



COUNTY COUNCIL OF BEAUFORT COUNTY
Beaufort County Community Development Department

Beaufort County Government Robert Smalls Complex
Physical: Administration Building, 100 Ribaut Road, Room 115
Mailing: Post Office Drawer 1228, Beaufort, SC 29901-1228
Phone: 843-255-2140 / FAX: 843-255-9432

The regular meeting of the Beaufort County Planning Commission (hereinafter "Commission") was held on Monday, July 2, 2018, in County Council Chambers, the Beaufort County Administration Building at 100 Ribaut Road, Beaufort, South Carolina.

Members Present:

Mr. Robert Semmler, Chairman
Ms. Cecily McMillan

Mr. Randolph Stewart/Vice-Chairman
Mr. Kevin Hennelly
Mr. Harold Mitchell

Ms. Diane Chmelik
Mr. Jason Hinchler
Mr. Ed Pappas

Member Absent: Dr. Caroline Fermin

Staff Present:

Mr. Eric Greenway, Community Development Director
Mr. Robert Merchant, Assistant Community Development Director
Ms. Hillary Austin, Zoning Administrator
Mr. Christopher Inglese, Assistant Staff Attorney
Mr. Thomas Keaveny, Staff Attorney
Ms. Heather Spade, Administrative Assistant to the Community Development Director
Mr. Curtis Coltrane, Legal Counsel for the Planning Commission

CALL TO ORDER: Chairman Robert Semmler called the meeting to order at approximately 6:00 p.m.

PLEDGE OF ALLEGIANCE: Mr. Semmler led those assembled in the Council Chambers with the pledge of allegiance to the flag of the United States of America.

REVIEW OF MEETING MINUTES: The Commissioners reviewed the June 4, 2018 minutes. **Motion:** Mr. Ed Pappas made a motion, and Mr. Jason Hinchler seconded the motion, **to accept the minutes as written with one correction.** The motion **carried (8-0 - FOR: Chmelik, Hennelly, Hinchler, Pappas, McMillan, Mitchell, Stewart and Semmler; ABSENT: Fermin).**

CHAIRMAN'S REPORT: Mr. Semmler apologized to those of the public that had to drive from the Bluffton area. Mr. Semmler explained that in the past when multiple agenda items are south of the Broad, the commission meeting is historically held at the Bluffton Library for the convenience of the public. Mr. Semmler added the Barbara Childs has retired after 23 years; he thanked Ms. Childs for her years of service to the Planning Commission and the County. He also asked that all cell phones be turned off during the meeting.

PUBLIC COMMENT on non-agenda items: None were received.

SOUTHERN BEAUFORT COUNTY STREET NAME CHANGE PETITION FROM SARAHBECCA DRIVE TO CRAMER AVENUE, PERPENDICULAR TO PALMETTO BLUFF ROAD, BLUFFTON; APPLICANT: DEANNA CRAMER: The applicant Deanna Cramer was present and she explained to the commission that the street was supposed to be Cramer Avenue many years ago when the original 911 enhancement took place. When the original sign (Cramer Avenue) was to be installed the neighboring property owner would not let the workers proceed and insisted on the name of the front section of that road to be named Sarahbecca. Ms. Cramer explained that the current name has been confusing for delivery personnel along with first responders. The property owner responsible for the road being named Sarahbecca has recently moved, Ms. Cramer believes that this seemed like a good time to fix the problem.

Mr. Semmler asked for Staff comment: No Staff comment

Motion: Ms. Diane Chmelik made a motion, and Mr. Harold Mitchell seconded the motion, **to approve the Southern Beaufort County Street Renaming from Sarahbecca Drive to Cramer Avenue.** No further discussion occurred. The motion **carried (8-0--FOR: Chmelik, Hennelly, Hincer, McMillan, Mitchell, Pappas, Semmler, and Stewart).**

DISCUSSION OF PROPOSED PASSIVE PARK ORDINANCE / PASSIVE PARK COMPREHENSIVE PLAN FOR REVIEW AND COMMENT; STAFF: STEFANIE NAGID, PASSIVE PARK MANAGER

Mr. Semmler explained that Stefanie Nagid has prepared the Passive Park documents and has provided them to the Planning Commission for review and comment; Mr. Semmler added no vote on the matter is necessary.

Mr. Eric Greenway, Community Development Director, introduced Ms. Stefanie Nagid to the Commission and audience. Ms. Nagid explained to the commission over her three months of employment with the county she has spent ample time studying the Rural and Critical Lands program and visiting the properties. Ms. Nagid explained to the board that no general foundation documents were in place for the Rural and Critical lands properties. She explained to the Commission that the lack of rules and guidelines for the properties has made it hard for law enforcement to enforce and ensure the safety of the public while maintaining and preserving the land as intended.

Ms. Nagid went on to explain that the comprehensive plan that has been presented to the commission is based on a 2016 report from the Beaufort County open Land Trust. Ms. Nagid explained that she used the recommendations from the Open Land Trust report to build on and create the comprehensive plan for the passive park program. Ms. Nagid stated that the Ordinance she created was tailored off of a template from past employment with City of Gainesville, Florida. She went on to say that most of the rules and regulations addressed in the ordinance are things that she learned in Gainesville. Ms. Nagid added that the Ordinance is established on many lessons learned; she believes these practices would be useful in Beaufort County as well.

Commission Comments: Mr. Ed Pappas recognized the fact that he was part of the Rural and Critical Lands preservation program for 10 years and knows the amount of work that has gone into preserving the land acquired by Beaufort County so far and wanted to commend Ms. Nagid on the amount of work that she has put into the program in such a short amount of time. Mr. Pappas commented on the meticulous attention to detail Ms. Nagid has paid in setting the foundation for the program, and looks forward to seeing how the program grows.

Motion: No action required.

TEXT AMENDMENT TO THE BEAUFORT COUNTY COMMUNITY DEVELOPMENT CODE (CDC): APPENDIX B, DAUFUSKIE ISLAND CODE TO AMEND THE DAUFUSKIE ISLAND PLAN

Robert Merchant, Community Development Deputy Administrator, introduced the two items being brought forward for Daufuskie Island; The Daufuskie Island Plan and The Daufuskie Island Community Development Code. Mr. Merchant explained that the Daufuskie Island Council is an advocacy group for the island and also a liaison group for the local and federal government. The Daufuskie Island Council took it upon themselves to initiate a relationship with a consultant to move the process forward. Mr. Merchant made mention that Staff would not like action to be taken on the item tonight due to notification issues and also further Staff and community review. No recommendation today.

Ms. Beverly Davis, RS and H part time Daufuskie Island resident, volunteer consultant for the Daufuskie Island Plan spoke on the Daufuskie Island Plan. Ms. Davis provided a powerpoint presentation highlighting the

chapters in the Daufuskie Island Plan. Ms. Davis explained the reasoning behind the use tables and compared the current code to the upgraded code showing the way that the existing code was as a

Motion: Ms. Diane Chmelik made a motion, and Ms. Cecily McMillin seconded the motion, **to defer the text amendment to the Beaufort County Community Development Code: Appendix B, Daufuskie Island Code to amend the Daufuskie Island Plan for one month.** No further discussion occurred. The motion **carried (9:0 FOR: Chmelik, Hennelly, Hincer, McMillan, Mitchell, Pappas, Semmler, and Stewart).**

ADMINISTRATIVE APPEAL OF THE STAFF REVIEW TEAM (SRT) APPROVAL OF THE UNDEVELOPED, UNSUBDIVIDED PORTION OF BEST BUY COMMERCIAL CENTER AT 1031, 1033, 1037, AND 1039 FORDING ISLAND ROAD R600-032-000-0455-0000; KNOWN AS OSPREY COVE APARTMENTS); APPELLANTS: THE CRESCENT PROPERTY OWNERS ASSOCIATION, INC, ET. AL.

Please see attached official court reporting for this Administrative Appeal

Motion:

Mr. Stewart: I respectfully move to grant the appeal to the Creasant Property owners association as follows: there's no evidence of compliance with South Carolina Code 6.29.1145 and CDC 1.1.40 and so this matter is remanded to the SRT for the purpose of considering an easement agreement and whether or not there has been compliance with SC Code 6.29.1145 and 1.1.40.

The motion **carried (9:0--FOR: Chmelik, Fermin, Hennelly, Hincer, McMillan, Mitchell, Pappas, Semmler, and Stewart).**

Ruling:

The Move to deny the appeal because:

1. No evidence of compliance with South Carolina Code 6.29.1145 and section 1.1.40 of the Community Development Code was found.


Announcement:

The announcement on the ruling of the appeal of the Staff Review Team's approval of Osprey Cove Apartments has been approved.

NEW/OTHER BUSINESS: None were discussion.

ADJOURNMENT: Mr. Semmler, with no objections from the other Commissioners, adjourned the meeting at approximately 9:30 p.m.

SUBMITTED BY:


Heather Spade, Planning Assistant


Robert Semmler, Beaufort County Planning Commission Chairman

APPROVED: September 6, 2018

*Note: The video link of the July 2, 2018, Planning Commission meeting is:
http://beaufort.granicus.com/MediaPlayer.php?view_id=3&clip_id=3814*

APPLICATION FOR APPEAL - PLANNING COMISSION OF BEAUFORT COUN
MISC 2018-05 - PLANNING COMISSION

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STATE OF SOUTH CAROLINA
BEFORE
THE PLANNING COMISSION OF
BEAUFORT COUNTY, SOUTH CAROLINA

APPLICATION FOR APPEAL
NO. MISC 2018-05

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THE MEETING BEFORE THE PLANNING
COMMISSION OF BEAUFORT COUNTY, taken in the
above-entitled cause, taken pursuant to Notice
and agreement, before Kyle J. Saniga, Certified
Court Reporter and Notary Public, at the
Beaufort County Courthouse, 100 Ribaut Road,
Beaufort, South Carolina, on the 2nd day of July
2018, commencing at or about the hour of
6:00 p.m.



1 APPEARANCES OF COUNSEL:

2

3 FOR THE CRESCENT PROPERTY OWNERS'
4 ASSOCIATION, INC. (THE CPOA):

5 DOUGLAS WHITSETT MacNEILLE, ESQUIRE
6 Ruth & MacNeille, P.A.
7 10 Office Way
8 Suite 228
9 Post Office Box 5706 (29938)
10 Hilton Head, South Carolina 29928
11 843.785.4251
12 douglas@ruthandmacneille.com

13

AND

14 CHESTER C. WILLIAMS, ESQUIRE
15 Law Office of Chester C. Williams, LLC
16 Suite 2
17 Towne Centre
18 17 Executive Park Road
19 Hilton Head, South Carolina 29928
20 843.842.5411
21 firm@ccwlaw.net

22 FOR BEAUFORT COUNTY COMMUNITY
23 DEVELOPMENT DEPARTMENT - STAFF REVIEW TEAM
24 (THE SRT):

25 THOMAS J. KEAVENY, II, ESQUIRE
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Robert Smalls Complex
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19

FOR STAFFORD BLUFFTON LAND COMPANIES:

20

21 WALTER JOSEPH NESTER III
22 McNair Law Firm, PA
23 23-B Shelter Cove Lane
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wnester@mcnair.net

25

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STAL COURT REPORTING & VIDEO SERVICES



1 APPEARANCES:

2	Robert Semmler-	Chairman
3	Randolph Stewart-	Vice-Chairman
4	Curtis Coltrane-	Beaufort County
5	Eric Greenway-	Beaufort County
6		Community Development Director
7	Diane Chmelik-	Beaufort County
8		Planning Board Member
9	Kevin Hennelly-	Beaufort County
10		Planning Board Member
11	John Nastoff	Crescent Property
12		Owners' Association, Inc. (CPOA)
13	Will York-	Stafford Bluffton
14		Land
15	Mike Thomas-	Mike Thomas
16		Architects
17	Paul Moore-	Ward Edwards
18		Engineering
19	Harold Mitchell-	Beaufort County
20		Planning Board Member
21	Ed Pappas-	Beaufort County
22		Planning Board Member
23	Cecily McMillan-	Beaufort County
24		Planning Board Member
25	Jason Hincer-	Beaufort County
		Planning Board Member



1 APPEARANCES (continued):

2	Hillary Austin-	Beaufort County Zoning Administrator
3		
4	Jim Chesney-	Crescent Property Owners' Association, Inc. (CPOA)
5		
6	Heather Spade	Beaufort County Community Development Assistant
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I N D E X

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1 MR. SEMMLER: Good evening. I
2 call to order this meeting of the
3 Planning Commission for Monday July 2nd
4 2018. Could we all please stand, cite
5 the Pledge of Allegiance.

6 First item on the agenda is a
7 review of the meeting minutes for
8 June 4th 2018.

9 (Whereupon, there was a break in
10 record due to
11 request of take-down.)

12 Next item on agenda;
13 Administrative appeal of the staff
14 review team (SRT) approval of the
15 undeveloped, unsubdivided portion of
16 Best Buy commercial center at 1031,
17 1033, 1037 and 1039 Fording Island
18 Road, R600-032-000-0455-000; known as
19 Osprey Cove Apartments;

20 Appellants: The Crescent Property
21 Owners Association Inc., et. al.

22 The process we're going to follow
23 for this appeal, we're first going to
24 have a presentation of general nature
25 of the case by representatives of the



1 county government in this case, Mr.
2 Greenway, and then we're going to have
3 a presentation of the specific basis
4 for the appeal by the appellant, a
5 representative, then we're going to
6 have extenuating and/or mitigating
7 factors presented by either party and
8 we're going to have discussion,
9 questions by members of the commission.

10 We can call on those people who
11 made the presentation then we're going
12 to have final arguments by appellant
13 and we're going to have the final
14 argument by the government, then the
15 commission will vote.

16 The announcement of the ruling
17 will happen after the vote. I -- the
18 community development department has
19 provided council for the planning
20 commission and we will probably use
21 that individual and call an executive
22 session at some point during the
23 proceedings. Mr. Coltrane is here.

24 MR. COLTRANE: Thank you, sir.

25 MR. SEMMLER: And we're going to



1 follow those procedures, okay. Mr.
2 Greenway?

3 MR. GREENWAY: Thank you very
4 much.

5 Before you this morning is Appeal
6 SRT decision --

7 MR. SEMMLER: In helping to your
8 recitation of how we go forward the
9 applicant is present?

10 MR. WILLIAMS: Yes, sir.

11 (Whereupon, an off-the-record
12 discussion was held.)

13 MR. GREENWAY: Gentleman, what you
14 have before you is an appeal of SRT
15 Staff Review Meeting and additional
16 approval that occurred on April 18th of
17 this year regarding and approval for an
18 apartment development known as Osprey
19 Cove. The SRT at that meeting after
20 hearing from the proposed government,
21 their engineer and community comments
22 made a decision to approve the items
23 with regards to some outstanding --
24 some plan with some outstanding items
25 that I was related to form water



1 capacity fees being paid, landscaping
2 requirements, reviewed arborist report
3 and some modifications to the parking
4 lot on handicapped accessibility, what
5 a conditional approval sent /-L mean is
6 that we're going to approve the thing
7 object /-L once all the outstanding
8 comments have been addressed by the
9 engineer and the developer and then it
10 would be able to proceed on a permit at
11 that particular point.

12 There are some matters of fact
13 here that you need to be aware of when
14 we went through this. One of those
15 being what you're dealing with tonight
16 is an easement agreement that applies
17 to a particular piece of property which
18 was entered into from a neighborhood
19 adjacent to the property and the
20 developer and projected owner are the
21 developer of the property. (Phonetic)

22 One of the things that's going to
23 be claimed tonight is that staff should
24 treat those easements -- the easement
25 agreement as restrictive covenants that



1 invokes a statute under South Carolina
2 law that basically says we have to
3 inquire as to whether restrictive
4 covenants are in play on a particular
5 piece of property and if we're given
6 actual notice that they are -- then we
7 must not approve anything in those
8 restrictive covenants prohibit --
9 activity until we get something from
10 the property owners that are
11 outstanding with those covenants saying
12 that the conditions have been released
13 and the permitted activity can occur.

14 The staff's position is that an --
15 language in an easement agreement does
16 not compare to a recorded set of
17 restrictive covenants.

18 There might be conditions in the
19 easement agreement, just like there
20 might be conditions in a will that say,
21 you know, if somebody inherits your
22 property that they can't dispose of
23 that property outside the family or
24 whatever but that doesn't mean that
25 that's establishment of a restrictive



1 covenant on that piece of property.

2 Restrictive covenants are separate
3 documents. I think the state law is
4 pretty clear about what the staff
5 obligation is with restrictive
6 covenants. There's nowhere in that
7 state law that says that an easement
8 agreement is also a restrictive
9 covenant that restricted that easement
10 agreement -- conditions to fulfil the
11 easement agreement.

12 I'm going to reserve further
13 comment until I hear the appellant's
14 presentations and then I will come back
15 up and address you all again if that's
16 okay but I will answer any questions
17 you all may have for me currently.

18 MR. SEMMLER: Any questions?

19 MR. STEWART: I'm curious. I've
20 been on the board a number of years.
21 This is the first time I've seen a
22 stenographer. Who is the stenographer
23 being paid by and for what purpose?

24 MR. SEMMLER: I'll let that be up
25 to -- if you want to answer that



1 question.

2 MR. MacNEILLE: The stenographer's
3 here for the Crescent Property Owners
4 Association.

5 MR. STEWART: Pardon me? I
6 couldn't hear you.

7 MR. MacNEILLE: For the Crescent
8 Property Owners Association.

9 MR. STEWART: Okay, thank you.

10 MS. CHMELIK: Do we have a picture
11 of exactly where this property is
12 located?

13 MR. GREENWAY: I do believe
14 there's a picture in the packet. I'll
15 try to get to that real quick.

16 Essentially, the property is
17 located behind the --

18 MR. SEMMLER: Just so you all
19 know, it's not like we're falling
20 asleep. This package is 522 pages and
21 we got it I think on Wednesday,
22 Tuesday, maybe, and it's something
23 Stewart, I don't know, but you all --
24 but my eyes start squinting after
25 awhile, so --



1 Could you point out on the map the
2 piece of property we're talking about?

3 MR. GREENWAY: If you look in the
4 blue it's projection location.

5 MS. CHMELIK: This is a photograph
6 of existing buildings.

7 MR. GREENWAY: We do have a
8 photograph. We'll pull that up so you
9 can see it. It's an aerial on -- the
10 property sits back right behind the
11 Best Buy, between Best Buy and the
12 Crescent neighborhood.

13 MS. CHMELIK: Between Best Buy and
14 what?

15 MR. GREENWAY: The Crescent
16 neighborhood.

17 MS. AUSTIN: No, it's behind Best
18 Buy and it's next to the Crescent.

19 MR. SEMMLER: Why don't we
20 proceed. I'm sure the opportunity's
21 going to come up when we have better
22 maps you'll pick up on it.

23 MS. CHMELIK: Yeah. You want to
24 say something either of ring.

25 UNIDENTIFIED SPEAKER: Are we



1 going to have access to that print?

2 MR. GREENWAY: I don't know. It's
3 a public meeting. It would be
4 available for anybody that would like a
5 copy.

6 MR. SEMMLER: Good. Is the
7 stenographer the county's or --

8 MR. MacNEILLE: No, it's the
9 property owners. Property owners hired
10 the stenographer and there would be a
11 charge for the copy is all I can say
12 otherwise you're more than welcome to
13 it.

14 MR. SEMMLER: I'm sure the county
15 would pay for it if we needed a copy.

16 UNIDENTIFIED SPEAKER: Are we good
17 up here? I know you'll be up again.

18 MR. SEMMLER: Now presentations by
19 the appellant or the representatives?

20 MR. WILLIAMS: Good evening, Mr.
21 Chairman, ladies and gentlemen.

22 You may recall I was before you
23 last month. My name is Chester
24 Williams. I, along with Doug MacNeille
25 here or my co-counsel, represent the



1 Crescent Property Owners Association
2 and several homeowners who live in the
3 vicinity of where this proposed project
4 is and maybe just to give you a little
5 bit more help to figure out where it
6 is, if you're familiar with where the
7 Home Depot is in Bluffton, if you're
8 leaving Hilton Head Island there's a
9 Home Depot and then there's Best Buy
10 and then there's a traffic light where
11 Wal-Mart is katty-corner. That's the
12 entrance there to the Crescent
13 development.

14 MS. CHMELIK: Okay.

15 MR. WILLIAMS: So this is back
16 behind the area where Home Depot and
17 Best Buy is.

18 Our clients are appealing the SRT
19 approval to build an apartment building
20 as part of the -- originally supposed
21 to be the Best Buy shopping center.

22 The records appeal should include
23 number one, our appeal application that
24 we filed on May 17 of 2018.

25 Our supplemental memorandum we



1 filed on June 15, 2018.

2 Our reply memorandum filed on
3 June 27, 2018. I'd ask that just to be
4 sure that all those documents are
5 included in the record on this appeal.

6 Admittedly, our filings of this
7 appeal set forth the legal basis and
8 that's important for building a record
9 here but they're very lawyerly
10 documents and they're somewhat
11 complicated and Mr. Chairman pointed
12 they're somewhat voluminous, also. My
13 goal here is try and simplify things
14 and explain why we're filing this
15 appeal and the legal support that we
16 have.

17 So, the background; the
18 association and the individual owners
19 who have -- oppose the Osprey Cove
20 apartment complex for a very simple
21 reason, when the Best Buy shopping
22 center was developed in 2005 the
23 developer needed access to a sewer lift
24 station for waste water.

25 The best sewer lift station for



1 them to use was inside the Crescent
2 development on the other side of the
3 golf hole as part of the Crescent Point
4 golf course, so they needed an
5 easement, number one, from the owner of
6 the golf course for the sewer line over
7 there but they also needed easements
8 from the association to use the
9 association's roads to get to that lift
10 station and to use part of the
11 association property as a staging area
12 for the construction of -- to build
13 that sewer line.

14 They came to the association and
15 asked for the easements and in return
16 for the easements gained support of the
17 association the developer agreed to
18 certain plans for the development of
19 the shopping center and these are all
20 set forth in the easement agreement
21 you're familiar with, include height
22 restrictions, night lighting buffers
23 and landscaping in the area that's
24 adjacent to Crescent community.

25 The association and the developer



1 agreed to enter into the easement
2 agreement and to memorialize the
3 various agreements and that easement
4 agreement was made known to the SRT at
5 the April 18th meeting, so it is part
6 of the record here that is known to the
7 SRT before they made their final
8 decision on the application.

9 In the easement agreement the
10 developer also promised the association
11 that if there were going to be any
12 changes in the plans attached to the
13 agreement then the association would be
14 notified and they had an opportunity to
15 object to those changes and the
16 developer also promised that in the
17 easement agreement that the further
18 development of the Best Buy shopping
19 center would be -- this is a quote --
20 quote "A commercial retail shopping
21 center" -- and also told
22 representatives of the association that
23 the unlabeled buildings on the overall
24 site plan is what the exhibits -- were
25 going to be office buildings. I wasn't



1 aware of this until a few minutes ago
2 until I was talking with Walt Nester
3 who was counsel for I think for the
4 land owner but I'm not quite sure who
5 the land owner is but he said the
6 original permit application for the
7 Best Buy shopping center included seven
8 office buildings on this particular
9 tract or in the general area of this
10 particular tract that we're talking
11 about.

12 I'll also ask Jim Chesney who is
13 here to testify in a couple of minutes.

14 Mr. Chesney was the president of
15 the association when the agreement was
16 entered into and his signature is on
17 the agreement on behalf of the
18 association.

19 In 2017 a successor developer
20 affiliated with Stafford I think but a
21 successor developer began discussions
22 with the community development
23 apartment about developing this
24 particular five-acre tract.

25 On November 21, 2017, a conceptual



1 plan application was filed. The
2 association was not advised of that
3 application even though it showed
4 apartment complexes instead of office
5 buildings.

6 On March 26, 2018 a final plan
7 application for the apartment complex
8 was filed and on April 18th, the final
9 plan application was approved by the
10 SRT for conditions. That's the
11 approval that we're appealing today.

12 A week after that approval Mr.
13 Nester, as the developer's lawyer, sent
14 a letter to the association asking for
15 the association's approval of the
16 apartment complex in accordance with
17 the requirements of the easement
18 agreement.

19 On May 3rd, Mr. MacNeille,
20 representing the association sent Mr.
21 Nester a letter with association's
22 detailed objections to the apartment
23 complex plan.

24 When it became clear that the
25 association objections were not going



1 to be seriously considered by the
2 developer we didn't have any other
3 option but to file this administrative
4 appeal, so that's how we've ended up
5 before y'all here today.

6 The restrictive covenant that Mr.
7 Greenway talked about. Apparently, Mr.
8 Greenway thinks that unless a document
9 says a restrictive covenant in the
10 title that is not a restrictive
11 covenant for purposes of the applicable
12 state statute. We think that's wrong
13 as a matter of law. A document,
14 whatever the title is, can include and
15 contain restrictive covenants that are
16 applicable to be a particular piece of
17 property.

18 Here, the restrictive covenant
19 requires that any further development
20 of the shopping center which deviates
21 from the original plans be communicated
22 to the association and that deviations
23 are subject to the reasonable approval
24 of the association not to be
25 unreasonably withheld, conditioned or



1 delayed.

2 The easement agreement in Section
3 3B also says, all covenants and
4 provisions of this agreement shall be
5 deemed to run with the land --
6 properties affected nearby and shall be
7 binding upon the parties here --
8 successors, designees, agents and
9 employees and in -- to the benefit of
10 the parties hereto and their
11 successors, designees, agents, tenant
12 and employees.

13 That is restrictive covenant
14 language. When you see the terms 'run
15 with the land' or 'burden the
16 property', those terms are typically
17 used in documents to import the
18 importance of the restrictive covenants
19 on the land.

20 The easement agreement is a
21 recorded document recorded in the
22 Register of Deeds Office.

23 Now, Mr. Greenway eluded to the
24 particular state statute referenced in
25 our appeal application. It's Section



1 6-29-1145 of the state code and it
2 requires the county in an application
3 for permit to ask the applicant if the
4 land that's subject to the application
5 is restricted by a recorded covenant
6 that is contrary to, conflicts with or
7 prohibits the proposed activity and
8 prohibits the county from issuing the
9 permit that the county knows of that
10 restriction unless and until the county
11 receives confirmation that a
12 restriction had been resolved.

13 Section 1.4.40 of the community
14 development code contains a similar --
15 basically it imports in the county code
16 the state requirements.

17 The final plan application that
18 was filed on, when was it, March 26th
19 has a question on the form. It says,
20 are there restrictive covenants? But
21 neither the yes nor the no box was
22 checked on that application, so the
23 applicant here did not answer that
24 question, nevertheless the SRT reviewed
25 the application. Nevertheless, they



1 approved it notwithstanding the fact
2 that Mr. MacNeille advised them of the
3 existence of restrictive covenants at
4 the April 18th meeting.

5 Now, Mr. Nester, likely, is going
6 to tell you when he speaks that the
7 easement agreement is not a restrictive
8 covenant and it does not apply to the
9 apartment complex plan but ask yourself
10 this, if that's the case, then why did
11 he send this letter on April 25 asking
12 for the association's consent to the
13 approval of the apartment complex.

14 The association relied on the
15 representations in the easement
16 agreement, that the property would be
17 developed for commercial purposes.

18 The original application said
19 office buildings there and the other
20 understanding would have likely deemed
21 the easement agreement and that was an
22 agreement that was necessary for the
23 development of the Best Buy center.

24 The developer got everything that they
25 needed and wanted out of that easement



1 agreement and now they want to change
2 the rules.

3 The association of the homeowners
4 agreed with commercial shopping center
5 for office development. Those
6 establishments appear to be closed all
7 night long. They don't have later
8 evening noise or traffic. An apartment
9 complex is exactly the opposite, not in
10 a traffic -- single family homes. With
11 an apartment complex you have 24/7
12 activity, 24/7 noise, 24/7 traffic
13 generation. That's a material
14 difference than what was originally
15 presented to and represented to the
16 association in order to induce them to
17 enter into that easement.

18 Other issues that we've raised;
19 the applicant must either own the
20 property in question or authorize an
21 agent to file the application.

22 I submit to you that there's
23 nothing in the 500 pages probably 400
24 had to do with this application, I'd
25 submit to you there's nothing in there



1 that shows conclusively who the owner
2 of the property is. That being the
3 case, I don't see how the county could
4 have known who the proper applicant
5 was.

6 The fact that the applicant must
7 either own the property or be
8 authorized I mean that seems obvious
9 but here's it's a little more
10 complicated. If you look at the deeds
11 recorded in the Register of Deeds
12 office here it seems to lead you to
13 believe that Stafford, Stafford
14 Bluffton Lands LLC is the owner.

15 Unfortunately, as we've mentioned
16 in the appeal application narrative,
17 South Carolina Code 6-29-11 -- makes it
18 a misdemeanor for an owner of property
19 being developed to transfer title to
20 any part of the development without
21 first having the property subdivided.

22 There was no approved subdivision
23 for the land on which the apartment
24 complex was proposed to be built
25 notwithstanding the fact that it had



1 been conveyed at least twice subsequent
2 to the ownership by Stafford Roads LLC.

3 When this was pointed out to Ms.
4 Austin and Mr. Greenway that's what
5 caused Ms. Austin to sent her April 30,
6 2018 e-mail to Ward Edward saying,
7 you've got to go through the
8 subdivision process before you do
9 anything else.

10 We think she should have gone
11 further than that. We think she should
12 have withdrawn the approval of the
13 apartment plan until there was a formal
14 subdivision application so that
15 ownership of the property could be
16 legally and properly documented in the
17 land records that are over in the
18 Register of Deeds office.

19 CDC Section 7.2.7.B has a similar
20 provision that makes it illegal to
21 convey property without having an
22 approved subdivision plat or
23 development plan.

24 To our knowledge, since Ms. Austin
25 raised that issue with the engineers



1 for the developer on April 30th they
2 haven't taken any steps, whatsoever,
3 towards trying to get that
4 subdivision approval. Without the
5 approved subdivision, the transfer of
6 title of Stafford Bluffton Land
7 violated both South Carolina law and
8 the county's community development
9 code. The applicant for the apartment
10 development approval failed to refuse
11 to tell the county about the lack of
12 the approved subdivision for -- the
13 apartment project.

14 Since Stafford Bluffton Land
15 doesn't -- I don't know if they legally
16 owned the property -- and if they don't
17 then they couldn't legally apply for
18 the permits that would be --

19 Once approved, once the county
20 knew about the problem we think they
21 should have withdrawn the approval for
22 the apartment complex.

23 Now, Mr. Nester will tell you that
24 because there was a condominium regime
25 established for the shopping center the



1 land could be lawfully transferred.

2 Unfortunately, we don't think that
3 arguments holds any water because the
4 land at issue here, the five-acres of
5 the apartment complex never was
6 submitted to the horizontal property
7 regime. It's never been made -- to the
8 property regime and Mr. Nester has
9 admitted that.

10 The compound issues, the final
11 approval application and this is the
12 owner of a company that has never had
13 any ownership -- of the property
14 whether lawful or not.

15 We also believe the final plan
16 application is incomplete. Number one,
17 the owner listed is wrong. The
18 restrictive covenants contained in the
19 easement agreement are not correctly
20 addressed and the SRT approval was
21 issued with conditions.

22 If you read Community Development
23 Code Section 7.4.40.8.D.2 it allows for
24 conditions on permits like that but
25 those conditions are limited to those



1 deemed necessary to insure compliance
2 with the standards of the CDC.

3 Other conditions were added,
4 later. Primarily one that probably be
5 subdivided before any further permits
6 be issued but the conditions here
7 involve not only the missing
8 subdivision but the fundamental
9 requirements that should have been part
10 of and included with and reviewed as
11 part of the approval process; storm
12 water, connectivity, parking on
13 sidewalks and a completed landscape
14 plan. None of those were included with
15 the plan and they go to the heart of
16 the plan approval process, itself.

17 So, part of your task here tonight
18 is to ask that if -- if the SRT
19 approval of the plan is flawed as it is
20 it should be -- or is it should be
21 reversed.

22 We suggest that while some of our
23 objections may be -- seem like form
24 over substance, in fact, they're not.
25 The South Carolina code, Community



1 Development Code are statutes of
2 ordinances and the SRT is required to
3 follow them. The application process
4 set out in the CDC is there for a
5 particular reason and that is to insure
6 compliance with the applicable statutes
7 and ordinances.

8 Now, the applicant for the
9 apartment complex, I mean they may or
10 they may not be able to submit a proper
11 subdivision application and get the
12 property subdivided. We don't know
13 that because they haven't taken the
14 steps to do that and they may or may
15 not be able to submit a proper
16 application for the apartment
17 development but they should be required
18 by the SRT to do that and if the SRT
19 does not require compliance with the
20 Community Development Code then it's
21 your obligation, as the planning
22 commission, to as it states -- to
23 oversee the administration of the
24 regulations that may be adopted as
25 provide in the state -- so y'all have



1 oversight authority on the actions of
2 the SRT of reviewing, approving
3 applications like this.

4 The CDC requires that you, the
5 planning commission, reverse the SRT's
6 decision to approve the Osprey Cove
7 apartment development if one of three
8 things; if the SRT made an error in
9 determining that the standard contained
10 in the CDC was met, if the SRT's
11 decision is based on a standard not
12 contained in the CDC or if the CDC made
13 an error in applying the standard
14 contained in the CDC.

15 If you give me a minute I'd like
16 to ask Jim Chesney to come up. I've
17 got one or two questions for him.

18 UNIDENTIFIED SPEAKER: No, that's
19 not permissible. We would object.

20 MR. WILLIAMS: I'll be glad to
21 show you the rules where we can call
22 witnesses.

23 UNIDENTIFIED SPEAKER: Show me.

24 MR. KEAVENEY: Please, let's walk
25 through this and find out what's right.



1 MR. WILLIAMS: Mr. Keaveney, I'm
2 looking at Resolution R-2004-29, which
3 is the adoptions of the rules of
4 procedures for the planning commission.

5 MR. KEAVENY: I'm looking at the
6 Subsection 7.3.70 it deals with
7 appeals.

8 MR. WILLIAMS: Uh-huh.

9 MR. KEAVENY: Which says that the
10 appeal would be decided based only the
11 record that was --

12 MR. WILLIAMS: Yeah. And this
13 deals with part of the record. This
14 deals with the easement agreement.

15 MR. KEAVENY: No, no. There was
16 no testimony presented by anybody, just
17 that, so it --

18 MR. WILLIAMS: The easement
19 agreement was presented to the staff
20 before the SRT approval on April 18th
21 at that meeting by Mr. MacNeille. It
22 is there. It is in the record.

23 MR. KEAVENY: That's right but
24 there was no testimony about it and
25 there's not going to be -- we object to



1 the testimony about it now because it's
2 not permitted.

3 You have an attorney to advise
4 you.

5 MR. SEMMLER: I was really hoping
6 we could hold off on that for awhile.

7 MR. WILLIAMS: What rule is that?

8 MR. KEAVENY: I'm reading Article
9 6.

10 MR. WILLIAMS: Administrative
11 Appeals Procedure, Section 2; the
12 applicant or the county administrator
13 or its designees or the property owner
14 -- applicant is not the property owner,
15 it says, it may present testimony under
16 oath. The commission may call its own
17 witnesses when deemed appropriate. The
18 chairman may compel witnesses to attend
19 by subpoena delivered at least seven
20 days prior to the hearing. You have
21 the right to subpoena witnesses to
22 testify here. Clearly, your rules
23 contemplate testimony, questioning of
24 witnesses.

25 Next section, Section -- Cross



1 Examination; the applicant or the
2 county administrator or its designee or
3 the property owner if the applicant is
4 not the property owner shall have the
5 right to examine opposing witnesses in
6 an ordinarily manner. Intimidation of
7 witnesses will not be allowed.

8 If you got these rules, how can
9 you say, no, you can't call witnesses?
10 I'd like to call Mr. Chesney as a
11 witness.

12 MR. KEAVENY: I would just direct
13 the commission to CDC Section 7.3.70,
14 Section 5 which says see Section 7.4.70
15 -- county procedures, appeals from a
16 decision administrative agents --

17 MS. CHMELIK: Excuse me, could you
18 speak up, sir, so that I can hear you?

19 MR. KEAVENY: Sure. Appeals from
20 an decision of an administrative agent
21 shall be heard by the CCOA or the
22 planning commission as appropriate
23 based solely on materials (plans,
24 documents, reports, studies, drawings
25 and testimony available to the body or



1 agent rendering the initial decision)
2 and advisory bodies prior to the
3 decision.

4 There was no testimony so there
5 should be no testimony at this hearing.

6 MR. WILLIAMS: With all due
7 respect, there was testimony.

8 MR. SEMMLER: Yes, sir.

9 MR. WILLIAMS: Mr. MacNeille tried
10 to offer it into evidence and the SRT
11 said, no, we're not going to consider
12 it.

13 MR. SEMMLER: At this time I'd
14 like to take about five minutes in
15 executive session on this specific
16 issue.

17 (Whereupon, a short break was
18 taken.)

19 MR. SEMMLER: Call back into
20 session. The -- Mr. Williams, your
21 request to have Mr. Chesney speak.
22 Mr. -- was Mr. Chesney at the SRT
23 meeting?

24 MR. WILLIAMS: He was not.

25 MR. MacNEILLE: Was not.



1 MR. SEMMLER: According to these
2 rules I do not wish to hear from Mr.
3 Chesney. I know he was the president
4 of the homeowners association, signed
5 the original document, we all know
6 that, but he was not at the SRT, okay,
7 and we -- let me finish.

8 If the purpose of his testifying
9 is to confirm that the SRT had a copy
10 of the easement agreement that's
11 documented, we know that, okay, so.

12 MR. WILLIAM: Then I would ask
13 that I be allowed to make a proffer as
14 to what Mr. Chesney would testify to if
15 he was allowed to.

16 MR. SEMMLER: He's -- no, I don't
17 even want to hear that. According to
18 the rules that we will follow, the
19 gentleman was not at the SRT meeting
20 when it was originally -- when the
21 applicant originally applied to
22 development then he will not speak
23 tonight.

24 MR. WILLIAMS: So, just for the
25 record you've deny my request to make a



1 proffer of Mr. Chesney's testimony?

2 MR. SEMMLER: Mr. Williams, I deny
3 your request to have Mr. Chesney
4 testify.

5 MR. WILLIAMS: Thank you.

6 MR. SEMMLER: Good?

7 MR. WILLIAMS: And, also, and I'm
8 not a litigator but those sorts of
9 things I don't know all -- but Mr.
10 MacNeille, can you explain what a
11 proffer of testimony is?

12 MR. SEMMLER: Do you understand
13 what it is, Mr. --

14 MR. MacNEILLE: A proffer, I can
15 -- no, please.

16 UNIDENTIFIED SPEAKER: It's
17 basically a summary of what the person
18 would testify to if they were allowed
19 to testify.

20 MR. SEMMLER: He's not allowed to
21 so we don't need it. That works.

22 MR. MacNEILLE: And just please
23 respectfully note our exception to the
24 rule.

25 MR. SEMMLER: Yes, sir, I



1 understand, completely. Thank you for
2 that explanation. Mr. Williams, the
3 floor is yours.

4 MR. WILLIAMS: Let me wrap up
5 here.

6 We submit, number one, that SRT
7 made an error, accepted and approved an
8 application by someone other than or
9 someone with permission of the owner of
10 the proposed site of the apartment
11 development.

12 Number two, the SRT made an error
13 when it ignored the effect of the
14 restrictive covenants contained in the
15 easement agreement on a proposed site
16 with the parking development and
17 approved that development
18 notwithstanding those restrictive
19 covenants.

20 C, that the SRT made an error when
21 it approved the incomplete application
22 for the development of the apartment
23 complex.

24 D; that the SRT made an error when
25 it approved the application of the



1 apartment development with conditions
2 that addressed the specifics of the
3 application, itself.

4 And E, that the SRT made an error
5 when it failed to withdraw the approval
6 of the apartment development when Ms.
7 Austin and Mr. Greenway learned of the
8 illegal subdivision of the site.

9 Given the record, we ask that the
10 planning commission to reverse the
11 SRT's approving the application for
12 development of the Osprey Cove
13 Apartments. Thank you.

14 MR. SEMMLER: Questions? Any
15 questions of Mr. Williams?

16 MR. WILLIAMS: John Nastoff, who
17 is the current president of the
18 association who was present at that SRT
19 meeting is here in case any of you have
20 any questions. Mr. MacNeille who
21 represents the association and was
22 present at the SRT meeting is here,
23 also, if you have any questions.

24 MR. SEMMLER: Okay. Any
25 questions?



1 MR. HENNELLY: I'll reserve.

2 MR. SEMMLER: Write them down.

3 Mr. Williams thank you very much.

4 MR. WILLIAMS: Thank you.

5 MR. SEMMLER: Is the applicant
6 here?

7 MR. NESTER: Yes, sir.

8 MR. SEMMLER: Your turn.

9 MR. WILLIAMS: And for the record,
10 we would object to the applicant here
11 testifying. We don't know who the
12 owner of the property is. The owner of
13 the property is likely a necessary
14 party here. There's nothing in the
15 record that establishes who the owner
16 of the property is.

17 MR. SEMMLER: Yes, sir.

18 MR. WILLIAMS: Thank you.

19 MR. SEMMLER: Maybe we'll find
20 out. Will you please identify
21 yourself.

22 MR. NESTER: Good evening, Mr.
23 Chairman, Member of the Planning
24 Commission.

25 My name is Walter Nester. I'm an



1 attorney with the McNair Law Firm and
2 we represent Stafford Bluffton Land.

3 With me tonight is Mr. Will York
4 who is with Stafford Bluffton Land, Mr.
5 Mike Thomas and is Mike Thomas
6 Architects and Paul Moore with Ward
7 Edwards Engineering.

8 I think that as a general
9 proposition I think that it's been very
10 adequately identified that this is a
11 voluminous application. There's a lot
12 of material and Mr. Williams has done a
13 very good job of providing lots of
14 material for you to get to review and
15 to get caught up on.

16 Mr. Williams says it looks like
17 form over substance. I can't comment,
18 really, on that other than I agree.

19 It boils down to really
20 four points that Mr. Williams is
21 making in his application and before I
22 get into those four points I'd like to
23 say, for the record, that on behalf of
24 Stafford Bluffton Land we submitted a
25 reply, a response to the -- application



1 and we provided that to Mr. Greenway I
2 believe on June 26th and that should
3 also be in the record, as well, and
4 that should be in the voluminous packet
5 of materials that you have previously
6 received and we ask that our response
7 be included in the record if, indeed,
8 it wasn't provided to you already.

9 And we -- as Mr. Williams closed
10 he talked a little bit about the
11 standards that you're reviewing and I
12 ask the same thing, that you keep --
13 that the planning commission keep in
14 mind what it's being asked to review
15 and those three items; whether a
16 standard was met, whether the director
17 made the decision based on a standard
18 not contained in the CDC or appropriate
19 county ordinances regulations or state
20 law or made an error in applying a
21 standard.

22 Now, considerable discussion had
23 been made on the first item and that is
24 Mr. Williams refers to it as an illegal
25 subdivision on a lawful subdivision and



1 talks about misdemeanors.

2 Ms. Austin, can we get the picture
3 back up of the shopping center?

4 Mr. Williams also refers to it as
5 a commercial shopping center being the
6 Best Buy shopping center.

7 Our client, an affiliate of our
8 client purchased approximately a
9 36-acre tract which is shown in that
10 picture and that -- a portion of that
11 36-acre tract was made subject to the
12 horizontal property regime.

13 The balance of the original tract
14 is identified as future phase property
15 because the developer wanted to retain
16 the flexibility to do something with it
17 as market conditions changed and that's
18 a pretty -- that's a pretty common
19 phenomenon and that's what happened
20 here not while all the -- all of the
21 property was permitted for development,
22 initially, the -- that development
23 permit, to the extent it wasn't built,
24 expired by the calendar and it was not
25 renewed.



1 So, this application has been made
2 for apartment buildings it's a new
3 application because the prior
4 application had expired.

5 The prior application -- the prior
6 permit did approve seven office
7 buildings of 10,000-square foot each.
8 A portion of the property of those
9 seven buildings were intended to be
10 located is now a storm water facility
11 and so that land doesn't exist anymore,
12 it's a storm water pond.

13 This application seeks -- this
14 application which was approved,
15 permitted for residential -- resident
16 apartment buildings meeting the
17 requirements of the community
18 development code.

19 So Mr. Williams says that the
20 future subdivision, the future phase
21 property was not subdivided and
22 therefore the county and the planning
23 commission should be concerned about
24 that.

25 We assert that we've retained that



1 flexibility. That flexibility to
2 identify a portion of that property and
3 submit it to a permitting process
4 whereby once the permits are issued a
5 subdivision can be undertaken to
6 subdivide that property for the
7 development and sale to the end user,
8 otherwise every time a landowner or a
9 developer comes to the county before
10 they submit an application for
11 development they've got to subdivide
12 the property. They have to subdivide
13 that property and that's just not
14 normally the case.

15 Typically a developer will come
16 to -- will identify a portion of the
17 piece of land or a piece of land that
18 it intends to develop, put that
19 property under contract with a period
20 of due diligence when it can go to the
21 applicable governing authorities and
22 get the appropriate permits and that's
23 exactly what has happened here, so
24 there is a five-acre portion of the
25 property that's been identified for a



1 subdivision and but for this appeal
2 that subdivision would have already
3 been applied for and taken place.

4 The second issue that Mr. Williams
5 raises or the appellants raise is that
6 the application wasn't submitted by the
7 owner and they don't know who the owner
8 is.

9 Actually, the CDC doesn't
10 really -- doesn't require that because
11 it can be an owner who submits an
12 application, a contract purchaser or
13 other person having a recognized
14 property interest in the land on which
15 development is proposed and that's in
16 Section 7.4.30A of the Community
17 Development Code and that's a fairly
18 standard practice, as well. A real
19 estate developer identifies a piece of
20 property that it wants to develop, puts
21 that piece of property under contract
22 and ultimately the holder, the party,
23 the entity that takes title is the sole
24 purpose entity, a limited liability
25 company to take title to the property,



1 undertake the mortgage to the property
2 or finance the property for the
3 construction of improvements on that
4 property. That's a very standard
5 process and we submit does not mean
6 that a standard was not met when the --
7 when the permits were approved.

8 The appellant also speaks to the
9 easement that it identifies as a
10 restrictive covenants. That's a legal
11 interpretation.

12 Mr. Williams identifies what he --
13 in that document what he believes makes
14 it a restrictive covenant. We don't
15 believe that it's a restrictive
16 covenant but that's a legal
17 interpretation and that's a legal
18 interpretation that the staff review
19 team or the director does not require
20 to make nor is it a legal
21 interpretation that the planning
22 commission is required to make.

23 If it's a -- if it is a
24 restrictive covenant that's a private
25 matter between the beneficiaries of



1 that restriction and, indeed, they can
2 bring a lawsuit to stop the permit in
3 the event that they believe a
4 restrictive covenant has been violated
5 and that's certainly what -- their
6 right but it's a private right, it's a
7 private restriction and one that
8 doesn't warrant interpretation by the
9 municipality.

10 The municipality is not -- it's
11 role is not to interpret restrictive
12 covenants or legal documents to
13 determine whether, indeed, they are
14 restrictive covenants.

15 From the applicant's perspective,
16 the applicant doesn't believe it's a
17 restrictive covenant and the applicant
18 in the conceptual plan checked that
19 there's no restrictive covenant.

20 I can't speak to why it wasn't --
21 the box wasn't checked when the final
22 develop -- land development permit
23 application was submitted but I submit
24 that if the staff review team asked the
25 applicant at that time that would have



1 been the answer. There's no
2 restrictive covenant. It's a -- again,
3 it's a legal interpretation.

4 And finally, the appellant makes
5 reference to conditions of the
6 approval.

7 Well, there again, we disagree.
8 Conditions for paying water and sewer
9 capacity fees, applicants for
10 development don't pay water and sewer
11 capacity fees until such time as
12 they're actually pulling the building
13 permits, themselves. This is a land
14 development plan. There was -- there
15 were conditions to get updates and the
16 storm water -- storm water permit as
17 well as landscaping and lighting and
18 other updates. Well, those -- those
19 have all now been -- have all -- are
20 now all part of the -- have the --
21 excuse me, Mr. Thomas asserts that all
22 those things are now completed and all
23 those -- all that information has been
24 provided to the staff review team and
25 it's fairly common for a question to be



1 answered through a condition. Before
2 we give you this permit you're going to
3 have to pay your -- you're going to
4 have to submit a final or amendments to
5 this document or amendments to that
6 document. It's fairly standard
7 procedure. Otherwise these offices
8 would be backed up for months because
9 if your application is not complete and
10 I can't conditionally approve it,
11 you've got to go home, get that permit,
12 wait until that other authority takes
13 the time to review your storm water
14 plan and initial it and that would
15 result in what we assert would be a
16 more difficulty and more delay in
17 getting the permitting processes
18 completed.

19 Now, one last item with respect to
20 the easement agreement. Mr. Williams
21 said that there's been silence. Well
22 Mr. Williams asserts that I asked and I
23 did ask, the record reflects that I
24 asked because when Mr. MacNeille came
25 to the SRT meeting and started -- and



1 made the assertion that it's a
2 restrictive covenant my client said,
3 well, gee, let's go talk to them.
4 Let's ask them.

5 As a matter of fact, prior to
6 that, Mr. Nastoff was having
7 conversations with a representative of
8 our client about this very thing and
9 the discussion was, what can we do?
10 What can we do to ameliorate your
11 concerns?

12 And then on May 16th in my office
13 all these people attended a meeting at
14 a which time we said the same thing.
15 We want to help you. What is it that
16 we could do to ameliorate your concerns
17 changing this development from seven
18 buildings, seven commercial buildings
19 to four residential buildings and
20 that's seven at 10,000 square foot each
21 down to four at approximately
22 7,500-square foot each and the answer
23 we received, unfortunately, was, we
24 will not agree to apartments and that's
25 really unfortunate.



1 I think the planning commission is
2 well aware of the need for housing and
3 apartments. Heck, we all started in
4 apartments. I don't know how many of
5 us went right from our parents home to
6 a brand new home. So many of
7 us started in apartments and actually
8 there's a considerable amount of law on
9 the subject of whether or not
10 apartments should be built in someone's
11 backyard and the law is, when you hear
12 statements like, they produce crime,
13 they produce noise, if you look at what
14 the Fair Housing Act says about that,
15 Fair Housing Act, federal law takes a
16 pretty stern look at peoples feelings
17 about apartments and we submit that
18 this activity is designed solely to
19 frustrate the opportunity to construct
20 apartments on that property and we feel
21 that that's unfortunate.

22 We also believe that the record
23 doesn't have sufficient evidence to
24 show that a standard wasn't met or a
25 standard was wrongly applied or there



1 was an error made in applying that
2 standard and we ask that the planning
3 commission uphold the permit that has
4 been issued to our client.

5 Be glad to answer any questions
6 that the planning commission may have.

7 MR. SEMMLER: That was a lot, Mr.
8 Nester.

9 MR. NESTER: Yes, sir.

10 MR. SEMMLER: The -- when the
11 applicant submitted his plan to the
12 SRT, did you know about the homeowners
13 association agreement with the property
14 owner?

15 MR. NESTER: At the time of the
16 submission of the application I
17 personally did not.

18 MR. SEMMLER: Did the property
19 owners?

20 MR. NESTER: Now, when I say 'did
21 not know', actual knowledge, right.
22 Had I taken -- well, there's a
23 distinction in the word actual notice
24 and actual knowledge, right?

25 We're representing the seller. We



1 didn't have a title report. I didn't
2 read through the title report. The
3 application is submitted by engineers,
4 land planners and architects and the
5 question didn't come across my desk
6 until after this SRT meeting whether or
7 not this was a restrictive covenant and
8 that produced the activity that Mr.
9 Williams spoke of after the SRT
10 meeting.

11 MR. SEMMLER: Yes, sir. Any other
12 questions from the commission? Please.

13 MR. HENNELLY: Did the easement
14 document show up in the title report?

15 MR. NESTER: An easement document
16 would show up in a title report. I'm
17 --

18 MR. HENNELLY: Question was, did
19 the easement document show up in this
20 title report, the one that you said --
21 you represented.

22 MR. NESTER: No, sir. What I said
23 was, we don't represent the buyer. The
24 buyer would produce a title report and
25 a title -- would commission a title



1 abstract and issue a title commitment
2 that would list all those items.
3 That's not the seller's attorneys --
4 the seller's responsibility under our
5 contract.

6 Under our contract the purchaser
7 represented by separate counsel would
8 make that -- would untake -- make that
9 undertaking to commission an abstract
10 and to review title.

11 MR. HENNELLY: The buyer you mean?

12 MR. NESTER: The buyer, yes, sir.

13 MR. HENNELLY: The buyer is the
14 one who filed the application.

15 MR. NESTER: Representatives of
16 the buyer filed the application, yes,
17 sir.

18 MR. HENNELLY: Okay. So, well, do
19 you know did they have this easement
20 document as part of the -- report?

21 MR. NESTER: They have it now. I
22 don't know what time they received it.

23 MR. HENNELLY: I don't want to
24 dominate the floor. I've got a couple
25 of other questions.



1 MR. SEMMLER: Mr. Nester, there's
2 one letter in this huge packet we got
3 and I'm just curious on this. It's the
4 May 3rd 2018 letter from Douglas
5 MacNeille and it's to you. It says --
6 and he says refer to your letter of
7 April 25th to the CPOA. Do you recall
8 that?

9 MR. NESTER: Yes, sir.

10 MR. SEMMLER: Okay. And then it
11 says CPOA has associated Mr. Williams
12 as co-counsel in connection with the
13 pending permitting modification
14 requested by Stafford for the parcel
15 adjoining the Best Buy commercial
16 center in Bluffton Osprey Cove
17 Apartments and you referred to that in
18 your letter of April 25th.

19 And then the next paragraph says,
20 on April 29th 2018 I requested, on
21 behalf of the CPOA, an additional
22 15-business day extension of time
23 within which to respond. However, you
24 denied my request to the response
25 letter dated to me May 2nd, so this is



1 May 3rd and that's what started all
2 this.

3 Why did you deny their 15-day
4 request for an extension just so they
5 could talk to you and review it and see
6 what they could do?

7 MR. NESTER: Well, my client had
8 been speaking with Mr. Nastoff,
9 previously, and the time -- the
10 easement document provides for a 15-day
11 response period, so in the easement
12 document, itself, if there's a -- if
13 there's a change to the permit and that
14 references the original permit, if
15 there's a change in the permit then
16 that change in the permit, in my
17 interpretation, that change in the
18 permit is imposed by the government.
19 If there's a change imposed by the
20 government we have to go back to the
21 Crescent Property Owners Association
22 and ask them -- give them -- ask them
23 to consent to that change if it's
24 material and costs more than \$25,000.
25 That was my -- that was my request.



1 They -- Mr. MacNeille indicated that he
2 believe that it was a problem so
3 that -- the discussion then -- the
4 direction from my client was reach out
5 to them and try to get that -- try to
6 get that resolved.

7 But the 15 days, Mr. MacNeille did
8 respond within that 15-day period and
9 one of the items was that they wouldn't
10 accept apartments on the property.

11 MR. SEMMLER: They kind of didn't
12 have a choice but --

13 MR. NESTER: Well, under the
14 easement document they don't have a
15 choice. That's our assertion is under
16 that easement document they don't a
17 choice because they had 15 days to give
18 -- provide us with consent or provide
19 us with comments. They provided us
20 with their comments within that 15-day
21 period and we have to undertake
22 reasonable efforts to get those
23 comments addressed.

24 One of those comments is that, no
25 apartments be constructed on the



1 property which we don't believe is a
2 reasonable request. As a matter of
3 fact, we think it's unreasonable and
4 there's a reasonable standard in the
5 easement document that their consent is
6 not going to be unreasonably withheld.

7 MR. SEMMLER: Yes, sir, I
8 understand the word 'reasonable' but
9 maybe my calendar is screwed up.

10 This letter to you is dated May
11 3rd and they refer to a letter dated
12 April 25th that you sent to them and
13 then they asked for an opportunity to
14 review it in 15 days and that was
15 denied, so they had to turn around --
16 oh, that's -- their letter --

17 MR. NESTER: Was for and
18 additional 15 days.

19 MR. SEMMLER: May 2nd and they
20 asked -- well they only -- gosh, that
21 was --

22 MR. NESTER: Mr. Chairman, that
23 was 15 --

24 MR. SEMMLER: And they only had
25 five days to the 30th, so they had



1 seven days to respond. They asked for
2 15 more, it was denied, so they wrote
3 this letter on the 3rd which basically
4 said, no.

5 MR. NESTER: That's what their
6 letter says, yes, but they were
7 provided 15 days under the document.
8 They had 15 days -- under the easement
9 they had 15 days to respond once they
10 received notice, once they received the
11 plans they had 15 a days to respond
12 whether or not they consent or to
13 provide reasons why they would not
14 consent.

15 MR. SEMMLER: I got it. That
16 extra five days was a killer. Okay. I
17 think I got it now. Any other
18 questions of Mr. Nester? Thank you,
19 sir.

20 MR. NESTER: Yes, sir, thank you.
21 That.

22 MR. SEMMLER: We've had the
23 presentation, the general nature of the
24 case by the county government.

25 We had the presentation of



1 specific basis for appeal by the
2 appellant and we had a presentation by
3 the applicant.

4 Now I would like the call on in
5 the same order extenuation and
6 mitigating factors presented by all
7 three parties, please. Mr. Greenway.

8 MR. GREENWAY: Thank you again,
9 Mr. Chairman.

10 I often say in my career that one
11 of the pitfalls of being a community
12 planner or working with community
13 development departments or planning
14 departments is that you're either doing
15 too much or too little at the same time
16 based on who's making a phone call or
17 asking a question.

18 We have a situation and this is a
19 prime example of that situation and
20 quite honestly I'm still confused as to
21 why the neighborhood is objecting and
22 appealing the decision because I don't
23 really understand what they're trying
24 to accomplish here.

25 If they don't want the apartments



1 or say the easement agreement is
2 contrary to the apartments being built
3 there that will certainly contradict
4 the testimony by their own legal
5 counsel at the SRT meeting when I point
6 blank asked them if the restrictive
7 covenants or some language, something
8 to the point of you are saying the
9 apartments are not allow -- are not
10 permitted based on this easement
11 agreement and his response to me was,
12 no, we're not saying that, at all.

13 And I want try to play a few
14 minutes of that and I know it's long
15 but if you guys will indulge me I would
16 like for you all to hear that exchange
17 from the SRT meeting if it will play
18 without any technical difficulties,
19 please. It's about three or
20 four minutes.

21 (Whereupon, the above reference was
22 played back.)

23 MR. GREENWAY: Again, once again,
24 I'm confused. Going back to my comment
25 about doing too much or too little with



1 regards to the situation, the SRT is
2 not an official body of the county
3 that's enumerated in the community
4 development code. It is a courtesy
5 that we do to provide comments to
6 engineers and developers to help them
7 expedite their permitting and review
8 process to speed their process along
9 because going to the too little, if we
10 did not have such a process where
11 people could come in and discuss their
12 issues with us and give them their
13 comments directly would have all of you
14 relatively departments -- relative
15 related departments that have to make
16 comments on such plans, if we did not
17 have that process then we would
18 constantly get complaints from
19 developers and engineers and you all
20 have heard this I'm sure time and time
21 again in Beaufort County that the
22 development review process takes too
23 long, it's too cumbersome, you don't
24 know what your comments are and -- so
25 this is -- the purpose of the SRT is to



1 provide an opportunity for developers
2 and engineers to come in and give their
3 comments all at one time, discuss their
4 concerns and procedures and issues that
5 they have regarding those comments so
6 that we can work issues out in tandem.

7 The approval that takes place and
8 we're going to put a stop to the voting
9 of the SRT and we're going to change
10 that process and modify it so it's
11 consistent with common practices of
12 other jurisdictions have staff review
13 team meetings or joint development
14 review meetings and things like that,
15 that's common place among community
16 development -- particularly in South
17 Carolina. We do need to modify some
18 procedures of the SRT and we're going
19 to do that. We do vote and we vote
20 conditional approval on this basically
21 to give the engineer notice that once
22 you address all these outstanding items
23 then you can get a permit and get your
24 official approval to proceed with your
25 permit and -- we have not issued any



1 kind of the official approval because
2 that approval comes from me and we have
3 not done that yet. I am the designated
4 official to issue that approval.

5 Let me go back to the easement
6 language.

7 Mr. Williams is totally correct in
8 that that is not on me or my staff to
9 decide if an easement agreement goes to
10 the level of establishing a restrictive
11 covenant that is for the courts to
12 decide.

13 I think the statute is clear that
14 staff -- the reason the state
15 legislature wrote that language the way
16 they did so closely and tightly is
17 because they did not want to create an
18 opportunity for planning staffs to use
19 any language out there to hold up
20 development review permits and issue
21 permits for folks and it makes common
22 sense that that is the purpose and
23 intent of that and I can't put my staff
24 -- and I don't think the state law puts
25 me in a position of looking at any



1 document anywhere that's been recorded
2 that I have no control I don't have any
3 control over what gets recorded in the
4 Register of Deeds office and I don't
5 think the state legislature would put
6 me in the position as a community
7 development director to try and
8 interpret that just because some
9 language is inserted into a document
10 that got recorded at the Register of
11 Deeds office in Beaufort County that
12 that establishes restrictive covenants
13 on a particular piece of property.
14 That is why they use the language
15 restrictive covenant because that is a
16 government document that gets recorded
17 as -- under the homeowners association
18 and property owners association,
19 typically, and that's what we were
20 looking for. I can't get into
21 interpreting other side documents and I
22 do not want to do that.

23 To make a decision tonight that we
24 erred in that particular case then
25 that's -- that will be what you're



1 telling us as a staff to do in the
2 future to review all documents that
3 people want to present to us to hold up
4 projects until those items are
5 resolved. It's a matter for the courts
6 to decide and not for the staff.

7 Again, I will just reiterate to
8 you that conditional approval is not
9 official approval. We give them a set
10 of comments. Once you address these
11 comments then you will get our official
12 approval.

13 With regards to the recording of
14 the subdivision, that was not a matter
15 that was raised at the SRT meeting.
16 That's a point of contention. I think
17 it's inadmissible but let me just say
18 something about that. Sometimes deeds
19 do get recorded that establish new
20 property lines or that people think
21 establishes new property lines and they
22 get cut in by the tax assessor's
23 office, again, as a community
24 development department I have no
25 control over what the Register of Deeds



1 decided to record and I have no control
2 over what the tax assessor decides to
3 cut in on the tax parcel of the --
4 assigns parcel numbers. We can correct
5 that issue after we discover it and
6 we're going to. I dealt with this when
7 I was a planning director in Ware
8 County. I dealt with it when I was
9 planning director in Berkley County,
10 same process -- Register of Deed was
11 recording deeds without subdivision
12 plats associated with -- establishing
13 property lines. It took me some time
14 but administratively we corrected that
15 once every one -- all the agencies and
16 the county knew about the problem. I
17 appreciate Mr. Williams bringing this
18 problem to my attention and among many
19 other things that I have to correct
20 here that will be one of them but it is
21 a step process. I can't do everything
22 overnight and just because we don't do
23 everything overnight doesn't mean we're
24 in error and conditional unproven in
25 this particular plan. That's all I



1 have unless you all have any questions.

2 MR. SEMMLER: Yes, sir. Mr.

3 Greenway -- Mr. Williams was at that

4 SRT?

5 UNIDENTIFIED SPEAKER: Mr.

6 Williams?

7 UNIDENTIFIED SPEAKER: He was not.

8 MR. WILLIAMS: No, I was not.

9 MR. SEMMLER: Was the Crescent
10 Point -- Crescent Property Owners

11 Association at the SRT meeting?

12 UNIDENTIFIED SPEAKER: There were
13 people representing the property owners
14 association there to my knowledge. I
15 don't know.

16 MR. SEMMLER: I've been to a
17 couple of SRT meetings. Is it normal
18 to invite the neighboring developments
19 to attend an SRT meeting?

20 MR. GREENWAY: We do post the
21 property. We do provide some notice,
22 but again, that is not a public meeting
23 and we're going to stop that practice
24 because, again, it's a staff level.

25 MR. SEMMLER: Yes, sir.



1 MR. GREENWAY: It's a staff level
2 meeting.

3 MR. SEMMLER: How did the Crescent
4 Property Owners Association know about
5 the meeting?

6 MR. GREENWAY: You'll have to ask
7 these -- I'm not sure. I don't know if
8 he saw the sign or what.

9 MR. SEMMLER: But they -- that --
10 we heard them talking.

11 MR. GREENWAY: Yeah, they were
12 there.

13 MR. SEMMLER: So they were
14 participating in the conversation?

15 MR. GREENWAY: They were there.
16 Mr. MacNeille to my left was there, so
17 that's who the exchange about the
18 apartments being permitted and this and
19 that, no, we're not saying that the
20 apartments are prohibited under the
21 easement agreement, that was Mr.
22 MacNeille.

23 One additional thing, let me say
24 here about -- I lost it -- never mind.

25 MR. SEMMLER: Ed, did you have a



1 question?

2 MR. PAPPAS: No.

3 MR. SEMMLER: Sir, we may ask you
4 one later. Randolph? You've got one,
5 Randolph?

6 MR. STEWART: Thank you for your
7 clear response. First of all, if you
8 have knowledge that there is an
9 easement, deed restriction, covenants,
10 POA guidelines, any of that type of
11 thing, when someone brings an
12 application to you does that have an
13 effect on that application?

14 MR. GREENWAY: It does. We
15 have -- if it is something that is
16 regulated by that statute, some
17 permitted activity that's regulated by
18 that statute other than the type of
19 buildings to be constructed on that
20 property then, yes, we have to hold up
21 the application until -- -- we have to
22 hold up that application until that is
23 released, but again, I do not think
24 that an easement document falls under
25 those guidelines but that's not for me



1 to determine, ultimately, it's for a
2 court to decide.

3 MR. SEMMLER: Okay. Sir, do you
4 recall when that easement document was
5 signed with the property owners
6 association?

7 MR. GREENWAY: I want to say
8 around 2005.

9 UNIDENTIFIED SPEAKER: October
10 2005.

11 UNIDENTIFIED SPEAKER: Yes.

12 UNIDENTIFIED SPEAKER: 18, October
13 2005? So it's over ten years old.

14 MR. GREENWAY: And again, I don't
15 think that the easement document
16 regulates land use.

17 MR. SEMMLER: Yes, sir.

18 MR. GREENWAY: It establishes a
19 procedure.

20 MR. SEMMLER: Yes, sir.

21 MR. GREENWAY: And I don't think
22 we're obligated to enforce procedures.
23 Thank you.

24 MR. SEMMLER: Thank you Mr.
25 Greenway.



1 Can we hear from the appellant?

2 MR. WILLIAMS: Gladly.

3 MR. SEMMLER: Williams. You've
4 got a whole notebook here.

5 MR. WILLIAMS: This is just the
6 stuff that's been piling up in my lap
7 as I listen to this -- and Mr.
8 Greenway.

9 Let's first of all talk about the
10 restrictive covenant. What state
11 statute says is in an application for a
12 permit the local planning agency -- and
13 I think Mr. Greenway read this -- the
14 local planning agency must inquire in
15 the application or by written
16 instructions to an applicant whether
17 the tract or parcel of land is
18 restricted by any recorded covenant
19 that is contrary to, conflicts with or
20 prohibits the permitted activity,
21 doesn't say restrictive covenant, it
22 says any recorded covenant. A covenant
23 is a promise. That easement agreement
24 contains promises on the part of
25 Stafford that they made to the Crescent



1 POA in order to induce the Crescent POA
2 to enter into that agreement. It's
3 recorded. It's applicable to this
4 property and Mr. Nester has admitted
5 that the original application provided
6 for office buildings. That's what the
7 Crescent POA was led to believe when
8 they were induced to enter into this
9 easement agreement.

10 Stafford got what they wanted out
11 of that agreement. They got their
12 easement. They built their connection
13 to the lift station and they're off and
14 gone with their development.

15 The POA is left with the promises
16 that Stafford made on the restrictions
17 on the development and use of that
18 property, so that's all we're here
19 talking about today. Stafford made
20 certain promises. Those promises are
21 binding on that property and binding on
22 all future owners of that property and
23 those covenants deal with height
24 restrictions, lighting requirements,
25 buffers, the typical things that you



1 see in documents that are sometimes
2 called restrictive covenants or
3 declaration of covenants and
4 restrictions. Shakespeare's arose by
5 any other name. An easement can
6 contain restrictive covenants, recorded
7 covenants just like a deed can, just
8 like a document, just like the
9 documents for Callawassie, they're
10 recorded restrictive covenants
11 applicable to Callawassie. The county
12 is prohibited from issuing a permit for
13 the development of a piece of land in
14 Callawassie that violates those
15 covenants. Exact same situation here.
16 That's all we're talking about.

17 Now, I want to find my notes.

18 Mr. Nester mentioned four things;
19 the illegal subdivision.

20 The illegal subdivision came about
21 before these permits were applied for.
22 They came about in 2014 and 2015 by the
23 deeds -- get my notes here -- special
24 warranty deed recorded 6, October 2014
25 in Beaufort County Records 335 page



1 473. Stafford Roads LLC conveyed the
2 future phase tract of 14 acres to an
3 entity called SR278 Investments, LLC.
4 Just over a year later by way of
5 special warranty deed recorded on 4,
6 November 2015 SR278 LLC conveyed the
7 future tract -- future phase tract of
8 Stafford Bluffton Land LLC. Those are
9 the two conveyances that are prohibited
10 by state law and it's a misdemeanor for
11 someone to make and record those deeds.

12 Where's the statute -- so, when
13 Mr. Nester says, oh, this is common
14 place for developers to apply for these
15 sorts of permits in subdivisions, that
16 -- what we're talking about happened
17 long before.

18 If title to the future phase tract
19 was still in Stafford Roads LLC then we
20 wouldn't be talking about this issue
21 but Stafford Roads violated the law
22 when they recorded the deed SR278 -- as
23 did SR278 Investments LLC, they
24 recorded as Stafford Land Development,
25 LLC, that's the issue that -- that



1 tract is not a separate legally
2 subdivided tract and because of that,
3 if those were illegal transfers, is it
4 Stafford Roads LLC that still legally
5 owns the property notwithstanding the
6 deeds recorded in the -- to the
7 Register of Deed's office? I don't
8 know. I'd searched. There's no
9 recorded case under that section of the
10 code, so I don't know what the answer
11 to that is but the fact of the matter
12 is only the owner or someone authorized
13 by the owner or as Mr. Nester said,
14 someone with a contract purchase or
15 interest is authorized to file that
16 sort of application.

17 Mr. Nester, in his reply
18 memorandum, response memorandum
19 referred to some contract. I've asked
20 Mr. Nester on several occasions, give
21 me a copy of the contract so I can
22 verify what you say. It's -- it hasn't
23 been forthcoming. It's not in the
24 record here and there's nothing in the
25 record that demonstrates, conclusively,



1 who the owner of the property is.
2 Technical issue, no question, but an
3 issue, nonetheless, for the SRT to have
4 dealt with if it had been disclosed to
5 it and it wasn't disclosed to it but an
6 issue for you to deal with, also,
7 because it has been disclosed to you.

8 The conditions on proposal. Let's
9 take a quick look at the conditions on
10 approval. It is Exhibit B to our
11 appeal application.

12 First, Mr. Nester wants you to
13 think that these are all conditions
14 that could be better, routinely, could
15 be satisfied by the payment of money by
16 the capacity -- things like that,
17 that's not the case.

18 Applicant shall address storm
19 water requirements. The community is
20 development code has storm water
21 requirements that must be met in order
22 to get a permit like this. They
23 haven't complied with that. That goes
24 to the substance of the application,
25 itself.



1 The applicant shall devise a site
2 plan to show the connectivity, handicap
3 parking spaces to be distributed,
4 sidewalks and signage to be placed on
5 the property. That goes to the heart
6 -- to the site plan, to the heart of
7 this application.

8 Applicant shall pay for --
9 Beaufort and Jasper and Water --
10 capacity -- permit to be constructed,
11 that's fine. That's -- we would expect
12 that to be a typical condition.

13 Applicant shall submit a revised
14 arborist report. That's a requirement
15 for approval of the application. They
16 said, well, we -- we don't -- we'll
17 disregard that as a requirement right
18 now, just make it as a condition, later
19 on. We think the CDC doesn't allow
20 that.

21 Applicant shall submit a revised
22 landscape plan -- again, that goes to
23 the site plan, that goes to the heart
24 of this application.

25 It's one thing to approve an



1 application with conditions that can be
2 satisfied on a routine basis. It's a
3 completely different thing to approve
4 an application where the SRT is
5 basically saying, yeah, you haven't
6 complied with all the requirements of
7 the application approval yet but we'll
8 go ahead and give you the approval,
9 anyway, then we'll make the conditions
10 -- that's putting the cart before the
11 horse and that should not be allowed.
12 I mean you've got requirements here
13 specifically to address these sorts of
14 things.

15 Mr. Greenway's characterization of
16 the restrictive covenant, he thinks the
17 legislature intended that section of
18 the code to be used in order to not
19 frustrate development permits.

20 My reading of that is completely
21 opposite. It's there in order to
22 protect land owners from the county or
23 the town or some municipality or some
24 subdivision -- issue permits for
25 development that violate restrictive



1 covenants.

2 You've got a restrictive covenant
3 -- in Callawassie, for example, you've
4 got lots that are restricted to
5 single-family residential use. Can the
6 county legally issue a permit for the
7 construction of a restaurant on there?
8 Mr. Greenway wants you to believe, oh,
9 that's a structure, so no, we're not
10 prohibited from doing that just because
11 the Callawassie covenants say
12 single-family residents.

13 Clearly, that is there in order to
14 prohibit the county from approving
15 development that doesn't comply with
16 the restrictive covenants. We think
17 it's clear that that's a recorded
18 covenant. Stafford got what they
19 wanted.

20 Now they want to change the rules
21 of the game and -- I can't -- Mr.
22 Nester's characterization of Mr.
23 MacNeille's May 3 letter, Mr. Nester,
24 said -- in that letter, they said, no
25 apartments.



1 I challenge you to read that
2 letter and find anywhere in there where
3 Mr. MacNeille says, no, we won't agree
4 to apartments.

5 In fact, such intent of that
6 letter says, based on that -- COA later
7 consents to -- modification CPO may
8 require a restrictive covenant
9 enforceable by the CPOA to be opposed
10 on the Osprey Cove Apartment -- that
11 will prohibit the leasing -- for less
12 than \$2,000 a month.

13 There's no objection to apartments
14 in here. The objection here is, go
15 back and do what the easements says
16 you're supposed to do. Do what the
17 covenants and easements say you're
18 supposed to do and go apply for the
19 office buildings that you told us and
20 that you originally applied for and it
21 says if you can't get those permits,
22 then you can do your apartments. Mr.
23 Nester readily admitted, yeah, we can
24 get those permits for those offices,
25 that's the crux of the matter -- Mr.



1 Nester also mentioned, oh yeah, the --
2 Mr. Nastoff had been talking with
3 Stafford back and forth about it. Mr.
4 Nastoff was here. He was at the SRT
5 meeting. He received an e-mail, was it
6 March 3rd, from a representative of
7 Stafford saying, oh here's this consent
8 to what we want to do. Here's a site
9 plan attached to it and it shows office
10 buildings but then there's some sort of
11 language down at the bottom that says,
12 well, maybe -- apartments and Mr.
13 Nastoff has told me he had two
14 conversations with that representative
15 at Stafford both of the times pressing
16 him to get that document signed, him
17 say, well, I've got a process I've got
18 to go through. I can't approve this on
19 my own. I've got a board -- so, while
20 there were some conversations it was
21 minimal. Stafford has tried to --
22 Stafford went through the approval
23 process and regardless of whether or
24 not Mr. Nester had any actual knowledge
25 of that document, Stafford clearly had



1 actual knowledge. Stafford Roads is a
2 party to it. Look at the commonality,
3 Stafford Bluffton LLC. This is the
4 same people we're dealing with here
5 transferring property between different
6 entities in violation of state law
7 without having an approved subdivision
8 and then they want you to think, well,
9 we didn't know about that. I don't
10 think you can hide from that.

11 Questions? Anything I can
12 address?

13 MR. SEMMLER: Mr. Williams?

14 MR. WILLIAMS: Yes.

15 MR. SEMMLER: Can you relate to me
16 how the lift station happened? I'm
17 kind of confused. The lift station is
18 on Crescent --

19 MR. WILLIAMS: Heather, can you
20 put up --

21 MR. SEMMLER: And what are the
22 dates?

23 MR. WILLIAMS: -- the plat that's
24 dated 2005 or 2006. Not that one.
25 There are two others that I --



1 MR. SEMMLER: Let me finish what
2 I'm trying to get at. We got a lift
3 station. It's on the Crescent's
4 property. Right?

5 MR. WILLIAMS: Right.

6 MR. SEMMLER: And Best Buy
7 developer is going through his -- what
8 he needs to do and his plans for the
9 office building.

10 MR. WILLIAMS: Right.

11 MR. SEMMLER: -- on this piece of
12 property, nine acres and he needs
13 something to move the waste.

14 MR. WILLIAMS: Correct.

15 MR. SEMMLER: And the only one
16 available was the one on Crescent's
17 property?

18 MR. WILLIAMS: I can't speak to
19 whether or not it's the only one
20 available. It's the one that they
21 ended up using.

22 MR. SEMMLER: So, it was like the
23 developer went to Crescent, hey, can we
24 marry up with yours and they said,
25 yeah? I'm trying to -- I don't want to



1 put words in your mouth.

2 MR. WILLIAMS: Mr. Chesney could
3 certainly testify to this because he
4 was involved in it.

5 But see, but you're asking me
6 questions that I don't have any
7 personal knowledge of. When you have a
8 witness, potential witness here who
9 does have actual knowledge of what you
10 might -- would you like to hear from
11 Mr. Chesney on that issue?

12 MR. SEMMLER: No, I've got a --

13 MR. WILLIAMS: But the bottom line
14 is is that they needed a -- and I can't
15 -- I don't have a pointer or anything
16 but -- may I walk over where Heather is
17 so I can use her --

18 MR. SEMMLER: Oh please. She's
19 nice. She's really nice.

20 MR. WILLIAMS: All right. So this
21 is the Best Buy store, itself, right
22 here, right?

23 MR. SEMMLER: Got that.

24 MR. WILLIAMS: This is the
25 Crescent golf course here.



1 MR. SEMMLER: Got that.

2 MR. WILLIAMS: And you see right
3 here these a faint dot dash line.

4 MR. SEMMLER: Got that.

5 MR. WILLIAMS: That's the easement
6 across the golf course and there it
7 says 'pump station'.

8 MR. SEMMLER: Okay.

9 MR. WILLIAMS: So, this roadway
10 that you need to go on to get from 278,
11 which is a public road, to the pump
12 station is owned by the association.

13 MR. SEMMLER: And they have the
14 agreement with the developer, hey,
15 we'll do this for you, you do this for
16 us.

17 MR. WILLIAMS: Correct. We will
18 allow you to use our roads to come into
19 our development to do the work that's
20 necessary to run your sewer line across
21 the golf course to connect into this
22 pump station.

23 MR. SEMMLER: And it was all done
24 in good faith in 2005.

25 MR. WILLIAMS: Correct. And we'll



1 allow you to use part of our property
2 over here as a staging area in order to
3 do the construction that you need to
4 do.

5 Stafford also got a second --
6 there's a different owner of the golf
7 course. The association doesn't own
8 the golf course, so there's a different
9 easement from the owner of the golf
10 course to allow for the sewer line to
11 go across the golf course.

12 MR. SEMMLER: So, two people were
13 involved. Two entities were involved?

14 MR. WILLIAMS: Correct.

15 MR. SEMMLER: Mr. Williams, that's
16 perfect. Thank you.

17 MR. WILLIAMS: Questions from
18 anyone else?

19 MR. STEWART: Did money change
20 hands when that happened?

21 MR. WILLIAMS: I'd ask Mr. --

22 MR. SEMMLER: Save it. We're
23 good. It's not in the document.

24 MR. WILLIAMS: It says -- well,
25 the document recites the consideration



1 as the mutual promises and the
2 agreements contained herein.

3 MR. SEMMLER: Thank you.

4 MR. WILLIAMS: So -- and it says
5 'for other good and value
6 consideration'. I don't know if money
7 changed hands but I would imagine Mr.
8 Chesney probably does.

9 MR. SEMMLER: Unfortunately, he
10 doesn't get to speak. Mr. Williams,
11 thank you.

12 MR. MITCHELL: This is from my
13 understanding, I've really been
14 struggling with all of this to be
15 honest with you, so in exchange for
16 that easement that runs across the golf
17 course to that lift station, the --

18 MR. WILLIAMS: Let me -- the
19 easement from the association isn't one
20 that runs across the golf course,
21 that's the one from the owner of the
22 golf course. There are two separate
23 easements. The easement from the
24 association is the one that allowed
25 Stafford to use the roads of the



1 association to get over there and to
2 use their property to do the work that
3 was necessary in order to install that
4 sewer line.

5 MR. MITCHELL: And in exchange for
6 that Stafford promised the POA that
7 there would be no -- there would only
8 about office building built adjacent to
9 the property?

10 MR. WILLIAMS: They promised the
11 POA that that 30 something acre tract
12 would be developed as shown on the site
13 plans that are exhibits to the document
14 and that site plan shows offices in
15 that area. Well, let me rephrase it,
16 the site plan shows buildings there
17 that are undesignated.

18 Mr. Chesney would testify that
19 they were told it would be offices.

20 MR. SEMMLER: I think you showed
21 that was a future phase to be office
22 buildings.

23 MR. WILLIAMS: Correct and Mr.
24 Nester has also testified that when the
25 permits for the shopping center



1 development were originally filed those
2 permits also include seven ten thousand
3 square foot office buildings on the
4 future development phase. Those
5 buildings were never built though and
6 the permit to allow those -- that
7 development -- so, clearly, Stafford
8 intended, all along, to build offices
9 there. The market changed, now they
10 want to build apartments.

11 They already have what they got
12 out of the easement and now they want
13 the association to be left holding the
14 bag.

15 MR. SEMMLER: One more -- I'm
16 sorry.

17 MR. MITCHELL: What's the
18 significance of that, of the lapsing of
19 the agreement? I mean --

20 MR. WILLIAMS: From out
21 standpoint, none. The agreement still
22 requires offices to be built there and
23 if the agreement says but if you go to
24 the county and you apply for offices
25 there and you can't get those permits



1 then you can do something else.

2 MR. MITCHELL: Can you repeat
3 that?

4 MR. WILLIAMS: The agreement says,
5 if you go to the county and you apply
6 to build offices there and you can't
7 build those because the county won't
8 let you because you can't get permits
9 for i8t then you can do something else
10 and they haven't made any effort to go
11 back to see if they can get new
12 apartments -- I'm sorry, new permits
13 for the office buildings. That's what
14 -- that is the promise that they made
15 at the -- let me rephrase that --
16 that's one of the many premises that
17 they made to the association in that
18 document and now they don't want to be
19 bound by that.

20 MR. MITCHELL: But -- when
21 something expires and you know I have a
22 legal mind -- but when something
23 expires, I mean it implies -- they
24 don't I mean -- the final word but --
25 (phonetic)



1 MR. WILLIAMS: You need to be able
2 to separate the development permitting
3 process, which is a governmental issue
4 on the one hand, and the agreements
5 that Stafford and the association made
6 on the other hand.

7 Stafford and the association
8 agreed there are going to be offices
9 there. They went through the
10 permitting process. They got permits
11 to build offices there, then they
12 decided, well, we're not going to build
13 those offices.

14 Now, they've come back and said,
15 oh, we want -- we changed our mind, we
16 want to build apartments and the
17 association says, that's not what you
18 agreed to. Here's our list of
19 objections to that and nowhere in that
20 list of objections is there anything
21 that says, we won't allow apartments.

22 MR. SEMMLER: That agreement does
23 say they can -- let me get the wording
24 correct.

25 MR. WILLIAMS: And we're looking



1 at the easement agreement?

2 MR. SEMMLER: Yeah. Where they
3 can deny them to build those apartments
4 unless I'm wrong. I can't find it.
5 I've got ten pages of small type. You
6 know, I buy these reading glasses at
7 the Dollar Store -- anyway, Mr.
8 Williams, I think you answered my --
9 Mitch, did he answer yours?

10 MR. MITCHELL: Yes.

11 MR. SEMMLER: Anybody else?
12 Thank you, sir.

13 MR. WILLIAMS: Thank you.

14 MR. SEMMLER: Let's hear from the
15 applicant, sir. You've got a
16 notebook, too.

17 MR. WILLIAMS: It's a lawyer
18 thing.

19 MR. NESTER: Thank you Mr.
20 Chairman.

21 This is we believe that the
22 easement document really speaks for
23 itself, all right, and so while we
24 appreciate Mr. Williams' efforts to
25 tell you what it says we believe that



1 it speaks for itself.

2 The other -- and ask that you, in
3 fact, review it in that light.

4 There was an easement agreement
5 that Mr. Williams referenced that was
6 recorded in Book 2259 at page 1604 on
7 11, October 2005 between Links Corps
8 South Carolina and Stafford Roads LLC
9 in which Stafford Roads paid \$10,000
10 for an easement to connect to that pump
11 station.

12 The easement agreement that Mr.
13 Williams cites was executed between
14 Stafford Roads and Crescent Property
15 Owners Association on October 25th 2005
16 and I'd like to make certain that there
17 was some calendar questions that were
18 discussed as it relates to the timing,
19 both Mr. Chairman and Mr. Hennelly had
20 some questions about who knew what,
21 when, but as Mr. Williams states, Mr.
22 Nastoff was provided with copies of
23 plans and requests, this is an only --
24 not by personal knowledge but the
25 e-mails that I subsequently received --



1 and I disagree with the contention that
2 there was an effort to sneak something
3 by, put in a plan that shows different
4 kind of buildings. I think the
5 discussions have been, all along, that
6 what was being proposed there were
7 apartment buildings. It's unfortunate
8 but Stafford is not going to lie to the
9 property owners association next door
10 or to other parties and so, that's
11 unfortunate.

12 The other point I'd like to make
13 is that the easement agreement that Mr.
14 Williams cites does not restrict use.
15 It doesn't say in that document that
16 that residential uses are prohibited.
17 It doesn't say that in the body of the
18 document, anywhere, and we think that
19 that's an important point that needs to
20 be made. It does not prohibit
21 residential use.

22 In response to the comments that
23 there was -- Mr. MacNeille's response
24 letter to me in my notice that set
25 forth a number of different criteria



1 there's a strategy to all of this and I
2 hope you appreciate that.

3 And, as I said, all the parties
4 met in my office for a considerable
5 amount of time and looked at the plans,
6 looked at the document and the
7 application, the architectural plans,
8 and we said, repeatedly, what can we do
9 to get your consent? What is it that
10 you want to get the consent and they
11 said, no apartments. I recognize what
12 they said in the letter but they told
13 us that they weren't going to do
14 apartments, that they weren't going to
15 consent to apartments and I'm sorry but
16 that's -- that -- there's no record of
17 that other than the parties were here
18 were at that meeting and they
19 understood the discussion.

20 Unless there are any questions I
21 don't have anything further. Yes, Mr.
22 Hennelly?

23 MR. HENNELLY: You mentioned a
24 \$10,000 payment for the easement to lay
25 the pipe in the golf course.



1 MR. NESTER: Yes, sir, that's
2 recited in the easement document,
3 itself.

4 MR. HENNELLY: In that easement
5 document. Now, the easement document
6 we're talking about, the property
7 owners association, CPOA, was there any
8 payment to them for that?

9 MR. NESTER: I don't know the
10 answer to that question, sir, because I
11 wasn't involved in the negotiation of
12 this document.

13 I can tell you that it provides
14 for a 75-foot buffer, a 75-foot buffer,
15 not setback, buffer, provides for a
16 75-foot buffer between the property
17 line that's complained of. Crescent's
18 on one side. On the Stafford side it's
19 -- there's a 75-foot buffer that's
20 imposed and the permitted -- the
21 permits that have currently been issued
22 reflect that 75-foot buffer. There is
23 a 75-foot buffer which is more than
24 would otherwise would be required and
25 that the easement document also speaks



1 to the construction of terms, the
2 construction of a fencing and the
3 installation of landscaping all of
4 which require the easement on the
5 property belonging to the Crescent
6 Property Owners Association so that
7 those construction activities can take
8 place. When you construct a berm along
9 -- near or along the property line,
10 when you construct a fence near or
11 along a property line obviously you
12 have to go on the other side, stage
13 your materials and construct them.
14 That's what the easement agreement
15 provides. Those -- that's -- those are
16 -- that the additional consideration
17 and that -- and that is reflected in
18 the permitted plans.

19 MR. SEMMLER: Kevin, are you
20 talking about where it says \$10 for DMP
21 600 03200004.

22 MR. HENNELLY: No, no. I was
23 following up on his statement that
24 there was -- on your -- but I have a
25 final --



1 MR. SEMMLER: Please.

2 MR. HENNELLY: It's pretty obvious
3 to me, now, this -- twice now listening
4 to you and asking you a couple of
5 questions the buyer of this property
6 was well aware of this document. Well
7 aware of it because he's -- seems to be
8 picking and choosing his -- he's
9 finding areas where he can conform with
10 this document but I guess the question
11 is, this was a key thing was this
12 change in the intent and the change in
13 the permitting and that's pretty
14 detailed on how this document reflected
15 any permit modification involving the
16 expenditure by Stafford of more than
17 25,000 and I'm sure they spent more
18 than \$25,000 on all these plans and
19 everything to changes to apartments.
20 Was there any outreach to the community
21 to try to resolve that clause that was
22 in there? Because that's a big chunk
23 of the value that they got for this as
24 I see it. I'm just wondering, was
25 there anything done? Was there any



1 outreach? Was there any offer made?
2 Was there any attempt to resolve that
3 issue with the easement document?

4 MR. NESTER: Well sir. And that's
5 kind of like the bringing the rock game
6 and that's why, as I said, we met with
7 the parties. We met with the Crescent
8 Property Owners Association, the
9 representatives of the board of
10 directors and their counsel, Mr.
11 MacNeille and Mr. Williams.

12 Mr. Moore was in attendance to
13 show them all the storm water plans or
14 any other aspect of the plans.

15 Mr. Thomas was in attendance to
16 show them the architectural renderings
17 and all the permitted drawings.

18 Representatives from Stafford were
19 there to be able to say yes to some of
20 the things that have been identified --
21 that you've identified in the easement
22 agreement. The easement agreement with
23 Links Corps where they paid \$10,000 to
24 connect to a pump station and the
25 consideration and Mr. Semmler, it's not



1 the \$10 it's \$10 of the good and
2 valuable consideration. That
3 consideration being those promises as
4 Mr. Williams point out in the easement
5 document, itself, those promises were
6 things like a 75-foot buffer, berm,
7 construction of a fence, additional
8 landscaping, restrictions on lighting.
9 All of those things were set forth in
10 this easement agreement but there's
11 nothing in this easement agreements
12 that says you cannot -- that there's a
13 restriction against residential use.
14 There's nothing in this document that
15 says the property shall be restricted
16 to commercial use only. That such a
17 restriction does not exist in that
18 document.

19 MR. SEMMLER: Covenants don't
20 usually restrict though. Covenants do
21 restrict. Easements don't. Easements
22 are more what you can do. Covenants
23 are more what you can't do and here
24 it's saying, pretty clearly, shall be
25 subject to reasonable approval of CPOA



1 not to be unreasonably withheld
2 conditioned or delayed.

3 Any notice of such permitting
4 modification requiring Stafford shall
5 give CPOA not less than 15 business
6 days -- and I guess I just haven't
7 heard enough from either -- that that
8 was all done. That that was all --
9 that that was really followed.

10 (Phonetic)

11 MR. NESTER: Yes, sir. The
12 discussions were -- the discussion
13 started back in November when Mr.
14 Nastoff was provided with plans that
15 Mr. Williams referenced some time ago.

16 MR. WILLIAMS: Mr. Chairman, Mr.
17 Nastoff is here. He will testify that
18 those conversations were in March not
19 November.

20 MR. SEMMLER: Please Mr. Williams.

21 MR. WILLIAMS: Thank you.

22 MR. NESTER: Okay, all right, then
23 we can say March. So those discussions
24 were in March for the purposes of
25 moving this discussion along, Mr.



1 Chairman, I'm not making assertions for
2 Mr. Nastoff. I'm trying to answer Mr.
3 Hennelly's question and that is that
4 there was discussion, there was open
5 discussion and then formal notice was
6 required because we weren't getting
7 anywhere and after the permits and Mr.
8 MacNeille coming to the SRT and making
9 the assertions out of the restrictive
10 covenants then we open up the document
11 and said, well, we've got to follow the
12 formal notice requirements in this
13 document. We filed the letter, follow
14 the formal notice requirements. We
15 received Mr. MacNeille's list of things
16 that they wanted to see and we then had
17 a meeting. We had a meeting in my
18 office on May 16th of this year and it
19 was at that meeting, and again, that's
20 bring me the rock game. We can't walk
21 in and say, we'll give you another
22 \$10,000. We can't come in and say
23 we'll build a berm, we'll build a
24 fence. We said, what would you like?
25 What can we do to ameliorate your



1 concerns? And that was after the
2 permit was issued. That's what we
3 tried to do but we find our -- we find
4 ourselves here today arguing about this
5 when Stafford believes on May 16th of
6 this year we could have come to some
7 reasonable agreement that wouldn't have
8 cost all this time and effort.

9 MR. HENNELLY: If I can, but
10 according to this document, again, I
11 didn't write this I'm just reading it.
12 It says 'shall' not should, shall be
13 subject to the reasonable approval of
14 CPOA not to be unreasonably with held.
15 And I guess I'm just -- I'm --
16 (phonetic)

17 MR. NESTER: Well, that's exactly
18 where we are. Yes, sir, that's exactly
19 where we are. We've asked, they've
20 said no. The question is whether or
21 not they're saying no is unreasonable
22 and that's really -- I submit that's
23 something that lawyers and judges need
24 to determine.

25 MR. WILLIAMS: I object -- never



1 wrote no --

2 MR. SEMMLER: We did not interrupt
3 you, Mr. Williams. Mr. Nester, thank
4 you.

5 MR. NESTER: Yes, sir. Thank you.

6 MR. SEMMLER: At this point let's
7 bring it back up to the commission.

8 MR. WILLIAMS: Mr. Chairman, may
9 I?

10 MR. SEMMLER: Yes, sir.

11 MR. WILLIAMS: First of all, Mr.
12 Nester has left the impression to y'all
13 that \$10,000 was paid for the use of
14 the golf course went to the
15 association, it did not. He just said
16 he'll give them another \$10,000.

17 MR. SEMMLER: Please, you're
18 disrupting the sequence. You're
19 talking now. I'm going to call Mr.
20 Greenway back up to talk and I'm going
21 to call Mr. Nester back up to talk so
22 it's all even. Please.

23 MR. WILLIAMS: -- give a chance.

24 MR. SEMMLER: Some of us graduated
25 from high school. We can kind of



1 figure that out.

2 I'd like to bring it back to the
3 commission. Let's talk about it, have
4 some questions amongst ourselves and
5 then we finish with that I'm going to
6 send it back down to the -- for final
7 argument by the appellant, by the
8 applicant and by the government and
9 then we're going to vote. Okay?

10 MR. HINCHER: Well, I do feel like
11 that there was a tradeoff for this
12 easement agreement or both of them,
13 actually, one of them was \$10,000 --
14 the golf course and the other one was
15 to use the roads in the neighborhood to
16 go ahead and hook to the pump station
17 and I do feel like that the intent was
18 office buildings obviously laid out in
19 the documents. The detail of how much
20 can or should be changed in terms of
21 the site plan that I'm still kind of
22 filtering myself through the agreement.
23 I feel like an opportunity to have some
24 more time to review would be great. I
25 know I don't have it but I think it



1 would be great. I think it's a lot of
2 information.

3 I do -- my personal impression was
4 that it was a good faith agreement
5 documented publicly to give them access
6 to this sewer, which they probably
7 could have access in another way, it
8 might have cost them more money in
9 order to secure at least a conceptual
10 plan of what they could expect to be --
11 that's really -- I don't know if I
12 answered your question but that's how I
13 feel about it.

14 MR. SEMMLER: You spoke. That's
15 what I needed. Kevin?

16 MR. HENNELLY: I guess two things.
17 As far as the issue of the subdivision,
18 I'm familiar with subdivision by deed,
19 that's not uncommon in the United
20 States of America. It's been done a
21 lot, a lot of different places as
22 different areas mature, processes
23 change.

24 If they had gone from Stafford
25 owned it and now we're going to change



1 it's to the, you know, Billy Joel --
2 and then we're going to change it to
3 some other name but it was always
4 Stafford, everybody knew who it was,
5 that's how -- anyway, and there's,
6 again, common practice where someone
7 buys an option on a piece of property,
8 they'll buy it for a year so they can
9 find out what it is they can get
10 approved and that if they decide to go
11 they'll get a conditional approval,
12 they decide to go forward they'll put
13 in for a subdivision and I mean I know
14 as planning departments mature they get
15 a little more formalized and that kind
16 of -- that changes. I'm not really
17 hung up too much on that part of it but
18 I'm kind of like where Jason is and,
19 you know, there's a reason why in these
20 documents the word 'shall' is used in
21 some cases and the word 'should' is
22 used in other cases. In this case it
23 says 'shall' and I mean --

24 UNIDENTIFIED SPEAKER: One of the
25 questions we had to the SRT -- a



1 mistake. That's we got to -- did that
2 happen? That's the bottom line and I
3 think Mr. Greenway's point is also very
4 important. The requirements of the
5 community development department, okay,
6 when the application was made to them
7 by the developer, okay, and you can
8 only look at so many things and if it
9 isn't presented immediately or at the
10 planning process -- (Phonetic)

11 MR. HENNELLY: I would never want
12 to stand in judgement over the planning
13 department. I don't know if we know
14 enough about exactly what goes on on a
15 day-to-day basis over there but I do
16 think that not enough attention, if you
17 will, was given to what that document
18 was and whose fault that it could
19 have -- I don't know. I'm not pointing
20 a finger or blame but there was an
21 easement document that was a pretty --
22 three pages. There was a lot of
23 different things in there and I can
24 understand that, you know, that maybe
25 it's somebody else's decision but an



1 easement is an easement. It's on the
2 map. It's, you know --

3 MR. SEMMLER: It's like you have a
4 disagreement with somebody else you
5 either mutually say we're forgetting
6 the agreement or one says, I'm not
7 doing that agreement and you've got to
8 at least tell the other person.

9 MR. HENNELLY: Yeah.

10 MR. SEMMLER: I mean I keep coming
11 back to that portion.

12 MR. HENNELLY: I'm thinking that
13 this is why I would never say the
14 planning department made a mistake. I
15 believe the planning department
16 believed that as this thing progressed
17 that these two side would comply with
18 the agreement that they both signed and
19 now they're at the end of this thing
20 and they're saying, you want me to be
21 the bad guy now and they're not the bad
22 guy, they're just doing their job and
23 now it's, you guys got to resolve this
24 issue, these two groups, not the
25 planning department.



1 MR. SEMMLER: Sensible man.

2 Mitch, how about you?

3 MR. MITCHELL: I kind of wonder
4 sometimes whether we should be deciding
5 or whether -- these documents that were
6 signed and agreed to whether it should
7 just be in the court, let a lawyer or
8 judge decide it. I'm just not sure. I
9 mean, you know, maybe we have the
10 authority, I don't know, but, you know,
11 it just seems like sometimes this is
12 something you would appeal in a purely
13 legal matter in the court as to who has
14 the right to do what, who's right and
15 who's wrong. (Phonetic)

16 MR. SEMMLER: To ease your mind,
17 we do have the authority.

18 MR. MITCHELL: Okay, thank you.

19 MR. SEMMLER: That's why we're
20 doing it.

21 MR. MITCHELL: Well, I'll be
22 honest with you, I just -- I'm not
23 sure. I don't think I've gotten my
24 head around it to be honest with you.

25 MR. SEMMLER: Diane, what about



1 you?

2 MS. CHMELIK: Diane doesn't have
3 much to say in this kind of case.

4 MR. SEMMLER: Randolph?

5 MR. STEWART: Yeah. I go back to
6 the CDC and this is all about proving
7 error by the county, by staff whether
8 it's an easement or not an easement,
9 that's a legal decision not a planning
10 decision, so in my heart I don't think
11 there was an error made by staff and
12 that's where we're here. We given the
13 authority to say yes or no, it's that
14 simple, and if we say yes or no then
15 the parties that are involved can take
16 it further to the circuit court that --
17 that's the next step, right? Not to
18 council or commission or anything else?

19 So, I do know that just as
20 comment, as a side as we're talking
21 we've been diverted into a lot of
22 things about the agreement of the pump
23 station under the ground, apartments,
24 that if you have a lift station and you
25 have apartments and you have an office



1 building using it you've got so much
2 use in that lift station and then all
3 of a sudden you change that use to
4 however many apartments there are then
5 will that lift station handle that? So
6 that's not our issue here. I don't
7 care about the lift station or no lift
8 station, what's in the agreement,
9 what's not in the agreement. I just
10 feel that the burden of proof that in
11 our instructions to -- our law says to
12 us did the CRT make an error, you know,
13 and I don't feel that error was an
14 obvious error and that -- like some of
15 the other fellows here that needs to be
16 decided in the court because I don't
17 feel that they have made an error.

18 MR. SEMMLER: Ed?

19 MR. PAPPAS: Yeah. I do not find
20 anywhere where the SRT didn't meet the
21 standards.

22 You could say that the conditions
23 that they set in place pending approval
24 was putting the cart before the horse
25 but we know all the time that we set



1 conditions on giving approval and that
2 those conditions have to be met before
3 final approval or proceeding with that
4 process can go on.

5 Mr. Greenway stood here and told
6 us that to his knowledge there has been
7 no final approval. He's the final
8 authority. That all the conditions
9 that they're waiting on, including the
10 subdivision, as part of the process for
11 final approval, so, I think he
12 correctly applied by establishing the
13 conditions with all the members of the
14 SRT that what would be necessary to
15 meet that. I am conflicted by the fact
16 that the two parties couldn't get
17 together to hash out something that
18 they could both walk away with feeling
19 satisfied. I'd like to lock looked
20 them in the room for a week, whatever
21 it takes and have them work on that.
22 I'm kind of believing that the only --
23 that there is a hard line that's it's
24 taking, maybe it's gone too far. I
25 don't think it's up to the SRT to



1 decide you're right and you're wrong on
2 whether this is a legally binding --
3 disagreement is legally binding and
4 restricting on use of this property for
5 purposes of the apartment building.
6 We're -- code where that's allowed and
7 we've met all the requirements of the
8 CDC, SRT has, in reviewing the process.

9 MR. SEMMLER: Cecily?

10 MS. McMILLAN: For me it really
11 comes back to the importance of the
12 original easement agreement and
13 covenants and whether those two things
14 are the same thing or whether the
15 language makes them, whatever, my
16 concern is that I don't think it's an
17 error on the part of the planning staff
18 but I think we're going to see more and
19 more -- we're going to need more and
20 more clarity with the developers about
21 the existing easement or covenants that
22 exist. To me that -- I would like to
23 see the planning staff take that more
24 seriously, give it more weight. I kind
25 of disagree that they're just a matter



1 of procedure or a process, so that's
2 where it sticks for me and I think
3 probably we'll -- we last -- we have
4 issues with people not understanding
5 what they're own covenants and
6 agreements were, so I think the
7 original agreement was not honored in
8 this case.

9 It's too bad. I noticed in the
10 material, too, that they tried to get
11 to each other to talk and why that
12 didn't work, I don't know, but I don't
13 think you can -- very at certain points
14 say that you had -- for one thing and
15 then turn around and try and do
16 something else so I agree with my,
17 colleagues, too. (Phonetic)

18 MS. CHMELIK: I'll change my
19 comment to agree with. The lady's last
20 statement.

21 MR. SEMMLER: Thank you, Diane.

22 MR. HINCHER: I have a question?

23 MR. SEMMLER: Yes.

24 MR. HINCHER: What are the nuts
25 and bolts in terms of the way we vote,



1 excuse me, and what happens to this
2 permit?

3 MR. SEMMLER: We're not finished
4 yet.

5 MR. HINCHER: Good.

6 MR. SEMMLER: Following the
7 process that I talked when we first got
8 started we're going to have a final
9 argument by the applicant, by the
10 government, then at that point after
11 they give their final argument then
12 we're going to -- I think we're going
13 to have another session at that point
14 and go on, talk about exactly some of
15 the things that we were doing just so
16 you all -- some of the words that I've
17 been writing down is intent, good
18 faith, good neighbor, knowledge of what
19 we're doing and to the present and good
20 of the many, provisions, define, seemed
21 like -- errors in some cases and I
22 wrote down also, at this point, that
23 I'm disappointed that groups couldn't
24 get together.

25 The -- but before we get there



1 let's have our final arguments and with
2 that we'll start with the appellant,
3 Mr. Williams.

4 (Whereupon, an off-the-record
5 discussion was held.)

6 MR. SEMMLER: Mr. Greenway.

7 MR. GREENWAY: I don't really have
8 much to add. I think I've said
9 everything that needs to be said.
10 We've met the requirements of the CDC,
11 the property was properly zoned with
12 regards to the easement agreement we
13 think our staff position is that the
14 easement agreement is up to the
15 attorneys and a court and a judge to
16 decide how far that has to be taken,
17 again, and it's not listed as a
18 restrictive covenant and I do not think
19 that state law obligates us to consider
20 that with regards to the issuance of a
21 permit but like some of you all, I am
22 looking forward to a court telling me
23 their decision on that particular issue
24 but right now as it stands I have to
25 enforce the state law as drafted and it



1 says restrictive covenants and this is
2 an easement agreement. We're not a
3 party to that. We did what we were
4 required to do by the CDC. We have not
5 approved anything yet. We've just
6 issue comments and said, once you
7 address these items you will get an
8 official approval, have your
9 development permit. We do not have
10 that at this time. Thank you.

11 MR. SEMMLER: Yes, sir. Mr.
12 Williams?

13 MR. WILLIAMS: Thank you, Mr.
14 Chairman.

15 First of all, I'm a little
16 perplexed by Mr. Greenway's comments
17 that there's no approval here because
18 if there's not what are we appealing?
19 Why are we here if there's no approval
20 yet.

21 An approval is what gets appealed.
22 Clearly the SRT issue that approval
23 with conditions.

24 Now, technically the Director, Mr.
25 Greenway is one who issued that



1 approval but he did that along with the
2 rest of the SRT.

3 Again, just to make sure the
4 \$10,000 that was paid didn't go to the
5 association. There was no monetary
6 consideration paid to the association
7 for the easement according to Mr.
8 Chesney.

9 Communications back and forth, Mr.
10 Nastoff has an e-mail on his phone from
11 his Blackberry, I note, March 30th was
12 the first contact he received from a
13 representative of Stafford and that
14 e-mail had attached to the site plan
15 that showed office buildings but that
16 notice and the request for the approval
17 didn't meet the requirements of the
18 agreement and Mr. Nester sort of wants
19 to have it both ways, you know, we're
20 not bound by the restrictions of the
21 easements but yet we have to comply
22 with some of the provisions of the
23 agreement. That just doesn't seem to
24 make much sense to me.

25 We go through the SRT approval and



1 the meeting that was at Mr. Nester's
2 office was on May 16th, a month after
3 the SRT approval was issued,
4 three weeks after Mr. Nester's letter
5 and back and forth between him and Mr.
6 MacNeille.

7 Mr. Nastoff was at that meeting.
8 I was at that meeting. Mr. MacNeille
9 was at that meeting and John Brown, a
10 board member of the association was at
11 that meeting and Mr. Nester is wanting
12 you to think that he's naive if he went
13 into that meeting believing that Mr.
14 Nastoff and Mr. Brown had the authority
15 to make decisions on behalf of the
16 entire Crescent Property Owners
17 Association.

18 There's a process there and at
19 that meeting to my knowledge no one
20 associated with Crescent ever said, no
21 apartments. What they said was, show
22 us your plans and they showed us their
23 plans, and said, well, gosh, we've got
24 security issues, you know, noise
25 issues, traffic issues. Gosh, we need



1 to take all this back to our members
2 and that's what they did but to my
3 knowledge -- and maybe I'm wrong, I
4 don't think there's anything -- where
5 the association said, no apartments and
6 the letter from Mr. MacNeille to Mr.
7 Nester said, well, if there are
8 apartments there then we may want some
9 restrictive covenants.

10 And speaking of restrictive
11 covenants, Mr. Nester sort of made my
12 case on this, he mentioned that the
13 easement agreement requires a 75-foot
14 buffer. That's a restriction on the
15 property. That is a descriptive
16 covenant.

17 Could the county have approved the
18 development of this five-acre tract
19 with structures placed in that 75 --
20 because the county's regulations --
21 Hillary, there's a 20-foot buffer there
22 on the code? Is that --

23 MS. AUSTIN: Well, that 75
24 feet was done in 2005. It was a
25 modulation from a hundred feet to 75



1 feet and that was set since 2005.

2 MR. WILLIAMS: So, with respect to
3 the covenants -- and that's a result of
4 that restrictive easement.

5 The county could not legally have
6 approved a plan to develop the
7 five-acre tract showing structures in
8 that buffer and that buffer is a
9 function of that easement. It's a
10 function of the covenants that are in
11 that easement.

12 It also refers to height
13 limitations of three stories. The
14 county can't approve that. Legally
15 under the code the county can't approve
16 that because it's a recorded covenant
17 of the property that limits the height
18 of the buildings on that property.
19 That seems self-evident to me. That
20 provision of the code is there for the
21 protection of the association so that
22 the county doesn't approve any
23 development of the property that
24 violates the covenants.

25 Admittedly, the county didn't have



1 actual knowledge of that until the SRT
2 meeting and I certainly don't expect
3 the SRT to make legal decisions about,
4 number one, is it a recorded covenant?

5 Number two, does it prohibit
6 what's left? That's Mr. Keaveney's
7 job.

8 What the SRT should have done was
9 say, well, we've got this new issue.
10 We'll put it off for a week or
11 two weeks, the next meeting and we'll
12 go talk to Mr. Keaveney to see if this
13 is something that we have to deal with.
14 That's the proper procedure to follow
15 here.

16 Instead, the SRT, on its own, made
17 a decision, well, no, that's not
18 applicable, we're going to ignore that.
19 That was an error. That was a mistake
20 that should not have occurred.

21 I don't know what Mr. Keaveney's
22 opinion is on that but if the county --
23 and, as a matter of fact, someone
24 mentioned the -- appeal from last
25 month. That's what happened in that



1 process -- Mr. Boland came in in one of
2 the SRT meetings with these covenants
3 and the SRT stopped. They went and
4 talked to Mr. Keaveney. Said, do these
5 covenants encumber this property? He's
6 there to give legal advice to the
7 staff. His advice in that case was,
8 no, it does not and it went -- why
9 didn't the staff follow the same
10 process here?

11 You know, the SRT process I think
12 is a good process. I think staff makes
13 a good faith effort to comply with the
14 law but this was a matter that brought
15 to their attention and they chose to
16 ignore it. They made a mistake and
17 ignored it and it needs to be
18 addressed.

19 Y'all are the ones who can send
20 this back to them and says, consider
21 this document in your approval process
22 or y'all are the ones who can reverse
23 it and say, no, the permit approval is
24 no good or you can say, we're going to
25 pass it on. I hate to see that happen



1 because that frustrates the purpose of
2 that section of the codes.

3 That section of the code is there
4 so that property owners don't feel
5 compelled to go to the courts. If they
6 come in and -- here's a document that
7 is clearly applicable to this property,
8 so the next question is, is it -- are
9 there covenants in it? And if there
10 are, do those covenants prohibit the
11 activity that's requested. That's all
12 there is to it from that. Questions?

13 MR. SEMMLER: Thank you sir.

14 MR. WILLIAMS: Thanks.

15 MR. SEMMLER: Mr. Nester, one more
16 time.

17 MR. NESTER: Thank you, Mr.
18 Chairman.

19 I would just submit, once again,
20 that the review standard for the
21 planning commission reviewing this SRT
22 decision was whether the standard was
23 met, whether the SRT decision was based
24 on some other standard that doesn't
25 apply or was there some error made in



1 applying those standards and I think
2 that it's important that there was
3 discussion. There's been plenty of
4 discussion between the parties
5 concerning what can be done and what we
6 said at that meeting in my office on
7 May 16th is, what can be done to
8 ameliorate the concerns of your owners?

9 And as Mr. Williams says, those
10 representatives needed to go back to
11 their constituents and say, what can we
12 have done to ameliorate your concerns?
13 Whether or not they did that, I expect
14 that they probably did but today's
15 July 2nd and we don't have an answer.
16 We have an appeal. We actually have a
17 lawsuit that's been filed against us,
18 so there's -- there's a lot of water
19 under this bridge but I'm standing here
20 as I said to -- as I said, earlier, we
21 want -- we'd like to know what can be
22 done to ameliorate the concerns?

23 We would prefer to spend money
24 doing so than being before this body
25 and making those kind of arguments.



1 Thank you.

2 MR. SEMMLER: Thank you, sir.

3 At this point, I'd like to go into
4 executive session so the commission can
5 discuss some more details before we
6 vote and I'd like to have counsel with
7 us, if we could.

8 UNIDENTIFIED SPEAKER: Did you
9 make a motion?

10 MR. SEMMLER: I'm sorry, make a
11 motion. I made a motion to do that.
12 We need a vote.

13 CONSENSUS: All in favor. I.

14 MR. SEMMLER: Thank you, sir.

15 (Whereupon, a short break was
16 taken.)

17 MR. SEMMLER: I call this session
18 of the planning commission back to
19 order on the appeal.

20 We're at the point now where the
21 commission is going to vote and after
22 that we'll make an announcement of the
23 ruling. May I please have a motion?

24 MR. STEWART: I respectfully move
25 to grant the appeal of the Crescent



1 Property Owners Associations as
2 follows', there's no evidence of
3 compliance with South Carolina Code
4 6.29.1145 and CDC 1.1.40 and so this
5 matter is remanded to the SRT for the
6 purpose of considering the easement
7 agreement and whether or not there was
8 -- there has been compliance with the
9 South Carolina Codes 6.2.9.145 and 11
10 -- CDC1140. (Phonetic)

11 MR. SEMMLER: May I have a second?

12 MR. MITCHELL: Second.

13 MR. SEMMLER: Any discussion among
14 the commission? Any discussion?
15 Hearing none, all in favor say I?

16 CONSENSUS: I.

17 MR. SEMMLER: Got it?

18 On the appeal of the -- on the
19 appeal of the appellant from Crescent
20 Property Owners Association I find that
21 the SRT had no evidence of -- there's
22 no evidence of compliance with South
23 Carolina Code 6.29. I'm rereading what
24 I said before, 1145 and CDC 1.140 and
25 so this matter is remanded to the SRT



1 for the purpose of considering the
2 easement agreement.

3 As to whether or not there has
4 been compliance with South Carolina
5 Code 6.29 and 1145 1.140 CDC.

6 Okay? Got it?

7 May I have a motion? That's all
8 we've got. That's the last part. Do
9 we have a motion to adjourn?

10 UNIDENTIFIED SPEAKER: Motion to
11 adjourn.

12 MR. SEMMLER: Second? All in
13 favor?

14 CONSENSUS: I.

15 MR. SEMMLER: We're out of here.

16 (Whereupon, the Beaufort County
17 Planning Commission hearing was
18 concluded at
19 approximately 9:30 p.m.)

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C E R T I F I C A T E

STATE OF GEORGIA:
CHATHAM COUNTY:

I, Kyle J. Saniga, Court Reporter and Notary Public in and for the above county and state, do hereby certify that the foregoing testimony was taken before me at the time and place herein-before set forth; that the witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth, that thereupon the foregoing testimony was later reduced by computer transcription; and I certify that this is a true and correct transcript of my stenographic notes so taken.

I further certify that I am not of counsel to either party, nor interested in the event of this cause.

Kyle J. Saniga

Kyle J. Saniga, CCR
Notary Public, B-2038
Savannah, Georgia



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