

THE TOWN OF HILTON HEAD ISLAND
REGULAR TOWN COUNCIL MEETING

Date: Tuesday, May 18, 2010

Time: 4:00 P.M.

Present from Town Council: Thomas D. Peeples, *Mayor*; Ken Heitzke, *Mayor Pro-Tem*; George Williams, John Safay, Bill Harkins, Drew Laughlin, Bill Ferguson, *Councilmen*.

Present from Town Staff: Stephen G. Riley, *Town Manager*; Greg DeLoach, *Assistant Town Manager*; Curtis Coltrane, *Assistant Town Manager*; Lavarn Lucas, *Fire Chief, Fire & Rescue*; Charles Cousins, *Director of Community Development*; Nancy Gasen, *Director of Human Resources*; Teri Lewis, *LMO Official*; Heather Colin, *Development Review Administrator*; Nicole Dixon, *Planner*; Sarah Skigen, *Natural Resources Associate*; Bob Klein, *Building Official*; Connie Pratt, *Code Enforcement Officer*; Susan Blake, *Executive Assistant*

Present from Media: Laura Nahmias, *Island Packet*

1) CALL TO ORDER

2) PLEDGE TO THE FLAG

3) INVOCATION

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

5) PROCLAMATIONS AND COMMENDATIONS

a. Building Safety Month

Bob Klein, Building Official, accepted the Proclamation

b. Bike to Work Day

Frank Babel accepted the Proclamation

c. EMS Week

Members of the Hilton Head Island emergency medical team accepted the proclamation.

6) APPROVAL OF MINUTES

a. Regular Town Council Meeting of May 4, 2010

Mr. Heitzke moved to approve. Mr. Williams seconded. Mr. Laughlin noted a request from a citizen who wished to have his comments, which were recorded in the minutes, expanded to include additional remarks he had also made. Mr. Laughlin moved that the minutes be amended. Mr. Williams seconded the motion for discussion and then suggested that the recording secretary review the taped recording of the meeting. The Mayor suggested they forego approval of the minutes until staff had had a chance to review the tape for the actual verbiage. The maker and seconder of the motion were in agreement. The minutes were not approved.

7) REPORT OF THE TOWN MANAGER

a. Town Manager's Items of Interest

Steve Riley reported on some items of interest.

b. May 2010 Policy Agenda, Management Targets and CIP Updates

The Town Manager mentioned that the updates were included in the agenda package and invited them to contact him if they had any questions.

8) REPORTS FROM MEMBERS OF COUNCIL

a. General Reports from Council

Mr. Williams mentioned that the consultants on the airport master plan would be giving an update at a joint County Council/Town Council meeting the next evening. It was his understanding that members of the County Council had in hand a pre-release of that particular presentation and they have refused to provide members of the Town Council a similar copy. Mr. Williams said that as a participant in the study and the fact that the airport was located on our Island, they deserved the courtesy to have the information prior to any public presentation.

Relative to the EMS Week Proclamation, Mr. Laughlin noted that his wife was a nurse in the ICU at the Hilton Head Hospital and as a result, Mr. Laughlin spent a lot of time with the people who work there. He has heard it said over and over from his wife and from many other hospital employees that our EMS staff was the best and Mr. Laughlin said as far as he was concerned, they deserved all the commendations that they receive.

Mr. Ferguson referred to a memo that he had distributed to the Council Members earlier that day about some information he had requested from the State Attorney General Office on the creation of committees, task forces, etc. He was hoping that Town Council would take a look at this and make some necessary changes, if needed.

Secondly, Mr. Ferguson advised that he had received a request from more than one person asking that Town increase the size of the fire pits for burning debris on residential property. Some residents have very large lots and they feel they could accommodate larger fire pits on their property.

Mr. Harkins said he shared Mr. Williams' concerns and thought the airport issue was contentious enough on its own merits without having to face another issue on an administrative procedural level. Mr. Harkins asked if the Mayor and Town Manager could intervene with the County to request that the meeting materials be delivered to the council members' homes this evening. The Mayor reported that they have already previously made this request and was told the information was not going to be distributed to anyone.

b. Report of the Intergovernmental Relations Committee – George Williams, Chairman

No report; today's meeting had been cancelled.

c. Report of the Personnel Committee – Drew Laughlin, Chairman

They have begun the process of interviewing candidates and anticipated this will be completed by the next regular Town Council meeting.

d. Report of the Planning and Development Standards Committee – Bill Ferguson, Chairman

No report.

e. Report of the Public Facilities Committee – John Safay, Chairman

No report.

f. Report of the Public Safety Committee – Bill Harkins, Chairman

No report.

9) APPEARANCE BY CITIZENS

Palmer Simmons requested the open burning ordinance be reviewed to allow owners of large lots to burn bigger piles of debris.

10) UNFINISHED BUSINESS

a. None.

11) NEW BUSINESS

a. First Reading of Proposed Ordinance No. 2010-04 to amend Title 16, “The Land Management Ordinance,” of the Municipal Code of the Town of Hilton Head Island, South Carolina, by amending Section 16-4-102, The Official Zoning Map with respect to those certain parcels identified as Parcels 318, 319A, 319, 320, 317, 25, 336, 348, 347, 346, 345, 343, 344, and 359 on Beaufort County Tax Map 4, a portion of parcel 15 on Beaufort County Tax Map 5, and parcels 281, 280, 1A, 238, 1, 1B, 172, 171, 173, 174, 175, 176, 190, 121, 115, and 120 on Beaufort County Tax Map 8, from IL (Light Industrial) to the OCIL (Office/Light Commercial/Light Industrial) Zoning District; and providing for severability and an effective date.

Mr. Heitzke moved to approve. Mr. Safay seconded.

Mr. Williams observed that, in light of where they were with the airport master plan and the possibility of expansion of the airport, this could possibly affect some of the parcels on the north end of the proposed rezoning. As they were currently zoned, airport uses were permitted. To rezone these particular parcels into the OCIL District would require rezoning if, at some future date, the properties were needed for an airport expansion. Mr. Williams felt it was premature to include these particular parcels in the rezoning amendment and they should wait until after the airport master plan recommendations had been released.

Mayor Peoples asked staff if they were prepared to address Councilman Williams’ concerns. Nicole Dixon, Planner, said they could remove the three parcels in question from the rezoning application but she mentioned that the parcel at the end of the row, the Church, requested they be part of this rezoning. Mayor asked if they removed the three parcels, would they have substantially changed the Planning Commission recommendations and then have to send this ordinance back to them? Nicole Dixon said that she did not think so, because they were not adding in properties.

Mr. Safay asked if this Town Council was perhaps going to be rejecting a year’s worth of work on this, with a lot of good reasoning behind it because maybe some consultants’ report might recommend that we make some changes over there. Are we supposed to stop everything just because of this airport issue? This was an important change to show folks that the Town Council was trying to be more flexible with zoning – all the things we have been criticized for not doing and here we are, doing it.

Mr. Ferguson agreed with Mr. Safay. Mr. Ferguson also felt the issue was these people who own the properties have requested that those properties be included in the OCIL District. Nicole Dixon said the one in particular, the St. James Church, at the end – they requested to be part of this rezoning application. Mr. Ferguson thought that if indeed the Beaufort County and Hilton Head Island Town Council agreed to extend the runways, then it really wouldn’t matter

what zoning designation these properties had anyway – they’ll have to disappear. Nicole Dixon responded that the OCIL district does not allow for aviation services so the properties would have to be rezoned back to IL at that time, if that was to happen. Mr. Ferguson felt they should yield to the citizens in that community who desired to be rezoned OCIL.

Mr. Laughlin asked if the concerns expressed by Mr. Williams were addressed at the Planning Commission level. Nicole Dixon said they were not. Mr. Laughlin said that Mr. Williams had raised a legitimate area of discussion and he would be more comfortable if it was aired out at the Planning Commission level. He would also be interested in a legal opinion from Town Attorney Gregg Alford as to whether they could proceed with part of this and refer the rest of it back to the Planning Commission.

Gregg Alford said the statute appeared to require that the Planning Commission have the opportunity to review and make recommendations on proposed changes to the zoning maps and the text. Clearly the Planning Commission has had an opportunity to discuss changing all of this but now Town Council was suggesting leaving the change in place for a significant portion of this and removing the potential change for the three properties in question. So Mr. Alford felt that Mr. Laughlin’s recommendation was probably the proper one. As to further advice on this matter, Mr. Alford said he would prefer to give it in executive session.

Mayor Peoples indicated the prudent thing to do would be to forego voting on this until they had received the legal advice offered by Mr. Alford to be discussed in executive session.

Nicole Dixon asked if she could note a correction to the ordinance. On page two at the top, it should read “are *not* detrimental.”

The Mayor said he would like to postpone a vote on the motion until after they returned from executive session at which time they will act on this ordinance. Mr. Safay moved to table the motion until after executive session and Mr. Laughlin seconded. The motion was approved by a vote of 7-0.

b. First Reading of Proposed Ordinance No. 2010-11 to amend Title 16 of the Municipal Code of the Town of Hilton Head Island, South Carolina, the Land Management Ordinance, Chapters 4, 5, and 6 to revise various articles and sections. These amendments include changes that provide for amendments to: auto sales, special events, open air sales, on-street parking and dune protection standards; and providing for severability and an effective date.

Mayor Peoples suggested that the Town Council follow the lead of the Planning Commission and take up these different items separately. Mr. Williams asked if he meant that they would vote on the auto sales change as one item; special events as one item, etc. The Mayor replied yes.

Mr. Williams moved to approve Section 16-4-1205. Mr. Ferguson seconded. Mayor asked staff to explain the proposal. Nicole Dixon said this amendment came forward when it was brought to staff’s attention why was there a huge separation for auto sale uses and not for auto repair. So staff looked at possibly putting a separation requirement for auto repair and found that they would be creating twenty-seven non-conforming uses, which was not something they were in favor of doing. So, staff concentrated on lowering the separation distance between auto sales uses, in between auto sales and residential, and auto sales facilities. Planning Commission recommendation was to lower the distance from 1500 ft. to 500 ft. and at the Planning and Development Standards Committee, they recommended reducing that to 400 ft. in between existing auto sales sites. They also recommended removing criteria “B” which was that auto

sales sites shall be located directly on a major or minor arterial road.

Fran White noted that a lot of the auto use properties were right on the boundary of the airport. She also did not like the prospect that these proposed changes could result in more used car dealers setting up business on the Island.

Mr. Laughlin reminded everyone that his law partner has in the past done some work for a gentleman who would like to be able to sell used cars on his property. Mr. Laughlin did not see why they needed Section 16-4-1205 at all and in order to avoid any questions about his motives, Mr. Laughlin would be abstaining.

Mr. Heitzke moved to amend Section 16-4-1205 to require a 500 ft. separation between auto sales facilities instead of a 400 ft. separation. He noted the 400 ft. separation recommendation was strictly to appease one individual and he did not like the precedent that this would set. Mr. Williams seconded for discussion. Mr. Safay pointed out that there was another side to this situation and requested the back story. Town Manager Steve Riley advised this started because some years ago staff accidentally permitted auto sales at a place that also has auto repair on Hunter Road. A complaint was filed by a competitor who pointed out that the auto sales use was incorrectly permitted because it was too close to residential and it was not on a major or minor arterial road. So this entire set of amendments grew out of a complaint. Steve Riley started asking himself the question, why do we have a separation for auto sales when we do not even have a separation for auto repairs, which is a noisier business than sales. So the Town Manager initiated this review because he wondered why they wanted to be enforcing an ordinance that did not make any sense to him anymore. The Mayor called for a vote on Mr. Heitzke's motion. The vote was 1-5-1; Mr. Heitzke was in favor, Mr. Laughlin abstained and the rest of the council members were opposed.

Mr. Williams made a motion to remove auto sales as a permitted use in the CC District. Charles Cousins clarified for Council that the recommendation to delete the requirement that auto sales have direct access to a major or minor arterial never went to the Planning Commission for public hearing; that was only discussed at the Planning & Development Standards Committee. Actually, tonight, the 400 ft. and 500 ft. buffer requirements were the only amendments they should be voting on. So if Town Council wanted to add the CC District amendment and the exemption from major and minor arterial road access, they would need to be processed as separate amendments. Mr. Williams' motion died for lack of a second.

Mr. Harkins moved to send section 16-4-1205 back to the Planning Commission to review the recommended changes by the Planning and Development Standards Committee. Mr. Williams asked to include discussion of his request to remove auto sales as a permitted use in the CC District. Mr. Harkins added this to his motion. Mr. Williams seconded the motion.

The motion was approved by a vote of 5-1-1. Mr. Safay was opposed and Mr. Laughlin abstained.

Section 16-4-14XX (New section) Special Events. Mr. Williams moved for approval and Mr. Heitzke seconded. The motion was approved by a vote of 7-0.

Section 16-4-1405 Open Air Sales. Mr. Heitzke moved for approval and Mr. Williams seconded. The motion was approved by a vote of 7-0.

Section 16-5-12XX (New Section) On-Street Parking. Mr. Heitzke moved for approval and Mr. Williams seconded. The motion was approved by a vote of 7-0.

Section 16-6-305 Dune Protection Standards. Mr. Heitzke moved for approval and Mr. Williams seconded. The motion was approved by a vote of 7-0.

- c. First Reading of Proposed Ordinance No. 2010-12 to amend Title 8 of the Municipal Code of the Town of Hilton Head Island, South Carolina, Chapter 1 to revise Section 413. This amendment includes changes that provide for general amendments to destruction of sea oats or other dune vegetation; and providing for severability and an effective date.**

Mr. Heitzke moved to approve. Mr. Williams seconded. Mr. Laughlin observed that the stated purpose of this amendment was to allow more flexibility in tree removal and removal of non-native vegetation and providing for more views to the beach. In the first sentence, it originally read “It shall be unlawful for any person to remove or otherwise destroy sea oats or any other vegetative matter growing out of the sand dunes.” Mr. Laughlin had a hard time understanding why, in the name of flexibility, we were adding “.....or otherwise engage in any activity that results in damage or destruction....” and secondly, what could somebody inadvertently do that was an activity that resulted in damage or destruction to any vegetative matter. Sarah Skigen, Natural Resources Associate, explained the justification for that added language was a recent court case where there seemed to be ambiguity in the term “remove or otherwise destroy.” The additional language was added so there would be no doubt as to what would constitute a violation.

Mr. Laughlin moved to delete “or otherwise engage in any activity which results in damage or destruction of...” Mr. Williams seconded.

Mr. Ferguson asked if live oaks less than six inches in diameter could be removed. Sarah Skigen said that live oaks were protected within the dune area. The amendment was approved by a vote of 4-3. Mayor Peoples, and council members Laughlin, Williams and Ferguson were in favor of the amendment and council members Safay, Harkins and Heitzke were opposed.

The amended motion was approved by a vote of 7-0.

12) EXECUTIVE SESSION

Mr. Riley said that he needed an executive session for contractual matters regarding land acquisition, including a request for an easement over town owned land; and legal advice pertaining to a question of remanding an item to the Planning Commission.

At 5:39 p.m., Mr. Heitzke moved to go into Executive Session for the reasons stated by the Town Manager. Mr. Williams seconded. The motion was approved by a vote of 7-0.

Mayor Peoples called the meeting back to order at 6:16 p.m. and returned to consideration of New Business Item 11.a. – First Reading of Proposed Ordinance No. 2010-04. Mr. Safay moved for approval. Mr. Williams seconded. Steve Riley noted that in the Ordinance itself, at the top of page two between the words “are” and “detrimental” the word “not” needed to be inserted. Mr. Williams moved to insert “not” and Mr. Harkins seconded. The amendment was approved by a vote of 7-0.

Mr. Williams moved that the parcels fronting on Beach City Road and northeast of the airport parcel be removed from Proposed Ordinance No. 2010-04 and remand those to the Planning Commission for further review and discussion as to whether or not they should be included in the OCIL rezoning because it would mean the parcels would no longer be allowable for airport uses, given the discussion about the airport master plan. Mr. Harkins seconded.

Chester Williams expressed his legal opinion regarding the State Enabling Statute and the Planning Commission powers and duties.

Mr. Ferguson indicated his preference to support staff's recommendation and he would vote in favor of the rezoning applications of all the parcels.

Mr. Laughlin said that he was not suggesting that he endorsed Chester Williams' legal opinion on the Statutes, but if it would help to avoid a problem he wondered why they shouldn't just send the entire application back to the Planning Commission for further study.

Mayor Peeples asked Charles Cousins if there were any applications to make changes to their property that would be detrimentally impacted by a delay in the OCIL rezoning. Mr. Cousins said that staff did not have anything imminent.

Mr. Harkins thought they were making this issue unnecessarily complicated by bifurcating this at this stage. The Mayor said he agreed with Mr. Harkins.

The Mayor asked the maker of the motion and the seconder, if they objected to revising the motion to send the entire rezoning amendment back to the Planning Commission rather than just selected parcels. Both were in favor of the revision to the motion. The motion passed by a vote of 6-1. Mr. Safay was opposed.

Bill Ferguson moved that the Town Council for the Town of Hilton Head Island authorize the execution of a contract for purchase of 5.79 acres on William Hilton Parkway and Squire Pope Road from Matthew and Teena Jones Family, LLC for four million (\$4,000,000) dollars. Mr. Heitzke seconded. The motion was approved by a vote of 7-0.

13) ADJOURNMENT

At 6:36 p.m., Mr. Heitzke moved to adjourn. Mr. Williams seconded. The motion was approved by a vote of 7-0.

Susan Blake, Secretary

Approved:

Thomas D. Peeples, Mayor