



The Town of Hilton Head Island  
**Board of Zoning Appeals Special Meeting**

**Monday, July 15, 2019 – 2:30 p.m.**  
Benjamin M. Racusin Council Chambers

## **AGENDA**

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*As a courtesy to others please turn off / silence ALL mobile devices during the meeting. Thank you.*

1. **Call to Order**
2. **Pledge of Allegiance**
3. **FOIA Compliance** – Public notification of this meeting has been published, posted, and distributed in compliance with the South Carolina Freedom of Information Act and the requirements of the Town of Hilton Head Island.
4. **Swearing in Ceremony for Reappointed Members Lisa Laudermilch and Robert Johnson, and New Member Anna Ponder** – *Performed by Josh Gruber, Assistant Town Manager*
5. **Roll Call**
6. **Welcome and Introduction to Board Procedures**
7. **Approval of Agenda**
8. **Approval of Minutes** – Regular Meeting June 24, 2019
9. **Unfinished Business**
10. **New Business**
  - a. **APL-001261-2019** – Request for Appeal from Nate Jones with Broad Creek Marina Adventures. The appellant is appealing staff's determination, dated May 24, 2019, that an outdoor electric go-cart track is not an allowed Outdoor Commercial Recreation use in the Waterfront Mixed Use (WMU) zoning district.
11. **Board Business**
  - a. Review of revised amendments to the Rules of Procedure
12. **Staff Report**
13. **Adjournment**

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



Town of Hilton Head Island  
**Board of Zoning Appeals**  
Monday, June 24, 2019 at 2:30 p.m.  
Benjamin M. Racusin Council Chambers

## **MEETING MINUTES**

**Present from the Board:** Chairman David Fingerhut, Vice Chairman Jerry Cutrer, Patsy Brison, John White, Lisa Laudermilch

**Absent from the Board:** Robert Johnson (excused), Charles Walczak (excused)

**Present from Town Council:** Glenn Stanford

**Present from Town Staff:** Nicole Dixon, Development Review Administrator; Josh Gruber, Assistant Town Manager; Taylor Ladd, Senior Planner; Teri Lewis, Deputy Director of Community Development; Missy Luick, Senior Planner; Teresa Haley, Senior Administrative Assistant

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**1. Call to Order**

Chairman Fingerhut called the meeting to order at 2:30 p.m.

**2. Pledge of Allegiance**

**3. FOIA Compliance** – Public notification of this meeting has been published, posted, and mailed in compliance with the South Carolina Freedom of Information Act and the Town of Hilton Head Island requirements.

**4. Presentation of the Town's Crystal Award to outgoing Chairman David Fingerhut** – Josh Gruber, Assistant Town Manager, presented the award. Mr. Gruber expressed appreciation to Mr. Fingerhut for his service to the community on behalf of the Town. Chester Williams also expressed his appreciation to Mr. Fingerhut for his service.

**5. Roll Call** – See as noted above.

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

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

**7. Approval of Agenda**

Chairman Fingerhut asked for a motion to approve the agenda. Ms. Brison moved to approve. Mr. White seconded. The motion passed with a vote of 5-0-0.

**8. Approval of Minutes** – Meeting of March 25, 2019

Chairman Fingerhut asked for a motion to approve the minutes of the March 25, 2019 meeting. Vice Chairman Cutrer moved to approve. Ms. Brison seconded. The motion passed with a vote of 5-0-0.

**9. Unfinished Business** – None

**10. New Business**

- a. **APL-000770-2019** – Request for Appeal from William Peratta with Greenberg Farrow, on behalf of McDonald's. The appellant is appealing staff's determination, dated March 14, 2019, that the proposed digital menu boards for the property located at 2 Plaza Drive are not permitted per the sign standards in the LMO.

The appellant presented his case as described in the Board's agenda packet. Staff presented their findings as presented in the determination letter dated March 14, 2019.

Chairman Fingerhut asked the Board for discussion. The Board made comments and inquiries regarding: size and location of the existing sign and the proposed new sign; the proposed sloped roof on the new sign; how the existing sign is changed and how often; how the proposed sign would be changed and how often; the format and material of the existing sign and the proposed new sign; the kiosk was proposed upon review of the Town's Design Guide; interpretation of a periodic change, and animated and moving effects; lighting and sign illumination; the McDonald's location at the south end of the Island does not currently incorporate digital signs; the purpose of the proposed sign and kiosk; definitions of a digital sign and changeable copy; LED signage is permitted if certain requirements are met; manual change versus digital change of menu boards; the LMO does not list digital signs under prohibited signs; not all digital signs have animation or moving effects; there is a moving effect of the menu board changing twice per day; digital signage in the LMO should be addressed; and placing a condition on the sign permit that the proposed menu board would never contain animated or moving effects.

Upon the conclusion of the discussion, Chairman Fingerhut asked for a motion.

Vice Chairman Cutrer moved that the Board of Zoning Appeals reverse the determination of the LMO Official pursuant to LMO Section 16-2-103.T.5.3 based on the following:

Finding of Fact: The periodic changing of the menu items and prices on digital menu boards is not an animated or moving effect.

Conclusion of Law: LMO Section 16-5-114.I.2, Prohibited Signs, does not apply to the proposed signage because the proposed digital menu boards will not contain animated or moving effects.

Additionally, a condition shall be placed on the sign permit stating that the proposed digital menu boards will never contain animated or moving effects.

Ms. Brison seconded. The motion passed with a vote of 5-0-0.

b. **Public Hearing**

**VAR-1162-2019** – Robert Brick, on behalf of James Douglas Lamm, is requesting a variance from LMO Section 16-6-102.D, Wetland Buffer Standards, to construct a home and driveway within the 5 foot setback from the 20 foot wetland buffer. The property is located at 26 Oak Marsh Drive and is identified as Parcel# 307 on Beaufort County Tax Map# 10.

Ms. Dixon presented the application as described in the Staff Report. Staff recommends the Board of Zoning Appeals approve the application, based on the Findings of Fact and Conclusions of Law contained in the Staff Report, with the following conditions:

1. The deck in the rear is reduced in size to eliminate any encroachments into the 20 foot wetland buffer and the 5 foot building code setback from the property line.

2. Sediment and erosion control fencing be installed in a way that leaves room for the home to be constructed with as little disturbance and impact to the wetland buffer as possible. The fencing shall be inspected by staff prior to construction. Upon project completion, the areas of the buffer that were disturbed shall be re-planted to create a fully vegetated and functioning wetland buffer.
3. The areas of the wetland buffer that are currently void of vegetation be planted with wetland vegetation upon project completion. The applicant shall submit a landscaping plan for review and approval by the Town's Environmental Planner within 2 weeks of variance approval.
4. Staff shall inspect the property prior to a final Certificate of Occupancy is passed on the building permit to check for compliance with the landscaping plan and buffer impact mitigation.

The Board made comments and inquiries to Staff regarding: the property lines; parking area; ownership of the property; staff condition 1 only applies to the deck; the remaining area that would encroach into the 5 foot setback, if the deck size is reduced; square footage of the home would be just over 1,500 square feet.

Chairman Fingerhut asked if the applicant would like to make a presentation. The applicant presented statements regarding his grounds for the variance.

Chairman Fingerhut opened the hearing from public comments and none were received.

Upon the conclusion of the discussion, Chairman Fingerhut asked for a motion.

Ms. Laudermilch moved to approve the application, based on the Findings of Fact and Conclusions of Law, together with the four conditions, contained in the Staff Report. Mr. White seconded. The motion passed with a vote of 4-1-0. (Roll: Fingerhut, Cutrer, White, Laudermilch – for the motion; Brison – against the motion.)

#### **c. Election of Officers for the July 1, 2019 – June 30, 2020 Term**

Ms. Brison made a motion to elect Jerry Cutrer to serve as Chairman for the new term. Mr. White seconded. There were no additional nominations for the office of Chairman. The motion to elect Jerry Cutrer as Chairman passed unanimously.

Mr. Cutrer made a motion to elect Patsy Brison to serve as Vice Chairman for the new term. Ms. Laudermilch seconded. There were no additional nominations for the office of Vice Chairman. The motion to elect Patsy Brison as Vice Chairman passed unanimously.

Mr. Cutrer made a motion to appoint Teresa Haley to serve as Secretary for the new term. The motion passed unanimously.

### **11. Board Business**

#### **a. Review and adoption of revised amendments to the Rules of Procedure**

Staff presented the changes made to the rules based on the feedback given at the last meeting. The Board and public made comments on those changes. The Board asked staff to make additional changes. Staff will incorporate the requested changes for the Board's review at a future meeting.



## 12. Staff Report

- a. Waiver Report – The Waiver Report was included in the Board’s packet.

Ms. Dixon provided an update on the July meetings. There will be a special BZA meeting on July 15 at 2:30 p.m. to hear two appeals. Staff will contact the board members to confirm their availability for the regular meeting on July 22 at 2:30 p.m. to hold a public hearing for one variance application.

The Board briefly discussed cancellation of the regular August meeting due to lack of available members.

Vice Chairman Cutrer moved that the regular BZA meeting on August 26 be cancelled. Mr. White seconded. The motion passed with a vote of 5-0-0.

Ms. Dixon introduced the Town’s new Senior Planner and BZA Coordinator, Missy Luick.

## 13. Adjournment

The meeting was adjourned at 4:38 p.m.

**Submitted by:** Teresa Haley, Secretary

**Approved:** [DATE]



# TOWN OF HILTON HEAD ISLAND

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## *Community Development Department*

**TO:** Board of Zoning Appeals  
**VIA:** Shawn Colin, AICP, *Director of Community Development*  
**FROM:** Teri B. Lewis, AICP, *Deputy Director of Community Development*  
**DATE:** June 20, 2019  
**SUBJECT:** APL-001261-2019

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Staff has received an appeal from Nate Jones with Broad Creek Marina Adventures. The appellant is appealing staff's determination, dated May 24, 2019, that an outdoor electric go-cart track is not an allowed Outdoor Commercial Recreation use in the Waterfront Mixed Use (WMU) zoning district.

Per the Code of Laws of South Carolina, specifically 6-29-800.B, upon receipt of an appeal, staff is required to immediately transmit to the board all the papers constituting the record upon which the action appealed from was taken. The record as attached consists of the following documents:

- Attachment A - Appellant Submittal
- Attachment B - Staff Determination Letter
- Attachment C - Determination Request
- Attachment D – Pre-application Request and Staff Comments
- Attachment E – Planning Commission and LMO Committee Meeting Minutes

Staff reserves the right to submit additional documents.

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



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

FOR OFFICIAL USE ONLY	
Date Received:	6/6/19
Accepted by:	Nicole J. Terrell
App. #: APL	1261-2019
Meeting Date:	

Applicant/Agent Name: Nate Jones, Vice President Company: Broad Creek Marina Adventures  
Mailing Address: 33 Broad Creek Marina Way City: Hilton Head State: SC Zip: 29926  
Telephone: (843) 682-6000 Fax: N/A E-mail: nate@broadcreekmarinahh.com

**APPEAL (APL) SUBMITTAL REQUIREMENTS**


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

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

- A detailed narrative stating the Town Official or Body who made the decision, the date of the decision being appealed, the decision being appealed, the basis for the right to appeal, the grounds of the appeal, cite any LMO Section numbers relied upon; **and** a statement of the specific decision requested of the review body.
- Any other documentation used to support the facts surrounding the decision.
- Filing Fee - \$100.00 cash or check made payable to the Town of Hilton Head Island.

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

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

Applicant/Agent Signature:  Date: 6/6/19

**APPEAL TO THE BOARD OF ZONING APPEALS  
FOR THE TOWN OF HILTON HEAD, SOUTH CAROLINA**

IN THE MATTER OF BROAD CREEK	)	
MARINA DEVELOPMENT, LLC and	)	<b>APPEAL OF DETERMINATION</b>
BROAD CREEK MARINA	)	<b>RELATING TO INTERPRETATION OF</b>
ADVENTURES, LLC	)	<b>LAND MANAGEMENT ORDINANCE</b>
	)	
	)	

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Broad Creek Marina Development, LLC and Broad Creek Marina Adventures, LLC (collectively "Broad Creek Marina Adventures"), hereby appeal the recent determination of Teri Lewis, AICP, dated May 24, 2019, which was given in her capacity as the LMO Official for the Town of Hilton Head Island ("Town").<sup>1</sup> Within the determination, the Town opined that an outdoor electric go-kart track ("OEGK") is not an allowed "Outdoor Commercial Recreation Use" that can be pursued within the Waterfront Mixed-Use ("WMU") District absent formal amendment to the Town's Land Management Ordinance ("LMO"). Notably, the Town declined to undertake the analysis of whether OEGK could be recognized as an allowed unlisted use without need for an amendment to the LMO in accordance with Section § 16-4-102.A.5.b of the LMO.

The determination should be reversed because the Town's determination is: (1) contrary to the plain terms of the LMO; (2) is not a proper interpretation of the LMO; and (3) is incompatible with state and federal law. To avoid interference with protected property rights and minimize damages from further delay, the determination should be reversed.

**BACKGROUND**

Broad Creek Marina Adventures is located within the WMU District, a zoning classification that is intended to house a mixture of uses. Currently, the property is home to several Outdoor Commercial Recreation uses that provide activities that are not otherwise available within

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<sup>1</sup> A copy of the determination that is the subject of this appeal is attached as Exhibit A.

the Town. In June 2018, Broad Creek Marina Adventures approached the Town to confirm that an outdoor electric go-kart track is an Outdoor Commercial Recreation Use allowed under the LMO within the WMU District. A series of discussions followed, as well as a site visit to a OEGK business that is currently operating in Statesboro, Georgia. Ultimately, the Town issued its recent determination that this use could only be pursued on the property if the LMO is amended to explicitly include the specific phrase “go karts” within the definition of Outdoor Commercial Recreation Use set forth within the LMO. This decision is causing substantial damages by delaying the implementation of a use that should plainly be allowed.

**RELEVANT PROVISIONS OF THE LMO**

Under South Carolina law, the written terms of zoning ordinances such as the LMO must be interpreted according to their “ordinary and popular meaning.” *Charleston Cty. Parks & Recreation Comm’n v. Somers*, 319 S.C. 65, 68, 459 S.E.2d 841, 843 (1995). The Principal Use Table for the WMU District specifically includes “Outdoor Commercial Recreation Use,” confirming that the intended use is a “listed” use for purposes of the LMO. It is not disputed that a use involving outdoor, electric go karts on the property would be: (1) outdoor, (2) commercial, and (3) recreational. Furthermore, such a use is not prohibited within the WMU District by any other provisions of the LMO. In fact, such uses are expressly intended for the WMU District.

The phrase Outdoor Commercial Recreation Use is itself a “defined term” under the LMO. A business operating an outdoor electric go-kart track is plainly within the scope of that definition as well:

**Outdoor Commercial Recreation Other than a Water Park.** An establishment that offers entertainment and recreation activities, events, or attractions to the general public, outdoors, on a commercial or fee basis.

*See* LMO at § 16-10-103.E.2. It is also not disputed that the intended use involves: (1) an establishment; (2) that offers entertainment and recreation activities, events, or attractions; (3) to the general public; (4) outdoors; (5) on a commercial or fee basis. However, the definition provided in the LMO does not expressly include the specific phrase “go karts,” which is the Town’s basis for stating that an amendment to the LMO must be pursued. It is noted that there are dozens of specific examples of uses that are not expressly listed by name within the LMO but nevertheless exist within the Town.

Although the definition of Outdoor Commercial Recreation Use within the LMO also includes a list of specific examples of Outdoor Commercial Recreation Use, this list of specific examples is neither exhaustive nor exclusive. The LMO includes the following rule of interpretation relating to lists and examples used within the LMO:

#### C. Lists and Examples

Unless otherwise specifically indicated, lists of items or examples that use terms like “for example,” “including,” and “such as,” or similar language are intended to provide examples and are not exhaustive lists of all possibilities.

*See* LMO at § 16-10-101. The list of examples of Outdoor Commercial Recreation Use is subject to this rule of interpretation, as it uses the word “include” in the list of examples. Additionally, the included list of sample/example Outdoor Commercial Recreation Uses is itself not included within the Principal Use Table. The relevant “listed” use is Outdoor Commercial Recreation, which should allow for outdoor electric go karts under any reasonable interpretation of the LMO.

Finally, the LMO also contains provisions allowing for the approval of “unlisted” uses without the need for seeking an amendment to the LMO, to the extent that an outdoor electric go-kart track would be deemed an unlisted use. *See* LMO at § 16-4-102.A.5.b. Broad Creek Marina

Adventures asked that the Town conduct this analysis relating to the intended OEGK use. However, the Town's determination omits any analysis of this issue.

**ARGUMENTS AND AUTHORITIES**

**I. THE BOARD OF ZONING APPEALS SHOULD CONFIRM THAT OEGK IS AN OUTDOOR COMMERCIAL RECREATION USE ALLOWED IN THE WMU DISTRICT.**

A property owner within the WMU District, or anywhere within the Town as a whole, is entitled to use their property to the highest utility that is permitted under the LMO. Upon review of the LMO, a property owner would have no reason to believe that OEGK would be disallowed as a Commercial Outdoor Recreation Use in the WMU District. The property is located within a mixed-use district and has been developed accordingly.

Such reasonable expectations on the part of the property owner have legal significance. Ordinances adopted by municipalities within South Carolina must be drafted to allow a property owner to understand what they are and are not permitted to do on their property, as has been confirmed in prior cases involving zoning disputes:

Local governments have wide latitude to enact ordinances regulating what people can do with their property, but they must draft their ordinances so that people can have a clear understanding as to what is permitted and what is not. Otherwise, we must construe such ordinances to allow people to use their property so as to realize its highest utility.

*See Keane/Sherratt P'ship by Keane v. Hodge*, 292 S.C. 459, 465, 357 S.E.2d 193, 196 (Ct. App. 1987) (emphasis added); *see also Helicopter Sols., Inc. v. Hinde*, 414 S.C. 1, 776 S.E.2d 753, 758 (Ct. App. 2015) (confirming that a helicopter tour business was allowable use within an Amusement/Commercial district even though helicopter tours were not expressly listed within the definition). On this basis, applying the terms of the LMO as written and interpreting the LMO as required by state law, OEGK is a Commercial Outdoor Recreation Use that should be allowed.



This stands to reason, as there are any number of qualifying Outdoor Commercial Recreation Uses that are not specifically identified in the list. Broad Creek Marina Adventures is entitled, as the property owner, to a liberal construction of the LMO in its favor. Under South Carolina law, “terms limiting the use of the property must be liberally construed for the benefit of the property owner.” *Purdy v. Moise*, 223 S.C. 298, 302, 75 S.E.2d 605, 607 (1953). When the terms of the LMO, stated rules of interpretation, and applicable legal precedent are considered together, we respectfully believe that OEGK should be promptly confirmed as an allowed Outdoor Commercial Recreation Use. Simply put, OEGK is an allowable Outdoor Commercial Recreation Use under the LMO.

In her May 24, 2019 determination that is the subject of this appeal, Teri Lewis, as the LMO Official for the Town incorrectly confuses Principal Use with the specific examples of uses associated with a Principal Use. It is undisputed that the Principal Use relevant to this appeal is Outdoor Commercial Recreation Other than a Water Park, which includes OEGK within the scope of its definition. This is particularly true when the terms of the LMO liberally construed in favor of the property owner, as it must be under applicable law, using the plain and ordinary meaning of the relevant language. Although go-karts are not *explicitly* listed within the definition of Outdoor Commercial Recreation Use, this does not provide a basis for the Town to refuse such a use on the property.

The permitted uses in the WMU District are listed in LMO § 16-3-105, which allows for ***Outdoor Commercial Recreation Use***. Although the definition of ***Outdoor Commercial Recreation Use*** includes a short list of sample uses, the list is neither exhaustive nor exclusive. This fact is confirmed by the general rules for interpretation that are included in the LMO:



### C. Lists and Examples

Unless otherwise specifically indicated, lists of items or examples that use terms like “for example,” “including,” and “such as,” or similar language are intended to provide examples and are not exhaustive lists of all possibilities.

*See LMO at § 16-10-101.C.* In reaching its determination, the Town disregarded this rule of interpretation that is set forth within the LMO. In lieu of this binding rule, the Town substituted arguments inconsistent with the LMO. Specifically, the Town opined that since an alleged “majority” of specific examples of uses are listed within the definition of Outdoor Commercial Recreation Use, everything else must be disallowed absent an amendment to the LMO. Not only does this point violate the manner in which the LMO must be interpreted, there are many examples of specific uses that are not explicitly listed but that are currently existing within the Town.

Alternatively, the Town argues that since go karts are explicitly included in the LMO definition of Indoor Commercial Recreation Use, they must therefore be prohibited as an Outdoor Commercial Recreation Use. This argument is also undermined by the unambiguous language of § 16-10-101.C of the LMO and yields unreasonable results. For example, “basketball courts” are explicitly listed as a specific outdoor use, but not as an indoor use. If the Town applies the same reasoning that appears in the determination under appeal, the Town would be forced to declare that “basketball courts” are not an allowed Indoor Commercial Recreation Use. On this basis, it is clear that the reasoning used in the determination is faulty. Ordinances should not be interpreted in such a manner that leads to unreasonable results. *City of Myrtle Beach v. Juel P. Corp.*, 344 S.C. 43, 47, 543 S.E.2d 538, 540 (2001) (“In construing a statute, its words must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute’s operation.”). Similarly, “boardwalks” are listed as an indoor use, but not an outdoor use, even though a boardwalk (in its ordinary meaning) would only be built outside.

As demonstrated above, the reasoning used by the Town in the determination is incorrect and inconsistent with the terms of the LMO. The LMO is to be interpreted liberally in favor of the property owner so that property can be used to its highest utility. The Town's determination violates these principles and should be reversed. As OEGK is allowable within the WMU District as an Outdoor Commercial Recreation Use, Broad Creek Marina Adventures requests that the Town's determination be reversed.

**II. ALTERNATIVELY, THE BOARD OF ZONING APPEALS SHOULD CONFIRM OEGK AS AN UNLISTED USE WITHOUT NEED FOR AMENDMENT TO THE LMO UNDER SECTION § 16-4-102.A.5.B.**

If the Board of Zoning Appeals is unable to confirm that OEGK falls within the WMU District, OEGK should be deemed as an allowed "unlisted use" in the WMU District. According to the LMO, an "unlisted use" is one that is not expressly listed in the Principal Use Table.<sup>2</sup> It is noted that the Principal Use Table utilizes the categories of uses, not an exhaustive recitation of every possible variety within each category. Notably, with respect to Outdoor Commercial Recreation Use, the Principal Use Table includes a reference to "Other" when setting parking requirements, which can only be interpreted to mean that there are other examples of Outdoor Commercial Recreation Uses that are allowed, provided that they meet the applicable general definition and are not otherwise prohibited by the LMO. OEGK is an example of an "other" Outdoor Commercial Recreation Use.

For this reason, it is not necessary or appropriate to evaluate OEGK as an unlisted use. Nevertheless, the Town was asked to confirm that OEGK is an allowable, "unlisted" use based

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<sup>2</sup> It is noted that the Principal Use Table does not include the specific examples of each use, but rather includes the Principal Uses such as "Outdoor Commercial Recreation Use." As a further indication that the Principal Use Table is not an exhaustive list of specific examples, the Principal Use Table uses the word "Other" when describing the parking requirements, demonstrating that other uses are indeed allowed.

on the stated criteria within the LMO. The Town failed to undertake this analysis in its determination, which is another reason why the Town's determination should be reversed.

As was presented to the Town prior to the issuance of the determination, OEGK is an allowable unlisted use. In the determination, the Town did not conduct or provide any analysis in response to the evidence presented by Broad Creek Marina Adventures. A summary of the information provided to the Town regarding each criteria is listed below:

- i. *The actual or projected characteristics of the unlisted use in relationship to the stated characteristics of each listed Use Type;*

OEGK is a family-friendly, outdoor, commercial and recreational use. It would be operated in conformity with all applicable Town ordinances, including lighting ordinances, noise ordinances, signage, and bufferyard requirements. Based on the characteristics of the site, the buffers to surrounding properties will be significant in linear distance. Visibility of the OEGK use from offsite will be limited to none, based on the densely forested/vegetated areas, other current uses, existing buildings, and fences. Relating to possible noise, the Planning Commission has made a visit to an OEGK business in Statesboro, Georgia and confirmed that noise is not an issue with the intended use. Traffic is also not an issue, as the relevant arterial road (Marshland Road) is significantly *under* its potential capacity and has acceptable levels of service at all applicable time frames. Also, a significant amount of the anticipated business would come from customers who are already on site to enjoy the other Outdoor Commercial Recreation Uses.

OEGK is similar to other allowed uses and should be permitted. In fact, it would be substantially *less* impactful than certain example uses that are specifically referenced in the definition, such as stadiums, amphitheaters, or band shells. There is no likelihood of confusion that would arise from the allowance of this use based on the limited number of parcels that are

within the WMU District and the fact that Broad Creek Marina Adventures already exists as a site offering multiple outdoor recreational opportunities.

- ii. The relative amount of site area or floor space and equipment devoted to the unlisted use;*

As previously presented to the Town, the use will include a landscaped track and a covered pavilion for customers to begin and complete their ride. A covered storage may also be included. The business would have a total of 60 go-karts, with 30 running at a given time. The site area would be designed accordingly.

- iii. The relative amounts of sales from each unlisted use;*

The sales would be consistent with the other existing Outdoor Commercial Recreation Uses already present, Aerial Adventures and Zipline Hilton Head.

- iv. The customer type for each unlisted use;*

As noted above, this is a family-oriented business that would cater to families, birthday parties, and corporate/event groups, similar to the existing Outdoor Commercial Recreation Uses on site. No response was received on this factor.

- v. The relative number of employees in each unlisted use;*

The staffing for the OEGK business would be similar to that in place for Aerial Adventures and Zip Line Hilton Head. It is anticipated that 2-3 employees would be working at a time.

- vi. The hours of operation;*

The hours of operation would be generally consistent with other uses on the site, including the Up the Creek Pub & Grill.

- vii. The building and site arrangement;*

The building and site arrangement would not be visible from the applicable minor arterial road (Marshland Road) and would be significantly buffered. The facility would include a landscaped track and a covered pavilion or building.

*viii. The vehicles used with the unlisted use;*

Other than the go-karts themselves, there would be no commercial vehicles associated with the OEGK use.

*ix. The relative number of vehicle trips generated by the unlisted use; and*

The number of trips generated would be consistent with the other existing Outdoor Commercial Recreation Uses on site. As noted above, the operation would have 30 go-karts running at a time. This limited capacity would generate only a nominal amount of additional vehicle trips that Marshland Road can easily absorb. Additionally, with the relocation of the publicly-subsidized passenger ferry operation to another location, the traffic coming to the site is substantially reduced in comparison with prior years.

*x. Whether the unlisted use is likely to be found independent of the other listed uses on the site.*

OEGK is entirely compatible with the existing uses on the site and is within the stated definition of Outdoor Commercial Recreation Use. However, it is unlikely that an OEGK-oriented business would be located elsewhere within other parcels in the WMU District. It is not a use that is likely to create confusion as the site already offers Outdoor Commercial Recreation opportunities in a mixed-use setting. For these reasons, we believe that it is unnecessary for the Town to undertake any amendment to the LMO, as a reasonable interpretation of the existing terms of the LMO would encompass the intended use as allowed.

**CONCLUSION**

As stated above, and as mandated under South Carolina law, zoning ordinances must be construed in favor of the rights of the property owner so that property can be used to its "highest utility." When these legal principles are followed, and the required rules of interpretation stated within the LMO are applied, it is clear that OEGK should be allowed as an Outdoor Commercial Recreation Use or, alternatively, allowed as an Unlisted Use in accordance with Section § 16-4-102.A.5.b of the LMO. To avoid any further regulatory delay of the intended use, we respectfully request that the Board of Zoning Appeals reverse the determination of the Town dated May 24 2019, and confirm the allowance of the intended use.

Respectfully submitted,

By: *s/Ellis R. Lesemann*

Ellis R. Lesemann

erl@lalawsc.com

J. Taylor Powell

jtp@lalawsc.com

LESEMANN & ASSOCIATES LLC

418 King Street, Suite 301

Charleston, SC 29403

Phone: (843) 724-5155

***Attorneys for Broad Creek Marina  
Development, LLC and Broad Creek Marina  
Adventures, LLC***

June 6, 2019

Charleston, South Carolina

ATTACHMENT A

**EXHIBIT A**

# TOWN OF HILTON HEAD ISLAND

One Town Center Court, Hilton Head Island, S.C. 29928

(843) 341-4600 Fax (843) 842-7728

www.hiltonheadislandsc.gov

John J. McCann  
Mayor

*Via E-mail*

William D. Harkins  
Mayor ProTem

May 24, 2019

\_\_\_\_\_  
Council Members

David Ames  
Tamara Becker  
Marc A. Grant  
Thomas W. Lennox  
Glenn Stanford

Mr. Nate Jones  
Vice-President/General Manager  
Broad Creek Marina Adventures  
P.O. Box 21584  
Hilton Head Island, SC 29925

\_\_\_\_\_  
Stephen G. Riley  
Town Manager

Dear Nate:

This letter is in response to your request for a formal determination regarding the use of go-cart tracks in the WMU (Waterfront Mixed Use) zoning district. Specifically your request asks the Town to consider the use of outdoor electric go-cart tracks as an unlisted use in the LMO. I have reviewed both the correspondence from your attorney, Ellis Lesemann, dated May 9, 2019 and the Town's Land Management Ordinance (LMO) as part of preparing this determination.

The LMO includes Commercial Recreation as a use. The description for Commercial Recreation Uses in LMO Section 16-10-103.E.1 states the following:

Commercial Recreational Uses involve providing indoor or outdoor facilities for recreation or entertainment-oriented activities by patrons or members. There are two types of Commercial Recreation uses: indoor commercial recreation and outdoor commercial recreation... Accessory uses may include offices, concessions, snack bars, and maintenance facilities.

A water park is listed as a separate type of Outdoor Commercial Recreation use.

The LMO further defines Indoor Commercial Recreation in LMO Section 16-10-103.E.2 as:

An establishment that offers entertainment activities, events, or attractions to the general public on a commercial or fee basis. Indoor commercial recreation uses include: movie theaters, stage theaters, auditoriums, amusement and electronic game arcades (video games, pinball, etc.), pool or billiard tables, theme or amusement parks, boardwalks, midway type attractions such as rides, bumper cars, go-cart tracks, game booths, bowling alleys, pool halls, dance studios and dance halls, indoor firing ranges, health



clubs and spas, indoor tennis and swimming pools, and indoor archery ranges.

The LMO, specifically Section 16-10-103.E.2, defines Outdoor Commercial Recreation Other than a Water Park as:

An establishment that offers entertainment and recreation activities, events, or attractions to the general public, outdoors, on a commercial or fee basis. Outdoor commercial recreation uses include golf courses; driving ranges; miniature golf courses; zip line courses, and active sports complexes with such uses as tennis courts, ball fields and basketball courts; and facilities that are available for the benefit of spectators like stadiums, amphitheaters, and band shells. This use does not include Water Parks.

Indoor Commercial Recreation uses are permitted by right in the WMU zoning district as shown in both LMO Section 16-3-105.O.2 and Table 16-4-102.A.6. Outdoor Commercial Recreation Other than a Water Park uses are permitted by condition in the WMU zoning district. The condition is that the site shall have direct vehicular access to a minor arterial in accordance with Sec. 16-5-105.B, Street Hierarchy. This condition is found in LMO Section 16-4-102.B.5.b.

A review of the definition for Indoor Commercial Recreation uses indicates that go-cart tracks are listed as an example of this type of use. This same use is not listed as an example of Outdoor Commercial Recreation uses.

LMO Section 16-4-102.A.5 provides a process for interpreting unlisted uses in the LMO. This section states that the LMO Official may interpret a use that is not listed in the Principal Use Table as being allowed in a zoning district if the standards found in LMO Section 16-4-102.A.5.b are met. In this case, electric go-cart tracks are not expressly listed as a use in the Principal Use Table; however, other than water park, there are no specific examples of Indoor or Outdoor Commercial Recreation uses listed in the Principal Use Table. The specific uses associated with both Indoor and Outdoor Commercial Recreation are found as examples within the definition of each use. Go-cart tracks are listed as an example of an Indoor Commercial Recreation use which means that it is a use that is found in the LMO.

I find that since the majority of the specific uses associated with Indoor Commercial Recreation and Outdoor Commercial Recreation are found as examples within the definition of each use that go-cart tracks do not qualify as an unlisted use.

As you are aware staff advised you in August 2018 during the review of your pre-application for a 750' – 800' electric go-cart track at 33 Broad Creek Marina Way, that go-cart tracks were not permitted as an Outdoor Commercial Recreation use. Staff stated at that time that a permit application for an outdoor go-cart track could

not be approved unless the use definition in the LMO changed to permit go-cart tracks as an Outdoor Commercial Recreation use.

The Planning Commission and LMO Committee, at the request of Broad Creek Marina Adventures, held several public meetings to discuss the addition of electric go-cart tracks to the Outdoor Commercial Recreation use examples. At the last meeting of the LMO Committee held on January 28, 2019 the Committee recommended staff not pursue an LMO amendment to add electric go-cart tracks as a use example for Outdoor Commercial Recreation.

Due to the fact that go-cart tracks are listed as an example of an Indoor Commercial Recreation use and are not listed as an example of an Outdoor Commercial Recreation use, I have determined that go-cart tracks are not permitted as an Outdoor Commercial Recreation use.

Should you wish to appeal the determinations that go-cart tracks do not qualify as an unlisted use and that go-cart tracks are not an Outdoor Commercial Recreation use, you must submit an appeal application within 14 days of receipt of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "TB Lewis". The signature is written in a cursive, flowing style.

Teri B. Lewis, AICP  
Deputy Director of Community Development

# TOWN OF HILTON HEAD ISLAND

One Town Center Court, Hilton Head Island, S.C. 29928

(843) 341-4600 Fax (843) 842-7728

www.hiltonheadislandsc.gov

John J. McCann  
Mayor

*Via E-mail*

William D. Harkins  
Mayor ProTem

May 24, 2019

\_\_\_\_\_  
Council Members

David Ames  
Tamara Becker  
Marc A. Grant  
Thomas W. Lennox  
Glenn Stanford

Mr. Nate Jones  
Vice-President/General Manager  
Broad Creek Marina Adventures  
P.O. Box 21584  
Hilton Head Island, SC 29925

\_\_\_\_\_  
Stephen G. Riley  
Town Manager

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ATTACHMENT B

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Sincerely,

A handwritten signature in black ink, appearing to read "TB Lewis".

Teri B. Lewis, AICP  
Deputy Director of Community Development

# LESEMANN & ASSOCIATES LLC

CIVIL LITIGATION | BUSINESS DISPUTES

ELLIS R. LESEMANN  
EMAIL: [erl@lalawsc.com](mailto:erl@lalawsc.com)

418 KING STREET, SUITE 301  
CHARLESTON, SOUTH CAROLINA 29403

DIRECT: (843) 724-5156  
WEBSITE: [www.lalawsc.com](http://www.lalawsc.com)

TELEPHONE (843) 724-5155

May 9, 2019

## **VIA EMAIL AND OVERNIGHT DELIVERY**

Teri Lewis, AICP  
LMO Official  
Town of Hilton Head Island  
One Town Center Court  
Hilton Head Island, SC 29928  
[teril@hiltonheadislandsc.gov](mailto:teril@hiltonheadislandsc.gov)

Re: *Request for Administrative Determination Confirming Outdoor  
Commercial Recreation Use Within the Waterfront Mixed-Use District*

Dear Ms. Lewis:

We represent the applicant, Broad Creek Marina Development, LLC (“BCMD”), regarding its pending request for an administrative determination from the Town of Hilton Head (“Town”) relating to the Outdoor Commercial Recreation Use of its property.

As you know, the specific determination requested is simply confirmation that an outdoor electric go-kart track is an “Outdoor Commercial Recreation Use,” a Principal Use allowable within the Waterfront Mixed-Use (WMU) District where the subject property is located.

BCMD originally approached the Town regarding this issue a year ago. Although the time and consideration that the Town has provided to date is appreciated, it is important that the issue be favorably resolved as soon as possible. Otherwise, the delay would set BCMD back another year or more until this Outdoor Commercial Recreation Use can be implemented. For this reason, we respectfully request that the Town issue a determination confirming the allowance of this Outdoor Commercial Recreation Use as soon as possible.

For a number of years, BCMD and its affiliates have successfully owned and operated several outdoor recreation businesses at the Broad Creek Marina site that provide numerous forms of benefit to the Town as a whole. An outdoor electric go-karts amenity (“OEGK”) will add another outdoor, family-oriented recreational opportunity that compliments those already in place on the property.

The permitted uses for the WMU District listed in Section 16-3-105 of the Town's Land Management Ordinance ("LMO") include Outdoor Commercial Recreation Use. Based on the plain terms of the LMO, OEGK is certainly an Outdoor Commercial Recreation Use. The OEGK facility will be: (1) outdoor, (2) commercial, and (3) recreational. Under South Carolina law, the terms in zoning ordinances such as the LMO must be interpreted according to their "ordinary and popular meaning." *Charleston Cty. Parks & Recreation Comm'n v. Somers*, 319 S.C. 65, 68, 459 S.E.2d 841, 843 (1995). For this reason, the intended use should be confirmed as allowed.

It is recognized that Outdoor Commercial Recreation Use is a "defined term" under the LMO. OEGK clearly falls within the scope of the definition that is provided:

**Outdoor Commercial Recreation Other than a Water Park.** An establishment that offers entertainment and recreation activities, events, or attractions to the general public, outdoors, on a commercial or fee basis.

See LMO at § 16-10-103.E.2. Applying this definition to OEGK, it can be confirmed that OEGK would be: (1) an establishment; (2) that offers entertainment and recreation activities, events, or attractions; (3) to the general public; (4) outdoors; (5) on a commercial or fee basis.

A property owner within the WMU District, or anywhere within the Town as a whole, is entitled to use their property to the highest utility that is permitted under the LMO. Upon study of the LMO, a property owner would have no reason to believe that OEGK would not be allowed as a Commercial Outdoor Recreation Use in the WMU District, particularly in view of the fact that it is intended as a mixed-use district and has been developed in such a fashion.

Such reasonable expectations on the part of the property owner have legal significance. Ordinances adopted by municipalities within South Carolina must be drafted to allow a property owner to understand what they are and are not permitted to do on their property, as has been confirmed in prior cases involving zoning disputes:

Local governments have wide latitude to enact ordinances regulating what people can do with their property, but they must draft their ordinances so that people can have a clear understanding as to what is permitted and what is not. Otherwise, we must construe such ordinances to allow people to use their property so as to realize its highest utility.

See *Keane/Sherratt P'ship by Keane v. Hodge*, 292 S.C. 459, 465, 357 S.E.2d 193, 196 (Ct. App. 1987) (emphasis added); see also *Helicopter Sols., Inc. v. Hinde*, 414 S.C. 1, 776 S.E.2d 753, 758 (Ct. App. 2015) (confirming that a helicopter tour business was allowable use within an Amusement/Commercial district even though helicopter tours were not expressly listed within the definition). On this basis, applying the terms of the LMO as written and interpreting the LMO as required by state law, OEGK is a Commercial Outdoor Recreation Use that should be allowed.

Although the definition of Outdoor Commercial Recreation Use within the LMO also includes a list of specific examples of Outdoor Commercial Recreation Use, this list of specific

examples is neither exhaustive nor exclusive. A property owner (or court) reviewing the LMO would confirm this fact upon review of the LMO's stated "general rules for interpretation," which state as follows in relevant part:

### C. Lists and Examples

Unless otherwise specifically indicated, lists of items or examples that use terms like "for example," "including," and "such as," or similar language are intended to provide examples and are not exhaustive lists of all possibilities.

*See LMO* at § 16-10-101. Certainly, the use of the term "include" in the short list of example uses is subject to the applicable rule of interpretation that specifically discusses the required interpretation of such terms.

This stands to reason, as there are any number of qualifying Outdoor Commercial Recreation Uses that are not specifically identified in the list. BCMD is entitled, as the property owner, to a liberal construction of the LMO in its favor. Under South Carolina law, "terms limiting the use of the property must be liberally construed for the benefit of the property owner." *Purdy v. Moise*, 223 S.C. 298, 302, 75 S.E.2d 605, 607 (1953). When the terms of the LMO, stated rules of interpretation, and applicable legal precedent are considered together, we respectfully believe that OEGK should be promptly confirmed as an allowed Outdoor Commercial Recreation Use.

This same conclusion is reached in view of the inherent breadth among the specific examples of Outdoor Commercial Recreation Use that are listed:

1. Golf courses;
2. Driving ranges;
3. Miniature golf courses;
4. Zip line courses;
5. Active sports complexes;
6. Tennis courts;
7. Ball fields;
8. Basketball courts;
9. Facilities available for the benefit of spectators;
10. Stadiums;
11. Amphitheaters; and
12. Band shells.

*See LMO* § 16-10-103.E.2. The list of Outdoor Commercial Recreation Uses does not include bicycle tours, jet skis, jet packs, pickleball, horseback riding, or scooter rentals, but each of these Outdoor Commercial Recreation Uses exist within the Town, among others.

We believe that OEGK should be deemed as an "unlisted use" in the WMU District. According to the LMO, an "unlisted use" is one that is not expressly listed in the Principal Use Table. It is noted that the Principal Use Table utilizes the categories of uses, not an exhaustive



recitation of every possible variety within each category. Notably, with respect to Outdoor Commercial Recreation Use, the Principal Use Table includes a reference to “Other” when setting parking requirements, which can only be interpreted to mean that there are other examples of Outdoor Commercial Recreation Uses that are allowed, provided that they meet the applicable general definition and are not otherwise prohibited by the LMO. OEGK is an example of an “other” Outdoor Commercial Recreation Use.

For this reason, it is not necessary or appropriate to evaluate OEGK as an unlisted use. Nevertheless, if the Town were to engage in this form of analysis, the Town should confirm that OEGK is an allowable unlisted use based on the stated criteria for the following reasons:

- i. *The actual or projected characteristics of the unlisted use in relationship to the stated characteristics of each listed Use Type;*

OEGK is a family-friendly, outdoor, commercial and recreational use. It will be operated in conformity with all applicable Town ordinances, including lighting ordinances, noise ordinances, signage, and bufferyard requirements. Based on the characteristics of the site, the buffers to surrounding properties will be significant in linear distance. Visibility of the OEGK use from offsite will be limited to none, based on the densely forested/vegetated areas, other current uses, existing buildings, and fences. Relating to possible noise, the Planning Commission has made a visit to an OEGK business in Statesboro, Georgia and confirmed that noise is not an issue with the intended use. As noted above, the operation will fully comply with the Town’s noise ordinance. Traffic is also not an issue, as the relevant arterial (Marshland Road) is significantly *under* its potential capacity and has acceptable levels of service at all applicable time frames. Also, a significant amount of the anticipated business would come from customers who are already on site to enjoy the other Outdoor Commercial Recreation Uses. OEGK is similar to other allowed uses such that it should be permitted. In fact, it would be substantially *less* impactful than certain example uses that are specifically referenced in the definition, such as stadiums, amphitheaters, or band shells.

- ii. *The relative amount of site area or floor space and equipment devoted to the unlisted use;*

The use will include a landscaped track and a covered pavilion for customers to begin and complete their ride. A covered storage may also be included. The business would have a total of 60 go-karts, with 30 running at a given time. The site area would be designed accordingly.

- iii. *The relative amounts of sales from each unlisted use;*

The sales would be consistent with the other existing Outdoor Commercial Recreation Uses already present, Aerial Adventures and Zipline Hilton Head.

- iv. *The customer type for each unlisted use;*

As noted above, this is a family-oriented business that would cater to families, birthday parties, and corporate/event groups, similar to the existing Outdoor Commercial Recreation Uses on site.

v. *The relative number of employees in each unlisted use;*

The staffing for the OEGK business would be similar to that in place for Aerial Adventures and Zip Line Hilton Head. It is anticipated that 2-3 employees would be working at a time.

vi. *The hours of operation;*

The hours of operation would be generally consistent with other uses on the site, including the Up the Creek Pub & Grill.

vii. *The building and site arrangement;*

The building and site arrangement would not be visible from the applicable minor arterial road (Marshland Road) and would be significantly buffered. The facility would include a landscaped track and a covered pavilion or building.

viii. *The vehicles used with the unlisted use;*

Other than the go-karts themselves, there would be no commercial vehicles associated with the OEGK use.

ix. *The relative number of vehicle trips generated by the unlisted use; and*

The number of trips generated would be consistent with the other existing Outdoor Commercial Recreation Uses on site. As noted above, the operation would have 30 go-karts running at a time. This limited capacity would generate only a nominal amount of additional vehicle trips that Marshland Road can easily absorb. Additionally, with the relocation of the publicly-subsidized passenger ferry operation to another location, the traffic coming to the site is substantially reduced in comparison with prior years.

x. *Whether the unlisted use is likely to be found independent of the other listed uses on the site.*

OEGK is entirely compatible with the existing uses on the site and is within the stated definition of Outdoor Commercial Recreation Use. However, it is unlikely that an OEGK-oriented business would be located elsewhere within other parcels in the WMU District. It is not a use that is likely to create confusion as the site already offers Outdoor Commercial Recreation opportunities in a mixed-use setting. For these reasons, we believe that it is unnecessary for the Town to undertake any amendment to the LMO, as a reasonable interpretation of the existing terms of the LMO would encompass the intended use as allowed.

In conclusion, my client appreciates the Town's efforts to study this issue and believes that an official determination from the Town confirming the allowance of the intended use is proper. Conversely, a determination that such a use is disallowed would be inconsistent with the terms of the LMO and applicable state law. To avoid undue regulatory delay of the intended use, we respectfully request that the Town confirm the allowance of the intended OEGK use.

This letter is intended to supplement the materials and information that BCMD has already provided to the Town. If additional copies of those materials and information, or any additional

materials or information, would be helpful to the Town in making a prompt determination, please let me know.

We look forward to hearing from the Town on this issue as soon as possible.

With best regards,

*s/ Ellis*

Ellis R. Lesemann

ERL:ajs

cc: Shawn Colin ([shawnc@hiltonheadislandsc.gov](mailto:shawnc@hiltonheadislandsc.gov))  
Josh Gruber ([joshg@hiltonheadislandsc.gov](mailto:joshg@hiltonheadislandsc.gov))  
Brian Hulbert ([brianh@hiltonheadislandsc.gov](mailto:brianh@hiltonheadislandsc.gov))

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

<b>FOR OFFICIAL USE ONLY</b>	
Date Received:	8-3-18
Accepted by:	Sarah W.
App. #: PAPP	1855-2018
Meeting Date:	_____

Applicant/Agent Name: Roger Freedom Company: Broad Creek Marina Development  
Mailing Address: P.O. Box 21584 City: Hilton Head State: SC Zip: 29925  
Telephone: 860-573-8019 Fax: \_\_\_\_\_ E-mail: FFCINT@aol.com

Project Name: BCM Electric Go Karts Project Address: 33 Broad Creek Marina Way  
Parcel Number [PIN]: R510 011 000 0000 0000  
Zoning District: WMH Overlay District(s): \_\_\_\_\_

**PRE-APPLICATION (PAPP) SUBMITTAL REQUIREMENTS**

Digital Submissions are encouraged and can be e-mailed to CDIC@hiltonheadislandsc.gov

*To be filled out by Community Development Staff- Applicants may use this checklist as a guide  
All items are required at the time of submittal to be distributed for review.*

- One Copy of the Project Narrative describing the scope of the project
- One 11" X 17" inch Copy of the Conceptual Site Plan
- Any additional information pertinent to the proposed project

## BCM ELECTRIC GO KART PROJECT

Broad Creek Marina Development is proposing to build a 750-800 foot go kart track that would accommodate 20 electric go karts. The track would have a concrete surface and the lanes would approximate 18 feet. (The conceptual designs does not encompass necessary adjustment to the Zipline course or the track.) The track would have safety barriers surrounding it. It would also have a 3200 square foot pit area-garage for starting the races as well as storing the go karts.

Nearly 35 million Americans participate in the sport of go karting every year. Go Karting is the most popular motor sport in the world. **The innovation of electric go karts, that eliminated noxious fumes and reduced noise levels, has led to a karting explosion around the globe. It is a form of fun the whole family can enjoy.**

Studies show that the average go kart enthusiast is 30 years old, but kids just love the sport. It is a great form of family-fun, and a great choice for birthday parties, corporate events, and team building experiences.

Go Karting is an exceptional activity for families to share. It's competitive, fast paced, and exciting for kids. Learning to master operating a go kart on the track is a terrific confidence builder, and an outstanding way for kids to learn the basics of driving a car.

Racing helps children focus and improve their basic motor skill and reflexes while having a grand time sitting behind the wheel of a motorized vehicle. Most of all its fun!

















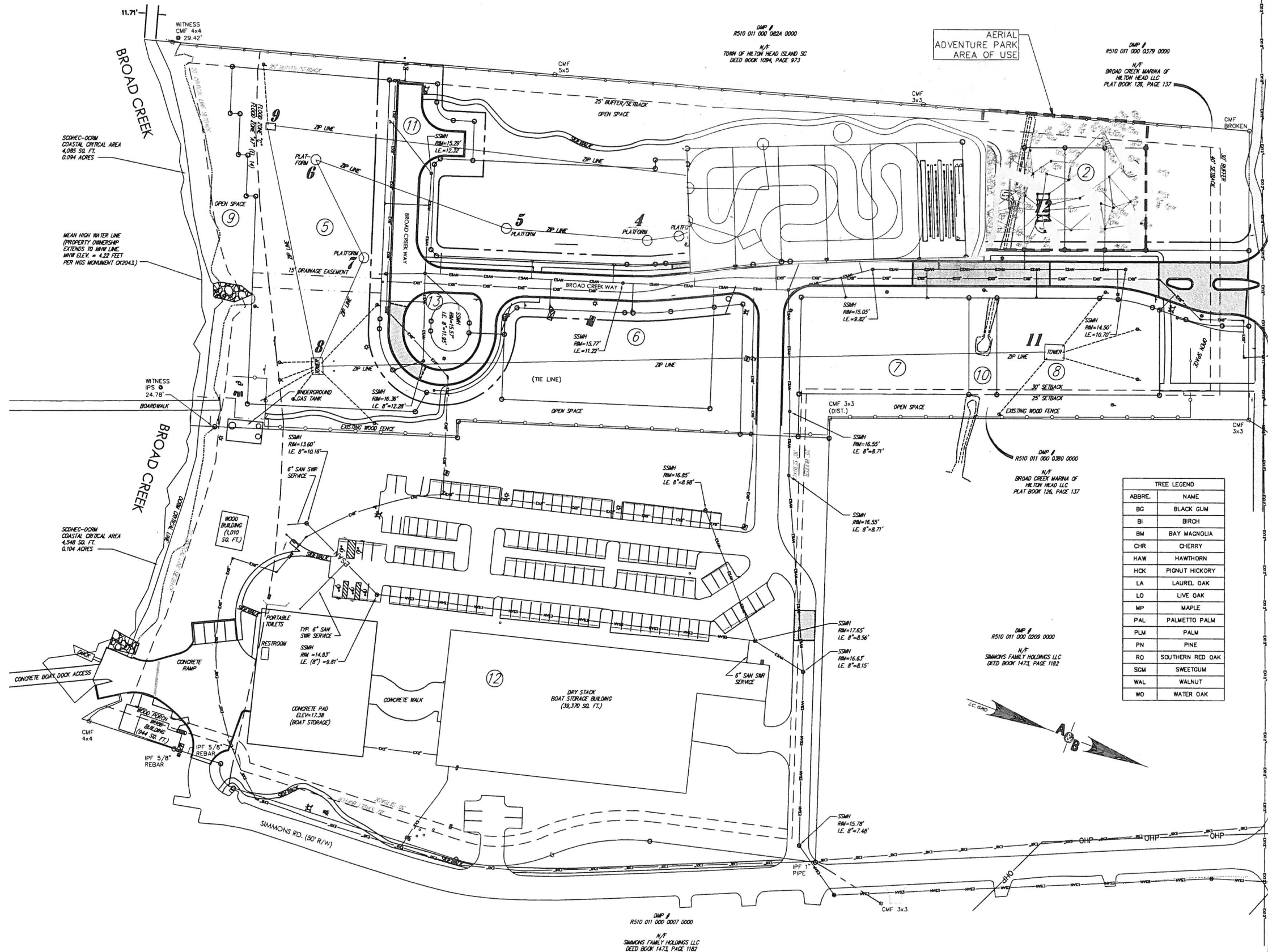












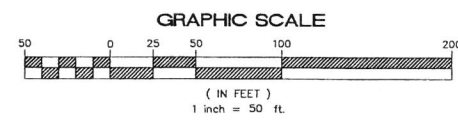
- PLAN REVISIONS
- | NO. | DESCRIPTION                | DATE     | BY |
|-----|----------------------------|----------|----|
| 1   | INCREASED TREE SURVEY AREA | 05/02/11 | AK |
| 2   |                            |          |    |
| 3   |                            |          |    |
| 4   |                            |          |    |
| 5   |                            |          |    |
| 6   |                            |          |    |
| 7   |                            |          |    |
| 8   |                            |          |    |
- 
- THE DESIGNS AND IDEAS PRESENTED IN THESE DRAWINGS ARE THE COPYRIGHTED PROPERTY OF ANDREWS & BURGESS, INC. THE USE OR REPRODUCTION OF THESE PLANS OR THEIR CONTENT IS STRICTLY PROHIBITED WITHOUT PRIOR WRITTEN CONSENT.
- 
- LOT # 1  
BROAD CREEK MARINA VILLAGE S/D  
DMP #  
R510 011 000 0382 0000  
WALLACE J. AND DONNA SOTTER PARR  
DEED BOOK 2778, PAGE 1896  
4,410 SQ. FT. / 0.101 ACRES
- LOT # 2  
BROAD CREEK MARINA VILLAGE S/D  
DMP #  
R510 011 000 0383 0000  
WALLACE J. AND DONNA SOTTER PARR  
DEED BOOK 2778, PAGE 1896  
4,410 SQ. FT. / 0.101 ACRES
- LOT # 3  
BROAD CREEK MARINA VILLAGE S/D  
DMP #  
R510 011 000 0384 0000  
DORIS H. AND MARGARET C. MCCALL  
DEED BOOK 2778, PAGE 1916  
4,410 SQ. FT. / 0.101 ACRES
- DMP #  
R510 011 000 0006 0000  
N/F  
BROAD CREEK MARINA OF  
HILTON HEAD LLC  
DEED BOOK 2623, PAGE 795  
PLAT BOOK 126, PAGE 137  
58,359 SQ. FT. / 1.334 ACRES
- DMP #  
R510 011 000 0006 0000  
N/F  
BROAD CREEK MARINA OF  
HILTON HEAD LLC  
DEED BOOK 2623, PAGE 795  
PLAT BOOK 126, PAGE 137  
52,252 SQ. FT. / 1.154 ACRES
- DMP #  
R510 011 000 0006 0000  
N/F  
BROAD CREEK MARINA OF  
HILTON HEAD LLC  
DEED BOOK 2623, PAGE 795  
PLAT BOOK 126, PAGE 137  
20,754 SQ. FT. / 0.476 ACRES
- DMP #  
R510 011 000 0006 0000  
N/F  
BROAD CREEK MARINA OF  
HILTON HEAD LLC  
DEED BOOK 2623, PAGE 795  
PLAT BOOK 126, PAGE 137  
17,393 SQ. FT. / 0.399 ACRES
- DMP #  
R510 011 000 0006 0000  
N/F  
BROAD CREEK MARINA OF  
HILTON HEAD LLC  
DEED BOOK 2623, PAGE 795  
PLAT BOOK 126, PAGE 137  
16,558 SQ. FT. / 0.380 ACRES
- DMP #  
R510 011 000 0379 0000  
N/F  
BROAD CREEK MARINA OF  
HILTON HEAD LLC  
DEED BOOK 126, PAGE 137  
104,818 SQ. FT. / 2.406 ACRES
- DMP #  
R510 011 000 0380 0000  
N/F  
BROAD CREEK MARINA OF  
HILTON HEAD LLC  
DEED BOOK 126, PAGE 137  
22,191 SQ. FT. / 0.508 ACRES
- DMP #  
R510 011 000 0183 0000  
N/F  
BROAD CREEK MARINA OF  
HILTON HEAD LLC  
DEED BOOK 2536, PAGE 499  
PLAT BOOK 126, PAGE 137  
74,943 SQ. FT. / 1.726 ACRES
- DMP #  
R510 011 000 0007 0000  
N/F  
BROAD CREEK MARINA OF  
HILTON HEAD LLC  
DEED BOOK 2772, PAGE 1546  
PLAT BOOK 118, PAGE 109  
287,834 SQ. FT. / 6.608 ACRES

TREE LEGEND

ABBRE.	NAME
BG	BLACK GUM
BI	BIRCH
BM	BAY MAGNOLIA
CHR	CHERRY
HAW	HAWTHORN
HCK	PIG LIT HICKORY
LA	LAUREL OAK
LO	LIVE OAK
MP	MAPLE
PAL	PALMETTO PALM
PLM	PALM
PN	PINE
RD	SOUTHERN RED OAK
SOM	SWEETGUM
WAL	WALNUT
WO	WATER OAK

ACREAGE TABLE

AREA	SQUARE FEET	ACRES
UPLANDS	667,995	15.335
CRITICAL	8,633	0.198
TOTAL	676,628	15.533



LEGEND:

□	CONCRETE MONUMENT FOUND
○	IRON PIN FOUND
○	IPF
○	IRON PIN SET
⊙	FIRE HYDRANT
⊙	LIGHT POLE
⊙	POWER POLE
—OHP—	OVERHEAD POWER LINE
⊙	QUI WIRE

NOTES:  
 1. BEARINGS ARE BASED ON SC STATE PLANE COORDINATE SYSTEM.  
 2. FIELD WORK COMPLETED OCTOBER 02, 2010.  
 3. ACCORDING TO FEMA FLOOD INSURANCE RATE MAP COMMUNITY-PANEL NUMBER 480220 0007 D DATED DECEMBER 18, 1988, SUBJECT PROPERTY APPEARS TO BE WITHIN FLOOD ZONE "C" (AREA OF MINIMAL FLOODING) AND FLOODZONE "A" (ELEV. = 14').  
 4. ALL UNDERGROUND UTILITY LOCATIONS ARE APPROXIMATE LOCATIONS BASED ON ABOVE GROUND FEATURES AND DESIGN PLANS.  
 5. ALL PROPERTY CORNERS ARE 1/2" REBAR SET UNLESS NOTED OTHERWISE.  
 6. CRITICAL LINE TAKEN FROM PLAT BOOK 118, PAGE 108 AND PLAT BOOK 126, PAGE 137.

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

NOTE:  
 TREE SURVEY WAS UPDATED WITHIN THE LIMITS-OF-WORK ON 04/02/12.

40A Shanklin Road  
 Beaufort, SC 29906  
 843.636.0360  
 Fax 843.636.9766

**Andrews & Burgess Inc.**  
 Engineering & Surveying

BOUNDARY, TREE AND ASBUILT SURVEY  
 Prepared For  
 BROAD CREEK MARINA  
 of HILTON HEAD, LLC

BROAD CREEK MARINA VILLAGE  
 TOWN OF  
 HILTON HEAD ISLAND  
 BEAUFORT COUNTY, SC

Date Drawn: 02/11/11  
 Last Revised: 04/05/12  
 Drawn By: N. Ridley  
 Engineer: G. Burgess

SHEET #:  
**1**  
 of 3

JOB:



Amusement Products, LLC  
 5954 Brainerd Road  
 Chattanooga, Tennessee 37421  
 phone: 423-892-7264  
 fax: 423-855-0432

Thunder Volt Go Kart Track Preliminary Layout	
Hilton Head Project	
Roger Freeman	
Beaufort, SC	
3/14/18	0' = 0' CCL
NOT FOR CONSTRUCTION	
PAGE 1	of 1

# PLAN CORRECTIONS REPORT (PAPP-001855-2018)

**PLAN ADDRESS:** 33 Broad Creek Marina Way  
Hilton Head, SC 29926

**PARCEL:** R510 011 000 0389 0000

**APPLICATION DATE:** 08/03/2018  
**EXPIRATION DATE:**

**SQUARE FEET:** 0.00  
**VALUATION:** \$0.00

**DESCRIPTION:** BROAD CREEK MARINA / ELECTRIC GO KART-  
PROPOSING TO BUILD A 750-800 FT GO KART THAT  
WOULD ACCOMODATE 20 ELECTERIC GO KARTS.

CONTACTS	Name	Company	Address
Applicant	Roger Freedman		
Business Name		B C M ELECTRIC GO KARTS	Po Box 21584 Hilton Head Island, SC 29925
Owner		BROAD CREEK MARINA DEVELOPMENT LLC	Po Box 21584 Hilton Head Island, SC 29925

**All comments provided in this Staff Corrections Report for a Pre-Application are not comprehensive.**

**Other corrections may be determined at such time the final development application is submitted to the Town for review and permitting.**

## 1. Building Plan Examiner

Scott Sodemann Ph: 843-341-4651 email: scottso@hiltonheadislandsc.gov

Correction: Building - General Comments

- Comments:*
1. Current Building Codes: 2015 IBC, IMC,IPC, 2014 NEC, 2017 ANSI A117.1, 2009 IECC.
  2. Not enough information has been provided to evaluate the proposed building for the carts.
  3. Maintain accessible route throughout the site and building as per applicable codes.
  4. More comments to come at Building Permit plan review.

## 2. Development Review & Zoning

Taylor Ladd Ph: 843-341-4607 email: taylorl@hiltonheadislandsc.gov

Correction: Planning

*Comments:* **1. Go-Cart Track Use:**

**-Per LMO 16-10-103.E.2, Commercial Recreation Uses Definition: Go-cart tracks are not permitted as an outdoor commercial recreation use. The LMO defines a go-cart track as an indoor commercial recreation use only.**

**-Any permit applications for an outdoor go-cart track cannot be reviewed or approved by Staff at this time.**

**-Comments from Staff on this pre-application report are only as a courtesy for the applicant to consider if the use definition in the LMO ever changes to permit go-carts as an outdoor commercial recreation use.**

2. Permitting:

-As proposed, this project requires a Major Development Plan Review (DPR) application. Submit all applicable materials listed in the LMO Appendix D-6 for a Major Development Plan Review Application, including but not limited to a recent tree and topo survey, site plan, site lighting and planting plans.

-The only items not required at the time the application is submitted are outside agency approvals, such as DHEC, OCRM, land disturbance permits, SCDOT encroachment permit, utility service, etc. Approval will not be issued until all required outside agency items are received.

-Impact Fees will be assessed at the time of building permit application

3. Development Notes:

-Add the following note to the site plan: Before any demolition, underbrushing, clearing, tree removal, soil removal, or any other site work begins, Town staff must inspect the site to ensure any required erosion controls and/or tree protection is installed. Please contact Taylor Ladd, Senior Planner, at 843 341 4607 or at taylorl@hiltonheadislandsc.gov to schedule the pre clear inspection. Please allow for two full business days for the pre clear inspection and any required re-inspections.

-Add the following note to the site plan: Per LMO 16 2 103.P, this project shall obtain approval\* of a Certificate of Compliance (C of C) prior to the actual occupancy or use of the site or structure. When the site work is complete, submit a Certificate of Compliance application and all required items to Taylor Ladd at taylorl@hiltonheadislandsc.gov. Please allow for two full business days for the C of C inspection and any required re-inspections.

4. Site Plan:

-Provide a table on the site plan with the following information: the property's zoning district (WMU); the property's overlay districts (COR); flood zone; parcel number and address; project name; site acres; allowed density (8,000 GFA) and proposed density; the maximum impervious cover (50% max); the proposed impervious cover for this development\* (as a percent of net site acres and square feet); the maximum building height allowed in the WMU district (75ft); the proposed maximum building height; the minimum number of parking spaces required for the proposed use (1 per 3 persons + 1 per 200 GFA associated structures); the number of spaces proposed\*\*.

\*Impervious surfaces includes the land that is covered by impervious surfaces, including but not limited to roofs, buildings, streets, driveways, parking areas, sidewalks, asphalt or concrete surfaces, permanent ponding/storage areas, and permanent surface water bodies within the property common areas. To calculate the impervious surfaces, show approximate building footprints, driveways, parking areas, sidewalks, etc. on the site plans.

\*\*Show the proposed location of parking spaces with existing parking spaces used for the Zip Line facility to ensure the proposed development can accommodate the required number of parking spaces.

-Site Plan should show all proposed improvements, to include any changes to the existing zip line facilities affected by the go-cart track.

5. Setbacks and Buffers: ATTACHMENT D

- Delineate and label all required setbacks and buffers on the site plan. This property is subject to WMU district regulations with a Minor Arterial Street (Marshland Road).
- "40 Foot Adjacent Street Setback" from Marshland Road.
- "30 Foot Adjacent Use Setback" from the adjacent Town-owned property zoned PR. Adjacent Use setback angles will need to be met.
- "20 Adjacent Use Setback" from the adjacent Simmons property.
- Parcels R510 011 000 0006 0000, R510 011 000 0389 0000, R510 011 000 0183 0000, and R510 011 000 007F 0000 are viewed one development for the Board Creek Marina and Village. Adjacent street and use setbacks and buffers are waived for shared development property boundaries.
- "Type B Option 1 (25 feet) or Option 2 (15 feet) Adjacent Street Buffer" from Marshland Road.
- "Type C Option 1 (25 feet) or Option 2 (15 feet) Adjacent Use Buffer" from the adjacent Town-owned property zoned PR.
- No buffer required from the adjacent Simmons property.
- The applicable buffer(s) + 5' setback from tidal wetland(s) per LMO 16 6 102.D.

3. **Fire Marshal Office - Fire & Rescue**- No comments at this time.

4. **Floodplain Manager**

Shari Mendrick email: sharim@hiltonheadislandsc.gov

Correction: Planning

*Comments:* 1.The proposed improvements are in Flood Zone C, therefore, no special conditions apply. Note FEMA community, map, panel and zone when submitting DPR.

5. **Natural Resources**

Rocky Browder email: rockyb@hiltonheadislandsc.gov

Correction: Natural Resources

*Comments:* 1. Replacement or Supplemental Tree Plan, Sec. 16-6-104  
Submit a proposal to meet the "Requirement for Minimum Standard of Tree Coverage" pursuant to LMO Sec. 16-6-104.G (ACI Calculations) or pursuant to Sec. 16-6-104.I, Standards for Supplemental or Replacement Trees, based on trees removed by category.

2. Specimen Tree Impacts Sec. 16-6-104.F

Take all steps needed to minimize the impacts to any Specimen trees that exist on the project site by eliminating any proposed impacts within their drip lines.

Provide a canopy survey of all specimen trees within the construction limits to include the height above the ground of the lowest limbs.

Ensure that the proposed specimen tree impacts comply with Sec. 16-6-104.F.2.iii, which states in part that "no more than 20 percent of the total area within the drip line of any specimen tree shall be subject to paving or soil compaction, and that no paving or soil compaction will occur within 15' of the tree's trunk."

If 20 percent limit is to be compromised within the drip line of a specimen tree, show that alternative means of protection for the specimen tree are being used, i.e. pervious pavers, materials placed at or above grade, no use of mechanical machinery.

3. Tree and Topo Requirement Sec. 16-6-104.C.2

Provide a tree and topographic survey certified by a South Carolina Land Surveyor that is less than 2 years old.

4. Minor Development Tree Submittals, Sec. 16-6-104.C.1.b

Since this project is for minor construction or the alteration to an existing development, you may choose to provide a sketch showing the trees on the site and the proposed building impacts in lieu of a complete tree survey and completed tree tally sheets, listing trees by size and category, and showing those to be removed with an "X".

5. Site Development Plans, Sec. 16-6-104.C-1

All grading and utilities must be shown in relation to the existing trees. All utilities must be certified by the provider. All trees to be removed must be shown with an "X".

6. Tree Protection Zones Sec. 16-6-104.C

Show tree protection zones for any trees located within 25' of any proposed grading, construction, or tree removals; to be established by physical barriers that will need to be maintained until such time that the work is completed.

SPECIAL ATTENTION must be shown for the Specimen tree protection areas that prevent paving or soil compaction within 15' of the trunk. These Specimen tree protection zones should be substantial, such as cyclone or wooden fencing that will prevent access to these 15' areas or material storage of any kind.

7. Wetland Delineation Sec. 16-6-102, Appendix D-13

Provide a wetland determination as required or request a waiver from the wetland determination required in Sec. 16-6-102.

8. Buffer Standards Sec. 16-5-103.F

For required buffers, you will need to produce a chart that lists what the planting requirements are for each 100' section of the chosen buffer; listing what overstory trees, understory trees, and the evergreen shrubs that are existing within each 100' section that will be applied to that section's planting requirements. You must then detail what you proposed to add to each of those categories within each 100' section, if needed, to demonstrate that you are meeting the required standards for each chosen buffer.

**6. Stormwater Engineering**

Brian Eber email: briane@hiltonheadislandsc.gov

Correction: Stormwater Engineering

*Comments:* 1. Provide pre- and post-development drainage area maps with flow path. The ultimate offsite discharge point should be the point of study for the drainage calculations.

2. Provide an erosion and sediment control plan per Section 16-5-109.I. of the LMO.

Per Section 16-5-109.I.2.d all erosion, sedimentation, and pollution control BMPs shall be designed, installed, and maintained in accordance with the South Carolina DHEC's Stormwater BMP Handbook.

All symbols and standard details on plans shall conform to those found within the BMP Handbook.

3. Depending upon the total area of disturbance and the proximity to the nearest receiving water body, this project may require submittal to SC DHEC/OCRM for either coverage or concurrence under the NPDES General Construction Permit as well as for Coastal Zone Consistency Certification. If the applicant desires more information on submittal requirements, please contact SC DHEC Bureau of Water at (803) 898-4300.

4. The applicant shall submit a completed Stormwater Plan Review form.

5. Provide the net change (if any) in impervious area (from existing conditions to future developed conditions).

**7. Traffic Engineering**

Darrin Shoemaker email: darrins@hiltonheadislandsc.gov

Correction: Traffic Engineering

*Comments:* 1. The applicant needs to inventory in detail the existing development on the site and its square footage, including the nos. of wet and dry boat slips. Coordinate with case manager to ensure satisfaction with the requirements of 16-5-107.D.1 and any ADA-related requirements as outlined in 16-5-107.D.6. Town desires to discuss regulation of existing parking along Beaufort-County maintained Simmons Road with applicant in an effort to dissuade patrons from parking on the existing sidewalk.

2. The proposed development appears to encroach into the private right-of-way associated with Broad Creek Marina Way and a required shoulder area per Table 16-5-105.D.1.

3. There is an existing pedestrian crossing on Broad Creek Marina Way just interior to the security gate that appears to be lacking in traffic control. It is suggested that the applicant examine this existing crossing relative to the need for the installation of signs, pavement markings, and/or ADA-required detectable warning surface (DWS) approach pads.

4. It is suggested that the applicant document on-site satisfaction of the Town's requirements relative to bicycle parking per 16-5-107.H.7 and an EV charging station per 16-5-107.D.10. This may not be a requirement; check with case manager. But the amount of development that has been incrementally added to this site in recent years certainly warrants these accommodations.

**8. Urban Design**

Chris Darnell Ph: 843-341-4676 email: chrisda@hiltonheadislandsc.gov

Correction: Urban Design

*Comments:* 1. This project requires review from the Town's Design Review Board. Contact Chris Darnell at 843-341-4676 for more information.



**TOWN OF HILTON HEAD ISLAND**  
**Planning Commission**  
**Minutes of the October 3, 2018 – 9:00 a.m. Meeting**  
**Benjamin M. Racusin Council Chambers**

Commissioners Present: Chairman Alex Brown, Vice Chairman Peter Kristian, Leslie McGowan, Glenn Stanford, Todd Theodore, Judd Carstens, Lavon Stevens, Michael Scanlon

Commissioners Excused: Caroline McVitty

Town Council Present: None

Town Staff Present: Chris Darnell, Urban Designer; Shea Farrar, Landscape Associate; Brian Hulbert, Staff Attorney; Teri Lewis, LMO Official; Jennifer Ray, Planning & Special Projects Manager; Anne Cyran, Senior Planner; Teresa Haley, Senior Administrative Assistant

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**1. Call to Order**

Chairman Brown called the meeting to order at 9:00 a.m.

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

**3. Roll Call**

**4. Freedom of Information Act Compliance**

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

**5. Approval of Agenda**

Vice Chairman Kristian moved to approve the agenda as presented. Commissioner Stanford seconded. The motion passed unanimously.

**6. Approval of Minutes – Meeting of September 5, 2018**

Vice Chairman Kristian moved to approve the minutes of the September 5, 2018 meeting as submitted. Commissioner Stanford seconded. The motion passed unanimously.

**7. Appearance by Citizens on Items Unrelated to Today's Agenda**

Roger Freedman, owner of Broad Creek Marina and Zipline Hilton Head, asked the Commission to consider an LMO amendment to allow electric go-karts as an Outdoor Commercial Recreation use. Mr. Freedman requested that this amendment be considered as soon as possible to allow him to open an electric go-kart facility this spring. Chairman Brown asked Mr. Freedman to submit a written request to the LMO Committee.

**8. Unfinished Business – None**

**9. New Business – None**

**10. Commission Business**

**a. Review and Adoption of 2019 Meeting Schedule**

Chairman Brown expressed concern that the January 2 and July 3 meetings would conflict with the adjacent holidays, and that a meeting on April 17 would conflict with the RBC Heritage. Chairman Brown recommended those meetings be cancelled and that special meetings can be scheduled as needed.

Commissioner Stanford moved to approve the 2019 Meeting Schedule with the deletion of the January 2, April 17, and July 3 meetings. Commissioner Scanlon seconded. The motion passed with a vote of 8-0-0.

**11. Chairman's Report – None**

**12. Committee Report**

Commissioner Stanford reported Scott Liggett, Director of Public Projects and Facilities/Chief Engineer will provide a CIP update at the Commission's October 17<sup>th</sup> meeting.

Commissioner Stevens reported on the status of the Gullah-Geechee Land & Cultural Preservation Task Force, the recently hired consultant, The Walker Collaborative, and the liaison position.

Commissioner Carstens reported the Public Planning Committee recently approved the Comprehensive Plan/Vision Phase 2 recommendations with a slight modification to change "public" leadership to "community" leadership in one of the proposed principles. The Comprehensive Plan Committee is looking at dates to meet to discuss details of the management team and working groups.

Vice Chairman Kristian reported the LMO Committee is looking into dates to meet.

**13. Staff Report**

**a. Update on Affordable Workforce Housing Initiative**

Ms. Ray presented information pertaining to the recent meeting of the Public Planning Committee (PPC) and the recently hired consultant, Lisa Sturtevant & Associates, a Virginia based company specializing in housing policy and planning. They will partner with the Clemson University Department of City Planning and Real Estate Development.

The Commission made comments and inquiries regarding: the consultant's presentation to PPC; the consultant sharing information on affordable workforce housing in other communities; most available land that is not Town-owned is native-owned property; the consultant's timeline and deliverables; there are no short term policies in place to provide incentive for developers to build affordable housing; any related LMO changes would involve a comprehensive process and require public hearings; and taking a comprehensive approach to affordable workforce housing.

The Commission asked staff to provide them with Dr. Sturtevant's presentation to the PPC and the staff-prepared underutilized/vacant property maps. Chairman Brown asked staff to notify the Commission of the consultant's upcoming visits and to provide an update to the full Commission after each visit.

**b. Quarterly Report**

Ms. Cyran noted a revision made to the report regarding the status of ZA-001467-2018. The Commission made inquiries regarding the status and asked Ms. Cyran to include an additional revision to the report. Ms. Cyran indicated for the next meeting, staff will add the CIP update to the agenda and plan a Board/Commission continuing education training.

**14. Adjournment**

The meeting was adjourned at 9:40 a.m.

Submitted by: Teresa Haley, Secretary

Approved: November 15, 2018

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Alex Brown, Chairman

**TOWN OF HILTON HEAD ISLAND**  
**LMO Committee Meeting**  
**October 30, 2018 – 2:00 p.m.**  
**Benjamin M. Racusin Council Chambers**

Members Present: Chairman Peter Kristian, Vice Chairman Todd Theodore, Michael Scanlon

Members Absent: Leslie McGowan

Planning Commissioners Present: Glenn Stanford

Town Council Present: None

Town Staff Present: Charles Cousins, Anne Cyran, Teri Lewis, Teresa Haley

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**1. Call to Order**

Chairman Kristian called the meeting to order at 2:00 p.m.

**2. Freedom of Information Act**

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

**3. Approval of the Agenda**

Mr. Theodore moved to approve. Mr. Scanlon seconded. The motion passed unanimously.

**4. Approval of the Minutes – August 16, 2017**

Mr. Scanlon moved to approve the minutes of the August 16, 2017 meeting. Mr. Theodore seconded. The motion passed unanimously.

**5. Discuss Proposed 2018 LMO Amendments**

Chairman Kristian indicated that some of the proposed changes are ministerial and the Committee agreed to forward those to the Planning Commission. Chairman Kristian asked Ms. Lewis to begin the discussion.

Ms. Lewis indicated today's objective is for the Committee to discuss the list of proposed amendments in consideration of the 2018 LMO Amendments. The Committee discussed each amendment, received public comments, and provided direction for staff. Ms. Lewis stated staff will revise the amendments before bringing them to the Planning Commission.

The Committee considered the request to amend the LMO to allow electric go-karts as an Outdoor Use in the Waterfront Mixed Use (WMU) Zoning District. The Committee heard a presentation from staff, a presentation from Nate Jones with Broad Creek Marina, and public comments. After a discussion, the Committee requested that the Planning Commission discuss the issue at the next Commission meeting to allow more input.

Patsy Brison addressed the Committee with a request to amend the text of the LMO regarding large buildings in the Resort Development zoning district. The Committee asked staff to review Ms. Brison's request.

Upon the conclusion of the discussion, Chairman Kristian thanked everyone for participating in today's discussion.

**6. Adjournment**

The meeting was adjourned at 4:47 p.m.

Submitted by: Teresa Haley, Senior Administrative Assistant

Approved: June 3, 2019

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Peter Kristian, Chairman

**TOWN OF HILTON HEAD ISLAND**  
**Planning Commission**  
**Minutes of the December 19, 2018 – 3:00 p.m. Meeting**  
**Benjamin M. Racusin Council Chambers**

Commissioners Present: Chairman Alex Brown, Vice Chairman Peter Kristian, Glenn Stanford, Todd Theodore, Judd Carstens, Caroline McVitty, Lavon Stevens, Michael Scanlon

Commissioners Excused: Leslie McGowan

Town Council Present: Tamara Becker, Bill Harkins, Tom Lennox, David Ames

Town Staff Present: Jeff Buckalew, Town Engineer; Charles Cousins, Assistant to the Town Manager; Shawn Colin, Director of Community Development; Carolyn Grant, Communications Director; Brian Hulbert, Staff Attorney; Teri Lewis, LMO Official; Scott Liggett, Director of Public Projects and Facilities/Chief Engineer; Jennifer Ray, Planning & Special Projects Manager; Anne Cyran, Senior Planner; Teresa Haley, Senior Administrative Assistant

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**1. Call to Order**

Chairman Brown called the meeting to order at 3:00 p.m.

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

**3. Roll Call**

**4. Freedom of Information Act Compliance**

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

**5. Approval of Agenda**

The Planning Commission approved the agenda by general consent.

**6. Approval of Minutes – Meeting of December 5, 2018**

Commissioner Stanford moved to approve the minutes of the December 5, 2018 meeting as submitted. Vice Chairman Kristian seconded. The motion passed unanimously.

Mr. Charles Cousins then approached the Commission to announce recent changes to Town staff. Mr. Cousins transferred positions to Assistant to the Town Manager. Mr. Shawn Colin was promoted to Director of Community Development. The Commission congratulated Mr. Cousins and Mr. Colin.

**7. Appearance by Citizens on Items Unrelated to Today's Agenda – None**

**8. Unfinished Business – None**

**9. New Business – None**

**10. Commission Business – None**

**11. Chairman's Report – None****12. Committee Report****a. LMO Committee/Electric Go Karts**

Staff recommends the Planning Commission advise the LMO Committee regarding whether or not an amendment to allow electric go karts as an Outdoor Recreation use in the Waterfront Mixed Use (WMU) Zoning District should be pursued.

Vice Chairman Kristian presented opening remarks. After hearing from a number of citizens on both sides of the issue during their previous meeting, the LMO Committee felt it was best to bring this issue to a public forum to get additional comments.

Ms. Lewis presented information as described in the Commission's packet. Ms. Lewis noted that while the discussion has focused on the Broad Creek Marina site, this change would apply to all of the properties in the Waterfront Mixed Use (WMU) Zoning District. Staff presented two videos showing electric go karts. Ms. Lewis then presented the maps showing all of the areas zoned WMU on the Island.

The Commission discussed the information presented, including: the difficulty in making a decision based upon sound in a video; whether indoor go karts are currently in use; and the possibility of having a live demonstration of an electric go kart.

Mr. Nate Jones, a representative of Broad Creek Marina, presented information regarding electric go karts as provided in the Commission's packet and a video demonstrating that an electric go kart produced a decibel level of 52.3 at a distance of 25 feet from the track. Mr. Jones said the decibel level of the traffic on Marshland Road was 65 decibels at a distance of 25 feet. Mr. Jones indicated the nearest outdoor electric go kart track is located in Statesboro, Georgia. Mr. Jones noted that Staff's video showed a racing type go kart as opposed to the smaller, slower go karts they want to use.

The Commission discussed the information presented, including: the safety data on electric go karts; that the Statesboro track has no record of incidents in their 3 years of business; that insurance for electric go karts would cost far less than the insurance for Zipline Hilton Head; the footprint of the outdoor track would be approximately 1,000 linear feet or one acre; if this proposal is rejected, Mr. Freedman would consider building an indoor go kart track; that an indoor track is a by right use on this property; an indoor track is not preferred due to costs and impacts to the site's natural beauty; an indoor track would require at least 43,560 square feet and removal of many trees; the relationship of the outdoor electric go karts with Zipline Hilton Head and overall vision of development on this site; this change would apply to all property in the WMU Zoning District; this use does not fit into other WMU zoned properties; that noise may become a nuisance for surrounding residents; whether this use is the right fit for the community; the decibel levels permitted by the Town Municipal Code before and after 10:00 p.m.; the possibility of bringing an electric go kart to the Island for a demonstration; the Broad Creek Marina site appears to have less

impact than the other WMU areas; what the property owner's final product or goal is for the Broad Creek Marina site; if an electric go kart track is developed, all LMO requirements would need to be met including direct access to a minor arterial and maximum impervious coverage requirements; and that decibel levels are read from an adjacent property line.

Chairman Brown asked for public comments, and the following comments were received:

Chip Munday, Indigo Run General Manager, expressed concerns about noise, visibility, and the site turning into an amusement park over time.

Randy Tardy expressed support for this as an opportunity to attract families and younger individuals to the Island and specifically to the north end.

Donald Lucas, President of the 2019 Indigo Run Community Owners' Association, said every resident that has approached him about this issue is opposed to it. Mr. Lucas expressed concerns about noise from multiple go karts running all day long, karts bumping into each other, and crowds of people.

The Commission asked staff how many complaints the Town has received regarding Zipline Hilton Head and the surrounding area. Mr. Hulbert said there have been no noise complaints since Zipline Hilton Head opened.

Chairman Brown asked whether zipline was a by right use or if a change was made to the LMO to allow it. Staff stated it was not a by right use and the definition of Outdoor Recreation had to be changed to allow it.

The Commission asked whether anyone has discussed this concept with the Simmons family, the adjacent property owners. Mr. Jones said he spoke to Mr. Palmer Simmons the other day and he is aware that Mr. Freedman is going through this process. Mr. Jones stated they have a good working relationship with the Simmons family and always have. The Commission asked the minimum age to drive the electric go karts. Mr. Jones indicated a minimum age of 12 years old to drive. A child as young as 6 years old can sit in the seat next to an adult driver. Mr. Jones indicated they would like to purchase a maximum of 20 electric go karts and have 10 on the track at any given time.

The Commissioners made additional comments, including: one Commissioner stated he cannot support this concept; that go karts are a by right use as Indoor Recreation in the WMU Zoning District; that ambient noise already surrounds the community, so noise is not the issue, but whether this type of activity is wanted on the Island; that there are few activities on the Island for families; from an environmental standpoint the indoor use would be worse; an outdoor track could incorporate the landscape and serve as a sound shielding device; whether electric go karts could be allowed as a conditional use or Special Exception.

Chairman Brown asked Mr. Jones to ask Mr. Freedman to approach the LMO Committee



again with a comprehensive plan of the Broad Creek Marina area, including the end goal of the property, and a map or photographs of the layout of the property.

Staff indicated all regulations will need to be complied with should this use be allowed in the LMO. Staff cautioned that Mr. Freedman may show the Commission a plan, but it does not require him to go through with that plan.

### **13. Staff Report**

#### **a. Update on Circle to Circle Committee & Ad Hoc Committee Recommendations**

Mr. Shawn Colin presented a comprehensive update of the initiatives, recommended by the Circle to Circle Committee and the Ad Hoc Committee as described in the Commission's packet.

The Commission and Mr. Colin had an in depth discussion of the initiatives and the outcomes to date. The Commission thanked Mr. Colin for his presentation.

Chairman Brown asked Commissioner Carstens and the Comprehensive Plan Committee to work with Staff to review and improve on the success of these recommendations.

Chairman Brown asked for public comments and the following were received:

Randy Tardy expressed appreciation for the improvements made at the intersection of New Orleans Road and Pope Avenue. Mr. Tardy expressed concern for U-turns being made at that intersection and suggested a No U-turn sign be installed there.

### **14. Adjournment**

The meeting was adjourned at 4:35 p.m.

Submitted by: Teresa Haley, Secretary

Approved: February 6, 2019

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Alex Brown, Chairman

**TOWN OF HILTON HEAD ISLAND**  
**LMO Committee Meeting**  
**January 28, 2019 – 2:00 p.m.**  
**Benjamin M. Racusin Council Chambers**

Members Present: Chairman Peter Kristian, Vice Chairman Todd Theodore, Leslie McGowan, Michael Scanlon

Planning Commissioners Present: Glenn Stanford

Town Council Present: Tamara Becker, David Ames

Town Staff Present: Teri Lewis, Nicole Dixon, Anne Cyran, Teresa Haley

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**1. Call to Order**

Chairman Kristian called the meeting to order at 2:00 p.m.

**2. Freedom of Information Act**

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

**3. Approval of the Agenda**

Mr. Scanlon moved to approve. Ms. McGowan seconded. The motion passed unanimously.

**4. Approval of the Minutes – December 11, 2018**

The LMO Committee approved the minutes of the December 11, 2018 meeting by general consent.

**5. Discuss Proposed LMO Amendments Related to Electric Go-Carts in the WMU Zoning District**

Chairman Kristian introduced the item and asked Ms. Lewis to begin. Ms. Lewis indicated the purpose of today's discussion is for the Committee to recommend whether or not Staff take forward an amendment regarding the item.

Ms. Lewis went through the proposed changes as described in the Committee's packet. The proposed changes are based on the discussions and concerns from the Planning Commission and the public.

The Committee made comments and inquiries regarding: how many acres are in the WMU zoning district that this change would apply to; is there additional information pertaining to sound decibels; an outdoor track would require tree removal, but an indoor track would require more; the site is subject to tree requirements based on the zoning district; an indoor track is a by right use on the subject property; examples of outdoor commercial recreation permitted on the subject property include: active sports complexes with such uses as tennis courts, ball fields, basketball courts, and facilities that are available for the benefit of spectators like stadiums, amphitheatres, and band shells.

Chairman Kristian asked for public comments. Several members of the public spoke in opposition of the proposal. The public comments and questions received related to: the decibel levels between different types of electric go-carts can vary and increase; noise from a speaker system; concerns for the existing permitted by right uses on the property; there are no restrictions on the types of go-carts permitted and the number of go-carts that can run at one time; an indoor track can contain noises better; citizens depend on the LMO to keep the integrity of the Island; if there is another island that has an outdoor go-cart track; if this is a successful business venture; concerns for environmental impacts and lighting levels; the mission of the Planning Commission; the proposal benefits tourism and not residents; the proposal does not fit the Town's vision or Charles Frasier's vision; and the historical context of Charles Frasier's vision for the Island.

Mr. Nate Jones, a representative of Broad Creek Marina, presented statements in support of the proposed amendment and answered questions presented by the Committee. Mr. Jones said they would comply with the noise ordinance and work with the Town on meeting all requirements and regulations. Mr. Jones pointed out that more trees would be removed if an indoor track is constructed versus an outdoor track. Mr. Jones respectfully requested the Committee pursue this proposal.

The Committee discussed the information presented, including: respecting the rights of individual land owners; the sentiment that this might not fit the Island; an indoor facility would take out a significant amount of trees; concerned for how the Island is addressing future generations and if we are losing a connection with them; this parcel may be more suited for this use, but consideration has to be given to all WMU parcels; setting a precedent that could be followed by several other waterfront parcels; this is not a noise issue, but whether or not citizens want this use on the Island; concern for deterring entrepreneurs and investors; examples of other businesses and developments on the Island that were publicly opposed, but resulted positive outcomes.

Upon the conclusion of the discussion, the Committee recommended Staff should not pursue this amendment.

**6. Adjournment**

The meeting was adjourned at 3:06 p.m.

Submitted by: Teresa Haley, Senior Administrative Assistant

Approved: June 3, 2019

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Peter Kristian, Chairman



# TOWN OF HILTON HEAD ISLAND

*Community Development Department*

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**TO:** Board of Zoning Appeals  
**FROM:** Nicole Dixon, CFM, *Development Review Administrator*  
**DATE:** July 8, 2019  
**SUBJECT:** Revisions to Rules of Procedure

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At the June 24, 2019 BZA meeting, the Board reviewed and discussed amendments to the Rules of Procedure as presented by Staff. Based on this discussion, several minor revisions have been made. The attached version of the Rules of Procedure is presented for your review.

In the attached document, revisions have been made to:

- Article IV, Section 2.A.2.iv, on page 6
- Article IX, Section 2, Title on page 16
- Article IX, Section 2, Paragraphs 4 and 6 on page 17

*Board of Zoning Appeals  
Rules of Procedure  
Town of Hilton Head Island*

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**CONTENTS**

	<b>Page</b>
<b>Article I: <u>Powers and Responsibilities</u></b>	<b>4</b>
<hr/>	
<b>Article II: <u>Authority</u></b>	
<b>Section 1.</b> Authority.	<b>4</b>
<b>Section 2.</b> Territorial Jurisdiction.	<b>4</b>
<hr/>	
<b>Article III: <u>Rules of Procedure</u></b>	
<b>Section 1.</b> Rules of Procedure.	<b>4</b>
<b>Section 2.</b> Amendment.	<b>5</b>
<hr/>	
<b>Article IV: <u>Board Organization and Duties</u></b>	
<b>Section 1. Membership.</b>	<b>5</b>
A. Number and Qualifications.	
B. Length of Terms.	
C. Term Limits.	
D. Attendance/Absences.	
E. Removal.	
F. Education.	
<b>Section 2. Election of Officers.</b>	<b>6</b>
A. Chairman – Term and Duties.	
B. Vice-Chairman.	
<b>Section 3. Secretary – Appointment and Duties.</b>	<b>7</b>
<b>Section 4. Staff Board Coordinator.</b>	<b>8</b>
<hr/>	

<b>Article V: <u>Meetings and Quorum</u></b>	
<b>Section 1. Regular and Special Meetings.</b>	<b>8</b>
A. Meeting Schedule.	
B. Regular Meetings.	
C. Special Meetings.	
D. Cancellation of Meetings.	
<b>Section 2. Quorum.</b>	<b>9</b>
<b>Section 3. Conflict of Interest.</b>	<b>9</b>

**Article VI: Meeting Administration, Public Comment, Notices, Fees, Voting Supplemental Submissions/Briefs**

<b>Section 1. Media Notices.</b>	<b>10</b>
<b>Section 2. Agenda [Order of Business].</b>	<b>10</b>
<b>Section 3. Minutes.</b>	<b>10</b>
A. Meetings.	
B. Minimum Contents of Minutes.	
C. Lack of Quorum	
<b>Section 4. Public Comment.</b>	<b>11</b>
<b>Section 5. Submission Deadline for Regular Meetings.</b>	<b>11</b>
<b>Section 6. Meeting Protocol.</b>	<b>11</b>
<b>Section 7. Filing of Application, Fees and Notice.</b>	<b>12</b>
<b>Section 8. Motions and Final Decisions.</b>	<b>12</b>
<b>Section 9. Voting.</b>	<b>12</b>
A. General.	
<b>Section 10. Supplemental Submissions/Briefs.</b>	<b>12</b>
<b>Section 11. Communication Among Board Members or With an Outside Party.</b>	<b>13</b>

**Article VII: Procedures for Hearing an Application for a Variance**

<b>Section 1. Presentation of the Town Staff and Applicant.</b>	<b>13</b>
<b>Section 2. Public Comment.</b>	<b>14</b>
<b>Section 3. Vote on Application for Variance.</b>	<b>14</b>

<b>Article VIII: <u>Procedures for Hearing an Application for Special Exception</u></b>	
Section 1. Presentation of the Town Staff and Applicant.	15
Section 2. Public Comment.	15
Section 3. Vote on Application for Special Exception.	15

<b>Article IX: <u>Procedures for Hearing an Appeal</u></b>	
Section 1. Jurisdiction.	16
Section 2. Presentation of the Appellant, Town Staff and Interested Parties.	16
Section 3. Vote on the Appeal.	17

<b>Article X: <u>Procedures for a Remand</u></b>	
Section 1. Remand.	18

<b>Article XI: <u>Motions</u></b>	
Section 1. Motion for a Reconsideration.	18
Section 2. Motion to Dismiss	19
Section 3. Motion for Postponement	19
Section 4. Motion for Withdrawal of Application	19

<b>Article XII: <u>Miscellaneous</u></b>	
Section 1. Executive Session	20
Section 2. Recess	21

<b><u>Attachments for Reference</u></b>	
Types of Motions	22
Types of Votes	25

**Article I**  
**Purpose and Responsibilities**

The Board of Zoning Appeals exists to provide final administrative decisions for the Town of Hilton Head Island to enforce the zoning ordinance in accordance with State law, subject to an appeal to circuit court by an appropriate interested party. Its main responsibilities include hearing and deciding: (a) appeals from administrative decisions of the Land Management Ordinance (LMO) Administrator and from Planning Commission actions on certain traffic analysis plans; (b) applications for variances from LMO requirements; and (c) applications to permit uses by special exception. The powers of the Board of Zoning Appeals also include remanding a matter to an administrative official if the record is deemed insufficient, issuing subpoenas for witness appearances, and certifying contempt to the circuit court. In exercising these powers, the Board of Zoning Appeals may, in conformity with State law and the LMO, reverse or affirm, wholly or in part, or may modify the order, requirements, decision, or determination of an Administrator, and to that end, has all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit. All final decisions and orders of the Board must be in writing and be permanently filed in the office of the Board as a public record.

**Article II**  
**Authority**

**Section 1. Authority.**

The Town of Hilton Head Island Board of Zoning Appeals is established by Appendix A-3 of the Land Management Ordinance (LMO) of the Town of Hilton Head Island pursuant to the authority of Section 6-29-780, *et seq.*, of the Code of Laws of South Carolina, and hereinafter shall be referred to as the "Board."

**Section 2. Territorial Jurisdiction.**

Pursuant to Appendix A-3.E of the LMO, the Board shall have jurisdiction over all the lands within the Town. This jurisdiction may be expanded by the Town Council by ordinance and/or by intergovernmental agreement, in accordance with Section 6-29-330 of the Code of Laws of South Carolina.

**Article III**  
**Rules of Procedure**

**Section 1. Rules of Procedure.**

These *Rules of Procedure* are adopted by the Board to carry out its powers and responsibilities under SC Code 6-29-780, -790, -800, and -810 and Appendix A-3 of the LMO. A portion or section of the *Rules of Procedure* may be suspended by majority vote of the Board to meet particular circumstances. If there is a situation where these *Rules of Procedure* do not specifically apply, then the most recent edition of *Robert's Rules of Order* shall govern the conduct of meetings.



An informational chart summarizing types of motions and votes in Robert's Rules of Order is attached.  
**Section 2. Amendment.**

These rules may be amended at any time by an affirmative vote of a majority of the members of the Board; provided however, that such amendment(s) shall have first been presented to the entire Board, in writing, at a Regular or Special Meeting preceding the Regular or Special Meeting at which the vote is taken.

## **Article IV** **Board Organization and Duties**

### **Section 1. Membership.**

- A. Number and Qualifications.** The Board shall consist of seven members appointed by the Town Council. To the extent practicable, the appointed members may include at least one attorney and one design professional (either a registered architect or a registered landscape architect). None of the members shall hold an elected public office or position with the Town of Hilton Head Island or Beaufort County, South Carolina.
- B. Length of Terms.** Members of the Board shall be appointed annually for three-year terms effective each July 1, with all such terms ending on June 30 of the applicable year, unless a member is appointed to fill a vacancy. Vacancies shall be filled by the Town Council by appointments for the balance of any unexpired terms.
- C. Term Limits.** No member may serve more than two successive terms, except for extraordinary circumstances where Council believes it to be in the best interest of the community to have a continuation for a specific period of a particular member of the Board. This limitation shall not prevent any person from being appointed to the Board after an absence of one year. Service for a partial term of less than 1½ years shall not constitute a term of service for the purpose of these term limits.
- D. Attendance/Absences.** Board members are expected to attend all Board meetings. Each member of the Board who has prior knowledge that they will not be able to attend a scheduled Regular Meeting of the board shall notify the Secretary no later than 4:30pm the business day before the meeting. In the case of an emergency, a member shall give the earliest possible notification. The Secretary or Staff shall notify the Chairman in the event that the projected absence(s) will produce a lack of a quorum.
- E. Removal.** Three (3) absences at Regular or Special Meetings of the Board during one Board year (July 1 through June 30) shall be cause for recommendation by the Chairman to the Town Council to reconsider the appointment of that member. Attendance records may be reviewed annually by the Board in executive session during the 9<sup>th</sup> month of each Board year.
- F. Education.** The Code of South Carolina requires a six (6) hour Orientation Program and a three (3) hour/year Continuing Education Program for each Board member.

## Section 2. Election of Officers.

The officers of the Board shall be a Chairman and a Vice-Chairman for one-year terms beginning on the first meeting in July. They are elected annually by the Board members no later than at the last meeting in July. Neither of these two positions shall be filled by a member beginning his or her first year of service as a Board member. Members that leave the Board and are re-appointed after a period of no more than three years may be elected to an officer position in his or her first year of service. Nominations for the Chairman and Vice-Chairman shall be made from the floor at the meeting.

A majority vote is normally required to elect to office. If no one in an election receives a majority vote, the vote must be repeated until one of them does get a majority.

**A. Chairman – Term and Duties.** The term shall be for one year. At the end of each Board year, the Chairman may be re-elected subject to his/her appointment term. The Chairman shall have the following duties:

1. In consultation with the Staff Board Coordinator, delegate the Secretary to prepare agendas for all meetings;
2. Conduct all meetings and hearings of the Board, meaning that the Chairman—
  - i. Is responsible for maintaining order.
  - ii. Should begin the meeting promptly at the scheduled hour if a quorum is present.
  - iii. Should have a well prepared agenda and abide by it.
  - iv. Should be familiar with the procedural rules of the bylaws board.
  - v. Keeps the board working together by explaining procedure clearly and communicating the next business in order.
  - vi. Should “assign” the floor by recognizing those members who wish to speak by calling them by name. No other member may interrupt or call out remarks without being out of order. Private discussion between members while another has the floor is out of order and disruptive members should be reminded of this rule.
  - vii. Should impartially call on members wishing to speak and should give members on both sides of an issue an opportunity to speak.
  - viii. Should remain calm and objective, keeping the meeting moving.
  - ix. Should always confirm that all members understand the motion and that the Secretary has fully recorded the motion.
  - x. Should open debate by saying “Is there any discussion?” The Chairman *must* open all debatable questions to debate.
  - xi. Should recognize members who wish to speak by stating their names.
  - xii. Should be a voting member and vote on all cases before the Board. If the Chairman wishes to make a motion, he/she should pass the gavel to the Vice-Chairman for conducting the meeting.
  - xiii. Should request that a motion with grounds (facts and conclusions) be made by any member. If necessary, may assist the member in formulating the motion. (Complex motions may be brought to the meeting pre-written.)

- xiv. Should request any member to second the motion.
  - xv. If a motion fails to get a second, should state, “Since there is no second, the motion is not before the Board.”
  - xvi. If seconded, should ask the members if there is any discussion of the motion.
  - xvii. Should not allow irrelevant discussion.
  - xviii. At the conclusion of any discussion of a seconded motion, should put the question to a vote by requesting the Secretary to call the roll.
  - xix. Should announce the result of the vote.
  - xx. At the conclusion, should adjourn the meeting without motion – “If there is no further business and there is no objection, the meeting will be adjourned. There being no objection, the meeting is adjourned.”
3. Act as spokesperson for the Board;
  4. Sign documents for the Board. Note, final decisions are signed by the moving member, the Chairman, and the seconding member;
  5. Act or designate a Board member to act as liaison with other governmental agencies and Town boards;
  6. Assign or delegate tasks to other Board members as may be necessary to perform the Board’s functions;
  7. Transmit reports and recommendations to Town Council;
  8. Ensure that all business is conducted in accordance with the SC Code, the LMO, and these Rules of Procedure;
  9. Cancel a scheduled Board meeting if there are no agenda items; and
  10. Perform other duties approved by the Board.

**B. Vice-Chairman.** A Vice-Chairman shall be elected by the Board from among the members in the same manner and for the same term as the Chairman. The Vice-Chairman shall serve as Acting Chairman in the absence of the Chairman, and, at such time, the Vice-Chairman shall have the same powers and duties as the Chairman. The Vice-Chairman shall succeed the Chairman, if the office is vacated before the term has expired, to serve the remainder of the unexpired term of the Chairman. A new Vice-Chairman shall be elected at the next regular meeting of the Board. In the absence of both the Chairman and Vice-Chairman, an acting Chairman shall be elected by the members present at a meeting of the Board.

**Section 3. Secretary—Appointment and Duties.**

During the July meeting of each year, a member of the Town’s Community Development Department shall be appointed by the Board to independently act as the Secretary of the Board. The Secretary will not be eligible to vote or to otherwise participate or deliberate in the proceedings of the Board. The Secretary shall:

1. Publish and post notices of all meetings of the Board;
2. As delegated by the Chairman, prepare meeting agendas;
3. Distribute to each Board member in advance of each meeting--the agenda, prior meeting draft minutes for approval, and all written submissions by staff and applicants on each agenda item, and other relevant materials;

4. Record the proceedings of meetings on audio tape and prepare written minutes of meetings for approval by the Board at its next regular meeting, recording in the written minutes the attendance of members at each meeting, the attendance of Council members, the attendance of staff, and a detailed summary of all discussions during each meeting;
5. Maintain the Board's notices, correspondence, reports and forms as public records for a period of time consistent with the records retention schedule of the Town of Hilton Head Island;
6. Assist in the preparation and forwarding of all reports and recommendations of the Board; and
7. Maintain each final decision of the Board as a permanent record as required by the SC Code.

#### **Section 4. Staff Board Coordinator.**

The Community Development Director shall appoint a member of Staff to assist the Chairman and the Secretary in Board coordination, including:

1. Ensuring all postponed agenda items are rescheduled;
2. Ensuring public notices are accurately written for publication;
3. Ensuring the minutes accurately reflect the actions taken in the meeting;
4. Coordinating with pertinent staff on submittal of agenda items to the Secretary for distribution to the Board;
5. Scheduling mandatory training sessions for the Board;
6. Ensuring the Board's Rules of Procedure remain updated;
7. Attending all Board meetings and resolving any questions or requests by the Board; and
8. Assisting the Secretary in the efficient running of the public meetings.

### **Article V** **Meetings and Quorum**

#### **Section 1. Regular and Special Meetings.**

- A. Meeting Schedule.** An annual schedule of regular meetings and work sessions of the Board shall be adopted, published and posted at the Town Government Center in late Fall of each year for the next calendar year. Unless rescheduled by a vote of the Board, meetings shall be held at the time and place stated in notices. Meetings shall be open to the public.
- B. Regular Meetings.** Regular Meetings of the Board shall be held on the fourth Monday of each month or such other date as determined by the Chairman or with input from Staff. Notification of all Applications for Appeal, Variance and Special Exception scheduled and any other matters for consideration at each regular meeting of the Board will be in accord with the public notice requirements of the SC Code as implemented by the Town's LMO.
- C. Special Meetings.** Special Meetings of the board may be called at any time by the Chairman or requested by the Staff. At least forty eight (48) hours public notice shall be provided for any

Special Meeting of the board including the time, place and particular agenda item(s) scheduled for consideration consistent with the notice requirements of the SC Code as implemented by the Town's LMO.

- D. Cancellation of Meetings.** Whenever there is no business scheduled for any Regular or Special Meeting of the Board, the Chairman or Staff may cancel such Regular Meeting by giving notice to all members of the Board, as well as the public, no less than twenty-four (24) hours prior, whenever possible, to the time set for any such Regular Meeting.

## **Section 2. Quorum.**

A majority of the Board shall constitute a quorum for the conduct of business. The Secretary will notify the Chairman in the event projected absences will result in the lack of a quorum. If a quorum is established, then a member leaves, the quorum is no longer present. In the absence of a quorum, no further business requiring a vote shall be transacted and any such business shall be postponed to the next meeting.

## **Section 3. Conflict of Interest**

At a minimum, South Carolina law regarding conflicts of interest [S. C. Code Ann. § 8-13-10, *et seq.*, (Supp. 1994)] shall control Board members' actions. In addition, any member of the Board who believes that he or she has or may have a conflict of interest of any nature on any matter before the Board shall, prior to the case at the Regular or Special Meeting at which such matter may be heard or considered by the Board:

1. Prepare a written Potential Conflict of Interest Form describing the matter requiring action or decisions and the nature of his/her potential conflict of interest with respect to the action or decision;
2. File the Potential Conflict of Interest Form with the Secretary; and,
3. Provide a copy of the Potential Conflict of Interest Form to the Chairman.

Upon receipt of a Potential Conflict of Interest Form from any member of the Board, as required in section II (J)(A), *supra.*, the Chairman shall cause the Potential Conflict of Interest form to be recorded in the minutes and shall require that the member filing such Potential Conflict of Interest Form be excused from any votes, deliberations, and any other actions on the matter on which the potential conflict of interest or conflict of interest exists.

Any Board member so disqualified shall leave the dais while the disqualifying matter is being considered and refrain from deliberating or voting on the question.

**Article VI**  
**Meeting Administration, Public Comment,**  
**Notices, Fees, Voting Supplemental Submissions/Briefs**

**Section 1. Media Notices.**

The Secretary shall give the notice required by statute or ordinance for all meetings of the Board as per Section 16-2-102.E of the LMO. All Board meetings shall be open to the public and all requirements of the South Carolina Freedom of Information Act [S. C. Code Ann. § 30-4-10, *et seq.* (Supp. 1994)] shall be complied with in the conduct of meetings.

**Section 2. Agenda (Order of Business)**

A written agenda shall be furnished by the Secretary to each member of the Board and media. An agenda may be changed at the related meeting by a majority vote of the members present. Public Hearing items should be so noted with each pertinent item. Generally, the agenda should contain:

1. Call to Order;
2. Roll Call;
3. Freedom of Information Act Compliance;
4. Use of Cellular Telephones or Other Electronic Sound Emitting Devices Prohibited;
5. Review of Meeting Protocol as described within, including Citizen Participation;
6. Approval of Agenda;
7. Approval of Minutes of Previous Meeting
8. Old Business;
9. New Business;
10. Board Business;
11. Staff Reports;
12. Adjournment.

**Section 3. Minutes.**

**A. Meetings.** Minutes of meetings is governed by the Code of South Carolina (30-4-70 through 30-4-90). Minutes of each Board meeting shall be recorded by the Secretary and approved at the next available meeting after their preparation. Final approved Minutes shall be available on microfilm for previous years, and may be posted on the Town's Web site for public information.

**B. Minimum Contents of Minutes.**

1. Kind of meeting (regular or special).
2. Name of the organization.
3. Date and place of the meeting.
4. Presence of the Chairman and Secretary or the names of substitutes.
5. Presence of a quorum.
6. Names of all Board members, Council members, and Staff.

7. Time the meeting was called to order.
8. Whether the minutes of the previous meeting were approved or corrected.
9. All adopted and defeated motions and grounds (facts and conclusions). Withdrawn motions need not be recorded.
10. Name of the maker of the motion and the seconding member.
11. Summary of all presentations and discussions.
12. Motions, including proposed findings and conclusions, must be recorded verbatim.
13. Record the vote of each member upon each question, or, if absent or failing to vote, indicating that fact.
14. The adjournment and the time of adjournment.

**C. Lack of Quorum.** If there is lack of a quorum of the Board, minutes may be recorded but shall include a statement in the header of each page indicating that a quorum was not present and the minutes are not official. Such minutes shall not be approved by the Board at a later meeting. (There are different quorums, depending on the agenda item.)

#### **Section 4. Public Comment.**

In the case of a Variance or Special Exception application, at the conclusion of presentations by Staff and the Applicant, the Chairman will open the public hearing. The Chairman may set a time limit for all public comments and may determine the order of the comments. The Chairman will recognize citizens to comment and request that they sign up to speak at the podium. Each person will have the opportunity to speak for three (3) minutes. At the conclusion of the public comment, the Chairman will close the public hearing. Staff and/or the Applicant may request that the Chairman allow additional clarification after the public comments. Public comment is not permitted in a case involving an appeal from an Administrator decision.

#### **Section 5. Submission Deadline for Regular Meetings.**

The deadline for the filing of a complete Application with narrative for Variance or Special Exception or Request for Appeal shall be thirty (30) calendar days prior to any Regular Meeting of the Board. Any submission or brief containing any citation to an opinion of a court must include a complete copy of the cited opinion.

#### **Section 6. Meeting Protocol.**

The Chairman will review the protocol at the start of each meeting. The meeting protocol includes further information about the following: speaker sign-up sheet, length of time for speakers, the order of presentation, and the opening and closing of a public hearing. The speaker sign-up sheet will be placed at the podium for speakers to sign when they come up to speak.

## **Section 7. Filing of Application, Fees and Notice.**

All Applications and Appeals scheduled for review by the Board shall be filed by the interested property owner(s) or by a property owner aggrieved by an Administrator's decision, or by a representative with a written certification of authority by such property owner. All Applications and Appeals shall satisfy all fees and notice requirements in accord with the provisions outlined in the LMO. In any case where the owner of record of the real property affected by any Application for Special Exception or Application for Variance, or his/her certified representative, is not the Applicant, the Applicant shall serve notice of the Application to the contiguous owner(s) of record within the time frames and as described in the LMO. Such notice shall include the time and place of the Board meeting at which the Application shall be heard.

## **Section 8. Motions and Final Decisions.**

A Motion by a Board member is the procedure leading to a final decision by the Board when the Motion is seconded by another Board member and adopted by a vote of a quorum of the Board. A Motion is to be made to describe the proposed decision with findings and conclusions to support the Motion. If the Motion is seconded and adopted by the Board, the final decision, contained in a Notice of Action, must be in writing and be permanently filed in the office of the Board as a public record. The final decision must include findings and conclusions and be delivered to parties of interest by certified mail.

## **Section 9. Voting.**

1. A Board member must be present at the beginning of each case to be permitted to discuss and vote on the case. If a Board member that was absent at the beginning of the hearing establishes requisite knowledge of the case, the member may be permitted to discuss and vote on the case by a majority vote of the Board.
2. All members of the Board, including the Chairman, shall be voting members, and shall be entitled to vote on any issue before the Board unless disqualified by law.
3. For Appeals from Administrator's decision, a majority vote of the entire Board shall be necessary, thus requiring at least 4 affirmative votes to pass a motion.
4. A simple majority of a quorum shall be required to conduct all other Board business including a decision on an Application for Variance or Special Exception.

## **Section 10. Supplemental Submissions/Briefs.**

Any supplemental written submission or legal brief must be delivered [One (1) hard copy or one (1) copy sent via e-mail] to the Secretary of the Board no later than 8:00am four business days before the public meeting day in order for the Secretary to distribute such submission to each Board member by the close of business that day. Town Staff, or the opposing party, has two business days after receipt of the supplemental submission to respond in writing. This excludes any business days when the Town is closed. The Board reserves the right to require or permit later written submissions or briefs and/or proposed findings of fact and conclusions of law to be submitted by the Appellant, Applicant for Variance or Special Exception, or Town Staff. Any



submission or brief containing any citation to an opinion of a court must include a complete copy of the cited opinion. Any written or oral information sent directly to any Board member shall be disregarded and promptly turned over to the Chairman through the Secretary of the Board.

### **Section 11. Communication Among Board Members or With an Outside Party.**

- A. There shall be no communication in writing, orally, or by e-mail by any Board member with any other Board member or any outside party regarding the substance of any matter before the Board that is or may be brought to a vote other than during a public meeting.
- B. Once a decision has been rendered by the BZA, there shall be no further discussions by any Board member with staff, applicants or their attorneys or representatives. Any such communications regarding a decision should be made to the Town Attorney.
- C. Communication with staff or outside parties to communicate procedural matters or general positions or opinions of the BZA will be at the discretion of the Chairman or by an affirmative vote of the majority of the Board members. The Chairman or his designee will be responsible for all such written/verbal communications with anyone other than the remainder of the Board members and Staff.
- D. Board members should refrain from discussing an upcoming agenda item with the Applicant, his Attorney, or his Agent, either through written or verbal communication. Board members should refrain from discussing an upcoming agenda item with Staff either through written or verbal communication, except to clarify facts or request additional information. All discussion of the item should take place in the public meeting. This is to avoid the appearance of improper ex parte communications.

## **Article VII**

### **Procedures for Hearing an Application for a Variance**

The following procedures shall be applicable in the presentation of a Request for a Variance.

#### **Section 1. Presentation of the Town Staff and Applicant.**

- 1. Staff shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Staff believes support the position of Staff with respect to the Application for a Variance. During the presentation by Staff, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the Chairman, Staff's time may be extended if the Staff is unable to complete the presentation due to questioning from the Board of Zoning Appeals.
- 2. The Applicant shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Applicant believes supports the Application for a Variance. During the presentation by the Applicant, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the Chairman, the Applicant's time may be extended if the Applicant is unable to complete the presentation due to questioning from the Board of Zoning Appeals.

3. The Staff shall have a maximum of five (5) minutes to present any desired rebuttal.
4. Following the presentation, the Board of Zoning Appeals may ask such additional questions of the Applicant or Staff as the members deem appropriate.
5. The Board may subpoena witnesses and in the case of contempt may certify such fact to the Circuit Court having jurisdiction over such matters.

### **Section 2. Public Comment.**

1. The Chair will call on interested citizens and request that they come to the podium, state their name for the record and place their name on the sign up sheet. Each person will have the opportunity to speak for three (3) minutes.
2. The Applicant and/or Town Staff shall clarify any information presented by the public before the Board makes a motion.

### **Section 3. Vote on Application for Variance.**

1. Following the presentation by all parties as set forth above, the Board, upon a Motion duly made and seconded, shall vote on the Application for Variance.
2. The Motion shall contain, at a minimum, a finding of those facts which the member making the Motion deems material to the decision and appropriate references to the relevant criteria of the LMO.
3. Pursuant to the provisions of the LMO the Board shall approve the Application for Variance, approve the Application for Variance with conditions or modifications; or, deny the Application for Variance.
4. Following the vote, the Staff shall prepare a written Notice of Action. The written notice of action shall include decision of the Board as well as the findings of fact and conclusions of law adopted by the Board with respect to the Application for Variance.
5. The Notice of Action shall be mailed by certified letter to the Applicant and record owner of the real property affected by the Application for Variance, if different from that of the Applicant.
6. The decision of the board shall be deemed final and applicable upon mailing of the Notice of Action.
7. The certificate of mailing shall be made a part of the board's file on the Application for Variance.

**Article VIII**  
**Procedures for Hearing an Application for Special Exception**

The following procedures shall be applicable in the presentation of an Application for Special Exception:

**Section 1. Presentation of the Town Staff and Applicant.**

1. Staff shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Staff believes support the position of Staff with respect to the Application for a Special Exception. During the presentation by Staff, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the Chairman, Staff's time may be extended if the Staff is unable to complete the presentation due to questioning from the Board of Zoning Appeals.
2. The Applicant shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Applicant believes supports the Application for a Special Exception. During the presentation by the Applicant, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the Chairman, the Applicant's time may be extended if the Applicant is unable to complete the presentation due to questioning from the Board of Zoning Appeals.
3. The Staff shall have a maximum of five (5) minutes to present any desired rebuttal.
4. Following the presentation, the Board of Zoning Appeals may ask such additional questions of the Applicant or the Staff as the members deem appropriate.
5. The Board may subpoena witnesses and in the case of contempt may certify such fact to the Circuit Court having jurisdiction over such matters.

**Section 2. Public Comment.**

1. The Chair will call on interested citizens and request that they come to the podium, state their name for the record and place their name on the sign up sheet. Each person will have the opportunity to speak for three (3) minutes.
2. The Applicant and/or Town Staff shall clarify any information presented by the public before the board makes a motion.

**Section 3. Vote on Application for Special Exception.**

1. Following the presentation by all parties as set forth above, the Board, upon a Motion duly made and seconded, shall vote on the Application for Special Exception.
2. The Motion shall contain, at a minimum, a finding of those facts which the member making the Motion deems material to the decision and appropriate references to the relevant criteria of the LMO.
3. Pursuant to the provisions of the LMO, the Board shall approve the Application for Special Exception, approve the Application for Special Exception with conditions as stated in the LMO or deny the Application for Special Exception.

4. Following the vote, the staff shall prepare a written Notice of Action. The written notice of action shall include the decision of the Board as well as the findings of fact and conclusions of law adopted by the board with respect to the Application for Special Exception.
5. The Notice of Action shall be mailed by certified letter to the Applicant and record owner of the real property affected by the Application for Special Exception, if different from that of the Applicant.
6. The decision of the board shall be deemed final and applicable upon mailing of the Notice of Action.
7. The certificate of mailing shall be made a part of the board's file on the Application for Special Exception.

## **Article IX**

### **Procedures for Hearing an Appeal**

The following procedures shall be applicable in the presentation of an Appeal from a decision of any Administrator:

#### **Section 1. Jurisdiction.**

Once an appeal has been taken from any final decision of Administrator, the jurisdiction of the Administrator, from which the appeal was taken, shall cease.

#### **Section 2. Presentation of the Appellant, Town Staff and ~~Interested~~ Other Necessary Parties.**

1. The Appellant shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Appellant believes supports the Appeal. During the presentation by the Appellant, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the Chairman, the Appellant's time may be extended if the Appellant is unable to complete the presentation due to questioning from the Board of Zoning Appeals.
2. Staff shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Staff believes support the position of Staff with respect to the Appeal. During the presentation by Staff, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the Chairman, Staff's time may be extended if the Staff is unable to complete the presentation due to questioning from the Board of Zoning Appeals.
3. Where the Appellant is someone other than the Property Owner of the Property that is the subject of the Appeal, the Property Owner or their Agent shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Property Owner believes supports the position of the Property Owner with respect to the Appeal. During the presentation by the Property Owner or their Agent, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the Chairman, the Property Owner's time may be extended if the Property Owner is unable to complete the presentation due to questioning from the Board of Zoning Appeals.

4. Where the Appellant is someone other than the Holder of the Permit or Approval or their Agent ~~of for~~ the Property that is the subject of the Appeal, the Holder of the Permit or Approval or their Agent shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that ~~he/she the Holder of the Permit or Approval~~ believes supports ~~the~~ their position of the Holder of the Permit or Approval with respect to the Appeal. During the presentation by the Holder of the Permit or Approval or their Agent, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the Chairman, the Holder of the Permit or Approval's or their Agent's time may be extended if ~~he/she the Holder of the Permit or Approval~~ is unable to complete the presentation due to questioning from the Board of Zoning Appeals.
5. The Chairman may allow a maximum of five (5) minutes each for all parties to present any desired rebuttal.
6. Following the presentation, the Board of Zoning Appeals may ask such additional questions of the Appellant, Property Owner, Holder of the Permit or Approval or their Agent or Staff as the members deem appropriate.
7. The Board may subpoena witnesses and in the case of contempt may certify such fact to the Circuit Court having jurisdiction over such matters.
8. Public comment is not permitted in a case involving an appeal from an Administrator decision.
9. All parties shall be subject to the submittal requirements as set forth in Article 6, Section 10 of the Rules of the Procedure.

### **Section 3. Vote on the Appeal.**

Following the presentation by all parties as set forth above, the Board, upon a Motion duly made and seconded, shall vote on the Appeal.

1. Pursuant to the provisions of Section 16-2-103.T.4.d of the LMO, the Board shall:
  - a) Affirm the action of the Administrator from which the Appeal was taken; or,
  - b) Modify the action of the Administrator from which the Appeal was taken, and to that end, the Board of Zoning Appeals shall have all of the powers of the Administrator from which the Appeal was taken, and may issue a permit, or direct that a permit be issued; or,
  - c) Reverse the action of the Administrator from which the Appeal was taken, and to that end, the Board of Zoning Appeals shall have all of the powers of the Administrator from which the Appeal was taken, and may issue a permit, or direct that a permit be issued; or,
  - d) Remand the action of the Administrator from which the Appeal was taken for such further proceedings as the Board of Zoning Appeals may deem appropriate.
2. The Motion shall contain, at a minimum, a finding of those facts which the member making the Motion deems material to the decision.
3. Following the Vote, the Board shall issue a written Notice of Action. The written notice of action shall include the decision as well as the findings of fact and conclusions of law adopted by the Board.

4. The Notice of Action shall be mailed by certified letter to the Appellant and Record Owner of the real property affected by the Appeal, if different from that of the Appellant.
5. The decision of the Board shall be deemed final and applicable upon mailing of the Notice of Action.
6. The certificate of mailing shall be made a part of the board's file on the Appeal.

## **Article X**

### **Procedures for a Remand**

#### **Section 1. Remand.**

1. A member of the Board may move for a remand at any time, subject to review and determination by the Board. The motion shall specifically set forth factual and/or legal grounds that cause the record to be insufficient.
2. If a remand is granted, the Town and the Applicant shall obtain and present all additional information needed to render the record sufficient as detailed in the motion for the remand.

## **Article XI**

### **Motions**

#### **Section 1. Motion for a Reconsideration.**

1. The Board may reconsider any decision made under Section 16-2-103.E.3.d, 16-2-103.S.3.d or 16-2-103.T.4.d of the Land Management Ordinance.
2. Any party aggrieved by a decision of the Board, if they desire to do so, is required to file any Petition for Reconsideration by delivering the same to the Administrator within ten (10) days from the date of hearing. "Delivered" as referenced in this section, means actual delivery.
3. The Petition for Reconsideration shall be in writing and shall state with particularity the points alleged to have been overlooked or misinterpreted the Board.
4. The Petition for Reconsideration shall be presented to the Board at the next regular scheduled meeting following the filing of the Petition for Reconsideration after compliance with the public notice requirements for a Board Public Meeting per the LMO.
5. Motions:
  - a. A Motion to Grant the Petition for Reconsideration may only be made by a member of the Board who voted on the prevailing side in the original vote.
  - b. The effect of the granting of a Motion for Reconsideration shall be that the Board will review the entire matter as if no previous vote had been taken.
  - c. A Motion to Deny the Petition for Reconsideration may be made by any member of the Board. The effect of a vote denying a Petition for Reconsideration is that the vote shall be considered to be the Board's final action on the matter. A Notice of Action shall be delivered to the Applicant following such vote.

6. Successive Petitions for Reconsideration are prohibited. No matter that has been reconsidered may be reconsidered a second time. The Board may not reconsider a denial of a Petition for Reconsideration.

## **Section 2. Motion to Dismiss.**

Any interested party to a matter pending before the BZA may file a Motion to Dismiss the pending matter. The purpose of a Motion to Dismiss is to seek dismissal of the matter prior to the hearing on the merits of the pending matter.

1. A Motion to Dismiss may assert matters relating to procedure or jurisdiction including:
  - a. Failure to comply with requirements of the LMO,
  - b. Lack of jurisdiction,
  - c. Standing,
  - d. Other matters not relating to the merits of the matter.
2. A Motion to Dismiss shall be in writing, and be filed and served in accordance with Article VI, Section 10, Supplemental Submissions/Briefs.
3. A Motion to Dismiss may be supported by briefs of the law, affidavits or other matters pertinent to the Motion.
4. Any interested party may file briefs and other materials in response to the Motion, in accordance with Article VI, Section 10, Supplemental Submissions/Briefs.
5. The Motion to Dismiss will be normally heard at the same meeting as the related appeal; however, the Chairman or Vice Chairman, in the absence of the Chairman, upon request, in his sole discretion, may permit the motion to be heard at an earlier meeting.

## **Section 3. Motion for Postponement.**

The Town, the Applicant or a Member of the Board may request a postponement of an application at any time, subject to the review and determination of the Board.

The Chairman or Vice Chairman, in the absence of the Chairman, may for good cause grant one postponement request for a period of up to three months from the original hearing date. Any subsequent postponement requests shall be discussed and voted on by the Board

A Motion for Postponement shall be in writing, stating the reasons for the requested postponement, and be filed and served in accordance with Article VI, Section 10, Supplemental Submissions/Briefs.

## **Section 4. Motion for Withdrawal of Application.**

The applicant may request a withdrawal of an application prior to the ruling. A Motion for Withdrawal of the Application shall be in writing, stating the reasons for the requested withdrawal, and be filed and served in accordance with Article VI, Section 10, Supplemental Submissions/Briefs.

The Board shall have the opportunity to discuss the reasons for the application being withdrawn; unless the project has been abandoned. In the absence of the applicant, if the withdrawal is questioned by the Board, the case will be postponed to the next meeting.

## **Article XII** **Miscellaneous**

### **Section 1. Executive Session.**

If a member determines after reviewing the applicable cases that they would benefit from the advice of legal counsel in Executive Session they shall contact the Chairman or his designee. The Chairman will determine if an Executive Session is warranted. If the Chairman decides that the membership would benefit from an Executive Session, they will inform the Board's Secretary of the request. The Chairman's decision can be overridden by a majority vote of the Board taken at a regular or special meeting of the BZA.

Executive Session is a meeting at which the proceedings are secret. A member can be punished under disciplinary procedure if he violates the secrecy of an executive session. Anyone else permitted to be present is honor-bound not to divulge anything that occurred.

Permitted reasons should include:

1. Personnel reasons
2. Contracts
3. Legal advice relating to pending, threatened or potential claim
4. Discussion regarding development of security personnel
5. Investigative proceedings regarding allegations of criminal misconduct
6. Economic development (specific criteria in FOIA)
7. Legal advice relating to procedural, conflict of interest, or general issues unrelated to a specific matter before the Board.

Entering and Adjourning an Executive Session:

1. A motion to close the current meeting and go into executive session is made and passed by a majority vote;
2. Chairman must announce the specific purpose of the executive session;
3. No formal action may be taken in executive session except to:
  - a. Adjourn
  - b. Return to public session

The Board can request attendance by non-members as they deem appropriate.



**Section 2. Recess.**

A recess shall be declared as deemed appropriate by the Chairman or by majority vote of the members present at the meeting. No discussion of the agenda item shall be conducted by Board members during the recess.

**For the Board of Zoning Appeals  
Town of Hilton Head Island, South Carolina**

Date of Approval: June 24, 2019

By: \_\_\_\_\_  
David Fingerhut  
Chairman

## Attachment for Reference

### TYPES OF MOTIONS

<b>Main Motions</b>	<b>A main motion is defined as a proposal that certain action is taken or an opinion be expressed by the group.</b> The words to use are: “I Move.”
<b>Secondary Motions</b>	<b>A secondary motion is one which can be made <i>while</i> the main motion is on the floor and <i>before</i> it has been decided.</b> Secondary motions are divided into three classes which relate to their use in parliamentary procedure. Those classes are: <ul style="list-style-type: none"> <li>○ Subsidiary motions</li> <li>○ Privileged motions</li> <li>○ Incidental motions</li> </ul>
<b>Subsidiary Motions</b>	<b>Subsidiary motions relate directly to the motion on the floor. They may change the words, send it to a committee, delay it, etc.</b> They are designed to expedite business by disposing of the pending motion other than by adopting or rejecting it. <i>Subsidiary motions are the class of motions most frequently used in meetings.</i> These motions have rank (order of precedence of motions) among themselves. A motion of higher rank can be made while a motion of lower rank is on the floor. The lower rank motion “yields” to the higher rank motion. (Motion to postpone has higher rank than the motion to commit and takes precedence. If motion to postpone is adopted, the main motion and the motion to commit are postponed until the next meeting.)
<b>Privileged Motions</b>	<b>Privileged motions are motions of an emergency nature,</b> such as to recess or adjourn. They do not relate to the motion on the floor but to the welfare of the group. They are of high rank and must be handled before any other business that may be pending.
<b>Incidental Motion</b>	<b>Incidental motions are procedural.</b> They deal with process, such as enforcing proper procedure, correcting errors, verifying votes, etc. When introduced, they must be decided before business can resume.
<b>Amending Motion</b>	General consent can be used with amendments to motions if the Chairman feels the group will accept the amendment. “If there is no objection, the motion is so amended.” <i>Restate the motion.</i>
<b>Motions Commit</b>	Have precedence over the motion to amend. <b>More than one motion can be on the floor but only one question.</b> All pending motions must relate to the main motion on the floor. No new business may be introduced.
<b>Point of Order</b>	Motion used if a board member feels the Chairman is failing to operate within the rules.

## Restorative Motions or Motions that Bring Back a Question

<b>Restorative Motion</b>	<p><b>Allows a group to change its mind.</b></p> <ul style="list-style-type: none"> <li>○ They are a separate category because of their contradiction to the parliamentary rule that once a question has been decided it cannot be brought up again at the same meeting.</li> <li>○ Within limits, members have the right to rethink a situation if they feel their decision has been made too quickly or without enough information.</li> <li>○ The two most commonly used restorative motions are: <i>Rescind</i> and <i>Reconsider</i>.</li> </ul>
<b>Rescind</b>	<p><b>Rescind is the motion to use to quash or nullify a previously adopted motion.</b> It may strike out an entire motion, resolution, bylaw, etc.</p> <ul style="list-style-type: none"> <li>○ Rescind is <i>not in order</i> when any action has already been taken as a result of the vote, such as any kind of contract when the other party has been notified.</li> <li>○ It must be seconded.</li> <li>○ It requires a <i>two-thirds</i> vote unless <i>notice has been given</i> at the previous meeting, either verbally or in writing. If notice has been given, the motion requires only a <i>majority</i> vote.</li> </ul>
<b>Reconsider</b>	<p><b>Reconsider is the motion which allows a group to reconsider the vote on a motion.</b> It enables a majority of the members, within a limited time, to bring back a motion for further consideration after it has been acted upon. Its purpose is to prevent hasty or ill-advised action.</p> <ul style="list-style-type: none"> <li>○ Reconsider has special rules to prevent its abuse by a disgruntled minority, since it allows a question already decided to be brought up again.</li> <li>○ Rules limit who can make the motion. <b>It can only be made by someone who voted on the prevailing (winning) side.</b></li> <li>○ <b>It has a time limit. It must be made on the same day that the vote to be reconsidered was taken.</b></li> <li>○ It requires a second.</li> <li>○ It may be debated and it opens up the motion to which it is applied to debate.</li> <li>○ It requires only a majority vote.</li> <li>○ It may be made and seconded while other business is pending because of its time limit. However, it is not debated and voted on until the business on the floor is completed.</li> <li>○ All action that might come out of the original motion is stopped at the time that reconsider is made and seconded. This is the main value of the motion, and it should be made as quickly as the situation calling for it is recognized.</li> </ul>
<b>Amend a Motion</b>	<p><b>Change the wording to make it clearer, more complete, or more acceptable before the motion is voted upon.</b> The amendment must be germane to the motion on the floor to be in order. Adoption of the amendment does not adopt the motion. If the group votes “no” on the amendment, the motion is on the floor in its original wording.</p>
<b>Amend an Amendment</b>	<p>First amendment is called the primary and the amendment to the amendment is the secondary amendment. Only two amendments may be pending at any time.</p>

	First vote on the amendment to the amendment (secondary), then vote on the original amendment (primary), then vote on the main motion. Amendments require a majority vote.
<b>Friendly Amendments</b>	Change in wording to enhance the original motion – can be changed by general consent.
<b>Hostile Amendments</b>	Gives a different meaning to a motion and may defeat the intent of the main motion.
<b>To Commit or Refer a Motion</b>	Sends the question to a small group (committee) to be studied and put into proper form for the group to consider. Motion includes specific directions as to where the question ought to go (what committee). Motion can be applied to any main motion with any amendments that may be pending. It must be seconded, it can be debated, and requires a majority vote.
<b>Postpone</b>	<b>Delays action on a question until later in the same meeting or until the next meeting.</b> <i>A motion cannot be postponed further than the next regular meeting.</i> Can be applied to all main motions, it must be seconded, it can be debated, it can be amended (as to time of the postponement), it requires a majority vote. Motion is called up automatically when the time to which it was postponed arrives (place under Unfinished Business on agenda of next meeting).
<b>Limit Debate</b>	<b>Motion to exercise special control over debate</b> – reducing the number and length of speeches allowed. Used with any motion, must be seconded, is not debatable, can be amended (but only as to the length of speeches or when the vote will be taken), requires 2/3 vote, vote must be taken by show of hands or a rising vote in a large group. (Need a timekeeper and timer if speeches have a time limit.)
<b>Previous Question</b>	<b>The motion used to cut off debate and to bring the group to an immediate vote on the pending motion. (Call the question for an immediate vote).</b> Previous question can be ruled out of order if the motion is debatable and has not received debate. Motion requires 2/3 vote (by show of hands or standing vote). Not debatable.
<b>Postpone Indefinitely</b>	Lowest-ranked subsidiary motion is used to kill a main motion. It avoids a direct vote on the question on the floor. Shouldn't be used.
<b>Lay on the Table</b>	Highest-ranked subsidiary motion. Cannot be amended or debated. It is out of order when used to “kill or avoid dealing with a measure”. <b>Was designed as a courtesy motion to allow a group to set aside a question for something more important, such as arrival of a speaker.</b>
<b>Withdraw a Motion</b>	<b>Permission to withdraw a motion allows a member who realizes he has made a hasty or ill-advised motion to withdraw it with the consent of the group.</b> This device saves time in disposing of the motion. The presiding officer usually handles the request by use of general consent.
<b>Dilatory Tactics</b>	A dilatory tactic is the misuse of parliamentary procedure to deliberately delay or prevent action in a meeting. It is the duty of the presiding officer to prevent a dissident minority from misusing legitimate forms of motions to obstruct business. Such motions should be ruled out of order or those members engaged in such game playing should not be recognized.

## TYPES OF VOTES

<b>Majority Vote</b>	<ul style="list-style-type: none"> <li>• <b>More than half of the votes cast.</b></li> <li>• The minority has the right to be heard, but once a decision has been reached by a majority of the members present and voting, the minority must then respect and abide by the decision.</li> </ul>
<b>Silence is Consent</b>	Those members who do not vote, agree to go along with the decision of the majority by their silence.
<b>Two-thirds Vote</b>	<b>A two-thirds vote is necessary whenever you are limiting or taking away the rights of members or whenever you are changing something that has already been decided.</b> A two-thirds vote has at least twice as many votes on the winning side as on the losing side. A show of hands should be taken for <i>all</i> motions requiring a <i>two-thirds vote</i> . If a motion requires a two-thirds vote, the Chairman should inform the group of that.
<b>General Consent</b>	<p><b>Is an informal agreement of the group, the method in which action is taken without a formal vote or on occasion without a motion.</b> The Chairman initiates the procedure to expedite business. Usually done to approve and correct the minutes.</p> <ul style="list-style-type: none"> <li>• The presiding officer always pauses after asking if there is any objection. If there is <i>any</i> objection, the matter is put to a vote in the usual way.</li> <li>• A member may object because he feels it is important to have a formal vote and dispel any suspicion of railroading.</li> </ul>
<b>Tie Vote</b>	Is a <i>lost</i> vote because a majority was not obtained. The <i>Chairman is not compelled to break a tie</i> . While the Chairman has a right to vote as a member, it is recommended he not vote unless the vote is by ballot. He may also vote in cases where the vote would change the result. The Chairman should appear impartial.