

**Planning Commission
May 5, 2010; 3:00pm
Kiawah Island Municipal Center
Council Chambers**

Minutes

I. Call to Order:

II. FOIA: Notice of this meeting has been published and posted in accordance with the Freedom of Information Act and the requirements of the Town of Kiawah Island.

III. Roll Call:

Present: Fred Peterson, Chairman
Andy Capelli, Vice-Chairman
Larry Iwan
John Strauch
Ed Dittmeier
Peter Trees
Ron Tedesco

Also Present: Alan L. Burnaford, Town Council Member
Tumiko Rucker, Town Administrator
Joel Evans, Charleston County Planning
Jennifer Werking, Charleston County Planning
John Carullo, Charleston County Planning
Catherine Wilson, Town Clerk

IV. Approval of Minutes:

A. Minutes of March 3, 2010 Planning Commission Meeting

Mr. Capelli motioned to approve the minutes of March 3, 2010. Mr. Dittmeier seconded the motion. The motion carried unanimously.

V. Subdivision Request

A. Parcel 23

Mr. Ray Pantlik, Development Director of Kiawah Development Partners, Inc (KDP), represented the applicants Kiawah Development Partners II (KDPII) and Dyal Compass LLC (Dyal). He complimented Planning Staff on their thorough write-up and review of the application status. Mr. Pantlik stated that staff called him to have a discussion about the applicable lot standards and he explained that Exhibit 13.3 of the October 12, 2005 Development Agreement prevails over the current Article 12 standards. Staff then explained that any deviations require Architectural Review Board (ARB) review and approval of

the plat. Mr. Pantlik stated that Amanda Mole, ARB, reviewed the plat and that one of the rear lots did not strictly comply with Exhibit 13.3. After this was pointed out, the plat was revised and resubmitted to the ARB and Planning Staff and that, effectively, they are asking for consideration of the Plat dated April 26, 2010. He explained that it conforms to all Development Agreement standards.

Mr. Joel Evans, Charleston County Planning Department, discussed the application timeline as follows:

Time Line

- March 8th: Southeastern Surveying submitted an application for Preliminary Plat of 31 proposed Lots.
- March 19th: Staff conducted an onsite inspection of the property and mailed comments to the Surveyor.
Staff reviewed the proposed Preliminary Plat in accordance with the Town of Kiawah Island Land Use Planning/Zoning Ordinance. Thru this process staff found several deficiencies within the application and conveyed this information to the surveyor. The deficiencies were from Table 2C Lot Standards for R-2 Single family Detached Dwellings, and 12A-216 Waterfront Development Standards Applying To Properties Adjacent To Saltwater Marshes/Wetlands/ Waterways.
- March 31st: Staff met with Mr. Pantlik and the surveyor; staff discussed the comments that were generated on March 19th.
- April 7th: Mr. Pantlik forwarded a letter to staff explaining that the development of this particular parcel was exempt from Waterfront Standards. Staff forwarded this information to the Town Attorney for a determination.
- April 14th: The surveyor submitted a revised application and added the Waterfront Standards setback and buffers; however several proposed lots still did not meet Table 2C Lot Standards. Staff conveyed this information to the surveyor April 15th
- April 16th: The surveyor resubmitted and requested that the documents be forwarded to the Planning Commission. Staff did as requested and recommended disapproval of the application as it did not meet the requirements of the Ordinance nor did it meet the requirements of Exhibit 13.3 as staff had not received any notification nor justification from the ARB.
- April 21st: Staff delivered the application to the Town and also mailed to the surveyor the deficiencies from the Ordinance.
- April 23rd: Mr. Pantlik again contacted staff and explained that the whole development was to be directed by Exhibit 13.3 and not Table 2C. Mr. Evans stated that this is the first that staff had heard of this directive, and if it were to be the case, expected that the ARB would have notified staff of its unique development concerns. Staff again forwarded this information to Mr. Rhoad.
- April 25th: Attorney Dennis Rhoad sent staff an email making the legal determination that Parcel 23 is governed by the Development Agreement and Exhibit 13.3. Staff opened the email on April 26, 2010.

- April 30th: Attorney Dennis Rhoad responded that while the plat was amended, the change did not constitute a resubmission of a new application and that the Planning Commission should proceed with the original schedule of review.
- May 4th: Staff reviewed the modified plat and determined it meets the development standards as required in Exhibit 13.3.

Mr. Strauch asked if there were any other letters from the ARB or Amanda Mole other than the April 29 letter. Mr. Evans stated that he received a letter on April 28 but that the language was not sufficient in convincing staff and for that reason it was not forwarded to the Planning Commission. He then quoted Exhibit 13.3 Notation 1) “The ARB shall prescribe and determine Lot area, Lot Width, Lot Depth, Lot Coverage, setback and yard requirements, and may adjust the criteria set forth in the Table of General Lot Standards attached as Exhibit 13.3 provided the ARB determines that exceptional circumstances exist with respect to a particular Lot based on unusual configuration, topographic conditions or unique tree cover or other material considerations.” He explained that the first letter from the ARB, dated April 28, did not address any of those requirements but the April 29 letter did. Mr. Strauch asked if the ARB focused on identifying any of those requirements in the April 28 letter. Mr. Evans stated that he cannot answer that question and it would be best directed to an ARB representative.

Mr. Strauch stated that the letter from Trenholm Walker references today’s date although it was sent last week. He asked if that was a mistake. Mr. Evans stated that he contacted Mr. Pantlik and that it was obvious that the letter contained an error because there is no subsequent letter.

Mr. Strauch asked if anyone was in attendance that could speak to the two letters from the ARB dated April 28 and April 29. Mrs. Amanda Mole, ARB, stated that it was not a failure to focus on the requirements but the focus was on the need for deviations due to the site concerns. She stated that the April 28 letter was simply an inefficient letter. Mr. Dittmeier stated that the April 29 letter refers to the review of April 15 drawing and asked if there was also a review of the April 26 drawing. Mr. Peterson clarified that the ARB reviewed the April 15 plat but if you read further down the letter it references the revised plat dated April 26, which is what the Planning Commission has been asked to approve. Mrs. Mole stated that there is a synopsis of both the first and second reviews.

Mr. Strauch asked the details of the ARB’s plat review process. Mrs. Mole stated that she does not recall the exact date but that the review was based upon the unusual configuration of the parcel as a whole and how that drove how the lots would be configured. She stated that it was reviewed based upon the plat and location of grand trees. She stated that any hardwood tree 24” in

diameter is considered a grand tree. Mr. Capelli pointed out that a grand tree is defined in the ARB's *Designing with Nature* guidelines.

Mr. Evans stated that on May 4 staff reviewed the plat in light of the additional ARB and attorney information and determined that the Parcel 23 subdivision met the requirements of the Development Agreement Exhibit 13.3 table and that staff recommends approval. Mr. Evans stated that Mr. Pantlik submitted signed plats to him for file. Mr. Evans also asked that when the final plat is submitted they would like to see the setbacks shown.

Mr. Evans also stated that this was a learning experience for all involved because it is the first time the Development Agreement has been used in this manner. He explained that Staff now has new procedures to follow when the Development Agreement is the applicable guideline.

Mr. Strauch asked if staff determines lot width, from the plat, by measuring to scale. Mr. Evans responded yes.

Mr. Capelli stated that there is a letter to Dennis Rhoad from Trenholm Walker and asked that if there has been a response to that letter. Mr. Evans stated that based on previous correspondence, staff is aware of what Mr. Rhoad's position is on the subdivision. Mr. Capelli asked if Mr. Rhoad's position has been taken from the April 30 email. Mr. Evans responded that is correct.

Mr. Capelli stated that during the previous subdivision of Parcel 23 in September of 2009 that Mark Permar represented the developer and stated that tracts A and B, which are essentially the even numbered lots between 112-140, would be left to the developer and possibly designated as conservation easement. He asked if a conservation easement is still possible even though they will be platted. Mr. Pantlik responded that yes it is possible.

Mr. Dittmeier stated that there is an assignment and assumption agreement included in the materials and a clause for the subdivision of Tract C. He stated that if it is intended to be subdivided into more than 12 lots and then it requires approval and asked if that approval has been granted. Mr. Pantlik responded yes.

Mr. Peterson asked what document lets him know that Dyal Compass, LLC has agreed to allow KDP to subdivide the land. Mr. Pantlik stated that in the purchase agreement, which is not a recorded document, there is an agreement that KDP agreed to assist in getting the conditional plat approval. He also explained that there is an ownership affidavit submitted to the staff as part of the review.

Mr. Tedesco asked when the decision will be made that the Development Agreement prevails over Article 12. Mr. Evans stated that with all undeveloped parcels Exhibit 13.3 will prevail over Article 12 of the ordinance and embedded is the notation that allows the ARB to deviate from those standards with justification.

Mr. Capelli stated that he appreciates the timeline and asked if it was prepared for information or for justification of the timely submission of the subdivision. Mr. Evans stated that it was prepared for information only.

Mr. Trees stated that on April 16 Mr. Pantlik submitted a plat and based on that document the staff could not approve. Mr. Trees asked why Mr. Pantlik didn't foresee that and stop it from happening. Mr. Pantlik stated that he was unaware of staff's position until the letter and that developer's position has always been that Exhibit 13.3 prevails. He explained that staff could not make a decision until an opinion was received from the Town Attorney. Mr. Trees stated that he received his information 30 minutes ago and that the quality of the response is affected by the delay in receiving correct information. Mr. Pantlik stated that developer was prompt to respond to all requests for further information. Mr. Pantlik did not receive recommendation for disapproval until April 26 and had to formally ask staff for it.

Mr. Iwan asked if there is a reason that the developer is pushing to have this before the Planning Commission meeting this month instead of delaying until the next meeting. Mr. Pantlik stated that all developers want to move ahead as quickly as possible and that Mrs. Dyal would argue that she has an economic interest in getting the subdivision approved. Mr. Peterson noted that preliminary and conditional plat approval can be approved at the same time.

Mr. Capelli stated that in reading and understanding this he sees the only delay was that the Town's attorney could have responded a little quicker and provided a more specific response that would have allowed for a quicker response from Staff. Mr. Peterson agreed.

Mr. Capelli motioned to approve the subdivision of Parcel 23. Mr. Dittmeier seconded the motion. The motion carried unanimously.

Mr. Peterson stated that he hopes that the Developer and ARB follow lot standards as much as possible because the Town has standards for a reason and that exceptions do not become the rule.

VI. Old Business:

A. Comprehensive Plan Review

Charleston County Planning Staff presented the Planning Commission with several maps and data sets. The Planning Committee decided to take no action on the information and that the Committee will set up a work plan and

possible subcommittee. Mr. Trees suggested that Mr. Capelli submit a possible work plan for the Committee's guidance.

VII. New Business:

None

VIII. Correspondence:

None

IX. Public Comments

None

X. Commissioner Comments:

Mr. Strauch,

Mr. Strauch suggested that any memo that is submitted to the Planning Commission have at the least, a "From, To, Date and Subject lines."

Mr. Iwan,

Mr. Iwan stated that there is a picture of a dog running without a leash on the beach in the Comprehensive Plan and he suggested that it be removed.

Mr. Trees,

Mr. Trees stated that the timeline was extremely helpful and thanked staff for putting it together.

Mr. Dittmeier,

Mr. Dittmeier thanked staff for their work on the evaluation of Parcel 23 and their work, thus far, on the Comprehensive Plan Update.

Mr. Peterson,

Mr. Peterson stated that the Exhibit 13.3 notation "seems like the developer found a new tool" and he hopes that they do not abuse it.

XI. Adjournment:

Mr. Iwan motioned to adjourn the meeting at 4:14 pm. Mr. Capelli seconded the motion. The motion carried unanimously.

Submitted by,

Catherine Wilson, Town Clerk

Approved by,

Fred Peterson, Chairman

Date