

THE TOWN OF HILTON HEAD ISLAND

Planning Commission

Minutes of the Wednesday, July 20, 2011 Meeting

APPROVED

3:00p.m. – Benjamin M. Racusin Council Chambers

Commissioners Present: Chairman Loretta Warden, Vice Chairman Tom Lennox,
David Bennett, Tom Crews, Jack Docherty, and Gail Quick

Commissioners Absent: Terence Ennis and Therese Leary, Excused
Charles Young

Town Council Present: None

Town Staff Present: Curtis Coltrane, Town Attorney; Brian Hulbert, Staff Attorney
Trudie Johnson, Flood Plain Administrator; Shea Farrar, Senior Planner
Jayme Lopko, Senior Planner & Planning Commission Coordinator
Marcy Benson, Senior Grants Administrator
Kathleen Carlin, Secretary & Administrative Assistant

1. CALL TO ORDER

Chairman Warden called the meeting to order at 3:00p.m.

2. PLEDGE OF ALLEGIANCE TO THE FLAG

3. ROLL CALL

4. FREEDOM OF INFORMATION ACT

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. APPROVAL OF AGENDA

The agenda was **approved** as presented by general consent.

6. APPROVAL OF MINUTES

The minutes of the regular July 6, 2011 meeting were **approved** as amended by general consent.

7. APPEARANCE BY CITIZENS ON ITEMS UNRELATED TO TODAY'S AGENDA

None

8. UNFINISHED BUSINESS

None

9. NEW BUSINESS

APL100006: Request for Appeal from Chester C. Williams on behalf of Ephesian Ventures, LLC. The Community Development Department issued a notice of action, approving the construction of a tabby walkway and brick areas at Edgewater on Broad Creek. The appellant contends that the Community Development Department erred in its decision to issue a notice of action and is requesting that the notice of action be declared void.

Chairman Warden stated that APL100006 is the first application for appeal appearing for review before the Planning Commission. The Planning Commission's review of an application for appeal is appropriate under Land Management Ordinance, Sec. 16-3-309. Chairman Warden stated the Planning Commission's procedure for the review of an application for appeal. The Chairman then requested that Chester C. Williams make his presentation on behalf of his client, Ephesian Ventures, LLC.

Chester C. Williams, Esq. stated that based on certain events occurring yesterday, Michael Mogil, Esq., who represents the Edgewater Homeowners Association, is requesting an opportunity to address the Planning Commission. Mr. Williams stated that he has no objections to this request. Following these comments, Chairman Warden requested that Mr. Mogil address the Planning Commission.

Mr. Michael Mogil stated that he represents the Edgewater on Broad Creek Owners Association and Horizontal Property Regime. Mr. Mogil stated that this application for appeal has been continued several times by tolling agreement between Mr. Williams' client, Ephesian Ventures, his own client, Edgewater on Broad Creek Owners Association, and the Town of Hilton Head Island.

Mr. Mogil stated that an action was filed yesterday by his client in Beaufort County Court of Common Pleas. The action for a declaratory judgment asks that the Court rule on all material issues involving the interpretation of the master deed which governs the relationship between Mr. Mogil's client and Mr. Williams' client.

Mr. Mogil stated that the issue, including whether or not Mr. Williams' client has the legal standing to object to development on Mr. Mogil's client's land, will be before the Common Pleas Court for interpretation. The issue before the Planning Commission is to decide whether or not the restrictive covenants in place allow for Mr. Williams' client to object to the issuance of the Notice of Action. Mr. Mogil stated that, if all parties agree, application for appeal, APL10006, should be continued until after the Court issues its ruling.

Chairman Warden requested that Mr. Williams respond to Mr. Mogil's request. Mr. Williams stated that he has no objections to the request for continuance. Mr. Williams stated that two grounds were alleged for voiding the Notice of Action: (1) the application was incomplete and, therefore, should not have been acted on (this is wholly outside of the issues having to do with the master deed); and (2) misinformation was provided in the application. The requested activity in the permit violates restrictive covenants contained in the master deed.

Chairman Warden and Mr. Williams discussed the extension of the tolling agreement. Mr. Williams and Mr. Mogil stated that they agree with extension of the tolling agreement.

Curtis Coltrane, Attorney for the Town, presented statements on behalf of the Town. Mr. Coltrane stated that the Town has no objections to Mr. Mogil's request for continuance. The primary dispute lies between these two parties with respect to the interpretation of the documents that set up the Edgewater Regime and the balance of the property owned by Ephesian Ventures, LLC. Having the matter resolved in Circuit Court leaves the two parties that actually have the issue between them, with the burden of resolving it.

Mr. Brian Hulbert, Staff Attorney, presented statements with regard to the Planning Commission's role in this matter. The decision as to whether or not to continue the appeal rests entirely with the Planning Commission. The Planning Commission is also charged with deciding if the application is complete or incomplete.

Following final comments by the Planning Commission, Chairman Warden stated the three options that the Planning Commission has in making their decision for discussion. Following the discussion, Chairman Warden requested that a motion be made.

Commissioner Quick made a **motion** for **continuation** of Application for Appeal, APL100006, based on timely submission of the executed tolling agreement. The continuance shall be until after the Court of Common Pleas issues a decision on the action filed by Edgewater Homeowners Association on July 19, 2011. Commissioner Docherty **seconded** the motion and the motion **passed** with a vote of 6-0-0.

Public Hearing

Hazard Mitigation Plan: Review of the Beaufort County Hazard Mitigation Plan and consideration for adoption as an appendix to the Comprehensive Plan. This Plan is an update to the current Hazard Mitigation Plan.

Mrs. Trudie Johnson made the presentation on behalf of staff. Mrs. Johnson discussed the 2009 update of the Beaufort County Hazard Mitigation Plan. The Comprehensive Planning Committee approved the Plan on June 15, 2011. Following approval by the Planning Commission, the Hazard Mitigation Plan will be forwarded to Town Council for adoption as an Appendix of the Comprehensive Plan of the Town of Hilton Head Island.

Mrs. Johnson stated that Beaufort County and its incorporated communities prepared this Hazard Mitigation Plan to assess the communities' vulnerabilities to natural hazards, to prepare a long term strategy to address these hazards, and to prevent future damage and loss of life. This Plan was created through participation from county and municipal officials as well as residents and business owners. As such, it represents the community's consensus. The modified Plan has been approved by both State and Federal reviewing agencies.

The 2009 update to the Beaufort County Hazard Mitigation Plan will replace the original Beaufort County Hazard Mitigation Plan prepared in 2004, as required by the Disaster Mitigation Act of 2000. The adoption of the updated 2009 Plan will fulfill the continuing requirements that qualify the Town of Hilton Head Island for FEMA pre-disaster mitigation grants, post disaster reconstruction assistance and continued participation in the Community Rating System. This completed Mrs. Johnson's presentation. Chairman Warden requested public comments on this item and none were received. Chairman Warden stated that the public hearing for this item is closed.

Following final comments, Chairman Warden requested that a motion be made by Resolution that we recommend to the Town Council the adoption of the Hazard Mitigation Plan as an appendix to the Hilton Head Island Comprehensive Plan. Commissioner Crews made the **motion** as stated by Chairman Warden. Commissioner Quick **seconded** the motion and the motion **passed** with a vote of 6-0-0.

10. COMMISSION BUSINESS

None

11. CHAIRMAN'S REPORT

Chairman Warden reported that she and Vice Chairman Lennox met with senior staff earlier today to discuss future Planning Commission agendas.

12. COMMITTEE REPORTS

None

13. STAFF REPORTS

Update of Priority List to Town Council

Ms. Shea Farrar made the presentation on behalf of staff. The Planning Commission briefly reviewed a section that addresses obtainable housing in relationship to land use, economic development, and redevelopment. The Town is currently working with Habitat for Humanity on a project off of Marshland Road. Town Council is considering the donation of land to assist Habitat in this effort.

Separately, the Planning Commission inquired about the status of the burial of powerlines, particularly along William Hilton Parkway. Mrs. Jayme Lopko responded on behalf of staff. Staff will e-mail a memo and map of the Island which states the status and future plans for the burial of powerlines following today's meeting.

Ms. Marcy Benson, Senior Grants Administrator, reported that updated Town of Hilton Head Island wallet cards will be provided to the Planning Commission as soon as they are available. The staff has been waiting for updated census information.

Lastly, Mrs. Lopko stated that the staff has no agenda items for the next Planning Commission meeting on Wednesday, August 3rd. Chairman Warden approved the cancellation of this meeting. The next regularly scheduled Planning Commission meeting is Wednesday, August 17, 2011 at 3:00pm.

14. ADJOURNMENT

The meeting was adjourned at 4:00pm.

Submitted By:

Approved By:

September 7, 2011

Kathleen Carlin
Administrative Assistant

Loretta Warden
Chairman