TOWN OF HILTON HEAD ISLAND

Planning Commission Approved

LMO REWRITE COMMITTEE MEETING

December 18, 2013 Minutes

8:30a.m. – Benjamin M. Racusin Council Chambers

Committee Members Present:	Chairman Tom Crews, David Ames, David Bachelder, Irv Campbell, Jim Gant, Kim Likins, *Ex-Officio;* and Charles Cousins, *Ex-Officio*
Committee Members Absent:	Vice Chairman Gail Quick, Chris Darnell and Walter Nester
Planning Commissioners Present:	None
Town Council Members Present:	None
Town Staff Present:	Teri Lewis, LMO Official Jill Foster, Deputy Director, Community Development Brian Hulbert, Staff Attorney Kathleen Carlin, Administrative Assistant

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1) CALL TO ORDER

Chairman Crews called the meeting to order at 8:30a.m.

2) FREEDOM OF INFORMATION ACT

Public notification of this meeting has been published, posted and mailed in compliance with the Freedom of Information Act and Town of Hilton Head Island requirements.

3) APPROVAL OF THE AGENDA

Chairman Crews and Ms. Lewis recommended revising today's agenda in order to address the written comments provided by Chester C. Williams, Esq. Mr. Williams' comments are related primarily to Chapter 2 of the draft LMO. The Planning Commission and the LMO Rewrite Committee have received Mr. Williams' written comments in advance of the meeting. Ms. Lewis stated that the Planning Commission will meet at 3:00p.m today and will review Mr. Williams' comments at that time. The Planning Commission will also review the consultant's responses to Mr. Williams' comments. The Planning Commission would appreciate input from the LMO Rewrite Committee on these comments. The Committee **approved** the agenda as revised by general consent.

4) APPROVAL OF THE MINUTES

The minutes of the December 12, 2013 meeting will be approved at the next committee meeting on January 9, 2014.

5) UNFINISHED BUSINESS

None

6) NEW BUSINESS

Review of written comments provided by Chester C. Williams, Esq., and the consultant's response to those comments.

On December 4, 2013 the Planning Commission reviewed draft LMO Chapters: Chapter 1 (General Provisions), Chapter 2 (Administration), Chapter 8 (Enforcement) and Chapter 9 (Disaster Recovery). Following the consultant's presentation of these chapters and discussion by the Planning Commission, the Planning Commission voted to forward Chapter 1 (General Provisions), Chapter 8 (Enforcement) and Chapter 9 (Disaster Recovery) to Town Council with a recommendation of approval.

Due to the extensive public comments presented at that meeting by Chester C. Williams, Esq., particularly regarding Chapter 2 (Administration), the Planning Commission voted to hold Chapter 2 back for additional review. The Planning Commission requested that Mr. Chester Williams provide all of his comments to them in writing.

Mr. Williams has provided his comments in writing and at staff's request Clarion Associates (the LMO Rewrite Project consultant) has prepared a response to those comments. The LMO Rewrite Committee has received copies of all of this information in advance of today's meeting.

Ms. Lewis presented general statements related to Chapters 3, 4, and 10. Mr. Williams presented statements regarding increasing the density in the Mitchelville District. Ms. Lewis presented statements with regard to the appropriate zoning.

Citizen, Mr. Perry White, presented statements regarding the history and significance of the Mitchelville area. Mr. White presented statements regarding the existing density and land uses and the proposed density and land uses for Mitchelville.

Chairman Crews stated his appreciation to Mr. White for his comments. Chairman Crews and Mr. White discussed several issues regarding the Mitchelville District. The Mitchelville District will remain 12-units per acre. Ms. Lewis and Mr. Cousins presented statements regarding the existing uses and zoning. Mr. David Ames and Mr. David Bachelder also presented statements regarding this district.

Ms. Lewis asked what the directive is from the committee regarding the proposed Mitchelville District. Does the committee want to put the existing density and uses back into the district? Mr. Gant suggested that there is an interim step involved in the process. The committee should review on a piece of paper the uses that were there before versus the uses that are proposed. What has changed? We need to look at the differences and then decide what the directives should be to the staff and to the consultant. Based on the comments received from Mr. White, the issue seems to be Resort Accommodations/Commercial uses and density. Chairman Crews and the rest of the committee agreed with the idea to review a side-by-side comparison.

Ms. Lewis and the committee then reviewed the following items provided by Chester C. Williams and the responses provided by Clarion Associates. The staff and the committee began their review with item # 5:

(5) Pages 2-1 and 2-7 through 2-10 – Sections 16-2-101, Table 16-2-102, Section 16-2-102.E, Table 16-2-102.F.2, and Footnote 39 – Public hearings generally, and BZA appeal hearings as public hearings in particular: *Subjecting BZA appeals to public hearings is contrary to the long-*

established practice of the Town and not required by statutes (or for variance and special exception applications). BZA rules of procedure prohibit public comments on appeals.

Recommend: Revise provisions regarding BZA appeals to refer to hearings, not public hearings.

(6) **Pages 2-4 through 2-6, 2-28, and 2-31 – Section 16-2-102.C, Footnotes 30 and 32, and Sections 16-2-102.D, 16-2-103.F.3.c.ii, 16-2-103.G.4.c.ii, and 16-2-103.G.4.c.iii – Application Submittal, and Staff Review and Action:** *Statutorily required review deadlines for subdivision and land development applications must be in the LMO, not an administrative manual. Removal of a determination of application completeness process leaves an applicant no way to determine when the statutory review deadlines start to run.*

Recommend: No change – The statutory review deadlines are in review procedures for Subdivision Review and Development Plan Review. They expressly state when the time period starts (when the application is submitted) – see p. 2-28 for Subdivision Reviews and p. 2-30 and 31 for Development Plan Reviews. If that is before they are complete, then the review period clearly complies with the statute.

(7) **Page 2-4 – Section 16-2-102.C.1 – Authority to Submit Applications:**
Provisions stating who must sign development applications are not clear and unfair. The term "owner of record" is not defined. Co-owners of heirs properties shouldn't be given more favorable treatment than other multiple-owners, and should be determined from deeds records rather than tax records. Suggest authorizing co-owners owning a majority of the interest in the property to file applications. Applications involving condominium common areas would have to be signed by all condominium owners. Is a mortgage holder a person with a recognized property interest, and have the right to file an application over the objection of fee interest owners?

Recommend: Revise to refer to "owner" rather than "owner of record" and to require applications to be submitted by the property owner(s) or person authorized in writing by the owner(s) – leaving it up to multiple owners to obtain the consent of all owners.

(8) **Page 2-7 – Section 16-2-102.E.2.a.iii – General Notice Requirements:** *It limits the right to challenge an approval obtained after defective notice.*

Recommend: Revise to better reflect the limited intent to cut off challenges by persons who refused to accept the notice, or who were vacation when notices were provided, etc., versus challenges due to the notice being delivered to the wrong address.

(9) **Page 2-8 – Table 16-2-102.F.2 – Public Hearing Notice Requirements:** *Statutes require a 30-day notice of amendments to land development regulations.*

Recommend: Agree – Revise to change the notice requirement for all text amendments from 15 to 30 days.

(10) **Page 2-10 – Section 16-2-102.E.2.e:** *Notice Contents: Content requirements for various types of notices don't match.*

Recommend: Revise notice requirements for published and posted notices to add identification of subject site location and statement that interested persons may appear as well as speak at hearing.

(11) **Page 2-10 – Section 12-2-102.E.3 – Request to Defer Public Hearing:** *Should be expanded to address deferral of non-public hearing matters; should require approval of request for deferral or set standards for such approval.*

Recommend: Continue to apply only to deferral of public hearings – where substantial reliance on public notice is involved. Revise to authorize approval upon "good cause shown" – a general standard familiar to courts and reflecting the many potentially justifiable reasons for deferral (e.g., hurricane, illness, requested new information, etc.)

Staff will cover the deferral of non-public hearing matters within each board or commission's Rules of Procedure.

(12) **Page 2-12- Section 16-2-102.G.1.b- Remand**: *Allow remand to be applied to other than Town staff; allow Town Council to remand to Planning Commission.*

Recommend: Revise to allow remand to staff or Planning Commission.

(13) **Pages 2-13, 2-63, 2-64 Appeals to BZA:** *The appeal provisions should track Section 6-29-88(A)(2) of state zoning statute that says BZA has the power to hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance."*

Recommend: Needs to be discussed further with Town's legal staff.

(14) **Page 2-15 Section 16-2-103.K.2.b- Extension of Time Period**: *Objects to Official being able to extend time period for development approval for up to but no longer than one year as contrary to Vested Rights Act (§6-29-1510 et seq.).*

Recommend: No change. Sec. 16-2-103.K.2.b pertains only to approvals not subject to the Vested Rights Act (i.e., not an approval of a site specific development plan).

(15) **Page 2-16-Section 16-2-103.B.2.d—Text Amendment:** *Suggests text amendment of permitted uses should be treated as rezoning.*

Recommend: No change.

(16) **Pages 2-16 through 2-20 Text and Map Amendment Procedure**: *Section 6-29-760(A) of zoning statute says "No change in or departure from the text or maps as recommended by the local planning commission may be made pursuant to the hearing unless the change or departure be first submitted to the planning commission for review and recommendation." Procedures don't take this into account.*

Recommend: Revise decision-making steps to add wording mirroring statutory language.

(17) **Pages 2-16, 2-19, and 2-22 – Legal challenges/appeals to Text and Map Amendments, and PUD Master Plans**: *Should make it clear that challenge or appeal is available in accordance with state law.*

Recommend: Agree: make change.

(18) **Page 2-23- Footnote 65 and Section 16-2-103.D.8.a- Minor Deviations from Approved Master Plans for telecommunications towers:** *Stealth telecommunication tower is not defined***.**

Recommend: Delete "stealth" from footnote (inadvertently added).

(19) **Pages 2-23 to 2-24- Section 16-2-103.D.8.a.vi- Monopole telecommunications tower:** *Provisions include no standards for DRB decisions. This is an illegal delegation of the Town's zoning authority to private parties.*

Recommend: This provision carries forward provisions added to the current LMO in July 2012. We share Mr. Williams' concerns about the lack of guidance to the DRB review and the delegation of approval authority to private parties. We recommend that the section be revised to address these concerns, after further discussion with Town legal staff. One option is to subject construction of a new telecommunications towers on land not designated for single family use to provisions similar to those applied to changes in major infrastructure features (in paragraph iii). Other options may be explored as well.

Staff will give this item additional consideration.

(20) **Pages 2-25, 2-61, and 2-66 – Appeals of Decisions on Special Exceptions, Variances, and Appeals to BZA**: *Should make it clear that appeal from decision of BZA is available in accordance with state law.*

Recommend: Agree; make change.

(21) **Page 2-27- Section 16-2-103.F.2.b.i –Minor subdivision**: *Current definition of minor subdivision in LMO needs to be carried forward.*

Recommend: Agree; make change.

(22) **Page 2-28-Section 16-2-103.F.5- Effect of Subdivision Approval**: *Provision doesn't accurately reflect current practices, which requires a subdivision plat to be stamped for recording before it can be recorded. Not stamped until all infrastructure is completed. Should modify language to bring it into line with current practice.*

Recommend: Several LMO Rewrite Committee members recommend reinstating the bonding option to completion of infrastructure. The committee suggests the Planning Commission discuss this further and make a recommendation related to this issue.

(23) **Page 2-37-Sections 16-2-103.I.4.a.vii and 16-2-103.I.4.b.vii- Appeals of Decisions of Major Corridor Review and Major Sign Permits:** *Should make it clear that appeal from decision of DRB is available in accordance with state law.*

Recommend: Agree: make change.

(24) **Pages 2-38 and 2-69- Sections 16-2-103.I.5 and 16-2-103.W.4.c-Design Guide:** *Who will determine what is in the "Hilton Head Island Design Guide"?*

Recommend: Revise Appendix A to authorize DRB to prepare and revise a design manual, subject to adoption by the Town Council.

(25) **Pages 2-38 through 2-40- Traffic Impact Analysis Plans:** *Regulations do not establish to whom and when a TIA plan apples; additionally, there is no explanation of the effect of the approval, or who can appeal it.*

Recommend: Replace with carried forward procedures in Ch. 3. Art. XIII of current LMO, which have the missing information.

(26) **Pages 2-49, 2-54, and 2-68- Appeals of Decisions on Street Names, Public Project Review, and Appeals to the Planning Commission:** *Should make it clear that appeal from the above decisions is available in accordance with state law.*

Recommend: Agree: make change.

(27) **Pages 2-52, 2-64 – Appeals of Decisions of Certificates of Compliance:** *Procedure currently provides for appeal to BZA. Should be appealable to Planning Commission because Certificate of Compliance is form of land development.*

Recommend: Revise if necessary after further discussion with Town legal staff.

(28) **Page 2-53- Public Hearing on Public Project Reviews:** *Even though state statutes do not require public project review be the subject of a public hearing, Town has always done it this way. This should not be changed.*

Recommend: Revise to require public hearings for public project reviews, carrying forward current notice requirements related to public projects.

(29) **Pages 2-54 through 2-56 – Written Interpretations:** *Track language of statute about what should be subject to a written interpretation.*

Recommend: No change, except add subsection to 16-2-103 R. 2 that states that request for written interpretations can also be requested on a development approval or permit.

Ms. Lewis stated that we will consult our legal department on this item.

(30) **Pages 2-57 through 2-60 Administrative Adjustments:** *Believes authorization under zoning statute is not available or suspect.*

Recommend: No change.

(31) **Pages 2-60 through 2-63 – Variances:** *State statute only allows variances from the zoning ordinance (Section 6-29-800(A)(2). Current variance section authorizes variances from "development and design standards." Some of these provisions involve land development standards. Section 16-2-10.3T.4.a.i refers to variance granted by the appropriate decision-making body, and only BZA can grant variance.*

Recommend: Modify language in Section 16-2-10.3T.4.a.i to state BZA makes decisions on variances. Make it clear in Section 16-2.T.c. that a variance can be granted only from the following standards in Chapter 16-5: Development and Design Standards: adjacent setback and buffer standards; open space standards; parking and loading standards; fence and wall standards; single-family residential compatibility standards. [1]

Make it clear in Section 16-2.T.d. that a variance can be granted only from the specimen tree and wetland buffer standards in Chapter 16-6: Natural Resource Protection.

(32) **Pages 2-63 through 2-66- Section 16-2-103.U-Appeals of the Official's Decision to the BZA:** *The appeal provisions should track Section 6-29-88(A)(2) of state zoning statute that says BZA has the power to hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance."*

Recommend: Revise if necessary after further discussion with Town legal staff.

(33) **Pages 2-663 through 2-68- Section 16-2-103.V-Appeals to the Planning Commission:** *Concerned that language of who can appeal a decision does not include "party in interest," which Section 6-29 1150 (C) provides can make an appeal.*

Recommend: Agree. Change language in Section 16-2-103.V.2 to make it clear "any party in interest" has the right to make an appeal to the Planning Commission.

(34) **Page 2-70- Section 16-2-103.W.4.g- Appeals of Decisions on Appeals to the DRB:** *Should make it clear that appeal from decision of DRB is available in accordance with state law.*

Recommend: Agree; make change.

(35) **Page 8-3-Section 16-8-105.C.3- Notice of Violation:** *This section refers to "record owner, but term is not defined.*

Recommend: Revise to use "owner" rather than "record owner."

(36) **Page 8-4-Section 16-8-108- Town Maintenance of Common Open Space**: *Believe it would be better to have Planning Commission serve as the public body to hold the hearing referred to in Section 16-8-108, as Town Council is otherwise not involved in overseeing administration and enforcement of LMO, and Planning Commission is.*

Recommend: No change. The proceedings can result in the Town taking over maintenance of common open space, which typically involves Town expenditures that only the Town Council can authorize.

Based on the lack of time, the staff and the committee agreed to review Rewrite Draft Chapters 4 & 10 at a later date. The next committee meeting is scheduled to be held on Thursday, January 9, 2014 at 8:30a.m. Following final comments, the meeting was adjourned.

7) ADJOURNMENT

The meeting was adjourned at 9:20a.m.

Submitted by: Approved by: January 9, 2014

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Kathleen Carlin
Administrative Assistant

Tom Crews
Chairman