

SPECIAL CALL TOWN COUNCIL

Municipal Center Council Chambers

December 19, 2023

Immediately following the Special Call Ways and Means

Minutes

I. Call to Order: *Mayor Labriola called the meeting to order at 9:40 am.*

II. Roll Call:

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

Attending Via Zoom: Brad Belt, *Committee Member*

Also Present: Stephanie Tillerson, *Town Administrator*
Dorota Szubert, *Finance Director*
Bruce Spicher, *Building Official*

III. Citizens' Comments (Agenda Items Only):

Maura McIlvain – 186 Blue Heron Pond Road

Ms. McIlvain commented on the proposed amendment to the Town Attorney Contract, stating that she was aware that the term of the current contract expires on December 31st and, if not terminated by that date, would extend from year to year, but thinks the 60-day notice is still relevant. She also responded to a comment that Mayor Pro Tem Heidingsfelder made at the end of the last meeting.

Alex Fernandez – 418 Snowy Egret

Mr. Fernandez indicated he would be commenting on the item listed under the Executive Session and that he was not speaking for the KICA (Kiawah Island Community Association) Board but would be expressing his beliefs and opinions as an individual KICA Board member and Kiawah homeowner.

Mr. Fernandez stated that he had read the sections of the Development Agreement that pertain to Captain Sam's Spit or Parcel 12b, and he believes that there are obligations that are yet to be fulfilled by Kiawah Development Partners under Section 16(f). KICA legal counsel agrees, and a public letter has been sent to the Partners. He asked that the Town Council take the necessary steps to ensure that Kiawah Development Partners comply with the conveyance to KICA as outlined in the Development Agreement.

Brad McIlvain – 186 Blue Heron Pond Road

Mr. McIlvain reiterated his earlier comment that obtaining a new attorney is an opportunity for this Council and stressed the importance of the attorney representing the entire Council. He noted that the attorney KICA hired was very experienced and knowledgeable and asked the Council to make sure they considered it. She also responded to a comment that Mayor Pro Tem Heidingsfelder made at the end of the last meeting.

IV. Old Business:

A. To Consider Approval of **Ordinance 2023-24** - An Ordinance to Amend Article 4, Finance and Taxation, Chapter 3, Municipal Business Licenses to Update the Class Schedule as Required by Act 176 of 2020 – **Second and Final Reading**

Mayor Pro Tem Heidingsfelder made a motion to approve the second and final reading of Ordinance 2023-24. Council Member Berner seconded the motion, and it was unanimously approved.

V. New Business:

- A. To Consider Approval of *Resolution 2023-06* - A Resolution for the Adoption of the Amended 2023-2024 Charleston Regional Hazard Mitigation and Program for Public Information Plan**

Mayor Pro Tem Heidingsfelder made a motion to approve Resolution 2023-06 to adopt the amended 2023-2024 Charleston Regional Hazard Mitigation and Program for Public Information Plan. Council Member Berner seconded the motion.

Mr. Spicher stated that the Charleston Hazard Mitigation Manual is actually just a compilation of the risk assessments and enforcement efforts in relation to floodplain management for all the jurisdictions within Charleston County. Each jurisdiction has its own subsection within the manual, which contains its action plan and status report. The status report is basically the risk vulnerability study, what we see on the island, and how we go about mitigating to minimize any floodplain issues. The action plan is how we go about that mitigation effort. Adopting the program doesn't require the Town to perform any studies, and there is no money involved other than that if the Town does not adopt the program, it will adversely affect the Town's CRS (Community Rating System) rating.

Mr. Spicher explained that as part of the CRS program, representatives from each jurisdiction meet quarterly to discuss a variety of topics and that within the manual, there are opportunities to receive credits toward decreasing the rating. The manual was reviewed by FEMA (Federal Emergency Management Agency) in March for content purposes, and any required amendments have to be made by the end of the year so that they can be attached to the manual and sent back to FEMA.

Mayor Labriola asked if the Town is obtaining the maximum number of credits. Mr. Spicher stated that other efforts could possibly be made for additional credits and that those would be presented at the upcoming Council Retreat. In March, a FEMA representative will be doing an audit of everything that the Town currently does and is proposing to do. The audit tabulation takes about a year to come up with a new CRS rating.

Council members discussed the earlier concerns, the kinds of changes made in the current updated version, whether there are any updates for the Kiawah Community, and if the Town's plan is in concert with the Community Association. Also discussed were some of the efforts and the events that will be included in the plan, the dated information currently on the Charleston County website, and that the 2023 update was not the new five-year plan.

Following the discussion, the motion to approve Resolution 2023-06 was unanimously approved.

- B. To Consider Approval of *Resolution 2023-07* - A Resolution for the Adoption of a Framework for Council Related to Matters Outside of Kiawah**

Mayor Pro Tem Heidingsfelder made a motion to approve Resolution 2023-06 to adopt a Framework for Council Related to Matters Outside of Kiawah. Council Member Berner seconded the motion.

Mayor Pro Tem Heidingsfelder stated that the members of the Council felt it was appropriate to give, at least the current Council, a little bit of a framework when, as a council, they may want to get involved in matters that are outside of their jurisdiction but do, under certain criteria, impact either the community or the sea Islands as a whole.

Mayor Pro Tem Heidingsfelder stated that the document gives members a framework or guidance when they feel they should consider getting involved and be heard. as we have been He provided the example of submitting letters to Seabrook when the Bohicket Marina expansion was up for a vote and also a letter recently submitted to the Charleston County Council relating to the Health and Wellness Village along Betsy Kerrison. This document should provide a framework for the community to understand under which circumstances the Council should get involved or under which circumstances the Council would want to have more input from the community on whether the Council should get involved. He clarified that the word “involved” meant just making a statement since it may be outside of the Council’s jurisdiction.

Following the discussion, the motion to approve Resolution 2023-07 was unanimously approved.

- C. To Consider Approval of the continuation of Joe Wilson as the Town Attorney for Three Months, Starting January 1, 2024, through March 31, 2024, at a rate of \$300/hour.

Mayor Labriola stated that the contract amendment was reviewed and discussed at the Ways and Means Committee meeting.

Mayor Pro Tem Heidingsfelder made a motion to approve the continuation of Joe Wilson as the Town Attorney for Three Months, Starting January 1, 2024, through March 31, 2024, at a rate of \$300/hour. Council Member Berner seconded the motion.

Council Member Belt stated that the only issue he would raise, and the reason he voted in the negative at the Ways and Means Committee meeting, was not with an extension for three months and hopefully providing some transition time, but that he did not see any basis for a 50% increase in the hourly rate that had just been negotiated a couple of months ago.

Following the discussion, the motion was unanimously approved.

VI. 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 move 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, and it was unanimously approved.

Mayor Pro Tem Heidingsfelder made a motion to move back into regular session. Council Member Berner seconded the motion, and it was unanimously approved.

Mayor Labriola stated that no decisions were made. and no actions were taken during the Executive Session.

Mayor Labriola stated that he was authorizing Joe Wilson, the Town Attorney, to pursue an interpretation of the ARDA (Amended and Restated Development Agreement) in accordance with the procedure set out in the ARDA.

VII. Council Member Comments:

Council Member Belt provided an update following the Charleston County Public Hearing on the Island Park Place development, also referred to as the Health and Wellness Village. The hearing was actually extraordinarily well attended. He spoke at the hearing along with a number of members of the Kiawah Island community, some in support and others in opposition. When speaking to the Council Members,

he noted, for the record, that they should have received the results of the survey and, at a high level, summarized it.

Council Member Belt stated that there was a fairly robust discussion of a wide range of issues, and he encouraged the council members to not only look at the high-level results, which showed that approximately 80% of respondents, nearly 900, opposed the Health and Wellness Village project as proposed per the application submitted. But looking through the respondents who actually provide additional narrative content, which was about half of the respondents, what really came through was both from the proponent as well as the opponent standpoint is that the people were not necessarily opposed to the concept of having more accessible Health Care Services on and around Kiawah Island, but it was with regard to the scope and scale of the particular project, as well as the range of permitted uses.

Council Member Belt stated that the upshot is that at the end, he noted that a process that had worked well to achieve a mutually beneficial outcome was for the developer to sit down and negotiate with key stakeholders what a project scale and scope might be acceptable, pointing to what happened with Riverstone. Several of the Council Members, including the Chairman, pushed the developer as to whether they would be willing and amenable to sitting down and coming up with a revised proposal, and the developer so indicated. As a result, the first reading that was scheduled for two days from now has been deferred or postponed till at least the January Charleston County Council meeting.

Council Member Belt stated in light of the executive session, so the community understands what is being talked about with respect to these various issues is to put into the record the December 4th letter we received from the KICA Board regarding the Sam Spit matter as it pertains to the ARDA the December 14th response from Kiawah Partners to that KICA letter, as well as a December 15th opinion received from Amy Armstrong the General Counsel and executive director of SCEL (South Carolina Environmental Law Project) regarding this matter.

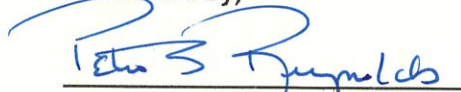
VIII. Citizens' Comments:

None

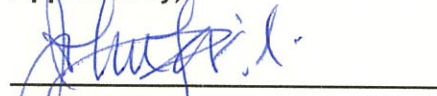
IX. Adjournment:

Mayor Labriola adjourned the meeting at 4:21 pm.

Submitted by,


Petra S. Reynolds, Town Clerk

Approved by,


John D. Labriola, Mayor

1-24-2024
Date

KIAWAH ISLAND
COMMUNITY
ASSOCIATION

December 4, 2023

VIA US Mail and Email

Kiawah Development Partners, LLC
Attn: Patrick Melton & Jordan Phillips
1 Kiawah Island Parkway
Kiawah Island, SC 29455

Re: Amended and Restated Development Agreement Requirements, Section 16(f)

Dear Mr. Melton and Mr. Phillips:

This letter is being sent to you in your capacity as representatives of Kiawah Development Partners, LLC and is sent on behalf of the Kiawah Island Community Association (KICA) Board of Directors. The purpose of this letter is to provide notice to the Property Owner, as defined in the Amended and Restated Development Agreement (ARDA), of certain obligations under Section 16(f) of the ARDA. This Section contains obligations and rights of the Property Owner with respect to the property known as Captain Sam's Spit or Parcel 12B. The property is further identified and incorporated as Exhibit 16.2 of the ARDA.

We direct your attention to the second and third to last paragraphs of Section 16(f) that provide the following obligations of the Property Owner:

On or before the Termination Date of this Agreement, Property Owner shall convey to KICA (for nominal consideration by quitclaim deed) such areas of highland depicted in light green and cream on Exhibit 16.2 as are then seaward (as to land on the ocean side of Parcel 12B) of the crest of the primary oceanfront dune, less only such areas/lots as may have been encumbered by easements or conveyed to third parties (e.g., lot owners, KICA, etc. pursuant to the authorizations hereinabove noted).

Prior to the Termination Date, Property Owner also agrees to restrict all remaining highlands not devoted to the uses or purposes authorized herein, to non-developable, passive green space by restrictive covenant recorded in the Charleston County RMC office. Property Owner shall grant an easement to KINHC (provided KINHC accepts) for any acreage not subject to Development, including such acreage as is to be conveyed, ultimately, to KICA.

As you are aware, the termination date of the ARDA is December 4, 2023. To date, KICA has not been provided any information concerning the Property Owner's intent to comply with the above-referenced requirements of Section 16(f). Notably, the ARDA does not provide any prerequisite or other limitation that Captain Sams's Spit must first be developed for the Property Owner to fulfill its requirements. It is KICA's expectation that the obligations of Section 16(f) of the ARDA will be performed by the Property Owner on or before the Termination Date. We ask that the Property Owner detail its position as to these respective obligations, both of which act to the benefit of KICA.

Sincerely,

KICA Board of Directors

cc: Amanda Mole, KP Chief of Architecture & Design and KICA Development Director
Stephanie Tillerson, Town of Kiawah Island Administrator
John Taylor, Town of Kiawah Island Planning Manager



December 14, 2023

KICA Board of Directors
Kiawah Island Community Association
23 Beachwalker Dr.
Kiawah Island, SC 29455

Re: ARDA – Captain Sams

Dear KICA Board Members:

I am writing to respond to the unsigned letter from the KICA Board of Directors to Kiawah Development Partners, LLC dated December 4, 2023. The letter states it is to “provide notice to the Property Owner, as defined in the Amended and Restated Development Agreement (ARDA), of certain obligations under Section 16(f) of the ARDA.” In particular, the letter refers to two excerpts from Section 16(f) and states that the Property Owner has not provided notice of its intent to comply with the quoted provisions of Section 16(f). The letter requests that the Property Owner respond with the details of its position with respect to the “obligations” that are asserted to be “for the benefit of KICA.”

Let me start by saying that we have been diligent in making sure the Kiawah Partners’ entities that were party to the ARDA fulfilled their conveyance obligations under the ARDA. In particular, KRA, LP recently conveyed to KICA all marshes and lowlands contiguous to Kiawah Island including those lands below mean high water and isolated lands above mean high water identified on Exhibit 16.1 of the Development Agreement, which are not specifically excepted in Section 16(a) and/or are identified as Parcels in Exhibit 4.1. That transfer completed the conveyance obligations of the Property Owner.

Turning to Captain Sams, KRA, LP and KDP II, LLC do not agree with KICA’s apparent interpretation of Section 16(f). KRA, LP gave up the right to develop a 325-room hotel immediately east of Beachwalker Park in return for the defined development rights on Captain Sams. Similarly, KRA, LP’s willingness to agree to the conveyance of the land seaward of the crest of the primary oceanfront dune to KICA *after* development was in return for receiving the benefit of the development described in the section. Despite its persistent efforts to realize that development, KDP, II, LLP was prevented from doing so. When all the terms of this section are considered together, along with the attached exhibit, the conclusion is inescapable that the entire provision contemplated that the development was to occur before the limited transfer to KICA, yet that development was made impossible by the courts.

We also must disagree with the assertion in the letter that Section 16(f) was intended for the benefit of KICA. It was intended for the benefit of the Property Owner. Section 30, titled "Third Parties," states: "Notwithstanding any provision herein to the contrary, this Agreement shall not be binding and shall have no force or effect as to persons or entities who are not Parties or Successors and Assigns to this Agreement."

We trust that we have sufficiently stated Kiawah Partners' position as requested by you.



Jordan Phillips
Partner

KIAWAH ISLAND
COMMUNITY
ASSOCIATION

December 4, 2023

VIA US Mail and Email

Kiawah Development Partners, LLC
Attn: Patrick Melton & Jordan Phillips
1 Kiawah Island Parkway
Kiawah Island, SC 29455

Re: Amended and Restated Development Agreement Requirements, Section 16(f)

Dear Mr. Melton and Mr. Phillips:

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