



**The Town of Hilton Head Island
Planning & Development Standards Committee
Regular Meeting
Wednesday, June 23, 2010 4:00p.m.
Benjamin M. Racusin Council Chambers**

AGENDA

As a Courtesy to Others Please Turn Off All Cell Phones and Pagers during the Meeting.

- 1. Call to Order**
- 2. Freedom of Information Act 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.
- 3. Approval of Minutes - Regular Committee Meeting of May 26, 2010**
- 4. New Business**
Property Maintenance Code Direction
- 5. Adjournment**

Please note that a quorum of Town Council may result if four (4) or more of Town Council members attend this meeting.

**THE TOWN OF HILTON HEAD ISLAND
REGULAR PLANNING & DEVELOPMENT STANDARDS COMMITTEE MEETING
Benjamin M. Racusin Council Chambers**

Date: Wednesday, May 26, 2010

Time: 4:00pm

Committee Members Present: Chairman Bill Ferguson, Drew Laughlin and John Safay

Committee Members Absent: None

Council Members Present: None

Town Staff Present: Jill Foster, Community Development Department Deputy Dir.
Kathleen Carlin, Administrative Assistant

1) CALL TO ORDER

2) FREEDOM OF INFORMATION ACT 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.

3) APPROVAL OF MINUTES

Mr. Laughlin made a **motion** to **approve** the April 28, 2010 minutes as presented. Mr. Safay **seconded** the motion and the motion **passed** with a vote of 3-0-0.

4) COMMITTEE BUSINESS

None

5) NEW BUSINESS

Beaufort County Council Development Agreement – Presented by: Mr. Paul Summerville

Town staff recommended that the Planning & Development Standards Committee endorse a recommendation from the Beaufort County Council Development Agreement Negotiating Committee to allow the Greenheath PUD on Lady’s Island to renew their Developer Agreement such that a school capital construction fee would be negotiated to reflect a reduced amount for the “by right” density and the full amount of \$6,000 for each additional residential unit.

Mr. Paul Summerville made the presentation on behalf of the Beaufort County Council. Greenheath is a 300 unit Planned Unit Development (PUD) in Lady’s Island with an existing Developer Agreement dating to 1997. A sticking point on the renewal of this Agreement has been the school capital contribution fee. A compromise has been suggested, but Beaufort County seeks the concurrence of its partner municipalities before moving forward. For new Developer Agreements, a fee of \$6,000 per residential unit was previously agreed to for units of the size anticipated.

The compromise would provide for a payment of \$1,500 per housing unit for the first 200 units and \$6,000 per unit for the final 100 units. The basis for this compromise rests on two points. First, that the developer is entitled to develop 200 units “by right” without an agreement. Secondly, that a school impact fee was on the books in 1997 (subsequently outlawed in a State Code amendment) in the

amount of \$1,000 and the original agreement made the developer subject to that fee. The compromise would cover the 200 “by right” units as if they were subject to the prior impact fees (adjusted for inflation) and subject the remaining 100 units to the full school capital construction fee.

Pursuant to an agreement from 2007, The Town of Hilton Head Island joined with Beaufort County and the other local governments in the County, in agreeing to support institution of school capital construction fees as part of any new Developer Agreements. All entities agreed to seek a fee for residential units based on the size and type. Commercial development was to be charged \$2.50 per square foot (SF).

The County subsequently negotiated two Developer Agreements and is in the process of negotiating a third. An issue has arisen with this latest negotiation and the County is seeking the input of its partner local governments.

The first agreement was for Okatie Marsh (off Highway 170). When built out this development will contain approximately 1300 rooftops (some multi-family) and will net the school district approximately \$7.8 million.

The second agreement was Tanger 1. Even though Tanger 1 is taking their current building down to the ground, they intend to rebuild on their existing footprint so we did not feel that it was appropriate to charge them for the same footprint they currently have. However, they reserved the right to increase their footprint by a specified amount and in that event, they are required to pay \$2.50/additional square foot.

Similarly, when the Town of Hilton Head Island negotiated its first Developer Agreement in 2009 for the Mall at Shelter Cove, it included this school capital construction fee for the square footage that was to be added. No contribution was required for previously existing commercial space.

Beaufort County is currently renegotiating a 1997 Developer Agreement for a project on Lady’s Island known as Greenheath, which was permitted for 300 units on approximately 100 acres. The developer approached the County prior to the expiration of the Agreement and asked that the PUD be renewed. The County likes this PUD because it provides the type of things they seek such as interconnectivity, walking paths, school access, mixed use, etc.

An agreement was reached to extend it with certain caveats. One was that the developer gives a walking trail to the county around the perimeter. A second was interconnectivity to a school located near the property and a third was that renewal of the PUD be contingent on paying school capital construction fees.

During the negotiations the developer pointed out that he could abandon his PUD and build the development “by right” with 200 units and pay no school capital construction fees. It was then pointed out that when the PUD was initially approved in 1997 Beaufort County had in effect a school impact fee of approximately \$1,000/rooftop. After extensive additional negotiations, it was tentatively agreed that the developer would pay the then existing school impact fee (\$1,000 adjusted for inflation to about \$1,500/unit) for the 200 “by right” units and the full \$6,000 for the additional 100 units.

The County considers this a reasonable compromise as it would net the school district approximately \$900,000.00 which is that much more than if the developer elected to develop the property “by right”. Also, it gives the County additional controls and benefits contained in the PUD.

Before finalizing this Agreement, the County is seeking the input of the partner local governments as to whether this compromise is consistent with the letter and the spirit of the resolutions passed by our respective councils in 2007/2008. The County has or is scheduled to make presentations to each of the other local governments in the County.

At the completion of the presentation, the Committee and Mr. Summerville discussed several issues including the developer agreement, impact fees, tax revenue, and the transferability of rights. At the completion of the discussion, Chairman Ferguson requested public comments and none were received. At the completion of final comments, Chairman Ferguson requested that a motion be made.

Mr. Safay made a **motion** that the Planning & Development Standards Committee **endorses** the recommendation as presented today. The Committee recommends that Town Council **endorses** the recommendation. Mr. Laughlin **seconded** the motion and the motion **passed** with a vote of 3-0-0.

6) ADJOURNMENT

The meeting was adjourned at 5:20pm.

Submitted By:

Approved By:

Kathleen Carlin
Administrative Assistant

Bill Ferguson
Chairman

TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Planning & Development Standards Committee
VIA: Charles Cousins, Director
FROM: Jill Foster, Deputy Director
Bob Klein, Building Official
CC: Teri Lewis, LMO Official; Brian Hulbert, Staff Attorney
DATE May 28, 2010
SUBJECT: Town Council's Goal on Community Appearance Standards

Recommendation: Staff seeks direction on the approach described in this memo related to drafting a property maintenance ordinance. Staff recommends the following:

- Town Council amends Municipal Code Title 9 (Health & Sanitation) to revise the definition of "public nuisance" and add new language to include specific sections of the International Property Maintenance Code that capture the concerns of Council. These additions would regulate the minimum conditions and the responsibilities of persons for maintenance of a structure, equipment and exterior property, whether inhabited or uninhabited, safe or unsafe.
- Town Council amends Land Management Ordinance (LMO) Chapter 8 (Violations and Enforcement) to strengthen our ability to use development permits as an enforcement tool.

If Town Council agrees to our recommended approach outlined in this memo, it is our intention to have these code amendments before the Planning & Development Standards Committee in September.

Summary:

At its 2009 annual workshop, Town Council discussed the lack of maintenance to existing non-single family development and the negative impact this can have on the community. Some of the items discussed were commercial buildings in disrepair, parking lots and driveways with pot holes, tattered awnings and buildings needed to be painted. This discussion also included thoughts on limiting such a role by the Town to the most visible areas on the Town. In January 2010, Town Council adopted a goal "*Commercial Appearance-- Town Role and Direction*" as part of their Policy Agenda for 2010: Targets for Action.

The International Codes Council, which publishes the Building Codes series, has a separate International Property Maintenance Code specifically for maintaining buildings and property. This code covers a broad set of issues from the condition of a building to motor vehicles on the site to drainage to weeds and insect screens. While many communities adopt the entire International Property Maintenance Code, Staff believes this Code goes much further than the Council desires based on their

comments at their workshop. The Town Attorney believes that adopting a portion of this code is an advisable alternative.

As such an alternative, Staff believes revisions to Title 9 (Health and Sanitation) of the Municipal Code to include new language on *Maintenance and Aesthetics* is an avenue that should be pursued. These additions would focus on the specific items the Town Council wants to address and could apply to all land uses within the Town except stick built and manufactured homes. Staff suggests the follow areas for focus in these changes:

- exterior of buildings (unsafe conditions such as improperly anchored veneer or defective roofing components; protective treatment such as peeling paint or deteriorating stucco; and deteriorating or defective structural members, foundation walls, roofs and drainage, decorative features, chimneys & towers, handrails & guards, windows, door frames, and screens);
- equipment located on the exterior of the building (propane tanks, HVAC systems); and
- property areas (eroded grading; hazardous drainage, sidewalks, driveways, drive aisles, parking spaces, streets & access easements; and deteriorating accessory structures such as fences & walls).

Additionally, staff believes an amendment to Chapter 8 (*Violation and Enforcement*) of the LMO would also assist in addressing Town Council's concerns over community appearance standards. A large percentage of the existing development within the Town has an approved site plan on record. Much of this development also received an approval from the Town's Design Review Board. Sites or buildings in disrepair are most likely contrary to these approvals. Amending this section of the LMO by further defining a violation to include not maintaining the development in a manner reflected on any approved plan or in a manner to which it was substantially permitted would strengthen the Town's ability to address this issue.

Background:

Existing Town laws used for limited enforcement of maintenance issues

Title 9, Chapter 1: Public Nuisance. This section requires a situation to fit the current definition of a 'public nuisance' before it can be enforced. This definition, for the large part, addresses unsanitary, unsightly and unsafe conditions. It regulates all premises within the Town, whether vacant, occupied or improved. However, conditions which are strictly aesthetic in nature would not be enforceable under this chapter as currently written. The definition of 'public nuisance' should be revised to ensure those maintenance and aesthetic standards desired by Council are captured.

Title 9, Chapter 8: Uninhabited, Unsafe Buildings/Structures. This chapter revolves around *unsafe and uninhabited* conditions. It cannot be used for enforcement if the site or building is safe and inhabited and only considered

‘unsightly’ or ‘in need of maintenance.’ This section is also quite lengthy in timeframe and would result in the situation being unresolved for several months.

Title 15: Building Codes. These codes deal with construction of a site, equipment, and building, and with existing unsafe, hazardous or dangerous buildings and equipment. Our adopted building codes do not address maintenance of *safe, inhabited* buildings or sites.

It is Staff’s intention to fill the ‘gap’ left from these ordinances by providing code that will regulate maintenance of safe, inhabited structures, property and exterior equipment.

What other communities are doing

The International Property Maintenance Code is used in many communities to address the appearance and maintenance of private development and to address safe, inhabited buildings and property. This Code is an elective Code from the International Codes Council and can be adopted in addition to other Building Codes. The Cities of Myrtle Beach, Greenville and Beaufort have adopted the complete International Property Maintenance Code covering all residential and nonresidential structures and include enforcement actions involving tickets and placing liens on the property if the City has to abate the situation. Ann Arbor, Michigan has adopted only certain sections of the International Property Maintenance Code to regulate only existing and future residential rental structures. Enforcement procedures include tickets and injunctions, with liens on the property during abatement situations. The Town of Bluffton has created its own limited property maintenance code to regulate only unsafe/uninhabited buildings, with tickets and liens as enforcement mechanisms. Charlotte, North Carolina has created its own property maintenance code for all non-residential structures, vacant or inhabited, with tickets and liens on the property as enforcement tools. Beaufort County does not appear to have any type of maintenance code.

Adopt regulations for non-single family uses only

Town Council’s discussion at their workshop appeared to suggest that their desire was to regulate the appearance or maintenance of everything except stick built and manufactured homes. Therefore, Staff discussed with the Town Attorney limiting any regulation to all land uses except for stick built and manufactured homes. He advised that such a limitation could be done.

Adopt part or all of the International Property Maintenance Code

The International Property Maintenance Code regulates the “*minimum conditions and the responsibilities of persons for maintenance of structure, equipment and exterior property.*” This Code is used to address sanitation, grading and drainage, sidewalks and driveways, weeds, exhaust vents, accessory structures, motor

vehicles, and defacement of property, exterior walls, roofs and drainage, decorative features, stairways, decks, porches, chimneys, handrails, glazing, insect screens, and building security features.

As you can see, this Code covers a great deal more than what Town Council discussed at their workshop. Staff does not believe that Council had a desire to regulate things such as weeds or window glazing. Further the enforcement of this Code in other communities has led to the governing authority becoming involved in disputes between renters and landlords. Thus Staff investigated the potential to adopt just a portion of this Code. The Town Attorney advised Staff that it would not be problematic to adopt just a portion of this Code.

Areas of possible regulations to be kept in a clean, safe and sanitary condition and in good repair and working order could be:

- grading to prevent erosion and accumulation of water
- sidewalks, driveways, drive aisles, parking spaces, streets, & access easements
- accessory structures such as fences and walls
- unsafe or deteriorating structural members, foundations or walls, roofs & drainage, overhang extensions, decks, porches, floors, balconies, towers, handrails, guards, windows, skylights, door frames, torn insect screens; stairs or chimneys; rotting masonry or siding joints; loose cornices, trim, veneer or other decorative features
- exceeding nominal loads of structural members or walls
- equipment such as outside heating/air equipment, electrical wiring or devices, flammable liquid containers or other equipment on the premises
- protective treatment (cracking surface materials; peeling paint; leaking windows or skylights; rusting metal surfaces)
- restoration of any exterior surface destroyed or damaged with graffiti, carving or other markings

Adopt regulations over part of the Island or over its entirety

Staff recommends placing regulations over the entire Island by amending Title 9 (Health & Sanitation) of the Municipal Code. This Title covers the entire jurisdictional boundary of the Town and includes chapters on public nuisance; garbage and trash; and uninhabited, unsafe buildings/structures. Additions to this Title could include new language on *Maintenance and Aesthetics* and would specify parts of a property maintenance code that capture the concerns of Council. Staff recommends amending this Title, as enforcement of this Title is more equitable and better distributed throughout the Island (as opposed to using specific zoning districts or the corridor overlay district which leave enforcement gaps in areas of similar land uses as their neighbors).

Staff also recommends amending LMO Chapter 8 (Violations and Enforcement). Maintenance issues are not addressed in the LMO. The LMO regulates sites that are

under development or redevelopment. To strengthen our ability to enforce maintenance and aesthetic issues on previously approved developed/redeveloped sites, Staff recommends adding an amendment to the LMO that requires maintenance of any approved site plan or development approval. This amendment would address any Town-approved development or redeveloped site. However, it would not capture any site approved prior to the incorporation of the Town.

Enforcement Issues

Upon consultation with the Town Attorney, Staff recommends the Municipal Code be revised to provide more enforcement mechanisms. If these recommended changes are made by Town Council, the Municipal Code and the Land Management Ordinance would have the same enforcement mechanisms.

1. **Issue tickets.** This is a commonly used method by the Town and other municipalities. It is considered a misdemeanor which is tried as a criminal matter with a higher burden of proof ('beyond a reasonable doubt') as opposed to using civil remedies which require a lower standard of proof ('more likely than not'). Drawbacks to this method are misdemeanors may be entitled to jury trials, thus taking more time and cost to try, and we are still faced with meeting the higher burden of proof.
2. **Withholding any approvals or permits.** This would most likely apply to phased projects where part of a development is completed but other work has ceased, resulting in deterioration of any unfinished structures. Additional building applications on the site could be withheld until the unfinished work is completed. A drawback to this method is that the entire project could take longer to complete, and it addresses only those projects with active permits. This method is not applicable to strictly a maintenance situation in an existing development. A revocation of a certificate of occupancy would be an enforcement method for an existing development.
3. **Issuance of stop work orders against any work undertaken without proper approval or permit or in violation of the Code.** This ensures that the work to be done is reviewed for code compliance. See #2 above for similar situations and drawbacks.
4. **Bringing an action for an injunction to prevent the violation and/or to prevent the occupancy or use of any site or structure involved in the violation.** For those violations which are truly dangerous and unsafe, such immediate and drastic action as seeking an injunction is appropriate if an owner refuses to take action. Injunctive relief, while requiring the filing of a civil summons and complaint, allows fairly quick access to a trial court.
5. **Bring an action for injunction or mandamus to abate a violation.** Similar issue as described in #4 above.

As always these methods are a matter of degree. A ticket and a fine may be appropriate for a case of peeling paint or a torn awning. However, an injunction is appropriate when faced with a dangerous or extremely unsightly appearance,

where tickets and other enforcement mechanisms are unsuccessful in achieving the desired result.

Also, if the Town decides to abate the nuisance because the property owner refuses, our Code allows us to place a lien on the property. However, the Town might not see any monetary return on its action for a lengthy timeframe. Also, in an abatement situation, the Town would need to determine of which situations they would abate with staff time and effort and taxpayer's money. For example, the Town could choose to not abate a situation involving torn awnings or peeling paint, but could choose to abate an unsafe situation such as a road full of potholes or a building with unsafe conditions.

Adoption Schedule

Planning & Development Standard Committee review of Memo	6-23
Committee briefing at Town Council	7-6
Town Council approval of Memo	8-3
Planning & Development Standard Committee review of Ordinance	9-7
Committee briefing at Town Council	9-21
Ordinance first reading	10-5
Ordinance second reading	10-19