



## TOWN OF MOUNT PLEASANT STATEMENT ON THE COLEMAN BOULEVARD AND MILL STREET OFFICE BUILDING ZONING ISSUE

### Introduction:

Based on Town ordinance, the Marine District zoning lines seen on numerous maps are incorrect, a situation that has caused uncertainty and confusion.

### Executive Summary:

The Marine District represented on numerous plats and zoning maps is irreconcilable with what Town Council authorized via ordinance in 1989. What appears to be the Marine District boundary on those maps is actually not, according to Town ordinance. Because of this and further inconsistencies in regard to lot size and prior zonings, there is uncertainty as to the actual Marine District boundary and the Shem Creek Waterfront Overlay District boundary.

In regard to the office building at the corner of Coleman Boulevard and Mill Street, Town staff followed ordinances, as required, to arrive at the decision to grant a 30-foot extension of the Urban Corridor Overlay District into the Shem Creek Waterfront Overlay District.

Subsequent appeals of the required administrative decision did not meet minimum thresholds in areas of eligibility to appeal and/or timing.

Acting outside of Town ordinance to grant special status – including the right to appeal where it does not exist – would be improper. Town staff followed the code of ordinances in both allowing for the 30-foot extension and handling subsequent appeals.

### Relevant Facts:

- The June 13, 1989 [Town ordinance](#) creating the Marine District does not correlate with the tract shown on [plat 1](#) and [plat 2](#) and tax maps. This has led to uncertainty about the Marine District boundary and the Shem Creek Waterfront Overlay District boundary.
- Plats and tax maps are not binding or controlling. They do not create zoning lines.
- Town ordinances are binding and controlling. They do create zoning lines.
- When it comes to questions of zoning, written documents are controlling over maps or images.
- In the event of zoning uncertainty, Town staff is [required by ordinance](#) to authorize an extension not exceeding 30 feet into more restrictive zoning areas.



- Town staff cannot pick and choose when to enforce Town ordinances. Staff must apply ordinances across the board, and first consideration is given to property owners in these instances.
- Only Town Council can vote to change zoning.

### **Why the Uncertainty?**

Town Council never voted to zone the Marine District along a property line represented in several versions of plats and Town zoning maps, including those from 2005 and 2009. The purported boundary in question – a property line that first appeared in 1989 after the Marine District was established and was abandoned in a plat dated December 2005 – bears no correlation to the Town ordinance enacting the Marine District. That fact has been the source of much confusion.

Beginning in late June 1989, it was incorrectly assumed that all of the property from Shem Creek to the aforementioned line was zoned as Marine District; a developer plat from 1989 clearly states as much. However, there was never any vote by Council to that effect.

So why would the plats indicate that property line is the Marine District boundary? That answer remains uncertain. What is certain is that Town ordinance supersedes any plats, zoning maps and tax maps.

### **What was approved as Marine District?**

What Council actually approved as Marine District was a 2.5-acre tract located on Coleman Boulevard known as “The Trawler Restaurant,” according to Town ordinance. The land (Tax No. 517-15-0-2) was to be rezoned from Light Industrial to Marine District so a restaurant could be built at that location, according to the ordinance.

However, in exploring the issue of permitting in the area last June, Town planning staff discovered significant discrepancies between what the ordinance authorized and what subsequent plats depict as the Marine District. Notably, neither tract 517-15-0-2 nor the area purported to be Marine District is 2.5 acres, nor had either been entirely zoned Light Industrial.

These inconsistencies have led to deep confusion in regard to the district boundary. Today it remains uncertain what makes up the 2.5-acre Marine District called for in the Town ordinance.

### **Marine Waterfront Overlay District and Urban Corridor Overlay District**

In 2004, Town Council placed the Shem Creek Waterfront Overlay District boundary on the



purported Marine District boundary, as it appeared to mirror Marine District zoning, which it did not. Where there was supposed to be concert, there is instead conflict in regard to the underlying Marine District boundary. That uncertainty, then, extends to the Shem Creek Waterfront Overlay District boundary.

Furthermore, as reflected in a [June 25, 2014 Design Review Board report](#), the Urban Corridor Overlay District boundary was [established in 2011](#) without reference to any existing property lines. Section 156.301 (E) (Interpretation of District Boundaries) of the Town code of ordinances applies to situations in which a zoning district boundary line is established in the absence of a property line (or other known reference point as outlined in the ordinance). The Urban Corridor Overlay District boundary line and the original purported Marine District line were established in the absence of property lines and other prescribed reference points. Therefore, the extension of the Urban Corridor Overlay District line into more restrictive zoning areas – whether Light Industrial, Area Business, Area Business 2, Marine District or Shem Creek Waterfront Overlay District – reconciles the uncertainty and removes the conflict, in accordance with Town ordinance.

The cardinal rule of statutory construction/interpretation due to conflict is to discern the intent of the legislative body. Council intended the overlay district lines to reflect concert and not conflict with the underlying zoning boundary lines and therefore abut one another. When possible, conflicting statutes should be interpreted to give effect to both. The provisions of Section 156.301 provide an administrative procedure to reconcile the conflict and uncertainty described by allowing the extension of the less intense zoning district(s) into the more restrictive district(s) for a distance not exceeding 30 feet.

This ordinance is the administrative remedy for these types of zoning disputes, and Town staff is required to follow it. There is no room to pick and choose when it comes to ordinance application, and property owners are given first consideration in these instances, regardless of circumstance.

### **There have been several appeals. Why have they been denied?**

There are a number of reasons the appeals were denied. They are:

#### **1. Applicants must be an aggrieved party as defined by Town ordinance and State law**

As has been noted, in a non-binding 2009 opinion, the State Attorney General determined that a municipality's Mayor, Council Members or Council itself may appeal a decision made by the Zoning Administrator.



Private applicants must show that their property is specifically affected by the decision, according to the opinion. While municipal officials may or may not be held to a less stringent standard, they still must show a particularized injury.

None of the applicants met these criteria.

## **2. Applicants must have standing to appeal**

The S.C. State Supreme Court has ruled that to have standing for an appeal, individuals must have suffered an injury-in-fact, which is a concrete, particularized, and actual or imminent invasion of a legally protected interest belonging to or being owned by the applicant.

In order for an injury to be particularized, it must affect the applicant in a personal or individual way.

None of the applicants met these criteria.

## **3. Appeal must take place within 30-days of actual notice**

Final plans for the office building at Coleman Boulevard and Mill Street were approved by Town staff on Sept. 24, 2014. As a public official, Councilman Gary Santos is deemed to have at that time received actual notice, and he received additional information well before 30 days prior to his March 10 appeal.

Regardless of when the private applicants received actual notice of the decision, in this instance they still do not possess standing to appeal, for reasons outlined above. In regard to its decision, Town staff was not required to post additional public notice, as the decision, per ordinance, was administrative. The information, however, was available and provided upon request. This is the required and correct action as outlined by Town ordinance and is executed hundreds of times annually.

It should, however, be noted that Town Staff directly provided materials regarding the decision to the leadership and legal counsel of Save Shem Creek, in addition to numerous in-person meetings before and after.

However, acting outside of Town ordinance to grant special status – including the right to appeal where it does not exist – would be improper. Town staff followed ordinance code in both allowing for the 30-foot extension and handling subsequent appeals.

## **Timeline**

**1979** – A major revision of Town zoning was passed and signed by Mayor Johnnie Dodds that introduced the concept of Light Industrial, Marine District and other zoning districts in Mount Pleasant.



**1989** – In early June, a rezoning request for a 2.5-acre tract located on Coleman Boulevard known as “The Trawler Restaurant” was [approved by the sitting Town Council](#). The request was for the property to be converted from Light Industrial to Marine District, so a restaurant could be built at the location, according to the ordinance.

- The tax map number for The Trawler Restaurant is 517-15-0-2, according to Town ordinance. It is not a 2.5-acre parcel, and portions of it were zoned for uses other than Light Industrial.
- A plat from late June 1989 shows, for the first time, the property line that appears to have been assumed to be the Marine District boundary. That property line is not, however, for the tract that Council specified to be rezoned. It actually appeared after the Marine District was approved.
- Note: When dealing with zoning issues, written ordinances take precedent over illustrations or maps.
- Note: Only Town Council can vote to rezone property, and in this case they did not in terms of the tract being depicted as the Marine Zone.

**2004** – The Shem Creek Waterfront Overlay District is put in place by Council, in line with the erroneous Marine District line. Council made this boundary distinction based on a misunderstanding of Marine District zoning.

- Since the base zoning is uncertain, that uncertainty extends to the overlay zoning that followed based on the questionable information.
- There is, however, a required administrative solution to this issue. When there is uncertainty in regard to zoning, Town ordinances require staff to review street lines, corporate lines, lot lines or, as a final remedy, allow up to a 30-foot extension into more restrictive zoning areas. Property owners are given first consideration in these circumstances, regardless of where they take place.
- Note: Reviewing lot lines would not be the correct remedy in this instance, as the Marine District, as written, was not intended to be bounded by the line depicted on plats and Town maps.

**2005** – A plat is produced that calls for abandoning several property lines, including the line that doubled as the erroneous Marine District boundary and the Shem Creek Waterfront Overlay District boundary. That plat cites two previous plats: one from 1855 and the 1989 plat in which the line first appeared without explanation or proper tax map numbers.



**2006** – Coleman Boulevard and Ben Sawyer Overlay District enacted.

**2011** – Urban Corridor Overlay District supersedes its Coleman Boulevard and Ben Sawyer predecessors.

**2014** –

**April 15:** Setbacks in Urban Corridor overlay district altered

**June 10 - 11:** Plans for preliminary Design Review Board review of office building at Mill Street and Coleman Boulevard are submitted electronically June 10. Front of building elevation and site plan are uploaded to Town Projects and Applications webpage June 11. This site is for public use.

**June:** Planning staff notices that office building project lease lines cross purported Marine District zoning line. Further review by Planning staff reveals Marine District boundary discrepancies.

**June 25:** Due to the uncertainty revealed during research, ordinance 156.301 is invoked by Town staff. However, plans not approved at this time, pending the resolution of architectural and landscape issues.

**July 11 & 31:** Town responds to FOIA requests. Information on preliminary zoning decision included.

**August 13:** Town staff meets with Save Shem Creek legal counsel and group representatives Jim Owens and Lewis Horton to discuss concerns and provide information in regard to office project.

**September 23:** Town responds to FOIA requests from Jim Owens and Lewis Horton. Information includes details on zoning decision that is finalized the following day.

**September 24:** Coleman Boulevard/Mill Street office project receives final approval from Town staff.

**December 9:** Town staff meets with Save Shem Creek attorney to discuss concerns and provide information.

**2015** –

**January 6:** Save Shem Creek officials write letter outlining intent to appeal office at Coleman and Mill.



**February 10:** Save Shem Creek attempts to appeal – without appropriate forms or filing fee – the 30-foot extension for office project. Appeal ultimately denied.

**February 19:** A private citizen appeals 30-foot extension for office project. Appeal ultimately denied.

**February 20:** Planning staff meets with Councilman Gary Santos to discuss concerns and provide information.

**March 10:** Councilman Gary Santos appeals 30-foot extension for office project, well after 30 days of actual notice and nearly six months after decision. Appeal ultimately denied.

### **Zoning Process Today**

From the time Town zoning was revised in 1979 until 2011, the Town relied primarily on Tax Map Sequence (TMS) numbers to describe property. Since 2011, the Town has utilized more complete parcel identification information – from lot and block numbers to boundary information and physical descriptions – in order to mitigate confusion and uncertainty in regard to property and zoning boundaries.

### **Conclusion**

Statutory interpretation related to zoning is complex and must take into consideration all parties, including property owners. Town staff did a thorough job in researching this issue and identifying the correct and proper resolution.