

# **TOWN OF HILTON HEAD ISLAND**

## **FINANCE AND ADMINISTRATIVE COMMITTEE MEETING**

**Date:** December 18, 2018 **Time:** 3:00 p.m.

**Members Present:** Tom Lennox, *Chairman* and John McCann *Council Members*

**Members Absent:** None

**Staff Present:** Josh Gruber, *Assistant Town Manager*; Brian Hulbert, *Staff Attorney*; John Troyer, *Director of Finance*, Jeff Buckalew, *Town Engineer*, Jeff Netzing, *Assistant Town Engineer/SWU Manager*, Alexis Cook, *Storm Water Engineer* and Cindaia Ervin, *Finance Assistant*

**Others Present:** Danny Crowe, *Crowe LaFave, LLC*; Tamara Becker, David Ames and Bill Harkins, *Council Members*; Chester C. Williams, *Law office of Chester C. Williams LLC*; Walter Nester, *Burr Forman McNair*, Skip Hoagland, Risa Prince, Eleanor Lightsey, *Lowcountry Inside Track* and other members of the community.

**Media:** Katherine Kokal, *Island Packet*

---

**1. Call to Order:**

The meeting was called to order at 3:00 p.m.

**2. 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.

**3. Approval of Minutes:**

- a. Mr. McCann moved to approve the draft minutes from the Finance and Administrative Committee Meeting on November 7, 2018 at 2:00 p.m. Mr. Lennox seconded, and the motion passed unanimously.

Mr. Lennox stated that Town Council's newest member, Tamara Becker, would be the 3<sup>rd</sup> member of the Finance & Administrative Committee per the Mayor's request starting January 2019.

**4. Unfinished Business:**

- a. Mr. McCann moved to approve the proposed 2019 Finance and Administrative Committee meeting dates. Mr. Lennox seconded, and the motion passed unanimously.

**5. New Business**

Mr. Lennox made a motion to move the new business agenda item "C" to item "A" out of courtesy to the guest speaker present. Mr. McCann moved to approve the motion and Mr. Lennox seconded, and the motion passed with a vote of 2-0.

- a. **General Discussion Regarding Legal Obligations of the Freedom of Information Act.**

Josh Gruber, Assistant Town Manager, gave the Committee and Council Members present a brief background of guest speaker Danny Crowe. Danny Crowe, Crowe LaFave, LLC, spoke with the Committee members and Council present regarding if the Town is under any affirmative

obligation to request documents from the Hilton Head Island-Bluffton Chamber of Commerce. He simply stated, “no” based on the DomainNewsMedia case as it did not address to what extent a city should obtain documents from a party with which it contracts or the party specifically that the chosen Destination Marketing Organization. Mr. Crowe explained that the DomainNewsMedia did not change the law, so municipalities are not required to create documents that do not already exist. Also, municipalities responding to Freedom of Information Act (FOIA) requests are not conduits for other requesters of FOIA information, nor are they collectors of information that does not already exist. Mr. Crowe said that he would rely on the definition of public record in the Freedom of Information Act in Section 30-4-20 (c), which is unchanged by the DomainNewsMedia case. He stated if the public body, “the Town” does not have the documentation in its possession, it is not required to retrieve or produce from a third party. His view was information or documentation that the Town has obtained in the course of its relationship with the DMO are subject to FOIA.

Tom Lennox, Chairman, opened the floor to questions and Mayor McCann asked if a member of Council or Town staff obtained notes as part of a meeting with the current DMO, if those were subject to FOIA. Mr. Crowe responded that FOIA is addressed to the council as a body and if the individual has such documents in his or her possession, unless they are doing it on behalf of the public body, the fact that the individual member has documents in his possession would not make it subject to FOIA. Plainly, if a Council Member viewed documents and does not possess them they are not required to recreate a document based on a FOIA request. David Ames, Council Member asked, “does the reverse apply if the Town were to take the position that it wanted information, would the DMO then have the ability to say no?” Mr. Crowe replied that if the Town requested specific information, that would depend on the contractual agreement between both parties. However, it is up to the DMO to release the requested information as they could decline as the request could be unrelated to the agreement. Based on recent Supreme Court rulings, the Hilton Head Island-Bluffton Chamber of Commerce is not subject to FOIA in its role as a DMO. Mr. Ames asked how best the Town could take a stance on transparency and Mr. Crowe replied that the Town could negotiate terms within the contract and that would provide clear expectations, obligations and responsibilities of both parties on certain matters. Mr. Ames shared with the Committee that when the Town initiates the Request for Proposal (RFP) for the Towns’ DMO, it could include a policy regarding FOIA and requested information and at that time, and the responding parties could at that time chose to submit a bid or not. Mr. Lennox’s views were based on not if the DMO is performing well under the contract rather than if they are compliant with the State Accommodations Tax Regulations. He believes that transparency is difficult to argue against but the important part of this relationship is compliance of the DMO with the contract.

Mr. Lennox opened the floor for public comment.

**Skip Hoagland:** Addressed the Committee on how important it is to demand the compliance of FOIA and transparency of the Hilton Head Island-Bluffton Chamber of Commerce’s spending when they are an agency that has received public funding.

Mr. Lennox thanked Mr. Crowe for his time and comments regarding the legal obligations of the Freedom of Information Act.

**b. General Discussion Regarding Revised Stormwater Utility PUD/POA Drainage Agreement.**

Jeff Netzinger, Assistant Town Engineer/SWU Manager, explained to the Committee the proposed revised stormwater utility PUD/POA drainage agreement. He stated that there are benefits of standardizing the current agreement to allow for uniform terms and expectations for both the Town and the local PUDs. Mr. Netzinger also outlined the notable changes and clarifications that the Town will provide to the PUDs for their review. This process will allow the Town to hear any concerns and provide feedback with resolutions if needed. He also gave a history of some matters that have come up regarding deficiencies that the Town has made on behalf of the PUD and has found that they have been caused by contractors or normal wear and tear. Standardizing the current stormwater utility drainage agreement will address these matter and clearly define who is responsible and how the PUD will go about seeking reimbursement from the Town if requested. The Stormwater department will hold a public discussion regarding the proposed changes in the coming weeks and from those meeting they will consider any possible changes that may need to be implemented and ultimately send a final draft for adoption to Town Council for their approval.

Mr. Lennox stated that this revised agreement has been talked about for several years now and he is glad to see it come forward as it clearly defines that work can be done with available funding and it is not a future liability of the town if the project makes the priority list. There has been a general misconception that if a deficiency is identified that it automatically will be maintained by the Town. However, it determines how much of a priority it truly is and if there is funding available. David Ames, Council Member, stated that this revised agreement will allow for the Town to look at the magnitude of the liability. He gave an example of the Town wanting to provide adequate drainage to the Forest Beach area. This project turned an agreement that looks similar to what is in place today. His concern is that the Town should deal with the larger community infrastructure of the Island for adequate drainage. He also feels that decisions made 20 years ago takes funding from the ability to improve drainage infrastructure of those outside the gates and this changes the initial responsibility and liability of those buying homes inside the gates years ago.

Mr. Lennox opened the floor for public comment.

**Skip Hoagland:** His recollection regarding a court case in Greenville against a private a community using public funds to repair a bridge within the community that is not used by the general public. The Supreme Court decided it is unconstitutional to use public funds for private purposes when it is not in the interest of the public.

**Risa Prince:** Address the Committee regarding the current stormwater agreement termination date and the burden if implemented.

**Walter Nester:** Addressed the Committee regarding the stormwater ordinance and the overall plan to move forward. He also stated that he would like Town Staff consider a reasonable standard for qualifying deficiencies within the proposed agreement.

Mayor McCann made a motion to move forward the proposed revised stormwater utility agreement to the local PUDs for further consideration. Mr. Lennox seconded and the motion passed with a vote of 2-0.

Mr. Lennox thanked Mr. Netzinger for his time and the informative discussion.

**c. General Discussion Regarding the Process for Dedication and Acceptance of New Private POA Systems.**

The Committee was not able to reach this agenda topic due to time and Chairman Lennox asked to resume this topic at the Committees next scheduled meeting in January.

**6. Adjournment:**

Mr. McCann made a motion to adjourn and Mr. Lennox seconded. The motion passed with a vote of 2-0 and the meeting was adjourned at 4:02 p.m.

**Approved:**

**Respectfully submitted:**

---

**Tom Lennox, Chairman**

---

**Cindaia Ervin, Secretary**