

**Planning Commission Meeting
September 8, 2010 at 3:00 pm
Kiawah Island Community Association Conference Room**

MINUTES

- I. Call to Order: Mr. Peterson called the meeting to order at 3:00 pm.**
- 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, Chair
Andrew Capelli, Vice Chair
Ed Dittmeier
Ron Tedesco
Peter Trees
- Also Present:** William G. Wert, Mayor
Al Burnaford, Mayor Pro Tempore
Tumiko Rucker, Town Administrator
Dan Pennick, Planning Director
Joel Evans, Planning Staff
Jenny Werking, Planning Staff
Wendy Kulick
Mark Permar
Greg Vanderwerker
- Absent:** Larry Iwan
John Strauch
- IV. Amendment of the Agenda:**
Without objection, Mr. Peterson amended the agenda to add an item: Ordinance 2010-9 to amend the Town's Comprehensive Plan and Zoning Map. There were no objections and the item was added under New Business.
- V. Approval of Minutes:**
Mr. Capelli motioned to approve the minutes of the August 2, 2010 meeting. Mr. Dittmeier seconded the motion. After three corrections, the motion carried unanimously.
- VI. Subdivision Requests:**
None

VII. Old Business:

A. Draft Development Agreement with Kiawah Island Golf Resort (KIGR)

Mr. Peterson stated that a Subcommittee consisting of Mr. Capelli, Mr. Tedesco and himself was formed to meet with the Town Attorney to review the proposed Development Agreement.

Mr. Capelli provided a report of the Subcommittee's meeting on August 17, 2010 at the County Planning office. He stated that Dennis Rhoad, Dan Pennick, Joel Evans, and Jenny Werking also attended the meeting. The Subcommittee immediately moved to Executive Session for the purpose of receiving legal advice and completed a paragraph-by-paragraph review of the proposed Development Agreement. The Subcommittee focused on determining whether areas were consistent or inconsistent with the existing Comprehensive Plan as well as determining how the definitions and language in the proposed Development Agreement interacted with existing Town documents. Particular attention was focused on paragraph 8 which addresses the conformity of the Comprehensive Plan and the proposed Development Agreement. The Subcommittee reached a consensus that, after an amendment to Article 12, the new Development Agreement will become a part of Article 12, and limited in its application to things covered by the Agreement.

The Subcommittee was satisfied that the process and approach to include the Agreement in the ordinance would work. The Subcommittee also suggested to the Town Attorney some editorial changes and non-substantive changes to be incorporated into the Development Agreement prior to the final document appearing before the Town Council in October. Among other things, the Comprehensive Plan future land use map will be changed to reflect the Development Agreement and make the two documents consistent.

Mr. Capelli provided the Commissioners with a written summary of the meeting as well as for inclusion in the minutes of this meeting (see attachment). Mr. Peterson noted that no decisions were made and no votes were taken during the Subcommittee meeting.

Mr. Capelli stated that the Executive Session was very helpful and open; especially as it led to the Subcommittee determining that the Comprehensive Plan was consistent with the Development Agreement.

B. Update of the 2005 Comprehensive Plan

Mr. Peterson thanked Mr. Trees and Mr. Dittmeier and staff for their very thorough work on the proposed review of the Town's Comprehensive Plan. He also noted that he solicited comments from the two absent

Commissioners, Mr. Iwan and Mr. Strauch, who submitted written comments supporting the updated Comprehensive Plan. Mr. Peterson read the comments into the record and circulated a copy to each Commissioner in attendance. (These comments are attached as a part of the minutes).

Mr. Peterson motioned to recommend that Town Council approve the revised Comprehensive Plan. Mr. Trees seconded the motion.

Mr. Trees provided a detailed summary of the 13 weeks of work that the Subcommittee performed to complete the update. He explained that the County Planning Staff and the Town staff met five times to discuss updates and allocate responsibilities to the respective staff members. During these meetings, the Subcommittee reviewed current planning data, thoroughly reviewed each element, and proposed changes to the document. In addition, the Subcommittee received over 130 comments from the Planning Commissioners and hosted two public sessions that yielded a further 33 comments. The Subcommittee also received input from additional entities, including Kiawah Island Community Association, Kiawah Development Partners, Kiawah Island Golf Resort, and others. A large majority of these comments were reflected on the proposed revision to the Plan. Mr. Trees thanked the Mayor, Council members, staff and commissioners for their support throughout the process. The subcommittee was very appreciative of all of the input and comments received from everyone.

Mr. Dittmeier expressed his thanks to the Town and County Planning staff as listed on the acknowledgement page for their efforts and help in completing the proposed revision. He also noted that the proposed revision incorporates new 2007 South Carolina Priority Investment Act requirements for transportation and priority investment elements, a deeper discussion on affordable housing, and the establishment of required implementation strategies together with responsible persons and time frames.

Mr. Tedesco thanked the task force for listening to his comments and working to incorporate them into the document.

Mr. Capelli stated that he did not think that the work done was required by law. However, he noted the document does reflect a great deal of work. He expressed regret that that some comments, although requested, were viewed negatively. Mr. Capelli stated that he had a number of further questions regarding the Comprehensive Plan that he believed should be addressed before the Commission recommends the Plan for adoption by Town Council. He stated that there were certain areas that were not addressed and there were some word choices with marked differences in interpretation that could change the intent of the Plan. He also stated there

were some comments that were not incorporated in the proposed revision without any explanation as to why they were not incorporated, including for example, consideration for potential cultural arts facilities. He further stated that Town Council directed the Planning Commission to develop annexation evaluation procedures which were accepted by Town Council in April 2006 and that the proposed Plan discussion regarding annexation proposals did not reflect this.

The Commissioners proceeded to discuss the merits of various potential changes to the proposed revisions. As part of this discussion, Mr. Trees stated that the Subcommittee prepared a list of all comments received with an explanation of why the comment was incorporated in the proposed revision or not. Mr. Capelli stated that the Commission should not be comfortable with the quality of the process applied to revising the Plan; he provided his written comments on the Plan to be entered into the record (see attachment). Mr. Peterson stated that the Plan should be used regularly. He noted that any Planning Commission action will proceed to Town Council which will hold public hearings and consider any further potential modifications to the Plan.

Mr. Dittmeier moved to call the question. Mr. Trees seconded. The motion to call the question was approved.

The motion to recommend that Town Council approve the revised Comprehensive Plan was approved 4 -1 with Mr. Capelli voting against the motion.

VIII. New Business:

A. Ordinance 2010-9: Amendment of Article 12 and the Comprehensive Plan

Mrs. Rucker provided each Commissioner with draft ordinance 2010-9: proposed amendment to the zoning map and the future land use map. She explained the purpose of the ordinance was to amend the Comprehensive Plan and Article 12-A Land Use & Zoning so as to make them consistent with the proposed Development Agreement.

Mr. Pennick then explained the Future Land Use Map and the Zoning Map. He stated that the proposed Future Land Use Map includes the properties that would be affected by the proposed Development Agreement with KIGR. Some Resort owned properties, such as the golf courses, would not change under the proposed Development Agreement and some properties were updated to accurately reflect property lines. He then explained that the proposed Zoning Map includes an Overlay District to show new zoning created as a result of the proposed Development

Agreement (R-2 DA and R-3 DA zoning). The map reflects all parcels effected by the proposed Development Agreement and listed in Exhibit 13.5 in the proposed Development Agreement.

The Commissioners discussed the draft ordinance. As part of this discussion, Mr. Dittmeier asked for clarification on the relationship between Exhibit 13.5 and the Zoning Map overlay district and Mr. Pennick confirmed that all parcels on Exhibit 13.5 are reflected in the Zoning Map overlay district (hatched areas on the zoning map). Mr. Peterson explained that by using the overlay district and the exhibit, the Development Agreement rights would terminate upon expiration versus being incorporated into Article 12. Mr. Evans stated that KIGR rights are only vested for the 10 years of the Development Agreement and that any undeveloped areas revert back to the original zoning at the expiration of the Development Agreement, Mr. Capelli asked if the Development Agreement with KRA would be incorporated into Article 12 in a like manner and Mr. Pennick stated that it would not at this time, but perhaps at some time in the future.

Mr. Pennick stated that the largest changes reflected in the proposed Development Agreement involve Willet Island and Mingo Point. There was considerable discussion among the Planning Commission, Planning Staff, and Councilmember Burnaford about the allowance of 20 dwelling units at Willet Island and a further 23 dwelling units on the remaining adjacent parcel. Mr. Pennick stated there is only one parcel in Charleston County zoning records and one tax map number on record for the parcel.

Mr. Permar stated that the 1994 Development Agreement included a Willet Island Parcel and a separate residual which was sold separately. He stated his understanding that the residual property was platted with a separate tax map number and represented his understanding that the property owner believes there is approval for 43 lots on the Willet Island and residual properties.

Mr. Capelli stated that until this legal matter is resolved, the correct Willet Island boundaries are not known.

Mr. Permar stated that there is a lack of clarity on the platting of these properties, including those represented in Exhibit 13.6 - Ocean Course Residual and agreed to perform research to locate the plats he believes exist for Willet Island and the Willet Island Residual.

Mr. Peterson motioned that the Planning Commission finds that subject to adoption of Ordinance 2010-9, the proposed Development Agreement is consistent with Article 12 and the Comprehensive Plan and

recommends that the property owner provide a platted survey for Exhibit 13.6 - Ocean Course. The motion was seconded by Mr. Capelli.

Mr. Peterson tabled the motion to discuss Mingo Point. After a second, the motion passed unanimously.

Mr. Pennick pointed out that the zoning at Mingo Point, as reflected in exhibit 13.5, remains unchanged as R-2 C or 2.5 stories and a maximum height of 40 feet.

Mr. Peterson then motioned to reinstate the original motion. Mr. Capelli seconded the motion. The motion passed unanimously.

IX. Correspondence

None

X. Public Comment

A. Wendy Kulick, 38 Marsh Edge Lane

Ms. Kulick asked if there was any requirement on the size or a definition of an overlay district.

Mr. Pennick explained that the Town could define any standards, including size, for an overlay district, but needed to ensure that sufficient acreage was so designated such that it cannot be construed as spot zoning. He also stated that there were other zoning techniques, like floating zones, that could be used or considered by the Town for future use. Mr. Capelli stated that any of these zoning techniques would require a change to the zoning ordinance. Mr. Pennick stated that the Town should employ a more regular review of its zoning ordinance to consider changes in state law or road codes.

Mrs. Kulick also asked whether the language in the Development Agreement which states that the Resort may determine the roads is contradictory. Mr. Evans explained that a Development Agreement may include any contradictory language that is negotiated, and that is why it is a commonly used tool. Mr. Pennick further clarified that the Resort is required to provide a plat that shows roads as well as other things for Planning Commission and Town Council approval.

XI. Commissioner Comments

Mr. Capelli submitted a copy of the Annexation Evaluation Process procedures to the Town Administrator. Mr. Capelli explained that the Planning Commission wrote the procedures at the direction of the Town Council. These procedures were accepted by the Town Council in April 2006 (These procedures are attached).

Also, Mr. Capelli provided two examples of comment omissions that were previously presented to the Comprehensive Plan Subcommittee which he believes demonstrate the lack of quality work of the Comprehensive Plan review process.

Mrs. Werking reminded the Commissioners that they will receive a 3-hour planning & zoning continuing professional education training session on October 6, 2010.

She also reported that Planning Staff have received a request for a property on Belmeade Hall to move an HVAC unit from underneath the home to the side of the building so as to comply with flood plain zoning changes. However, this places the unit within the setback and will require a variance. Staff will develop a proposal to allow HVAC units within setbacks which the Planning Commission will be requested to consider.

XII. Adjournment:

Mr. Tedesco motioned to adjourn the meeting at 4:55 pm. Mr. Capelli seconded the motion. The motion carried unanimously.

Submitted by,

Tumiko Rucker, Town Administrator

Approved by,

Fred Peterson, Chairman

Date