

# SPECIAL CALL TOWN COUNCIL

Municipal Center Council Chambers

April 12, 2024, 2024, 11:30 am

## Minutes

I. **Call to Order:** *Mayor Pro Tem Heidingsfelder called the meeting to order at 11:30 am*

II. **Roll Call:**

**Present at the Meeting:** Michael Heidingsfelder, *Mayor Pro Tem*  
Brad Belt, *Council Member*  
Russell Berner, *Council Member*  
Madeleine Kaye, *Council Member*

**Also Present:** Stephanie Tillerson, *Town Administrator*

**Also Present via Zoom:** Mac McQuillin, *Town Attorney*  
Ross Appel, *Attorney*

III. **Citizens' Comments (Agenda Items Only):**

**Greg VanDerwerker – 510 Ruddy Turnstone**

Mr. VanDerwerker stated that I am a 30-year property owner of Kiawah and a 20-year full-time resident. I attended the Kiawah Community Association meeting on Monday. In his comments, Chairman Donlon stated with respect to the spit, "There's been a lot of discussion about that. There's very little that we can say now. We have been engaging in discussions with the Town of Kiawah Island and the Conservancy. We are well aware of the concerns in the community. We continue to negotiate the form of the deed with Kiawah Partners and that's about all we can say at this time."

First of all, my question is, what is there to be negotiated? The development agreement clearly sets out how things are to be done, in what manner, and what is to be delivered. Secondly, I'm not an attorney, but I would really like to know, and perhaps the Town's legal counsel can inform the Town what standing KICA or the Conservancy has in any kind of negotiation. KICA and the Conservancy are third parties to the Development Agreement. It was the Town and the Partners who willingly, I think no negotiation, consented to and signed the Development Agreement, so I did not see how KICA and the Conservancy are anything other than beneficiaries of the agreement. They are mere recipients of a deed or deeds, the nature which had been predetermined in the agreement by the Town and the Partners. And as far as I understand, they don't even have to accept those deeds; then they would revert to the Town.

In my layman's view, reading the agreement and as enunciated in attorney Appel's letter to attorney Trentham Walker. The bottom of the first paragraph that was produced and published in the Town Notes on or before the termination date of this agreement. "The property owner shall convey to KICA for nominal consideration by quick claim deeds. Such areas of highland, depicted in light green on Exhibit 16.2, or seaward as to land on the oceanside of Parcel 12 B at the crest of the primary oceanfront dune, less only such areas/lots as may have been encumbered by the easements are conveyed to third parties., For example, lot owners KICA et cetera, pursuant to the authorization noted here above, would be effective on the date of the signing of the agreement, not afterward. So, it appears to me that there is nothing to negotiate. A quick claim deed must be transferred free

of any easement restriction or incumbrance not in effect at the time of the expiration of the agreement.

Over the many years, there has been a strawman of a Lucas suit for takings, which was initially filed and then held in abeyance for all the court appeals and never reactivated, but people talk about it. But again, in my layman's reading of it, that's a totally different issue. Lucas bought two lots in 1986 in Isle of Palms. In 1988, the State changed the coastal zoning so that he could not build any habitable building on those lots, and that's what he sued about. This is a totally different issue. This is an agreement undertaken willingly by the Town and the Partners, giving the Partners the opportunity to build on the highlands. That has not been taken away; merely the agreement has expired, so I don't think that dog is going to hunt. In my view, I would urge the Council at this point to pull up their big boy pants and take them to the mat. If it means going to the court, so be it; get a performance of this and, for heaven's sake, stop all this negotiation because it's totally inappropriate and not relevant.

***Council Member Berner made a motion to move into Executive Session to discuss Section 16(f) of the ARDA (2013 Amended and Restated Development Agreement) and Captain Sam's Spit and to receive legal advice on Beachwalker Site Plans. The motion was seconded and unanimously approved.***

**IV. Executive Session:**

- A.** Executive Session Pursuant to South Carolina Code Section 30-4-70(a)(2) to Discuss Section 16(f) of the ARDA (2013 Amended and Restated Development Agreement) and Captain Sam's Spit and to Receive Legal Advice on Beachwalker Site Plans.

***Council Member Berner made a motion to come out of the Executive Session and move back to regular session. Council Member Kaye seconded the motion, and it was unanimously approved.***

**V. New Business:**

- A.** Town Council may Consider the Approval of an Action on the 2013 Amended and Restated Development Agreement and Captain Sam's Spit.

Mayor Pro Tem Heidingsfelder made the following statement:

We received legal advice from our town attorney and legal counsel during the past, well, almost 2.5 hours. No decisions were made, of course. Based on the advice from our lawyers, we discussed our likely strategies as they relate to Captain Sam's Spit under different scenarios of responses from the master developer to the current, in particular to the current KICA and KDP contractual negotiations that are ongoing.

***Council Member Belt made a motion to authorize the Town's legal counsel to take appropriate action when necessary and as directed by the Mayor or the Mayor Pro Tem. Council Member Kaye seconded the motion.***

Council Member Belt stated that the only thing I would add is that, picking up on the comments that the KICA Board Chairman made at their last board meeting, the Town, the KICA Board, and the Kiawah Conservancy have been working together and discussing these matters. We continue to hope that that will be the case and believe that the best outcome for Kiawah Island and its residents would be if all those parties could continue to act in concert.

**VI. Council Member Comments:**

None

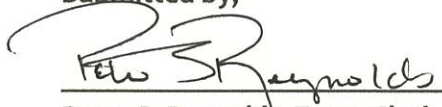
**VII. Citizens' Comments:**

None

**VIII. Adjournment:**

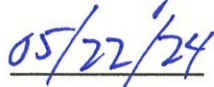
*Council Member Belt made a motion to adjourn the meeting at 1:53 pm. Council Member Berner seconded the motion, and it was unanimously approved.*

Submitted by,

  
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Petra S. Reynolds, Town Clerk

Approved by,

  
\_\_\_\_\_  
Bradley D. Belt, Mayor

  
\_\_\_\_\_  
Date