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**MINUTES
Planning Commission Meeting
July 15, 2014 – 7:00 p.m.**

Chair Tyler Marion called the July 15, 2014, Tybee Island Planning Commission meeting to order. Commissioners present were Marianne Bramble, David McNaughton, John Major, Tyler Marion, Demery Bishop, and Julie Livingston.

Mr. Marion – The first order of business is the minutes of the June 17, 2014, meeting. Do I have any discussion? [There was none.] Do I have a motion? [Mr. Major made a motion to approve as written; Mr. Bishop seconded.] All those in favor please signify. [The vote was unanimous.]

Mr. Marion – Do we have any recusals or disclosures? [There were none.]

Text Amendment – Section 4-050(E) and (F) and (O) – District Use Regulations

Ms. Otto – This is related to hosting special events. It is specific to zoning districts C-1, C-2, and the South End overlay. In your packet were three different versions for consideration to deal with those that choose to host special events. None of this would change what has occurred in the past; this would be moving forward. Version 1 is proposing that in C-1 and C-2 if it is a hotel, motel, a bed and breakfast inn, which is the commercial bed and breakfasts, or a restaurant hosting special events, they would need Site Plan Approval. If it is anything else besides those, such as a residential bed and breakfast, it would require both Special Review and Site Plan Approval. For the South End overlay it proposes a new concept. It takes the South End overlay and divides it into a 200-foot outer ring and what is inside that ring it treats those separately. For the ones that are not in the outer ring it would be Site Plan Approval only; that would be the ones on the interior of the South End overlay. For those in the exterior, or within the 200-foot ring, they would need to have Special Review and Site Plan Approval. Version 2 is very similar to what I already described, Site Plan Approval for those hotel, motel, bed and breakfast inns, and restaurants and Special Review and Site Plan Approval for all the others. When it came to the overlay, instead of using the 200-foot outer ring or the remainder within the ring, it instead goes to the zoning district which would mean you would see what is above [referring to PowerPoint]. There are areas within the South End overlay that are predominately C-1 so you would go to C-1 and see what was required depending upon the use that is considered. For Version 3, it requires all hosting of any special event by any type of business to go through Special Review and Site Plan Approval in the C-1 and C-2 districts. For the South End overlay it proposes either Site Plan Approval or Special Review and Site Plan Approval as determined by the zoning district of the location. There is nothing currently like this. This is a new topic to discuss and I’m open to any questions you may have.

Mr. Major – For the record and anybody who may be interested, if I’m the petitioner and I come before Council, what impact will it have if it is Site Plan only in both terms of cost and process? If it is Site Plan only, Special Review only, or Site Plan Approval and Special Review, what is the difference?

Ms. Otto – For the cost question, if you are having Site Plan only, it is a \$500 process. If you have had Site Plan Approval within the prior three years, that fee is reduced to \$250 and it is considered an amendment to a previously approved Site Plan. For Special Review the fee is \$500. For those that need both Site Plan and Special Review the total would be

\$1,000. The process differs between the two in that the Land Development Code lays out the requirements for parking sizes, the number of spaces required, and setbacks for any proposed new structure. The Site Plan process is designed just for public information and if it meets all requirements it should be approved. It is only if they are asking for a Variance where there is some leeway for the Planning Commission and Council to have input on what that development looks like. Under Special Review the ordinance allows criteria or conditions to be imposed on the development. Special Review is where the ordinance requests information about hours of operation and things that have more flexibility. If the responses were not considered appropriate for the location, Council can grant Special Review approval but impose conditions on the hours of operation or any other component of the development that they choose to impose conditions on.

Mr. Major – Under Site Plan Approval, Planning Commission or Council can make recommendations but we can't impose conditions if there is no Variance.

Ms. Otto – That is correct. If it meets the ordinances then it is their right to have it the way they presented it.

Mr. Marion – Whether it is version 1, 2, or 3, let's say I am a high volume event space, tell me again how the fee structure works. For example, if I'm the wedding chapel and have large weddings, would the person facilitating it potentially see a large dollar cost associated with all of these processes?

Ms. Otto – It would be the same regardless of the size of the development asking for this. It would be \$1,000 to have both the Special Review and Site Plan Approval. We are only talking about future developments, not about anything that is currently in place. If we had a proposal before us requesting something similar to the chapel, it would be \$1,000; \$500 for each of the two.

Mr. McNaughton – At one point wasn't the code changed that if you have a Site Plan and a Special Review, the cost of the Special Review would be less than the \$500?

Ms. Otto – That is only within the buffering standard. If a Site Plan comes forward that does not propose a buffer or one that meets the basic requirements of the protective barrier requirements, they do not have to pay an extra Special Review fee to have whatever buffer they are proposing be considered. Conditions can still be imposed to require that buffering be changed from what they are suggesting.

Mr. McNaughton – Is this a one time, say a restaurant wants to do special events, they don't have to go through this every time, correct?

Ms. Otto – Once approved they move forward to either building or renovating the structure that they are proposing, installing the parking lot as required, and getting a business license.

Mr. McNaughton – The proposed wording of version 1 says, "*Hotels, Motels, bed and breakfast inns, and restaurants may also be used as a dwelling or structure...*" and it goes on. The way it is written, would that put it in the code that you could live in a restaurant?

Ms. Otto – That is an interesting concept.

Mr. McNaughton – It clearly says a restaurant can be used as a dwelling. I'm on the first paragraph in red.

Ms. Otto – I hadn't caught that. That's a good catch. I think we need to review that.

Mr. McNaughton – Every one of these has that same wording translating a restaurant into a dwelling.

Mr. Marion – David, could you say that again?

Mr. McNaughton – All the wording through the different versions, every time we see restaurant, motel, bed and breakfasts may be used as a dwelling or structure and I think that wording is repeated over and over again.

Ms. Otto – Yes. This proposed version came from the City Attorney’s office from Tommy Branch who works alongside Bubba Hughes. If you will go down to, for example, 5(B) where it says “Dwellings or structures rented for special events”, I think he may have picked up that language and incorporated it in the other places. The section below is intended to address bed and breakfasts because they are dwellings. I understand exactly what you are saying and I think that does need to be modified.

Mr. Major – That is an excellent catch David. Just for consideration if you took out the words “used as a dwelling or structure” and you just said that hotels, motels, bed and breakfast inns, and restaurants may also be rented for special events.

Ms. Otto – I like that better as well and throughout where it is stated otherwise have the same thing.

Mr. McNaughton – This wording is repeated on that same page in the next paragraph (B), *“Dwellings or structures rented for special events. For properties located in the C-1 Beach Business District, other than hotels, motels, bed and breakfast inns, and restaurants, special approval and review shall consider all relevant factors including but not limited to the availability of parking or an appropriate parking plan.”* Does that wording exclude hotels, motels, bed and breakfast inns, and restaurants from a requirement to have a parking plan?

Ms. Otto – No. It is excluding them from having Special Review. They would fall under the first section where it is talking about the hotels and motels that they still have to have Site Plan Approval which does require a parking plan.

Mr. McNaughton – Okay. The next question, this is in the current version on page 1, it says, *“Multi-family uses are not permissible in the following areas included within the C-1 beach business district”*. When you go down to paragraph (4), subparagraph (a), it says you can put multi-family dwellings there. I don’t understand that. It says, *“In the C-1 beach business district, land may be used for the uses listed below.”* and lists multi-family housing is permissible.

Ms. Otto – You are in the C-1 category or the C-2?

Mr. McNaughton – This says C-1.

Ms. Otto – In C-1 under Uses Permitted by Right after Site Plan Approval?

Mr. McNaughton – Yes. Paragraph (A) lists one of the permitted uses of two-family, three-family, and four-family dwellings. If you go back to the first paragraph under (E), the last sentence says, *“Multi-family uses are not permissible in the following areas included within the C-1 beach business district.”* I may be misreading this but it looks like there is a conflict in the language.

Ms. Otto – That statement is very specific to 1, 2, and 3 there. You cannot have multi-family uses on lots abutting Butler Avenue on the east and west sides from Fourteenth Street to Izlar.

Mr. Marion – Possibly between three and four there should be the word ‘however’.

Ms. Otto – Probably separate it out so it doesn’t look like you are still reading the same thing.

Ms. Livingston – Is there somewhere in the book a definition of a special event? If not, there should be.

Ms. Otto – You didn’t find one in Article 2?

Ms. Livingston – No.

Ms. Otto – I agree.

Mr. Major – What constitutes a special event?

Mr. Marion – Months back didn't we talk about that?

Ms. Otto – Yes, I thought we spelled one out elsewhere in the ordinances. Let me investigate that. Would you like to see that within these sections or in the definitions?

Ms. Livingston – In the definitions. I think when we are talking about expecting certain things for special events we need to be clear what a special event is.

Ms. Otto – I had brought a preliminary article a few meetings back. We are still tweaking that and it is coming back to you so I will add that term to that language.

Mr. Major – I think our concern is to provide the greatest protection any place where a commercial would butt up against residential. Does staff have a recommendation among these three? Tommy clearly didn't or is it just multiple choice? How does the City feel about it?

Ms. Otto – I am not keen, personally, on the one that has the 200-foot outer ring [referring to PowerPoint]. I would prefer for the overlay that it be based on its zoning district not where it is on the overlay. I'm not in favor of this one that talks about the 200-foot ring but if you like that one best I'm not opposed to it either. The one for version 2, I believe it is appropriate to have just Site Plan Approval when it is a hotel, motel, inn, or restaurant, and then require that additional layer of Special Review for residential bed and breakfasts or anything else that may not fall in the category above, I do like that.

Mr. Marion – Would you suggest that version 2 would be the most efficient way to address the issue?

Ms. Otto – Yes, I would say 2 would be my preference but it is your decision, not mine. It won't hurt my feelings if you think otherwise.

Mr. McNaughton – Version 2, paragraph (O), is where it will require either Site Plan or Special Review depending on the zoning classification. Which would have to do the Site Plan and which would have to do the Special Review?

Ms. Otto – You would go to the C-1 or C-2 to see if you are reviewing a hotel or a residential bed and breakfast and that would determine the level of review.

Mr. Marion – Any other questions for staff on versions 1, 2, or 3? [There were none.] Is there anyone from the public that would like to speak on this? [There were none.] At this time I will close the public hearing. Do I have discussion or a motion?

Ms. Bramble – I personally think that even though we are in a C-1 business district there is still a lot of residential mixed in there. I personally think every business should be subject to Special Review and Site Plan with all the parking plans involved if they want to have a special event. They should come with a logical plan for the special events because, especially in that area, people like to get married and have their special event during our high season and they may not be able to accommodate all the cars that are coming to a special event. If 2 is the plan, I just want to make sure that every business or bed and breakfast or whatever has to come with a Special Review with a parking plan.

Mr. Marion – Which version do you prefer?

Ms. Bramble – Two. I would go with the recommendations that staff would but there can't be any special exceptions. If you lay within this parameter, within the inner circle, then you don't have to present Site Plan or you just have to have a Site Plan and you don't have to have Special Review. I think they have to present it. It is a onetime application, onetime fee that they have to pay. Maybe the fees can be adjusted; we can talk about the fees again if they are asking for both. I think that everyone has to be reviewed.

Ms. Otto – That reads the way version 3 is proposed for C-1 and C-2. To accomplish it for the overlay as well, it could be to strike what now says 'Site Plan Approval OR' and only use Special Review and Site Plan Approval for all hosting special events. That is a good suggestion.

Mr. Bishop – I think maintenance of continuity in both Site Plan and Special Review is critical to our continuing developing needs. I think version 3 is the better and I would be remiss in not saying that.

Ms. Bramble – I make a motion that we accept version 3 with changes that we omit line 'O' from that version.

Ms. Otto – You are suggesting eliminating the first line of (O) that says "Site Plan Approval".

Ms. Bramble – Site Plan Approval or Special Review.

Ms. Otto – Skip that "Site Plan Approval OR" and only have Special Review and Site Plan Approval. Is that what you are wanting?

Mr. Marion – Would you say that again.

Ms. Otto – C-1 and C-2 would read as it shows on the slide. For (O) in the overlay, "Site Plan Approval OR" would be struck out and instead it will have just "Special Review and Site Plan Approval as determined by the zoning district". Any hosting of special events regardless of whether it is a hotel or residential bed and breakfast, any use that is proposing special events, will have Special Review and Site Plan Approval.

Ms. Bramble – Yes.

Mr. Marion – We have a motion on the table, do I have a second?

Mr. McNaughton – Second.

Mr. Marion – I have a motion to approve with a second. All those in favor please signify. [Vote was unanimous.]

Text Amendment – Section 3-100 – Beach, Dune, or Vegetation Disturbance / Crossover Maintenance and Construction

Ms. Otto – This is related to Section 3-100. This has been an ordinance for quite some time and there are two paragraphs. On the slide is the first of the two paragraphs. What is proposed is the striking of the words that are in red which read, "*...in the area within the jurisdiction of the department of natural resources under the Shore Protection Act.*" The same part of the sentence is struck in paragraph 2 that again refers to those areas within the Shore Protection Area. At your table this evening I offered you a diagram of how DNR determines the Shore Protection line. This has been their procedure for quite some time. The act was adopted, I believe it was 1979, and from that date forward they have always interpreted their Shore Protection line to be structures that existed at the time the Shore Protection Act was adopted and trees that are at least 20 feet tall. They have representations of some homes and tall trees and how they would draw the line from tree to tree or from house to house depending on the age of the home and the height of the tree. What this has resulted in for Tybee, because this ordinance that we are considering refers to the jurisdiction line that the DNR draws, is there are

areas on the island where there are sand dunes that are not in the Shore Protection Area and therefore not protected. It is here for your consideration to protect sand dunes that are not in DNR's jurisdiction. For example, on the slide [referring to PowerPoint] I have blown up Tybee and it has lost a lot of its detail in doing so. I haven't looked up the ages of these different homes in this vicinity but you can see there are some trees. If those trees are 20 feet tall, the DNR would draw their jurisdiction line maybe from the last house that was built before the Shore Protection Act was adopted to the 20-foot tree to another 20-foot tree to another 20-foot tree and when there were no more trees maybe go back to the next house that was built before the Shore Protection Act. Because of the way Tybee's ordinance reads, if that is the shore protection line, the dunes that are seaward of that would be protected. To determine Tybee's landward toe of the landward-most dune, it is going to be the last sand dune on the seaward side of the trees. Any dunes that are in this area are not protected and would not have a Tybee 10-foot setback line because they are not in the jurisdictional area the way the ordinance reads; only dunes in the jurisdictional area are counted.

Mr. Marion – The back river, I know there are dunes encroaching around houses. How would they approach that?

Ms. Otto – It all depends on, again, how DNR drew their line. If there are older homes there and 20-foot tall trees that would cause those dunes to be included in the DNR's jurisdictional area then they would be protected by Tybee's ordinance. If that line was drawn because there has been all new homes built and there were no trees, and the jurisdiction line comes short of those, then that would not be the case. Every situation is different. This is being brought to your attention that our ordinance relies heavily on the DNR jurisdiction line and maybe that is the way it should be but you know there are sand dunes not in their jurisdiction that could be built on because they are not protected by this ordinance.

Mr. Major – Two years ago, we had a subcommittee look at this and we've been looking for years at better protection. One of the concerns expressed by the DNR representatives that participated was that there were dunes in areas that their line didn't protect. What you have shown here clearly increases the protection that Tybee has. Would there be any instances where it would be lessened because we took the DNR jurisdictional line out of our ordinance that suddenly we have exposure to development where it wasn't before?

Ms. Otto – No. The reason I say no is because with removal of the jurisdictional line, for Tybee's purposes, you would only be looking at the sand dunes with no consideration of whether they are in or out of the Shore Protection area.

Mr. Major – If there is sand or beach, even a flat beach because some areas have no dunes, this applies. This says dunes, beaches, or vegetation thereon.

Ms. Otto – In that case, if there were no dunes, the only ordinance we have that protects the dunes is this one. If we struck what the jurisdictional line does to it they could still not remove or alter the beach, the dunes, or the vegetation. For the second part, whatever was determined to be the landward most dune, whether that was in or out of the jurisdictional area, that is where the 10-foot setback would come.

Mr. Major – How did this originate?

Ms. Otto – During the recent discussions about the buffer and dealing with the marshes, this topic came up about the sand dunes and how they are handled. I had recognized this situation with Tybee's ordinance for quite some time. I was asked to bring it forward to see if this may be the way the governing body chooses for it to be or whether just so we can have this discussion and make sure everybody is aware that there are unprotected dunes because they are not in DNR's territory.

Mr. Marion – If we choose to strike this.

Ms. Otto – If we choose not to strike it.

Mr. Marion – Choose not to strike it there are implications to the dunes.

Ms. Otto – To the dunes that are not in the jurisdictional area.

Mr. Marion – Yes. In other words we could pull up with a truck and shovel a bunch of sand into it and nobody could do anything.

Ms. Otto – If you knew where that jurisdiction line is and you knew that dune was not in DNR’s jurisdiction, then it is not protected and you could do whatever you wanted to that dune.

Mr. Bishop – With all the discussion we had with regards to the buffer, with the removal of this DNR Shore Protection Act, that will be in sync with what we recommended and Council recommended last Thursday with the buffer ordinance. It is not going to be conflicting?

Ms. Otto – There is not a conflict. That ordinance deals with marshlands; not anything with sand dunes.

Mr. Bishop – It does deal with vegetation in the dune area.

Ms. Otto – This ordinance only deals with the sand dunes. The beach, the dunes, or the vegetation thereon are dunes. This doesn’t deal with marshes and marshes don’t deal with dune areas.

Mr. Bishop – You are saying this is strictly vegetation within the dunes.

Ms. Otto – And the beach.

Mr. Bishop – By striking this it would allow our ordinance to be more expansive and protective, and with the DNR because we could in essence build beyond the DNR line, right?

Ms. Otto – That is exactly correct. There may be some different language; I took the simpler approach of striking the DNR jurisdiction line. If there is some other aspect that needs to be tweaked or modified, that can be done. Currently we rely heavily on that 10-foot setback from the landward-most dune in the jurisdictional area. If there was desire to perhaps stay with the jurisdictional area but require a 25-foot setback that would be another alternative. It would still be the landward-most dune in the jurisdictional area whereas now if this were adopted we would have 10-foot off the landward-most dune no matter where it is. It is a big topic. I don’t know if you are able to digest all of this or if you want to ponder it some more and I can bring it back next month.

Mr. McNaughton – The last part of that last sentence, if reference to the Shore Protection Act of the DNR were stricken, does it matter that we still have a reference to something delineated by the DNR?

Ms. Otto – No. That is a service they provide to our community. In addition to flagging their own line from tree to house, they also flag for Tybee the toe of the landward-most dune.

Ms. Bramble – Do you have any idea how many properties on that line that would be affected?

Ms. Otto – I don’t. The reason why is because I don’t know DNR’s jurisdiction line. Whenever they are requested to provide one, they go to the field and they determine using historic aerials and what they see on the ground to decide about these 20-foot trees and the ages of the houses to draw their lines. I don’t have that mapped out island-wide to figure out, based on their line, where a change like this would have an impact.

Mr. Major – We used to have a Tybee line in addition to the DNR line. I’m trying to remember the formula that was used to determine that Tybee line. I think the definition changed about four times and then we got rid of it. It dealt with structure and then structure turns into dwelling. Do you remember how that worked?

Ms. Otto – I hadn’t refreshed my memory on that. I do know before we went to the toe of the landward-most dune, there was an alternative line and it did have something to do with structures but it wasn’t the same as DNR’s.

Mr. Major – I think it was more restrictive.

Ms. Otto – It is working well. I can't say we are running into issues with this. We are only seeing on paper what DNR is flagging within their jurisdiction for the landward-most toe. I don't know if there has been a situation where they would have flagged Tybee's line differently had it not been spelled out in our ordinance that it had to be the last dune in their jurisdictional area.

Mr. Livingston – I understand what this is all about and it makes complete sense to me to protect the dunes. Can you foresee a scenario where this would have a negative impact on a homeowner or someone who had to deal with this?

Ms. Otto – Yes. Back to that aerial I have, for example, these trees that I pointed out here [referring to PowerPoint], and I didn't go down to see, if those are 20-foot tall trees and there are dunes on this side, where the DNR line would have stopped at the trees and the landward-most dune would have been on this side of the trees, those folks would have had to stop. They could have built up to that landward toe of the dune on this side of the trees. Even though there are dunes over here, their line would have been over here to build so they could have come out further. If this change is adopted this dune line back here is the point at which they would have to be 10-foot away from that dune line. I'm sure the owner would find that a negative.

Ms. Livingston – It is a hard call because you have got to protect the dunes. I wish we had input from some of the residents.

Ms. Otto – The importance of dunes was certainly brought to the forefront from Superstorm Sandy and how the areas that had protective dunes were not as compromised because the storm surge didn't overtop the dunes. I think we have recognized for years how important they are but that really demonstrated that these dunes can play a significant role when we have major events.

Ms. Livingston – I agree and I understand that. I just wish we had more input because we don't know how it would affect people that are already here that may have plans on doing something in their back yard. I still say we need to protect the dunes but still need their input.

Mr. Bishop – Dianne, your comment a moment ago with regards to how that would protect those dunes further in. If we strike this language it would prevent the current property owner from being able to go out to where they could have gone with the DNR line. The only problem I have, and I'm all in favor of the dune protection, but don't we have to be concerned about the argument that this is governmental taking of property without due process? Isn't that an issue potentially?

Ms. Otto – It is an argument that I hear. I hear it and read it in the newspapers, especially recently with the buffer that folks are paying taxes on these undevelopable marshlands. I'm certainly not a legal mind to answer your question.

Mr. Bishop – But it could definitely be an issue with property owners that would be affected by this change. I'm not asking for a legal opinion because we have seen it with the buffer ordinance.

Ms. Otto – It is already impacting properties. For example, the seawall, and there are dunes landward of it, under the current ordinance would have an impact if this increased the distance of that impact. Whether that is a legal issue or not I couldn't say.

Mr. Major – Doesn't the City Charter provide for an 18-foot setback from this seawall?

Ms. Otto – It does. That is mostly in place but there are areas, I'm thinking of a couple on the south end, where that 18-foot does not apply. Back when that was implemented, those folks granted the City that 18 feet but there were some areas that did not, for whatever reasons, so it is mostly true but not all the way down the line.

Mr. Marion – Is there anyone from the public that would like to speak to this? [There were none.] At this time I will close the public hearing. Do I have discussion or a motion?

Mr. McNaughton – I'm going to make a motion that the proposed changes in Section 3-100 be approved. I think obviously this is going to be an issue for property owners so I think we ought to move it along to City Council and the public. I move that the proposed changes be made.

Mr. Marion – If we proceed this route and approve it will it set us up for a lot of people asking for Variances?

Ms. Otto – It could. I can't say it wouldn't. There is always the opportunity. I can't recall that we have had any. We had one request to build within that 10-foot setback and it was denied. I can't say we wouldn't have requests if that dune line was different.

Mr. Marion – We have a motion on the table, do we have a second?

Ms. Livingston – Second.

Mr. Marion – I have a motion with a second. All those in favor please signify. [Vote was unanimous.]

Mr. Marion – Is there any other business for the evening?

Mr. McNaughton – Dianne, you said you will bring the definitions back; what about the tree ordinance?

Ms. Otto – Yes. It is being worked on and it was really close to making it to your packet. John Eric Schleicher, the intern that was with me at the last meeting, is working on it and it is really, really close. We are fine tuning it and I expect that to be on the next agenda.

Mr. McNaughton – Thank you.

Mr. Marion – Do I have a motion to adjourn?

Mr. Major – Motion to adjourn.

Ms. Bramble – Second.

Mr. Marion – I have a motion with a second. All those in favor please signify. [Vote was unanimous.]

Meeting ended at 7:57 PM

Minutes by Jerris Bryant