TOWN OF SULLIVAN'S ISLAND, SOUTH CAROLINA
PLANNING COMMMISSION
REGULAR MEETING MINUTES
Wednesday, May 13, 2015

A regular meeting of the Town of Sullivan's Island Planning Commission was held at 6:30 p.m., Wednesday, May 13, 2015 at Town Hall, 2050-B Middle Street, all requirements of the Freedom of Information Act satisfied. Present: Commissioners Chair Gary Visser, Vice Chair Hal Currey, Charles Cole, Sydney Cook, Carl Hubbard and Manda Poletti. Staff members present: Zoning Administrator Henderson, Asst. to Administrator Darrow and Building Official Robinson.

Call to Order. Chair Visser called the meeting to order, stated press and public were duly notified pursuant to state law and all Commissioners present except Carlsen Huey (excused absence). Approximately 20 people were present in audience; no media.

I. Approval of Agenda – Commission approved agenda with no changes

II. Approval of Minutes

MOTION: Vice-Chair Currey moved to approve the April 8, 2015 minutes; seconded by Mr. Hubbard; MOTION UNANIMOUSLY PASSED.

III. Items for Information

1. **<u>Conservation Easement Uses:</u> Review of Zoning Ordinance text amendments to allow standalone structures and recreational uses on residentially zoned properties when a conservation easement has been established.**

<u>Staff Comments</u>

Zoning Administrator Henderson noted this agenda item and Staff report are a continuation of discussion from the April 8, 2015 Planning Commission meeting.

Background:

In June 2014, Building Department staff met with Chad Waldorf, the petitioner of the subject text amendment and owner of 3117 Marshall. Mr. Waldorf recently purchased the subject property and has begun working with the <u>East Cooper Land Trust</u> to establish a conservation easement on the subject property to prohibit the use of the property for single-family residential use while allowing an approximately 500 sq. ft. structure for storage and recreational use.

Currently the Zoning Ordinance prohibits Standalone accessory type structures on RS Zoned properties. The current provisions of the Z.O. only permit single-family detached homes as a principal use (use by right) and structures for storage or recreational use as ***<u>accessory uses only</u>***. A variance (use variance) would not be permitted via BZA request due to its prohibition by way of state statute and local zoning ordinance.

During the April 8, 2015 Planning Commission, members voted unanimously to review draft text amendments that would permit "conservation easement uses and structures." The Commission further requested that a list of benefits and a list of unintended consequences be reviewed during the May 13, 2015 meeting.

Zoning Administrator Henderson provided the benefits of conservation easements and outlined some unintended consequences and questions the Commission should consider with this potential use change.

Planning Commission Considerations:

- Consider Comprehensive Plan for guidance on this use change;
- Determine the various conditions for allowing such non-residential uses and definitions (provided proposed text for Commission and general public at this meeting);
- Determine the process of review and approval of such uses (Condition Use or Special Exception).

Potential Actions:

- Recommend text amendment to Town Council for Section 21-20.B (RS Conditional Uses);
- Recommend text amendment to Town Council for Section 21-20.C (RS Special Exceptions);
- Recommend to Town Council no action be taken to amend the Zoning Ordinance.

Commission Questions for Staff

Q. Clarify why the structure cannot be considered an accessory structure
A. Current zoning only allows one single-family residential structure on an RS lot. Additional structures and recreation improvements may be allowed as accessories to the single-family residential home, provided they meet the guidelines and restrictions set forth in the Zoning Ordinance and receives Design Review Board approval, if applicable.

Q. Clarify how extensive this use change would be on the Island.
A. If the Town approved this use change, the opportunity for improvements on vacant lots would be available to every property owner of an RS zoned lot.

Q. Should the Town approve this use change, clarify what role the Board of Zoning Appeals (BZA) would play in future requests, and, clarify how placement of land in a conservation lot is linked to a standalone structure on a vacant lot.
A. Creation of conservation easements on the Island is possible without this use change. The Town has already placed Town owned vacant lots into conservation easements, to allow view corridors and public access to the marsh/ICW (i.e. "Old Dump" lot at Station 19). If the Town allowed a use change for standalone structures on vacant lots, the ordinance could be written as a special exception use for property, on the condition that the land is placed in a perpetual conservation easement. In this situation, the

conservation easement becomes linked and the Board of Zoning Appeals would review and potentially issue a special exception.

Q. How would the Town handle properties that have single-family residences and existing accessory structures (pools, garages, tennis courts, etc.)? Would these accessory structures be grandfathered for the owner if the house was wholly or partially removed?
A. This is one of the questions this Commission must answer during this process. Other considerations for the Commission include:

- Define goals for Town land use; identify the goals of a conservation easement;
- Identify structures desired and undesired for vacant lots;
- Parking
- Allowed uses on vacant lots

Chair Visser opened the floor for public comments on this topic, requesting Mr. Gray Taylor speak first as he serves as legal counsel for the East Cooper Land Trust

Public Comments

Gray Taylor, Real Estate attorney; works with East Cooper Land Trust

- Disclosure: His firm performed the real estate closing for Mr. Waldorf's purchase of 3117 Marshall Boulevard; clarified he is present tonight on behalf of the East Cooper Land Trust.
- Noted he has performed a lot of work with the Kiawah Conservancy and with conservation easements.
- Conservation easement:
    - A contract between the owner and conservancy
    - One of few opportunities for a land owner to "speak from the grave" and provide for perpetual stewardship of land.
    - Easements can trace back to many uses, usually open space use and/or habitat protection.
- Noted that, in Kiawah, the driving force for conservation easements is the desire for land owners to down-zone property immediately adjacent to his/her property. He believes Sullivan's Island property owners would share this common motivator.
- Conservation easements on beachfront property support the State's statute and OCRM/DHEC policy of active beach retreat. 3117 Marshall Boulevard is an example of beach retreat.
- Recommends Town work with owners, as much as possible, to encourage land owners to voluntarily protect land through conservation easements.
- Owners who place properties in conservation easements voluntarily give up, in perpetuity, some of their land use rights. A land use trust must, by law, monitor property at least once annually for compliance with the conservation easement. In signing the easement, the property owner has provided for the land trust to take action against the property owner to compel compliance and/or mitigate any land use changes that violate the conservation easement.

Commission members asked Mr. Taylor questions about the Kiawah Conservancy:

Q. Does Kiawah have any standalone structures on a conservation easement?
A. No, currently no structures are allowed as standalone principal uses on conservation easement properties. If a conservation easement property has an accessory structure on it, this is usually related to a recreation use item (i.e. pool, pool cabana or tennis court) that cannot be placed on the property owner's adjacent lot due to setbacks. An owner wishes for the recreation use item to be close to the primary residence, so land is placed into the conservation easement to mitigate the setback variance.

Q. Do the easements provide for right of public access on Kiawah?
A. No

Q. Would the Kiawah Conservancy allow the lot owner to what is being asked of the Town of Sullivan's Island (for example, Mr. Waldorf's request for 3117 Marshall Boulevard)?
A. No, Kiawah would not allow this use. He noted that placement of a conservation easement on land with the ability to build on part of it is compatible and common in many areas. He stated Sullivan's Island is considering a more progressive approach to downsizing beach front and other land uses.

Q. If the land no longer exists (i.e. hurricane changes topography), does the easement remain?
A. Legally, yes, the conservation easement lasts in perpetuity, but practically speaking there is no easement. He noted that some trusts hold easements for platted lots that are currently underwater.

Other Staff Comments

- Reviewed pictures of current accessory structures that could be standalone structures on a vacant lot if this use change is allowed.
- Commented that, depending on the flood plain designation, structures would require varying minimum heights for the lowest horizontal member (i.e. base of roof). For example, in a VE flood level zone, the minimum base flood elevation (BFE) is 15 feet above the ground for the lowest horizontal member. FEMA regulations dictate the minimum heights for BFE guidelines.
- Reviewed how Isle of Palms handles standalone structures on lots. Noted that open air gazebos, usually attached to boardwalks, are located on oceanfront lots as standalone structures, adjacent to the lot where the primary residential structure is located.

Public Questions/Comments

Jenna Waldorf, owner of 3117 Marshall Boulevard

- Noted her husband wished to be present but was currently out of town.
- Her family wants to keep the height of the structure on 3117 Marshall Boulevard as low as possible.

Katie Zimmerman, Program Director Air, Water & Public Health, Coastal Conservation League

- Complimented the Town for being progressive and considering ways to support active retreat from beachfront development, as with the 3117 Marshall Boulevard request.

Gray Taylor, Real Estate attorney; works with East Cooper Land Trust

- Noted that the East Cooper Land Trust's goal is to obtain conservation easements. From that perspective, the Trust would advocate for the Town to work with residents to reasonably accommodate their requests so that conservation easements can be realized.
- He clarified for the Commission that conservation easements are perpetual contracts mutually entered into by the property owner and conservatory trust. Should a particularl conservatory trust dissolve, there are statutory guidelines in state and/or federal legislation to protect the conservation easement.
- Clarified that a trust would pursue violations through civil suits; the Town could pursue violations using police powers.

Wayne Stelljes, 3104 I'On Avenue

- Referenced letter he provided the Commission tonight.
- Stressed that the Commission is considering the impact of the use change on the entire Island, not only the property at 3117 Marshall Boulevard.
- Supports active beach retreat and conservation deed protection activity, but expressed concerns with the Town modifying its zoning ordinances to allow this new use. Some of the unintended consequences with which he expressed concerns included (articulated fully in his correspondence):
    - Types of allowed uses and design specifications of structures;
    - Difficulty for Town to monitor and enforce restrictions for large group events on the lots, whether private or rented, trespassing and unauthorized access to the lots with potential land owners who may not have a residence on the Island or are absentee homeowners;
    - Long-term maintenance of structures on the Island;
    - Potential declining property value for area neighbors' homes. Noted that land trusts advertise the property tax savings that owners may realize by placing land in a conservation easement. He noted that this was a big selling point/incentive for property owners. The Town and other taxpayers, however, would have to compensate for the lost property tax revenues to the Town's coffers.
- Thanked the Commission for carefully and methodically considering this issue and all the ramifications of a land use change.

Paul Boehm, 3209 Middle Street

- Supports the request made by Mr. Waldorf for 3117 Marshall.
- Noted that the lot currently has a house on it that allows for all the things mentioned by Mr. Stelljes: private parties, long-term rental, parking recreational vehicles on the lot, etc.
- Current request would allow for a smaller footprint on the beachfront lot.

Jim Lundy, 39 Smith Street, Charleston, SC

- Acknowledged he did not own property on the Island and was present as an interested Charleston County citizen.
- Posed question: if a current RS zoned property had a house lost to fire or in a storm, what would happen to the accessory structures (pool, pool cabana, detached garage) if the homeowner did not rebuild the primary structure/residence.

Chair Visser:

- The Town's ordinances allow the resident additional time to replace a primary structure in the event of a fire or other natural disaster.

Seeing and hearing no additional speakers, Chair Visser closed public comments

Commission members discussed a method to proceed with study of the draft ordinance language. Commission members debated the value of dealing with the question of standalone structures on lots for all Island lots, or, separating discussion between beachfront/marsh property and interior property.

Action: Commission established an ad hoc Planning Commission work group to review the current ordinance language and support information for report back to the Planning Commission at its next meeting. The work group will include Commission members Cook, Hubbard and Poletti, Staff members and a few Island residents.

Chair Visser asked Wayne Stelljes and Larry Middaugh, both present in the audience, to participate as Island residents. Both gentlemen indicated they would assist.

Staff will coordinate the public workshop date/time, to be held at Town Hall. Public will be invited to attend and observe.

Action: Agenda item tabled to next Planning Commission meeting, pending work group report.

2. **Staff Update on Town Projects:** Staff provided oral report.

3. Correspondence/Comments – All items relate to agenda item #1 above:
Letter from Wayne Stelljes and Gray Taylor (referenced above); verbal comments annotated above. **No other general comments made or correspondence received**

Next Meeting – (6:30pm) Wednesday, June 10, 2015 at Town Hall
Vice-Chair Currey and Mr. Huey will be absent from the June meeting (excused).

There being no further business, the meeting adjourned at approximately 8:20 p.m. (Mr. Hubbard motioned; Ms. Poletti seconded; unanimously passed).

Respectfully submitted,
Lisa Darrow
Asst. to Administrator

Approved at the Wednesday, June 10, 2015 Planning Commission Meeting

Planning Commission
Correspondence - May 13, 2015 Meeting

Joe Henderson

From: Gray Taylor <gray.taylor@buistbyars.com>
Sent: Monday, May 11, 2015 4:27 PM
To: Joe Henderson
Subject: RE: Conservation Easement Uses-Town of SI

Joe – I have reviewed and do have some initial comments.

Section 5(c)(i) – the 125 sq ft limitation is really small. For instance, it would make it very difficult to safely store a paddleboard, surfboard or kite boarding gear.

Section 5(c)(iv) – is the site lighting prohibition intended to exterior lighting, interior lighting, or both?

Section 5(d)(i) – the owners could (and will) presumably use the property after 8:00 pm - can this parking restriction be relaxed to accommodate the owner's reasonably use of the property?

Section 5(g)(iv) – I would suggest deleting the language after the first sentence.

Section 5(g)(vi) – I would suggest deleting the language after "The Lot shall remain in single ownership". The remainder of the language is, at least in my opinion, overly burdensome and likely an unenforceable restraint on alienation.

In your definitions section, I would definitely suggest using the reference to the SC Code rather than the definition from the VA code of laws.

I hope these comments are helpful, and I will be available most of the day tomorrow if you would like to discuss.

Sincerely,

Gray B. Taylor

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BUIST BYARS & TAYLOR LLC
ATTORNEYS AT LAW

Correspondence 05132015 PC Meeting- Email from Wayne_Stelljes (05112015)
From: garyvisser <garyvisser@bellsouth.net>
Sent: Monday, May 11, 2015 9:23 PM
To: Lisa Darrow; Joe Henderson; Hal Currey
Subject: Fw: Input for 5/13 Planning Commission Meeting
Attachments: Structures and Uses for Otherwise Vacant Lots - 11 May 2015.docx

Please include this in the correspondence for the Planning Commission and distribute to Commissioners
at the meeting.

Thank you
Gary Visser

843-822-2705 cell

garyvisser@bellsouth.net

----- Forwarded Message -----
From: bulldog1981 <bulldog1981@bellsouth.net>
To: Planning Comm. Chairman Gary Visser <garyvisser@bellsouth.net>
Sent: Monday, May 11, 2015 9:04 PM
Subject: Input for 5/13 Planning Commission Meeting

Hello Gary,

While I was unable to attend the April 8th, 2015 S.I. Planning Commission meeting, I have
significant concerns about the intent of several landowners to place 3117 Marshall Blvd. into a
land trust; requesting that they be allowed to erect a recreation and storage structure on the site
(after removal of the existing single family home on the property). I have read the Planning
Commission report from that meeting, including the minutes of the meeting, and the staff
analysis. I also met with Joe Henderson and Randy Robinson, to better understand the

details of the issue, and to voice my concerrns.

My primary concerns related to the allowance of recreational and/or storage structures on
any Sullivan's Island property (without a residential structure), are as follows:
* The inherent loss in property values that occur, within a neighborhood, when a residential
property is placed in a land trust
* The decrease in property tax revenues for the Town - based on the decreased property
value of the residentially-zoned land placed into a land trust
* The negative aesthetic affects of a recreational and/or storage structure on an otherwise
vacant lot
* The fact that such properties would be unattended, and therefore, unsupervised and open
to non-permitted activities; either by those individuals authorized by the landowner(s) to
utilize the site, or individuals who illegally trespass and utilize the site
* Potential environmental risks (described in the attached document)
* Potential security risks (described in the attached document)
* The virtually impossible task of permitting, monitoring, and enforcement of the very
specific structures and uses that would be allowed on any specific residential property
placed in a land trust

Correspondence 05132015 PC Meeting- Email from Wayne_Stelljes (05112015)

The attached document, comprised of three sections, includes my thoughts, concerns, and objections to the placement of any Sullivan's Island residential property into a land trust, with the opportunity to erect a recreational and/or storage structure (without a residential structure on the property).
* Please see attachment *

Gary, feel free to forward this e-mail and it's attachment to the members of the Planning Commission, if you desire. I plan to attend the May 13th Planning Commission meeting and look forward to hearing further discussion by the commission members. (I am certainly open to hearing from you, or any member of the commission, either by phone or e-mail).

Thank you Sir,

Wayne Stelljes

3104 I'on Ave.
(843)883-0573

Possible Structures and Desired Uses for Otherwise Vacant Properties

(submitted by Wayne Stelljes)

Assumption – If conservation easement uses are granted for residential, privately-owned properties without a residential structure, not all requests would be for ocean-front properties. While it is likely that requests for storage and recreational uses on ocean-front properties would be related to beach and watersports activities, it is also likely that the desired uses for marsh-front and 'internal' lots may differ significantly. Thus, an extremely broad range of uses must be considered by the Town of Sullivan's Island if, and before, and changes are made to the current codes.

- Open-Air Shelter – over picnic table, beach chairs, outdoor furniture, etc.
- Beach Cabana
- Storage of Watersports Gear – kiteboards, paddle boards, surfboards, kayaks, etc.
- Swimming Pool
- Pool Cabana – for a pool on the property, or an adjacent property
- Volleyball / Tennis / Basketball Courts
- Standalone Deck
- Storage Shed - potentially housing hazardous materials; including propane tanks, charcoal lighter fluid, fuels, etc.
- Tool Shed – for storage of yard maintenance equipment, power tools, hand tools, etc.
- Workshop – involving use of hand tools, battery-operated tools, and potentially, electrically-powered tools (using alternative sources for power, including: power cord(s) from adjacent properties or gas-powered generators on-site).
- Exercise Room or Deck – for yoga, martial arts, free weights, exercise machines, etc.
- Art / Music Studio
- Children's Playhouse
- Tree-House
- Playground Equipment (with or without a structure on-site) – swings, slides, climbing bars, climbing walls, volleyball nets, sand boxes, etc.

Questions / Concerns Regarding Structures and Desired Uses for Otherwise Vacant Properties

(submitted by Wayne Stelljes)

On-Site Supervision: Can it be legally required that a property owner, member, partner, or shareholder be present at all times, when a property is in use? (Would it be *legal* to make such a requirement?)

Unauthorized Use of Property: Because the properties would be attended and unsupervised, the unauthorized use of the property by the general public could be very likely. Such unauthorized use could not be easily prevented, monitored, or enforced.

Public or Private Use: While the specific request for 3117 Marshall Blvd. would maintain the property for private, non-public use, if similar land trust uses were allowed across the Island, would they be for private use only, public use, or a combination of the two?

Groups / Clubs / Organizations: Would groups / clubs / organizations be allowed to use the property? (social club, book club, yoga or exercise group, garden club, hunting / fishing groups, etc.)

Environmental Risks:
1) Since a shower would drain only onto a pervious surface, is it possible that the environment would be damaged by the washing of dishes and/or cooking grills (including oils, grease, and leftover food)?
2) Since no impervious surface would be allowed, there is a risk of damaging the environment by the storage or use of gasoline, motor oil, fuels, charcoal lighter fluid, etc.

Security of Personal Property: Any secured or unsecured personal property would be of greater risk for burglary or vandalism, since the property does not include a residential structure, and is therefore unattended and unsupervised.

Pre-Fabricated Structures: Would any type of pre-fabricated storage structures be allowed? (storage sheds from big-box stores, dog kennels with a roof and/or enclosed structure, plastic or metal cabinets intended for garage use, etc.)

Storage Lockers: Is it possible that a landowner would provide individual 'storage lockers' for a potentially large number of people to store their kiteboards, paddle boards, surfboards, and beach gear?

Alcohol: Would non-commercial dispensing and consumption of alcohol be allowed on such properties?

Electrical Power: Even if electrical power connections are prohibited, is it likely that some landowners would bring power to the property via electrical extension cord(s) from an adjacent property or properties, or bring a gas-powered electric generator to the site?

Trash / Garbage: Would the landowner be required to pay for garbage pickup through Charleston County, as is required of all single-family residences? Is it reasonable to assume that a garbage can(s) would be rolled out to, and withdrawn from the street side on the proper days of the week; since the property is unattended?

Bathroom Facilities: Even if bathroom facilities were to be prohibited, is it likely that some landowners would attempt to provide such facilities – without a proper sewer connection? (Port-o-let or a site-built toilet with a holding tank - similar to those used in campers).

Recreational / Storage Structures – Examples

(submitted by Wayne Stelljes)

Although some of these structures would exceed certain size limits, or their style may not be in keeping with designs that the Design Review Board would approve, they demonstrate the broad range of recreational / storage structures that have been erected for personal use.

Received by Wayne Stelljes (3104 I'On)


EPIC BAR SHED