

THE TOWN OF HILTON HEAD ISLAND
SPECIAL TOWN COUNCIL MEETING

Date: Tuesday, May 31, 2016

Time: 2:07 P.M.

Present from Town Council: David Bennett, *Mayor* Bill Harkins, *Mayor Pro Tem*; David Ames, Marc Grant, Tom Lennox, John McCann, *Council Members*

Absent from Town Council: Kim Likins, *Council Member*

Present from Town Staff: Charles Cousins, *Director of Community Development*; Brian Hulbert, *Staff Attorney*; Susan Simmons, *Director of Finance*; Teri Lewis, *LMO Official*; Jill Foster, *Deputy Director of Community Development*; Bob Klein, *Building Official*; Chris Yates, *Chief Building Inspector*; Joheida Fister, *Fire Marshal*; Melissa Cope, *Systems Analyst*; Lynn Buchman, *Senior Administrative Assistant*.

Present from Media: Rebecca Lurye, *Island Packet*; and Tori Simkovic, *WJCL-TV*

1) CALL TO ORDER

Mayor Bennett called the meeting to order at 2:07 p.m.

2) PLEDGE TO THE FLAG

3) INVOCATION

4) FOIA Compliance – Public notification of this meeting has been published, posted and distributed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.

5) Unfinished Business

None

6) New Business

a. Discussion Related to the Issues Surrounding the Use of Lock-Out Units in the Town with the Law Firm of Robinson McFadden

Mayor Bennett noted this was a Special Meeting of Town Council to discuss in a public setting the issues surrounding the practice of lock-out units being used as two long-term use rentals and to determine a path forward in the best interests of the community at large. In an effort to obtain a fresh look at the legal underpinnings and to provide recommendations to Town Council, he recognized attorneys Bill Metzger and Frank Ellerbe from the firm of Robinson McFadden, who have been engaged to look at all the data available, listen to the concerns of Town Council, Town Staff, and interested residents and citizens.

Mr. Metzger indicated he and his colleague are in the early stages of information gathering, reviewing and digesting the materials provided and concerns expressed, and they are not in a position at this time to render any preliminary or definitive opinion. After hearing all sides of the issue and will return to present Town Council with their recommendations.

Bob Klein, Building Official, summarized what had occurred over the past few years and the concerns expressed about accessibility to circuit panels by other occupants, and the definitions of “dwelling unit,” “accessible,” and “readily accessible.” He explained that having failed to meet

the 5 criteria of “dwelling unit”, the lock-out is not considered a separate unit, therefore, the issue of ready access is not applicable. Mayor Bennett questioned why both sides of the unit being rented on a long-term basis to two separate unrelated households is being allowed to occur. Brian Hulbert, Staff Attorney, noted the Town does not have an Ordinance which regulates short-term or long-term rentals, nor an Ordinance that regulates the number of families that can live in a dwelling unit. With a tourism-driven economy, he noted that there are numerous houses and timeshares with multiple family occupants that are not regulated by the Town.

Mr. Harkins expressed his desire to seek recommendations from the attorneys for better ways to handle the situation since a continuation of the status quo does not inure to the benefit of the neighborhood nor to the reputation of the Island.

Mr. Lennox noted that the issue appears to be how to resolve the conflict between the definitions as defined in the regulations and what the Town believes to be in the best interest of the community.

Mr. Klein requested that the attorneys review the initial permit and appeal process that occurred in 1981, as the lock-out units were addressed and approved. Mr. Klein indicated that his initial review of the issue did not include a site visit, therefore, he was under the impression that the lock-out unit had a separate kitchen, which led him to believe the lock-out was a separate unit. However, after access to an actual unit was obtained, the investigation revealed the lock-out did not meet the criteria for a dwelling unit, and his opinion changed.

Mr. Ames explained the lock-outs were initially designed to augment the number of hotel rooms for short-term rental with on-site management of the units, but because of various factors, the use of the units changed incrementally over time. He expressed the desire to return to a short-term rental operation or a long-term operation with on-site management. Mr. Harkins noted this could lead to a discussion of what is management and the difficulty of codifying this as a policy statement.

Mr. Hulbert explained how individual owners rent the units either privately or through rental agents for short-term or long-term as an entire unit or renting the lock-out separately. Charles Cousins, Director of Community Development, noted that although there is no inventory of lock-out units on the Island, he is aware of realtors who manage developments on the Island with lock-outs and offered to provide those contacts to legal counsel. Mr. Hulbert added that there are also private residences operating as multi-family dwellings with lock-outs.

Mr. Ames stated his concerns about the way in which the lock-out units are being used on the Island, which is counter-productive to the perception and brand of the Island, and that the Town’s Ordinances do not match up with the purpose or brand, so something needs to be done.

Joheida Fister, Fire Marshal, stated that her department conducts fire inspections and fire plan review, but only the Building Department enforces electrical code violations, including those identified by Fire Rescue, so the issue of access to electrical panels was referred to the Building Department. Mr. Klein noted that in the case of a fire, all occupants would need to exit the building and would not need access to the electrical panel.

Comments from the public were elicited, which included:

- Jack Daly suggested the central focus should be ready access to electrical panels, and not that the lock-out does not meet the criteria defining a dwelling unit although it is occupied as such. He asked for a fresh, objective definition of ready access for the occupant that could be applied to all lock-out units and residential dwellings.

- Fred Carty, who agreed with Mr. Klein’s interpretation that “readily accessible,” would include the electrical panel being behind a locked door, and claimed there was no fire issue nor crime involved with the lock-out units.
- Ann Delvecchio expressed her safety concerns about fire regulations being circumvented or not adhered to.
- Deborah Urato noted an easy-to-unlatch door and on-site management changed over the years so that the lockouts could be rented to unrelated parties of questionable stature, which she considered a crime safety issue.
- John Lentz, a long-term property manager and rental agent, noted all electrical panels are located behind large washers and dryers and are inaccessible in every unit. He explained his process for screening long-term rentals for units he managed, and he had no documented crime problems associated with his renters.
- Bruce Bartow noted the problem was ready access to the electrical panel, as has been pointed out to the attorneys from Robinson McFadden on a site visit today. He suggested a solution to continuation of lock-out units is 24/7 on-site management, which was how Oceanwalk was originally designed. He noted that crime over the last few years has dropped dramatically as a result of a decrease in the number of owners participating in long-term split rentals, but crime problems from the cheap, inexpensive rentals will not go away.
- Tom Weatherhead and Henry Sanders stated the issue is interpreting the National Electrical Code (NEC) definition of ready access by occupants, the definition of legal dwelling unit, and the fact that the split unit is being rented out separately regardless of the fact that it does not meet the criteria for a dwelling unit. Mr. Sanders also urged that on-site management be required and the codes be enforced.
- Bill Greene stated that lock-outs are also located in residential single-family neighborhoods where houses are divided into 2 or 3 units and rented separately with one electrical panel.
- Chester Williams stated he appeared at the Construction Board of Adjustments and Appeals hearing where Mr. Klein’s determination was upheld that the lock-out was not a separate dwelling unit, as clearly set forth on the floor plans in the condominium regime documents. Therefore, the issue of ready access does not apply to a single unit. Mr. Williams stated this is an internal Oceanwalk governance issue that a vocal minority of owners is trying to impose on the majority of owners without success, and they are now seeking the Town’s assistance in imposing management regulations on condominium regimes.
- Linda Ward, Board Vice President at Oceanwalk, disagreed with Mr. Williams’ comments and noted that all criminal problems are coming from the small, cheap rentals.

Mr. Metzger confirmed with Mr. Klein that his interpretation of “readily accessible” would allow for the electrical panel to be behind a locked door since his decision was that the lock-out units are part of one single dwelling unit. Mayor Bennett suggested it is being treated as two units rented to unrelated parties.

A discussion followed concerning other elements shared by these units, including water, plumbing and heat and air units, and how electrical bills are split. Mr. Klein noted that the type

of clientele living in the lock-outs and crime issues are not something that the Building Department can address, but must be addressed by the individual complexes.

Brian Hulbert stated that it was the Town's position that the units referred to as lock-out units are not in violation of any local or State Ordinances. Charles Cousins, Director of Community Development, added that this decision was made by Bob Klein, as Building Official, which decision was appealed to the Construction Board of Adjustment who upheld that decision.

Mayor Bennett stated that regardless of the code interpretation that the lock-outs are one unit, the reality is that there are two unrelated parties renting on a long-term basis what he considers to be two units. He considered this tantamount to sub-standard housing, reflecting poorly on our community and its reputation, undermining our brand, and possibly fostering an environment where criminals can live and hide among us. He expressed the desire to seek a solution that works for our community with the assistance of the Robinson McFadden attorneys. Mr. Harkins agreed with the Mayor's remarks.

Mr. Hulbert confirmed that the Town LMO permits lock-outs and has done so since the LMO was adopted in 1987. Mr. Hulbert and Mr. Cousins also stated that lock-outs exist in many resort communities around the state and country. Mr. Metzger noted they will be looking at other projects in Myrtle Beach and Columbia.

A brief discussion followed about the possibility of clarifying the definition of a dwelling unit where the usage is in conflict with the definition. Further discussion ensued concerning the challenges of changing the code to address one item when there are numerous homes on Hilton Head Island that may fall under the definition, the legal non-conforming uses that are already permitted, and whether new regulations adopted can be applied to existing older structures. Mr. Hulbert added that those definitions are mandated by State law as adopted from the International Building and Electrical Codes, and suggested a possible solution would be changes to the definition of lock-out unit and the creation of rules related to such units in our local ordinances.

Mr. Harkins inquired if the Town could legally legislate management practices, and Mr. Metzger acknowledged it would be unwise to give legal opinions at this time, as there may be privilege issues to be discussed in an Executive Session so decisions can be made based on advice given.

Mr. Ames noted that due to various economic factors, the lock-out units are not as attractive for investment as they once were. Mr. Cousins agreed that short-term rentals was the initial intent for the lock-outs, but the challenge is that the code does not distinguish between short-term and long-term rentals, and the covenants may or may not address that issue. Mr. Ames noted that the market is very different today than it was in the past, and the lock-outs were designed for something they are not being used for now.

Mr. Lennox confirmed with Mr. Bartow that although crime was down and ownership was changing at Oceanwalk, that any amendments to the bylaws would require a 2/3 vote of the owners, which they cannot obtain, and a downturn in the economy would result in more split unit rentals, therefore the Town is being asked to assist.

At 3:49 PM Mr. Harkins moved to enter Executive Session to receive legal advice from the Robinson McFadden attorneys, and Mr. McCann seconded. The motion was approved by a vote of 6-0.

Mayor Bennett called the meeting back to order at 4:55 p.m. stating that no action was taken as a result of the Executive Session.

7) Adjournment

Mayor Bennett adjourned the meeting at 4:56 p.m.

Lynn Buchman
Senior Administrative Assistant

Approved: 06/21/2016

David Bennett, Mayor