

TOWN OF HILTON HEAD ISLAND
Planning Commission Meeting
Wednesday, March 19, 2014
3:00p.m – Benjamin M. Racusin Council Chambers

APPROVED

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

Commissioners Absent: Brian Witmer

Town Council Present: Mayor Drew Laughlin

Town Staff Present: Teri Lewis, LMO Official
Charles Cousins, Director Community Development
Steve Riley, Town Manager
Shawn Colin, Deputy Director Community Development
Brian Hulbert, Staff Attorney; Nicole Dixon, Senior Planner
Jayme Lopko, Senior Planner & Planning Commission Coordinator

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 regular January 15, 2014 meeting as submitted by general consent. The Planning Commission also **approved** the minutes of the regular February 5, 2014 meeting as submitted by general consent. Lastly, the Planning Commission **approved** the minutes of the special meeting held on February 12, 2014 as submitted by general consent.

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

None

8. Unfinished Business

None

9. New Business

Hearing

APL140001:

Request from Jeffrey D. Kaplan. The appellant is appealing the Town's decision on November 26, 2013 to issue a revised Notice of Action (approval) for subdivision application SUB130006. The subject subdivision subdivided a .20 acre parcel out a larger

tract of land within Hilton Head Plantation; the larger tract is designated as Beaufort County Tax Parcel 510-003-000-0060-0000. Chairman Quick introduced the application and requested that the appellant make his presentation.

Mr. Chester C. Williams, Esq., made the presentation on behalf of his client, Mr. Jeffrey D. Kaplan. Mr. Williams presented a brief history of the application for appeal. Mr. Kaplan is appealing the Town's decision to issue the Notice of Action for subdivision application, SUB130006, on the grounds that: (1) Ms. Nicole Dixon, Senior Planner, lacked the authority to approve or disapprove subdivision application, SUB130006; (2) the application for revised SUB130006 does not meet the requirements of the Land Management Ordinance (LMO) and should not have been approved; and (3) approval of the subdivision of the .30 acre tract for use as a cell phone tower violates the applicable recorded restrictive covenants, which is in violation of Section 6-29-1145 of the State Enabling Act.

At the completion of his presentation, Mr. Chester Williams requested that the Planning Commission (a) consider these issues in their review of APL140001 and the pertinent provisions of the State Enabling Act, the LMO, and other applicable law; (b) find that the revised Notice of Action approving the revised SUB130006 should be revoked and the approval of revised SUB130006 should be reversed; and (c) revoke the approval of revised SUB130006. Commissioner Lennox presented comments regarding the certificate of title and title insurance policy referred to by Mr. Williams in his presentation.

Vice Chairman Bennett and Mr. Williams discussed the restrictive covenants, the Open Space issue, and the development of the site as a cell tower. Commissioner Ennis presented comments regarding the staff's need to exercise some judgment in the process. Following final comments by the Planning Commission, Chairman Quick requested that the Town's legal representative make his presentation on behalf of staff.

Gregg Alford, Esq., attorney for the Town, addressed the issues raised by Mr. Chester Williams in his presentation. Mr. Alford stated the need for Town staff to exercise some judgment (i.e. use some common sense) in dealing with these types of issues. This is what Ms. Teri Lewis, LMO Official, did in making her decision. Mr. Alford stated that there is absolutely no doubt that Ms. Teri Lewis is the Land Management Ordinance (LMO) Official. Therefore, Ms. Teri Lewis has the authority to appoint a designee. The LMO Official has the authority to make administrative interpretations of the LMO. The decision about which items are applicable to an application is an administrative interpretation.

Mr. Alford stated that the Hilton Head Plantation's Property Owners Association's Covenants make it very clear that utilities were contemplated on Open Space property. Mr. Peter Kristian, General Manager, of the Hilton Head Plantation Property Owners Association, is well within his authority, as agent, to sign as the owner on behalf of Hilton Head Plantation Property Owners Association.

As part of this discussion, Mr. Alford requested that Mr. Peter Kristian, General Manager, Hilton Head Plantation POA, be sworn in as a witness. Chairman Quick agreed that the Planning Commission should accept statements from Mr. Kristian on this issue.

Mr. Alford performed the swearing in of Mr. Kristian as a witness in this matter. Mr. Kristian stated that he is the registered agent for Hilton Head Plantation POA. Mr. Kristian presented statements regarding the Covenants as they relate to the Open Space. The

Covenants clearly allow for utility installation on Open Space. Mr. Alford and Mr. Kristian discussed several photos of existing open space and existing utilities in Hilton Head Plantation. Mr. Kristian stated that there are many utilities currently located in Open Space that provide necessary services to the residents of Hilton Head Plantation. Commissioner Lennox and Mr. Kristian agreed that the proposed cell tower will be an extension of these services to the residents of Hilton Head Plantation. At the completion of Mr. Alford's presentation, Chairman Quick invited a response from Mr. Chester Williams.

Mr. Williams requested a 5-minute recess at this time so that he can prepare his response to the statements presented by Mr. Alford. Chairman Quick requested that a motion be made to grant Mr. Williams' request for a 5-minute recess. Vice Chairman Bennett made a **motion** to grant a 5-minute recess. Commissioner Ennis **seconded** the motion and the motion **passed** with a vote of 8-0-0.

When the meeting resumed, Mr. Chester Williams responded to several of the issues raised by Mr. Alford including hyper-technical issues and Certificate of Title and Title Insurance Policy. Mr. Williams questioned Mr. Peter Kristian on other cell towers located within Open Space in Hilton Head Plantation. Mr. Jim Scheider, Esq., co-counsel for the appellant stated that he believes that the deed restrictions trump the covenants.

Mr. Alford responded to Mr. Williams' comments regarding the deed restrictions. Following this discussion, Chairman Quick requested statements from the Planning Commission.

The Planning Commission discussed the application for appeal. The Planning Commission agreed that the case for appeal, APL140001, is not strong enough. At the completion of their discussion, Chairman Quick requested that a motion be made.

Commissioner Ennis made a **motion** to support and **approve** the Town staff's position that the Notice of Action for SUB130006 was appropriately issued and should be upheld. The Planning Commission should **deny** application for appeal, APL140001. Vice Chairman Bennett **seconded** the motion and the motion **passed** with a vote of 8-0-0.

10. Commission Business

Commissioner Ennis stated that it is the Planning Commission's responsibility to conduct a public workshop regarding Redevelopment of the Coligny Area. The Coligny Workshop will take place on Wednesday, April 2, 2014 at 4:00 p.m. in Council Chambers. The goal of the workshop is to receive as much public input and information as possible and then provide it to the consultant to make revisions and create a conceptual plan. We will need to have at least three Planning Commissioners to take the lead for the three focus groups that will be formed for this workshop. Vice Chairman Bennett and Commissioners Brown, Carstens, Lennox, and Taylor volunteered to participate in this process.

11. Chairman's Report

Chairman Quick stated that she will select a Nominating Committee by May 1st to make nominations for the next Planning Commission term.

Chairman Quick stated that the status of the Collier Beach permit will be addressed at the April 16, 2014 Planning Commission meeting.

12. Committee Reports

None

13. Staff Reports

a. Quarterly Report

Ms. Lopko presented the quarterly report listing the status of previously reviewed applications and documents.

b. Status update on LMO Rewrite Committee

Ms. Lewis reported that the LMO Rewrite Committee formed several advisory subcommittees to get the process completed. The LMO Rewrite Committee expects to complete a full review by end of March 2014. The Planning Commission will work with the advisory committees for the public hearings in May and June 2014.

14. Adjournment

There being no further business, the meeting adjourned at 5:40 p.m.

Submitted By:

Approved By:

April 16, 2014

Eileen Wilson
Senior Administrative Assistant &
Kathleen Carlin, Secretary

Gail Quick
Chairman