

SPECIAL CALL TOWN COUNCIL

Municipal Center Council Chambers

January 3, 2024, 8:00 am

Minutes

I. **Call to Order:** *Mayor Labriola called the meeting to order at 8:00 am.*

II. **Roll Call:**

Present at the Meeting: John D. Labriola, *Mayor*
Michael Heidingsfelder, *Mayor Pro Tem*
Russell Berner, *Council Member*
Brad Belt, *Council Member*

Present Via Zoom: Stephanie Tillerson, *Town Administrator*

Also Present: Joe Wilson, *Town Attorney*
Ross Appel, *Attorney*

III. **Citizens' Comments (Agenda Items Only):**

Gaye Stathis – 488 Marsh Cove Road

Ms. Stathis stated that, in her opinion, only one lawyer was needed for Captain Sam's Spit, and that was Amy Armstrong. She read from Ms. Armstrong's recently posted letter in which it was Ms. Armstrong's legal opinion "that the Town has a duty to demand specific performance of the clear and unambiguous terms of the ARDA and to undertake an enforcement action, if necessary, to enforce its terms because it negotiated certain benefits for KICA as a third-party beneficiary, which have not been accomplished."

Cheri Gallagher – 119 Spartina Court

Ms. Galliger stated that paragraph 16 was not overlooked, considering it takes up an entire page in the Development Agreement, and now there is the opportunity to make it right. She noted the opinion of Amy Armstrong, who is very familiar with the Spit and the argument to protect it, was very forceful. The residents are counting on the Council to protect the natural space and abide by the terms of the Development Agreement.

Alex Fernandez – 418 Snowy Egret

Mr. Fernandez noted that, coincidentally, it has been published at 11:00 am the Kiawah Island Community Association (KICA) Board would also be meeting in Executive Session with legal counsel regarding Captain Sam's Spit. He requested that the Council consider coordinating with the KICA Board on whatever work needs to be done or whatever action needs to be taken on the issue.

Maura McIlvain – 146 Blue Heron Pond Road

Ms. McIlvain appreciated the Town Council having the meeting. Still, she did not understand why it was an emergency, considering everyone had known for the past thirteen months that the Development Agreement was ending.

Devid DeStefano – 31 Burroughs Hall

Mr. DeStefano stated that every time he reads the ARDA (Amended and Restated Development Agreement), he finds another clause that shocks him, and it is time for the Town to draw the line and act now.

IV. Executive Session:

- A. Executive Session to receive legal advice regarding the 2013 Amended and Restated Development Agreement and Captain Sam’s Spit pursuant to South Carolina Code Section 30-4-70(a)(2).**

Mayor Pro Tem Heidingsfelder made a motion to go into Executive Session to receive legal advice regarding the 2013 Amended and Restated Development Agreement and Captain Sam’s Spit pursuant to South Carolina Code Section 30-4-70(a)(2). Council Member Berner seconded the motion.

Council Member Belt provided additional context for the reason for the Executive Session. The issue of the conveyance language in Section 16(f) of the ARDA was specifically brought to the attention of the Town and the Kiawah Island Community Association (KICA) in the week preceding the expiration of the ARDA. On December 4th, KICA sent Kiawah Partners a demand letter regarding enforcing the provisions of the 8 and 9 paragraphs of Section 16(f). The Town then received an opinion from the director and general counsel of SCEL (South Carolina Environmental Law Project), who have been involved in matters regarding Captain Sam’s Spit over the last several years.

Council Member Belt went into an in-depth review of the language in the ARDA relating to the conveyance of Captain Sam’s Spit, along with the specific provisions regarding the restrictive covenants, restrictive easements, and obligations under the ARDA.

Following the discussion, the motion was unanimously approved.

Council Member Belt made a motion to come out of the Executive Session. Council Member Berner seconded the motion, and it was unanimously approved.

V. New Business:

- A. Town Council may Consider the Approval of an Action on the 2013 Amended and Restated Development Agreement and Captain Sam’s Spit.**

Mayor Labriola stated that in the time spent in the Executive Session, there was a lot of discussion, and the Council looked at a series of courses of action, but the one thing that was crystal clear and that there was no disagreement on was ensuring the pristine nature of the property.

Mayor Labriola also stated that during the Executive Session, no decisions were made, and no actions were taken. The focus was on a course of action, settling on issuing a demand letter.

Mayor Pro Tem Heidingsfelder made a motion to request attorney Ross Appel draft a letter to the developer to please perform as required by the 2013 Amended and Restated Development Agreement related to Captain Sam’s Spit, specifically relating to Section 16(f), paragraphs 8 and 9, reiterating that the Town has the right not to allow a sale to a third party, as stipulated in Section 33. Council Member Belt seconded the motion.

Council Member Berner stated the decision was not hard, with all the Council on board protecting Captain Sam Spit.

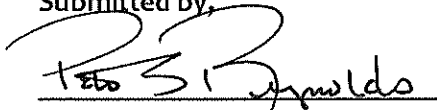
Council Member Belt stated this issue has been and will continue to be of critical importance to the community. Everyone's objective is to ensure that Captain Sam's Spit remains in the pristine condition as it is now, untouched and undeveloped. This is the appropriate first step in pursuing our legal obligations and rights under the terms outlined in the ARDA.

Following the discussion, the motion was unanimously approved.

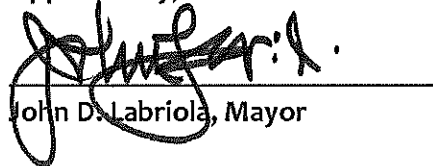
- VI. Council Member Comments:
None
- VII. Citizens' Comments:
None
- VIII. Adjournment:

Council Member Berner made a motion to adjourn the meeting at 10:18. Mayor Pro Tem Heidingsfelder seconded the motion, and it was unanimously approved.

Submitted by,


Petra S. Reynolds, Town Clerk

Approved by,


John D. Labriola, Mayor

3-11-2024
Date