

**ENVIRONMENTAL COMMITTEE MEETING
SEPTEMBER 2, 2008; 3:00PM
KIAWAH ISLAND MUNICIPAL CENTER
COUNCIL CHAMBERS
MINUTES**

- I. Call to Order: Mr. Lipuma called the meeting to order at 3:03PM.**
- 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: Charles Lipuma, Chair
Dale Anderson
Jim Jordan, TOKI
Norm Shea, KICA
Dave Achey, KICA
Liz King, KIGR
David Elliott
Sarah Latshaw, KIGR

Also Present: Catherine Wilson, Town Clerk

Absent: Jim Chitwood
Nancy Jackson, ARB

IV. Environmental Committee Minutes of August 7, 2008

Mr. Elliott motioned to approve the minutes of August 7, 2008. Mr. Anderson seconded the motion. Mr. Lipuma asked that the word “COBRA” have the letter “O” removed from all instances. With those changes, the minutes were unanimously approved.

V. Old Business:

None

VI. New Business:

Mr. Lipuma stated that this meeting will be dedicated to the Captain Sam’s Development and Kiawah River Revetment. He explained that it was the Committee’s original intent to have Mr. Mark Permar and Mr. Leonard Long of KDP, attend the meeting to present a detailed plan for the proposed development and to be available during the question and answer session. Mr.

Lipuma stated that Mr. Long cancelled KDP's attendance via email on Friday, August 29, 2008 until further notice.

A. Captain Sam's Development

Mr. Lipuma discussed a Captain Sam's fact sheet and pointed out that the most recent edition of Kiawah Island Talk presented an excellent and factual summary of Captain Sam's.

Mr. Lipuma explained that language in the 2005 Development Agreement, between the Town and KDP, required that the Town assist the development of Captain Sam's Spit and directly corresponds with the letter from Mayor Wert dated May 13, 2008 to Congressman Brown in support of HR 6389. Mr. Lipuma stated that the Town Attorney agreed that the Town needed to assist with the development. Mr. Lipuma also stated that due to public opposition, Congressman Brown withdrew his proposed HR 6389.

Mrs. King stated that she, Jim Jordan and Norm Shea met with representatives from Thomas and Hutton Engineering one week prior to the meeting to discuss the revetment and their plans. Mrs. King stated that a Town Ordinance requiring that the Town receive initial notification of the revetment was discussed during the meeting. She stated it was clear that Thomas and Hutton were aware of their failure to notify the Town before submitting permitting applications to OCRM. Mrs. King asked if the Town would have the ability to review the permit before the work begins and for any other relevant information Mr. Lipuma may have concerning Town involvement with the permit.

Mr. Elliott asked what relationship the permit application shows with the Federal Requirement relevant to critical habitat for the Piping Plover. He stated that in the late 1990's a Federal Critical Habitat area was established for the Piping Plover on the West End of Kiawah Island. Mr. Lipuma stated that he had not seen a KDP proposal and that one of their representatives would be necessary to answer that question. Mr. Lipuma also stated that he had requested a copy of the development proposal several weeks prior to the meeting and has not received any further information.

Public Q & A

A. Carol Fishman, 247 Saltgrass Court

Mrs. Fishman stated that the original 1994 Development Agreement set Captain Sam's Inlet aside for preservation; half of the land was to go to KICA and the other half to the Park Service. She stated that it is important to recognize that the most recent development agreement decision, which made the land developable, could have changed KDP's views on the land. She also pointed out that the second Development Agreement was a substantial change and it is important for everyone to remember that.

Mrs. Fishman stated that during negotiations of the second Development Agreement there were comments that KDP planned 17 units on the property. She also stated that the recent discussion is back to the authorized 50 units and asked what KDP's plans are in respect to the number of units.

Mr. Lipuma answered: KDP clearly has the right to 50 homesites. Until a master plan is released the number will be purely speculation.

Mrs. Fishman stated that Mayor Wert and Don McIver had made statements to the public and individuals that they "should not worry so much because only 17 units are planned."

Mr. Lipuma stated to "think 50 and if it's fewer than 50, so be it."

B. Art Morganstern, 164 Marsh Island

Mr. Morganstern stated that it seems like the Committee is planning on dealing with this issue when it arises again in the future and asked if there will be a meeting with advance notice, so that people can be prepared to answer questions.

Mr. Lipuma replied that if he is still a member of Town Council when it arises again, there will be a public meeting. He then referred Mr. Morganstern to Leonard Long's letter and stated that KDP will need more time before reviewing their master plan with the Town.

Mr. Morganstern asked how the requirement for Town's support and assistance has been interpreted in regards to Town Committees and Town employees. Mr. Morganstern stated that the Environmental Committee is composed in large by Town Employees who where a separate hat and provide a separate function for the Town. Mr. Morganstein asked if the employees are required to support the bill.

Mr. Lipuma stated that the simple answer is "yes". It means the Town, Town Council and Committees are bound by the Development Agreement language.

Mr. Morganstern asked if Mr. Lipuma interpreted the Development Agreement language as assisting in all aspects of the permitting process or just the marketing aspects.

Mr. Lipuma stated that the term that is used is "assist" and read aloud the specific language of page 22.

Mr. Elliott stated that to his knowledge there is only one Town employee on the Environmental Committee and that is Jim Jordan.

Mr. Morganstern asked about Dave Achey and Norm Shea.

Mr. Achey and Mr. Shea replied that they are employed by KICA.

Mr. Lipuma stated that the only entity absent from the Environmental Committee meeting was the ARB; Nancy Jackson represents them. All other members represent KICA, KIGR, the Nature Conservancy, or property owners.

Mr. Morganstern asked Dale Anderson if he was an employee of the Town.

Mr. Anderson stated that he was employed by KICA and is also a property owner.

Mr. Morganstern stated that he has heard rumors of a beach club being developed. Mr. Morganstern asked if this was part of the original application and if so, is the Town required to support it.

Mr. Lipuma stated that he did not know KDP's plans and that the word "beach club" is not specifically mentioned in the Development Agreement. Some of the land is zoned for multiple use which could include villas, homesites, or commercial property. Mr. Lipuma stated that this would not be on Captain Sam's Spit but on other KDP properties referenced in the Development Agreement.

Mr. Morganstern asked where Captain Sam's Spit is located.

Mr. Lipuma stated that the most recent edition of Kiawah Island Talk contains a great picture of the area known as Captain Sam's Spit and pointed the area out to the audience and Mr. Morganstern.

C. Catherine Jeweler, 4246 Mariners Watch

Mrs. Jeweler asked if any wildlife or endangered species assessments or surveys had been conducted on the Captain Sam's property.

Mr. Lipuma stated that KDP hired an environmental consultant to conduct surveys on the property. This consultant met with members of Town staff to review any previous wildlife surveys of the property and to gain insight on future studies that may be conducted.

Mr. Jordan stated that a large section of HR 6389 discussed a bioinventory project to catalog species. He also stated that he received a phone call where the KDP consultant stated that because HR 6389 had been removed from consideration that the bioinventory project had been cancelled until further notice. Mr. Jordan stated that to his knowledge, there are Piping Plover and Loggerhead Turtles, which are endangered species, located only on the beachfront of Captain Sam's and no endangered species in the upland area.

D. Wendy Kulick, 38 Marsh Edge Lane

Mrs. Kulick thanked the Committee for holding the meeting even though the KDP presentation was cancelled.

E. Andy Capelli, 160 Governors Drive

Mr. Capelli stated that he is unclear what the purpose of the meeting is due to the fact that the KDP cancelled their presentation. Mr. Capelli stated that he is concerned with the Committee's questions over the Development Agreement. Mr. Capelli stated that the property owner put over 2/3's of their property into a lifetime conservancy when they signed the Development Agreement and that by the Committee challenging the Agreement, they are risking a situation that is a "plus, plus" for both the Town and the Developer. Mr. Capelli also stated that by challenging the Agreement at this point, it seems as if the Committee may be attempting to unravel the contract and it is very disappointing to see Council members that voted for the Development Agreement to now have questions to its validity. Mr. Capelli also stated that by seeing the members question the Agreement that they voted for made him question their ability to understand what they voted on and that if they did not understand it when they voted on it, then the citizens may have to look for a Council that could. Mr. Capelli also stated that the Environmental Committee's only function was to recommend environmental issues to Town Council.

Liz King stated that this meeting was put together because Mr. Leonard Long had asked the Committee for their support on HR 6389. Mrs. King stated that Mr. Long asked the Committee for their recommendations on how to properly protect the species located on the affected property and that this is the forum the Committee has chosen to discuss those species. Mrs. King also stated that this Committee is comprised of members that could be considered experts on the species of Kiawah Island and that Mr. Long asked for their support in order to develop the property in a sensitive manner.

Mr. Capelli stated that he did not feel the Committee was discussing environmental issues.

Members of the audience and committee spoke at the same time and exact phrases were not clearly recorded. Mr. Lipuma called for order.

Mr. Lipuma stated that the Development Agreement is a contractual obligation and the Town recognizes that and no one has said they are looking to change that contractual obligation. Mr. Lipuma also stated that the only way it can be changed is by mutual agreement among both signing parties. Mr. Lipuma stated that as Chairman of the Environmental Committee he has the right to set agendas and that during the July Environmental Committee meeting, there were a number of questions pertaining to the proposed development and its related implications on the wildlife. Mr. Lipuma explained that is why the Environmental Committee meeting was discussing the development during today's meeting. Mr. Lipuma also stated that before HR 6389 was removed, that Mr. Leonard Long was

anxious to come before the Committee to obtain their support. Mr. Lipuma stated that he simply wanted the public and the Committee to have an opportunity to ask questions concerning the development.

F. Pamela Cohen, 380 Greenwing Teal

Mrs. Cohen stated that she had two issues to discuss with the citizens and Committee members: development of Captain Sam's and construction/development along the east end of the Island. Mrs. Cohen stated that she documents wildlife on the Island and that everyone needs to know that Kiawah Island will not be the same if the east end is altered to reduce the current habitat that is available. Mrs. Cohen stated that by building parking lots and structures on the land, that critical harm is being done to bird habitat. Mrs. Cohen warned attendees that "Kiawah Island will not be Kiawah Island anymore if these developments occur."

G. Terry Peterson, 67 Surfwatch

Mr. Peterson stated that he has been a property owner for nearly 27 years and has been very pleased by the Town and Developers until now. Mr. Peterson stated that two issues occurred that brought him to this meeting: 1) He received a letter encouraging him to contact Congressman Brown and that irritated him as a citizen of Kiawah Island to think that he should support development that will destroy part of the Island by building more homes. He also explained that he had worked for local, state, and federal government agencies and that he has experienced people making foolish, rushed decisions in the midst of a tight economy. He stated that these decisions hurt the longtime good and legacies. He stated that during a walk with his 11 month old granddaughter he realized she would never see the same Kiawah that he has experienced and it inspired him that he has an opportunity to protect the Island as it is now. Mr. Peterson stated that as members of Town Council and voting members in a democratic society, the right to change ones mind is inherent. He understands that the Town is in a contractual agreement and that changing of minds would "open things up" but as residents, they must be responsible for the future of the Island. Mr. Peterson stated that our country allows people to exert their rights, but that he believes it takes working together to exert their responsibilities.

Mr. Lipuma stated that the Town has a contractual obligation with KDP allowing 50 homesites to be constructed on Captain Sam's Spit. This agreement can only be changed by mutual agreement of both parties.

B. Kiawah River Revetment

Mr. Lipuma presented a fact sheet of the Kiawah River Revetment and OCRM application 08-117-E. Mr. Lipuma stated that the County Park had planned to submit a permit application for a small revetment in the park area to mitigate the erosion problem. KDP realized more protection was needed than could be done with a small revetment, so they applied for a 2783 ft. long revetment. The public comment period expired on May 31, 2008. Mr. Lipuma stated that KDP did not

submit an application to the Town before applying to OCRM. Town Ordinance 2002-6 regulates the procedural application process and requires that applicants submit an initial application to the Town before proceeding with the permitting process. The Town could then work in conjunction with OCRM on the permitting process. Mr. Lipuma stated that the Town will request that OCRM delay their review to provide the Town time to complete a detailed review and analysis. The Town will also notify KDP of the procedural requirements.

Mrs. King asked if the Town can request that the public comment period be reopened.

Mr. Lipuma stated that he is unsure of OCRM's procedures and that he will talk with Mrs. Rucker in order to request the reopening of the Public Comment Period.

Mr. Jordan stated that it will not hurt to ask OCRM to reopen the comment period but that he highly doubts they will do so. OCRM has their own procedural requirements that are not mandated by the Town and if those requirements were met, there is no need to reopen the comment period.

Mrs. King asked if the Town had distributed notification of OCRM permits to residents in the past.

Mr. Lipuma stated that the Town went through the public notification procedures during the beach renourishment project and that the whole process was public. Mr. Lipuma stated that this was a Town project that followed those procedures but the current KDP project has not. Mr. Lipuma wants KDP to be fully aware that they have an obligation to come before the Town for review before they go to OCRM.

Mr. Elliott asked if there is a conflict between the contractual agreement and the Town ordinances. He recommended that the Town use Mr. Tim Kana as a consultant on this project in order to gain insight from a professional that is very knowledgeable on the Kiawah beaches. He posed the following questions:

- 1) What might the effect be on any rare, threatened, or endangered wildlife?
- 2) What will the collateral effects be? Will currents be shifted to different locations and cause further erosion?
- 3) If the Island has a major hurricane, pushing and pulling large amounts of water from the Stono and Kiawah Rivers, would the revetment withstand the impact of water trying to escape afterwards?
- 4) Captain Sam's Inlet continually scours away the beach at Seabrook and it has cut through before. What implications does the proposal have relative to that situation?

Mr. Lipuma stated that the revetment is completely separate from the development agreement and appropriate procedures must be followed by everyone. Ordinance 2002-6 requires the property owner to come in advance in

order to deal with issues concerning erosion, impacts of the revetment, wildlife implications, etc.

Mrs. King stated that she wrote a letter to Leonard Long explaining to him that the diamondback terrapins, in the Kiawah Island salt marsh, are part of the longest running continuous study of diamondback terrapins in the world. During the past 20 years of the study, diamondback terrapin population numbers have been dramatically decreasing. The revetment would be placed in the most significant nesting habitat for the terrapins and she is very concerned that the revetment will block the terrapins from reaching their nesting habitat. Mrs. King explained that Mr. Long replied to her letter stating that there are numerous studies that show turtles will nest on island hummocks and offered her the opportunity to speak with KDP's biologist. Mrs. King displayed a map, part of a 1989 study of the nesting of the diamondback terrapins in the Kiawah Salt marsh and she pointed out the location of the revetment in regards to the nesting habitat. Mrs. King stated that she believes the revetment will have a devastating impact on the local population of diamondback terrapins.

Public Q & A

A. Lynn Morganstern, 164 Marsh Island Drive

Mrs. Morganstern stated that this discussion has been very helpful and that she would like for the public comment period to be reopened by OCRM. She stated that because KDP did not produce evidence of their public notice of the project that OCRM would possibly reopen the comment period and that the community had no notice of hearing.

Mr. Lipuma stated that the Town also learned about the permit after the fact, despite the ordinance.

Mrs. Morganstern stated that she has written contracts for many years and that there will always be questions asked and that does not constitute a challenge of the contract. She stated that it is important to note that there is a good argument that the revetment is not covered in the development agreement but urges the Town to carefully consult this fact with their attorney. She also stated that, in regards to Mr. Elliott's comments, that the Town cannot contract away their citizens' health and safety regulations or the Town's right to independent review. Mrs. Morganstern stated that if the contract requires that the Town support a project before it is designed or permitted, then the document may be in conflict with the Town's ordinance requiring initial review. She hopes that the Town will spend a lot of time with their attorney going over these issues.

Mr. Lipuma stated that he interprets the revetment issue as being separate from the development agreement.

B. Wendy Kulick, 38 Marsh Edge Lane

Mrs. Kulick asked that the Town request OCRM reopen the comment period and to hold a public hearing on the issue. She also stated that the Town should work with OCRM to ensure that they are aware of the Town's regulations.

Mr. Lipuma stated that when Mrs. Rucker spoke with OCRM she informed them that there is a required pre-review by the Town and at that point, they were unaware of the Town's requirement.

C. Andy Capelli, 160 Governors Drive,

Mr. Capelli stated that the procedures required under the Tidelands Management ordinance require that the Planning Commission spearheads the review and then makes recommendation to Town Council as a Committee. Mr. Capelli stated he recommends that the Environmental Committee be prepared to make recommendations to the Planning Committee as they undertake their review. Mr. Capelli stated that the procedures are unclear and that they do not require that the Town get the review of an outside consultant. Mr. Capelli stated that the Planning Commission is in the process of re-writing these ordinances in a clear way that will not overlap any of the OCRM or ARB requirements. Mr. Capelli stated that there currently is a conflict in the existing regulations and procedure currently in place and it is being resolved.

Mr. Lipuma stated that he had contacted Mr. Joe Colvin, Chair of the Planning Commission, in order to make sure that he was aware of Ordinance 2002-6 and that he agrees with the idea that the language needs to be "tightened up". Mr. Lipuma also stated that the Planning Commission will be the group that reviews these applications and it would be appropriate for the Environmental Committee submit their comments and recommendations to them.

D. Kelly Bragg, 176 Marsh Island,

Mrs. Bragg stated that she strongly encourages the Planning Commission to seek expert opinions or advice on this issue because the Town cannot afford to be wrong. She asked what OCRM does with the Town's recommendations on the permitting issues. Mrs. Bragg expressed her concern with the fact that the revetment was already authorized by the Army Corps of Engineers. Mrs. Bragg also stated that she requests that OCRM reopen their public comment period.

Mr. Lipuma stated that OCRM will make their decision and that the Army Corp will follow suit. Mr. Lipuma stated that he did not know OCRM's regulations and that he feels that public comment is highly regarded.

E. Jennifer Barber, KIGR Nature Center,

Ms. Barber stated that she feels that if no action is taken to stop the development that the diamondback terrapin population will be depleted forever. She invited all

to attend a presentation, in October, hosted by Mike Dorcas to learn more about the diamondback terrapin and their importance to Kiawah Island.

Mr. Lipuma stated that the Environmental Committee is comprised of members that love the Island and are emotionally dedicated to work hard at keeping the Island as pristine as possible.

Mr. Lipuma also stated that KDP has gone a long way in keeping the Island natural and pristine.

VIII. Mr. Anderson motioned to add “Committee Member Comments” to the agenda. Mr. Jordan seconded the motion. The motion carried unanimously.

IX. Committee Member Reports:

Mr. Anderson

Mr. Anderson stated that he current turtle nest count is up to 228 and hatching is progressing rapidly.

Mr. Elliott

Mr. Elliott stated that *The Curious Mr. Catesby* will be distributed to PBS nationally in January of 2009.

Mr. Achey

Mr. Achey stated that he is concerned with the effect on vegetation if the Captain Sam’s Spit area is developed. KICA is in the process of renovating areas from Spartina to Blue Heron Pond Rd. The reforestation project is in a “no mow” and will continue to grow out with the use of replants from the rescue list. Plant rescue will begin later in the month and the first project is scheduled for September 11, 2008. KICA purchased a tree injector with herbicide to treat Tallow Trees. KICA staff feels they have enough properties to qualify for the National Wildlife Federation community award and are in the process of submitting the application.

Mr. Lipuma asked if residents needed to get ARB approval before removing a Tallow Tree from their property.

Mr. Achey stated that because the Tallow Tree is an invasive species, ARB approval is not necessary.

Mr. Shea

Mr. Shea stated that fish kills occurred in the following ponds: Pond 005, Pond 050, Pond 072, and Pond 111. There were 18 active alligator nests in 2008; nine have hatched. August was the first month of the year to have normal or above normal rainfall with 6.54 inches; the Island remains 27% below normal rainfall levels.

Ms. Latshaw

Ms. Latshaw stated that the Annual Beach Sweep is scheduled for September 20, 2008. Volunteers will meet at the Nature Center and pick up trash along the beach.

Mr. Lipuma

Mr. Lipuma stated that the Town will host its cleanup day on September 26, 2008 covering Beachwalker Drive and the Parkway.

Mr. Jordan

There were two bobcat wildlife calls; a sighting of bobcat kittens at 107 Surfscotter and a VHF collared bobcat was killed at the entrance to the Ocean Course. Piping Plover surveys have been completed. Mr. Jordan is in the process of completing a bobcat management plan which will assist the Conservancy with land management and conservation decisions.

Mrs. King

Mrs. King stated that she maintains that education and public awareness is the key for all decisions. She presented a publication by Dr. Whit Gibens from UGA, on the Kiawah Island diamondback terrapins. The KIGR fall activity guide is available at the Visitor’s Center desk. KIGR is also doing their 2nd e-Waste recycling day at the end of the week.

Mr. Lipuma

Mr. Lipuma reminded everyone to keep informed of Hurricane Hanna.

IX. Citizen Comments:

None

X. Adjournment:

Mr. Elliott motioned to adjourn the meeting at 4:32PM. Mr. Jordan seconded the motion. The motion carried unanimously.

Submitted by: _____
Catherine Wilson

Approved by: _____
Charles R. Lipuma

Date: _____

CC: William Wert, Mayor
Tumiko Rucker
Town Council