



**TOWN OF HILTON HEAD ISLAND**  
**Board of Zoning Appeals**  
Special Meeting  
September 19, 2016 – 9:00a.m.  
Benjamin M. Racusin Council Chambers

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**Board Members Present:** Chairman Glenn Stanford, Vice Chairman Jerry Cutrer, David Fingerhut, John White, Lisa Laudermilch

**Board Members Absent:** Robert Johnson (excused), Steve Wilson (unexcused)

**Council Members Present:** Tom Lennox, Bill Harkins

**Town Staff Present:** Brian Hulbert, Staff Attorney  
Teri Lewis, LMO Official  
Howard Williamson, Code Enforcement Officer (*present for testimony only*)  
Nicole Dixon, Senior Planner & Board Coordinator  
Teresa Haley, Secretary

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**1. Call to Order**

Chairman Stanford called the meeting to order at 9:15a.m.

**2. Pledge of Allegiance to the Flag**

**3. Roll Call** – See as noted below.

**4. Freedom of Information Act Compliance**

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

**5. Welcome and Introduction to Board Procedures**

Chairman Stanford welcomed all in attendance and introduced the Board's procedures for conducting the business meeting.

**6. Approval of Agenda** – See as noted below.

**7. New Business**

**APL-001006-2016** – Request for Appeal from Chester C. Williams on behalf of Adam Congrove, owner of ArborNature, LLC. The appellant is appealing staff's determination, dated May 13, 2016, that the subject property located at 76 Leg O Mutton Road is not in conformance with the Town's Land Management Ordinance (LMO).

**8. Adjournment**

The meeting was adjourned at 2:05p.m.

**Please see the certified transcript of the above-referenced meeting attached hereto and made a part of the record hereof.**

Approved: November 28, 2016

\_\_\_\_\_  
Glenn Stanford, Chairman

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

INDIGO RUN COMMUNITY OWNERS ASSOCIATION, INC., A  
South Carolina Non-Profit Corporation,  
CHEW-FISHER CAPITAL BUSINESS PARK, LLC, A  
Nebraska Limited Liability Company,

Plaintiffs,

vs. CIVIL ACTION NUMBER  
2016-CP-07-1294

ADAM CONGROVE, DENNIS ROY CONGROVE, and  
ARBORNATURE, LLC, A South Carolina Limited  
Liability Company,  
Defendants.

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The hearing in front of the Hilton Head  
Island Board of Zoning Appeals, was taken  
pursuant to Notice and agreement, before Amanda  
Bowen, Stenographic Reporter and Notary Public,  
at Town Hall, One Town Center Court, Hilton Head  
Island, South Carolina, on the 19th day of  
September 2016, commencing at or about the hour  
of 9:15 a.m.

## 1 APPEARANCES of COUNSEL:

## 2 FOR THE DEFENDANTS:

3 THOMAS C. TAYLOR, ESQUIRE  
 4 Law Office of Thomas C. Taylor, L.L.C.  
 22 Bow Circle  
 Suite A  
 5 Post Office Box 5550  
 Hilton Head Island, South Carolina 29928  
 6 843.785.5050  
 tom@thomastaylorlaw.com

7  
 8 And

9 CHESTER C. WILLIAMS, ESQUIRE  
 Law Office of Chester C. Williams, L.L.C.  
 10 17 Executive Park Road  
 Suite 2  
 11 Post Office Box 6028 (29938  
 Hilton Head Island, South Carolina 29938  
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 14 - - -  
 15

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1           MR. STANFORD: We always begin our  
2 meetings with the pledge to our flag.

3           (Whereupon, Pledge of Allegiance  
4 was said.)

5           MR. STANFORD: Thank you. Be  
6 seated.

7           Teresa, will you call the roll,  
8 please?

9           MS. HALEY: Mr. Fingerhut?

10          MR. FINGERHUT: Present.

11          MS. HALEY: Mr. Stanford?

12          MR. STANFORD: Present.

13          MS. HALEY: Mr. Cutrer?

14          MR. CUTRER: Present.

15          MS. HALEY: Mr. White?

16          MR. WHITE: Here.

17          MS. HALEY: Ms. Laudermilch.

18          MS. LAUDERMILCH: Present.

19          MS. HALEY: Mr. Johnson is excused  
20 and Mr. Wilson is expected.

21          MR. STANFORD: I don't think Mr.  
22 Wilson is going to be here because if  
23 he isn't here for the entire meeting,  
24 he can't vote on the matter, so I spoke  
25 -- I had e-mail communications with

1 him. He may come as an observer and  
2 that would be all.

3 Are we in compliance with the  
4 Freedom of Information act.

5 MS. HALEY: Yes, sir.

6 MR. STANFORD: Thank you. We're  
7 here on an appeal. This is Case Number  
8 001006-2016. The appellant is Adam  
9 Congrove, agent for ArborNature, LLC,  
10 which is the owner of 2.47 acres known  
11 as 76 Leg'O Mutton Road. This is the  
12 appeal of the determination of the land  
13 management official of the Town of  
14 Hilton Head Island that use of the  
15 property is not in conformance with the  
16 LMO and the date of that determination  
17 was May 13, 2016.

18 Was the application for appeal  
19 filed within the required 14 days?

20 MR. TAYLOR: Yes, sir.

21 MR. STANFORD: Thank you. And was  
22 that filed along with the required  
23 application form?

24 MR. TAYLOR: It was.

25 MR. STANFORD: Thank you. And the

1 required filing fee.

2 MR. WILLIAMS: Yes, sir.

3 MR. STANFORD: I'm just trying to  
4 dot all our I's and cross all our T's.

5 MR. WILLIAMS: I understand, Mr.  
6 Chairman.

7 MR. STANFORD: Has public notice  
8 of the appeal been published as  
9 required by law?

10 MS. HALEY: Yes, sir.

11 MR. STANFORD: Thank you. This is  
12 the town board of zoning appeals which  
13 has jurisdiction to hear this appeal  
14 and we have the forum of the board.  
15 Conduct of this meeting or hearing as  
16 much as is my duty as chair introduce  
17 the procedures to be followed and the  
18 rules to be followed. Under the LMO,  
19 the town staff will present the LMO  
20 official's interpretation of the LMO as  
21 it applies to the subject property.  
22 The appellant or applicant, we use  
23 those terms interchangeably, will then  
24 have the opportunity to state why the  
25 decision is being appealed. We expect

1 to hear from some witnesses to be  
2 called by the appellant.

3 Now, I mentioned a few minutes ago  
4 that the parties have reached what's  
5 called "a stipulation of fact." That  
6 stipulation of fact will eliminate the  
7 need for testimony of a number of  
8 witnesses and will make this hearing  
9 make this hearing much more -- make it  
10 smoother and it probably won't last as  
11 long. There will be some live  
12 testimony I expect.

13 The appellant has requested  
14 sequestration of the witnesses. That  
15 legal gobbly-gook means the witness can  
16 not be in this chamber while other  
17 witnesses are testifying. They must be  
18 in a separate room. The idea is each  
19 witness's testimony should be their own  
20 testimony and not be influenced by  
21 testimony they heard from others.  
22 There is no implication of wrong doing  
23 in any of doing that, rather it is a  
24 standard procedure in trials and  
25 hearings of this type. The town can

1 call witnesses as well. Those witness  
2 will also be sequestered.

3 During the course of testimony,  
4 the town will have the right to  
5 cross-examination and the appellant  
6 will have the right to  
7 cross-examination. Additionally, there  
8 be questions from members of this  
9 board. Under the LMO procedures, there  
10 will be no public comment. In some of  
11 the matters that come before this  
12 board, there is an opportunity for  
13 public comment, so general citizens can  
14 come up and state their opinions. That  
15 does not apply in the case of an  
16 appeal, so there will be no public  
17 comment.

18 However, if you are a property  
19 owner within 350 feet of the property  
20 for which this decision or  
21 determination has been rendered and you  
22 are effected by the decision or the  
23 determination of the official, you are  
24 deemed an aggrieved person and you will  
25 be allowed to make a presentation to

1           the board. Essentially, what that says  
2           is if you own property within 350 feet  
3           of 76 Leg O Mutton, you will have the  
4           opportunity to make a presentation.  
5           That presentation will be limited and  
6           will be at the conclusion of all the  
7           evidence and the time limit on that is  
8           three minutes.

9           MR. WILLIAMS: Mr. Chairman, what  
10          section of the code are you citing when  
11          you refer to the 350 feet?

12          MR. STANFORD: It is part of the  
13          application procedures that are  
14          contained in your application.

15          MR. WILLIAMS: I don't believe  
16          there is anything in the code that  
17          allows for that.

18          MR. STANFORD: Mr. Williams, I  
19          can't give you a code citation. I'm  
20          reading from the application.

21          Brian, can you help us on that?

22          MR. HULBERT: I believe, if you're  
23          talking for a zoning amendment or  
24          something like that, they can get a  
25          chance. The appeal is with Mr.

1 Congrove and ArborNature and Ms. Lewis.

2 MR. STANFORD: So a property owner  
3 within 350 feet will not have a right  
4 to make a presentation?

5 MR. HULBERT: Unless one of these  
6 two parties calls them as a witness,  
7 they do not.

8 MR. STANFORD: Okay. I stand  
9 corrected on that. So there will be no  
10 public comment. At the conclusion of  
11 the testimony, presentations by the  
12 town and the appellant, the board will  
13 begin its step of deliberations. Those  
14 deliberations will occur on this podium  
15 and in public view. The board may have  
16 additional questions for the parties.  
17 Then after the board is undertaken its  
18 deliberations, as chair, I will ask for  
19 a motion. There are several different  
20 forms of motion. One will be to affirm  
21 the action of the LMO official. One  
22 will be to reverse the action of the  
23 LMO official or modify the action of  
24 the official. And the last will be to  
25 remand the action to the administrator

1 for further proceedings. That won't  
2 happen until the end of this hearing.

3 Any comments or questions on those  
4 rules and procedures?

5 MR. WHITE: I have a question, Mr.  
6 Chairman. My understanding is that  
7 both the attorneys for the appellant  
8 and the town will be calling witnesses  
9 and interviewing them and questioning.  
10 If a member of the board of zoning  
11 appeals has a question, could we ask it  
12 at that time of the witness or do we  
13 have to wait until the end of all  
14 testimony?

15 MR. STANFORD: You don't have to  
16 wait until the end of all testimony.  
17 If a question is appropriate during the  
18 course of testimony, you may ask your  
19 question. We will try to show  
20 appropriate courtesies whoever is  
21 posing the questions at that time.

22 MR. WHITE: Okay. Thank you very  
23 much.

24 MR. STANFORD: Thank you. Any  
25 other questions or clarifications?

1 Thank you.

2 May I have a motion to approve the  
3 agenda?

4 MR. FINGERHUT: So moved.

5 MR. STANFORD: For second?

6 MS. LAUDERMILCH: Second.

7 MR. STANFORD: All in favor?

8 THE BOARD: I.

9 MR. STANFORD: Thank you. And the  
10 agenda is approved.

11 So now we will begin the appeal  
12 proceedings on the request that has  
13 been filed on behalf of ArborNature,  
14 LLC. This relates to the staff's  
15 determination on May 13, 2016 that the  
16 subject property located at 76 Leg  
17 O'Mutton Road is not in conformance  
18 with town's land management ordinance.

19 The town will please proceed.

20 MR. HULBERT: I believe there is  
21 witnesses within the chambers that need  
22 to be sequestered.

23 MR. STANFORD: The witnesses that  
24 have been identified to me for the town  
25 are Rick Fisher, Wayne Johnson, Ben

1 Ham, and Mayor Bennett. So we need to  
2 -- since you are all potential  
3 witnesses in this, we ask that you  
4 have -- we have to ask that you leave  
5 the chamber at this time. There is a  
6 conference room over on the left where  
7 you can make yourself at home. Thank  
8 you.

9 Then on behalf of ArborNature,  
10 there will be Adam Congrove, but he is  
11 a party so he does not have to leave  
12 the chambers. And Ed Wrightson.

13 MR. HULBERT: I believe the  
14 parties after they are done testifying  
15 can stay in chambers if they wish.

16 MR. STANFORD: Correct. Correct.  
17 After a party has testified, that party  
18 can remain in the chambers. I also  
19 would like to welcome Mr. Lennox.  
20 We're glad to see you here. We hope  
21 you are feeling better and we are  
22 always happy to have members of counsel  
23 here for our hearings.

24 Teri?

25 MR. TAYLOR: Mr. Chairman, before

1 Ms. Lewis begins her presentation  
2 because and pardon me, board member,  
3 hopefully you-all know I'm Tom Taylor  
4 and this is Chet Williams and we  
5 represent ArborNature.

6 Mr. Chairman, before we start  
7 because we have worked hard over the  
8 weekend to enter into the agreed  
9 stipulation of facts and law. I would  
10 ask the board allow me to read that  
11 into the record, so that people who are  
12 here today can understand exactly what  
13 has already been stipulated. I think  
14 that will be very helpful.

15 MR. STANFORD: I think that's an  
16 excellent idea.

17 MR. TAYLOR: May I approach?

18 MR. STANFORD: Please.

19 MR. TAYLOR: And Madam Court  
20 Reporter, we'll give you a copy, so you  
21 don't need to take down everything.

22 Mr. Chairman, "On behalf of the  
23 appellant, ArborNature, LLC, and the  
24 Town of Hilton Head Island, in an  
25 effort to expedite the hearing on this

1 appeal and after having taken the  
2 depositions of Teri B. Lewis and Susan  
3 Simmons, the Town's Director of Finance  
4 on 15 September 2016 in that certain  
5 action styled Indigo Run Community  
6 Owners Association Inc., a South  
7 Carolina non-profit corporation and  
8 Chew-Fisher Capital Business Park, LLC,  
9 a Nebraska limited liability company v.  
10 Adam Congrove, Dennis Roy Congrove, and  
11 ArborNature, LLC, a South Carolina  
12 limited liability company, Civil Action  
13 No. 2016-CP-07-1294 in the Court of  
14 Common Pleas for the Fourteenth  
15 Judicial Circuit, Beaufort County,  
16 South Carolina, the undersigned agree  
17 that the decision of the Town's Board  
18 of Zoning Appeals in Application for  
19 Appeal APL-001006-2016 shall be  
20 rendered on the following Statement of  
21 Agreed Facts and Law, which shall serve  
22 as a substitute for sworn testimony and  
23 evidence of such facts, and as judicial  
24 notice of certain provisions of the  
25 Town's Land Management Ordinance and

1 the Town's Municipal Code, and (b) such  
2 other competent evidence that may be  
3 introduce at BZA's hearing on this  
4 appeal.

5 1. During all times pertinent to  
6 this appeal, Mrs. Lewis has been the  
7 Town's LMO official, and in that  
8 capacity she is the Town staff member  
9 who is authorized and empowered to  
10 administer and enforce the Town's Land  
11 Management Ordinance (the "LMO"), to  
12 make interpretations of the provisions  
13 of the LMO, and to make determinations  
14 under the LMO.

15 2. On 06 March 2007, the Town  
16 Council adopted Ordinance No. 2007-05  
17 which rezoned the ArborNature site at  
18 76 Leg O'Mutton Road (the "Property"),  
19 designated in that ordinance as "Tract  
20 A" from the RM-4 District to the PD-1  
21 Indigo Run PUD District, and provided  
22 for permitted uses and densities on the  
23 Property of (a) residential at up to 4  
24 dwelling unites per net acres, or (b)  
25 wholesale landscape nursery with a

1 landscape contractor's office and  
2 onsite storage at up to 6,000 square  
3 feet per net acre.

4 3. On 18 July 2009, Ms. Cyran,  
5 then a Town Staff Planner, approved  
6 Expedited Development Plan Review  
7 Application XDPR080018 for the use of  
8 the Property as a wholesale landscape  
9 nursery with a landscape contractor's  
10 office.

11 4. The site plan for the Property  
12 approved as part of Expedited  
13 Development Plan Review Application  
14 XDPR080018 (the "Site Plan") shows an  
15 area designated as "Plant, Log and Chip  
16 Storage Area."

17 5. At her deposition in the Indigo  
18 Run Lawsuit, Ms. Cyran testified under  
19 oath that the term "Chip Storage" as  
20 used on the Site Plan refers to wood  
21 chips.

22 6. On 05 January 2010, in response  
23 to a request from Adam Congrove, the  
24 owner of ArborNature, LLC, Ms. Cyran  
25 wrote a letter to Mr. Congrove (the

1 "01/05/2010 Letter") in which she  
2 stated, "Based on the allowed uses for  
3 Tract A, staff confirms that composting  
4 and wood grinding operations are in  
5 accordance with the Town of Hilton Head  
6 Island Land Management Ordinance (LMO).

7 7. Ms. Cyran was authorized by  
8 Mrs. Lewis to write the 01/05/10  
9 Letter.

10 8. Both Mrs. Lewis and Ms. Cyran  
11 testified under oath in their  
12 depositions in the Indigo Run Lawsuit  
13 that the 01/05/10 Letter was a decision  
14 or determination that was appealable to  
15 the BZA by anyone who did not agree  
16 with the determination set forth  
17 therein.

18 9. By the 01/05/10 Letter, the  
19 Town confirmed to Mr. Congrove that  
20 composting and wood grinding operations  
21 on the Property are permitted uses on  
22 the Property as part and parcel of the  
23 permitted principal use of the Property  
24 for a wholesale landscape nursery with  
25 a landscape contractor's office.

1           10. On 11 September 2013, Ms.  
2           Cyran sent Mr. Congrove an e-mail in  
3           which she again confirmed that  
4           "composting and wood grinding  
5           operations are permitted uses on Tract  
6           A." At her deposition in the Indigo  
7           Run Lawsuit, Ms. Cyran testified under  
8           oath that the letter referred to in  
9           that e-mail is the 01/05/10 Letter.

10           11. Since 2013, Mr. Congrove and  
11           the Appellant have been issued  
12           citations for, or have been issued  
13           occasions; however, both Mrs. Lewis and  
14           Ms. Cyran testified under oath in their  
15           depositions in the Indigo Run Lawsuit  
16           that in each such case, Mr. Congrove  
17           and the Appellant took appropriate  
18           corrective action to come back into  
19           conformance with the requirements of  
20           the LMO.

21           12. In her deposition in the  
22           Indigo Run Lawsuit, Mrs. Lewis  
23           testified under oath that the reference  
24           on the 2016 Business and Professional  
25           License No. 13657 issued by the Town to

1 the Appellant to certain uses on the  
2 Property as being "accessory uses",  
3 including "tree grinding, wood chip  
4 recycling and wood recycling" is  
5 incorrect, because those uses are not  
6 accessory uses, but rather are part and  
7 parcel of the permitted principal use  
8 of the Property for a wholesale  
9 landscape nursery with a landscape  
10 contractor's office.

11 13. Section 10-1-140 of the Town's  
12 Municipal Code requires the Town's  
13 business license inspector to deny an  
14 application for a business license  
15 "when the activity for which a license  
16 is sought is unlawful or constitutes a  
17 public nuisance."

18 14. In her deposition in the  
19 Indigo Run Lawsuit, Ms. Simmons, who is  
20 also the Town's business license  
21 inspector, testified under oath that  
22 the issuance of the Appellant's 2016  
23 Business and Professional License No.  
24 13657 means that she considered the  
25 Appellant's business operations as

1 specified in that license to be lawful,  
2 and that she not believe their business  
3 activities constitute a public  
4 nuisance.

5 15. In her deposition in the  
6 Indigo Run Lawsuit, Mrs. Lewis  
7 testified under oath that the grinding  
8 of trees and logs on the Property is a  
9 permitted use under the zoning  
10 applicable to the Property and the  
11 requirements of the LMO.

12 16. In her deposition in the  
13 Indigo Run Lawsuit, Mrs. Lewis  
14 testified under oath that the LMO  
15 contains no provision or requirement  
16 that prevents or prohibits the  
17 Appellant from accepting or receiving  
18 trees and logs from third parties for  
19 grinding on the Property.

20 17. In her deposition in the  
21 Indigo Run Lawsuit, Mrs. Lewis  
22 testified under oath that the LMO does  
23 not regulate or otherwise restrict the  
24 level of noise generated by permitted  
25 activities on the Property.

1           18. In her deposition in the  
2 Indigo Run Lawsuit, Mrs. Lewis  
3 testified under oath that the LMO does  
4 not include a definition of "wholesale  
5 landscape nursery."

6           19. In her deposition in the  
7 Indigo Run Lawsuit, Mrs. Lewis  
8 testified under oath that on several  
9 occasions, Town Code Enforcement  
10 officials have taken sound level  
11 readings in the vicinity of the  
12 Property, most recently on 10 and 12  
13 September 2016, neither of which ever  
14 demonstrated noise levels in excess of  
15 the permitted levels specified in the  
16 Town's noise ordinance, Title 17,  
17 Chapter 4 of the Town's Municipal Code.

18           20. LMO Section 16-2-103.R.6  
19 provides that "written interpretations  
20 shall be binding on subsequent  
21 decisions by the [LMO] Official in  
22 applying the same provisions of [the  
23 LMO] in the same circumstances."

24           Excess of the permitted levels  
25 specified in the Town's Mr. Chairman,

1           that was signed by Mr. Williams on  
2           behalf of the appellant and Teri Lewis  
3           on behalf on the Town of Hilton Head.  
4           It is a part of the formal record, and  
5           I would ask the chairman's instruction  
6           at this point in time to his fellow  
7           board members as to the fact that these  
8           stipulations must be accepted by the  
9           board as factual and as a proper  
10          interpretation of law pursuant to this  
11          appeal. Thank you.

12                    MS. LEWIS: May I ask that Mr.  
13           Taylor read into the record, the last  
14           paragraph that states the purpose of  
15           the appeal.

16                    MR. TAYLOR: Of course. And I  
17           apologize. I turned the page and  
18           simply didn't see a number on there.

19                    Mr. Chairman, the last paragraph,  
20           which is an important statement, "This  
21           stipulation of fact and law herein are  
22           agreed to by and between the Appellant,  
23           ArborNature, LLC, and the Town of  
24           Hilton Head Island for purposes of this  
25           appeal only, and are not intended to be

1 binding on any third parties or other  
2 actions."

3 I apologize. I did not add that.

4 MR. STANFORD: Thank you, Mr.  
5 Taylor.

6 For the benefit of the board,  
7 these facts that are stipulated are  
8 deemed proven. Further, the  
9 stipulations regarding the effect of  
10 the law as it applies to those facts as  
11 contained in this stipulation are  
12 binding upon us.

13 That being said, Teri, if you will  
14 proceed.

15 MS. LEWIS: Good morning. Teri  
16 Lewis for the record. This property  
17 was rezoned in 2007 to allow the the  
18 following uses on Tract A, residential  
19 up to 4 dwellings per net acre or  
20 wholesale landscape nursery with a  
21 landscape contractor's office and  
22 onsite storage at 6,000 square feet per  
23 net acre. Based on the square footage  
24 of that tract, ArborNature can have  
25 13,080 square feet of onsite storage

1 that does not get made any  
2 determination. What this means for the  
3 storage going up kind of cubic storage.

4 The tree grinding and composting  
5 are considered to be permitted uses on  
6 this site. There is no mention in the  
7 2010 approval letter of them be  
8 accessory. However, if you visit the  
9 site, it does appear that it be more  
10 appropriately classified as a tree  
11 service business. Staff opted to write  
12 a determination letter rather than a  
13 note of violation. Part of the reason  
14 for this is we already written and  
15 issued several violations to Mr.  
16 Congrove and while he had resolved the  
17 violations, he also stated to myself  
18 and others onsite that he planned to  
19 reduce the number of hours and days  
20 that he was grinding and that he was  
21 going to get the log pile more  
22 manageable and that hadn't happen.

23 The determination letter that I  
24 wrote does talk about principal uses  
25 versus accessory use, and staff has

1 nothing on file that states the  
2 grinding use has to be accessory.  
3 However, the uses -- it does list the  
4 uses for the property, none of which  
5 have definitions in the LMO. We have  
6 wholesale landscape nursery, landscape  
7 contractor's office and this  
8 association of onsite storage. Without  
9 a definition of wholesale landscape  
10 nursery, we looked at definitions as  
11 landscape business and wholesale sales  
12 to try define a wholesale landscape  
13 nursery and that was done in the letter  
14 that was written to Mr. Congrove in  
15 October 2015.

16 MR. STANFORD: Excuse me, Teri.  
17 Are you saying that letter defines the  
18 meaning of wholesale landscape nursery?

19 MS. LEWIS: No, it doesn't. It  
20 just lists here is the definition for a  
21 landscape business and here's the  
22 definition for a wholesale business.  
23 There is no definition on the LMO for  
24 wholesale landscape nursery.

25 MR. STANFORD: Thank you.

1 MS. LEWIS: The LMO also doesn't  
2 define landscape contractor's office,  
3 but staff has made the conclusion that  
4 generally landscape contractor will  
5 deal with their own debris not those of  
6 other tree services and landscape  
7 companies, but the LMO does not put  
8 prohibition on accepting those from  
9 others. But a reasonable person could  
10 make the assumption that accepting  
11 waste from others goes beyond the staff  
12 anticipated when we said that grinding  
13 and chipping were allowed.

14 But again, I'm telling you  
15 something that is not in the LMO.  
16 There is nothing in the LMO of tree  
17 grinding or wood composting whether it  
18 would be accessory use to a landscape  
19 wholesale nursery or the landscape  
20 contractor's office. I'm not telling  
21 you that there is any kind of  
22 prohibition in the LMO about being able  
23 to accept goods from others. I'm  
24 telling you what I believe we  
25 anticipated when we said that it was

1           allowed. I know that neither Anne  
2           Cyran or myself believe that when Mr.  
3           Congrove asked to do the grinding, the  
4           wood chipping and the composting, that  
5           he was going to be doing it for  
6           anything other than his business.

7                     But again, there is nothing in the  
8           LMO for that. I do truly believe as in  
9           my May 2016 determination letter that  
10          the site is best classified as a  
11          waste-related services use. If one  
12          visited the site, one can see that the  
13          site is being used for grinding and  
14          chopping of trees at a pretty massive  
15          volume as you would see for a tree  
16          service business.

17                    The main complaints that the town  
18          has received related to this business  
19          being at this location is noise,  
20          appearance, odor, unsafe traffic  
21          conditions, and then that there are  
22          other businesses bringing logs and  
23          trees to the site. I do have witnesses  
24          that I would like to call to testify to  
25          some of what they observed because they

1 are adjacent to this site on a regular  
2 basis.

3 MR. HULBERT: Who is your first  
4 witness?

5 MS. LEWIS: I would like to call  
6 Rick Fisher.

7 MR. STANFORD: We have a question  
8 before you start your questioning while  
9 Brian goes and gets the witness.

10 MS. LEWIS: Okay.

11 MR. STANFORD: Oh, we can't do  
12 that because that witness is supposed  
13 to be excluded.

14 MR. WILLIAMS: Brian, keep Mr.  
15 Fisher outside.

16 MR. TAYLOR: I'll let him know  
17 that before they all come back in.

18 Brian, will you leave Mr. Fisher.  
19 The board has a question for you.

20 MR. HULBERT: For me?

21 MR. TAYLOR: Or for Teri, but we  
22 wanted you in here.

23 MR. STANFORD: We have a question  
24 or two for you, Ms. Lewis.

25 MS. LEWIS: Okay.

1 MR. STANFORD: Mr. Cutrer.

2 MR. CUTRER: Teri, you've  
3 testified that the LMO has no  
4 definition of a wholesale landscape  
5 nursery, the purpose of which this  
6 property was zoned for for which it has  
7 a business license. Do we have other  
8 businesses on Hilton Head Island that  
9 you would deem a wholesale landscape  
10 nursery.

11 MS. LEWIS: I'm sure that we do.

12 MR. CUTRER: Can you cite any of  
13 them or identify any of them?

14 MS. LEWIS: I can name two off the  
15 top of head, I would probably say  
16 Caroline's and Bruno's. But again, I'm  
17 sure there are more than those two that  
18 may not be wholesale landscape  
19 nurseries.

20 MR. CUTRER: Those that you  
21 identified, do they grind and chip?

22 MS. LEWIS: I don't know.

23 MR. CUTRER: In your determination  
24 letter of May 13, 2016, on the second  
25 page, you list three items which you

1 based your determination on and the  
2 first of items is that trucks from the  
3 site that are bringing trees to the  
4 site for grinding and all the grinding  
5 is not related to the trees that  
6 ArborNature is removing as part of  
7 their business. I like to ask you what  
8 is the basis that you made that -- you  
9 reached that conclusion.

10 MS. LEWIS: That is -- like I said  
11 in my initial presentation before,  
12 there is nothing in the LMO that  
13 prohibits that.

14 MR. CUTRER: That wasn't my  
15 question.

16 MS. LEWIS: Okay.

17 MR. CUTRER: Why did you state  
18 that trucks are bringing third-party  
19 materials to the site for grinding?

20 MS. LEWIS: Why did I state that  
21 they're bringing that?

22 MR. CUTRER: Yes.

23 MS. LEWIS: Based on information

24 --

25 MR. CUTRER: Did the town observe

1           that happening?

2                   MS. LEWIS: Not on a regular  
3 basis, no.

4                   MR. CUTRER: Okay. Thank you.

5                   MR. STANFORD: Mr. Fingerhut.

6                   MR. FINGERHUT: Ms. Lewis, what  
7 was the basis of your information that  
8 the grinding was done of the waste from  
9 other companies other than ArborNature.

10                   MS. LEWIS: From the people that  
11 worked in the adjacent area. Is that  
12 what you're asking?

13                   MR. FINGERHUT: Yes. And that was  
14 the only source.

15                   MS. LEWIS: Yes. Every once in a  
16 while, we may seen, you know, other  
17 trucks pulling in, but we are not out  
18 there on a regular basis. So the  
19 primary source was being told this and  
20 given pictures of it from property  
21 owners in the adjacent businesses.

22                   MR. FINGERHUT: Did the  
23 confidential LMO from the town also  
24 indicate that in terms of the revenues  
25 from third parties? Just curious.

1 MS. LEWIS: I don't believe it  
2 did. I didn't look at it for that  
3 specific. I was looking for more how  
4 much grinding that they do, not where  
5 that grinding was coming from.

6 MR. FINGERHUT: Referring to the  
7 October 27th, 2015, determination  
8 letter, was that ever appealed?

9 MS. LEWIS: It was not.

10 MR. FINGERHUT: Was there a follow  
11 up to the findings in that letter?

12 MS. LEWIS: What happened was I  
13 met with Adam and, I believe, maybe  
14 with Mr. Williams as well, and he chose  
15 Option 4, which was to come into  
16 compliance with the existing zoning.

17 MR. FINGERHUT: So it is May  
18 letter that is subject to appeal. Was  
19 that in follow up of this letter, or  
20 was that a separate determination?

21 MS. LEWIS: It was a separate  
22 determination.

23 MR. FINGERHUT: One other  
24 question. Was there ever a formal  
25 application for a written

1 interpretation pursuant to the LMO  
2 filed as to the use on this property?

3 MS. LEWIS: I don't believe there  
4 was.

5 MR. FINGERHUT: So the 2010 letter  
6 from Ms. Cyran that was sent confirming  
7 that grinding is permitted, that was, I  
8 mean, in essence she was stating her  
9 opinion, but was that a formal written  
10 interpretation pursuant to the LMO?

11 MS. LEWIS: It was and it was one  
12 that could be appealed. There wasn't  
13 an application that was filled out. As  
14 I stated in my deposition, we don't  
15 have an application for written  
16 interpretations. Generally, someone  
17 will e-mail us or write us a letter.  
18 We make sure it is in writing, but and  
19 ask us for a determination and we will  
20 provide.

21 MR. FINGERHUT: You consider that  
22 a formal written interpretation?

23 MS. LEWIS: Yes, but there is no  
24 application.

25 MR. FINGERHUT: Thank you.

1           MR. STANFORD: No other questions  
2 at this time. Thank you.

3           Brian.

4           MR. STANFORD: Would you identify  
5 yourself for the record, please?

6           MR. FISHER: Richard Fisher. I  
7 have been a resident of Port Royal for  
8 25 years. I'm also the owner --  
9 majority owner of 9 Capital Business  
10 Park office warehouse building that is  
11 immediately adjacent to 76 Leg  
12 O'Mutton.

13          MR. STANFORD: Thank you.

14          MR. TAYLOR: Mr. Chairman, can Mr.  
15 Fisher be sworn in, please?

16          MR. STANFORD: Certainly. Will  
17 you swear the witness, please?

18          MR. HULBERT: She doesn't have any  
19 authority. You do, sir.

20          MR. STANFORD: It's for me?

21          MR. HULBERT: It's for you, sir.

22          MR. STANFORD: All right. If you  
23 will raise your right hand, please.

24                        RICHARD FISHER,  
25 a witness herein, having been duly sworn,

1 testified upon his oath as follows:

2 THE WITNESS: Yes, I do.

3 MR. STANFORD: Thank you.

4 EXAMINATION

5 BY MS. LEWIS:

6 Q Mr. Fisher, you stated you are in the  
7 building immediately adjacent to the ArborNature  
8 site in Capital Business Park, correct?

9 A Yes.

10 Q What have you observed related to  
11 vehicles other than ArborNature trucks coming  
12 into the ArborNature site?

13 A I'm not witnessing them myself. My  
14 tenants have. I have not.

15 Q Okay. How often when you're at your  
16 place of business at Capital Business Park, how  
17 often would you say the grinder runs per day?

18 A Again, I'm not there, Teri. I'm the  
19 owner of the building. I'm the landlord, but  
20 Ben and Wayne would be best to talk about that.

21 Q Okay. What has this meant for your  
22 business in terms of being landlord of your  
23 office warehouse in Capital Business Park?

24 A Well, since January of '15, or  
25 somewhere thereabouts and again, it's not me; it

1 is my tenants, around that maybe a month or two  
2 my tenants have constantly complained.

3 MR. STANFORD: Is that microphone  
4 on, Mr. Taylor?

5 MR. TAYLOR: I would object to any  
6 hearsay testimony elicited, and I need  
7 some direction from Chair if I should  
8 continue to object or it's just going  
9 to be simply noted on the record. I  
10 don't want to interrupt the flow of  
11 questioning, but I object to that  
12 question. Clearly, he was about to  
13 provide hearsay testimony.

14 MR. STANFORD: That objection is  
15 noted. You should testify as to what  
16 you know and what you've observed, not  
17 what others have told you. What others  
18 have told you is hearsay.

19 THE WITNESS: Thank you. Fair  
20 enough.

21 Sometime after January '15, when  
22 the new grinder was purchased and the  
23 \$500,000 in the appeal mentioned that  
24 Arbor bought for this new change in  
25 business model that they did. I was

1 getting fierce complaints from my  
2 tenants that it was noisy. That it  
3 stunk.

4 MR. TAYLOR: Again, Your Honor,  
5 hearsay. Objection.

6 THE WITNESS: That's what I was  
7 told.

8 MR. STANFORD: Please proceed.

9 THE WITNESS: And there was  
10 problems with the piles being so high,  
11 people were scared of fire hazards.  
12 They were upset that all during the  
13 day, there "beep, beep, beep" of trucks  
14 backing up. Huge 18-wheelers coming in  
15 on the small little roads were safety  
16 problems.

17 MR. STANFORD: Did you observe  
18 these yourself, Mr. Fisher?

19 THE WITNESS: No, I did not.

20 MR. STANFORD: What we need to  
21 hear from you is what you had observed,  
22 what you have witnessed and not what  
23 has been said to you, but what you  
24 observed and what you know of the facts  
25 of this matter.

1           THE WITNESS: Well, I've been over  
2           there when they are grinding. It's all  
3           things my tenants said. It is noisy.  
4           It is dirty. There is an odor. The  
5           piles of chipped wood are so high they  
6           have to be fire hazards. I know they  
7           have been cited by the fire department  
8           for them. They have been cited by the  
9           South Carolina Health and Safety Board  
10          for. the --

11          MR. STANFORD: Facts that you  
12          know, Mr. Fisher.

13          THE WITNESS: I know that.

14          MR. STANFORD: Okay.

15          THE WITNESS: They have been cited  
16          by the town for overreaching back in  
17          2007, and they immediately responded  
18          with Chet Williams came had them change  
19          to another zoning more robust so they  
20          could expand their operation. You  
21          know, I've been over there. The noise,  
22          the ground shakes because they take  
23          these huge trees and they drop them  
24          into the grinder and the entire ground  
25          shakes all around. You couldn't

1 possibly have a business meeting in  
2 Wayne Johnson's unit. There is just no  
3 way. The more I call around and talk  
4 to people, this is a major problem.  
5 This is public -- in my opinion, it is  
6 a public nuisance. We finally filed a  
7 suit against them for a private  
8 nuisance because the town was not going  
9 to do that on the public nuisance.

10 MR. STANFORD: I think the  
11 question to you was how did these  
12 activities affect your business.

13 THE WITNESS: My tenants are  
14 telling me depending on the outcome of  
15 this session and if it's negative, they  
16 are leaving. I will lose \$6,000 a  
17 month.

18 MR. TAYLOR: Same objection.

19 MR. STANFORD: Noted.

20 THE WITNESS: I will lose \$6,000 a  
21 month. I will lose my building's value  
22 approximately a million dollars. My  
23 broker, Bill Bosley, who is in this  
24 room, told me --

25 MR. TAYLOR: Objection. That is

1 double hearsay.

2 MR. STANFORD: Only what you know.

3 This is difficult. I understand. I

4 know you're not used to testified.

5 THE WITNESS: I'm used to Tom.

6 MR. STANFORD: We are not trying  
7 to interrupt you, but unfortunately you  
8 need to testify to what you know, so  
9 you know how this has effected your  
10 business and that's what you're telling  
11 us about.

12 THE WITNESS: Yes. I'm saying  
13 that this is going to be in damage of  
14 at least a million dollars if they  
15 leave. Bill Bosley will not take a  
16 listing because he will not get it  
17 rented or sold. He will not --

18 MR. TAYLOR: Same objection.

19 MR. STANFORD: Noted.

20 THE WITNESS: So it is going to be  
21 vacant, and I will have damages.  
22 That's why I'm proceeding with the  
23 lawsuit.

24 MR. STANFORD: Have you been --  
25 okay.

1           Teri, do you have other questions  
2 for this witness?

3           MS. LEWIS: No. I was going to  
4 ask about the lawsuit, but Mr. Fisher  
5 has already addressed that.

6           MR. STANFORD: The stipulation of  
7 fact is not related to the lawsuit. It  
8 specifically relates only to this  
9 appeal. Just so we're clear that  
10 mentioning the lawsuit, there is  
11 nothing inappropriate, but the  
12 stipulation does not apply to this  
13 lawsuit.

14           Is there questions from Mr. Fisher  
15 from the board?

16           MR. HULBERT: Mr. Chairman, I  
17 think Mr. Taylor has a chance to ask  
18 questions.

19           MR. STANFORD: Sure. Please  
20 proceed, Mr. Taylor.

21           MR. TAYLOR: The board has no  
22 questions, sir? I was waiting for that  
23 before I stood up.

24           MR. STANFORD: I think they will  
25 reserve their questions until after

1           you're finished. Thank you.

2           THE WITNESS: Is that it?

3           MR. TAYLOR: No, sir.

4                               EXAMINATION

5       BY MR. TAYLOR:

6           Q     Mr. Fisher, just a few questions, I  
7       believe.

8                       First, the interest --

9           MR. STANFORD: You need to go to  
10       the mike.

11          MR. TAYLOR: Pardon me.

12       Absolutely.

13       BY MR. TAYLOR:

14          Q     Mr. Fisher, your interest in this  
15       matter stems from your financial investment in  
16       the capital building -- Capital Business Park  
17       building that you own adjacent to ArborNature,  
18       correct?

19          A     That is correct. In addition to my  
20       tenants being good friends of mine over the  
21       years and that would be damage that would be  
22       unrecoverable if they leave. They are like  
23       brothers to me over the years and that is  
24       another reason too.

25          Q     Mr. Fisher, again, your interest is

1 financial in nature, correct?

2 A Correct.

3 Q Now, I believe that you earlier  
4 testified that you really don't have anything to  
5 offer from a factual perspective as to anything  
6 about the grinding or the number of trucks that  
7 come in or the noise or the odors, correct?  
8 Your information is basically what other people  
9 have told you?

10 A No. I have seen that. I have seen  
11 what they are saying. On selected times and  
12 selected dates. I'm not a good witness to what  
13 is happening day to day.

14 Q What dates and times have you observed  
15 anything? Did you make any record of it?

16 A I made a video last Saturday. It was  
17 the Saturday of Labor Day when they were  
18 grinding and it was horrible, so I made a video  
19 on my property and it was just as bad as they  
20 are saying.

21 Q And from your perspective -- first, let  
22 me make sure I'm clear. You don't have any  
23 actual notes or indication of when you had these  
24 observations. You remember some of them?

25 A That's correct.

1           Q     As to the one that you made last  
2     Saturday, I believe, you just testified  
3     ArborNature was grinding on Saturday?

4           A     Right. Labor Day weekend.

5           Q     Okay. Did you -- what did you find to  
6     be most offensive about it? Was it the noise?

7           A     Yes, sir.

8           Q     Okay. Did you make any type of noise  
9     reading?

10          A     No.

11          Q     Did you talk to the town about making  
12     any type of noise reading?

13          A     No. I don't think noise is the primary  
14     issue. I think the primary issue is the entire  
15     nuisance factor.

16          Q     Are you aware of the fact that the town  
17     sent its code enforcement officers out on  
18     September 10th and 12th made noise studies and  
19     found ArborNature grinding to be within the  
20     town's code even if it was applicable?

21          A     I'm not aware of that.

22          Q     You've not been told that?

23          A     No.

24          Q     Mr. Fisher, your building that you rent  
25     out and that you are concerned that you are

1 going to lose money on is located in a light  
2 industrial zoning district, isn't it?

3 A That's right.

4 Q And other permitted uses in that light  
5 industrial zoning would be a towing company,  
6 correct?

7 A I couldn't tell you. Ask Teri.

8 Q How about an automobile repair place?

9 A I don't know. I'm not an ordinance  
10 expert.

11 Q Did you build the building or did you  
12 buy it?

13 A I built it.

14 Q Sir?

15 A I built it.

16 Q When you built it, did you examine what  
17 uses were allowed in the zoning district when  
18 you were going to construct it with the apparent  
19 belief that you would rent it out?

20 A Light industrial ordinance.

21 Q And what other uses were allowed in the  
22 vicinity that perhaps might impact your  
23 clientele?

24 A I couldn't tell you. I don't know.

25 Q You didn't bother to look at that point

1 in time that what could be done in a light  
2 industrial that might affect your clients?

3 A No, I did not.

4 Q Mr. Fisher, do you recall an e-mail  
5 that you wrote to Teri Lewis on September 4th,  
6 2015, in which you talked about your e-mail that  
7 you had sent to her?

8 A Yes.

9 Q Did you write Ms. Lewis on September 4,  
10 2015, and say please realize that some of my  
11 e-mails are intended to give my tenants of a  
12 relationship with them having to leave the  
13 building, which I assume, without them having to  
14 leave the building.

15 A Right.

16 Q Is that correct?

17 A Correct. I'm showing some support, so  
18 they don't leave. I'm pretty sure that is  
19 basic.

20 Q And then you wrote a bit of show and  
21 puts some periods --

22 A I think we all know --

23 Q -- what type of show were you intending  
24 to --

25 A I think to show support. I think

1 that's pretty obvious. If you write an e-mail  
2 that some of my e-mails are intended to give my  
3 tenants of a relationship without them having to  
4 leave the building, a bit of show.

5 Q Does that mean what you've testified  
6 to?

7 A What else would it mean? Do you think  
8 I fabricated ArborNature's --

9 Q It could mean that you were  
10 exaggerating or otherwise somehow embellishing  
11 what the problems were?

12 A I don't think that is correct.

13 Q That's not what you meant?

14 A It is to show support. I don't want to  
15 lose my tenants.

16 Q As we sit here today, you have not lost  
17 a single tenant and their monthly rent payments,  
18 have you?

19 A No.

20 Q And notwithstanding that you have  
21 hired an attorney to file a private lawsuit  
22 against ArborNature and Mr. Congrove to attempt  
23 to prove that you're being damaged, right?

24 A I expect I will be, and I think we've  
25 already been damaged in other ways.

1           Q     I understand that's certainly your  
2           thought process. You elected to go into court  
3           to sue ArborNature and make them respond to you  
4           of damages you can prove?

5           A     I lost faith in the town to come  
6           through based on several incidences where they  
7           did not take action.

8           Q     Mr. Fisher, you have -- I think it  
9           would be an understatement to say you have  
10          repeatedly contacted the town since early 2015  
11          about what you perceived to be problems with the  
12          ArborNature property, correct?

13          A     Yes, sir.

14          Q     And I believe, your e-mail that I just  
15          read said I am confident that you are taking  
16          this seriously. That's what you wrote to Ms.  
17          Lewis in September of 2015?

18          A     That is correct. I think Teri has done  
19          a good job.

20                 MR. TAYLOR: Mr. Chairman, just  
21          one second.

22                 Nothing else for Mr. Fisher.

23                 MR. STANFORD: Questions from the  
24          board?

25                 Mr. Fingerhut.

## 1 EXAMINATION FROM THE BOARD

2 BY MR. FINGERHUT:

3 Q Mr. Fisher, have you ever been to the  
4 ArborNature site?

5 A Yes.

6 Q What does it appear to be to you?

7 A It appears something you would see in  
8 Seattle an industrial logging operation. I  
9 don't see anything of a nursery. At one time it  
10 was. Since January 2015, it looks like a  
11 commercial logging operation and piles of  
12 chipped wood. It's just huge. And huge front  
13 loaders and shredders and 18-wheelers. It's  
14 like no nursery I've ever seen.

15 Q Thank you.

16 MR. STANFORD: Mr. Cutrer.

17 BY MR. CUTRER:

18 Q Mr. Fisher, when did you build or buy  
19 the property?

20 A I think it was 12 years.

21 UNIDENTIFIED SPEAKER: 2004.

22 BY MR. CUTRER:

23 Q 2004?

24 A My boss made it clear to me.

25 Q Well, THE property was rezoned in 2006.

1       Actually, the process started in 2006 and wasn't  
2       completed until 2007. So at the time you bought  
3       the property, if I'm reading the record right,  
4       it was zoned RN-4, low density, which was a  
5       slightly different use than it is to date.

6                In your testimony you made reference to  
7       when things changed in early 2015?

8                A     Mm-hmm.

9                Q     Can you explain or elaborate on that a  
10       little bit more. What do you see as the  
11       situation before early 2015 and after 2015?

12               A     In somewhere around 2007, I was sent  
13       something from the town lawyer wanting my  
14       approval for them to go to a wholesale nursery,  
15       and I agreed to it. I didn't think there was  
16       any problem with a wholesale nursery. I was one  
17       that brought them there. They were home  
18       residents or something like that, and I thought  
19       a home nursery, wholesale landscape nursery  
20       would be fine.

21                And in 2015, they completely changed,  
22       in my opinion, their business model without  
23       permission and it came -- went away from the  
24       nursery to an entirely tree cutting and waste  
25       management facility for the trees they cut and

1       also for trees they buy from other suppliers.  
2       And suddenly it turns into a massive logging  
3       operation with chipping of unbelievable levels.  
4       The size of the chipper, you can only imagine,  
5       the noise it makes; the thumps it makes. No one  
6       around there can stand it. It is just too much.

7               And it's not an occasional grinding up  
8       of some things that can't be grind out on the  
9       field, which is most grinding actually out in  
10      the field, they put it in the back. This is a  
11      major industrial logging operation of great  
12      magnitude with huge equipment that you've never  
13      seen on Hilton Head in my opinion. I have been  
14      here 25 years. I've never seen anything like  
15      this.

16             Q       One other question. What is your  
17      observation of the hours of operation? Is this  
18      9:00 to 5:00, Monday through Friday operation or  
19      goes beyond that?

20             A       As far as I can tell, seven days a  
21      week. We have video of Saturdays. We have  
22      videos of Sundays. I was told by some of the  
23      Indigo residents that the 18-wheelers start  
24      backing up and beep-beeping as early 6:00 in the  
25      morning. I think they will go to 10:00 at night

1 at least that's what I'm told.

2 Q You can't tell us what you've been  
3 told.

4 A All right. Since I'm not there, I  
5 really couldn't tell you accurately.

6 Q But it is your observation it goes  
7 beyond 9:00 to 5:00, five days a week?

8 A Yes, sir.

9 Q Thank you.

10 MR. STANFORD: Other questions?

11 BY MR. WHITE:

12 Q Mr. Fisher, when you were -- let  
13 permission for the wholesale nursery, what was  
14 your impression of a wholesale nursery was?

15 A People that sell plants and peat moss  
16 and things like that, and I think at one time  
17 the town cited them for not having that, and I'm  
18 told charged a \$250 fine and made them put in  
19 bins, and all of a sudden it is nursery. Put  
20 some plants in bins. They were in the previous  
21 years that I was there very quiet and they were  
22 a nursery. They were doing those types of  
23 things. They always, I think, cut trees, but  
24 I'm not aware they brought huge trees back and  
25 ground them at that time.



1 viewing over the fence probably a dozen times,  
2 but most of my testimony is what I'm told. I  
3 made that clear.

4 Q Since January 1st, 2015, how many times  
5 have you actually made an observation for the  
6 purposes of trying to determine facts? By those  
7 facts, I'm talking what was available for  
8 purchase in the landscape nursery at that point  
9 in time or the size of the logs.

10 A I haven't seen any of that. I'm told  
11 all this information, except for a dozen times  
12 I've been there when they've been grinding and  
13 hear this on my own. I haven't been set out  
14 there and listen except one or two times except  
15 with my tenants who call me out and want me to  
16 witness this personally. I've said all along  
17 I'm not an expert of what they're doing because  
18 I'm not physically there. Up until six months  
19 ago, I lived in Scottsdale, Arizona. I wasn't  
20 there. I'm just getting e-mails and telephone  
21 calls from my tenants that they are not going to  
22 pay.

23 Q But you have offered testimony about  
24 your knowledge of Seattle giant logging  
25 operations. You're asking this board to believe

1       that what's going down at ArborNature, but the  
2       truth you don't really know personally much of  
3       anything about the facts that are going on at  
4       ArborNature with the hours of grinding or that  
5       type of thing.  You're testifying all based upon  
6       the complaints made by your tenants?

7           A       Not all.  I've been clear of what I'm  
8       testifying about, Tom.

9           MR. STANFORD:  Mr. Fisher, would  
10       you be clarify what you have actually  
11       observed whether it is recording video  
12       or standing looking over the -- your  
13       fence at the operations at ArborNature.  
14       Would you clarify what you have  
15       actually seen?

16          MR. FISHER:  I have actually seen  
17       18-wheelers bring in huge trues.  I  
18       have actually seen the front end  
19       loaders loading the tiles.  I've  
20       actually seen -- I don't know what you  
21       call it -- the big scope thing that  
22       picks up the trees and put it in this  
23       huge industrial shredder.  I've seen  
24       the chip product on a huge conveyor  
25       belt and these enormous piles of chip

1 product. I have seen trucks being  
2 loading, and I have seen trucks go out  
3 with finished product. And that's  
4 about all I've seen. I've seen it  
5 maybe a dozen times. I'm not an expert  
6 of what they do. The other witnesses  
7 will have a much better account than I  
8 do.

9 MR. STANFORD: Thank you. Other  
10 questions for Mr. Fisher?

11 Mr. Fisher, I think that concludes  
12 your testimony. You may remain in this  
13 room if you like to hear the rest of  
14 the testimony as we proceed further.  
15 Thank you.

16 MR. FISHER: Okay. Thank you.

17 MR. STANFORD: Next witness,  
18 please, Ms. Lewis.

19 MS. LEWIS: I would like to call  
20 Wayne Johnson. He indicated he may  
21 only be here until 10:00.

22 MR. STANFORD: We're going out to  
23 see if he is there.

24 Good morning. State your name,  
25 please.

1 MR. JOHNSON: Wayne Johnson.

2 MR. STANFORD: I'm going to swear  
3 you in. Would you raise your right  
4 hand?

5 WAYNE JOHNSON,  
6 a witness herein, having been duly sworn,  
7 testified upon his oath as follows:

8 THE WITNESS: I do.

9 MR. STANFORD: Thank you.

10 EXAMINATION

11 BY MS. LEWIS:

12 Q I want to ask you first of what you  
13 have seen -- what you have personally observed  
14 related to trips that trucks other than  
15 ArborNature trucks are making to the ArborNature  
16 site?

17 A Specifically related to the trucks, I  
18 have seen large --

19 MR. STANFORD: Excuse me. Could  
20 you identify him and what is his  
21 connection with this property is?

22 MS. LEWIS: Yes absolutely. Mr.  
23 Johnson is a tenant in Rick Fisher's  
24 building at Capital Business Park.

25 MR. STANFORD: Thank you.

1           MS. LEWIS: And I'll let him tell  
2           you -- I was going to ask him questions  
3           about his business. Can I say what his  
4           business is?

5           THE WITNESS: I've seen large  
6           logging trucks blocking as they  
7           negotiated a sharp curve around the  
8           corner there. I've seen the large  
9           trucks full of wood chips leaving the  
10          site and navigating that turn over  
11          there. In the morning I have to wait  
12          with traffic on Leg O'Mutton while  
13          these trucks negotiate in and out of  
14          the road. I've seen tropical waste  
15          garbage in and out, very large garbage  
16          trucks, and one of the most disturbing  
17          was the size of the fuel trucks that  
18          come in there. I guess this chipper  
19          can't go into the gas station, fuel  
20          trucks are coming in there, large fuel  
21          trucks that I haven't seen before this  
22          operation really started. So logging  
23          trucks, fuel trucks, wood chip trucks  
24          and large trash trucks.

25         BY MR. LEWIS:

1 Q So all of these are not ArborNature  
2 trucks?

3 A That's correct. The ArborNature trucks  
4 are also in and out, but those are the normal  
5 tree and limb trucks that we see around the  
6 island.

7 Q Okay. In your observation when you're  
8 at your place of business, how often do you feel  
9 that grinder runs?

10 A If feels like every, single day. I  
11 know that is an overstatement, but it is all the  
12 time.

13 Q Would it be every single day for some  
14 portion of the day?

15 A Yes.

16 Q Have you ever been there on the  
17 weekends?

18 A I have been, yes.

19 Q Does it run on the weekend?

20 A I have heard it on the weekends, yes.

21 Q Now, what does this mean for your  
22 business? And as a part of that, I'd like to  
23 tell the BZA what your business is.

24 A We do a lot of video production. We're  
25 at a business meeting when they are grinding, we

1 put large mattresses to block the windows.  
2 We've tried sound barriers, buffers, whatever we  
3 can do to mitigate the noise, but when we're  
4 filming -- we do a lot of filming in our studio  
5 at that location. We have to shut is down. We  
6 have to reschedule. We stop. It interrupts our  
7 business in the video production realm. Our  
8 conference room and my office particularly have  
9 windows that open and look out to the  
10 ArborNature site. And when the grinding is  
11 going on, I can't speak on the phone.

12 We've interrupted meetings and we've  
13 had to reschedule meetings in our conference  
14 room because the noise is so great. The windows  
15 rattle. There is vibration in the ground. And  
16 that really is what precipitated all this when I  
17 had very important, high-level meeting in my  
18 conference and we had to break it up because of  
19 the noise. That's when I started getting  
20 involved in this process. Because it became  
21 very disruptive to our business.

22 I can't -- we enjoyed the windows being  
23 opened. We enjoyed some of those things. They  
24 are some nice to have things, but we can no  
25 longer enjoy those for the past two years.

1       Opening the windows when this is going on, it's  
2       very unsettling. The grinding goes on eight  
3       hours a day. My frustration in the beginning to  
4       yourself and others was people come for 10  
5       minutes say, "Oh, my gosh. That's awful. That  
6       noise is terrible."

7                 Sit here from 8:00 in the morning or  
8       7:15 or 7:30, whenever they start until 6:00 at  
9       night and then do it for two years. It is a  
10      very grading noise, and then I recently took  
11      pictures. I think the thing we haven't  
12      mentioned is the sawdust that is being emitted  
13      in the air. It is all over our cars. The car  
14      washes I had to go through to get clean. We are  
15      parking our cars in the warehouse now and trying  
16      to do things to avoid the sawdust. It's on  
17      every level a disruption.

18                MR. LEWIS: Okay. Those are the  
19      all questions I have.

20                MR. STANFORD: Mr. Taylor.

21                               EXAMINATION

22      BY MR. TAYLOR:

23                Q     Mr. Johnson, good morning.

24                A     Good morning.

25                Q     Sir, how long have you been in your

1 office park?

2 A Four years.

3 Q Okay. Four years. And are you there  
4 on a daily basis?

5 A Yes.

6 Q Okay. And I wrote down a moment ago  
7 that you have testified under oath that the  
8 grinding goes on for eight hours a day for the  
9 last two years, seven days a week. Is that your  
10 sworn testimony?

11 A I don't believe I said seven days a  
12 week.

13 Q All right. Does the grinding go on  
14 eight hours a day, five days a week for the last  
15 two years?

16 A I cannot testify to the number of days.

17 Q How many days does the grinding go on,  
18 let's just say the last month, how many days has  
19 grinding occurred in the last month?

20 A In the last month, I would testify five  
21 days a week.

22 Q Five days week?

23 A Yes, sir.

24 Q And have you made any type of actual  
25 note or a record of this to show when you

1 started hearing it or when it stopped?

2 A No, sir.

3 Q How about the month before that? How  
4 often did the grinding occur?

5 A I can't recall that. I don't keep  
6 notes of that.

7 Q So you couldn't testify except for the  
8 last month of how much grinding was going on?

9 A I can testify to the disruption to our  
10 business. I can't testify to the number of  
11 specific days of that.

12 Q If Adam Congrove testified today that  
13 the grinding goes on for approximately 20 hours  
14 at maximum a week. Do you challenge that?

15 A Yes.

16 Q Okay. Have you articulated your  
17 complaints that you've testified to today to the  
18 Town of Hilton Head?

19 A Yes.

20 Q Have you found Ms. Lewis to be  
21 responsive to those complaints?

22 A Not in the beginning, but eventually,  
23 yes.

24 Q And ultimately she has advised you, I  
25 believe, that the production of noise from the

1 grinding is exempt from the Town of Hilton Head  
2 Island's noise ordinance, correct?

3 A Say the question again.

4 Q I think she has advised you over the  
5 course of the years that the noise emanating  
6 from the grinder at whatever level it may be,  
7 and we'll find that out today, is actually zoned  
8 under the town's noise ordinance because it is a  
9 landscape contracting office, correct?

10 A That is correct. This is not a noise  
11 issue.

12 Q It is not a noise issue?

13 A Right.

14 Q You talked earlier about --

15 A Excuse me.

16 Q I'm sorry.

17 A I said legally this is not a noise  
18 issue. The noise is what is disrupting my  
19 business.

20 Q Mr. Johnson, I'm confused. Will you  
21 tell me again what is and isn't an issue?

22 A The nature of the business on that  
23 property has changed dramatically and, I  
24 believe, that is what the issue. I'm not an  
25 expert in the land -- LMO, but that's the issue.

1 Q Will you tell me exactly what you know  
2 from your personal knowledge has changed?

3 A The nature of the business has changed  
4 dramatically. In early years we occupied the  
5 space, it was a lovely, quiet operation. There  
6 was no disruption of any kind. The logging  
7 trucks, the wood chip trucks, the fuel trucks,  
8 the very large pile of logs coming in and out of  
9 the site is very new. That has been the last  
10 two years.

11 Q Okay. Do you have waste trucks that  
12 come to your business?

13 A No, sir.

14 Q What do you do with your garbage?

15 A We take it to the dump.

16 Q Okay. Are there businesses located in  
17 the Capital Business Park that do have trash  
18 that is picked up?

19 A I'm not aware of any.

20 Q You are aware of another landscape  
21 company located in the vicinity of where you're  
22 at, right?

23 A Yes.

24 Q And there is large, patio pavers  
25 mulching which is just right down the street

1 from you, right?

2 A I'm not aware of that operation.

3 Q When you turn down Capital Business  
4 Park to come in off of Marshland Road, you don't  
5 see that giant mulch operation that is to your  
6 left called "The Courtyard?"

7 A No. I generally come on Leg O'Mutton.  
8 I live in Hilton Head Plantations and that is  
9 where I pick it up. I am aware there is some  
10 type of operation down the street.

11 Q Have you ever turned off of Marshland  
12 Road onto Capital Drive --

13 A Yes.

14 Q -- and observed The Courtyard operation  
15 there? It is a giant mulching and paving  
16 operation.

17 A The stone yard?

18 Q Yes.

19 A Yes. I'm familiar with the stone yard.  
20 I have never seen mulching on that site  
21 personally.

22 Q You've never -- I'm going to let this  
23 go, Mr. Chairman --

24 A I have.

25 Q -- you have never seen large loaders

1       that move the mulch from those massive bins in  
2       The Courtyard?

3             A       I've never observed those. I've seen  
4       the bins. I know what you're referring to.

5             MR. STANFORD: Asked and answered.

6       BY MR. TAYLOR:

7             Q       Yes, sir.

8             The fuel trucks that you articulated,  
9       do you contend that they are somehow violating a  
10       law or ordinance by entering into the  
11       ArborNature property?

12            A       No. They seem to be very dangerous to  
13       me on that blind curve where children are going  
14       to school that early in the morning, and traffic  
15       is blocked without cones, without police,  
16       without any kind of safety measures in place.  
17       Those trucks just block the road, and coming  
18       around the curve, I've had to really apply the  
19       brakes pretty aggressively to stop in time, so  
20       it is more of a risk -- danger factor seems to  
21       me.

22            MR. TAYLOR: Mr. Chairman, just  
23       one second, please?

24            MR. STANFORD: Certainly.

25            MR. TAYLOR: Mr. Chairman, nothing

1           else for Mr. Johnson. Thank you.

2           Mr. Johnson, thank you.

3           MR. STANFORD: Questions from the  
4           board?

5                           EXAMINATION FROM THE BOARD

6           BY MR. STANFORD:

7           Q     First of all, you've testified that  
8           there has been a change in the business  
9           operation in the last two years or so; is that  
10          correct?

11          A     Yes.

12          Q     Can you identify what the change was in  
13          the operation? Was there a change in equipment  
14          or a change in activity? What did you observe?

15          A     There was a new piece of equipment that  
16          arrived sometime in January 2015, maybe early  
17          spring that changed the noise level  
18          dramatically, and the piece of equipment rattled  
19          the windows and there was vibration in the  
20          ground that we never experienced before.

21          Q     Do you know what that equipment was?

22          A     It was a big chipper. It was a big  
23          logging chipper. Whole logs were going in.  
24          Wood chips were flying out. It really high  
25          thing. Filling 18-wheelers up with chips, and

1 I've never seen that on their site.

2 Q And that is the activity that is  
3 continued to the current time?

4 A That's correct. Yes, sir.

5 MR. STANFORD: Other questions  
6 from the board?

7 BY MR. WHITE:

8 Q Hello. Good morning.

9 A Good morning.

10 Q You've mentioned the fact that from  
11 prior to the 2015 and early 2015, you're saying  
12 and I'm not exactly sure how you phrased it, but  
13 the non-ArborNature trucks came pretty steady?

14 A Yes, that's right.

15 Q Can you give me some percentages? Is  
16 it 10 percent of the vehicles going in and out?  
17 50 percent?

18 A On Leg O'Mutton?

19 Q Yes.

20 A Yeah. I come in the morning. I go  
21 home at night. I have no idea. What I did  
22 notice was the dramatic change in the trucks.  
23 We moved in 2012, but really through 2014, it  
24 really was never noticeable. We would see in  
25 the yard, you know, the chippers that go behind

1 the tree trimming trucks were pretty regular,  
2 and then we understood that to be part of the  
3 business. And none of that activity took place  
4 on site. That was being done I would say more  
5 in the Publix parking lot, and they bring those  
6 trucks back.

7           When this new piece of equipment showed  
8 up, the logging trucks were the first thing I  
9 noticed and I started taking pictures of them  
10 because they shocked me, large full-sized trucks  
11 of logs you see going down 95 were navigating  
12 the Indigo Run Circle and Hilton Head Plantation  
13 -- that, you know, off 278 there and they were  
14 bumping the curb on that beautiful roundabout we  
15 had just put in. And I thought this can't be  
16 right or good. And I saw them go into  
17 ArborNature, and they were actually feeding that  
18 big machines that showed up. And they were  
19 filling large 18-wheelers, full-sized chip  
20 trucks from those logs, and the chip trucks were  
21 navigating to get out of there. So they have to  
22 zig-zag in and out, and they have to back those  
23 logging trucks, and that was the big difference  
24 I did see. I never saw anything like this prior  
25 to 2015.

1 Q And you actually witnessed the size of  
2 the chipper?

3 A Yes.

4 Q Can you give he some of the dimensions?

5 A It is probably from end to end of your  
6 bench right there, about that size and probably  
7 as wide. I mean, it is enough to take the logs,  
8 you see in the pictures, they are big, round.  
9 There are full-sized logs going in that thing,  
10 and there is a ramp to go above those  
11 18-wheelers and takes the chips and dumps them  
12 into the 18-wheelers. It is a really large  
13 piece of equipment.

14 Q Thank you.

15 MR. STANFORD: Mr. Fingerhut.

16 BY MR. FINGERHUT:

17 Q Have you ever visited the ArborNature  
18 site, yourself?

19 A I have never entered on it, no.

20 Q Have you ever make an observation of  
21 what other chipping is going on there?

22 A I have not, no.

23 Q Thank you.

24 BY MR. CUTRER:

25 Q Mr. Johnson, you've testified early on

1 that you had observed, I think, a tropical waste  
2 trucks entering the site?

3 A Yeah.

4 Q And what was your observation of the  
5 purpose of those trucks coming onto the site?

6 A I believe they were taking wood chips  
7 out as well. I've never seen those trucks.  
8 They are really big. And I generalize, I don't  
9 know exactly what they were doing there.

10 Q Did you observe them bringing material  
11 in to be chipped?

12 A It could be, but I haven't specifically  
13 observed that, no.

14 Q During the back and forth between you  
15 and? Mr. Taylor, it became obvious that there's  
16 another operation within Capital Business Park  
17 in the area that does some grinding and deals  
18 with stones. Has that operation been a problem  
19 for you?

20 A No, sir.

21 Q Okay. We've also heard that town's  
22 ordinances don't apparently limit or address  
23 sound, but later on we are going to hear some  
24 testimony, I believe, that the operation here  
25 produces a sound level that is equal to a

1 household appliance -- is that your  
2 observation?

3 A No, sir.

4 Q What is your observation?

5 A My observation is sitting in my  
6 conference room, the windows rattled, the ground  
7 shakes and the noise is so loud, I can't --

8 MR. TAYLOR: Object to that as  
9 being no foundation whatsoever to give  
10 that opinion testimony.

11 A That is my observation sitting in my  
12 conference room.

13 BY MR. CUTRER:

14 Q Well, I had a question of the nature of  
15 the business changing, but that has already been  
16 addressed?

17 MR. STANFORD: Any other questions  
18 for Mr. Johnson?

19 Mr. Johnson that concludes your  
20 testimony. You can remain in this room  
21 if you choose to do so and you're  
22 absolutely welcome.

23 Now, ladies and gentlemen, it's  
24 10:30. We are going to take about a 10  
25 -- we will reconvene at a quarter to

1 11.

2 Thank you.

3 (Whereupon, a short break was  
4 taken.)

5 MR. STANFORD: Ladies and  
6 gentlemen, it is a quarter to 11. We  
7 are going to reconvene. We are not  
8 sure how long this is going to last.  
9 There is some more witnesses and some  
10 other presentations in conjunction to  
11 this, and then finally as I stated in  
12 the beginning, the board will have its  
13 own deliberations, and never can tell  
14 how long we're going to talk, so we're  
15 not sure how long it is going to last.

16 Brian, do you have a comment?

17 If you will identify yourself.

18 MR. HAM: I'm Ben Ham.

19 MR. STANFORD: It is my  
20 responsibility to swear you in because  
21 you're given sworn testimony in this  
22 proceeding.

23 Please raise your right hand.

24 MR. HAMM: All right.

25 BEN HAM,

1 a witness herein, having been duly sworn,  
2 testified upon his oath as follows:

3 THE WITNESS: I do.

4 MR. STANFORD: Thank you.

5 EXAMINATION

6 BY MS. LEWIS:

7 Q Mr. Ham is also a tenant in Mr.  
8 Fisher's building.

9 I want to ask you first what have you  
10 personally observed related to trip -- trucks or  
11 other kind of equipment pulling into the  
12 ArborNature site other than ArborNature trucks?

13 A I have seen quite a few trucks other  
14 than ArborNature trucks. I witnessed --

15 MR. STANFORD: Excuse me, Mr. Ham.  
16 If you would speak into the microphone.

17 THE WITNESS: Can you hear me now?

18 MR. STANFORD: And it is also  
19 recorded.

20 THE WITNESS: Fantastic.

21 As I stated I've seen numerous  
22 trucks in and off the property. I have  
23 seen logging trucks coming and, I  
24 believe, it is LCR on the side of the  
25 truck. I've seen that on numerous

1 occasions bringing in large portions of  
2 trees that are being unloaded. I  
3 witnessed multiple, large trucks  
4 leaving the property in the evening.  
5 I'm assuming wood chip. I have a  
6 business in Charleston, South Carolina  
7 as well, so I've been behind these  
8 trucks and watch these trucks out to  
9 278.

10 BY MS. LEWIS:

11 Q How often have you observed the grinder  
12 on the site running?

13 A Almost every day.

14 Q And are you there on the weekend or  
15 just Monday through Friday?

16 A I'm there on the weekends as well.

17 Q Does it run while you are there?

18 A I believe the weekend after the storm  
19 passed, if my memory serves me correct, would  
20 have been September 2nd. I was there cleaning  
21 up and the grinder was occurring that day, which  
22 is Saturday.

23 Q Okay. What does the -- what's going on  
24 at the ArborNature site, what does it mean for  
25 your business or how does it affect your

1 business, and with that tell the board what your  
2 business is?

3 A I'm a large format landscape  
4 photographer. My work is sold around the world.  
5 One of things that occurs is people always tell  
6 me that my work speaks to them. So they come,  
7 they spend a fair amount of time in the front,  
8 and we have some pieces in display. I produce  
9 my work there at 9 Capital Drive. The sound is  
10 so loud, there is no way we can speak to anyone  
11 now. They come when the grinding occurs, folks  
12 don't stay long, and leave, so it has quite an  
13 effect on our business.

14 Q Okay. I want to show you a photograph  
15 and ask if this prepared by you and taken by  
16 you?

17 A Yes, it was.

18 Q What does it represent?

19 A This is taken from Leg O'Mutton  
20 standing outside the property holding my phone  
21 up over the fence. The first one you can see is  
22 dated January 1, 2016. It is just a massive  
23 amount of logs that go into the back of the  
24 property. You see a large, I think, that is a  
25 moving-type equipment that is parked on top of

1       some sawdust. I have observed them scooping up  
2       that material and loading it into big trucks.

3               The picture on the right-hand side was  
4       taken Friday, September 16th, pretty much from  
5       the same spot. Again, logs piled up. There  
6       logs arrived and then are ground up and  
7       dispersed on a weekly or daily basis.

8           Q     Okay.

9               MR. STANFORD: Show us those  
10       photographs, please. Bring it up a  
11       little closer.

12   BY MS. LEWIS:

13           Q     Mr. Chairman, I also have a video that  
14       I'd like you to hear. And verify this was  
15       prepared, by Mr. Ham?

16           A     It was.

17               MR. TAYLOR: Mr. Chairman, before  
18       that plays, I like to be heard on it,  
19       please.

20               MR. STANFORD: Yes, certainly.

21               MR. TAYLOR: Mr. Chairman, I like  
22       to ask Mr. Ham a couple of foundation  
23       questions for the video because the  
24       proverbial cat is out of the bag by the  
25       time it is shown and played, and I

1 think it will only be fair to me to  
2 question him a couple questions about  
3 it. If it is the same video that has  
4 been played in court before, I will  
5 have an objection to it before it is  
6 shown. So may I ask a couple  
7 foundations questions?

8 MR. STANFORD: Please.

9 EXAMINATION

10 BY MR. TAYLOR:

11 Q Mr. Ham, you know who I am? I'm Tom  
12 Taylor.

13 A I do.

14 Q You had a video prepared when we had a  
15 temporary injunction hearing in Beaufort.

16 A Yes, sir.

17 Q Do you recall that?

18 A Yes, sir.

19 Q Is this the same video?

20 A No, sir, is it not.

21 Q Does the video contain editorial  
22 comments by virtue of having slides inputted  
23 into it with questions like how big? What is  
24 this?

25 A No, sir.

1 Q All right. Does it have music with it?

2 A No, sir.

3 Q What is on it?

4 A It shows the grinding. There is a date  
5 occurring, I believe, May 13th, which is a  
6 Friday. So it shows the grinder in operation,  
7 which was again taken outside of the property by  
8 holding my phone up. It shows pictures of these  
9 trucks that I was questioned about arriving on  
10 the property and unloading the material. It  
11 shows a truck leaving. The large-type trucks  
12 that the wood chips are placed inside of and it  
13 has, I believe, the pictures you see there as  
14 well.

15 MR. TAYLOR: Mr. Chairman, thank  
16 you. I don't have any objection to the  
17 video.

18 MR. STANFORD: Excellent.

19 You mentioned the date of May 13.

20 Was that May 13 of 2016?

21 MR. HAM: Yes, sir, it was.

22 MR. STANFORD: Please proceed,

23 Teri.

24 (Whereupon, a video was played.)

25 MR. STANFORD: Mr. Ham, it was a

1 Sunday date in there. Do you recall  
2 what that was? It slipped right by me.

3 MR. HAM: It would have been  
4 Sunday. I believe it was May 26.

5 MR. STANFORD: Of 2016.

6 MR. HAM: Of 2016, yes, sir.

7 MR. STANFORD: Thank you.

8 MR. HAM: It doesn't say in the  
9 video if you note there was a time date  
10 I believe 10:13 or 10:18, then I was  
11 back at the office again at 2:30 in the  
12 afternoon. I didn't have that, but at  
13 5:30 that same loading procedure was  
14 still occurring.

15 MR. STANFORD: Teri.

16 EXAMINATION

17 BY MS. LEWIS:

18 Q And I just want to verify that the  
19 video and the pictures were shown is part of  
20 that, those were observed by you; you took the  
21 video; all of that was personal observations,  
22 right?

23 A Personal observations, yes.

24 Q I don't have any other questions.

25 MR. STANFORD: Mr. Taylor.

1 MR. TAYLOR: Thank you, sir.

2 EXAMINATION

3 BY MR. TAYLOR:

4 Q Mr. Ham, how many days total were shown  
5 in the video from your photography?

6 A That's a hard thing to ascertain. I  
7 would say probably seven days, seven individual  
8 days.

9 Q Well, I thought they were dated?

10 A They were dated.

11 Q Well, I wasn't expecting that because I  
12 asked you if there was anything written on it,  
13 and you said no, but when it started playing  
14 there was.

15 So how many days does that represent?

16 A That probably represents seven  
17 different individual days.

18 Q Okay.

19 A There is a date of Friday the 13th,  
20 which is the video of the grinding that is  
21 occurring, and then there was a date of May 26,  
22 which is a Sunday, I believe, May 26. I was  
23 there. Heard the sound of logs being loaded, so  
24 I walked over and took the video of that, and  
25 later that afternoon, I took that video again,

1 and the other pictures are just pictures that  
2 have been random over the past year, all in 2016  
3 different times as I've passed the property and  
4 seen trucks there and seen loading occurring, so  
5 each one is an individual day.

6 Q But as to these other random days, you  
7 can't testify what days they were actually  
8 taken?

9 A Not the actual date.

10 Q Mr. Ham, it would be fair to say that  
11 you find the ArborNature work to be an irritant  
12 to you personally, correct?

13 A Absolutely.

14 Q And that is one of the reasons you have  
15 made it one of your job responsibilities to  
16 photograph and videotape this type of things,  
17 right?

18 A Absolutely.

19 Q And would you say to this board that  
20 the noise emanating on your video was a fair  
21 representation of what was there?

22 A The noise that actually occurs is  
23 actually louder.

24 Q Why would that be?

25 A It's an obnoxious sound. These large

1 logs are being dropped in this grinder.

2 Q You took this video, right?

3 A Yes, sir.

4 Q Have you in any way changed the audio  
5 settings on the video?

6 A Not at all.

7 Q It would be a fair representation of  
8 the noise being made the same as the video would  
9 be a fair representation of the --

10 A Being take off the phone, you can't  
11 determine the audio quality of the phone. I'm  
12 using my iPhone to record it.

13 Q They have a pretty good audio and  
14 video?

15 A Then I will allow you that point.

16 Q Basically, the point is that you took  
17 this to show the board and anyone that you can  
18 get to of the operations as you see them to be  
19 inappropriate?

20 A Absolutely.

21 Q And you have not changed the audio  
22 sound or anything like that? It is what it is?

23 A It is what it is.

24 Q Okay. Have you ever conducted or paid  
25 anybody to conduct an actual measurement of the

1 noise that is being made by the grinder?

2 A No, sir, I haven't.

3 Q Have you thought about it?

4 A No, sir, I haven't.

5 Q Any of the people who joined you on the  
6 private lawsuit against ArborNature, have you  
7 discussed perhaps hiring a professional engineer  
8 to run a sound engineering test to measure the  
9 noise?

10 A No, sir, I haven't. And I'm not a  
11 participant in the lawsuit. I'm a witness in  
12 the lawsuit.

13 Q Thank you. You're right.

14 Are you of the opinion as you come  
15 today to give this testimony, that any of the  
16 visual presentations that are shown on the video  
17 or the photographs are a violation of Hilton  
18 Head's Land Management Ordinance?

19 A I can only state my opinion. In my  
20 opinion, any person of reasonable sensibility  
21 would look at that operation and determine that  
22 is not a nursery -- wholesale nursery landscape  
23 operation. It's a site that processes logs on a  
24 very large scale in my opinion on a weekly,  
25 daily basis. This goes on all the time and

1 starts in the morning and continues all day  
2 long. That is the only thing I can go on. So  
3 I'm looking at the opinion of does this business  
4 fit in the nature of our surrounding areas.  
5 That's my only determination on it.

6 Q Mr. Ham, is it your sworn testimony  
7 that the grinding operation on ArborNature just  
8 put it down to good memory, past three months  
9 has been occurring Monday through Friday from  
10 early morning to late at night?

11 A I would say most of that time, yes,  
12 that is the case.

13 Q That is goes on all day long?

14 A Goes on all day long.

15 Q Do you have any personal knowledge  
16 whatsoever of the amount of business that the  
17 grinding operation composes as to ArborNature's  
18 over all landscape contracting business?

19 A Absolutely not.

20 Q When you testified earlier that you  
21 have seen "quite a few trucks" or I also had  
22 that you said numerous trucks. Have you made  
23 any actual count that you can put down on record  
24 the number of trucks you have observed?

25 A No, sir, I have not.

1 Q Just one second.

2 Mr. Ham, I believe you testified  
3 earlier that some of your observations were made  
4 on May 26; is that correct?

5 A That is correct.

6 Q And you testified that was a Sunday?

7 A Yes.

8 Q If I told you if you look at a calendar  
9 and May 26th is actually a Thursday, would that  
10 impact in any way the recollections that you  
11 have of that?

12 A If I got the date wrong, that may be  
13 the case. But that was a Sunday that that was  
14 occurring, that the loading was occurring.

15 Q And you just must have guessed wrong  
16 when you put it on the video?

17 A I must have.

18 Q Okay.

19 A That was absolutely a Sunday.

20 Q Nothing further.

21 MR. STANFORD: Thank you.

22 MR. TAYLOR: Thank you, Mr.

23 Chairman.

24 MR. STANFORD: Questions from the  
25 board?

## 1 EXAMINATION FROM THE BOARD

2 BY MR. WHITE:

3 Q Mr. Ham, how long have you been in the  
4 present location of business?

5 A A little over seven years.

6 Q Did you notice a difference at any  
7 point in time of the sound?

8 A Oh, absolutely. I've observed this  
9 business, the nature of this business change  
10 over the last couple years, and it was this year  
11 and, I believe, it would have been late winter,  
12 early spring, I observed this large grinder  
13 being delivered on the site. And at them time,  
14 the town was paving a bike path. I was stopped  
15 in traffic waiting for this to be unloaded. I  
16 assume that this was a piece of equipment in  
17 that paving operation because it is massive, and  
18 then it was within a day or so that suddenly  
19 that noise escalated to a huge level and the  
20 large portions of trees are being dropped into  
21 it. It is a jarring sound. It rattles the  
22 windows in the building, and that has been  
23 occurring ever since then on a nonstop basis in  
24 my opinion.

25 Q Thank you.

1 MR. STANFORD: Mr. Fingerhut.

2 BY MR. FINGERHUT:

3 Q Mr. Ham, with respect to the video, it  
4 did have a couple of date stamps. Were those  
5 date stamps at or the time you took the  
6 pictures?

7 A Yes.

8 Q Teri, can we see that again to see what  
9 date we're talking about.

10 Frankly, my recollection is different  
11 from yours as to the date. I just want to see  
12 it to clarify.

13 A Okay. I do remember the initial date  
14 of May 13th. That's a birthday of a family  
15 member, so I know that for a fact, which was a  
16 Friday.

17 MR. STANFORD: All right. The  
18 first date was a Friday.

19 MR. HAM: Sunday, May 15th.

20 MR. FINGERHUT: That was my  
21 question.

22 MR. HAM: Maybe I misspoke about  
23 the 26th.

24 MR. STANFORD: It's very common to  
25 get confused about dates. That is not

1 a problem.

2 Is there any other questions for

3 Mr. Ham?

4 BY MR. FINGERHUT:

5 Q Mr. Ham, have you had the opportunity  
6 to observe the business that is going on at the  
7 ArborNature site?

8 A Only from the street and the adjoining  
9 property.

10 Q So you have never entered the property?

11 A Never entered the property.

12 Q So from your vantage point, how would  
13 you characterize the business in your opinion?

14 A In my opinion, anybody with reasonable  
15 sensibility can see that the primary function of  
16 this process is to process these large trees.  
17 It is being ground. It is a massive pile.  
18 Bigger than this room, taller than this room.  
19 There are large piles of trees. Those trees  
20 continue to be brought in. I witness that all  
21 the time. I drive by this property every single  
22 day, sometimes multiple times.

23 It is my understanding this is a  
24 wholesale nursery business, and I hope I'm not  
25 misstating that, that grinds trees to an

1       auxiliary to their business. The primary  
2       function in my opinion of this business is the  
3       grinding of the trees and producing of these  
4       chips that are then being loaded and being taken  
5       off the island. I have observed that on more  
6       than one or two occasions.

7           Q       Thank you.

8                   MR. STANFORD: Mr. Cutrer.

9       BY MR. CUTRER:

10          Q       The video that you started off on May  
11       13, where were you standing when you took that?  
12       Leg O'Mutton?

13          A       The beginning of the video is behind  
14       the property. Behind our building is a large  
15       wooded area. The town may own that. I'm not  
16       sure. But, you know, that sound is so prevalent  
17       now, you have to understand, I'm on the opposite  
18       of 9 Capital from this operation, so I'm several  
19       buildings removed from where Wayne Johnson's  
20       building is. However, the sound is quite loud,  
21       so you know the minute it is occurring. So I  
22       walked into the woods. There is a fence line  
23       along there, and I think you would be able to  
24       see it slightly in the video. You can see the  
25       chain-linked that kind of the obscures the

1 corners of that, so I held my phone to the  
2 chain-linked of the fence and I walked in Leg  
3 O'Mutton, pulled over on Leg O'Mutton. The end  
4 of the property -- these two pictures are just  
5 walking around the corner from us. The exact  
6 same thing --

7 Q So the original clip that we saw, the  
8 May 13th, you took at the back of the Capital  
9 Business Park property?

10 A Correct.

11 Q Your office is on the other side of the  
12 building?

13 A It is.

14 Q And in your opinion, is the sound  
15 pretty much the same on the other side as there  
16 or --

17 A It's that sound. I can't tell that it  
18 changes much from one side of the building to  
19 the other.

20 Q You are a professional photographer?

21 A Yes, I am.

22 Q Do you have any training in the science  
23 of sound recording?

24 A Not at all.

25 Q We're going to hear some testimony

1 later that indicates that apparently based on  
2 scientific work that the decibel levels were  
3 lower than the average decibel given off a  
4 dishwasher or a clothes dryer in an individual  
5 home. My wife insisted on a dishwasher which is  
6 the quietest made, so I can't relate, but how do  
7 you personally react to that statement?

8 A I find that statement surprising. But  
9 again, that is a layman with no training.

10 Q That's what I asked for.

11 A Mm-hmm.

12 Q Do you have -- you testified that you  
13 noticed trucks bringing in logs with an LTR  
14 logo, and, in fact, we saw --

15 A I believe it is LCR.

16 Q Do you have any knowledge of what that  
17 company is?

18 A Yes. I did look that up on the  
19 internet. I think our first initial meeting  
20 here and again, I'm relying on memory of the  
21 situation. I don't have that in front of me,  
22 that information in front of me. But I believe,  
23 they are a site clearing operation and they also  
24 state that their business is maybe processing or  
25 acclimation of trees from a green perspective.

1 Q Okay.

2 A Site prep. It is very much like  
3 Cleland.

4 Q I believe you have testified you have  
5 been a tenant for four years?

6 A Seven years.

7 Q I'm sorry. During this period of time  
8 and specifically talking about early 2015, what  
9 is your observation of how things have changed  
10 in the ArborNature site before 2015 and after  
11 the early part --

12 A I have been a 24-year resident --  
13 full-time resident of Hilton Head. I remember  
14 quite some time ago driving down Leg O'Mutton  
15 and noticing a low country house tucked in the  
16 trees. There were obvious potted trees and  
17 plants outside of that structure, and I used to  
18 think to myself, wow, what a fantastic thing.  
19 He is living and working on the same piece of  
20 property. Now, all of that is now being taken  
21 up by -- the trees are cleared. You see in the  
22 pictures that were presented here this morning  
23 it is just stacks of trees, stacks of debris,  
24 stacks of this ground up material that is now on  
25 the site. This is nothing even close to

1       resembling what was there in the past.

2           Q       Thank you.

3           MR. STANFORD:  Further questions,  
4       Mr. Taylor?

5           MR. TAYLOR:  Just a couple, Mr.  
6       Chairman.

7                               EXAMINATION

8       BY MR. TAYLOR:

9           Q       Mr. Ham, when you moved into your  
10       office -- I'm not sure -- I thought you were a  
11       part of Mr. Fisher's building?

12          A       I am a part of Mr. Fisher's building.  
13       I'm 104, which is the end from ArborNature.

14          Q       Okay.  So there are several buildings  
15       owned by Mr. Fisher?

16          A       Yes.

17          Q       Okay.  Yet the video and photographs  
18       that you proffered today as evidence of your  
19       observation were all taken not from your office  
20       or even your doorway, but from the closest point  
21       you could get to ArborNature over their fence by  
22       holding it up, right?

23          A       That's correct.

24          Q       And you don't have anything to offer  
25       the board as they are sitting today wondering

1       what the noise level from your office is  
2       actually like?

3           A       Not in that evidence, not the  
4       photographic or video evidence.

5           Q       You testified earlier that you did some  
6       internet research on this thing called LTR.  Let  
7       me just dispose of that very quickly --

8                   MR. STANFORD:  Mr. Taylor, excuse  
9       me.  If everyone can turn off their  
10      phones.  It is terribly disruptive.

11      Excuse me.

12   BY MR. TAYLOR:

13          Q       You certainly don't believe everything  
14      you read on the internet, do you?

15          A       Of course not.

16          Q       And you wouldn't begin to offer actual  
17      testimony sworn that this LCR that you  
18      apparently looked up on the internet have  
19      anything to do with the truck you observed,  
20      would you?

21          A       The logo of that company is on the  
22      internet is the same logo that is on the side of  
23      the truck.  That is my only testimony.

24          Q       That is the extent of your knowledge?

25          A       That is extent of my knowledge.

1           Q     Or perhaps they sold it to someone else  
2     to use --

3           A     I have no idea.

4           Q     But the thought process is as you came  
5     here today is why you volunteered it that they  
6     were doing something that you believe is wrong,  
7     correct?

8           A     No. I think they are doing something  
9     that is outside of the scope of what they claim  
10    their business to be. We all think of the  
11    grinding of trees and we see these tree trucks  
12    and we saw it last week when the storms came  
13    through that pull these two-wheeled grinders  
14    behind them, and shove those limbs in there. It  
15    is quite obvious this operation is not grinding  
16    up trees that they're trimming on the site.  
17    That may be a portion of that. I have witnessed  
18    on multiple occasions those trees being  
19    unloaded. The picture is very much of an  
20    indicator of the scope of the material on the  
21    property. It is -- was massive. If it was  
22    being taken out of the neighborhoods in the area  
23    here on this island where tree are being  
24    trimmed, Hilton Head would have clear cut in  
25    large portions. That's again, my opinion.

1           That's the nature of my objection. I  
2       believe this business is not fitting into the  
3       location nor the true nature of this island.  
4       That is part of my objection. It is not part of  
5       my full-time task to promote this occurring,  
6       what is occurring here today to try to shut down  
7       Mr. Congrove. I have no problem with Mr.  
8       Congrove operating a landscape -- wholesale  
9       landscape business, a nursery on his location.  
10      I do believe that these trees are being brought  
11      in and being placed on this property. I've  
12      witnessed it. They are being ground up. I've  
13      witnessed them being ground and I've witnessed  
14      them being taken away. And I wipe the sawdust  
15      off the front of my car every day when I leave.

16                It is a big operation. So in my  
17      opinion what is determined to continue there  
18      will be a determination of whether I continue to  
19      operate my business in its current location and  
20      on Hilton Head.

21           Q     Mr. Ham, I would wager that as  
22      observant as you are, you are familiar with The  
23      Courtyard's business right down at the end of  
24      Capital road?

25           A     Sure.

1           Q     You're aware to the fact, they have  
2     front end loaders and are constantly moving  
3     mulch around from bin to bin?

4           A     Sure.

5           Q     And loading dump trucks?

6           A     Yes.

7           Q     Any idea of what the sum of that dust  
8     might be on the front of your car?

9           A     I would doubt that it comes to my car  
10    because it is so far away.

11          Q     How much farther is it from the  
12    ArborNature grinder to your car is it to The  
13    Courtyard site?

14          A     I would say at least three or four  
15    times farther away.

16          Q     And I just want to ask you a couple  
17    other questions. Did I hear you testify a  
18    minute ago that you think ArborNature is  
19    bringing trees actually from off island because  
20    the volume you see and that the island would  
21    have been clear-cut?

22          A     Yes, you heard that correctly.

23          Q     That is what your thought process is?

24          A     Absolutely. I observed those trucks  
25    coming on the island and followed --

1 Q Please tell me about that, and remember  
2 that you're under oath.

3 A I am under oath.

4 Q When did you do that and what kind of  
5 notes do you have about that day?

6 A I do not keep notes up from that.

7 Q When did you pick up the truck?

8 A This side of Lowe's. I travel to  
9 Charleston multiple times a week. And I'm quite  
10 often coming on the island.

11 Q All right.

12 A I cannot give you specific date.

13 Q What truck -- what identification was  
14 on this truck that brought it to your radar?

15 A It's a logging truck as you saw in the  
16 video.

17 Q Is it a logging truck like people see  
18 that have open beds and just posts with logs on  
19 it?

20 A That is correct.

21 Q So your testimony is that you followed  
22 the truck all the way from Lowe's on 278 into  
23 ArborNature?

24 A Not at Lowe's in the parking lot.  
25 Probably in that vicinity.

1 Q I understand.

2 A Yes, that is my testimony.

3 Q You stayed behind it the entire time  
4 assuming it was going to ArborNature and, in  
5 fact, it did?

6 A I didn't stay behind it to follow it to  
7 ArborNature. I stayed behind it as I was  
8 traveling to my business.

9 Q Did you take any videos or photos?

10 A I don't know if I did because  
11 generally, I don't touch my phone when I drive.

12 Q And your thought process of convincing  
13 this board of the problems with ArborNature, did  
14 you go back and review your devices to see what  
15 evidence you might have to prove --

16 A No, sir. I don't touch my phone when I  
17 drive.

18 Q Did this happen on more than one  
19 occasion that you followed a truck off island  
20 and on to the island and followed them all the  
21 way to ArborNature?

22 A I can only remember at least one time.

23 Q We had talked about the word  
24 "date-stamped" o your video, and I want to make  
25 sure there is understanding here. Those videos

1 are not date-stamped by an automatic recording;  
2 those were dated typed in there by you, right?

3 A The dates are typed in there by me, but  
4 the clips have a date stamp when they are  
5 created. The phone records it, tells you the  
6 location and the date and the time.

7 Q Yes, sir. But they are not on --

8 A Those are transcribed from that. That  
9 particular Sunday, which I have deemed the wrong  
10 date. It wasn't the 26th. That time was 10:13  
11 or whatever that is, that that came right off  
12 the phone.

13 Q And finally, Mr. Ham -- I locked myself  
14 into that one.

15 The trucks that you said you observed  
16 in which you followed them off island --

17 A Mm-hmm.

18 Q How many times have you done that?

19 A Several.

20 Q Several?

21 A I would say more than four, maybe more  
22 than five.

23 Q Where did they go to?

24 A I don't know where they went to. I  
25 went to Charleston. They were in the front of

1 me when I went to leave the island. It is not  
2 my business.

3 Q Evidence to the contrary, apparently,  
4 it is your business to follow trucks, correct?

5 A No, sir, it is not.

6 MR. STANFORD: Let's not be  
7 argumentative.

8 MR. TAYLOR: I apologize, Mr.  
9 Chairman.

10 BY MR. TAYLOR:

11 Q Let me ask your opinion on this:  
12 You're obviously a long time resident of Hilton  
13 Head, love this community very much?

14 A Very much.

15 Q You seen it grow and change over the  
16 years?

17 A I have.

18 Q Do you believe it would be a better  
19 idea to send all of the large logs that may be  
20 lost from trees on Hilton Head on a truck all  
21 the way off island to Ridgeland or somewhere  
22 else for a safety matter, or do you think it  
23 would be a better idea to grind them here,  
24 assuming the grinding is within the town's LMO?

25 A If the grinding was in the LMO, it is

1 not of my opinion to alter that one way or the  
2 other.

3 Q So you're satisfied if the grinding is  
4 authorized by the LMO, you're satisfied?

5 A That's what we're here to determine.

6 Q Nothing further, Mr. Chairman. Thank  
7 you.

8 MR. STANFORD: Anything further?  
9 Thank you. Mr. Ham, your testimony is  
10 concluded. You can join us here for  
11 the rest of this session.

12 MR. HAM: I would like to do that.

13 MR. STANFORD: Thank you very  
14 much.

15 MR. HAM: Thank you.

16 MR. STANFORD: Further witness for  
17 the town.

18 MS. LEWIS: No more witnesses.

19 MR. STANFORD: Any follow-up  
20 presentation or would you like to  
21 reserve that to the end.

22 MS. LEWIS: I'd like to reserve  
23 that to the end.

24 MR. STANFORD: Okay. Mr. Taylor.

25 MR. TAYLOR: Mr. Chairman, thank

1           you.

2                     Mr. Chairman, Chet Williams and I  
3           are very proud to be here representing  
4           Adam and ArborNature in relation to  
5           this issue. You-all probably know Adam  
6           and his wife, Natasha who is with him.  
7           They are long-time residents of the  
8           island. Young couple that have been  
9           here. They own property here. They  
10          pay taxes here. They raise children  
11          here, and they told them that if you  
12          play by the rules, it will be fine.

13                    Mr. Chairman, part of my opening  
14          is basically a little summation of  
15          where I was thinking how we got here  
16          and then I'll present me witnesses. We  
17          are here today because the rules have  
18          literally changed on ArborNature  
19          without reason. For more than nine  
20          years, the town has absolutely time  
21          after time confirmed that the grinding  
22          of logs in the Arbor Nature property  
23          was permitted by the rezoning in 2007,  
24          was permitted by the expedited  
25          development review process in 2009 and

1 was confirmed by the January 3rd, 2010,  
2 determination letter. That is  
3 basically undisputed. The town has  
4 authorized the grinding of logs on this  
5 property of being something that is  
6 relatively needed.

7 We're here because a very vocal  
8 minority of persons who have an office  
9 in a in liked industrially zoned  
10 complex don't like the ArborNature  
11 business. The facts are going to show  
12 that ArborNature's principal use of the  
13 property has not changed from over the  
14 years from the original permitted use  
15 for a wholesale landscape nursery and  
16 landscape contractor's office.

17 The facts are going to show that  
18 ArborNature actually employs 15 to 20  
19 people on a full-time basis in its  
20 landscape contract and wholesale  
21 nursery business with a payroll of  
22 about a million dollars a year.

23 The facts are very importantly  
24 going to show that the grinding of  
25 these logs is only about at most 10

1 percent of the business of what  
2 ArborNature does, and I believe that as  
3 we go through the evidence and very  
4 importantly that the stipulations be  
5 acknowledged and understood by this  
6 board.

7 ArborNature has been permitted to  
8 grind on this property since at least  
9 2010. The noise ordinance is not  
10 applicable to the landscape contracting  
11 business that operates during the week  
12 Monday through Friday. I believe, Ms.  
13 Lewis will affirm that and the  
14 documents show that. The stipulations  
15 show that. If they grind on the  
16 weekend, they are subject to the noise  
17 ordinance and will hear testimony or  
18 actually the stipulations resolve that  
19 is that we don't need testimony that  
20 the noise levels read by the town, they  
21 didn't have to enforce them because  
22 they were in the town's noise level.

23 Your job today is a very important  
24 one. This is an appeal process set up  
25 by the legislature for the sole purpose

1 of vesting in this board the  
2 quasi-judicial role of hearing the  
3 facts that are put into evidence today  
4 and making a decision as to whether or  
5 not Ms. Lewis's May 13th, 2015, letter  
6 was in error in her determination of  
7 the principal usage of the property had  
8 changed.

9 In performing your job today is to  
10 listen to what evidence we're going to  
11 put up to remember the oath that you  
12 took which you took to sit on this  
13 board because you agree to review the  
14 evidence independently and make a  
15 determination based on the evidence  
16 that comes in front of you. You-all  
17 don't have the luxury of sitting back  
18 and assuming that what the town did was  
19 correct and you don't have the luxury  
20 that any evidence that was given by the  
21 witness is correct.

22 What you have to do in your role  
23 that you agreed to play is to listen  
24 and to look at the evidence that is  
25 actually there and determine whether or

1 not ArborNature is appropriately  
2 permitted to conduct this log grinding  
3 and if so, have they varied from what  
4 they were authorized to do. You must  
5 set aside your preconceived notion any  
6 of you have about this. We as humans  
7 want the facts to fit our preconceived  
8 notion. It is a lot easier and goes  
9 with that preconceived notion when the  
10 rubber meets the road, but that's not  
11 your job.

12 Your job is to listen to the facts  
13 and not be swayed by what you may  
14 believe to be citizen pressure or  
15 political pressure, which is obvious  
16 that happened here, and I think  
17 everybody knows. That is the red  
18 elephant in the room. Very vocal,  
19 small group of people have got together  
20 and got the politicians in here and  
21 they've pushed down and pushed the town  
22 to make a decision that the town for  
23 nine years has not done because  
24 ArborNature has been clearly within the  
25 scope of its permitted activity and

1           they sent out a letter that doesn't  
2           give ArborNature option on how to bring  
3           them back into compliance. What it did  
4           was successfully bring this to this  
5           board because the town staff clearly is  
6           ready for this board to make a decision  
7           about it. And that is your job and  
8           again is a very important one.

9           ArborNature's business is on the  
10          line here. Now everybody needs to be  
11          treated equally and everybody needs to  
12          be treated fairly. And the one other  
13          thing I would like to ask for before we  
14          present our evidence is for each of  
15          you-all to try to set aside any contact  
16          that you have had outside of the scope  
17          of this room. We know that a letter  
18          was sent to you from a lawyer that's  
19          representing the property owners, who  
20          have sued ArborNature, and that letter  
21          has been found was inappropriate and  
22          not part of the record that you were  
23          supposed to have in front of you.

24          However, all of us always if you  
25          can un-ring the bell, and I can't ask

1           for anything other than, Mr. Chairman,  
2           that when you-all go into deliberations  
3           to, please, once again, re-enforce to  
4           the board members how important it is  
5           that this decision be made on the  
6           evidence that is in front of you and  
7           the facts that are in front of you.

8                     Now, Your Honor, I like to first  
9           ask --

10                    MR. STANFORD: Before you proceed  
11           with that, you had asked that the mayor  
12           be sequestered depending the testimony  
13           on the town.

14                    MS. TAYLOR: Yes, sir.

15                    MR. STANFORD: If he is still in  
16           the building, is it acceptable for you  
17           if he comes back into the room?

18                    MR. TAYLOR: Yes, sir, and I thank  
19           you.

20                    Mr. CONGROVE: Will you come  
21           forward.

22                    MR. STANFORD: Would you identify  
23           yourself?

24                    MR. CONGROVE: Yes, sir. My name  
25           is Adam Congrove. I'm the owner of

1 ArborNature.

2 MR. STANFORD: It's my obligation  
3 to swear you in, so if you will raise  
4 your right hand.

5 ADAM CONGROVE,  
6 a witness herein, having been duly sworn,  
7 testified upon his oath as follows:

8 THE WITNESS: Yes, I do.

9 MR. STANFORD: Thank you.

10 EXAMINATION

11 BY MR. TAYLOR:

12 Q Adam, you own ArborNature?

13 A Yes.

14 Q Adam -- and before I ask you the  
15 substantive questioning but before let me ask  
16 you this: You were here a while ago when Wayne  
17 Johnson testified, correct?

18 A Yes.

19 Q Do you know him?

20 A Not personally, but I've talked to him.

21 Q Did you recognize him?

22 A Yes.

23 Q Mr. Johnson testified he never been on  
24 the ArborNature property; is that correct?

25 A I approached him several weeks ago on

1 the property.

2 Q Speak up.

3 A I approached him -- he came on the  
4 property and took off rather quickly, but I've  
5 seen him on my property before.

6 Q Did you have interaction with him at  
7 all?

8 A I've found him stating that being true.  
9 I found problems with what he is saying.

10 Q Adam, can you move the microphone back.  
11 You're soft spoken. Thank you.

12 Adam, I need to ask you a few questions  
13 for the board to understand certain things. Do  
14 you operate a wholesale landscape nursery at 76  
15 Leg O'Mutton?

16 A Yes, I do.

17 Q What do stock at the wholesale  
18 landscape nursery?

19 A Mulch, plants and pots and things of  
20 that nature.

21 Q Does Arbor Nature run a landscape  
22 contractor's business as part of the wholesale  
23 landscape nursery?

24 A Yes, that is a big part of that.

25 Q What does the landscaping contract

1 business primarily do?

2 A Prune trees, shrubs, bushes,  
3 fertilization, kind of all of that aspect of the  
4 business.

5 Q Do you use the 76 Leg O'Mutton property  
6 as the staging area for it?

7 A Yes, it is. I -- we get going in the  
8 morning and park our trucks and equipment and  
9 dispose of our debris.

10 Q Do you grind trees and limbs at the 76  
11 Leg O'Mutton property?

12 A Yes, I do.

13 Q You have a grinder on site?

14 A Yes, we purchased one this year.

15 Q How much did ArborNature approximately  
16 pay for the grinder?

17 A \$700,000.

18 Q How long has ArborNature been grinding  
19 limbs and branches and trunks at the 76 Leg  
20 O'Mutton address?

21 A I think since approximately 2008.

22 Q And it was being done as the  
23 Greenskeeper back at that, correct?

24 A Yeah. My dad owned the grinder, yes.

25 Q Did you request that the town in

1 January of 2010 give you a letter of opinion  
2 saying whether or not you were legally permitted  
3 to grind those branches and trees on site?

4 A Yes, they did.

5 Q Did they give you that?

6 A They gave me the letter for that use.

7 Q Ann Cyran?

8 A Yes.

9 Q And is that the letter dated January  
10 3rd, 2010?

11 A Yes, that's when she gave it to me.

12 Q Good. Did you move forward in reliance  
13 on that letter?

14 A Our business model is based on being  
15 able to do that.

16 Q Adam, how many employees does  
17 ArborNature have?

18 A In the neighborhood of 15 to 25.

19 Q Full-time employees?

20 A Closer to 20, I think, yes.

21 Q Do they work on site during the day?

22 A One or two, but most of them are off  
23 site.

24 Q In the landscape contracting field?

25 A Yes, within the office, but outside,

1 yes.

2 Q What is your annual payroll for these  
3 15 to 25 full-time employees?

4 A Somewhere around a million.

5 Q How many employees are actually  
6 involved with grinding the limbs and trunks on a  
7 weekly basis at your property?

8 A Just one or two.

9 Q And tell me how that literally works  
10 out.

11 MR. STANFORD: We are having  
12 trouble hearing. Thank you.

13 BY MR. TAYLOR:

14 Q Mr. Congrove, let me re-ask that. How  
15 many employees are actually involved with the  
16 grinding of limbs and trunks on a weekly basis  
17 on the Leg O'Mutton property?

18 A One or two.

19 Q And what do those one or two people  
20 literally do so the board understands.

21 A Usually, sort the yard and one guy will  
22 be grinding or that same guy will be doing both  
23 and turning it into mulch.

24 Q Adam are you on site every day?

25 A Yes.

1 Q Are you the supervisor mainly of the  
2 ArborNature business?

3 A Yes, I'm one of them, yes.

4 Q Adam, in the last year, please tell the  
5 board on average the number of hours that  
6 grinder operates a day and the number of days a  
7 week you operated the grinder?

8 A I would say it fluctuates, but some  
9 weeks we won't run it and other weeks we run it  
10 more than others. Generally three or four hours  
11 a day on average.

12 Q Three or four hours a day on average?

13 A Yeah.

14 Q How many days a week does the grinding  
15 operation generally run?

16 A Four days a week.

17 Q It averages four days?

18 A Yes. Some weeks we may grind 30 hours  
19 a week and other weeks grind 10 hours a week.  
20 So it kind of fluctuates.

21 Q So the total -- from your personal  
22 knowledge, the total number of hours that  
23 grinder is in operation at the 76 Leg O'Mutton  
24 property would be on average 16 to 20 hours a  
25 week?

1           A     Yes, on average.

2           Q     And Adam, taken into account 15 to 25  
3 people with an annual payroll of a million  
4 dollars, how much of your business payroll is  
5 devoted to the employees actually performing  
6 this grinding operation?

7           A     Somewhere around 10 percent or less.

8           Q     And how much of your landscape  
9 contracting business is actually devoted to this  
10 grinding?

11          A     What? Sorry.

12          Q     If you took the business that you're 15  
13 to 25 people full-time are doing out in the  
14 field for -- on a dilly basis and you compare it  
15 to the grinding on the Leg O'Mutton property --

16          A     Yes.

17          Q     -- how much of a percentage does the  
18 grinding actually mean on your overall scope of  
19 business?

20          A     Less than 10 percent.

21          Q     Less than 10 percent?

22          A     Around there, yes.

23          Q     And has that remained consistent  
24 throughout the course of, let's say, two or  
25 three years?

1 A Yes.

2 MR. TAYLOR: Mr. Chairman, I don't  
3 have any other questions for Mr.  
4 Congrove.

5 MR. STANFORD: Thank you.

6 MS. LEWIS: I don't have any  
7 questions.

8 MR. STANFORD: Questions from the  
9 board?

10 Mr. White.

11 EXAMINATION FROM THE BOARD

12 BY MR. WHITE:

13 Q Mr. Congrove, if the business model  
14 hasn't changed, how do you suggest that kind of  
15 lumber (unintelligible) --

16 A Previously, I worked with another  
17 company. They did it for me. LCR used to grind  
18 for us for seven or eight years and recently we  
19 did it on our own this year.

20 Q You mentioned that you purchased the  
21 equipment in 2016. Do you mean you purchased it  
22 this year?

23 A Yes, sir.

24 Q So it was only purchased --

25 A Last year. We were subbing it out in

1 2008. Then we had our own equipment then. We  
2 have gone back and forth.

3 Q So prior to 2016, you weren't grinding  
4 under at your location?

5 A No. Another company was grinding for  
6 us.

7 Q At your location?

8 A Yes.

9 Q I see.

10 A Yeah. No problem.

11 MR. STANFORD: Mr. Cutrer.

12 BY MR. CUTRER:

13 Q You just testified that in 2016 you  
14 made this equipment change, but there's, I  
15 believe, in the stipulation in Mr. Williams  
16 letter there was a reference to a January 2015,  
17 \$500,000 expenditure, which you've now said is  
18 \$750,000?

19 A Yes.

20 Q So I'm confused. Did you buy a big  
21 grinder and all this additional capital  
22 investment in early 2015 or 2016?

23 A Beginning -- end of 2015, beginning  
24 2016.

25 Q And your testimony is that you spent or

1       invested \$750,000?

2           A     It's probably like a million.

3           Q     It adds up.

4           A     Yeah. Early on it was less money, but  
5 we decided to get a different, quieter grinder  
6 that wouldn't have to run so many hours.

7           Q     What prompted you to make this really  
8 substantial capital investment in your business?  
9 I looked at your website and your website talks  
10 about your tree trimming and pruning, in fact,  
11 your primary business is pruning trees?

12          A     Right.

13          Q     So if you're in the business of pruning  
14 trees, to me that means chopping them and  
15 limbing them and not necessarily cutting them  
16 down. What was going on that led you to  
17 determine that you needed to make this enormous  
18 investment in this very heavy equipment?

19          A     In talking with Ann Cyran and just Teri  
20 in the past, we had talked about the way we were  
21 doing it. Before we subbed it out, so the  
22 company would come one week a month and make a  
23 lot of noise. We thought we would grind smaller  
24 amounts over all week rather than one week a  
25 month or something like that.

1 Q So correct me if I'm wrong, it appears  
2 your principal business at least according to  
3 your website --

4 A Yes.

5 Q -- is tree services, pruning, trimming  
6 and so forth. You have a very small tab on  
7 landscape products that you offer?

8 A Yes.

9 Q All of these logs that are being ground  
10 and chipped at your location, were they all cut  
11 by ArborNature crews?

12 A The majority of them were, yes.

13 Q Are you offering a service to site  
14 clearing companies where they can bring a huge  
15 truckload into your site and you'll grind the  
16 trees for them?

17 A There are other landscape companies and  
18 tree companies that will occasionally dump  
19 there.

20 Q This LTR or LCR company -- I'm confused  
21 if it is C as in Charlie or T as in Tango. Can  
22 you tell me what the correct --

23 A LCR. Low Country Recycling.

24 Q And that means what?

25 A I think, Low Country Recycling.

1 Q LCR, you grind logs for them?

2 A They would grind for us from the trees  
3 that we generate or landscape debris and stuff.  
4 They could come in on the property and grind it  
5 for us previously.

6 Q And what areas geographically do you  
7 operate your pruning and trimming business? In  
8 Hilton Head? Bluffton?

9 A Hilton Head and Bluffton.

10 Q So your testimony would be then that  
11 for over two years while these large trucks have  
12 come in with great, big logs that look like they  
13 are on the pulp mill, those are all trees that  
14 ArborNature has cut on Hilton Head and Bluffton?

15 A I'd say 90 percent of them, 80 percent,  
16 yes.

17 Q You also testified that your grinding  
18 business was less than 10 percent of your  
19 overall activity, and I'm not sure I understand  
20 what that 10 percent means. Is it 10 percent of  
21 the -- first of all, your grinding operation  
22 appears be mechanized. You're handling these  
23 enormous trucks, these enormous logs. We've  
24 seen pictures of these gigantic piles of tree  
25 and you said you had one or two people dealing

1 with that?

2 A Yes.

3 Q One guy on the grabber and one  
4 operating the grinder and it spits the sawdust  
5 or the chips out, but it's less than 10 percent  
6 of your business activities. Is that less 10  
7 percent of the man hours that your employees  
8 work or is that less than 10 percent of the  
9 revenues you generated in ArborNature?

10 A I would say 10 percent or less than 10  
11 percent of the man hours or payroll is in that  
12 aspect of the business.

13 Q But significantly more than 10 percent  
14 of the revenue?

15 A It wouldn't be much higher. It would  
16 probably be maybe 15, 20 percent, but that's not  
17 a large portion of my business, no.

18 Q But if your primary business is  
19 trimming and pruning, which was your  
20 testimony --

21 A Yes.

22 Q -- where in the world do all these  
23 significant logs come from, truck loads, week  
24 after week, month after month?

25 A Yeah.

1 Q Where do those logs come from?

2 A All of Hilton Head and Bluffton.

3 Q But Hilton Head has one of the most  
4 restrictive ordinances in the country. You have  
5 to have a permit to cut trees. I see a couple  
6 sites of the island that are being developed,  
7 but I personally don't see a lot of trees  
8 cutting down. Aren't you, in fact, I don't mean  
9 to lead you, but I want you to tell me that  
10 you're not receiving trees from site clearing  
11 companies to be ground on this site?

12 A We honestly don't not that I can think  
13 of. The main --

14 Q So every one of these huge trucks that  
15 come in on a daily or weekly or monthly basis  
16 packed to gills -- we've seen the photographs of  
17 these logs -- are trees that your company cuts  
18 down in this wholesale landscape business?

19 A Eighty percent. There are a couple  
20 other companies that dump there on occasion, but  
21 it's not their primary bulk of it.

22 Q Okay. Thank you.

23 BY MR. WHITE:

24 Q I just have one clarification. You  
25 indicated that LCR used to do your grinding?

1           A     Yes.

2           Q     And then after the expenditure of the  
3 grinding machine, you began taking over your  
4 grinding; you didn't grind for them?

5           A     The stuff that comes in, we grind it  
6 ourselves.

7           Q     Is it my understanding that LCR is a  
8 site clearing company?

9           A     They are a site prep company. They  
10 have a wholesale nursery and sell mulch, and  
11 they are out of Coosawhatchie -- out of  
12 Beaufort, but they also have a nursery out there  
13 too. They do several aspects of it.

14          Q     They no longer grind?

15          A     For me?

16          Q     No. You said you took over their  
17 business?

18          A     They still grind. They were busy  
19 elsewhere, so that's why we got our own  
20 equipment to do our grinding.

21          Q     So --

22          A     They are still grinding, just other  
23 places.

24          Q     So you're grinding larger logs because  
25 of the equipment --

1           A     The medium sized stuff, yeah. We grind  
2     a fair amount of the logs, yes.

3           MR. STANFORD: Ms. Laudermilch, do  
4     you have any questions?

5           MS. LAUDERMILCH: Yes, I have  
6     several of them, please.

7     BY MS. LAUDERMILCH:

8           Q     The capacity of the newest grinder that  
9     you've bought, we've heard testimony from  
10    different neighbors that the noise and the  
11    impact seemed to have accelerated within the  
12    last year. Is that grinder significantly  
13    different from the specification capacity  
14    perspective than the one that apparently LCR had  
15    been using?

16          A     The one LCR was using was bigger and  
17    louder than the one we have. The one we have is  
18    not near as loud.

19          Q     Okay. All right. If you didn't do  
20    that component of your business, the grinding,  
21    would that affect -- would that have any impact,  
22    a decrease in related kind of accessory or  
23    auxiliary business? Do they somewhat go hand in  
24    hand?

25          A     It is a real important part of the

1 pruning, trimming part of it. I wouldn't have  
2 anywhere to get rid of the stuff or get rid of  
3 it.

4 Q Okay. And my other primary question --  
5 not to rehash, but again, really who are those  
6 customers that are the origin of those big log  
7 trucks?

8 A They are all the people from Hilton  
9 Head and Bluffton and all around here.

10 Q Okay. Thank you.

11 A Several people.

12 MR. STANFORD: Mr. Fingerhut.

13 BY MR. FINGERHUT:

14 Q Mr. Congrove, referring to Ms. Simmons'  
15 letter of January 2007 and the stipulation of  
16 facts between the parties --

17 A Mm-hmm.

18 Q -- in January 2010, could you explain  
19 who was doing the grinding on your property?

20 A Around that date, I think it was me and  
21 my dad.

22 Q And what sort of equipment did you have  
23 there?

24 A Then, we had a Morbark tub grinder.

25 Q Can you describe it.

1           A     A similar grinder, just a different  
2 version of it.

3           Q     And how many days a week -- how many  
4 days a week would you say you used it?

5           A     A couple days a week.

6           Q     And then at some point after the  
7 January 5th, 2010, letter, you testified not in  
8 that time frame, but you testified LCR started  
9 grinding for you on your site; is that correct?

10          A     Later on we talked to them in came into  
11 agreement then they would start grinding our  
12 stuff for us rather than us grinding it.

13          Q     And how often did they do that?

14          A     Like, once a month for a week.

15          Q     So once a month they would bring their  
16 own equipment --

17          A     Yes.

18          Q     -- and grind on your site?

19          A     Yes.

20          Q     And then at what point did they stop  
21 and did you then purchase your own equipment?

22          A     December of 2015, January of 2016 is  
23 when that stopped and we purchased our own.

24          Q     So would it be fair to say since  
25 January 5th, 2010, the circumstances of your

1 business have somewhat changed?

2 A Honestly, no, they have pretty much  
3 been similar to the way it's been for however  
4 many years. Just maybe the regularity for maybe  
5 -- we grind one week for 40 hours and now we,  
6 like, grind for a couple hours a day, but aside  
7 from that, it hasn't.

8 Q In 2010, you did your own grinding in  
9 2010 and after that you subcontracted the  
10 grinding by one day a month?

11 A Yeah.

12 Q And you bought your own equipment  
13 thereafter?

14 A Yes, going back and forth.

15 Q That's fine. Okay. Now, if you could  
16 tell me about the nursery, the wholesale  
17 nursery. How many of your 15 to 25 employees  
18 are staffed at the nursery?

19 A Just one or two.

20 Q Who are those -- who specifically works  
21 at the nursery?

22 A Mike -- mainly Mike is the one that  
23 oversees it all.

24 Q Does that person have any other duties?

25 A Mainly keeping the yard organized,

1 grinding and just helping people when they come  
2 into the yard.

3 MR. STANFORD: Is that for  
4 grinding? Was that your answer?

5 THE WITNESS: Yes.

6 BY MR. FINGERHUT:

7 Q This is your supervisor person on your  
8 site?

9 A And he does the work himself too, yes.

10 Q He operates --

11 A He operates the tractor and stuff,  
12 yeah.

13 Q There is a lot of landscape companies  
14 on Hilton Head with this wholesale nursery, so  
15 who are your customers? What landscaping  
16 companies or individuals are your customers?  
17 For the nursery I'm talking about.

18 A There is other landscapers that bring  
19 their stuff to us like Carolyn's, Island Farms,  
20 different landscapers around here.

21 Q They bring stuff to drop off. I'm  
22 talking about who buys stuff from you?

23 A Mainly a couple of them here and there.  
24 It is not a regular basis. I mean, Carolyn's  
25 will by stuff, buy bamboo sometimes, that type

1 of thing.

2 Q What -- so would you characterize that  
3 as a large portion of your business?

4 A Not a large part, no.

5 Q Thank you very much.

6 BY MR. STANFORD:

7 Q Mr. Congrove, you saw the photographs  
8 that were presented. Are those an accurate  
9 depiction of the portion of your operation?

10 A It goes up and down, but yeah, busy,  
11 busy times, yes, sir.

12 Q And you also saw a video that showed  
13 the live operations. Was that an accurate  
14 depiction of your current business operations?

15 A I would say it is close, yes. Close,  
16 yes.

17 Q Thank you. Thank you. Nothing  
18 further.

19 MR. CUTRER: I have some follow  
20 up.

21 BY MR. CUTRER:

22 Q We talked a good bit about the logs  
23 coming in, and I'd like to get some information  
24 about the chips going out. All of this grinding  
25 that occurs, some of it I guess, goes into your

1 storage bins so you can sell wood chips or mulch  
2 to customers --

3 A Yes.

4 Q -- on site and in your wholesale  
5 landscape business, but we've heard testimony of  
6 big trucks leaving the site loaded with wood  
7 chips. Where do they go?

8 A Some that go -- a fair amount that goes  
9 to Savannah.

10 Q I'm sorry.

11 A A fair amount of it goes towards  
12 Savannah.

13 Q Toward Savannah?

14 A Yes.

15 Q Where in Savannah?

16 A There is a paper company over there.

17 Q So you're selling ground wood chips to  
18 the paper company?

19 A Or they make electric with it.

20 Q Burning for fuel?

21 A Right.

22 Q So they might not be a paper company,  
23 but it is an industrial user who buys wood --

24 A Part of it goes there. Part of it is  
25 trash.

1           Q     And of the products that you generated  
2     with -- back to the grinding now.  Of the  
3     product that you generate, what would you say --  
4     what percentage do you sell to either retail or  
5     landscape customers for mulch purposes and what  
6     percentage do you generate do you sell to some  
7     industrial user?

8           A     Say the majority of it goes to  
9     Savannah.

10          Q     Majority of it?

11          A     Yes, sir.

12          Q     Okay.  Thank you.

13                 MR. STANFORD:  Any further  
14     questions?

15                 Any follow up?

16                 MS. LEWIS:  I don't have any  
17     questions.

18                 MR. TAYLOR:  Mr. Chairman, just a  
19     couple questions.

20                                 EXAMINATION

21     BY MR. TAYLOR:

22           Q     First of all, are there other grinders  
23     similar to the one operation on Leg O'Mutton  
24     Road operating on Hilton Head right now?

25           A     Yes, sir.

1 Q Where else are they?

2 A There's Bruno Landscaping. Sea Pines  
3 Plantation has one, Hilton Head Plantation has  
4 one.

5 Q Okay.

6 A Indigo Run. I could go on.

7 MR. TAYLOR: Mr. Chairman, do you  
8 have the photo?

9 MR. STANFORD: No.

10 BY MR. TAYLOR:

11 Q Adam, I think there may be confusion  
12 and it's probably because I didn't do a good job  
13 cleaning it up. Let me ask you this: There has  
14 been photos or video purported to show large  
15 trucks with logs on them at the ArborNature  
16 site.

17 Do you recall seeing that?

18 A Yes.

19 Q All right. Were those trucks coming on  
20 to the ArborNature site delivering those logs or  
21 were they just taking those logs somewhere?

22 A They were all leaving.

23 Q How do you know that?

24 A Because all the main bit of the logs  
25 that come to the site are in small dump trucks.

1           Q     So where did the logs that are on those  
2     large trucks leaving come from that came in on  
3     smaller dump trucks?

4           A     Yeah, from residential houses that we  
5     work at.

6           Q     And those logs are assimilated there  
7     that either too big to grind or otherwise deemed  
8     to be inappropriate for grinding?

9           A     Right.

10          Q     And you load them and take them off  
11     island, right?

12          A     Yes.

13          Q     Where are they going to when they go  
14     off island?

15          A     Some go to Savannah. Some go to  
16     Estill.

17          Q     Is it your testimony none of those  
18     large trucks are actually being delivered to  
19     ArborNature, but they are going off island?

20          A     They are all leaving the island.

21          Q     I just want to be -- make sure the  
22     record is clear. LCR had originally brought a  
23     grinder on to the Leg O'Mutton property once a  
24     month, correct?

25          A     About, yes.

1 Q As a subcontractor?

2 A Yes.

3 Q And you grind for that week, generally,  
4 and then they leave?

5 A Usually, yes.

6 Q Okay. And then later you decide first  
7 to buy a used grinder with a feeder and you-all  
8 had purchased that, I believe, in 2015?

9 A The end of it, yep.

10 Q And you recently purchased another one  
11 that is faster and quieter?

12 A That is correct.

13 Q Why did you purchase the new one?

14 A So we didn't have to run it for an  
15 extended period of time.

16 Q Were you trying to work with the  
17 provisions of the town?

18 A Yes.

19 Q Adam, every time the town staff has  
20 approached you about an issue in past history  
21 that they felt was outside of somehow the scope  
22 of the ordinance, have they given you directions  
23 of what it would take to come back into  
24 compliance?

25 A Almost every time, yes, sir.

1 Q And have you always done that?

2 A Yes, sir.

3 Q Did the May 13th, 2016, letter that  
4 we're here about today, have any direction on  
5 how to come back into compliance?

6 A No, not really.

7 MR. TAYLOR: Mr. Chairman, I have  
8 in my hand a copy of the town's  
9 business license ordinance that is  
10 given to ArborNature. May I ask the  
11 witness a question of it.

12 MR. STANFORD: Yes.

13 BY MR. TAYLOR:

14 Q Mr. Cutrer had asked you earlier, I  
15 believe, if you were authorized to prune and  
16 otherwise take down trees. Adam, what does your  
17 business license provide at the bottom as far as  
18 what you're authorized to do; tree pruning and  
19 what?

20 A True pruning and removal.

21 Q Okay. And is that what you do is tree  
22 pruning and removal of the trees?

23 A Yes.

24 Q Okay.

25 Mr. Chairman, nothing more.

1 MR. STANFORD: Thank you.

2 EXAMINATION FROM THE BOARD

3 BY MR. STANFORD:

4 Q Mr. Congrove, I think that you  
5 testified just a moment ago that none of the  
6 trees that you are grinding are being brought to  
7 your site by any other company or operation.  
8 The question that was asked of you was, are all  
9 the trucks taking material away. Am I confused  
10 about that? Please clarify.

11 A I might have been confused too. I  
12 thought if he was asking the trees in the log  
13 trailers with logs on them. I think he was  
14 trying to say the log trailers were coming with  
15 logs and he was clarifying they were not coming  
16 with the logs. They would get logs and then  
17 leave.

18 Q So no logs were being delivered?

19 A Not on the log trailers that they claim  
20 it was.

21 Q How else would logs arrive?

22 A In small dump trucks. My dump trucks  
23 would bring them generally.

24 Q All right.

25 Mr. Cutrer.

1 BY MR. CUTRER:

2 Q We saw the photographs of these rather  
3 large piles of debris and landscape debris and  
4 logs. We saw a video. I'll call it the grabber  
5 because I don't have a better name for it.

6 A Yes.

7 Q That lifts the logs and puts that in  
8 the big chopper. Are all of those logs in the  
9 pile that you maintain on the site, are they  
10 there for you to grind?

11 A The majority of them, not all of them.  
12 Some of them we would put on a trailer and  
13 leave.

14 Q Maybe I'm remembering wrong, but I  
15 thought I heard you say in response to the  
16 question I had earlier that some of the logs  
17 were brought to you by other parties?

18 A Yes.

19 Q Carolyn's, other people?

20 A Yes, there are several others.

21 Q Why then if people are bringing you  
22 logs to grind, you've got this big inventory of  
23 logs to grind; you said by your own testimony a  
24 little over three-quarter of a million dollars  
25 to invest in this equipment to grind logs; why

1 would you load them up on a log truck and send  
2 them out to the place? I just need to  
3 understand that part of your business.

4 A It pays differently. We would load it  
5 on the log trailer, but not all the logs would  
6 be up to par. Some we have to grind because  
7 they are trash, but not trash, but there is no  
8 other use for them.

9 Q They're just pulp?

10 A Or chips or mulch, yeah.

11 Q So the vast majority of the logs that  
12 are processed in your site, your testimony is  
13 that they are trees that were cut down by your  
14 company in its normal course of business of  
15 pruning and trimming?

16 A Yes.

17 Q Okay. Thank you.

18 MR. STANFORD: Other questions?

19 MR. TAYLOR: Just a couple.

20 MR. STANFORD: Certainly.

21 MR. TAYLOR: Because I think I'm  
22 the architect of the confusion.

23 EXAMINATION

24 BY MR. TAYLOR:

25 Q Adam, we were talking about trailers.

1 I don't think I made it clear. There is  
2 something that you term a "log trailer," which  
3 is the big wide opened thing with big holes that  
4 people just stack these telephone logs on,  
5 correct?

6 A Yes.

7 Q That people always fear when they see  
8 them coming down the highway?

9 A Yes.

10 Q And that was what we saw in the video?

11 A Yes, sir. It was in one of the videos,  
12 yes.

13 Q Is it correct to say when those  
14 trailers are on ArborNature property, they are  
15 always leaving with the large logs?

16 A Correct.

17 Q But the trees and branches that  
18 otherwise get there both from ArborNature and  
19 outside parties that you admitted to, they come  
20 in another kind of truck, like, a smaller dump  
21 truck?

22 A Yes.

23 Q I hope that clears that up.

24 MR. STANFORD: Well, it doesn't.

25 MR. TAYLOR: Would it be possible

1 to see the video again? The still  
2 photos is what I'm really after. No.  
3 Mr. Ham had some video. The first one  
4 showed the grinding operation, but  
5 after that I thought there was some  
6 still photos.

7 MR. STANFORD: It's appropriate to  
8 see them for clarification.

9 THE WITNESS: So that truck would  
10 be leaving with logs.

11 EXAMINATION FROM THE BOARD

12 BY MR. CUTRER:

13 Q So do those trucks ever back into Leg  
14 O'Mutton Drive?

15 A It's a big circle. So they can drive  
16 in two different ways.

17 Q So from a business perspective when you  
18 grind, you sell the chips --

19 A Yes.

20 Q -- and the ones -- we'll call them  
21 "dirty trees."

22 A Yes, sir.

23 Q You'll sell chips from a dirty tree,  
24 but the wood that is discernible, you sell those  
25 in logs and pulp?

1 A Yes.

2 Q Two different pricing options?

3 A Yes, and one is less work.

4 Q Right.

5 MR. STANFORD: Thank you, Mr.

6 Congrove. I know that it is never a  
7 pleasant experience to testify.

8 MR. TAYLOR: Nothing further for  
9 that witness.

10 MR. STANFORD: All right. So  
11 Brian, the witnesses that have already  
12 testified are excused, correct?

13 MR. TAYLOR: Yes, sir.

14 MR. STANFORD: The ones that are  
15 not. It is little bit in the  
16 afternoon. I think.

17 MR. TAYLOR: I have a professional  
18 engineer I really like to get on if we  
19 are going to take a break. It might  
20 take, maybe, 10 minutes, but he was  
21 waiting to go back to Columbia for  
22 another night, and the other town  
23 witness that had been early called,  
24 they may be excused.

25 MR. HULBERT: So you plan on --

1           MR. TAYLOR: So Howard Williams  
2 should be here, but the other ones  
3 brought by subpoena are excused.

4           MR. STANFORD: Mr. Taylor, are we  
5 talking 10 minutes lawyer time or 10  
6 minutes real time?

7           MR. TAYLOR: Fifteen minutes real  
8 time.

9           MR. STANFORD: Call your next  
10 witness.

11          MR. TAYLOR: Mr. Ed. Wrightson.

12          MR. STANFORD: Mr. Wrightson, you  
13 are here to testify under oath on  
14 behalf of ArborNature and it is my is  
15 my obligation to swear you in. Will  
16 you raise your right hand, please.

17                   EDGAR WRIGHTSON,  
18 a witness herein, having been duly sworn,  
19 testified upon his oath as follows:

20           THE WITNESS: I do.

21           MR. STANFORD: Thank you.

22           MR. TAYLOR: Mr. Chairman, for the  
23 board's knowledge, the document that  
24 I'm going to be asking about is  
25 attached to your packet as one of your

1 last parts. I have additional copies  
2 that have been provided to the town,  
3 and you were -- I'll hand them up  
4 and --

5 EXAMINATION

6 BY MR. TAYLOR:

7 Q Mr. Wrightson, can you state your full  
8 name for the record, please?

9 A Edgar Connor Wrightson.

10 Q Where do you live?

11 A Columbia.

12 Q Specifically where?

13 A 4108 Springfield Road. It is the city  
14 of Forest Acres.

15 Q How old are you, Mr. Wrightson?

16 A 61.

17 Q Where is your college degree from?

18 A University of South Carolina.

19 Q And what field is it?

20 A Chemical engineering.

21 Q Do you work for Applied --

22 MR. STANFORD: Chemical  
23 engineering.

24 THE WITNESS: Yes.

25 BY MR. TAYLOR:

1 Q Do you work for Applied Building  
2 Sciences, Inc.

3 A Yes, I do.

4 Q How long have you been employed with  
5 them?

6 A Fourteen years.

7 Q What do you do for Applied Building  
8 Services?

9 A I'm an industrial hygienist. I  
10 actually look at and evaluate chronic --

11 MR. STANFORD: Speak into the  
12 microphone, please.

13 THE WITNESS: It's more -- kind of  
14 like safety effect of an acute hazard.  
15 If someone gets hurt right now as an  
16 industrial hygienist, we look at  
17 chronic hazards and occupational. I do  
18 occupational noise monitoring as part  
19 of that. But most of that is I do air  
20 monitoring for air quality and for  
21 indoor quality evaluations and asbestos  
22 situations and evaluate and monitor.

23 BY MR. TAYLOR:

24 Q Okay. How long have you been involved  
25 in the business of doing noise monitoring as you

1 talked about?

2 A Probably eight years.

3 Q Okay. Have you been retained as an  
4 expert witness in other matters?

5 A I have not.

6 Q On behalf of Applied Building Sciences,  
7 were you contacted or did Applied Building  
8 Sciences request that you perform a noise study  
9 for ArborNature?

10 A Yes.

11 Q Would you tell the board exactly what  
12 you did and walk them through what your report  
13 of August 24th, 2016, is?

14 A Yes. I was asked to do a preliminary  
15 investigation and it is suggested to measure 15  
16 minutes of each site. I did not know the layout  
17 of the land until I got there. We did see a  
18 site drawing previously. And Mr. Brophy told me  
19 the general direction of where the complaints  
20 were coming and asked me to measure near the  
21 property line and closer to their side. I  
22 thought -- when I talked to him, I intended to  
23 drive around Capital Drive and park in front of  
24 the business. I didn't realize the business was  
25 on that side of the road, so I just walked

1 through the back. But I tried to get -- Mr.  
2 Brophy had huge piles of mulch that he put along  
3 that side as a barrier to stop that sound. So I  
4 moved a little farther back from the fence where  
5 I thought the property line was because there  
6 would be a shadow behind that and I wanted to  
7 get the best situation. I also looked to go  
8 through the trees to get the clearest path  
9 because there were lots of trees around, so it  
10 is a very wooded area. But I walked around and  
11 did it on the southeast side around the business  
12 and on the neighborhood side too. We sampled  
13 close to the grinder and we sampled away at the  
14 property line and a little farther way -- well,  
15 guessing where the other property line would be.

16 Q Mr. Wrightson, what kind of equipment  
17 did you use, whether you calibrated it and you  
18 checked it before you used it, that type of  
19 thing?

20 A I used the sound level speed meters and  
21 we did calibrate it before and after and I did  
22 have calibrations certificates from the company  
23 I rented them from. I normally do occupational  
24 noise monitoring and I have different monitors,  
25 and I have omni-directional microphones and you

1 will get the noise coming from everywhere. With  
2 these sound level meters, I can point them  
3 toward the source which is what we are trying to  
4 measure.

5 If I did a full study, I would have  
6 come in a head of time and try to optimize and  
7 figure out where the best place to measure was,  
8 but I didn't do that this time. This was just  
9 supposed to be a preliminary study and actually  
10 were low enough that I wouldn't think we go back  
11 and do more.

12 Q Mr. Wrightson, as you begun  
13 investigating around the property of ArborNature  
14 in an effort to get those sound readings, did  
15 you make an effort to get in the position that  
16 the most noise would be heard?

17 A Yes, yes, that's why I moved way from  
18 the pile of mulch to -- I thought there might be  
19 a shadow effect where the sound waved wouldn't  
20 reach, and I also tried to pick the clearings in  
21 the trees where I could point to the best area  
22 towards the source.

23 Q And did you take noise level readings  
24 both before the grinder was in operation and  
25 when ArborNature turned the grinder on and fed

1 it?

2 A Fifteen minutes in each case in each  
3 location and 15 minutes with the grinder off and  
4 then 15 minutes with it off.

5 Q How many different locations did you  
6 sample?

7 A We had four locations at the property  
8 lines and two locations at the grinder and since  
9 we were working on opposite sides of the grinder  
10 and we had the ones closer to the grinder.

11 Q Okay. Mr. Wrightson, I like to ask you  
12 specifically -- and certainly the board can read  
13 your report -- but I want to focus on Location 4  
14 that apparently was 280 feet southeast of the  
15 grinder, approximately 78 feet east of the  
16 ArborNature east side fence at the northwest  
17 edge of the parking lot of the nearest business  
18 at Capital Drive.

19 Now is that a correct description of  
20 where you were?

21 A Actually I was staying on the paver. I  
22 put it on the edge of their pavers pointing  
23 towards the source, but for the parking lot for  
24 the business, it was behind the business, but on  
25 the edge of the paver.

1           Q     And the best you can tell -- let me ask  
2     you: Was either I or anybody else there  
3     instructing you where to set up?

4           A     No. Actually, Mr. Brophy actually  
5     showed me how to get through the fence and  
6     pointed me to the general location, and I picked  
7     the locations.

8           Q     Is the description of Location Number 4  
9     the closest that you could get to the  
10    ArborNature grinder and also in the Capital  
11    Business parking lot?

12          A     Yes.

13          Q     Okay. And that's where the earlier  
14    witnesses, Mr. Chairman, are located.

15                 Would you tell me, Mr. Wrightson, and  
16    tell the board what your findings were shown on  
17    Table 1, the summary table of the decibel levels  
18    with the grinder operating and particularly  
19    interested the Location Number 4. What were the  
20    decibel readings there

21          A     63.2 decibels with it operating.

22          Q     And with it off what was the reading?

23          A     51.2 2.

24          Q     And Mr. Wrightson, does Table 1 show  
25    the other decibel levels from the basic area

1 that you measured?

2 A Yes.

3 Q Can you tell the board just for, for  
4 example, the high reading at Number 2? Is that  
5 right up against the grinder?

6 A That is next to the grinder. There is  
7 a difference between level 2 and Location 5.  
8 Location 5 was 150 feet from the grinder --  
9 excuse me -- it was 50 feet from the grinder and  
10 the other ones was only 30 feet, but we had to  
11 get Number 2 farther away because that's where  
12 the back hoe was feeding the grinder, so we had  
13 to move it farther away.

14 Q Mr. Wrightson, were both Location 2 and  
15 Number 5 literally on the ArborNature property?

16 A Oh, yes.

17 Q Relatively close to the grinder?

18 A Relatively close to the grinder.

19 Q And Mr. Wrightson, did you in your  
20 professional capacity put together based upon  
21 published literature and accepted standards  
22 within your industry a sound level measurement  
23 from typical devices that are shown as Table 2  
24 of your report?

25 A Yes, I did.

1           Q     And can you tell basically the board  
2           exactly what this table shows and what they can  
3           infer from that as far as the noise level, and  
4           let's use the 63.2 level that you had on the  
5           Capital Business Park, how does that show up on  
6           the comparison to other noised?

7           A     It's shows that the noises are less  
8           than a dishwasher or clothes washer operating  
9           inside a house or a restaurant, the noise inside  
10          of the house. It is actually lower than any of  
11          the readings here. This is published data and  
12          it actually comes from the numbers of studies.  
13          I list them here the number of studies and the  
14          maximum that were there, but it is certainly  
15          lower than that.

16          Q     Okay. Mr. Wrightson, is the exhibit --  
17          excuse me -- is the report August 24th, 2016 and  
18          the attachment thereto a summary of the  
19          professional findings that you made in your  
20          investigation?

21          A     Yes, it is.

22          Q     Were you influenced in any way  
23          whatsoever as to what kind of findings you were  
24          to make, or were you asked to give an  
25          independent finding?

1           A     No, I was not.

2                   MS. LEWIS: I don't have any  
3           questions.

4                   MR. WHITE: I have a question.

5                           EXAMINATION FROM THE BOARD

6           BY MR. WHITE:

7           Q     You indicated in the report that you  
8           did sound levels when the grinder was off and  
9           when the grinder was on.  
10                   When it was on, was it being fed logs?

11          A     Yes, it was being fed the whole time.

12          Q     Thank you.

13                   MR. STANFORD: I have a question  
14          for you.

15          BY MR. STANFORD:

16          Q     You said your report was a preliminary  
17          report. What is the difference between a  
18          preliminary report and the full report or  
19          whatever you were describing?

20          A     We were asked to do a preliminary  
21          report and ones site visit. If I was going to  
22          do a full report, I would probably come in a  
23          head of time with a sound level meter and walk  
24          around and pick the best location and I wasn't  
25          able to do that. Would have spent a lot more

1 time preparing for it, I guess, I could say.

2 Q Would you have taken readings on more  
3 than one day?

4 A Probably. That's what would have been  
5 needed. To come in ahead of time and decide  
6 where the optimum place. As it is, I listened  
7 and walked around and looked through the trees  
8 to see where I thought the best sound was coming  
9 from. But I normally would have done it with  
10 the sound level meters to try in different  
11 locations. But again though, it would have been  
12 with it running and without it running.

13 Q Thank you, sir.

14 A If we were to do a full study you  
15 probably want to do a 24-hour study for an  
16 environmental complaint.

17 Q I understand. Thank you.

18 MR. STANFORD: Questions?

19 BY MR. CUTRER:

20 Q Were the grinder -- and again I don't  
21 know the technical term, but I would describe it  
22 earlier as the grabber --

23 A The track hoe or back hoe.

24 Q The track hoe.

25 Were the grinder and track hoe

1 operating at the same time --

2 A Yes.

3 Q -- in your reading?

4 A Yes, throughout. He -- Mr. Brophy was  
5 continuously feeding the logs when the grinder  
6 was running.

7 Q Okay. And were -- we've heard  
8 testimony that they do a lot of pruning and they  
9 get limbs and things. Were logs being ground at  
10 the time you took your readings, or was there  
11 what I call sort of yard debris, limbs?

12 A I think it was some of both. Honestly,  
13 the other guy that was sampling with me was near  
14 the grinder and I was away I could not see the  
15 grinder, but it was supposed to be both at the  
16 time of grinding. I honestly can't say for  
17 sure.

18 Q And to your knowledge, in any of these  
19 readings, was the track hoe backing up and  
20 making its beep, beep, beep, beep sound?

21 A I did not --

22 Q Had that influence the readings in any  
23 way?

24 A I didn't hear the beep, beep, beep  
25 sound from where I was. But certainly the back

1 -- track hoe, that's what he was doing. He was  
2 moving. That's why we had to get farther back  
3 to stay out of his way.

4 Q Keep getting ground yourself?

5 A Right. Get from run over. It was  
6 interesting when I was out on the road side  
7 doing the other side when I was looking at the  
8 instrument, I could see every car going by. The  
9 when I look at the output from this it all kind  
10 of smooths out. So I don't know -- it would  
11 have been smoothed out in the data anyway.

12 Q Did you take any readings when these  
13 large trucks were pulling in and out of the  
14 site?

15 A Yes. During the time -- during the  
16 beginning there was a time when a truck went  
17 through. We ran 15 minutes and we noted some of  
18 the things. I don't have the notes in front of  
19 me right now. But Bobby said there was time  
20 when a truck dumped a load of logs there.

21 Q Okay. Thank you.

22 MR. STANFORD: Ms. Laudermilch.

23 MS. LAUDERMILCH: Just a question  
24 for clarification.

25 BY MS. LAUDERMILCH:

1 Q You could or couldn't see the actual  
2 materials going into the grinder?

3 A I could not. Bobby was near the  
4 grinder. I was --

5 Q Okay.

6 A It's a wooded area. Of course, the  
7 pile of mulch was tremendous, so I could not see  
8 around it.

9 Q Okay. Thank you.

10 BY MR. FINGERHUT:

11 Q Mr. Wrightson, the sound equipment you  
12 were using measure vibration in addition to the  
13 decibel noise?

14 A No, it doesn't.

15 Q So if an impact was loud enough to  
16 vibrate a window, but didn't have a decibel  
17 count, it would not pick it up?

18 A It would not distinguish.

19 Q Thank you.

20 MR. CUTRER:

21 Q Your report is all about sound, but you  
22 said you do some air quality work. You did not  
23 do any air quality testing?

24 A No.

25 Q Okay. Thank you.



1            basically asking her some questions for  
2            the record.  So we can do that now or  
3            and -- excuse me we can go ahead and  
4            call Howard Williamson, who is the town  
5            code enforcement officer.

6                       So do you want to proceed with  
7            him?

8                       MR. STANFORD:  Yes, please.

9                       Good afternoon, would you state  
10           your name for the record.

11                      MR. WILLIAMSON:  Howard  
12           Williamson.

13                      MR. STANFORD:  It is my obligation  
14           to swear you in because your testimony  
15           would be under oath.  Please raise your  
16           right hand.

17                                 HOWARD WILLIAMSON,  
18           a witness herein, having been duly sworn,  
19           testified upon his oath as follows:

20                      THE WITNESS:  Yes, sir.

21                      MR. STANFORD:  Thank you.

22                                 EXAMINATION

23           BY MR. TAYLOR:

24                      Q     Mr. Williamson, could you state your  
25           full name for the record.

1           A     Howard Marvin Williamson, Jr.

2           Q     How old are you?

3           A     Thirty-five.

4           Q     Where do you live?

5           A     Bluffton, South Carolina.

6           Q     What do you do?

7           A     I'm a code enforcement officer.

8           Q     What does that mean?

9           A     I enforce all the codes and ordinances  
10          that are presented and bought to by the town  
11          counsel, so I'm enforcing those.  Once different  
12          departments within the town have issue regarding  
13          our municipal or land management ordinance, I  
14          enforce those regulations and violations.

15          Q     And for the record, we are talking  
16          about you're an employee of the Town of Hilton  
17          Head?

18          A     Yes, sir.

19          Q     Were you requested within the last two  
20          weeks to go to the ArborNature site at 76 Leg  
21          O'Mutton Road and perform noise studies or noise  
22          tests on the noise levels being generated an the  
23          property?

24          A     Correct.

25          Q     Did you do that?

1           A     Yes, sir.

2           Q     Tell the board what you did, how you  
3 got there and what you found when you got there.

4           A     I apologize. I brought my previous  
5 cases. Here we go. On September 12th between  
6 10:30 a.m. and 10:40 a.m., I conducted three  
7 different noise readings. I do have it  
8 available in a photo if you would like to see it  
9 on the chart. The noise readings I had at  
10 Position 1, which is located on Leg O'Mutton,  
11 had a low of 53 DB and a high at 64 DB. Now, on  
12 that location on Leg O'Mutton, I took it at the  
13 fence line. Again, some of the high readings I  
14 was getting was because of the car traffic  
15 coming in and out.

16                     Number 2 was the -- they are building a  
17 new neighborhood, like, if you're looking at  
18 ArborNature to the left, it is brand new  
19 neighborhood. They cleared the land at the  
20 property line and I had a high reading of 61 DB  
21 and a low reading on 49 DB. At the location  
22 inside the neighborhood that was being built,  
23 there was no car traffic, any traffic, so I was  
24 literally listening to what was going on inside  
25 ArborNature.

1           And then the -- I came inside the  
2           complex and met with the, I believe, she's the  
3           manager, office manager there, and she called  
4           Mr. Congrove, let him know I was there. He said  
5           any time you need anything from me just do what  
6           you need to do, if you need to take photos, if  
7           you need to take DB readings and whatnot, and I  
8           went inside closest to the pile of mulch. I did  
9           it at the property line and took my readings.  
10          There was a tractor there. There was equipment  
11          being used and my high reading was 59 DB and my  
12          low reading was 50 DB, so I took three different  
13          locations, took about 10, 15 minutes and those  
14          were my readings I got at that time.

15          Q     Mr. Williamson, did you check your  
16          equipment when you went out?

17          A     All of our equipment has to be sent off  
18          and tested and recalibrated per -- we can't use  
19          it. We can't use it in court, so it has to be  
20          calibrated every single year. We have a date.  
21          We have a whole system where it has to be --  
22          complies with regulations before we could use  
23          it.

24          Q     To the best of your knowledge, on the  
25          date we are talking about September 12, 2016,

1 your equipment was working properly?

2 A Perfectly.

3 Q Mr. Williamson, was the grinder  
4 operation operating at the time you took your  
5 noise readings?

6 A No, sir.

7 Q Okay. What was operating there?

8 A Large -- I'm not sure what they call  
9 them -- front loader, a very large front loader,  
10 a bobcat. There are trucks pulling in and out.  
11 I think there was two front loaders possibly and  
12 the bobcat and then trucks coming in and out, so  
13 the only thing I believe that wasn't running was  
14 the chipper, I guess.

15 Q The grinder?

16 A The grinder, yes, sir.

17 Q Okay. And based upon the readings you  
18 made on the noise levels on the ArborNature  
19 property, did you analyze them to determine  
20 whether the noise levels were above the town  
21 permitted decibel level?

22 A They were well within -- well within  
23 the code. He had no violations. I informed the  
24 operations manager who I spoke with just, let  
25 her know Mr. Congrove as of today he was well

1 within the readings weren't close, so...

2 Q There is another code enforcement by  
3 the last name of Noffsinger, correct?

4 A Noffsinger. N-o-f-f-s-i-n-g-e-r.

5 Q What's her or his full name?

6 A Karen with a K, K-a-r-e-n.

7 Q Do you work with Karen?

8 A No, sir, not on this case?

9 Q Do you work with Karen?

10 A Yes, sir.

11 Q Is she experienced and professional?

12 A Yes, sir.

13 Q Did she do the best of your knowledge  
14 also conduct noise tests that same weekend?

15 A On Saturday, yes, sir. So I did mine  
16 on the 12th --

17 MR. STANFORD: We're not going to  
18 get his opinion hearsay testimony  
19 concerning what she may have found,  
20 correct?

21 MR. TAYLOR: I was certainly going  
22 to elicit it given what has been  
23 elicited already today. So if you're  
24 instructing me not to, Mr. Chairman, I  
25 will not.

1 MR. STANFORD: I am so.

2 MR. TAYLOR: Very good. One  
3 second, Mr. Chairman.

4 BY MR. TAYLOR:

5 Q Mr. Williamson, do you have the results  
6 of the tests performed by Karen Noffsinger?

7 A I have it on my e-mail, sir. I don't  
8 have it with me. I have just my readings.

9 Q Do you know if any citations were  
10 issued by her?

11 A They were not.

12 MR. TAYLOR: Your Honor, nothing  
13 further.

14 MR. STANFORD: Thank you.

15 MS. LEWIS: No questions?

16 MR. STANFORD: Questions from the  
17 board.

18 EXAMINATION FROM THE BOARD

19 BY MR. CUTRER:

20 Q As a code enforcement officer, have you  
21 had other occasions to go to the ArborNature  
22 site or was this your first time?

23 A When I started in January of this year,  
24 I did issue a citation to ArborNature.

25 Q And what was the nature of that

1 citation?

2 A Working out of the scope of the  
3 business license, zoning requirements for  
4 landscape nursery, which is supposed to be that  
5 area, did not meet the requirements. I issued a  
6 citation for \$1,092.50. I explained to  
7 Mr. Congrove if he did -- we didn't tell him  
8 what, you know, if he needed plants, landscape  
9 materials, palm trees, selling mulch. It had to  
10 be a landscape nursery where the public could  
11 come in and purchase items from ArborNature. So  
12 we gave Mr. Congrove a time limit.

13 I believe it was two weeks to comply and I came  
14 back two weeks later. He did have pavers  
15 located there for sale. He had palm trees  
16 located for sale and other ornamentals and in  
17 three different bins he built. He had three  
18 different colors of mulch that could be sold to  
19 the public. So I reduced the ticket to \$250  
20 after he complied.

21 Q Okay. Thank you. So you've been to  
22 the site at least two times?

23 A Yes, sir.

24 Q More than two?

25 A Probably five.

1           Q     Okay. During that period of time, did  
2     you happen to observe anybody or a customer of  
3     the wholesale landscape operation?

4           A     No, sir, not purchase anything.

5           Q     Okay. Did you happen to observe any  
6     trucks bringing logs into the site?

7           A     Yes, sir.

8           Q     And do you know whether they ended up  
9     being ground or not ground?

10          A     I'm not sure.

11          Q     But you saw -- and were these the large  
12     trucks like you see in a big logging operation,  
13     or were they small trucks like they were for  
14     some pruning operation?

15          A     Small trucks looks like. Nothing like  
16     18-wheelers. The huge, big trucks I saw that  
17     were taking the mulch away once they were ground  
18     up.

19          Q     Okay. And so your first time at the  
20     site, you had only been with the town since the  
21     beginning of the year?

22          A     Yes, sir.

23          Q     So you wouldn't have any knowledge of  
24     any activities prior to 2015?

25          A     No, sir.

1 MR. STANFORD: Other questions?

2 MS. LEWIS: No questions.

3 MR. STANFORD: Mr. Williamson, you  
4 are excused. You can go back to your  
5 business. Thanks for being here.

6 THE WITNESS: Have a good day.

7 MR. STANFORD: Shall we take about  
8 30 minutes? Is that acceptable? So  
9 we'll resume five after one. Thank  
10 you.

11 (Whereupon, lunch recess was taken  
12 at 12:36 p.m.)

13 MR. STANFORD: I think we are  
14 ready to recommence this hearing. It's  
15 five after one.

16 Mr. Taylor, you have more  
17 witnesses?

18 MR. TAYLOR: Yes, sir. Ms. Lewis,  
19 please, briefly.

20 MR. STANFORD: State your name for  
21 the record, please.

22 THE WITNESS: Teri Lewis.

23 TERI LEWIS,  
24 a witness herein, having been duly sworn,  
25 testified upon his oath as follows:

1 THE WITNESS: I do.

2 MR. STANFORD: Thank you.

3 EXAMINATION

4 BY MR. TAYLOR:

5 Q Teri, good afternoon.

6 A Good afternoon.

7 Q You know me. We have been working on  
8 this for a while.

9 A Yes.

10 Q Just a few questions to clean up a few  
11 things. First off, you have seen the photos  
12 that have been marked as -- I'll assume will be  
13 become a record of the hearing today?

14 A Yes.

15 Q Is there anything in those photos  
16 that's in violation of the land management  
17 ordinance?

18 A I can't tell from the photos, but  
19 anything would be in a buffer, so I don't want  
20 tell to say there is nothing in violation, but  
21 in terms of the logs being on site, that is not  
22 a violation.

23 Q You saw the video Mr. Ham had produced?

24 A Yes.

25 Q Did you see anything from your video as

1 the LMO official was a violation of the LMO?

2 A No.

3 Q Ms. Lewis, you heard testimony from the  
4 code enforcement officer earlier. Were you  
5 aware of the fact that the code enforcement  
6 people were sent out to ArborNature on September  
7 10th and 12th?

8 A I was for the ones on the 10th. The  
9 12th, I became aware of after he went out.

10 Q Are you familiar with the report that  
11 was generated on the 10th?

12 A Yes.

13 Q Have you read it?

14 A Yes. Karen e-mailed her findings.

15 Q Does Ms. Noffsinger in the normal  
16 course of her business reduce her findings to a  
17 written document?

18 A I don't know.

19 Q Well, did you review a document that  
20 she had produced?

21 A Yes.

22 Q Did she show any violation of the  
23 decibel levels?

24 A It did not.

25 Q So both the town's noise meter readings

1 on the 10th of September and 12th, 2016, to the  
2 best of your knowledge, found ArborNature was  
3 not in violation of the noise provision of the  
4 town's municipal code, correct?

5 A Correct.

6 Q And Ms. Lewis, very importantly, the  
7 noise levels of the municipal codes are not even  
8 applicable to ArborNature's work from Monday  
9 through Friday, are they?

10 A That's correct.

11 Q They are specifically exempted from  
12 that because of the nature of the landscape  
13 contracting business?

14 A Tree -- excuse me -- tree grinding is  
15 exempt from the municipal code Monday through  
16 Friday?

17 Q But if they do work on the weekends,  
18 the code kicks in?

19 A It does and if it's before the hour, I  
20 think it's 7:00 a.m. to 10:00 p.m. If it's  
21 before or after that during the week.

22 Q Okay. But as we stand here today, the  
23 Town of Hilton Head to your knowledge has never  
24 issued a noise violation citation to  
25 ArborNature, have they?

1 A To my knowledge they haven't.

2 Q You'd probably know in your position,  
3 wouldn't you?

4 A If they were issued a noise ordinance?

5 Q Yes.

6 A Probably.

7 Q Teri, there was some testimony that Mr.  
8 Congrove and ArborNature received a citation on  
9 January 7th, 2016. Do you recall that?

10 A Yes.

11 Q Were you aware of that?

12 A Yes.

13 Q Okay. And that citation was issued  
14 because at that point in time they were low on  
15 the inventory of the wholesale landscape  
16 nursery, correct?

17 A Yes.

18 Q And then did you perform a site visit  
19 four to six weeks to confirm they were back in  
20 compliance?

21 A I did.

22 Q And did you find, in fact, they were  
23 back in compliance with the LMO?

24 A Yes.

25 Q Okay. And did you write Mr. Rick

1 Fisher advising him of that when he made another  
2 complaint to you about the ArborNature practice  
3 at that point?

4 A I believe I sent him an e-mail.

5 Q That ArborNature is in compliance with  
6 the LMO?

7 A Yes.

8 Q Teri, did the town to your knowledge  
9 conduct any studies that would show actual usage  
10 of the grinder at the ArborNature property?

11 A No, we have not.

12 Q Have you or the town conducted any type  
13 of studies that show the actual hours of  
14 operation from, let's say, January of 2016 to  
15 May of 2016?

16 A No, we did not.

17 Q And has the town performed any studies  
18 that would indicate the origin of the wood  
19 products that went into the grinder where they  
20 came from?

21 A No, we did not.

22 Q Have you seen or been provided any  
23 actual facts as to the grinder operating hours  
24 at ArborNature between January and May of 2016?

25 A I guess, what do you mean specifically?

1           Q     I'm asking -- we heard a lot of  
2           testimony today about supposedly when the  
3           grinder was operating and what I want to know is  
4           do you have any personal knowledge based upon  
5           observations by yourself or others of the actual  
6           normal operating hours of the grinder at  
7           ArborNature over the last six months?

8           A     Well, I received some e-mails from, I  
9           guess, citizens about when the grinder is in  
10          operation, if that's what you mean.

11          Q     That's what I'm trying to address.  
12          Aside from that any told evidence it was here  
13          and/or is there, any factual basis known  
14          different to what Mr. Congrove testified to as  
15          to the normal operating hours of the grinder?

16          A     I don't have that.

17          Q     Teri, focusing on your May 13th, 2016,  
18          letter, you've described that as being a  
19          determination letter; is that correct?

20          A     That's correct.

21          Q     Is it correct that determination letter  
22          was drafted by you after consultation with  
23          outside counsel, Greg Alford?

24          A     Yes.

25          Q     And it went through several iterations,

1 correct?

2 A It went through at least two.

3 Q Was the letter issued mainly because  
4 you would have been told that ArborNature was  
5 taking in wood product generated from a  
6 third-party?

7 A That was a large part of it, yes.

8 MR. STANFORD: Teri, you should  
9 not testify concerning any advice or  
10 your discussion with Mr. Alford, okay,  
11 for the town.

12 BY MR. TAYLOR:

13 Q Teri, who came up with the idea of  
14 asserting that ArborNature's principal use of  
15 its property had changed to this waste-related  
16 services accusation that is in your May 13th  
17 letter?

18 A Probably me since it is my letter.

19 Q Had that position been taken by the  
20 town in the last nine years of dealing with  
21 ArborNature?

22 A I don't believe so.

23 Q Was the position taken by the town  
24 after you received copies of e-mails that  
25 originated from Mayor Bennett and worked their

1 way down the staff about the ArborNature issue?

2 A No.

3 Q Was the position after e-mails that  
4 originated from Councilman McCain and worked  
5 their way down to the staff?

6 A No, but I guess, I do want to clarify.  
7 Are you asking time period or if you're asking  
8 as a result of their e-mails? If you're asking  
9 time period, it may have been after that time  
10 period. If wasn't taken as a result of their  
11 e-mails.

12 Q Did you as a town LMO official become  
13 aware of an e-mail that originated from Mayor  
14 Bennett and Councilman McCain targeting  
15 ArborNature's business?

16 A Yes.

17 Q Teri, in all your dealings with  
18 ArborNature throughout the course of your  
19 business with the town, did you always tell them  
20 how to fix any problems before that the town had  
21 found?

22 A If I were -- if it was an LMO  
23 violation, either I or somebody on my staff did.

24 Q Because that is part of generally of  
25 the code, correct?

1 A Yes.

2 Q But this time the May 13th letter did  
3 not contain any type of provision to give  
4 ArborNature instruction on how to get back on  
5 the confines of the code, did it?

6 A That's correct.

7 Q Ms. Lewis, the LMO does not regulate  
8 noise levels, does it?

9 A It does not.

10 Q And LMO does not regulate business's  
11 times of operation, does it?

12 A It does not.

13 Q Grinding of trees and logs is permitted  
14 as part of the principal use in the landscape at  
15 76 Leg O'Mutton, isn't it?

16 A Yes.

17 Q Teri, you've heard Adam's testimony  
18 that the grinding operation is actually composed  
19 about 10 percent of his landscaping contracting  
20 business, correct?

21 A Yes.

22 Q Do you dispute that?

23 A I don't know. I'm not on site enough  
24 to dispute it or not dispute.

25 Q Are you aware of any facts that would

1 lead you or any reasonable person to conclude  
2 that grinding operations make up more than 10  
3 percent of the ArborNature's landscaping  
4 contracting business?

5 A Not that I directly experienced. I  
6 assume complaints from people in the surrounding  
7 areas, but I'm not testifying to.

8 Q But you -- but most of those people  
9 were put up today as far as the witnesses for  
10 the town?

11 A I wouldn't say most. I would say some.

12 Q Would it be the three witnesses that  
13 testified on behalf of the town as the most  
14 vocal of the critics of the ArborNature's  
15 practice in the last year and a half?

16 A Yes.

17 Q Ms. Lewis, knowing that the grinding  
18 operations make up no more 10 percent of the  
19 ArborNature's business conducted at Leg O'Mutton  
20 Road, do you still believe as the LMO official  
21 that the principal use of the property has  
22 changed to that of waste-related services?

23 A I really do. When I go out to the  
24 site, I don't believe that it functions as a  
25 wholesale landscape nursery and what I would

1 classify as a landscape contractor's office. It  
2 really does appear to be a tree service  
3 business.

4 Q How would you classify the landscape  
5 contractor's office that you just spoke of?

6 A I'm not sure. We don't have a  
7 definition. So again, like the wholesale  
8 landscape nursery. So I have to sometimes use  
9 to the best of my ability. So I'll tell you  
10 based on, you know, what I observed and what we  
11 do have in the LMO, that's how I would classify  
12 it.

13 Q We can agree, can't we, that the town  
14 has been aware and actually authorized and  
15 permitted this grinding operation on this  
16 property since the 2009 expedited development  
17 review?

18 A Yes.

19 Q And the grinding has continually taken  
20 place since at least January 5th, 2010, when  
21 Anne Cyran wrote the letter saying this is a  
22 part of the permitted activities, correct?

23 A Yes.

24 Q And I know you heard Adam talk today  
25 about the fact that they employ 15 to 25 people

1 and a payroll around a million annually. You  
2 don't have any factual basis to dispute that?

3 A Not at all.

4 Q Given that testimony, wouldn't you  
5 agree that the ArborNature permitted tree  
6 removal and tree pruning is, in fact, under the  
7 LMO landscape contractor business?

8 A I don't feel that I can say that for  
9 sure.

10 MR. TAYLOR: Mr. Chairman, just  
11 one second.

12 Mr. Chairman, nothing further.

13 MR. STANFORD: Thank you.

14 Do you have anything further to  
15 say in conjunction with this?

16 MS. LEWIS: I don't.

17 MR. STANFORD: There is a question  
18 for you.

19 EXAMINATION FROM THE BOARD

20 BY MR. CUTRER:

21 Q Teri, your testimony here is that the  
22 nature of the ArborNature's business has changed  
23 and the conclusion, I think, that you reached is  
24 they're going to beyond the bounds of what a  
25 reasonable person without a specific definition

1 in the LMO would believe a landscape nursery  
2 operation would, the way it would operate.

3 I asked you earlier when you made your  
4 opening remarks about some other landscape  
5 companies. Bruno's comes to mind. I can't  
6 remember the name of the company that are on  
7 Union Cemetery Road that used to do Hilton Head  
8 Plantation?

9 A Ocean Woods I believe.

10 Q Ocean Woods. Thank you.

11 Do either of them operate grinding?

12 A I don't know.

13 Q You don't know. Okay. All right.

14 Thank you.

15 MR. STANFORD: Other questions?

16 BY MR FINGERHUT:

17 Q Ms. Lewis, with respect to your May  
18 13th letter, was the noise levels the reason for  
19 this letter?

20 A They weren't because the noise levels  
21 are covered by municipal code not the land  
22 management ordinance.

23 MR. STANFORD: They were or were  
24 not.

25 THE WITNESS: Were not. Our noise

1           ordinances are a part of our municipal  
2           code not our LMO.

3       BY MR. FINGERHUT:

4           Q     So is it fair to say with respect to  
5           your letter the issue of decibel levels is  
6           irrelevant?

7           A     Yes.

8           Q     Now, the two permitted uses of the  
9           property is wholesale nursery and landscape  
10          contractor's office?

11          A     The way the zoning map amendment was  
12          done for the property, it broke it into two  
13          tracts and this tract allows either residential  
14          at four units per acre or it allowed wholesale  
15          landscape nursery with a landscape contractor's  
16          office and onsite storage at a specific square  
17          footage.

18          Q     So a wholesale landscape nursery?

19          A     Yes.

20          Q     Or a landscape contractor's office?

21          A     Right. A wholesale landscape nursery  
22          with a landscape contractor's office.

23          Q     So you've had an opportunity to appear  
24          on site on occasion, have you a witnessed a  
25          wholesale landscape nursery in business?

1           A     I mean, there is an area of the site  
2           and that's really occurred after January when  
3           Mr. Williamson -- when we went out there and Mr.  
4           Williamson wrote Mr. Congrove a ticket. Part of  
5           what I had in my letter in October was that,  
6           October 27th, 2015, was that the site had to  
7           come in compliance with being a wholesale  
8           landscape nursery. So Mr. Congrove started to  
9           make efforts to add plants and mulch and things  
10          like that. When we went out in January of 2016,  
11          he hadn't done it to our satisfaction yet.  
12          There wasn't a lot on site there to indicate it  
13          was a wholesale landscape nursery. I believe  
14          some point after in February that the mulch bins  
15          with mulch inside of them had been added as well  
16          as plants, pots, and some palm trees, I believe.  
17          But in the times that I have been out there,  
18          have I seen someone go and purchase anything  
19          from there, no, but I'm not out there for a long  
20          period of time either.

21          Q     Okay. What changed from that time of  
22          the compliance in January or February from the  
23          e-mails to May? What was difference in May?

24          A     Well, some of -- it didn't appear that  
25          the wholesale landscape nursery wasn't

1 necessarily kept up with the volume of the  
2 materials that were there and then just looking  
3 at the site some more and really looking at how  
4 it functioned versus what, I believe, to be a  
5 wholesale landscape nursery would be, just  
6 seemed out of compliance with those kind of  
7 descriptions and the waste-removal service used  
8 in the LMO.

9 Q Thank you.

10 MR. STANFORD: Other questions?

11 Thank you.

12 Mr. Taylor, do you have further  
13 witnesses?

14 MR. TAYLOR: No, sir. That is the  
15 appellant's case.

16 MR. STANFORD: Excellent. Any  
17 rebuttal from the town?

18 MS. LEWIS: No, sir.

19 MR. STANFORD: Any further  
20 testimony.

21 MS. LEWIS: No, sir.

22 MR. STANFORD: Would you like to  
23 make some closing remarks? We  
24 understand you're not a lawyer.

25 CLOSING ARGUMENTS FOR THE TOWN BY TERI LEWIS

1           MS. LEWIS: I would just say that  
2           there has been a lot of problems with  
3           this site throughout the years. I do  
4           know that we do have some determination  
5           letters out there that states grinding  
6           is allowed. But like I said in my  
7           opening remarks even though there is no  
8           definition of a wholesale landscape  
9           nursery or a landscape contractor's  
10          office in the LMO, we do have  
11          definitions of other uses and really  
12          looking at the site and seeing it  
13          operate, it really does not appear to  
14          be what I would consider a wholesale  
15          landscape nursery and that was the  
16          basis of the May 13th, 2016,  
17          determination letter and the staff  
18          stands by that determination.

19                 MR. STANFORD: Thank you.

20                 Mr. Taylor.

21                         CLOSING STATEMENT

22                 MR. TAYLOR: Mr. Chairman and  
23                 board members, first, thank you for  
24                 moving this hearing up so it will not  
25                 conflict with a previously planned

1 vacation. I want to thank you for  
2 that.

3 There is a number of things and  
4 always in closing we wonder what should  
5 go first with. Two things I want to  
6 mention up front. John Adams, one of  
7 the founders of our country said,  
8 "Facts are stubborn things; and  
9 whatever may be our wishes, our  
10 inclinations, or the dictates of our  
11 passion, they cannot alter the state of  
12 facts and evidence."

13 What we have here is a clear  
14 authorized permitted use that has  
15 continued in the same exact manner for  
16 a number of years, which a very small  
17 but vocal group, has come to dislike in  
18 this community and now urging changing  
19 the rules in the middle of the game.  
20 The difference -- and we floated around  
21 this issue a number of times -- the  
22 difference is this is a land management  
23 ordinance and a zoning issue.

24 This is not a question about  
25 pornography. We talked about today how

1 did you feel about this and I don't  
2 know the definition, but it's kind of  
3 this the old age statement by the  
4 Supreme Court years and years ago. You  
5 don't have to define pornography, but  
6 you know when you see it. Now, that's  
7 kind of like what the town wants you to  
8 adopt today. It doesn't feel right.  
9 Yes, it is permitted. Yes, it has been  
10 repeatedly permitted, and we repeatedly  
11 told them they could grind, and there  
12 is no violation of the LMO that you  
13 cannot bring third-party logs, but it  
14 just doesn't feel right.

15 The problem with that is this:  
16 The zoning ordinances and zoning laws  
17 in the State of South Carolina as they  
18 are in most states are very, very  
19 strict. I believe Mr. Hulbert will  
20 tell you in your deliberations under  
21 the controlling law of the state which  
22 originated from Hilton Head each share  
23 a partnership in it. Our Supreme Court  
24 has repeatedly held that "ordinances in  
25 derogation of natural rights of persons

1 over their property are to be strictly  
2 construed as they are in derogation of  
3 the common law right to use private  
4 property so as to realize its highest  
5 utility and should not be impliedly  
6 extended to cases not clearly within  
7 their scope and purpose.”

8 And the critical importance in  
9 this case, I believe, is the remainder  
10 of the local government had wide  
11 latitude to act and regulate what  
12 people can do with their property, but  
13 they must draft their ordinances so  
14 people can have a clear understanding  
15 of what is permitted and what is not.  
16 Otherwise, we must construe such  
17 ordinance to allow people to use their  
18 property as to realize its highest  
19 utility.

20 Now, it is not much doubt that  
21 Hilton Head has been a leader, thank  
22 God, for zoning standards over the  
23 course of years. We have a wonderful  
24 community. We have department head up  
25 by Teri who does an incredible job

1           who's been here for 18 years, and she  
2           does a great job. But they know and  
3           everybody else involved in this  
4           understands that zoning must be clear;  
5           it must be concise and it must be  
6           applicable and there is not a lot of  
7           wiggle room in there to go apply for a  
8           property and tell them they can't do it  
9           this way.

10                  If you simply go back to your  
11           deliberations and take the stipulations  
12           that have been agreed to and actually  
13           we avoided a lot of testimony today.

14                  MR. STANFORD: Thank you for that.

15                  MR. TAYLOR: Here are the hot  
16           points from the appellant's  
17           perspective. We know that this  
18           property was originally rezoned in  
19           March 2007 as a wholesale landscape  
20           nursery with a landscape contractor's  
21           office and onsite storage of up 6,000  
22           square feet. We know the development  
23           permit was allowed in July of 2009. We  
24           know that the site plan in 2009  
25           throughout and had called out in plant,

1 log and chip storage area. We know Ms.  
2 Cyan has testified the term "chip  
3 storage" is used on the site plan  
4 refers to wood chips.

5 We know January 5th, 2010, Ms.  
6 Cyan with the permission of the LMO  
7 official wrote a letter "based on the  
8 allowed uses of Tract A, staff confirms  
9 that composting and wood grinding  
10 operations are in accordance with the  
11 Town of Hilton Head Island Land  
12 Management Ordinance." We know she was  
13 authorized to write it. We know that  
14 three years later she reaffirmed it in  
15 2013 when Adam asked for reaffirmation.

16 These are permitted uses  
17 originally put on the property. These  
18 are not accessory uses. Do not get  
19 confused about that because that's been  
20 cleared up in the stipulation. The  
21 business license was actually granted  
22 in error this year as another way to  
23 kind of limit how ArborNature was doing  
24 things. Teri agreed that it's not an  
25 accessory use. This was a permitted

1 use reaffirmed time and time and time  
2 again.

3 We know from the agreement that  
4 has been entered into the stipulation  
5 that the town has considered the  
6 ArborNature operations as specified in  
7 the business license to be lawful. We  
8 know the town granting the business  
9 license permit. We know that we would  
10 not have been granted it if they had  
11 felt that ArborNature's operations were  
12 anywhere near a type of nuisance. Ms.  
13 Simmons testified to that.

14 And we know the LMO does not  
15 included a definition of a wholesale  
16 landscape nursery. That is a  
17 critically important fact when you  
18 start thinking about the application of  
19 the law and how important it is in this  
20 state that law -- excuse me -- that the  
21 LMO be given strict scrutiny. We know  
22 that the noise issue which was the  
23 driving factor of getting us here is a  
24 non-issue because not only the  
25 independent engineering test that we

1 had conducted while the grinder was  
2 running showed it to be a reasonable  
3 noise level, not in violation either by  
4 the town's standard and very comparable  
5 to other noise machines, but the town's  
6 own code enforcement officers that were  
7 sent out there you all know with the  
8 absolute best to go on and write a  
9 ticket didn't because there was no  
10 noise violation.

11 It's very, very evident that when  
12 you start thinking about Mr. Ham's  
13 testimony and the testimony of the  
14 other two witness, these gentlemen  
15 actually believe there is a problem to  
16 them. There is no question about that.  
17 And they are good, decent people. But  
18 they have offices in a light industrial  
19 zoned complex where ArborNature has  
20 been able to do this. Now, is there a  
21 memory perhaps being embellished about  
22 the number of hours of grinding is  
23 actually going on, yes, because that's  
24 what happens to us as humans. When we  
25 start to get really emotional about

1 something, our thought process actually  
2 fill in as to the memory. I don't  
3 think anybody here actually believes  
4 that the grinding has been going on all  
5 day long, seven days a week as we heard  
6 some testimony.

7 Now, again, I'm not here to  
8 criticize these gentlemen. I  
9 understand these type issues come up in  
10 a community. We're not the Hilton Head  
11 of 30 years ago where everything was  
12 nice and quiet. We are a developed  
13 town that has a number of locations  
14 like ArborNature. We have other  
15 grinders operating on the island. With  
16 all the pressure, all the political  
17 pressure from the mayor and town  
18 council working down to the staff  
19 something had to be sent. And I think  
20 that's obviously what happened. With a  
21 letter without resource without  
22 instruction how to reform it. It was  
23 sent that ultimately you five, six or  
24 seven was going to make this decision.  
25 And that's where we stand.

1           It's important that we look at a  
2           couple other issues. First, there is  
3           not the first shred of credible  
4           evidence that shows there has been an  
5           LMO violation. There is simply not.  
6           There is a lot of complaints of about  
7           the smells, talk about the sawdust, but  
8           Teri has repeatedly told you these are  
9           not LMO violations. The town would  
10          have written them up for that. They  
11          are not. The noise is not an issue.  
12          The smell is not an issue, and the  
13          vibration, if you will, is not an  
14          issue. The circuit court with  
15          ArborNature having been sued will  
16          address those issues because it comes  
17          from a nuisance perspective. But it is  
18          not your job to think of reasons that  
19          the facts in front of you to award a  
20          finding against ArborNature.

21                 It is your job to act upon the  
22                 evidence given to you today, the  
23                 records that is put forward in front of  
24                 you and answer the question as to  
25                 whether or not it is a reasonable

1 position to take that ArborNature has  
2 changed in the face of the facts that  
3 are undisputed in front of you.

4 Maybe 10 percent of ArborNature's  
5 business is generated by the grinding  
6 of the logs. This is the type of  
7 business where it is not unusual that  
8 log work on the site would be what draw  
9 everybody's attention, but don't  
10 forget, there is 15 to 25 men that  
11 assemble there every morning and take  
12 trucks out into the field to do the  
13 work. This work is not primarily  
14 conducted on the site, and it is not  
15 unusual. Hilton Head is full of these  
16 types of the businesses. We have  
17 Bruno's, Carolyn's, and Bruno's has  
18 their own grinder. This is not a new  
19 problem. It's simply a problem that  
20 has festered that has been addressed  
21 that Teri Lewis repeatedly told these  
22 gentlemen is not a violation of the LMO  
23 and they can't take no for an answer.  
24 That's the bottom line. And we are now  
25 in the front of being decided by the

1 board.

2 Everyone is entitled to his own  
3 opinion, but not his own facts and that  
4 is a very true statement. I usually  
5 don't harp on the facts because usually  
6 they are in dispute. The facts are not  
7 in dispute in this case. You have a  
8 five-page stipulation that repeatedly  
9 acknowledges the permitting with wood  
10 grinding on the ArborNature site. I  
11 know this is not an easy call.

12 Some of the questions that you-all  
13 have asked would indicate our thought  
14 processes already formulated and  
15 investigations likes have been done  
16 outside. I ask that you do your job.  
17 I ask that your perform your objective  
18 duties, that you look at the record  
19 that is being produced in front of you  
20 and in the book and based on that, I  
21 don't see that there is any real  
22 question. They may not be the perfect  
23 neighbor, but ArborNature has the legal  
24 right to what they were doing.

25 Mr. Chairman, thank you.

1           MR. STANFORD: Thank you, Mr.  
2 Taylor. I would like to thank the town  
3 and the representatives of ArborNature  
4 for a clear, well-organized  
5 presentation of the difficult issue.

6           Now, Brian we need to conduct our  
7 deliberations in open session; is that  
8 correct.

9           MR. HULBERT: That is correct,  
10 sir.

11                           DELIBERATIONS OF THE BOARD

12           MR. STANFORD: I would like to  
13 first go over the stipulations of facts  
14 and what it means. The stipulation of  
15 facts is just exactly that. These  
16 facts have been deemed to be proven.  
17 Number 1, we know Teri Lewis is the LMO  
18 official. It is clear that the  
19 ordinance which handled the rezoning of  
20 the property in 2007 allowed four  
21 residential units or a wholesale  
22 landscape nursery with a landscape  
23 contractor's office and onsite storage  
24 up to 6,000 square feet per net acre.  
25 Further it is stipulated that the -- in

1           2009, the town staff approved the  
2           expedited development plan review for  
3           use of the property for the same  
4           purposes that were just mentioned.

5                     And Number 4, the site plan does  
6           designate a plant, log or chip area.  
7           The town has stipulated that chip  
8           storage refers to storage of wood chips  
9           that in January of 2010, the town  
10          stipulated or stated that based on the  
11          allowed used for Tract A, staff  
12          confirms that composting and wood  
13          grinding operations are in accordance  
14          with the LMO.

15                    Then in -- that letter it was  
16          clear that someone could have appealed  
17          that decision to the BZA, but it was  
18          not appealed. And Number 9, composting  
19          and grinding operations are permitted  
20          uses as part of the parcel of the  
21          principal -- of the permitted principal  
22          use of the property for wholesale  
23          landscape nursery with landscape  
24          contractor's office. Then in 2013, it  
25          was an e-mail that confirmed that

1           composting and wood grinding are  
2           permitted business on Tract A. Then in  
3           2013 there was notice of violations,  
4           but ArborNature took appropriate  
5           corrective action.

6           There was a deposition taken a few  
7           days ago where Ms. Lewis testified that  
8           certain uses on the property are  
9           accessory uses including tree grinding,  
10          wood chip recycling and wood recycling  
11          is incorrect because those uses are not  
12          accessory uses but rather are part and  
13          parcel of the principal use of the  
14          property for wholesale landscape  
15          nursery with contractor's office.

16          The town's municipal code  
17          authorizes an inspectors to deny a  
18          business license when activity for  
19          which a license is sought is unlawful  
20          or constitutes a public nuisance. In a  
21          deposition Susan Simmons stated that  
22          issuance of the business license means  
23          she considered the business of  
24          ArborNature as specified in the license  
25          to be lawful and she did not believe

1 the business activity was a public  
2 nuisance. Ms. Lewis testified under  
3 oath that the use under the zoning  
4 applicable to the property -- I didn't  
5 read that correctly.

6 Ms. Lewis testified under oath  
7 that grinding of trees and logs on the  
8 property are permitted uses under the  
9 zoning applicable to the property and  
10 the requirements of the LMO. It was  
11 also stipulated that the LMO contains  
12 no provision or requirement or  
13 prohibits the appellant of accepting or  
14 receiving trees and logs from third  
15 parties. Then the LMO does not  
16 regulate or otherwise restrict the  
17 level of noise generated by the  
18 permitted activity on the property.  
19 And finally that the LMO does not  
20 define what a wholesale landscape  
21 nursery is.

22 It is also stipulated that the  
23 land management ordinance provided us  
24 that written interpretations shall be  
25 binding on subsequent decisions by the

1 LMO by the LMO official in applying the  
2 same provisions in the same  
3 circumstances, and those are the facts  
4 and rules that are stipulated between  
5 these parties.

6 If we go back to the testimony of  
7 Mr. Johnson, he's been on the property  
8 for a number of years and that these  
9 large trucks and grinding operations  
10 had been going on for a daily basis  
11 somewhere between 20 hours a week over  
12 a five-day period. He also testified  
13 that the nature of the business has  
14 changed dramatically. Mr. Ham has been  
15 in the adjacent parking or business  
16 park for a number of years as well. He  
17 has observed many trucks with large  
18 trees, and over the last couple years,  
19 the activities have increased concerned  
20 the grinding. He provided us with  
21 photographs showing the tree storage on  
22 the property. He also provided us with  
23 a video showing the extent of the  
24 operations during the time that video  
25 was being taken.

1           I have a note that ArborNature --  
2           that Mr. Congrove testified that the  
3           nature of the business has changed some  
4           over the years in particularly they  
5           acquired this large new grinder. I  
6           find the testimony, in my opinion, the  
7           testimony concerning the nature of the  
8           business to be confusing because Mr.  
9           Congrove testified that the business of  
10          grinding took up only about 10 percent  
11          of the business and he also testified  
12          that the wholesale landscape operations  
13          took about 10 to 20 percent of his  
14          business. We don't know what took up  
15          the rest of the business and whether  
16          there is some other category maybe this  
17          may be following into. So to me that  
18          is a gray area.

19          It is acknowledged that grinding  
20          has been going on for a number of  
21          years. The testimony was confusing  
22          concerning receipt of the trees and  
23          delivery of trees, but it is clear that  
24          the wood chips were being produced for  
25          an industrial use or a significant

1           portion of the them as testified by Mr.  
2           Congrove used as fuel for producing  
3           electricity at a facility in Savannah.

4           Mr. Wrightson came in and  
5           testified as an expert to the effect  
6           that he has done a preliminary study  
7           and that during parts of the study, I  
8           believe, he testified there were  
9           grinding operations going on. He  
10          testified that the noise levels were  
11          equivalent of those of a washing  
12          machine and dishwasher in a home. We  
13          all heard the noises that were coming  
14          through at the time of the video.

15          Mr. Williamson, the code  
16          enforcement official performed a noise  
17          test in the last two weeks and he said  
18          he -- the grinder was not operating at  
19          that time. So it seems to be -- my  
20          personal opinion is that that is an  
21          incomplete noise evaluation to the  
22          extent that it is important. We do  
23          have a stipulation that noise is not a  
24          factor here. And Ms. Lewis stipulated  
25          that noise is not a factor during

1 weekday operations at this location.

2 We have a video that was prepared by

3 Mr. Ham that shows the grinding

4 operation going on a Sunday.

5 This is very difficult question.

6 In this country, we believe in free

7 enterprise and we also believe we are

8 supposed to be good neighbors. I'm

9 inclined to be at this time that the

10 nature of the business of ArborNature

11 changed substantially leading up to the

12 determination made by Ms. Lewis as the

13 LMO official determining that the uses

14 to which this property is being put was

15 not in accordance with its zoning

16 classifications.

17 After that speech, I will open it

18 up with discussion from others.

19 MR. FINGERHUT: Mr. Chairman, one

20 of the issues that is certainly

21 prevalent in the submissions that have

22 been made before today and certain

23 alluded to in the stipulation of facts

24 is that the town staff is bound by a

25 written interpretation of the LMO is it

1           pertains to this property. I like to  
2           address that issue first. It seems to  
3           me that based on the testimony really  
4           from Mr. Congrove, let's just limit it  
5           to that, that there have been a change  
6           of the circumstances since that letter  
7           was written and its follow up in 2013  
8           that would preclude the date of that  
9           letter be binding on the town. So in  
10          other words, the town is not bound by  
11          that interpretation that existed on the  
12          exact date at that time. So that being  
13          said, I think it does simplify the  
14          question as to whether it is a current  
15          violation of the LMO, not whether or  
16          not we are stuck with an interpretation  
17          of that year. I think Teri Lewis said  
18          that there was a written interpretation  
19          would have been binding to and since  
20          the fact has changed, I don't believe  
21          it is binding any longer. As a  
22          threshold, I think that has to be put  
23          aside.

24                 Question then being is this a  
25          violation of the LMO currently.

1           Personally, I believe the use is  
2           currently in violation of the LMO.  
3           What concerns me most of Ms. Lewis's  
4           letter is it does not give options  
5           ArborNature may do or must do to bring  
6           themselves in compliance of LMO. I  
7           think that those findings are  
8           suggestive in the letter or those  
9           options might be summed up in the  
10          letter and they were not in the October  
11          27th, 2015, letter, which gave a  
12          variety of options and that is  
13          presently one of my concerns.

14                 MR. STANFORD: Thank you.

15                 Mr. Cutrer.

16                 MR. CUTRER: Bear with me one  
17          moment, please. I agree with Mr.  
18          Fingerhut that the long history of the  
19          project or this issue was somewhat  
20          predicated on what was happening on a  
21          particular point in time, and we  
22          started out with what, I believe, was a  
23          residential property that became  
24          rezoned or some moderate use as a  
25          landscape nursery. Then I guess, part

1 of the problem with me or the issue I'm  
2 struggling with is our town's code and  
3 ordinances in particular the land  
4 management ordinance, I believe, were  
5 designed to afford protection for all  
6 parties and to me the question is what  
7 does surrounding property owners have  
8 the right to expect from their  
9 neighbors? And we have the right to  
10 operate a business within the confines  
11 of a piece of property, but those  
12 rights extend as far as your neighbors  
13 nose, I guess.

14 We heard testimony from a number  
15 of people of the change in the nature  
16 of business and my reading and  
17 understanding of the testimony today is  
18 that we went from residential property  
19 that got zoned landscape -- wholesale  
20 landscape operation, which to me is a  
21 place people can come and purchase  
22 plant materials and I've done that at a  
23 number of places, and then apparently  
24 the wood grinding operation had started  
25 out as something that the Congroves

1           were using for their own activity  
2           seemed to have grown. I understand  
3           that ArborNature has an outstanding  
4           reputation within the community as a  
5           tree service company, and if you look  
6           at their website, there is testimonies  
7           from satisfied customers. I happen to  
8           have a collateral duty of the Hilton  
9           Head Plantation POA and know that  
10          ArborNature is well-received by the POA  
11          that if you have a tree problem and you  
12          asked them to come and cut it down.

13                 But by the testimony by Mr.  
14          Congrove notwithstanding from the  
15          assertions you heard from counsel, my  
16          recollection is that there was an  
17          original assertion that grinding made  
18          up less than 10 percent of the  
19          business, but I believe I'm correct in  
20          my recollection that in response to my  
21          question did that 10 percent make up  
22          based on hours worked by employees or  
23          revenue, I believe it was conceded that  
24          the revenue generated by the grinding  
25          operation was somewhat significantly

1 greater than 10 percent. I would like  
2 to have seen a breakdown of all the  
3 categories of the revenue from this  
4 operation, and I believe -- I'm sorry  
5 we don't have that.

6 But we have testimony from the  
7 owner that around early 2015, he made a  
8 decision to invest over three-quarters  
9 of a million dollars in all this new  
10 grinding equipment, and I have to ask  
11 myself, why would a reasonable person  
12 do that? And the conclusion I reach is  
13 that a reasonable person would do that  
14 if they thought that area of the  
15 business was going to grow  
16 exponentially. And from the testimony  
17 of all the participants from Mr.  
18 Congrove and those neighbors, it  
19 appears that there has been, and the  
20 testimony with Ms. Lewis there has been  
21 a significant change in the nature of  
22 the operation.

23 So we do -- we now find ourselves  
24 in a situation where there is lot of  
25 grinding that goes on for other people.

1 I find it difficult to believe that all  
2 the trees and the vast majority of the  
3 trees that are ground on site are a  
4 result of trees that have been taken  
5 down as deceased or otherwise on Hilton  
6 Head Island because I don't see -- see  
7 that many trees being taken down on the  
8 island or surrounding areas that  
9 ArborNature operates. And it appears  
10 based on the testimony that the  
11 business has evolved into one of an  
12 industrial producer of wood chips or  
13 industrial use.

14 So the conclusion I reach, Mr.  
15 Chairman, based on the testimony I  
16 heard today and many of the preceding  
17 determinations by the town were  
18 addressing the situation that doesn't  
19 exist anymore, and this is a different  
20 business in 2016 than it was in 2007 or  
21 '10 or '12 or even '14, and so I  
22 believe that this is no longer a  
23 wholesale landscape supply company. I  
24 believe it is a industrial producer of  
25 wood chips.

1 MR. STANFORD: Thank you.

2 Mr. White.

3 MR. WHITE: This is very difficult  
4 because I agree with everything that  
5 has been said. I do think that the  
6 business, itself, has fundamentally  
7 changed. However, without a better  
8 definition of what something other than  
9 a wholesale landscaping company is, the  
10 LMO is the LMO. And to that point,  
11 we're getting into a definitional issue  
12 and I think the matter in front of us  
13 is this in violation of the LMO as we  
14 see it. And I don't think it is. I  
15 mean, the definition we have in front  
16 of us.

17 MR. STANFORD: Thank you.

18 Ms. Laudermilch.

19 MS. LAUDERMILCH: It's easy to say  
20 I agree with all the comments. Mr.  
21 White has expressed my concern at the  
22 lack of definition of the wholesale  
23 landscape business, and that obviously  
24 makes this decision much more clear,  
25 but I also do agree -- my notes

1 reference, you know, 10 percent of  
2 business -- well in excess of the 10  
3 percent of the business being grinding  
4 when it comes from a revenue  
5 perspective. Per Mr. Congrove's  
6 testimony, sale of landscape product is  
7 not a large part of revenues, that  
8 there was basically one staff person,  
9 maybe two active from time to time in  
10 that scope of the business and that the  
11 majority of the wood chips are going to  
12 an industrial user in Savannah.

13 And all of those facts just do not  
14 lead me to continue to believe it is a  
15 wholesale landscape business. It  
16 sounds like an industrial manufacturer  
17 of some sorts.

18 MR. STANFORD: Thank you. We're  
19 here today on an appeal of the  
20 determination made by the land  
21 management official for the Town of  
22 Hilton Head Island and the  
23 determination was the use of this  
24 property being applied on May the 13th  
25 of 2016. It was not permitted use of

1 the property under its zoning  
2 classifications and land management  
3 ordinance.

4 Under the rules of the board of  
5 zoning appeals, when we are asked to  
6 vote on an appeal, it is up to me to  
7 ask for a motion and the motion can  
8 take one of several actions; one, to  
9 affirm the action of the administrator  
10 from which the appeal was taken or two,  
11 modify the action by the administrator  
12 from which the appeal was taken.

13 And to that end, the board of  
14 zoning appeals will have all of the  
15 powers of the administrator from which  
16 the appeal is taken and then issue a  
17 permit or direct a permit be issued or  
18 reverse the decision of the  
19 administrator from which the appeal was  
20 taken and to that end the board of  
21 zoning appeals shall have all the  
22 powers of the administrator from which  
23 the appeal was taken and may issue a  
24 permit or direct that a permit be  
25 issued or the BZA can remand the action

1 of the administrator from which the  
2 appeal was taken for such further  
3 proceedings as the board of zoning  
4 appeals may deem appropriate. The  
5 motion shall contain a minimum of the  
6 finding of those facts for which the  
7 member making the motion deems material  
8 to the decision.

9 That being said I'm asking for a  
10 motion.

11 MR. CUTRER: Mr. Chairman, I move  
12 to affirm the decision of the LMO  
13 administrator for the reasons set forth  
14 in her May 13, 2016, letter.

15 Do I need to articulate those?

16 MR. STANFORD: The letter is in  
17 the record. You're adopting her  
18 findings?

19 MR. CUTRER: I move to affirm her  
20 findings.

21 MR. STANFORD: Is there a second?

22 MR. FINGERHUT: Second.

23 MR. STANFORD: Is there a  
24 discussion of the motion?

25 MR. FINGERHUT: Are we discussing

1 the need or desire of the LMO for more  
2 specific direction as to part of that?  
3 I didn't hear the motion. I'm asking  
4 that is part of the discussion? I'm  
5 asking.

6 MR. STANFORD: That is not part of  
7 the motion. Any other discussion?

8 We have a motion to affirm and  
9 that motion has been seconded.

10 Will you please call the roll?

11 MS. HALEY: Mr. Fingerhut.

12 MR. FINGERHUT: For the motion.

13 MS. HALEY: Mr. Stanford.

14 MR. STANFORD: For the motion.

15 MS. HALEY: Mr. Cutrer.

16 MR. CUTRER: For the motion.

17 MS. HALEY: Mr. White.

18 MR. WHITE: Against the motion.

19 MS. HALEY: Ms. Laudermilch.

20 MS. LAUDERMILCH: For the motion.

21 MR. STANFORD: Motion carries.

22 Thank you for the thoughtful  
23 presentation.

24 This hearing is adjourned.

25 (Whereupon, hearing was adjourned

at 2:05 P.M.)

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STATE OF SOUTH CAROLINA:

BEAUFORT COUNTY:

I, Amanda Bowen, Court Reporter and Notary Public in and for the above county and state, do hereby certify that the foregoing testimony was taken before me at the time and place herein-before set forth; that the witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth, that thereupon the foregoing testimony was later reduced by computer transcription; and I certify that this is a true and correct transcript of my stenographic notes so taken.

I further certify that I am not of counsel to either party, nor interested in the event of this cause.

---

Amanda Bowen

Court Reporter

Notary Public

Beaufort, South Carolina