

SPECIAL CALL TOWN COUNCIL

Municipal Center Council Chambers

October 24, 2023; 1:00 pm

Minutes

I. Call to Order: *Mayor Labriola called the meeting to order at 1:00 pm.*

II. Roll Call:

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

Absent: John Moffitt, Mayor Pro Tem

Also Present: Stephanie Tillerson, Town Administrator
Joe Wilson, Town Attorney
John Taylor, Jr., Planning Manager
Brian Gottshalk, Public Works Manager

III. Public Hearing:

- A. **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 - Public Hearing**
- B. **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 - Public Hearing**
- C. **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 - Public Hearing**
- D. **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 - Public Hearing**

Council Member Heidingsfelder motioned to open the Public Hearing. Council Member Berner seconded the motion, and it was unanimously approved.

Mr. Taylor stated that the expiration of the 2013 Amended and Restated Development Agreement (ARDA) expiration coming up in December of this year. As part of that expiration, staff have recommended several parcels within the ARDA to be rezoned. As part of the process, the staff recommendations were presented to the Planning Commission and discussed in several workshops and meetings. The recommendations made by the Planning Commission for Council consideration are presented in the provided materials.

Mr. Taylor reviewed a spreadsheet that showed each of the parcels, their existing future land use and zoning, designation, and the future land use designation and zoning category recommended by the Planning Commission.

Lance Spencer – 40 Sunlet Bend

Mr. Spencer spoke for the residents/homeowners in the three adjacent communities, who have all come together asking for consistent development with the surrounding developments. He also reviewed some of the issues or concerns he felt needed further consideration even after a decision was made.

John Fly – 102 Inlet Cove

Mr. Fly spoke to his skeptical view of the process by which policy decisions are made, but he felt the public comments made to the Planning Commission had been given due consideration and was also encouraged by the interaction between the Commissioners and Planning staff.

Greg Darus - 100 Belmeade Hall Road

Mr. Darus stated that he recognized that his wish to see the three properties rezoned even lower density and height limits was impractical, so he encouraged those involved to hold the developments to the laws and ordinances applicable without variance or amendment to the proposed zoning.

Linda Lefler – 60 Sunset Bend, President of the Inlet Cove HOA

Ms. Lefler stated that representing Inlet Cove, Riverview, and Kiawah Island COA, the group was 100% behind the Planning Commission's recommendations and, having come to a good compromise, wanted to see them passed.

Steve Horgrele– 77 Pepper Vine, Inlet Cove

Mr. Horgrele stated that while development along Beachwalker development is inevitable, he would like the same consideration given to other parts of the island, asking that it be developed along the same guidelines that the rest of the island's development and giving the R2 and R3 designation and not accepting the mixed-use designation.

Sherry Gallagher – 119 Spartina Court

Ms. Gallagher stated she did not live in Sparrow Pond or Inlet Cove; but as an island neighbor, understands and supports those communities and the desire to not have any more development than is absolutely minimally possible.

Mark Permar – 81 Dungannon Hall

Mr. Permar stated that he was representing Kiawah Partners, who owned several of the parcels under consideration. He provided comments on the recommendations made by the Planning Commission on each of those parcels listed on the spreadsheet, along with any recommendations based on the Partners' perception of Planning and Vision.

Mr. Permar expressed his concerns on the following:

- approval of the PC recommendations would further increase the number of non-conforming structures and dwelling units
- it was understood that there should be adjustment and reflection, but it should be progressive in thinking, not regressive
- the implication was that we (Kiawah Partners) were supporting this
- we (Kiawah Partners) support better planning, but this is regressive. We have to be better and can be better than what's represented here

- during the series of three Planning Commission workshops, there were public and commissioner comments made, but there was no exchange or cross-referencing, and there were zero comments made about the non-conforming aspects

Mr. Permar stated that his recommendation on behalf of the Partners is certain areas should be considered for different zoning classifications than what they are, certain areas in which there should not be an increase in density. We're ready to try to find a path together to find better planning.

John Grierson – 109 Bobcat Lane

Mr. Grierson stated that he felt the non-conforming issues of existing buildings are an issue. Still, the bigger issue is the pieces that haven't been developed yet, pointing out it is important to understand that because something gets approved for a higher density, it may not be able to be built.

Joan Horgrele – 77 Pepper Vine, Inlet Cove

Ms. Horgrele spoke to the comments made that the recommendations would increase the density. Still, when comparing the current standards vs. the new standards proposed, she noted that there was a lower number of units per unit per building in what was being proposed. She also stated that she felt the Planning Department listened to the community and supported their recommendations.

John Grierson – 109 Bobcat Lane

Mr. Grierson stated the one piece not talked about anymore was Captain Sam's Spit. It was a very high-valued parcel at one point but has been in court for many years. He wanted to make sure that as the Planning Commission looks at the rezoning, nothing changes any of the zoning ability to bring that piece back.

Larry Rutkowski – 222 Sparrow Hawk

Mr. Rutkowski spoke to the ordinance that rescinds the existing 2013-14 and removes the ARDA from the zoning code, stating that it is a must and there is no reason an agreement that is sunseting should, as some have argued, be grandfathered into perpetual existence by its annexation to the zoning code.

Lisa Snowden – 39 Sunlet Bend

Ms. Snowden stated that the Council is hearing very clearly from the community what they want while the developers are making their own set of compelling issues. The community is trusting that the Council can follow the Planning Commission's well-thought-out recommendations. She noted that regarding the conversations on non-conforming and non-compliance, she would ask to make sure that a standard that is relevant for today and the future is being used. The thinking is in terms of the communities that are along Beachwalker Drive, not the communities that do not yet exist.

Chris Booth – 27 Sunlet Bend

Ms. Booth stated that she agreed with the developer that density will increase under what the Planning Commission is recommending compared to what the developer is currently allowed, but more important was that there are two site plans currently before the Council and that Council has the choice to approve them before December 4th, allowing the developments to proceed according to the Development Agreement, or to decide it is appropriate to wait and let the time run out so that any development on these parcels proceed according to the Planning Commission recommendations.

Ms. Tillerson clarified that the Council does not approve the site plan review process; the approval is at the staff level. Further discussion of the review and approval process included that the review process was well underway, the engagement of Weston and Sampson as a *second set of eyes* looking at the plans, and the technical requirements that have to be met for approval.

Lance Spencer – 40 Sunlet Bend

Mr. Spencer stated that he felt that what was absent from the process going on with staff right now was referred to in his earlier comments: what are the second and third-order effects on adjacent communities, and what are the impacts on the infrastructure that the Town is ultimately responsible for and that focusing purely on a site plan is not an informed decision.

Lisa Snowden – 39 Sunlet Bend

Ms. Snowden asked for an explanation of how the current standards, using parcel 11 as an example, are less dense than the Planning Commission's recommendations.

Mr. Taylor and Mr. Permar provided an explanation for Ms. Snowden's question.

John Grierson – 109 Bobcat Lane

Mr. Grierson stated that a set of community homeowners met with Mr. Taylor and Ms. Tillerson and reviewed the package that was submitted, which was incomplete at the time. He indicated that they were still waiting to see the complete package to see if it was done properly and other than being told for the last month that it is very close, there is no visibility into any process.

Maura McIlvain – 146 Blue heron Pond Road

Ms. McIlvain reviewed the history of the discovery the previous summer that the 2013 Amended and Restated Development Agreement might not have been in effect, the activity surrounding what to do about proceeding under a development agreement that may not be operational, the October presentation of the initial subdivision plat for Beachwalker to the Planning Commission under the ARDA which was approved despite the question of if a development agreement was in place, the November amendment that made the ARDA operational again, and her question on the legal effect for any actions taken before the November amendment.

Linda Lefler – 60 Sunset Bend

Ms. Lefler stated that despite the earlier comment that the zoning of Parcel 9 had been commercial forever, it was felt that commercial zoning should not be in that area.

Mayor Labriola thanked everyone for their comments, stating they were important and helpful, and also for the support given to the Planning Commission.

Council Member Berner motioned to close the public hearing. Council Member Heidingsfelder seconded the motion, and it was unanimously approved.

In response to Mayor Labriola's suggestion that the request be remanded to the Planning Commission, Council Member Heidingsfelder acknowledged the tremendous amount of time spent in preparation and discussion and the 4 to 3 vote for the recommendation to the Town Council of the zoning changes that cannot be sent back to the Planning Commission in the hopes that they would take it on and come back with a different recommendation.

Mayor Labriola stated that based on the comments heard mainly on Parcels 8, 9, and 10, he thought that the Planning Commission might want to take another look, but if they did not, the ordinances would be taken up at the November Town Council meeting.

Council Member Belt added that the Planning Commission discussed all of the issues and made a very considered decision understanding what some of the tradeoffs were, including the issues related to non-conforming uses. He noted that the Council has a recommendation from the Planning Commission, and it is incumbent upon the Council to act upon it.

Council Member Belt discussed his distress that the commitment to have a first reading at this meeting for the rescission of Ordinance 2013-14 or removing the ARDA as an appendix from the zoning code was made to move the first reading to the next meeting.

Council Member Berner made an additional comment stating that realizing there is a major traffic problem on Beachwalker Drive, and even if the proposed zoning is approved, the traffic will still get worse, Mr. Permar earlier mentioned a willingness to meet with the residents and meet with the Planning Commission in order to come to a joint resolution of what to build, and he would like to add to that a resolution to the traffic and a resolution of the parking problems at the Timbers and the Cape.

Council Member Heidingsfelder stated that following Mr. Permar's explanation of the proposed changes, there seem to be three categories. First, the Partners agree with the recommendations. In the second, concerns were raised about non-conforming. Council Member Heidingsfelder stated when talking about parcels 8, 9, 10, 11, and the church parcel, the council has been trying to engage in conversations about the future of these parcels, making a multitude of proposals trying to convey the wishes of the community to the Partners. He noted that there would not be a debate if the Partners had engaged more in our conversations and had made a clearer decision on how they wanted to handle these Parcels rather than avoiding the final decision.

Council Member Belt made a motion to amend the agenda to add the first reading of Ordinance 2023-23, rescinding the ARDA to the agenda.

Council Member Heidingsfelder noted that the supporting documents are not attached to the draft and, therefore, the ordinance is not prepared for the first reading.

Council Member Belt withdrew his motion.

Council Member Belt made a motion to amend the agenda to move to the First Reading of the Planning Commission's recommendations.

It was noted that there are no Ordinances for 2023-20, 21, and 22, and Ordinance 2023-23 is incomplete.

Council Member Belt withdrew his motion.

Ms. Tillerson stated that the first reading of the ordinances would be at the November 7th Council meeting with the second reading at a special call meeting on November 14th.

Greg Darus - 100 Belmeade Hall Road

Mr. Darus stated that what is trying to be proposed now is something the entire Community is in support of. The Community is in support of what the Planning Commission has recommended and wants to have those recommendations applicable to all the properties being talked about before someone approves these site plans.

IV. Citizens' Comments (Agenda Items Only):

Maura McIlvain – 146 Blue Heron Pond Road

Ms. McIlvain addressed amending the Town Attorney contract for Mr. Wilson by repeating some of the comments made at the Ways and Means Committee meeting. The agreement before the Council for consideration is very different from his prior agreements. In the core duties, it provides in large part that his duties are determined by the Mayor and or a majority of the Council, not by the entire Council. Following a review of State Statutes and Town Ordinances, in her judgment, the agreement did not comport with the law and encouraged the Council not to approve it.

Brad McIlvain – 146 Blue Heron Pond Road

Mr. McIlvain stated that, according to state statute, this contract has to be competitively bid, and it was not. There have been comments made about how much the Town is spending on lawyers; he questioned why the contract was not bid out to ensure the Town is getting the best price and the best service from the lawyers and law firms that are hired.

Lance Spencer – 40 Sunlet Bend

Mr. Spencer agreed that it is in the public interest to have full and open competitions for services. He encouraged the Town to set up a framework with requirements stated in an RFP (Request for Proposals) to conduct an open competition for goods and services that the Town may need.

Council Member Heidingsfelder provided the speakers with the documentation of the RFQ (Request for Qualifications) released in 2019 for the Town Attorney. He noted that six or seven proposals were received, and the prior Town Council selected Joe Wilson as the Town Attorney.

Council Member Heidingsfelder commented that being debated is a contract that was originally intended to do nothing else than change from a flat rate to an hourly rate. With the amount of work that was requested by the Town Council, the Community, PreserveKiawah, and everybody else, Mr. Wilson was working far more than he was getting paid for, so he requested the rate change. The ability to request a change in the financial conditions and to make the change mid-term is in the contract. From there onwards, a multitude of changes were requested to address concerns or corrections that changed the simple rate change.

Council Member Heidingsfelder stated that, at this point, there were three options;

- Stop and go through another RFQ process
- Go back to the original contract, only changing the compensation rate
- Move forward with making improvements to the contract to clarify how we are governing the input from the Town Council.

Council Members engaged in an in-depth discussion of Council Member Heidingsfelder's request that the Council choose one of the three options, which included the intention of putting out an RFQ by the end of this year and considering whether or not it's appropriate to hire a full-time attorney to have a legal officer who is available to the Council.

V. New Business:

A. To Consider Approval of the Amended Town Attorney Contract Services Agreement with Joseph Wilson

Council Member Heidingsfelder made a motion to approve the amended Town Attorney Contract Services agreement with Joseph Wilson. Committee Member Berner seconded the motion.

Council Member Berner stated that the reference made with respect to the Town hiring another attorney was basically to verify what Mr. Wilson was opining on. He noted that there was one attorney on the Town Council who was adamant that Mr. Wilson was wrong. Having the two attorneys, Mr. Wilson and Mr. Belt, who disagreed, the decision was made to hire a third attorney to get clarification on the issue.

Council Member Belt responded by stating that he appreciated the fact that it was felt there was the need to bring in a third party to resolve any disagreement between the town attorney and himself, but what matters is what direction they are given.

Council Member Belt stated the issues previously expressed with regard to the legality of the proposed amendments have been addressed at length in a memo submitted for the public record. He stated that while researching this issue, he discovered a possible constitutional issue that warranted further exploration and that this contract was fundamentally flawed. He also felt that as a prudent fiscal matter, rather than paying the rates for outside legal counsel, the Town should be pursuing the option of hiring a full-time legal attorney who is available to each member on a full-time basis.

Council Member Belt stated that he would not spend any more time on his memo; it is available to the public as well because he knows where the votes are, and this is for the public record.

Council Member Heidingsfelder amended his motion to go back to the original contract, changing the compensation rate that had already been approved and including the language that Mr. Wilson has to submit the monthly expenses to be reimbursed with everything else remaining the same in the existing contract. Committee Member Berner seconded the motion. The motion was approved by a 3 to 0 vote, with Council Member Belt not voting.

The motion to approve the amended Town Attorney Contract Services agreement with Joesph Wilson as amended. The motion was approved by a 3 to 0 vote, with Council Member Belt not voting.

B. To Consider Approval of the Consultant for the Law Enforcement Department Feasibility Study

The Ways and Means Committee did not recommend approval of the Consultant for the Law Enforcement Department Feasibility Study.

C. To Consider Approval for the Creation of a Video Production Specialist Position within the Communications Department

Council Member Berner made a motion to approve the creation of a Video Production Specialist Position within the Communications Department. Council Member Belt seconded the motion.

Council Member Heidingsfelder recommended that the creation of the position be put on hold until the mid-year budget review in December or January. It would also allow for time to work on the 2024 podcast schedule and video content so that there is a better feel of the workload for that person.

Council Member Heidingsfelder made a motion to defer the recommendation. Council Member Berner seconded the motion.

Following the discussion, the motion was unanimously approved.

D. To Consider Approval of the Proposal from Clean Harbors for the Removal of Household Hazardous Waste

The Ways and Means recommended approval of the proposal from Clean Harbors for the removal of household hazardous waste by a 4 to 1 vote.

Council Member Heidingsfelder made a motion to approve the proposal from Clean Harbors for the removal of household hazardous waste. Council Member Berner seconded the motion.

Council Member Berner stated that he felt that the project could be postponed despite the fact there is more money involved. As he stated earlier in the Ways and Means Committee meeting, there is too much contamination being placed in the recycling bins and household garbage.

Following the discussion, the motion was unanimously approved.

E. To Consider Approval of the Proposal for a Dumpster Pad at Town Hall

The Ways and Means recommended approval of the proposal for a dumpster pad at Town Hall by a 4 to 1 vote.

Council Member Heidingsfelder made a motion to approve the proposal for a dumpster pad at Town Hall. Council Member Berner seconded the motion.

Council Member Belt stated that he was not saying that; ultimately, it was not something that may be worth doing. Still, he did not believe it was a critical action item and would prefer waiting until the review of the overall mid-year budget before acting on this.

Council Member Belt made a motion to defer the recommendation. Council Member Berner seconded the motion, and it was unanimously approved.

VI. Council Member Comments:

Council Member Belt commended the community turnout, stating it was pretty extraordinary and reflective of the increasing level of engagement on the part of the community. He stated it is seen through the Town Council drop-in meetings and increasing attendance at these meetings. He felt it showed the critical importance of this issue, a unanimity of views, and thanked the community for spending their valuable time with us today.

VII. Citizens' Comments:

Dr Solomon David – 3528 Shipwatch Road

Dr. David stated that after buying his home, he chose VACASA as the management company. To his surprise and dismay, VACASA let his business license expire and reviewed the circumstances, which led to the Town Council hearing at which his business license was revoked for one year. He explained that he, as the homeowner, now suffered from the management company's errors. He stated that he had been the only one ever to suffer this type of ramification and would like the Town Council to revisit this matter. Moving forward, he felt there was a greater need for the council to look at these management companies that homeowners rely on and trust to take care of their investment properties and not to make the homeowners responsible for things that are 100% out of our control.

Mr. Wilson explained that the Council's decision was final, and there was no appeal process in the Town Ordinance. The only appeal would have been to the Circuit Court and would have had to be submitted within 30 days. Mr. Wilson noted that if the Council wanted to rehear their final order, they could do that.

Council Member Berner stated that Dr. David stated he wrote a dozen emails, which the Council was not in receipt of, which is new evidence.

Council Member Heidingsfelder asked if the Council could revisit the case because, in addition to the emails Dr. David will send, he would also like to look at the documentation from the Special Call Meeting and then, based on that review, would give his recommendation. If the other councilman would do the same, a decision could be made on whether to revisit or not.

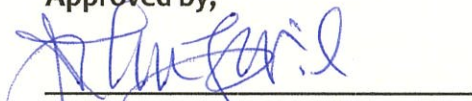
VIII. Adjournment:

Council Member Heidingsfelder made a motion to adjourn the meeting at 3:25 pm. Council Member Berner seconded the motion, and it was unanimously approved.

Submitted by,


Petra S. Reynolds, Town Clerk

Approved by,


John D. Labriola, Mayor

12-15-2023

Date