

TOWN COUNCIL
Municipal Center Council Chambers
November 7, 2023, 1:00 pm

Minutes

- I. Call to Order: *Mayor Labriola called the meeting to order at 1:00 pm.*
- II. Pledge of Allegiance
- III. Roll Call:

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

Also Present: Stephanie Tillerson, *Town Administrator*
 Joe Wilson, *Town Attorney*
 John Taylor, Jr., *Planning Manager*
 David Irwin, *Mauldin Jenkins*

IV. **Approval of Minutes:**

- A. Minutes of the Town Council Meeting of September 5, 2023

Council Member Heidingsfelder made a motion to approve the September 5, 2023, Town Council Meeting Minutes. Council Member Belt seconded the motion, and it was unanimously approved.

- B. Special Call Town Council Meeting of October 3, 2023

Council Member Heidingsfelder made a motion to approve the October 3, 2023, Special Call Town Council Meeting Minutes. Council Member Berner seconded the motion, and it was unanimously approved.

- C. Minutes of the Town Council Meeting of October 3, 2023

Council Member Berner made a motion to approve the October 3, 2023, Town Council Meeting Minutes. Council Member Heidingsfelder seconded the motion, and it was unanimously approved.

V. **Presentations:**

- A. MUSC – Dr. Patrick Cawley, CEO of MUSC Health System

Dr. Cawley stated that MUSC remains firmly committed to the vision of having 24/7, 365-day emergency care in the community. This project has been a long time coming; last December, after the realization that the original site would not work, the property next to Seafields was identified, and the donation of the property by Kiawah Partners was completed in late July. With that long process completed, the project is now gaining traction.

Dr. Cawley stated the concept of the project remains the same. On the site will be a 24/7, 365-day-a-year Emergency Department with ground and air transportation available, along with a traditional medical office building. The shape of the current property is square rather than rectangular, allowing for a slight reduction of the square footage and still maintaining each and every one of the services planned.

Dr. Cawley reviewed some of the work being done at this point.

- working through the Freshfields ARB approvals would begin with formal submission in the current week, followed by submission to the Town in early December. He noted that renderings would be released once the design gets the two approvals.

- working with the Town of Seabrook to resolve encroachment across the bike path during construction
- Kiawah Island
 - working with Town staff to include an emergency department as a permitted use
 - working with Town staff on appropriate signage
- submission for the OCR permit is expected in the current week

Dr. Cawley stated it was expected to take about six months to receive the OCR permit and begin construction. Construction is anticipated to take 13 to 14 months, beginning in May, with completion early to mid-summer 2025.

Council Member Heidingsfelder expressed concern that the zoning issue had not been resolved. Ms. Tillerson clarified there was no issue from the Town's standpoint in terms of zoning, and a zoning verification letter had been sent.

Council Member Heidingsfelder stated in addition to the MUSC emergency care and office facility, there is a Roper facility in Freshfields and a concept in development by Trident to build a full-fledged hospital on Maybank Highway, along with the proposed Health and Wellness Village on Betsy Kerrison Parkway. The Health and Wellness Village has been heavily debated, and many in the community are confused about what value it adds and where it fits in. Council Member Heidingsfelder asked Dr. Cawley for his opinion on whether there was a need or if it was becoming a competition. Dr. Cawley responded that he felt the market responding to the state legislature's repealing of the certificate of need, along with healthcare providers responding to the growth of Johns Island and Kiawah and Seabrook Islands. Health planning data shows the need is very high here and in other parts of John's Island.

B. Fiscal Year 2022/2023 Audit Presentation – Mauldin Jenkins

Mr. David Irwin, a managing partner with the audit firm of Mauldin Jenkins, gave a presentation on the Town's financial audit for the fiscal year ending June 30, 2023. He stated the purpose was to provide an overview of the independent auditor's report, highlight the financial statements, review the results of the compliance report issued in conjunction with the audit, provide the required auditing standards information, and discuss information auditing standards required to be communicated.

Mr. Irwin reviewed the following discussion points:

- **Audit Opinion**

The financial statements are the responsibility of the Town's management and members of the Town Council. Mauldin Jenkins, as external auditor, is to express opinions on these financial statements based on our audit. Mauldin Jenkins conducted the audit in accordance with governmental auditing standards and generally accepted auditing standards (GAAP).

- **Opinions**

Mauldin Jenkins has issued a clean or unmodified opinion on this year's audit report, which is the highest level of assurance that can be provided. The respective financial statements are fairly presented in all material respects in accordance with GAAP.

- **Compliance Report**

The Compliance Report or Yellow Book Report reports on the Town's internal controls and compliance with various state laws and regulations. Mauldin Jenkins has no audit findings to report or found no deficiencies or material weakness in the internal control during the audit.

Mr. Irwin stated that with all the new accounting standards that are being implemented each year and how complex the financial reporting process has become, it makes it all that more impressive to stand before you today and deliver the news that Mauldin Jenkins is issuing a clean opinion with no audit findings. He also commented on the work done by Ms. Szubert and her staff in preparing for the audit and accommodating the audit staff. He also commended the Audit Committee's engagement in thoroughly reviewing the financial documents and helping to oversee the audit process.

- **Financial Statements - ACFR**

An Annual Comprehensive Financial Report (ACFR) goes above and beyond the standard financial reporting required by accounting principles. The Town's ACFR was submitted to the Government Finance Officers Association (GFOA) and was stringently reviewed by GFOA professional staff along with a special Review Committee and deemed to merit the GFOA's Certificate of Achievement for Excellence in Financial Reporting award for the 19th year in a row.

- **Financial Statements – MD&A**

The purpose of the Management's Discussion and Analysis (MD&A) is to make it easier for a broader audience to understand the financial statements better. The MD&A provides a narrative explanation or summary of the activities that occurred throughout the year from the management's perspective, along with comparative information.

- **Financial Statements**

The presented financial statements included three components

- 1) government-wide financial statements
- 2) fund financial statements
- 3) notes on the financial statements.

During the discussion of the components of the financial statements, Mr. Irwin reviewed the assets, liabilities, revenues, expenses, and net position. He stated that the Town has a very healthy General Fund balance, pointing out that Kiawah Island does not impose a property tax and identified business licenses, building permits, and franchise fees as significant revenue sources.

Mr. Irwin stated that the footnotes, which disclose the Town's accounting methods and provide an expanded explanation of the financial activities throughout the year, showed no significant changes this year. He also reviewed the required communications:

- Clean Opinion and No Audit Findings
- We Received Full Cooperation from Management and Staff
- No Disagreements with Management
- No Significant Issues Discussed with Management
- No Uncorrected Misstatements
- We are Independent of the Town as required by Government Auditing Standards

Councilmember questions included comparing the Town's financial balance sheet to other luxury communities exposed to other weather risks, the process and methods used in testing compliance and internal controls, and the content reported in the MD&A.

VI. Updates:

A. Mayor

B. Council Members

Council Member Heidingsfelder spoke to his comment at the last Council meeting about his disappointment at not having a clear commitment from the Partners relating to the Upper Beachwalker parcels. There have been additional meetings since last week's Special Council meeting, but despite our best efforts to convince the partners to finally commit, they are sticking with their so-called dual path strategy. He again encouraged the Partners to make a final commitment to either developing these properties as the application submitted to the Planning Director states, or they will go with what is called alternative B, which is a far less dense, lower height building heights, lower number of dwelling units, a higher amount of impervious surfaces, more consideration to the existing tree canopy, larger setbacks, and substantial limitation for short-term rentals.

Council Member Heidingsfelder stated that over the past couple of weeks, there have been many community member conversations about the pending parking problem in the lower Beachwalker area, including the Timbers, the Cape, Parcel 13, and Duneside. Looking at the numbers, there is a substantial

parking problem in that particular area. He and Council Member Berner are concerned about safety and emergency access to those properties. He urged the partners to come forward and commit to resolving these problems.

Council Member Heidingsfelder also stated that the topic of construction traffic on Beachwalker Drive was also addressed with the Partners. An agreement needs to be reached on how to mitigate the traffic to the intersection at the Parkway and contribute financially to the resolutions.

Council Member Berner agreed with the comments made by Council Member Heidingsfelder on Beachwalker Drive. He met with the HOAs (Homeowner Associations) along Beachwalker Drive in the past week and discussed what has to be collectively accomplished in order to make Beachwalker less crowded, dense, and uncomfortable.

Council Member Berner stated that the next day, he met with Mr. Mark Permar and stressed to him that it is not just the density, it is not just the parking, and that any of these future developments have to incorporate a resolution of everything. In order to get this thing fixed, we have to have everybody, not just the Town, at the table, get all of the puzzle pieces together, and collectively come up with a resolution. It cannot be done in a patchwork kind of method.

Council Member Belt picked up on some of the points that Council Members Heidingsfelder and Berner raised. He indicated that representatives of the HOAs that are most directly impacted by Beachwalker developments are in attendance and expected to make comments. A meeting is also scheduled this week with the Partners, Mark Permar and Jordan Phillips, at which HOA representatives will hear from the Partners what they initially propose in terms of a PDD (Planned Development District) and then, as Council Member Heidingsfelder outlined, all of the issues that need to be resolved or addressed before there is an agreement. The process that has been discussed is very similar to what transpired for the Andell West project, in which the most affected community member sits down with the developer and tries to reach an agreement accommodation on a plan or path forward that works for all. That process seems constructive right now, and hopefully, it continues.

Council Member Belt stated that significant issues have been belatedly recognized in terms of addressing general traffic congestion issues, parking congestion, and stresses on infrastructure that suggest that a step back may need to be taken to get a handle on how all this fits before we do any further development.

Council Member Belt stated he was not sure most people appreciate how profound the parking situation is going to be in the Timbers, Cape, and Ocean Pines development, providing a detailed outline of the parking spaces designated to each development and the shortfalls in the allowance for service providers, staff, and visitors parking. He stated that a single external lot of 31 spaces is planned to handle all the overflow from Timbers, all the visitors and guests of Cape residents, all the visitors and guests of the Ocean Pines residents, and all the Cape Club users and staff of those facilities. With the numbers not adding up, the question becomes where those people are going to park. The pressure will be on Duneside and Greens Lake communities, where people will park on the streets or come in and then have to turn around even though there's really not any place to turn around. It will be an unmitigated disaster, even before considering what will be developed on the old Kiawah Island Inn site. This must be figured out because we are at a breaking point now, and it will only worsen.

Council Member Belt stated he wanted to bring to everyone's attention that the proposed Health and Wellness Village just on Betsy Kerrison is going before the Charleston County Planning Commission on November 13th. He encouraged the community to engage and let the Charleston County Planning Commission know of your views. He noted that there was a meeting at Town Hall that was hosted by the developer and was very well attended, with some people being supportive, some opposed, and some supportive but had questions or concerns about the scope and scale of the project and if the best place was along Betsy Kerrison Parkway. He noted that the Charleston County Planning Commission staff recommended disapproval of the proposal. In their view, it's incompatible with the surrounding uses,

notwithstanding the fact that it's inside the urban growth boundary. His principal concern is that the proposed uses are fairly expansive, including general office and general retail, and could become problematic because of how the PDD is drafted. If the developer does not go forward with the plans as presented, they also have the right to sell off or subdivide the parcels, and whoever acquires that can use that by right not necessarily to build out a Health and Medical Village but to do general office development and general retail.

Council Member Belt stated that he and Council Member Heidingsfelder had been working with KICA Board members David DeStefano and Kevin Donlin and other community members on the ARB task force over the summer and the fall. A draft of the Phase 2 report is being finalized, and it is the hope and expectation that the report will be able to be sent to the community after Thanksgiving and then a community meeting thereafter for additional input.

C. Administrator

VII. Citizens' Comments (Agenda Items Only):

Maura McIlvain – 146 Blue Heron Pond Road

Mr. McIlvain spoke to Item C under Old Business, the second reading of the ordinance, which relates to changing the Mayor Pro Tem's term in office. She noted that state statute 5-7-190 limits the term of a Mayor Pro Tem in the state of South Carolina to two years and would encourage the Council not to pass the ordinance. For the record, she read the statute, "immediately after any general election for the municipal Council the council shall elect from its membership a mayor pro temporary for a term of not more than two years." The Council is appointing a Mayor Pro Tem, not after a general election, and encouraged the Council to look into the statute.

Lisa Snowden – 39 Inlet Cove

Ms. Snowden stated that she and others have pleaded with decision-makers to ensure that further development of Beachwalker is completed in a strategic, collaborative, and holistic way that addresses density, design with nature, traffic, environmental impact, and compliance with all regulations.

At the beginning of the process, she participated in drop-in meetings with council members, finding them engaged in understanding the community's concerns, sat in Planning Commission meetings where public opinions were solicited and heard, watched Mr. Taylor and Administrator Tillerson demonstrate competence and commitment in helping to understand rather complicated zoning codes and witnessed the Planning Commission reach consensus on a measured and thoughtful recommendation to the Town Council. She trusted the process and the integrity and competence of the people involved. Then, at the October 24th Town Council meeting, the expected first reading of the Beachwalker rezoning ordinance was removed from the agenda without explanation despite very clear public support for the planning commission's recommendation. After that meeting, she struggled to understand, and the earlier trust was replaced with deep skepticism and disappointment.

Ms. Snowden requested answers to the following questions to ensure that there is no impropriety in this process.

- 1) Why is time of the essence, and who benefits from rushing to approve the site plans
- 2) Who approved the site plan for the Cape despite insufficient parking, and what is the remedy for that violation
- 3) What is the status of the engineering study that is looking at stormwater runoff and erosion
 - how was that engineering firm selected
 - what's the scope of their study
 - how will they assess the impact on adjacent neighborhoods and
 - how will the community learn the results
- 4) Who is Consulting with the biologist studying Bobcats to understand the impact of proposed development on their habitat

- 5) What controls are in place to ensure that all approvals are compliant with all regulations
- 6) Do any Commissioners, Council Members, Town staff, or their family members have any equity holdings, shares, or financial relationships with any of the Kiawah Island developers or their LLC, and have all of these relationships been disclosed?

Ms. Snowden stated that these were not rhetorical questions, sincerely wanting to hear their answers to restore confidence in both the process and the integrity and competence of the people involved.

Alex Fernandez – 418 Snowy Egret

Mr. Fernandes stated that he was not representing the KICA Board but himself as a homeowner and permanent resident of Kiawah Island. He stated that the original developers and planners of Kiawah Island had one concept in mind: to design with nature, and homeowners today respect that concept. In the last couple of years, when looking at the Cape and the Timbers, one questions if they respected the concept. He stated that the plans for the Ocean Pines that had been submitted for approval were not designed with nature and asked those authorizing the plans not to forget the concept.

Denise Klizek – 86 Belmeade Hall – Inlet Cove HOA Board Member

Ms. Klizek stated the efforts of the Planning Commission were appreciated and would like the Town Council to accept the new zoning recommendations. She noted that the 2-lane road Beachwalker Drive cannot be expanded and is treacherous to cross to go to the beach. She urged the Council to take the Planning Commission's recommendations, address nature, and help the community they represent.

Mark Permar – 81 Dungeon Hall

Mr. Permar stated that he was representing Kiawah Partners and their comments on the agenda items. He stated that independent of the expiration of the Development Agreement on December 4th there was an opportunity to do the best for the greater community, and we were looking forward to the session with Community thought leaders in nearby properties this coming Friday and expect to continue that dialogue with more people involved.

Mr. Permar provided detailed comments on agenda items relating to the recommended zoning classifications to be considered by the Council, referring to issues involving the removal of the commercial classification and zoning changes resulting in the potential for non-conforming structures.

Mr. Permar pointed out that beginning about ten days ago, he had been religiously going by every one of the parcels under consideration in the morning and at the end of the day. No signs about this activity have been posted publicly, which is required during rezonings. He encouraged the continuation of the process, especially along Beachwalker, to ensure that the greater community is engaged.

Council Member Heidingsfelder asked for clarification on Mr. Permar's comments on the Planning Commission's proposal for parcels 8, 9, and 10. He also expressed his disappointment that there was no commitment to parking and traffic. Mr. Permar stated the Partners were looking forward to collaboratively addressing parking issues and traffic issues and, on the traffic issue side, not just long-term traffic but interim conditions like construction activity.

Council Members, along with Mr. Permar and Ms. Tillerson, engaged in an in-depth discussion of the shortfall in parking spaces, the calculation of the potential shortfall in parking spaces, and a commitment from the Partners to resolve the problem.

James Wilson - Representing East West Partners developer of the Cape

Mr. Wilson apologized for being late to participate in this process, but we really just became aware of it. He was brought in to see how the proposed rezoning would impact East-West and, more importantly, our new homeowners. He confirmed that the East-West Partners team was providing information to the

Town for parking calculations and would be very glad to sit down with the Town; we obviously want to make sure that the project is in compliance.

Mr. Wilson explained that the Cape has two components: the residential component and the club component. The approval process for the project began in 2019. This project's specifics came to the Town Council in 2019 and were approved. The plans then went through site plan approval through building permitting, and the project has been under construction and is very close to completion. Even though it is very unusual, changing the zoning during construction does not change the fact that the approvals are vested rights and that construction will continue until completion. A municipality has provisions for legal non-conforming uses rights that say you're allowed to continue to use those structures and those uses, and if they're damaged, you can restore them. That's normal, so from that perspective, legally, the rezoning really should not change anything about the Cape. The reason we are here is to make sure it's clear to everyone, the Town, the Town Council, and with staff, everybody, that this is the common understanding. Because it's really unusual to rezone property mid-construction, we wanted to be here today to be on the record and to emphasize that point.

Miller Harper - East West Partners

Mr. Harper stated that it was painful to hear the frustration and the comments that several of you have had about the Cape. East-West Partners have spent many thousands of hours working on this with the community, hiring the best Architects, designers, and planners to work on it with us.

Mr. Harper said this hit his radar on Friday afternoon, so they were reacting quickly, trying to ensure they understood the implications and impact on them and our homeowners. He stated that he was never notified and never got a letter, and even though he went out to our property every week, he never saw a sign that said that this was happening.

Mr. Harper stated that the complete project plan was presented to the Town Council in August 2019, with many people in the room who unanimously supported the plan.

At this time, we have to speak on behalf of the new owners as well as our behalf. In effect, this could impact them, and we have to understand that impact, so we would ask you, given that we really are just getting our hands around this, that you slow it down just for a moment.

VIII. Old Business:

- A. To Consider Approval of Ordinance 2023-17 – An Ordinance to Amend the Town of Kiawah Island Comprehensive Plan – Land Use Element – Future Land Use Categories and Comprehensive Plan Map IX.2, Future Land Use; to Change the Future Land Use Designation for the Subject Properties (TMS# 207-00-00-040; 265-16-00-159; 265-16-00-160) from “Medium Density Residential” to “Active Recreation and Open Space.”- Second and Final Reading**

Mr. Taylor stated that with the expiration of the 2013 Amended and Restated Development Agreement, a number of parcels are being considered for rezoning. Parcels TMS# 207- 00-00-040; 265-16-00-159; 265-16-00-160, currently located in Ocean Park, are zoned R2, and their Future Land Use Destination is Medium-Density Residential. The request is that they go from that designation to Active Recreation and Open Space for the Future Land Use Destination and to Parks and Recreation for the Zoning Designation. Those come with recommendations from the Planning Commission.

Council Member Heidingsfelder made a motion to approve the second and final reading of Ordinance 2023-17 to Change the Future Land Use Designation for the Subject Properties (TMS# 207-00-00-040; 265-16-00-159; 265-16-00-160) from “Medium Density Residential” to “Active Recreation and Open Space.” Council Member Belt seconded the motion, and it was unanimously approved.

- B. To Consider Approval of Ordinance 2023-18 – An Ordinance to Amend Chapter 12 - Land Use Planning and Zoning, Article II. - Zoning, Division 2. - Zoning Map/Districts, Section 12-62. –Zoning Map by Rezoning the Properties (TMS# 207-00-00-040;265-16-00-159;265-16-00-160) from “R-2 Residential” to “Parks and Recreation - **Second and Final Reading**

Council Member Heidingsfelder made a motion to approve the second and final reading of Ordinance 2023-18 Rezoning the Properties (TMS# 207-00-00-040;265-16-00-159;265-16-00-160) from “R-2 Residential” to “Parks and Recreation. Council Member Berner seconded the motion, and it was unanimously approved.

- C. To Consider Approval of Ordinance 2023-19 - An Ordinance to Amend the Town of Kiawah Island Article 2, General Government and Administration, Chapter 2 – Municipal Council, Section 2-205 – Mayor Pro Tempore – **Second and Final Reading**

Mr. Wilson confirmed that the state statute limited the term to no more than two years.

Council Member Belt moved to table Ordinance 2023-19 – amending the term of the Mayor Pro Tempore. Council Member Heidingsfelder seconded the motion, and it was unanimously approved,

IX. **New Business:**

- A. To Consider Approval of the Appointment of the Mayor Pro Tempore

Mayor Labriola made a motion to appoint Council Member Heidingsfelder as Mayor Pro Tempore. Council Member Berner seconded the motion.

Council Member Belt raised the question of whether there is a process for filling the vacancy of the Mayor Pro Tem position other than as provided in that same statute and, given the language, if procedurally, this is the appropriate way to do that.

Council Members discussed the question and the suggestion to add something to the Town ordinance that provides a mechanism for filling the vacancy.

Following the discussion, the motion was unanimously approved.

- B. To Consider Approval of the Re-Appointment of Sanford Ain as Municipal Chief Court Judge

Ms. Tillerson stated that Judge Ain requested the Council to consider a reappointment to a four-year term.

Council Member Heidingsfelder made a motion to reappoint Sanford Ain as Municipal Court Judge for a four-year term. Council Member Berner seconded the motion, and it was unanimously approved.

- C. To Consider Approval of the 2024 Ways and Means and Town Council Meeting Dates

Council Member Berner made a motion to approve the 2024 Ways and Means and Town Council meeting dates. Council Member Heidingsfelder seconded the motion, and it was unanimously approved.

- D. To Consider Approval of Ordinance 2023-20 – An Ordinance to Amend the Town of Kiawah Island Comprehensive Plan – Land Use Element – Future Land Use Categories and Comprehensive Plan Map IX.2, Future Land Use; to Change the Future Land Use Designation for the Subject Parcels Within the 2013 Amended and Restated Development Agreement – **First Reading**

- E. To Consider Approval of Ordinance 2023-21 – An Ordinance to Amend Chapter 12 - Land Use Planning and Zoning, Article II. – Zoning, Division 2. - Zoning Map/Districts, Section 12-62. – Zoning Map by Rezoning the Specific Parcels Within the 2013 Amended and Restated Development Agreement – **First Reading**

Mr. Taylor stated that the parcels are being requested to be rezoned to establish a base zoning District essentially at the expiration of the 2013 amended and restated development agreement and come as recommendations from the Planning Commission.

Mr. Taylor highlighted each of the zoning, the future land use, and the zoning classification recommendations for each parcel.

Upper Beachwalker

- Parcels 8, 9, and 10
 - Proposed Future Land Use: Medium-Density Residential
 - Proposed Zoning: R-2, Residential

- Parcels 11 – Beachwalker Lagoon
 - Proposed Future Land Use: High-Density Residential
 - Proposed Zoning: R-3, Residential

- Former Church Parcel
 - Proposed Future Land Use: High-Density Residential
 - Proposed Zoning: R-3, Residential

Lower Beachwalker

- Parcel 13 (lot 1)
 - Proposed Future Land Use: High-Density Residential
 - Proposed Zoning: R-3, Residential

- The Cape
 - Proposed Future Land Use: High-Density Residential
 - Proposed Zoning: R-3, Residential

- The Timbers
 - Proposed Future Land Use: High-Density Residential
 - Proposed Zoning: R-3, Residential

Mr. Taylor stated that Parcel 12 is split within the 2013 Amended and Restated Development Agreement. He noted for the record that these particular parcels are shown as two separate categories but are identified as one TMS number.

- Parcel 12a - Beachwalker Park
 - Proposed Future Land Use: Medium-Density Residential
 - Proposed Zoning: R-2, Residential

- Parcel 12b - Captain Sam’s
 - Proposed Future Land Use: Low-Density Residential
 - Proposed Zoning: R-1, Residential

- Parcel 16 – The Settlement
 - Proposed Future Land Use: Low-Density Residential/Active Recreational and Open Space
 - Proposed Zoning: R-1, Residential – Parks and Recreation

The Planning Commission recommended a text amendment to the use table and conditions of uses within the PR category to clarify that the existing uses associated with a personal service improvement related to the spa are included as a condition of use.

- Parcel 41 – Osprey Beach
 - Proposed Future Land Use: Low-Density Residential/Active Recreational and Open Space
 - Proposed Zoning: R-1, Residential – Parks and Recreation

Mr. Taylor stated that not on the spreadsheet are the remaining lots in Ocean Park, which are designated R2 classification for Ocean Park, and then the pr category for the open space, and as mentioned earlier, consideration could be taken to remove the Marsh House property and rezone that to PR as requested by Property Owners from the HOA.

Mr. Taylor also stated that the Town received several public comments that the Council should have received via the online portal and wanted to make sure that those were part of the record as well.

Council Member Berner made a motion to approve the first reading of Ordinance 2034-20 and Ordinance 2023-21. Council Member Heidingsfelder seconded the motion.

Council Member Heidingsfelder asked if it would be the right process to send the Marsh House and the other properties in Ocean Park back to the Planning Commission for review and recommendation for re-zoning those parcels as they have done previously. Mr. Taylor agreed that the additional dialog would not hurt.

Council Member Heidingsfelder asked for clarification on why the Planning Commission recommended Parcel 12b - Captain Sam's to have the Low-Density/R1 designation rather than the staff recommendation of Parks and Recreation. He noted that the SC Supreme Court ruled there could be no residential development allowed on Captain Sams.

Mr. Taylor stated that if that parcel wanted to be developed, it could be. It's just a road component that prevents access to that parcel. During their discussion, the Planning Commission factored into the recommendation of existing land use patterns, existing future land use, and all of those legal implications landing back on the R1 residential component. From the staff's perspective, based on all those factors, he believed that that would be the most appropriate based on its current state.

Council Member Belt proposed minor changes to the language of Ordinances 2023-2 and 21. The third "whereas" clause states, "the Town also adopted Ordinance 2013-15" should read Ordinance 2013-14.

Committee Member Belt stated he wanted to make a couple of General comments. This is more for the public record and to address some earlier comments that were made during the Citizens' Comment period.

Being undertaken are zoning changes that change zoning classifications that have existed under the Amended and Restated Development Agreement. His view, for the record, is that the Planning Commission undertook a very extensive review and provided a very rational basis for making the zoning changes they did. For the record, he would note that the four "C"s that are relevant to this analysis and discussion were considered.

The first is *Compatibility*, that what the Planning Commission has recommended with regard to each of these parcels is, in fact, compatible with the surrounding adjacent residential properties; I might have wished that the Planning Commission would even gone a little bit further, but the surrounding parcels particularly Beachwalker parcels are all, with the exception of Timbers and the Cape, one-story, two-and-one-half story or two-story single-family residential developments.

Second, the Planning Commission's recommendations are *Consistent* with the Comprehensive Plan. I will quote from the Comprehensive Plan on page 15: "That low-density development that is being designed in harmony with nature is consistent with the Town's Vision while tall, massive buildings are inconsistent because they dominate the landscape rather than blending in and meshing with it. Large homes, hotels, and other large buildings should be located on large parcels or lots and should be set back from property lines to reduce their visual impact from streets, the beach, other open space, and neighboring lots."

The third thing I would note for the record, which has actually been brought up on a number of occasions, is what underpins some of these changes in zoning classifications in some cases from a dual, an optional RC to just R, is changed conditions. The zoning standards and zoning classifications that were embedded

in the Development Agreement go back multiple decades. What we now realize is while those zoning standards may have worked for the first 20 or 30 years of the Island's existence, for the last decade or so, we have shown the adverse impacts of what was then planned as higher-density development, particularly in the West End. We have seen an increase in pressure on infrastructure, on our amenities, and in terms of traffic conditions. So, changed conditions have warranted the Planning Commission's recommendations and will underpin my vote with regard to the Planning Commission's recommendations.

The fourth "C" is *Community Support*. We clearly had overwhelming community support; I dare say unanimous community support, not only at Planning Commission recommendations but also at Council meetings and the dozens of comments received through their portal and sent directly to Council Members. For all of those reasons, I would argue that there's a substantial basis for the Town.

The Council will accept the Planning Commission's zoning recommendations, and there is a rational basis for the Town Council to approve those. In fact, there is no issue presented of a "taking" that was a declarative statement that communities routinely rezone or down zone, and there has to be a rational basis for them doing so, and I believe that the Planning Commission has established that rational basis.

Council Member Heidingsfelder asked what the Planning Commission vote was on Parcel 12b – Captain Sam's—the motion passed by a 4 to 3 vote.

Committee Member Heidingsfelder stated that the fact here is, for the record, it was not a 7 to 0 vote; there were clearly Commissioners that would have liked to make the change in the zoning, is my understanding, and that should be an indication enough for us to really look at the Comprehensive Plan again when it's done, and then follow one of these criteria of compatibility or consistency again.

Following the discussion, the motion to approve the first reading of Ordinance 2034-20 and Ordinance 2023-21 was unanimously approved.

F. To Consider Approval of Ordinance 2023-22 – An Ordinance to Amend Chapter 12 - Land Use Planning and Zoning, Article II. – Zoning, Division 3. – Use Regulations, Section 12-103. – Conditions Of Use - First Reading

Mr. Taylor stated the ordinance is an amendment to Section 12-13 - Conditions of Use. As alluded to in the previous zoning amendment, this was a recommendation by the Planning Commission to look at the uses conditionally used by right within the Settlement area based on the spa. It is a small form text amendment that would ensure that the uses that are allowed today are conditionally used within that area as it is part of the inside of an enclosed building.

Council Member Berner made a motion to approve the first reading of Ordinance 2023-2. Council Member Heidingsfelder seconded the motion.

Following discussion, the motion was unanimously approved.

G. To Consider Approval of Ordinance 2023-23 – An Ordinance to Amend Chapter 12 - Land Use Planning and Zoning Ordinance Pursuant to Existing Ordinance 2013-14 to Remove the 2013 Amended and Restated Development Agreement from the Zoning Code as an Appendix –First Reading

Mr. Taylor stated that the final component of the order amendments is the ordinance removing the 2013 Amended and Restate Development Agreement as an appendix from the zoning code. He noted two things that will also happen as part of this amendment. The 2013-14 amendment also essentially created the zoning classifications for the Freshfields Plan Development, so as part of this ordinance, the zoning standards for the Freshfields Retail Village are retained. Another component is that there are a number of parcels that are being recommended to retain their setbacks to prevent complications. Section B highlights a list of those parcels showing exactly the property setbacks that will remain in place. The final

component is all of the amendments that have been made; sections D and E reaffirm those new zoning classifications based on attaching the actual zoning map of those classifications to this exhibit.

Council Member Belt made a motion to approve the first reading of Ordinance 2023-23. Council Member Berner seconded the motion.

Council Member Belt reviewed the minor language changes he proposed to the ordinance.

Council Member Belt spoke to a broader point he has mentioned a couple of times. You will not find any reference to the ARDA (Amended and Restated Development Agreement) anywhere in any appendices. Still, the Town Attorney has opined that it is, in fact, part of our Town's ordinances, so it is critically important now that the termination agreement that we correct what was probably a mistake in the first place for a couple of reasons. One, we do not want to continue the terms of the development agreement past the life of the development agreement, which would be inconsistent with the intent of the state development agreement statute. Secondly, if the entirety of the Development Agreement is part of our Town's ordinances, that means all the exhibits, there too, which include Designing with Nature and the graphic standards, then we are in the uncomfortable position of having had a private third party administering and enforcing Town ordinances. So, I would encourage my colleagues to approve passing this ordinance for those reasons.

Council Member Heidingsfelder stated that just for clarity and for the record, nowhere else in that little book is now a reference to the ARDA, 2013-14 is the only reference to the development agreement, and if there had been a thorough check, double and triple check made of all the other ordinances that there is not another reference to 2013-14 or the ARDA, etc. that may have been missed.

Council Member Heidingsfelder stated that in the planned development for Freshfields, specific uses are permitted that cause concern and many of us would disagree with them. Since there may come a time when Andell West comes under Town jurisdiction, it would be a good time to review or have the Planning Commission again review all these permitted uses and clean out some of the things that we may have made by error and discuss maybe make some changes. Mr. Taylor stated that at the next retreat, an RFP would be presented to look at the entire zoning code, and the review of the entire use table had already been built into it. There has not been a cleanup of the entire code since I have been working with Kiawah, and it is important that we look at all standards that would be part of that project.

Council Member Belt noted that those uses are not conditional or special exceptions; they are all permitted by right. He also noted that looking at the Freshfields PDD for fresh was part of the conversation with Riverstone, the Andell West developer; some of those permitted uses had been removed in the Andell West PDD that is before Charleston County right now.

Following the discussion, the motion was unanimously approved.

X. Council Member Comments:

Council Member Heidingsfelder spoke to an earlier comment that the Town has not complied with its notification regulations for these zoning changes, with no signs and no letters to owners.

Mr. Taylor stated that the Planning Staff sends out letters to notify property owners whether or not every property owner received one is based on the address in the records for Charleston County. As for signs, while it is not normal for Kiawah, staff have previously had signs removed by construction contractors.

Mr. Taylor stated that, in this instance, it would be his recommendation to hold a second public hearing to ensure clarity. Ms. Tillerson confirmed that a second public hearing could be scheduled for the 14th, along with the second reading of the ordinances. She noted that the letter that was sent was dated September 22nd.

Council Member Heidingsfelder confirmed that the Town fulfilled its obligation to notify owners of those different properties as well as we could. That a letter obviously did not reach East-West could be because either it ended up in the wrong department or the address was wrong.

Council Member Heidingsfelder encouraged the community to please go to the Charleston County Planning Commission meeting on Monday, November 13th at 2:00. It is important that our Sea Island communities appear in person to make clear their feelings and/or concerns about the Health and Wellness Village project that is supposed to go up along Betsy Carrison Parkway.

Council Member Belt stated that if you cannot attend in person, you can send comments to the County Planning Commission. The email information and instructions on how and where to send those comments can be found in a link from the John's Island Task Force. If comments are sent to your representative in the County Council, they will not be counted. The closing for public comments is Thursday at 5:00 pm.

Council Member Berner reminded the community that the next Community Drop-In meeting with himself and Council Heidingsfelder would be at the Sandcastle on Wednesday afternoon.

Mayor Labriola thanked East West for attending the meeting and apologized that they did not receive the notification. He felt it necessary to state that no one is under the payroll, no one owns stock in the Partners, and no one is getting anything from anybody, but he thought it was interesting to note that in 2018 and 2019, there was probably a room full of people who supported these projects and how things have changed from 2018/2019 to 2023. Right, wrong, or indifferent, things have changed.

XI. Citizens' Comments:

Peter Marks – Victory Bay Lane

Mr. Marks thanked the Council for approving the re-zoning of the three Ocean Park parcels from R2 to Park and Recreation. The homeowners have identified three remaining parcels that remain zoned R-2. With the rezoning of the parcels going back to the Planning Commission for review and recommendation, he asked when the ordinance can expect its first reading. Mr. Taylor said it would be after the first of the new year.

Lisa Snowden – 39 Inlet Cove

Ms. Snowden thanked the Mayor for the answer to question number six but reminded the Council that she said her questions were not rhetorical and asked when and how in this process she might expect answers.

Mayor Labriola stated that he thought they were very good questions. Ms. Tillerson indicated that she had noted all the questions and that the answers would be emailed to Ms. Snowden.

John Connelly – 1020 Scalp Court

Mr. Connelly wanted to take this opportunity since the East-West partners are here to let them know that they really need to focus on this parking issue because it is going to impact all of the owners at the Cape, and it is going to be a fiasco if nothing is done to fix it.

Mr. Connelly also stated he wanted to make sure that East-West was aware that five years ago, there was an agreement between the Community Association and the Partners restricting the use of Duneside Road. Part of that is that deliveries and services to the Club are not to be done through Duneside Road.

Kelly Satch – Nicholas Lane

Ms. Satch spoke to the State Accommodation Tax Committee (SATAX). The Council votes on the appointment of the members in January, and the seven committee members are one town member and

two residents, and the four are commercial members, the Partners, the Resort, the Andell Inn, and Akers Ellis. She stated that with 72% of accommodation tax revenue coming from short-term rentals, why are individual residents not part of the SATAX Committee?

Council Member Heidingsfelder, Belt, along with Ms. Tillerson, discussed and responded to some of the points made by Ms. Satch.

Council Member Heidingsfelder stated he would be chairing the SATAX Committee meeting taking place in two weeks, and afterward, he would be better able to address Ms. Satch's comments. He also stated he would certainly make sure that all the different aspects are looked at when we have to reappoint in January.

David DeStefano – 32 Burroughs Hall Road

Mr. DeStefano commented on the parking issue, stating that a lot of people had contacted him about the memorandum of understanding (MOU). He stated that after reading it in detail, he found the agreement ambiguous. He provided details of his research and pointed out the contradiction between the written agreement and one of the drawings included with it.

Council Member Belt and Council Member Heidingsfelder provided detailed responses to Mr. DeStefano's comments.

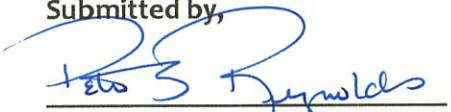
Mark Permar – 81 Dungeon Hall

Mr. Permar once again spoke to the lack of public notice and the need to do a better job.

XII. Adjournment:

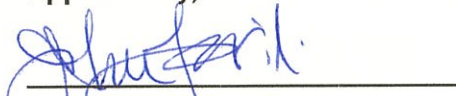
Mayor Labriola adjourned the meeting at 4:31 pm.

Submitted by,



Petra S. Reynolds, Town Clerk

Approved by,



John D. Labriola, Mayor

1.24.2024
Date