

**Public Hearing
Ordinance 2009-2
Town Council
Kiawah Island Municipal Center
Council chambers
January 22, 2009 1:00 PM
Minutes**

I. Call to Order

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

III. Roll Call

Present: William G. Wert, Mayor
Council: Alan L. Burnaford, Mayor Pro Tem
Charles R. Lipuma
G. Steven Orban
Harry M. McHugh

Also Present: Tumiko Rucker, Town Administrator
Catherine Wilson, Town Clerk

IV. Public Hearing:

A. Ordinance 2009-2-Proposed Zoning Map Amendments

Mayor Wert explained that the purpose of Ordinance 2009-2 is to amend Article 12A-202, the Zoning Map, of the Municipal Code of the Town of Kiawah Island. Whereas the Municipal code of the Town of Kiawah Island provides for an official Town of Kiawah Island Zoning Map in Article 12A and whereas Article 12A provides for the amendment of the official Town of Kiawah Island Zoning Map provided the requisite notices are given and a Public Hearing is held as required by Sections 12A-504 (4) and 12A-502 (A)(B)(C) and (D).

Mayor Wert stated that the intent of the Ordinance is to bring to present the Town of Kiawah Island Zoning Map, dated June 1994. The revised Map was forwarded to the Town Council after due consideration from the Town of Kiawah Island Planning Commission, chaired by Mr. Fred Peterson, and co-chaired by Mr.

Andrew Capelli. Many of the changes are reflective of the changes over the many years of zoning definitions and the Town's zoning ordinance, commonly known as Article 12. It also reflects changes required from the 2005 Development Agreement between the Kiawah Development Partners (KDP) and the Town. Mayor Wert reminded all that the 1994 Development Agreement between the Kiawah Resort Associates (KRA) and The Town expired January 1, 2008. The limited Development Agreement between the Town and Kiawah Island Golf Resort (KIGR) for the Sanctuary Hotel Property has also expired.

Mayor Wert stated that the purpose of the hearing was for the Town Council to hear comments and issues pertaining to the pending ordinance. Mayor Wert noted that the Council will listen and take into account the offerings heard during the hearing. Neither questions nor answers from the Council would be provided. Mayor Wert asked speakers to limit their comments to no longer than five minutes.

Mayor Wert stated that Mr. Dennison Royal, a Kiawah property owner, could not be present for the meeting but had submitted two letters for Council's review. Mayor Wert noted that copies of the letter, or any other documents distributed during the meeting, would be available upon request to the Town Clerk.

V. Public Comments & Public Input

A. Wendy Kulick, 38 Marsh Edge Lane,

Mrs. Kulick thanked Council for allowing public comment and thanked the Mayor for the lowering of the flags in remembrance of Mr. Bill Fowler.

Mrs. Kulick stated that the Mayor and Mr. Burnaford were aware of the questions that she and Mrs. Diane Lehder had submitted to Mr. Fred Peterson, the chair of the Planning Commission. Mrs. Kulick submitted a copy of the emails for the record.

Mrs. Kulick stated that it was her understanding, after attending the Planning Commission Meeting on December 3, 2008, that the rezoning was only housekeeping to bring the Town Zoning Map into full compliance with the Town Zoning Ordinance, the 2005 Development Agreement, and the Town's Comprehensive plan. Mrs. Kulick stated that after spending many hours reviewing the materials provided by the Town, the 1994 and 2005 Development Agreements, and responses from Mr. Peterson, it appears a number of the changes are definite changes and not housekeeping.

Mrs. Kulick referred to a letter from the Town dated, January 5, 2009, signed by the Mayor, under the title of "Notification; Zoning Map Request". The first sentence stated, "except for Parcel 12A, Marsh Point Residual (Parcel 10), and East Beach Ocean, the current existing zoning classifications are not being considered for change. Mrs. Kulick stated that the wording on the chart listing affected parcels seems to state that the zoning had been one classification and

now is another because of the 2005 Development Agreement. Mrs. Kulick asked why some parcels were considered as a change and others were not. Mrs. Kulick stated that Beachwalker Lagoon has the same verbiage as Marsh Point Residual that the 1994 Ordinance, Appendix 12A-3, and the 1994 Development Agreement, Exhibit 13.2 show the approved usage. Mrs. Kulick stated that the approved uses do not change from 1994 to the chart. Mrs. Kulick stated that per the Mayor's letter, Marsh Point Residual is having its zoning considered for a change but Beachwalker Lagoon is not. Cougar Island Residual is going from Park to R-2, Little Bear Island is going from Park/R-2 to Conservation, East Beach Ocean is going from Commercial to R-1 and Eugenia Avenue is going from R-E to R-1. Mrs. Kulick asked for the reasoning behind the changes and why they are not listed as "changes." Captain Sam's Spit, Parcel 12B, is going from Park to Conservation and R-1 and Parcel 12B are noted to be changing as a result of the 2005 Development Agreement. Mrs. Kulick stated that much of the information included in the Mayor's letter appears to be confusing at best and inaccurate at worst, that the letter does not appear to meet the requirements that every property owner whose property was affected or not affected notified properly. Mrs. Kulick asked if the above points would require a corrected letter and a new first reading of the Ordinance. Mrs. Kulick stated that if a corrected letter is not required because of the confusing and inaccurate information she would urge the Council to send a corrected letter and hold a new first reading of the Ordinance. She stated that there are a number of concerns about the rezoning process, the Eugenia Avenue rezoning, in particular.

B. Diane Lehder, 306 Palm Warbler

Mrs. Lehder thanked Council for the opportunity to address her concerns over the proposed zoning changes. She stated that a number of property owners contacted her asking what she knew about the proposed changes. She indicated to them that she believed they were all pro forma and simply brought the old zoning map into conformance with the current zoning. Mrs. Lehder stated that after she took the time to review the materials that it was not as simple as she had been led to believe. Mrs. Lehder stated that the information on the Town's website comparing the 1994 and proposed map is cryptic at best and incomplete in some respects. She stated that she spent over four hours working with others and additional hours on her own to find the appropriate references in the 1994 and 2005 Development Agreements as well as other Town documents. Mrs. Lehder stated that it would have been helpful to all property owners if someone knowledgeable had summarized in text each of the proposed changes while quoting from the supporting documentation where appropriate. Updating the zoning on Eugenia from R-E in the 1994 Development Agreement to R-1 on the revised map is an interesting case in point. Lot 14 in Eugenia is currently undeveloped. Mrs. Lehder stated that she understood from longtime residents on the Island that that parcel was set aside many years ago for use as a park by Eugenia's property owners. She was also led to believe that the deed for that property contains such deed restrictions. She stated that at least that lot should be updated as park. She searched the County's website and found that the parcel is

owned by KRA. The deed is not available to view online however she was able to determine that there is a 250 page deed for that parcel available downtown on microfiche. Mrs. Lehder stated that she will put in another half day of work by going downtown and looking at the deed restrictions for this lot. Mrs. Lehder stated that she is puzzled why an individual property owner would have to do the kind of research in order to ask intelligent questions at a public hearing. She stated she will review the deed before the next Council meeting and if there are such deed restrictions on this property, she will ask Council to amend the proposed map to reflect that the R-1 zoning excludes Lot 14 and to designate that lot as Park. She stated that in the seven years she has lived on the Island she has often spoken and written about the need for more and better communication and more transparency in local government. The residents of this community should be able to, with minimal effort, understand what their leaders are doing on their behalf. Mrs. Lehder stated that residents should be able to easily understand the proposed changes and not have to devote hours of their personal time to individually research to understand the proposed changes. Mrs. Lehder also stated that she supported Mrs. Kulick's comments.

C. Bob Feldman, 23 Sunlet Bend

Mr. Feldman stated that he wished to express concerns of the Board of Directors and other property owners of Inlet Cove. In reviewing the proposed zoning map it was found that some area's near or adjacent to Inlet Cove that had been specified in the 1994 Development Agreement as special development are now designated as either R-2/Commercial or R-3/Commercial in accordance with the 2005 Development Agreement. Inlet Cove is an R-2 medium density residential neighborhood with single family cottages. R-3/C allows for higher density multi-family dwelling and or commercial structures. Those designations are specified for Beachwalker Lagoon, Beachwalker Office, and Beachwalker Park. Those whose cottages are off Beachwalker Drive have been told by the ARB and real estate sales people, as recently as four years ago, that the area across from Inlet Cove was donated by the Royal family for the building of a church. It now appears that since 1994 most of the land is owned by KDP. Mr. Feldman stated that there is no question that the amended Zoning Map agrees with the 2005 Development Agreement regarding the three parcels, that the Board of Directors and other property owners of Inlet Cove feel that Beachwalker Lagoon should have at least been designated R-2/Commercial such as Mingo Point and property directly adjacent to Inlet Cove, Kiawah River Commons. Mr. Feldman stated that high density multi-family dwellings and/or large scale commercial development could have serious negative impact on their property value and quality of life. Mr. Feldman asked that the Town use its influence and remaining leverage to persuade KDP to limit the size and type of development allowed at Beachwalker Lagoon.

D. Mark Permar, 81 Dungannon, KIGR Representative

Mr. Permar thanked the Planning Commission and Town Council for their efforts of getting a map that is as accurate as possible. Mr. Permar stated that from his

personal experiences he understands how difficult it is to approach 4500 pieces of property and get it right for both zoning classifications and property definitions. Mr. Permar stated that he shares the same opinion of Mrs. Kulick and Mrs. Leher on the complexity of the notification letter and realizes that it is hard to communicate; however, KIGR had to make assumptions based on that letter. Mr. Permar stated that they understand the intent, which is to get an accurate map. Mr. Permar stated that his staff evaluated each proposed parcel change from their background along with the history of the properties. Mr. Permar stated that 27 of 30 KIGR listed properties are correct for zoning and boundary classification and that is the highest percentage of correctness on a combined map that the community has ever had. Mr. Permar then discussed the 3 properties that KIGR had questions or recommendations for:

Cougar Point

Mr. Permar stated that there is a property in West Beach Village, along the golf course side of Cougar Point indicating a small segment parcel classified as Park. The 1994 Zoning Map designates the area as Resort which is a more accurate representation of the area because the Clubhouse location. Mr. Permar stated that he believes the proposed classification is a mapping error and recommends correction of the proposed Map to indicate RST-2, consistent with contiguous parcels to the east and west and consistent with the 1994 Zoning Map. Mr. Permar stated that the reason is because unlike other golf course and clubhouse locations which are purely golf, West Beach Village has an integrated hole and therefore the RST-2 category would be more appropriate in both practice and as a reference to the 1994 Zoning Ordinance.

Ocean Course

Mr. Permar stated that historically a provision of the 1994 Development Agreement allowed for 20 single family residential dwelling units in a specific location around the old clubhouse location if certain conditions existed. Mr. Permar stated that historically, this has been handled oddly, but it is compelling and was retained in Article 12 as an entitlement. Mr. Permar stated that it has been a part of many historical conversations detailing a potential limited development in that specific location. Mr. Permar stated that it is a request that the Town consider reestablishing the entitlement. Mr. Permar stated that the first Kiawah Zoning Ordinance, dated 1988, was in place until June 1994 and listed the area as a residential zoning district.

Willet Island

Mr. Permar stated that the proposed Zoning Map indicates Park for a 9.14 acre parcel purchased from KRA/KDP in 1997. Mr. Permar stated that KIGR believes that the 1994 Zoning Map representation of the area as Park is a mapping error. KIGR believes that, with the exception of the 3 month period of June 8, 1994 map and property has had a long history of residential zoning. Mr. Permar stated that the last attempted update to the Zoning Map had Willet Island zoned as R-2. Since the adoption of the original Development Agreement, dated September 26,

1994, the parcel has been recognized by the Town as suitable for residential development. KIGR re-planned the immediate area and constructed a new clubhouse and advanced major improvements to the Course for an amount in excess of \$50 million; including permitting and construction of a bridge to Willet Island for \$450,000. Mr. Permar stated that these actions of a property owner that has developed a long range plan in anticipation of the limited, residential entitlements. KIGR recommends correction of the Proposed Zoning Map to the R-2 classification with the same restrictions of low density development as classified for Cougar Island.

Mr. Permar ended by stating that KIGR is prepared and willing to offer whatever assistance may be necessary to provide the highest level of accuracy. Mr. Permar met briefly with Planning Staff to go through the key points in order to share with them KIGR's findings and provided base maps for clarification.

E. Bill Moeckel, Representing 5 Eugenia Avenue

Mr. Moeckel thanked the Council and Mr. Burnaford in particular for their responsiveness in what has been a confusing issue. Mr. Moeckel stated that the recent addition to the Town's website clarifying the requirements of R-E to the currently proposed R-1 classification for Eugenia has been helpful. Mr. Moeckel stated that on the website, the Town stated that the requirements for current side yard setbacks under R-1 will not apply to those properties on Eugenia Avenue which have been identified in the Kiawah Island Property Setback Requirements Appendix dated July 10, 2007. That appendix identifies lots 1A-1B and 2-17, 19 and 21-41, 43A, 43B, 44A, and 44B, 45-60, 61A and B, 63 A and B, 65, 67, 69, 71, 73, 75, and 77. Mr. Moeckel is seeking clarification that these specific lots will be governed by the original setback requirements of 10' for side yards which was in the original Eugenia Avenue Subdivision requirements.

F. Mark Permar, Kiawah Development Partners Representative,

Mr. Permar stated that the 2005 Development Agreement they made strides for simplicity and clarity and improved mapping as it relates. Of the 28 parcels with proposed changes, KDP believes that 22 are correct. Mr. Permar stated that the remaining are mostly mapping issues.

Parcel 12A-Beachwalker Park

Mr. Permar stated that the proposed map indicated the correct zoning but exhibits an incorrect property line. Mr. Permar referred to the original exhibits of the 1994 Development Agreement and corresponding exhibits of the 2005 Development Agreement that indicate the proper shape and configuration of the parcel Mr. Permar also referenced Exhibit 13.2 of the 2005 Development Agreement. KDP recommends the parcel configuration be corrected to be the same as the exhibits in the 2005 Development Agreement.

Parcel 12B-Captain Sams

Mr. Permar stated that the proposed Zoning Map indicates dual zoning of R-1 and Conservation. The 2005 Development Agreement indicates a singular zoning classification of R-1 for the entire parcel. There is no exhibit or text that states the conservation classification is located where it is proposed. Mr. Permar stated that as plans are advanced for future review and approval, it is unlikely that select areas will be identified as conservation areas, however, until then KDP recommends that it would be more accurate to indicate the entire parcel as R-1 as depicted in the Development Agreement. Mr. Permar also recommended that Conservation be changed to Park with the full understanding that the original entitlements remain.

Parcel 13-Beachwalker Ocean

Mr. Permar stated that the Proposed Zoning Map indicates multiple zoning classifications of R-3/C and Conservation. Mr. Permar stated that the Development Agreement indicates dual zoning classification of R-3/C. Mr. Permar explained that the configuration of a Conservation “notch” on the map is incorrect and that the area should have dual zoning of R-3/C. Mr. Permar referenced Exhibit 13.2 in the 2005 Development Agreement. KDP recommends the parcel configuration be corrected to be the same as the exhibits in the 2005 Development Agreement.

Utility Tracts

Mr. Permar stated that the proposed Map indicated dual zoning classifications of Community Support and Water which is a hybrid zoning and land use map as water is not a “zone”. Mr. Permar stated that KDP recommends the entirety of the tract should be shown as Community Support in dark blue.

Settlement

Mr. Permar stated that the proposed Map indicates multiple zoning classifications of R2/C and Park. Mr. Permar stated that essentially, the Park is depicting the golf course in similar manner as a Land Use Map. Mr. Permar stated that the Development Agreement indicates dual zoning of R-2/C but that the Map would be more accurate if represented as R-2. As golf is a permitted use in The Settlement. KDP recommends the proposed Map be retained with the R-2 and Park classifications as represented with the full understanding by both parties that original entitlements are retained.

Mr. Permar stated that the handout (attached for the record) will have documentation and supporting evidence of all questions and recommendations.

Mr. Permar stated KIGR has substantially developed pieces of Willet Island based upon anticipated development opportunities. Mr. Permar stated that the development of Willet Island started with the bridge and an excess of \$450,000 was expended under the understanding that there were certain select development

rights. Mr. Permar asked that the bridge be considered along with the past history of the zoning of Willet Island.

VI. Adjournment

Mayor Wert directed the Town Clerk to complete the summary minutes with due haste and to distribute the minutes to all members of Town Council and the Planning Commission. Mayor Wert expressed the need for timely review before the February 3, 2009 Town Council Meeting. Mayor Wert noted that all materials would be available upon request.

Mr. Burnaford motioned to adjourn the meeting at 1:32PM. Mr. Orban seconded the motion. The motion carried unanimously.

Submitted by,

Catherine Wilson, Town Clerk

Approved by,

William G. Wert, Mayor

Date

cc: **Town Council**
Planning Commission
Dennis Rhoad, Town Attorney
Tumiko Rucker, Town Administrator