

THE TOWN OF HILTON HEAD ISLAND
REGULAR TOWN COUNCIL MEETING

Date: Tuesday, July 6, 2010

Time: 4:00 P.M.

Present from Town Council: Thomas D. Peeples, *Mayor*; Ken Heitzke, *Mayor Pro-Tem*; George Williams, John Safay, Bill Harkins, Drew Laughlin, Bill Ferguson, *Councilmen*.

Present from Town Staff: Stephen G. Riley, *Town Manager*; Curtis L. Coltrane, *Assistant Town Manager*; Lavarn Lucas, *Fire Chief, Fire & Rescue*; Charles Cousins, *Director of Community Development*; Scott Liggett, *Public Projects & Facilities Director*; Susan Simmons, *Director of Finance*; Teri Lewis, *LMO Official*; Paul Rasch, *Emergency Management Coordinator*; Nancy Gasen, *Human Resources Director*; Tom Fultz, *Director of Administrative Services*; Jeff Buckalew, *Town Engineer*; Steven Markiw, *Deputy Finance Director*; Lorie Schmidt, *Billing & Cash Receipting Manager*; Connie Pratt, *Code Enforcement Officer*; Brian Hulbert, *Staff Attorney*; Susan Blake, *Executive Assistant*

Present from Media: Laura Nahmias, *Island Packet*

1) CALL TO ORDER

2) PLEDGE TO THE FLAG

3) INVOCATION

4) 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.

5) PROCLAMATIONS AND COMMENDATIONS

6) APPROVAL OF MINUTES

a. Regular Town Council meeting of June 1, 2010

Mr. Heitzke moved to approve. Mr. Harkins seconded. Mr. Ferguson made a correction. The corrected minutes were approved by a vote of 7-0.

b. Regular Town Council meeting of June 15, 2010

Mr. Williams moved to approve. Mr. Harkins seconded. The minutes were approved by a vote of 6-0-1. Mr. Heitzke abstained because he did not attend this meeting.

c. Special Town Council meeting of June 22, 2010

Mr. Heitzke moved to approve. Mr. Williams seconded. The minutes were approved by a vote of 7-0.

7) REPORT OF THE TOWN MANAGER

a. Town Manager's Items of Interest

The Town Manager reported on some items of interest.

b. Semi-annual report of the Design Review Board – Marvin Caretsky, Chairman

Mr. Caretsky provided Town Council with an update on the Design Review Board activities

for the first half of 2010.

c. June 2010 Quarterly report

Steve Riley noted the quarterly report was attached to the agenda package. He invited Council Members to contact him or staff if they had any questions

d. Semi-Annual Land Acquisition Update

The Town Manager stated that there was approximately \$7 million of the \$12 million bond referendum remaining for land acquisition.

8) REPORTS FROM MEMBERS OF COUNCIL

a. General Reports from Council

Mr. Williams commented that if anyone watched the Fourth of July fireworks, he thought they would agree it was money well spent and the firework shows were very well attended.

He also spoke of an incident at Sea Pines recently about house lighting on the beach as it pertained to the Sea Turtle ordinance. Mr. Williams suggested that Town send out reminders to let the beachfront property owners know that it's more than a time-related restriction, but lights also needed to be shielded so they did not illuminate the beach.

Mr. Williams received a phone call from a person whose dog was attacked by a bull dog. The attack dog was under positive voice control but by two young girls about 8 years old. Additionally, Mr. Williams was out walking the beach at 11:30 a.m. and there were numerous dogs running around on the beach. He suggested that perhaps during peak tourist times, the Town might need to consider more stringent controls relating to dogs on the beach.

Lastly, Mr. Williams commented that he was reading an editorial in the local newspaper which questioned the Town's proposed budgeting of \$25,000 to study the dredging issue. He thought the editor needed to get a different perspective on the reasons this dredging was needed.

Mr. Laughlin applauded the efforts of private citizens who raised \$4.5 million dollars to build a new Children's Center. This was an incredible achievement and a tremendous asset to this community.

Mr. Laughlin also commented on the dredging issue. He said he thought it was way beyond the capability of private individuals to handle this and he thought the Town was going to have to help them.

b. Report of the Intergovernmental Relations Committee – George Williams, Chairman

There were no meetings planned for July or August.

c. Report of the Personnel Committee – Drew Laughlin, Chairman

They were meeting tomorrow afternoon because they still had one and maybe two spots to make recommendations for and they would be trying to do that as soon as they could.

d. Report of the Planning and Development Standards Committee – Bill Ferguson, Chairman

The Committee received a report from staff concerning the drafting of a community appearance standards ordinance. The Planning and Development Standards Committee made some suggested modifications to the staff proposal. This would be coming forward to the Town Council at their next meeting for the purpose of providing staff with direction in order to

proceed with the drafting of a proposed ordinance.

e. Report of the Public Facilities Committee – John Safay, Chairman

They committee reviewed a modified plan for a rowing and sailing center. They listened to a presentation from the Town as to what could be done for considerably less expenditure than was originally proposed. This would be coming forward to the next Council meeting with a favorable recommendation.

Staff was seeking approval to get involved in negotiations to permit a company to install two more cell towers on the Island. The Committee felt that this would benefit the Town and therefore, gave it a favorable recommendation.

Mayor Peeples commented that he attended the Public Facilities Committee meeting and he was pleased to hear the members of the Rowing and Sailing Club and the residents of the Squire Pope POA were in agreement as to the direction of the plan.

f. Report of the Public Safety Committee – Bill Harkins, Chairman

No report.

9) APPEARANCE BY CITIZENS

None.

10) UNFINISHED BUSINESS

a. None.

11) NEW BUSINESS

a. Consideration of a Resolution of the Town Council of the Town of Hilton Head Island, South Carolina supporting Marine Corp Air Station Beaufort and the Joint Strike Fighter (F-35B) Squadrons.

Mr. Heitzke moved to approve. Mr. Safay seconded. The motion was approved by a vote of 7-0.

b. First Reading of Proposed Ordinance No. 2010-13 to amend Chapter 1 (General Provisions) of Title 4 (Finance and Taxation) of the Municipal Code of the Town of Hilton Head Island, South Carolina by amending Section 4-1-30 Audit Required; and providing for severability and an effective date.

Mr. Heitzke moved to approve. Mr. Harkins seconded. The motion was approved by a vote of 7-0.

c. First Reading of Proposed Ordinance No. 2010-17 authorizing the granting of a temporary access easement to Rufus Boyd Laughlin across real property owned by the Town of Hilton Head Island, South Carolina located within the heirs of Alex Patterson subdivision on Marshland Road for the purposes of installing and maintaining a driveway pursuant to the authority of S.C. Code Ann. Sec. 5-7-40 (Supp. 2009), and Sec. 2-7-20, Code of the Town of Hilton Head Island, South Carolina (1983); and providing for severability and an effective date.

Mr. Heitzke moved to approve. Mr. Ferguson seconded. The motion was approved by a vote of 6-1. Mr. Ferguson was opposed.

At this point it was 4:27 p.m. Since the Public Hearing could not commence until 5:30 p.m., Mayor Peeples asked the Town Manager if he needed an executive session.

12) EXECUTIVE SESSION

Mr. Riley said that he needed an executive session for contractual matters regarding land acquisition and legal advice pertaining to potential Club Prana litigation.

At 4:28 p.m., Mr. Heitzke moved to go into Executive Session for the reasons stated by the Town Manager. Mr. Williams seconded. The motion was approved by a vote of 7-0.

11. d. PUBLIC HEARING 5:30 P.M. – CLUB PRANA BUSINESS LICENSE HEARING

At 5:30 p.m. the Mayor called the meeting back to order and opened the Public Hearing on consideration of revocation of the business license for an establishment known as Club Prana.

Deputy Finance Director Steven Markiw provided the Town Council with background on this Club. He advised that this business has operated on 130 Arrow Road as Club Paradise, an adult entertainment club from 2000 – 2007. In 2008, the management of Club Paradise hired a management company called AOE Entertainment to run the facility. The format was changed to adult entertainment dance club. Since then, the number of calls for service at Club Paradise DBA Prana has increased significantly. In November 2009, at the request of the Sheriff's Office, Town Manager Steve Riley sent a letter to Jay Stever of Club Paradise to inform him that they needed to do something about the calls for service. They were given ample time to respond to this warning. On June 29, 2010, the Town suspended the license based on the fact that the calls for service had not been reduced.

Capt. Toby McSwain of the Sheriff's Office provided the Council with additional specifics which led to the warning and subsequent license suspension. Since September 2008, the department has responded to 150 calls for service. Since the Town Manager sent a letter of warning to the Club in November 2009, the Sheriff's Office has responded 49 more times. Of the 150 calls, 106 have been noise complaints; the remainder were calls for shots fired, fights in the parking lot, assault and battery, alcohol violations, vandalism, patrons passed out in the parking lot. This club has call numbers higher than any other establishment on the Island; probably ten-fold. Capt. McSwain relayed Sheriff Tanner's comments to the Town, that the department has other law enforcement duties they needed to take care of, besides responding to 150 calls to one location – something needed to be done.

Mr. Ferguson asked if this was the same establishment previously known as Club Sky. Capt. McSwain said he thought that it had several names – Prana, Club Sky, Club Rain – they were just going to refer to it as 130 Arrow Road. The names have changed; it's still the same liquor license, but in Jay Stever's name.

Mr. Harkins asked about the attitude of management towards the Sheriff's Deputy when they respond to a call for service. Capt. McSwain said they have not gotten a lot of cooperation from any of the management there. Mr. Amir Bitton and his staff met with Capt. McSwain when the nuisance ordinance was enacted. They were told what the letter of the law was then and what the Sheriff was going to be watching for – same as any other establishment in Beaufort County.

Brian Hulbert, Staff Attorney, noted that it was important to Town Council to understand that the license the Town is asking them to revoke was for Club Paradise and Jay Stever is the person responsible for that license. The Town did also give notice to AOE Entertainment by personal delivery to Amir Bitton, who is the person on the Town's paperwork recognized to act on their behalf and accept process and things of that nature. Brian Toadvine, one of the managers for AOE Entertainment, which is the management club, has asked to speak here.

But the party who has to answer for the license for Club Paradise is Jay Stever, not Brian Toadvine.

Brian Toadvine addressed Town Council on behalf of the management company. Mr. Toadvine said that they had taken over management of the Club approximately 18 days ago. He asserted that they have been more than cooperative with any of the Beaufort County troopers and the ABC Board who have been sent to their establishment. Mr. Toadvine said that he set up an appointment with ABC to learn of any laws they may not be aware of regarding alcohol violations. And they have since hired a security company which has SLED-certified security guards. He said he would do anything he could to keep their business up and running.

Steven Markiw came forward and offered a point of clarification. AOE Entertainment was represented by Amir Bitton. LIG was a new management company replacing AOE and was not licensed with the town and they cannot take over the liquor license for Club Paradise. Their representation here is not a factor as they should not be running that facility at this point in time without a license with the Town.

Jay Stever felt there was some confusion. He thought the notice went to AOE because they were responsible for maintaining all the licenses and operating it and conforming to all the regulations, ordinances and so forth. But in the notice, there was no indication of his license with Club Paradise on this notice. So he was of the opinion that it was always AOE, the managing operators of the Club that was responsible for all the elements that were pointed out in the letter. So when Mr. Stever received the notice, he thought it was just a copy. But the notice does not state Mr. Stever's license.

Steven Markiw, pointed out that the letter says "Club Paradise" and Club Paradise is Jay Stever and is DBA Prana as one and the same – that was the license. Mr. Markiw and Bruce Seeley from the Town spoke with Mr. Stever and they explained to him that the license for Club Paradise DBA Prana was being suspended. They specifically pointed this out when Mr. Stever was served with the notice. Mr. Stever was also told that AOE was being noticed, too.

According to Jay Stever there were only two licenses that were involved in the operation: Island Cabaret, Inc. and AOE. There was no Club Paradise license.

Steven Markiw responded that in materials provided to Town Council was (a copy of) the license for Club Paradise DBA Prana which was the license issued to Jay Stever. At the time AOE took over, because the liquor license was at issue, the Town would not grant the change in name to Prana without it being attached to the liquor license. So what staff did was keep the Club Paradise name and did a "/DBA Prana." AOE Entertainment was kept separate and they do have a separate business license. So Island Cabaret went away when Club Paradise came into play. Steven Markiw had all the copies of the licenses in hand.

The Mayor asked if there was anyone present who was associated with whatever the name of the place was who wished to justify the actions asserted by the Sheriff's Office.

Brian Toadvine said that they have a decimal reader and they have never exceeded the 100 decimal level permitted by Town ordinance. Mr. Safay noted that even if the noise violations were discounted, which he realized was very subjective, the bottom line was the overwhelming number of more serious violations that have been occurring and continue to occur since the time of the warning in November 2009.

Jay Stever re-approached the podium and argued that he has a license that was a special exception with the Town and there was only one license, and it was Island Cabaret, Inc. He

said Club Paradise has nothing to do with the license. Further, there was nothing on the notice referring to Island Cabaret. So he was never under the assumption that his license was being suspended.

Capt. McSwain noted that the liquor violations have been written to Island Cabaret. That was the liquor license at that location.

Mayor Peeples asked if there was anyone else present who was an owner.

Eli Bitton, a member of AOE, talked about the noise issue. He said they turned off the bass to zero. He also stated that they have staff checking every ID and he cannot control people who come in with fake ID's. He maintained they also have security inside and outside.

Steven Markiw came forward and asked to clear up a confusion. He stated that in 2002 they have, signed by Jay Stever, a request to change Island Cabaret to Club Paradise and he wished to add this in as an exhibit for this hearing.

Brian Hulbert, staff attorney, approached Council with a request to clear up some misrepresentations. He said, as Council knows, there have been no changes to the noise ordinance in the past two years. He was not sure what the reference to 100 decibels was. Mr. Hulbert has personally talked to the deputy, as well as the code enforcement officers and they all said it was the bass that was the problem – it could be heard reverberating, and shaking the windows of the RVs across the street. Further, the noise meter at the club's doorway does not record bass, so it has no bearing here. The complaint was based on disturbing the public peace, not violating the decibel level of the noise ordinance. He also wished to reiterate that since November 10, 2009, there have been 18 calls for disturbance at Club Paradise DBA Club Prana. It has been doing business as Prana since 2008 when AOE took over management and when Mr. Hulbert started working at the Town five years ago, it was Club Paradise.

Mr. Heitzke moved to direct staff to prepare a formal order of revocation that would be heard at the next Town Council meeting on August 3, 2010. Mr. Harkins seconded. The motion was approved by a vote of 7-0.

13) ADJOURNMENT

At 6:10 p.m., Mr. Heitzke moved to adjourn. Mr. Williams seconded. The motion was approved by a vote of 7-0.

Susan Blake, Secretary

Approved:

Thomas D. Peeples, Mayor