

TOWN OF HILTON HEAD ISLAND
Planning Commission Meeting
Wednesday, December 18, 2013
3:00p.m – Benjamin M. Racusin Council Chambers

Approved

Commissioners Present: Chairman Gail Quick, Vice Chairman David Bennett, Tom Lennox, Alex Brown, Judd Carstens, Terry Ennis, Bryan Hughes, Barry Taylor and Brian Witmer

Commissioners Absent: None

Town Council Present: Bill Harkins, John McCann and George Williams

Town Staff Present: Jayme Lopko, Senior Planner & Planning Commission Coordinator
Brian Hulbert, Staff Attorney
Teri Lewis, LMO Official
Charles Cousins, Director of Community Development
Shawn Colin, Deputy Director of Community Development
Kathleen Carlin, Secretary

1. Call to Order

2. Pledge of Allegiance to the Flag

3. Roll Call

4. 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 Town of Hilton Head Island requirements.

5. Approval of Agenda

The agenda was **approved** as presented by general consent.

6. Approval of Minutes

The Planning Commission **approved** the minutes of the December 4, 2013 meeting as presented by general consent.

7. Appearance by Citizens on Items Unrelated to Today's Agenda

Mr. Jim Collett, Telecommunications Task Force representative, presented a status update on the progress of improved telecommunication facilities on Hilton Head Island. The Planning Commission thanked Mr. Collett for the status update.

8. Unfinished Business

Public Hearing

LMO Amendments:

The Town of Hilton Head Island is rewriting the Land Management Ordinance (LMO). This document guides new development and redevelopment within the Town limits. The Town proposes to replace Chapters 1, 2, 3, 8 and 9 of the existing LMO with the following new chapters: Chapter 1 (General Provisions), Chapter 2 (Administration), Chapter 8 (Enforcement) and Chapter 9 (Disaster Recovery). Significant changes have been made to parts or all of the above chapters.

Chairman Quick stated that the public hearing for the LMO Amendments remains open from the December 4, 2013 Planning Commission meeting. Due to her absence from the December 4, 2013 Planning Commission meeting, Chairman Quick requested that Vice Chairman Bennett continue to lead the Planning Commission's discussion of the LMO Amendments.

Vice Chairman Bennett presented a brief recap of the Planning Commission's review of new chapters: Chapter 1 (General Provisions), Chapter 2 (Administration), Chapter 8 (Enforcement) and Chapter 9 (Disaster Recovery) on December 4, 2013. Following the consultant's presentation and discussion by the Planning Commission at that meeting, 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 by Chester C. Williams, Esq., particularly related to Chapter 2 (Administration), the Planning Commission voted to hold Chapter 2 back for additional review. On December 4th Vice Chairman Bennett requested that Mr. Chester Williams provide all of his comments to the Planning Commission in writing.

Mr. Williams has provided his comments in writing and at the staff's request, the LMO Rewrite consultant, Clarion Associates, has prepared a response to those comments. The LMO Rewrite Committee met earlier today and reviewed both Mr. Williams' comments and the consultant's response to those comments. The LMO Rewrite Committee has provided a response to those comments.

Vice Chairman Bennett then invited Mr. Chester Williams to present his comments to the Planning Commission. Chester C. Williams, Esq., presented statements on the following topics. Mr. Craig Richardson, Clarion Associates, responded to each of Mr. Williams' comments. Comments by the Planning Commission and Ms. Teri Lewis, if any, follow each of the items.

- (1) **Page 1-2 – Section 16-1-104.B – Development Activities Constituting Development:**
Subsections a-c do not carry forward language that arguably works to a landowner's benefit.
Consultant's Recommendation: As stated at the last public hearing, the omitted language is vague, general, and discretionary (that is why it was not carried forward). We have no objection to adding it back in.
- (2) **Pages 1-4 and A-1 – Section 16-1-104.G and Appendix A Section A: Why doesn't LMO include provisions for issuance of a zoning permit by the Official?**
Consultant's Recommendation: No change – certification of approval as required by statute continues to be provided by Certificate of Compliance (Sec. 16-2-103.P).
- (3) **Page 1-8 – Section 16-1-108.D – Nonconformities:** No use, development, or structure established before the town's original enactment of the LMO in 1987 is legally conforming under Article 10's definition of "legal nonconformity."
Recommend: No change – Statement is not accurate. Development legally established before LMO and not compliant with LMO is clearly defined as nonconforming.
- (4) **Page 1-10 – Section 16-1-108.H – Development with Prior Permits and Development Approvals:** *Should state that nothing in the LMO prohibits the holder of a permit/approval issued under the prior LMO from seeking to revise the permit/approval to take advantage of the new LMO.*

Recommend: Revise to add such wording.

- (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).
- Mr. Chet Williams has indicated that he wanted to review this and possibly make additional comments. Mr. Williams was advised to do so in a timely manner.
- (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.

Add back in bonding provisions from current LMO – update as needed to reflect desires of the Planning Commission to have a bond that was redeemable, creditworthy and the appropriate amount.

- (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 applies; 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 would 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.

This completed the Planning Commission’s review of the 36 written items prepared and presented by Chester C. Williams, Esq. Vice Chairman Bennett stated his appreciation to Mr. Chet Williams for his input and participation. Vice Chairman Bennett requested additional public comments on Chapter 2 of the proposed LMO and none were received. Vice Chairman Bennett then presented comments regarding Sec. 2-16-2-103l2b. The current language seems to circumvent the Federal government’s language and control over wetlands. The legality of this item should be reviewed. Ms. Teri Lewis stated that the staff will review this item.

Mr. Tom Crews, Chairman of the LMO Rewrite Committee, presented statements with regard to the 66 plus meetings held so far by the LMO Rewrite Committee. The committee and staff have worked diligently over the past two and one-half years along with the consultant to craft the new Land Management Ordinance. Chairman Quick stated her appreciation to the LMO Rewrite Committee and the staff for all of their hard work.

Following final comments by the Planning Commission, Chairman Quick stated that the public hearing for Chapter 2 of the new LMO is now closed. Chairman Quick stated her appreciation to Mr. Chet Williams, the LMO Rewrite Committee and the staff for all of their hard work.

Following final comments by the Planning Commission, Vice Chairman Bennett recommended that Chapter 2 be remanded back to staff including all of the comments made today. The final Chapter 2 document will return to the Planning Commission for approval. Chairman Quick then requested that a motion for Chapter 2 be made.

Commissioner Ennis made a **motion** that the Planning Commission take all of the comments received today and remand those back to redraft Chapter 2 in final form for additional review by the Planning Commission. Chairman Quick **seconded** the motion and the motion **passed** with a vote of 9-0-0.

Mr. Chet Williams stated that another public hearing should be planned for the Planning Commission’s final review of Chapter 2 due to the substantial changes that are anticipated.

Mr. Charles Cousins and Brian Hulbert, Staff Attorney, presented statements in agreement. Another public hearing will be scheduled when Chapter 2 returns to the Planning Commission for final review.

9. New Business

None

10. Commission Business

None

11. Chairman's Report

None

12. Committee Reports

None

13. Staff Reports

Mrs. Lopko presented comments regarding the Fourth Quarter Report. The next Planning Commission meeting will be held on January 8, 2014 at 9:00a.m.

14. Adjournment

The meeting was adjourned at 4:40p.m.

Submitted By:

Approved By:

January 8, 2014

Kathleen Carlin
Secretary

David Bennett
Acting Chairman