

CITY COUNCIL PUBLIC HEARING
5:15 p.m., Tuesday, November 17, 2015

A Public Hearing was held at 5:15 p.m., Tuesday, November 17, 2015 in Council Chambers of City Hall, 1207 Palm Boulevard, Isle of Palms, South Carolina. Attending the hearing were Councilmembers Bettelli, Buckhannon, Carroll, Ferencz, Harrington, Loftus and Ward, Mayor Cronin, Administrator Tucker, Attorney Halversen, Assistant Administrator Fragoso and City Clerk Copeland; a quorum was present to conduct business. Councilmember Bergwerf's absence was excused.

1. Mayor Cronin called the Public Hearing to order and acknowledged that the press and public were duly notified of the hearing in accordance with the Freedom of Information Act.

2. **Purpose**

Ordinance 2015-14 – An Ordinance Amending the Official Zoning Map of the City of Isle of Palms to Rezone Certain Properties from the PDD Planned Development Zoning District to a New SR-3 Residential Zoning District and a New P-3 Preservation Overlay Zone. The properties to be rezoned include the 51 properties located between Palm Boulevard and the Atlantic Ocean from the east side of 53rd Avenue to 56th Avenue, including TMS #604-09-00-041 through TMS# 604-09-00-075 and TMS#604-09-00-172 through 604-09-00-187, and including the pedestrian beach access paths and open space beach conservation areas shown on the Plats attached as Exhibits A and B to Ordinance 2015-14.

And

Ordinance 2015-15 – An Ordinance Amending Title 5, Planning and Development, Chapter 4, Zoning, of the City of Isle of Palms Code of Ordinances to Provide for a New SR-3 Residential Zoning District and a New P-3 Preservation Overlay Zone, to Add “Beach Renourishment” as a Permitted Use to the P-1 and P-2 Preservation Overlay Zones, and to Amend Certain Regulations to Include Reference to the New SR-3 Residential Zoning District.

By way of background, Director Kerr stated that these two (2) ordinances are the result of learning that the restrictive covenants that were controlling the development between 53rd Avenue and 56th Avenue expired in 2007. Those covenants basically referred any type of control to the Wild Dunes Community Association (WDCA) in terms of developing or setting limits on the size, setbacks and height of buildings in that area; the WDCA has also handled the architectural review control since it was initially developed until they learned that the covenants had expired. The WDCA notified the City that the covenants had expired and that they no longer had any control; after reviewing the City's documentation, staff determined that the City also had no control, meaning that anything could be built in that area.

City staff, the WDCA, the City attorney and WDCA attorneys looked at various ways to resolve the problem, but concluded that the best option would be to develop a new zoning district, the SR-3 district. The intent was to make the standards for SR-3 closely mirror WDCA standards.

For the properties included, the following items will not change in the SR-3 district:

- Lot coverage at thirty-five percent (35%),
- Setbacks are twenty feet (20 ft.) in the front, thirty feet (30 ft.) in the rear and fifteen feet (15 ft.) on the side;
- An accessory structure setback would be the same as a house;
- Accessory structures may have living spaces;
- Maintenance of view corridors for ocean front properties; and
- Minimum house size of sixteen hundred square feet (1,600 sq. ft.).

Differences to be found in the SR-3 district are as follows:

- No architectural review going forward;
- Addition of floor to area ratio requirement, which will address the mass of the structure;
- Addition of the Preservation Overlay District, giving zoning control over the oceanfront between these houses and the Atlantic Ocean to the City; and
- The front setbacks will be measured from the road.

Mayor Cronin noted that there is also a change in the height limitation to forty feet (40 ft.) in the SR-3 District.

The Mayor also stated that, although the ordinances were on the Council Agenda for Second Readings, they will be deferred until, at least, January to give the Planning Commission sufficient time to complete its review of the standards.

John Cahill of 8-54th Avenue said that he was representing the Kirklands who live on 53rd Avenue, the Holschers who live at 2-54th Avenue and Ms. Rothschild who lives further up the beach. In his opinion, there were actually two (2) issues, i.e. (1) the zoning for the neighborhood and (2) the property held in trust ocean side from their beach front property. He expressed his thanks to Administrator Tucker, Director Kerr and Mayor Cronin for their openness and willingness to share information with them at a previous meeting. After purchasing his beach front home two years (2 yrs.) ago, he stated that he spent a considerable amount of time studying the restrictive covenants; he also talked to City officials and the Wild Dunes Community Association as well as OCRM about the guidelines and about what could or could not be done with the ocean front property. Mr. Cahill quoted from the expired covenants "they are fundamentally important to the property values of this neighborhood or any purchasers of the lots or any future purchases of the lots in the neighborhood."

Referring to the SR-3 zoning district, Mr. Cahill repeated that "the intent is to respect the unique configuration of these streets and the restrictive covenants as they were in the past." He indicated that he has sent to the Planning Commission via Director Kerr the neighborhood's suggestions for changes to the SR-3 district; they are:

- Setting the setbacks and lot coverage to be identical to other residential zoning districts;
- Inserting more effective language for the second row property owners so that their sight lines are preserved while allowing front beach owners to have a modest fence on their property lines;
- Disallowing For Rent or For Sale signs; and

- Have the walkover language identical to that of the remainder of the island.

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On the preservation zone, he stated that he and everyone he represents are against the preservation zone and any provision that has the beach renourishment element in it. The restrictive covenant language is very clear that the ocean side of beach front homes was intended to be held in trust for these fifty-one (51) homeowners; he noted that it is private property to the high water mark and not public. At the time of the beach scraping last year, he and Mrs. Holscher had multiple email conversations with Administrator Tucker and Steven Traynum who provided them assurances that their land would be protected and that the sand would come back that was transported away. They were not happy with the machinery being on their property and engaged a lawyer experienced in coastal real estate rights, and he had a very different viewpoint from the City on the status and use of that property. But based on the assurances they were provided by the City and the dire situation further down the beach, they chose not to litigate. However, he and his neighbors remain resolute that Wild Dunes and the City have no right to seize this private property and use it for any purpose other than what was originally intended – for the benefit of the fifty-one (51) property owners.

The sand has not returned, and the beach remains damaged. He added that the situation down the beach is more dire today than before. He stated that the good news was that a huge shoal is just off the coast for renourishment if that is what the City wants to do. Since the City has stated it has no intention of coming onto this property for additional scraping, the provision is unnecessary, and they “stand firm against any acknowledgement that this is not private property, but is for the use of the fifty-one (51) property owners.”

Jay Claypool, representing Lowe Wild Dune investors, stated that the property in question was formerly zoned PDD, the zoning designation for all of the Wild Dunes resort. The PDD district has a limited number of development rights, development limitations and a set property value. In the scenario where fifty-one (51) properties are being rezoned to SR-3 from PDD, the PDD zone, because it was fixed, is now changing; it is diminishing in terms of development right, the boundary is shrinking. While Wild Dunes resort supports the efforts on behalf of the City provided that, in these changes to the PDD, the status quo is preserved. The City has not yet addressed how the PDD is changing and what needs to be done in ordinance form to acknowledge these changes and what rights and limitations remain. Mr. Claypool stated that he is working with Director Kerr and Attorney Halversen to come up with the language to add to the ordinance for discussion at this meeting and to develop another ordinance about how the PDD has been amended and what effect the rezoning has on the remaining PDD zoning.

Carolyn Holscher, 2-53rd Avenue, thanked the City’s professional staff because what they have come up with is outstanding. She stated that, if she had known that her property would not always be ocean front, she would not have purchased it. She added that she and her husband particularly chose the Isle of Palms because of the family ambiance; she, like her neighbors, has children and wants to use her home generationally. She stated that she does think the City is trying to do the best by them, but she believes that the ocean front owners should have title for that property or, at the least, it should be put into some kind of perpetual trust for the use of the fifty-one (51) property owners. Ms. Holscher noted that the beach is dramatically different since the sand scraping last year.

Administrator Tucker told Council that all of the communications received from the affected residents will be sent to them.

3. Adjourn

With no other attendees opting to speak, Mayor Cronin closed the Public Hearing at 5:40 p.m.

Respectfully submitted:

Marie Copeland
City Clerk