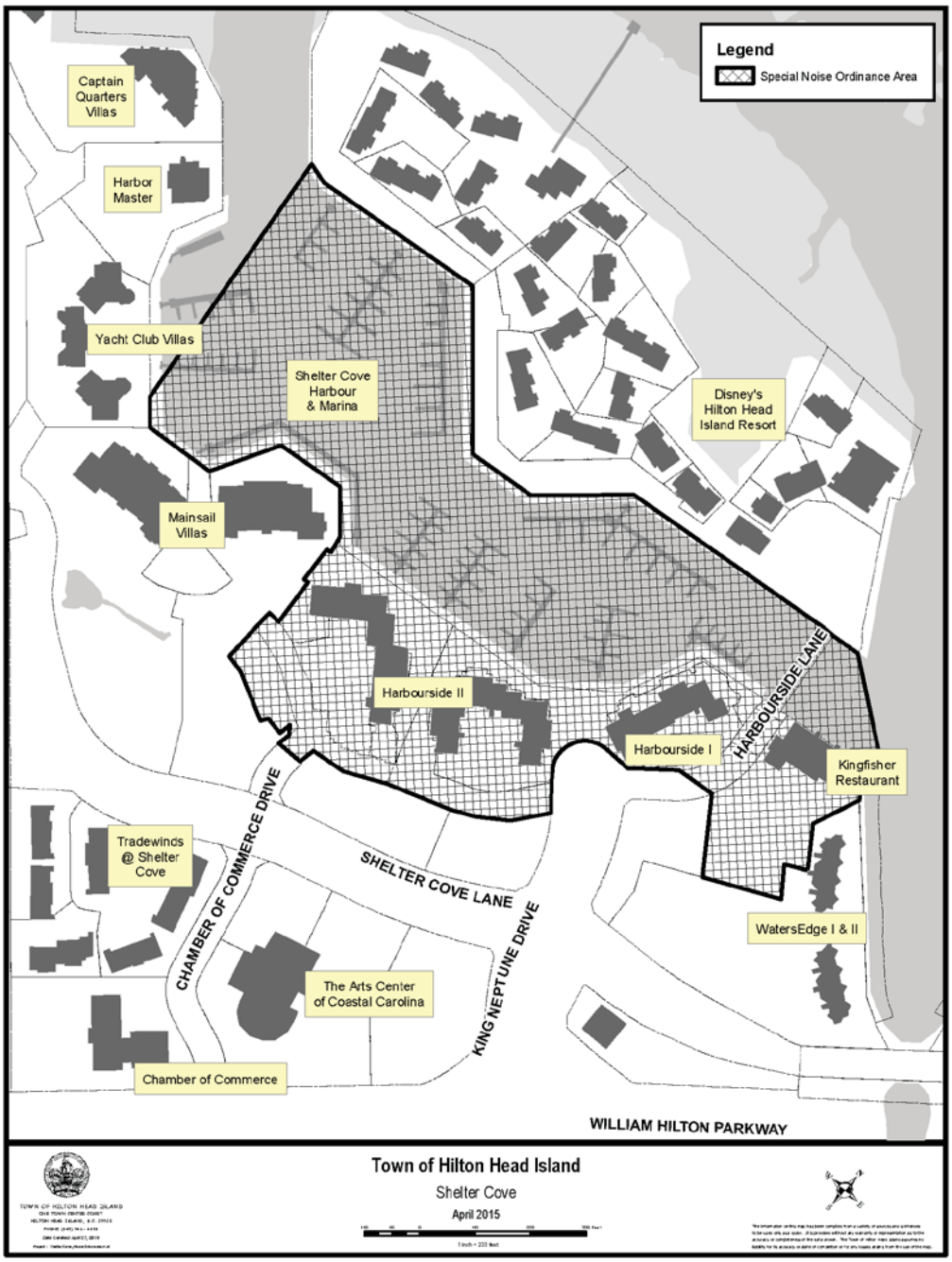
(Ord. No. 94-22, § 1, 7-19-94)

Sec. 17-4-118. - Penalty for violation.

Any person who violates any portion of this chapter shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be subject to the penalties set forth in section 1-5-10 of this Code.

(Ord. No. 94-22, § 1, 7-19-94)

Harbour Town - Sea Pines



Shelter Cove