

October 2, 2020

A Special Meeting of Town Council was held on the above date at approximately 9:00 a.m., all requirements of the Freedom of Information Act having been satisfied.

Present were: Patrick M. O’Neil, Mayor
Chauncey Clark, Mayor Pro-Tem
Sarah Church, Councilmember
Greg Hammond, Councilmember
Tim Reese, Councilmember
Bachman Smith, IV, Councilmember
Kaye Smith, Councilmember

Mayor O’Neil called the meeting to order at 9:03 a.m. and stated the press and public had been notified in accordance with State Law. There were approximately one-hundred and eighty (180) members of the public present and three (3) members of the media present. This meeting was conducted via virtual meeting as a result of COVID-19 Pandemic. The purpose of this Special Meeting was to discuss the Bluestein et al. v. Town of Sullivan’s Island et al. 2010-CP-10-5449 Mediation Settlement Terms.

Explanation of Bluestein et al. v. Town of Sullivan’s Island et al. 2010-CP-10-5449 Mediation Settlement Terms: Mayor O’Neil introduced Litigation Counsel Brady Hair and Derk Van Raalte. Derk Van Raalte gave a synopsis of the case. His statement is below.

“We are here this morning for Council to consider a potential settlement of Bluestein v. Town of Sullivan’s Island. It may be helpful for me to give you a 20,000-foot synopsis of where we are and how we got here. I am not going to cover line item, the specific items, because those have been previously provided in writing to all as far as the terms of the potential settlement. Generally speaking, the Town owns the land in between the front row homeowners and the ocean. This Accreted Land is managed by the Town, subject to certain deed restriction requirements imposed by the Lowcountry Land Trust that are generally intended to keep the land undeveloped. The deed does permit cutting the vegetation on the Accreted Land and the Town’s cutting rules have changed over the decades.

In the early 90’s when the deed restrictions were put in to place, the Town’s cutting rules allowed adjacent owners a process to cut all species to 3’, essentially flat topping to create a dense head shrub. By 2005, most species could be cut only to 5’, but many trees could not be cut. The result was a 5’ head shrub of myrtles punctuated by taller trees. Mr. Bluestein sued the Town claiming that certain deed restriction language meant that the Town was not permitted to change the cutting rules in any way that would degrade his ocean view or the value of his

property. He also claimed that certain aspects of our Accreted Land policy were harboring public nuisances. He sought monetary damages and he also sought a court order returning the Accreted Land to a 3' flat top rule that would have cut everything much like a bush-hog or a lawnmower.

The Town and Mr. Bluestein have litigated for over a decade with some victories and setbacks on both sides. Most recently, the Supreme Court issued an opinion that removed predictability from what previously seemed to be very predictable deed language. The case was remanded for trial. Court systems now almost uniformly encourage parties to mediate disputes prior to trial to see if an agreed-upon compromise might be reached. Compromises are by nature outcomes that leave both sides with something that is dissatisfying but which they can live with. Compromises also offer three (3) important benefits: 1) they let the parties control the outcome; 2) they offer certainty rather than rolling the dice; and 3) they offer closure and finality rather than another decade of trial and appeal.

It is important to have a baseline understanding of court mediation. First, mediation is confidential and the parties are not free to discuss what occurred in the room. Second, mediation is intended to be final. Most often a mediation concludes with the parties binding themselves to a term sheet before even leaving the mediation room. In this instance, the Town is a public body and should in public debate whether to accept or reject today's settlement terms that are on the table. That is the purpose of today's meeting. Renegotiating the proposed terms is not possible during today's meeting. The vote is strictly up or down. You either favor it as written, or you oppose it as written. A trial would offer substantial uncertainty to both sides. At the extremes, a victory for the plaintiff would have stripped the Town's ability to stop plaintiff from bush-hogging everything in the Accreted Land to 3' and could have opened the door for the Town to pay monetary damages on top of that. A victory for the Town would have confirmed the Town's authority to keep the 2005 cutting rule in place. Notably though, a victory for the Town may not have insulated the Town from nuisance claims in the future, so it is possible that even if the Town's right to the 2005 rule was confirmed, it might have still had to engage in additional cutting of the Accreted Land based on the other legal doctrines. A victory also may not apply to any subsequent ordinance change, so if the Town later wish to modify the 2005 rule, the process of litigation could have restarted again.

I mentioned earlier that the Town's actions with respect to the Accreted Land must comply with the Land Trust deed restrictions. The Town has an excellent working relationship with the Land Trust and values it. To that end, Council conferred with the Land Trust to get its reaction to the proposed settlement that the Town considers today. The Land Trust has indicated that it does not object to the arrangement. If this settlement document is approved, the next step will be the development of a detailed work plan and consultation with various experts and entities to ensure that the settlement here, if approved, is performed in a low impact manner. Let me close by offering a final thought: throughout 10 years of litigation, the Town has consistently argued that

a judge or jury is not the appropriate decision maker for a public policy decision on the Accreted Land. The Town has argued that the decision should lie with legislators to balance the competing interest. Up or down, today's meeting offers the Town a chance to decide its own faith."

Public Comments: The following island residents made a public comment regarding the Accreted Land: Larry Kobrovsky, 402 Seabreeze Lane, Stacie Craddock, 1761 Atlantic Avenue, Adam Berman, 1761 Atlantic Avenue, Luke Lewis, 2630 Raven Drive, Pete Budko, 2061 Pettigrew Street, Scott Bluestein, 2408 Goldbug Avenue, Barry Krell, 2713 Bayonne Street, Susan Middaugh, 2420 Raven Drive, Justin Novak, 3103 Middle Street, Gary Visser, 2924 Middle Street, Dan Krosse, 2424 Myrtle Avenue, Elizabeth Sarnoff, 2650 Bayonne Street, Sarah Diaz, 1325 Middle Street, Julia Khoury, 1728 I'On Avenue, Joe Church, 1655 Atlantic Avenue, Manda Poletti, 1771 Atlantic Avenue, Dean Kilpatrick, 1026 Osceola Avenue, Cyndy Ewing, 2514 I'On Avenue, Michael Bourland, 1607 Atlantic Avenue, Tippy Stern and Michael Brickman, 2629 Bayonne Street, Peter Richardson, 2820 Jasper Boulevard, Kimberly Brown, 2118 Pettigrew Street, William Craver, 2702 I'On Avenue, Karen Byko, 2862 Middle Street, Rob Byko, 2862 Middle Street, Pat Votava, 2214 Jasper Boulevard, Michael Koon, 910 Middle Street, Bob Trussler, 1650 Atlantic Avenue, Penn Hagood, 2424 Raven Drive, Ben Hagood, 2424 Raven Drive, Ned Hettinger, 2924 I'On Avenue, Tamatha Psenka, 1656 Thompson Avenue, Linnie Harper, 1325 Middle Street, Kevin Pennington, 1514 Middle Street, Ruth Bayard, 2708 I'On Avenue, Beth Mclean, 1313 Middle Street, Elizabeth Anderegg, 3 Florence Street, Lisa Crow, 2908 I'On Avenue, Dr. Peter Greim, 2913 I'On Avenue, L. Baxter Hahn, 2662 I'On Avenue, Courtney Somers, 2520 Myrtle Avenue, Billy Want, 927 Osceola Avenue, Curtis Cravens, 2608 Atlantic Avenue, John Bayard, 2708 I'On Avenue, Sara Ewing, 2514 I'On Avenue, Eddie Fava, 2424 Myrtle Avenue and Richard Hricik, Mount Pleasant. The complete list of residents whom signed up to speak is attached. (Attachment 1)

Mayor O'Neil thanked the island residents for their public comments.

Executive Session: Legal Advice- Bluestein et al. v. Town of Sullivan's Island et al. 2010-CP-10-5449:

Motion was made by Councilmember Tim Reese, seconded by Councilmember Greg Hammond, to go into Executive Session at 10:39 a.m. to receive Legal Advice regarding Bluestein et al. v. Town of Sullivan's Island et al. 2010-CP-10-5449.

Motion passed by a vote of 6-1, with Councilmember Bachman Smith, IV opposing.

Motion was made by Mayor Pro-Tem Clark, seconded by Councilmember Sarah Church, to come out of Executive Session at 10:53 a.m.

Motion passed unanimously.

Mayor O'Neil stated no votes or actions were taken during Executive Session.

Motion was made by Mayor O’Neil, seconded by Councilmember Sarah Church, to postpone any further consideration of this matter until at least the regular Council Meeting of November.

Motion failed by a vote of 3-4, with Mayor Pro-Tem Clark, Councilmember Greg Hammond, Councilmember Tim Reese and Councilmember Kaye Smith opposing.

Discussion and Consideration of a Resolution Settlement Agreement from Mediation Effort on September 10, 2020 for Bluestein et al. v. Town of Sullivan’s Island (Attachment 2):

Motion was made by Councilmember Greg Hammond, seconded by Mayor Pro-Tem Clark, to approve the Resolution Settlement Agreement from Mediation Effort on September 10, 2020 for Bluestein et al. v. Town of Sullivan’s Island.

Motion was made by Mayor O’Neil, seconded by Councilmember Bachman Smith, IV to amend the motion to add the names of the Councilmembers and their votes on the signature page of the Resolution.

Motion failed by a vote of 3-4, with Mayor Pro-Tem Clark, Councilmember Greg Hammond, Councilmember Tim Reese and Councilmember Kaye Smith opposing.

Verbatim Discussions from Town Council:

Councilmember Greg Hammond- “Shame on us for allowing this to happen. That line stuck with me. It’s from an email I’m sure many of you have seen, sent from the Sullivan’s Islanders Conservation group. It got me thinking where we are right now is indeed a shame. When the Town entered into its agreement with the Lowcountry Land Trust to place deed restrictions on the Accreted Land, it retained the authority to manage the land for various purposes including views and breezes. That is the crux of the disagreement that has been on this island for the last 30 years. Some people don’t want to touch a twig, some people want to continue to clear cut the land to 3’ as with past practice. Most of us are somewhere in the middle.

As a Town, we couldn’t come together to find a reasonable middle ground. That brings us where we are today. Anytime Council brings up managing its land for discussion, it’s a Town-wide debate. And that is just to get the conversation started. We have heard from both sides of the issues today. It is clearly a divisive issue on the island with many people on both sides. It has been one of the major issues for the past 2 elections where Council seats were decided by a matter of a few votes, one in my case. I don’t think anyone can sit here and say they speak for all islanders or the overwhelming majority. We’ve seen the results and it’s 50/50. And that is why I believe we need to compromise on this issue and move forward. Is this perfect? No. But it is reasonable.

The maritime forest has the lightest touch with some smaller trees and undergrowth coming out which should open up the understory and help with breezes and mosquitos. The canopy and vast majority of trees will not be touched. The less-forested areas in two progressive zones are maintained more as wet grasslands retaining larger and more mature trees. This largely mirrors what was set forth in the Town's last attempt to create a management plan in 2011. In line with current policy, the Town will pay for transition zone trimming. Work done in the Accreted Land beyond the transition zone will be paid for privately by those who wish to have the work done. If people on a certain block do not want the work done, it's simple- they don't fund it and it doesn't happen. Lowcountry Land Trust has stated this plan is within the deed restrictions placed on the Accreted Land. A large portion of this plan will occur seaward of the OCRM setback line. This will require a permit from DHEC and OCRM. This will require the Town to engage an expert engineering firm to put together the means and methods to be used to ensure we retain the integrity of our dune system.

I understand the issue is contentious and the time frame is uncomfortable but we have proven to ourself that as a Town we are unable to reach a compromise outside of a court setting. If you watch the video of the Supreme Court trial, you can see the judges clearly don't think the Town has done right by its citizens through its inaction. If we do not settle this case, we have two possible outcomes as outlined by Derk: 1) we win and we continue what we do and possibly face more lawsuits; and 2) we go back to what we used to do- clear cut all vegetation to 3'. That is a risk I do not want to take. Council voted 6-1 to attempt mediation on this case so that we could avoid that risk as well. I understand this is a passionate issue for many, but at the end of the day we need to do what is best for the future of our island and that is why I am in favor of the proposed settlement. It's time for us to adopt a reasonable compromise and move on. Thank you."

Mayor Pro-Tem Clark- "I just wanted to say that I agree with Greg, it has been a long working process getting to this place. I thought there were a lot of things said by the citizens that were meaningful and thoughtful and I think a lot of those things we've been talking about in mediation proceedings and I support the case to go forward.

Councilmember Tim Reese- "This has been tough on all 7 of us in a lot of ways. There's been a lot of passion from the citizens on both sides of what we've done. This does date back years and years. The first management plan was 2011 and I kept bringing it up on 3A that we need to go to the next level. There was a lot of contention even hiring the consultants and the report came out last year with the other consultants to do an implementation plan and a lot of people weren't happy with that. We've got folks out there that want to clear cut and take it back to 3' and others that don't want to touch it. The thing is, the way I'm looking at this, being elected the people that voted for me was to have a compromise. Is it the greatest compromise? Probably not. We used the best data we've ever had. We invested in a tree survey six years ago that was never touched

until this process. The tree survey is online and it shows you what is happening out there. I feel like it's a thinning process.

We have to have, as Greg said so eloquently, a management process moving forward. This is a one-time situation that we're voting on and it is cutting, but after that, we haven't determined yet the best practices and the best steps to manage it moving forward. I think there is a lot of opportunity for us to get this habitat cleaned up with the view corridors but more than anything to settle this lawsuit and as Greg said, we put the onus back on the property owners to pay for this. The transition zone is going to be paid for by the Town as it was from Station 16 all the way to the Sand Dunes Club. We will continue that process moving forward but the good thing is, it has already been taken up past Pettigrew Street and what is left in there, most of those homeowners have already managed it outside of the 100' and it's grass right now. There is not going to be some big burden on the Town. Anything outside of that transition zone that is done moving forward just like it is now when unfortunately, the only solution we have out there from a 'clearing or cutting perspective' is cutting myrtles to 5'. It is not a good look to move forward.

That was why we discussed this and we've come up with a plan to thin out some of those myrtles. Yes, it is not a perfect system we're doing but if we don't do anything and we end up back in court in litigation, I don't want to take that risk as an elected official. It's not perfect, I think it'll be sort of like how the school was. A lot of us on the island were not in favor of the size and magnitude of the school going from 30,000 sq. ft. to 70,000 sq. ft. but I have not heard one bad complaint how that school turned out and I'm praying to God that after this is done and the blocks that decide to implement this process that it is not as bad as we thought and we as a Council, whoever that next Council will be, will manage this moving forward correctly as was stated in the case many years ago that Councils previously have not managed. I am moving forward with this for that reason. Thank you."

Councilmember Kaye Smith- "I would just like to thank our Town Attorney's for stating it all so eloquently at the beginning of the meeting. This is a management plan and to reiterate it's not going to make everybody happy but it is a start. It is a management plan and I've heard from constituents over and over again that we need a management plan and hopefully we'll get it overseen by people who are qualified and have the knowledge and science behind them- that's our goal. This is hopefully going to be to benefit everyone on the island. Thank you"

Councilmember Bachman Smith, IV- "Thank you, Mr. Mayor. This morning when I couldn't sleep, the Lorax was my chosen reading. I am the Lorax and I will speak for the trees. I believe in civility, regardless of today's vote, we still have work for the Town to conduct. This process has resulted in the sharp disagreements, hard feelings and even distrust. All of which we will need to put behind us as we move forward in order to do the work of the Town. I believe in transparency. I am in my second term on Council and have been very clear during both

campaigns and all 5 ½ years serving that I am an advocate for mother nature's ability to manage herself. All that is needed is a light touch.

I do not believe in hiding behind no comment or veil of silence- that's the antithesis of transparency. I believe my role as a member of Town Council is to be the voice of the residents and of the island as a whole. It is clear to me that the proposal in front of us does not have the support of the majority of the island's residents and as such, should not be approved. When I vote no, I will be doing what I promised I would do, what I was elected to do, and I will be speaking on behalf of the majority of the residents. Finally, I speak for the trees for the trees have no tongues. To my fellow Council members who are considering a yes vote, even a Once-ler came to his senses albeit too late. It is not yet too late. Thank you."

Councilmember Sarah Church- "In looking at the big picture in this, I thought back to when this deed restriction was placed on the land and it was done just a few years after Hurricane Hugo, after there was massive destruction to all the vegetation out there. The lawsuit asks that we return the land to the state that was just barely trying to recover from. And so that is not a natural state or a healthy state and as we approach the anniversary of Hurricane Hugo, this term sheet returns it to that state. I wanted to address a couple of comments and emails that we received. There was a request several times for those who live on this land or are adjacent to the land to recuse themselves. Full disclosure, I live at Station 17 at the thickest part of the forest and I would be happy to recuse myself if the other two that are affected by this land also recused themselves but I don't think they intend to do so.

We have emails talking about the wetlands that are out there and I think that is an excellent point, there are areas that really should be designated as wetlands. I think that would be a DNR/DHEC matter and I think there are restrictions on what you can do in wetland areas and there are clearly significant ones down by my house and Station 16 as well as throughout the land. I think that moving forward with this term sheet will have incredible unintended consequences. We heard Sarah Diaz talk about the bird populations that are using this as a resting place and feeding place on their travels. We are hearing constantly on the news about dwindling bird populations, that it is a consequence of climate change and I don't want to do something that is going to add to that problem. We are going to have a huge disruption of the wildlife that lives in there. The coyotes, I know nobody loves them, but they're out there and they are not going anywhere. They are all across the state and country. If we start ruining the habitat they're existing in, you can bet where they are going- into our neighborhoods.

In addition, we recently had our yearly beach survey- I don't know how many people caught that. They come in and actually measure the sand and look at the health of the beach and one of the findings was that as the land continues to grow, it is not growing outward anymore, rather it is growing up, which is exactly what you want. The dunes are growing, a lot of that is from the

myrtles that are out there collecting that sand. Nature is doing what it can do best in our situation we are so lucky that we not in an eroding area. There may be consequences that we can't even foresee and we are faced with consequences now of climate change, hurricanes, extreme rains, rising sea levels and this land is our best protection. There may be consequences we may really regret. The timing of this, during a pandemic, seems cruel. The public has largely been distracted by a paid-parking issue and have not had their eye on this very controversial matter, which is why I supported the Mayor's motion this just a minute. We had \$30,000 study hand-picked experts by the Land Use and Natural Recourses Committee Chair Chauncey Clark to study what we should do with this land. We have not even discussed that report. \$30,000 of tax payer money just gone. We have not even talked about it one time. And the reason we have not even talked about it is because it is a significantly lighter touch recommended than what is in this term sheet. We did not choose those people.

Elections matter and I believe in living with the results of elections. It's fair to say that you all were elected; you should vote the way you feel your constituents want you to. But in this case, I feel like none of you were forthcoming with your views about the Accreted Land. I recall one of your campaign literatures only talked about removing invasive species. There was no mention of massive removal of trees and vegetation. Because of that, I feel that this matter really needs to go to a binding referendum because the public really should be able to weigh-in on this. I will vote no on this proposal and that's what I would like to see us do is a binding referendum so we can truly hear the voice of the residents that we are supposed to be serving. Thank you."

Mayor O'Neil- "I've been listening to the discussion on this issue and participating in discussion on this issue for about 25 years or more perhaps. I'm not sure how much I can add at this point. I came upon a quote the other day by Thomas Jefferson from his 1800 inaugural address which said 'But every difference of opinion is not a difference of principle'. But I think what we have here is clearly a difference of principals. Among them, the principles that the Town laid out several years ago for the management of the protected land which included that we should be both a good neighbor and a good steward of that land and that we should manage it for the benefit of the entire island. We have really been given a gift by God and the Corps of Engineers in this Accreted Land which continues to grow and continues to develop in a real natural habitat and very important ecosystem. All over the world, people are planting trees for lots of very valid reasons such as: climate, ecological quality, air quality, and for help with dealing with rainwater management because trees can absorb an awful lot of water out of the ground that would otherwise have no where to go. If we go ahead with this, rather than planting trees, we'd be cutting a thousand or more and we would be engaging in legally mandated deforestation. I cannot participate in that, so I will be voting against it. "

**Vote on approving the Resolution Settlement Agreement from Mediation Effort on September 10, 2020 for Bluestein et al. v. Town of Sullivan's Island:
Motion passed by a vote of 4-3, with Mayor O'Neil, Councilmember Sarah Church and Councilmember Bachman Smith, IV opposing.**

**Motion was made by Councilmember Bachman Smith, IV, seconded by Mayor Pro-Tem Clark to adjourn the meeting at 11:23 a.m.
Motion passed unanimously.**

Respectfully submitted,


Courtney Sottile

PATRICK M. O'NEIL
MAYOR

TOWN OF SULLIVAN'S ISLAND



TOWN COUNCIL
CHAUNCEY CLARK, MAYOR PRO TEM
SARAH CHURCH
GREG HAMMOND
TIM REESE
BACHMAN SMITH, IV
KAYE SMITH

ANDY BENKE
TOWN ADMINISTRATOR
JASON BLANTON
DEPUTY ADMINISTRATOR/COMPTROLLER
LAWRENCE A. DODDS
TOWN ATTORNEY
GREG GRESS
WATER AND SEWER MANAGER
JOE HENDERSON
DIRECTOR OF PLANNING AND ZONING
CHRISTOPHER GRIFFIN
CHIEF OF POLICE
RANDY ROBINSON
BUILDING OFFICIAL
COURTNEY SOTTILE
TOWN CLERK
M. ANTHONY STITH
FIRE CHIEF

A Resolution

Making Specific Findings of Fact, Authorizing Settlement of Bluestein v. Sullivan's Island on the general parameters set forth below, and Authorizing Staff to Take All Actions Necessary and Proper to Implement the Described settlement including procurement actions in accordance with Town policy, the development of detailed plans and applications, and the submittal of applications necessary to effectuate this settlement.

WHEREAS, the Town owns property along the Atlantic Ocean which is known generally as The Accreted Land (AL); and

WHEREAS, the Town obtained title to the AL by way of a deed from the Lowcountry Land Trust; and

WHEREAS, the deed contained certain restrictions and covenants, both procedural and substantive; and

WHEREAS, the deed provides the Town with the unrestricted authority to trim and control the growth of vegetation; and

WHEREAS, after decade of litigation the Town and Plaintiff(s) have reached a voluntary settlement; and

WHEREAS, the Town recognizes the need to develop a detailed implementation plan to use in conjunction with OCRM; and

WHEREAS, after preliminary consultation with the Land Trust the Town has received feedback that the proposed settlement is consistent with the substantive deed restrictions; and

WHEREAS, the Town is permitted to undertake activity on the AL enhance mosquito control, engage in scenic enhancement, and to control vegetation if accompanied by specific written findings of fact; and

WHEREAS, the Town wishes this Resolution to constitute such specific written findings of fact; and

WHEREAS, the Town Council finds that the potential settlement adopted herein strikes the most advantageous possible outcome of the lawsuit and best balances the competing needs of

beachfront and inland island residents and represents the best possible balance between ecological and natural interests on the one hand and human needs and safety on the other.

NOW THEREFORE, BE IT RESOLVED, by the Mayor and Town Council in Council Assembled, that:

1) Findings of Fact:

- a. The settlement, and implementing steps associated therewith, are solely undertaken to further specific enumerated, permissible public purposes under the Deed. In this instance, the Town Council believes that thinning of vegetation will serve the interests of improved mosquito control, improved vegetation management, enhanced public safety, improved public health, and scenic enhancement. The current thickness of vegetation, in significant part caused by the “hedging effect” of prior cutting rules, makes it extremely difficult for anti-mosquito treatments to penetrate. Members of Council have also noted an increased prevalence of pests correlated to the growth of the AL over past years with the 2005 cutting rule in effect. Additionally, by direct observation Council knows that the level of thickness significantly impedes airflow causing stagnant conditions that are not conducive to healthful and enjoyable living. Moreover, Council believes that the thickness of vegetation on the AL allows for rapid spread of wildfire should favorable fire conditions exist. Council believes that the thinning of myrtles and trees would improve all of these shortcomings. In addition, the cumulative effect of decades of growth has been to alter views from what existed at the time of deed signing. Council believes that the proposed action would help restore views to a level closer to what were enjoyed at the time the Deed Restrictions were implemented. Finally, Council believes that excessive plant density (stems per acre) can retard desirable maturation of plant life on the AL and that the thinning proposed herein will allow those stems retained to more fully and beneficially develop. Council believes that the combination of these factors will not only improve the safety of human habitation on the island, but also improve the overall condition of flora and fauna on the island. Finally, Council finds that the utilization of environmentally sensitive means (use of appropriate equipment, thinning techniques, naturalist approved seeding, etc) can avoid material problems with erosion, particularly in light of the decades of documented natural accretion in this area.
- b. The settlement, and implementing steps associated therewith, are necessary for the health, safety and general welfare of the Town. For the reasons set forth above, the Town finds that the settlement and implementation thereof are necessary steps to improve the health safety and welfare of the Town and its residents. Reduction in pests / mosquitoes benefits public health, as does fire hazard reduction. Improved airflow is also beneficial, allowing for (among other things) increased opportunities to avoid the need for artificial climate control during the course of a year.

- c. The benefits of the proposed settlement, and implementing steps associated therewith, outweigh any potential damage done to the aesthetic, ecological, scientific and education value of the property in its natural state. The Town finds this element to be met. The AL is proposed to remain in an undeveloped state. The proposed changes are intended to improve aesthetic conditions. They are also intended to improve wildlife habitat and allow maturation of retained vegetation. Given the diversity and number of stems remaining under the proposed plan the scientific and educational value of the property will not be undermined. In fact, Council finds it will be enhanced.
- d. In making these fact findings, Council has considered
 - i. The cumulative effect of actions pursuant to the proposed settlement and past AL related actions on the natural state of the Property. The Town's cutting rules have been unchanged for fifteen years and, in fact, bear striking resemblance to the rules in place at the time the deed restrictions were enacted. Consequently, there is no significant "cumulative" action to be considered. Regardless, the Council has carefully considered the changes proposed here and believe that they will either not harm or will enhance the natural environment of the AL for flora and fauna and will do so in a manner that benefits the island as a whole.
 - ii. Alternative methods of furthering the stated public benefits that would not adversely impact the natural state of the AL. The Council finds that there are no suitable alternative methods. The principle concern being addressed here is excessive vegetation growth and density leading to all of the problems previously enumerated. The only way to address excessive vegetation growth and density is selective thinning. The current plan represents a selective thinning plan carefully tailored to address these stated concerns while maximizing retained ecological, educational and scientific goals.
 - iii. The probable results of not taking the proposed settlement-related actions. The probable results of not taking the proposed settlement-related actions are two-fold. First, the existing conditions (and trend toward increasing vegetation thickness and growth) will continue to mature into an increasing problem. In that sense, taking no action at this point would amount to "action" furthering the undesirable attributes. Second, failure to undertake the proposed settlement would subject the Town and residents to the uncertainty inherent in a trial. Failure to prevail at a trial would mean that the Town would lose control of how the issues / concerns enumerated herein would be ameliorated. Instead, those decisions would be made by a judge not inherently familiar with the AL, or by a Plaintiff focused on his own interest rather than the balanced interests of the island

as a whole (as reflected by this Council and the balancing of interests struck with this settlement.)

2) Settlement of Bluestein v. Sullivan's Island is authorized on terms stated below:

General Approach:

- The Town would implement selective thinning of the Accreted Land (AL), based on initial cut parameters set forth below for each of the four Zones (Transition Zone, Zone 1, Zone 2, and Zone 3.) These parameters are based upon the mapping and data used by the Parties in mediation and related regulatory discussions. In order to maintain similar conditions going forward, with the help of a naturalist the Town would review changes in the condition of the AL on a recurring basis (for instance, once every five years) with an eye towards making whatever changes might be necessary to maintain appropriate levels of density and diversity. This would provide a mechanism to deal with natural attrition, growth, or other changes to the natural environment. Primary funding for transition zone work would be the Town. Funding for work in the Zones 1-3 would be subject to the receipt of adequate donations or grants.

Zones:

- Zone 1: Station 16 beach path to western edge of property line at 1715 Atlantic (TMS# 523-12-00-014)
- Zone 2: Eastern edge of Zone 1 to Eastern Edge of SIES property
- Zone 3: Eastern edge of Zone 2 to Station 28.5 beach path
- Transition Zone (TZ)

Beach Paths:

- All vegetation to be removed 4' on either side of town owned beach paths/boardwalks.
- Private beach paths to be maintained at a width of 6.5' plus additional understory may be cleared to a maximum of 2' on either side (per draft plan 3a). Cutting and maintenance shall be subject to the receipt by the Town of sufficient grants or donations.

Myrtles (All Zones):

- Allow for 50% of myrtles seaward of TZ to be removed with focus on saving myrtles located in low-lying topography areas

- All remaining myrtles may be cut to a height of 5'
- Property owners abutting town owned beach paths may trim myrtles from non-adjacent property line to beach path (eliminating "no man's land" currently existing in certain areas)
- Current town procedures will apply for annual cutting and payment thereof will apply

Zone 1:

- Keep all Live Oaks, Magnolias, Palmettos
- Remove all Cedar, Pine, Hackberry trees under 12" DBH
- Remove all other tree species under 6" DBH
- Limbing of trees >16" DBH will be allowed with TOSI approval so long as proposed limbing would not harm health of tree.
- Vines on trees may be removed with TOSI approval for health of tree
- All non-native or invasive species may be removed

Zone 2:

- Keep all Live Oaks, Magnolias, Palmettos >6" DBH
- Remove all Cedar, Pine, Hackberry trees under 16" DBH
- Remove all other tree species under 8" DBH
- Limbing of trees allowed with TOSI approval so long as proposed limbing would not harm health of tree.
- Vines located on trees may be removed with TOSI approval for health of tree
- All non-native or invasive species may be removed

Zone 3:

- Keep all Live Oaks, Magnolias, Palmettos >6" DBH
- Remove all Cedar, Pine, Hackberry trees under 18" DBH

- Remove all other tree species under 10" DBH
- Limbing of trees will be allowed with TOSI approval so long as proposed limbing would not harm health of tree.
- Vines on trees may be removed with TOSI approval for health of tree
- All non-native or invasive species may be removed

Transition Zone:

- Trees to be preserved are only Live Oaks, Magnolias, Palm Trees 16" DBH or greater
- All other vegetation to be removed
- 100' seaward of property line of adjacent properties (includes Bayonne right of way)
- Heavy machinery allowed landward of OCRM setback line

Permitting:

Permitting will be required through OCRM. Continued consultation with OCRM and the Land Trust will be important as the Town develops its implementation plan and permit application. The Town will need to engage an engineer and/or technical consultant to develop an appropriate, detailed plan specifying methods and objectives, and to make appropriate regulatory applications. We would expect environmentally appropriate overseeding to be a part of any such plan in order to assure continued soil stability.

Funding and Timing:

Thinning of the 2500 Block of Atlantic will proceed with all deliberate speed after formal settlement approval by Council and funding of block thinning cost by Plaintiff. The work shall be done by way of a contract signed by the Town and a vegetation management contractor as appropriate under the Town's procurement process. Maintenance shall be subject to receipt of sufficient grants and/or donations

Homeowners shall have the right to enter into an agreement with the Town whereby they must provide sufficient funds with the Town within 12 months of the settlement of Bluestein v. Town of Sullivan's Island to cut the property within their block in accordance with the zone specifications contained herein. As described above, using such funds the Town shall hire the approved contractor to complete the thinning. Such cutting will be done on a block by block basis after sufficient funds to thin a particular block are on-hand. Maintenance and any subsequent thinning shall be subject to receipt of sufficient grants and/or donations.

Appeals:

No party shall appeal the issuance of any permits issued for completion of work consistent with the settlement.

Compliance with Law required:

Implementation is subject to compliance with law.

The supporting Charts and Diagrams are attached hereto and shall be incorporated as if set forth fully herein.


- 3) Staff is hereby authorized including procurement actions in accordance with Town policy, the development of detailed plans and applications, and the submittal of applications necessary to effectuate this settlement

IN WITNESS WHEREOF, in writing I have hereunto set my hand and caused the Seal of the Town of Sullivan's Island to be affixed hereto on the 2nd day of October, 2020.


Patrick M. O'Neil, Mayor

Attest:


Courtney Sottile, Town Clerk


Andy Benke, Town Administrator