



TOWN OF SURFSIDE BEACH ♦ TOWN COUNCIL CHAMBERS
March 3, 2009 ♦ 6:00 P.M.

PLANNING & ZONING PUBLIC HEARING
AND
REGULAR MEETING MINUTES

CALL TO ORDER:

Chairman Mr. Hanson called the Planning & Zoning meeting to order at 6:30 PM and welcomed the Boy Scouts who were in the audience working on their Civic Merit Badge. In attendance were: Chairman Hanson, Vice Chairwoman Cook and Planning & Zoning commission members Barnard, Seibold, Smith and Saunders. Absent was commission member Culbertson. Also in attendance was staff member Building, Planning & Zoning Director Donevant, Administrator Booth and Clerk Pinnell. Consultant Mr. Tom Britton from the Waccamaw Council of Governments and Attorney Mr. Smith were also in attendance.

PUBLIC HEARING

Article VII Landscaping and Tree Protection, Sec. 17-367 Tree protection text amendment. Mr. Booth stated that he was there to explain that there is a lot of concern about trees and how there are a lot of trees being cut down and developers that are clear cutting lots. Council forwarded the ordinance to the Planning & Zoning Commission for their review. Mr. Booth explained that the Commission would need to discuss and address various items such as mitigation of trees and establishing a tree bank which was discussed amongst council. Mr. Booth explained a few other areas that the Commission would need to look at. Mr. Booth stated that it is now time to hear public input regarding the ordinance. It was confirmed that Ms. Donevant had information regarding costs to replace trees. There was discussion regarding the current moratorium in place on the cutting of trees. There was discussion regarding Santee Cooper and their responsibilities on removing trees that are hazardous to electrical lines.

Cecil Chandler, 611 A Surfside Drive: “The day they put the moratorium on the trees, I’ve got one that’s tearing up my sidewalk and they gave me the “ok” to cut it but it was given to me that day and they passed the moratorium that night and when I called somebody to get the permit they said I can’t get it, so I mean, I was approved but it’s two feet from my steps and going under my sidewalk and I was just wondering when I might be able to cut it, Jackie.”

Max Inman, 621 8th Avenue South S.: “I was at the last meeting with the council and there was some things in there that I was concerned about, what I overheard at the meeting, so I sent Joe Martin an e-mail and just said here’s three or four things that I consider that should be thought about and put into a tree planning or tree ordinance. At that time I began to do some research on the internet and I dug up a few things, in fact, the last article that I sent to Joe, because I didn’t think I was going to be here tonight, I thought I would have something else going on, and I included in the back of it an urban conservation paper, white papers that had been done by Auburn University and I think you guys, did he give it to all of you guys? So with that I just put together some thoughts that I had and I’ve also looked at your draft that Joe sent back to us today and looked through and I think basically the only thing that I see that is not really covered in your draft is some means by which the city could make this ordinance more people

52 friendly, more available so that the public would, the individual property owners would
53 be taking a part in it and maybe the city taking these lots that are being developed when
54 a developer comes in, he's going to destroy everything on the lot, basically. If the city
55 could do something similar to the ditch program that we have and move those large trees
56 it would help us because we cannot move those bigger trees, they are too expensive for
57 an individual. You're talking \$500, \$600 a clip. That gets expensive fast and I would
58 welcome putting 8 or 10 of those on my lot now and I have about 20 some trees, so if
59 you want me to read this so the rest of the people can hear it, I'll do it but you have
60 copies."

61
62 Mr. Hanson stated that the commission all had copies and that they would make sure that
63 Jackie and Mr. Booth got copies as well adding that he thought it was very well done
64 and there were some good thoughts in the paper and would take it all into consideration.

65
66 *Lynn Livesay, 10th Avenue S.:* "I have a specific list and I didn't have time because I just
67 had time to kind of rattle through it today and I'll just leave a copy with Sharon to
68 circulate because I address specific sections in the ordinance that might be of some
69 assistance. I had a copy of the draft and I thought that today was going to be a first
70 reading and of course I realized afterwards that you all have several things in your
71 package that you have to consolidate so it couldn't possibly be and I did read Mr.
72 Britton's memorandum to you all and I thought that he really was concise and specific
73 about some things and I didn't really address those things that he had already
74 specifically addressed. Some of the things that I'm interested in are things like in the
75 sections where it says tree protection and I had a copy of a really super old ordinance,
76 maybe not as super old as I think, but it seems like it is. If I could just highlight a couple
77 of little things in my statement that I worked on, first of all, I did look at the list of trees,
78 the list of trees that's in the ordinance, I don't know who put it together and I don't know
79 if anyone consulted anyone but I have a forestry book here on important trees from
80 eastern United States. I know of one tree specifically on the list that's not indigenous to
81 the area, it's not specifically on the specimen or the protected tree list, it's more or less
82 on the other one that you will encourage people to use for planting, so my suggestion
83 would be that someone in staff look at that list, and this book's pretty easy to get; it's
84 very easy to follow, maybe they would want to review some of those. It's good to have a
85 list for people to refer to. The other thing we're not defining in there is caliper and we
86 refer to it in definition but we use it as a term in one section and we don't in another and
87 we use diameter so I think we need to clear up that specifically and be real up front with
88 folks and make it a lot more user friendly as it was stated.

89
90 The pruning definition, it said four inches and I'm not a seamstress but I did bring my
91 measuring tape for a little show and tell. If you're going to restrict people to 4 inches,
92 for pruning, I think probably 6 inches would be more reasonable. I think we should be
93 careful about reasonable when we do the . . . you know, I'm all for the trees but when it
94 comes to pruning and people taking care of their trees to keep them healthy and to
95 increase growth I think we need to be a little bit more realistic so if everyone would just
96 realistically look at 6 inches which is a pretty good size branch. (There was some
97 discussion on measuring the diameter of the branch and not the circumference). Even
98 still, 4 inches, well what you're requesting in there is 4 inches, ok? So I just want us to
99 be careful when we do that so it will be a little bit more reasonable. The definitions, I
100 kind of looked at that for a section and I know that council was real interested, I went to

101 their workshop and listened to them talk about defining things and tree was kind of hard
102 to define so I would suggest maybe we just address existing trees since that's really what
103 we're dealing with. We might not have to really define a live tree which is already in
104 your draft there. You might be able to just consolidate that and I had written something
105 that just included an existing tree as a healthy living tree with a diameter not less than 8
106 inches and then it goes about how to measure it and so forth and then it defines
107 replacement tree which is fine and, once again, I think we need to define what the caliper
108 and how we measure and everything, just to make it a little bit more user friendly. I just
109 mentioned in my list here too a little bit more about some of the trees that should be
110 specific, prune, pruning of the tree must not result in permanent or long term
111 disfiguration of the tree unless, and I inserted here, permitted, in other sections of the
112 ordinance. I think if we just add a few little words that will make it a little bit more
113 helpful to people instead of generically saying, because permitted also eludes to the fact
114 that they have to go to the town, get a permit, they've talked to someone and gotten
115 permission to do it, so if you put the words 'permitted' in there it might help a little bit
116 too."

117
118 Mr. Hanson stated that they may want to set a diameter on pruning so that the town staff,
119 which does all the checking, has something to go by.

120
121 *Ms. Livesay:* "Sure, oh yeah, you should set it, but I'm just thinking maybe, more
122 reasonable, I mean, sometimes our oleanders have diameters of 4 inches so I mean if
123 they get too big, I'm just saying and Wax Myrtles, if you don't, people have to take care
124 of things like that, that know how to do it and I'm just saying you might want to look at
125 that more . . . or get advice from an arborist or our staff members that are being trained
126 to do that. We do have an arborist, I think, in training, don't we? Yes, we do. I'm
127 really glad that we do because another thing that I had encouraged here in my little list,
128 I'm skipping over some things, I do have two pages here. When a code enforcement
129 official, as stated in the ordinance, and it's got little parenthesis (s), it says code
130 enforcement official(s), I kind of like that to turn out to be a person who is collaborating
131 with our officials like an ISA Arborist or a South Carolina registered forester or a
132 Landscape Architect and I would rather exclude the architects and the professional
133 engineers from that list, nothing personal, but I really think they may have a conflict of
134 interest. I would prefer it just stay on the natural side versus the building side so I think
135 staff should, I hope, have the freedom to talk to an arborist or a forester versus engineers
136 and architects, but I don't think any of our officials should be left out there to make the
137 decision alone, I think they should be in collaboration with a professional at all times,
138 just in the tree ordinance and since we're going to be fortunate enough to maybe have
139 someone on staff that takes care of that. Another item that I, oh, I think that it was
140 brought up in the workshop and it's going to be, probably a real hot item, is the tree
141 mitigation fund. My thought on that, even the day of the workshop when I listened to
142 council, was that tree mitigation fund, it can be fees but it can also be available tree
143 inventory within the town limits, available for transplant. Residents could volunteer
144 trees for the inventory for future use if they deemed it best for the interest of the town so
145 if you have an undeveloped lot and you know in the future you're going to build in the
146 center of it and you have a beautiful Holly tree, you could offer that tree for future
147 mitigations, it doesn't have to always be monetary, it could be a viable live tree that
148 someone could pay to have moved maybe cheaper than going to buy one from a nursery.
149 I have like a lot of other little things here that I'm just going to leave and let you all read

150 but the one other thing under the tree protection ordinance, it was kind of left out, and
151 I'm just going to read this small section, in order to protect undeveloped land where a
152 building permit approval has not been issued, 'the removal within a 5 year period of
153 more than 25 percent of the existing trees on any one parcel of real property without
154 prior approval of the code enforcement official or building up property with soil fill for
155 speculative purposes is prohibited' that was an old reg and I think that needs to be put
156 back. It has to do with preparing property for construction and it has to do with the
157 grubbing and the pruning and I think anything that's going to, anytime a person who
158 owns property is going to clean underbrush, they need to get a permit and there needs to
159 be a tree survey before they start the grubbing so that's not hard, it's reasonable and it
160 keeps everybody out front instead of begging for forgiveness saying or asking for
161 permission but I will leave a copy of this with Sharon because she can make copies for
162 you all and I'm sorry I didn't have one for you, ok?"

163
164 Mr. Hanson thanked Ms. Livesay. Mr. Hanson stated that Ms. Livesay is on the Zoning
165 Board of Appeals and if anyone has any problems with trees or setbacks, the first place
166 they should go is to the Board of Zoning Appeals to see if they can get the setbacks
167 changed and added that he feels that the board has been very good in the past trying to
168 save trees. Mr. Hanson stated that Ms. Livesay would go out of her way to save a big
169 oak tree and allow the person to have a slight variance in the setbacks. Mr. Hanson
170 stated that this should be part of the town's procedure that if someone has a large tree in
171 the footprint.

172
173 *Brian Lenard, 505 Lakeshore Drive, Developer for McQuiddy:* "Just a couple different
174 things to talk about from going to the town council meetings and reading the minutes
175 from the workshop and such, and there's been numerous meetings between town council
176 and the members and they haven't come to an agreement yet about what they want and
177 they're now sending it down to you because really, there's a big divide on town council.
178 There seems to be one or two people that want extreme measures taken while everybody
179 else, if you read the minutes, is not in agreement with that, so, there's a little bit of
180 confusion there and in taking some of these extreme measures where it's been mentioned
181 if there's beautiful trees on lots to buy the lots from people so that they can't build or to
182 not allow somebody to build on a lot because certain trees are there. It's almost the
183 burning the bridge theory where the house you live in now in Surfside that once had
184 trees in it, you were able to build your house and somebody before you was able to build
185 your house and live there, if I bought a lot now or if I lived in Pennsylvania and I bought
186 a lot to retire on 10 years from now and I want to live in Surfside because I love it and
187 then to have town council say 'well we're changing the rules, you have beautiful trees on
188 your lot, we're not going to let you retire and on top of that we're going to buy your lot
189 from you and you have no choice'. It really makes no sense. Secondly, if I bought a lot
190 that I owned and there's trees all over it, you're going to try to tell me now that you're
191 going to change the rules, that it's my fault there's trees all over my lot, and I'm going to
192 have to pay 5, 10 thousand dollars for whatever the tree fund is to build a house on my
193 lot because nature put trees on my lot. It makes zero sense. A couple of other things; in
194 terms of a little bit, if there's a problem, a lot of people always throw out the term
195 'developer', the developer clear cut, the developer did this, I know myself and Mr.
196 McQuiddy, we play by the rules of the town. We call Jackie and Jack out to our job sites
197 numerous times, 'can we take this tree out or can we not take this tree out'? They do a
198 good job, they enforce what they know is going on. If somebody cuts a tree down in the

199 middle of the night or on the weekend and they don't see it, they're not at fault, you
200 know they can't watch every single lot in Surfside every single day and in terms of
201 giving developers a bad name, if it is a problem and there's a developer in town that's
202 specific that's causing these problems, increase the punishment, punish that builder or
203 developer. We've got a house we're building right now, I bet Jackie and Jack have been
204 to the job site 5 times to make sure we've got a tree survey, we've got a tree marked, you
205 know, can we take this tree down or not take it down? We're not trying to cause a
206 problem in town, we continually build in this town so the last thing we want to do is
207 cause a problem with the town. If the problem is a developer or developers in town,
208 developers usually have a bad name anyway, increase the fines, increase the, if
209 somebody does something wrong or is out of line with the ordinance, increase the
210 punishment to the builder. One other thing is that the State tree is the Palm tree and I see
211 where they want to take the Palm tree, they unanimously said they wanted to take the
212 Palm out. That's fine if they don't want to allow the palm, it is the beach, most people
213 who move here love the palm trees but some of the developments around here, you
214 might want to do a grandfather clause. We've got a development at Lakeview, we've
215 got a development at Poplar that there is a design of palm trees; there's two trees, three
216 trees, two trees, if you disallow the palm tree being replaced or if you say you can't
217 replace the palm tree without replacing it with 4 or 5 trees to meet the caliper of that tree
218 you're going to completely mess up the design and the development is going to look
219 weird and I'll tell you if I have a palm tree that dies in my yard and you're going to tell
220 me that I have to take 5 other trees that are 2 inches to equal up to the 8 or 10 inches of
221 width, I'm not going to spend \$1,000 to replace a dead tree in my yard; I'll let the dead
222 tree live there; I'm not going to spend, you know, tons of money it would take to replace
223 4 or 5 trees to replace that 1 palm tree and in replacing the palm tree it's going to mess
224 up the design of the whole neighborhood and it just doesn't make it look good. There's
225 a lot of things you got to think on the reverse; the laws that you're looking at putting in
226 place or changing, you need to look at what happens on the reverse side of that. There's
227 a lot of homeowners, I got a homeowner where we just built a beach house, sold to,
228 she's got a dead palm tree in her yard now and it's just laying there bent over dead and
229 she has to replace it and it's probably about this wide so she's got to buy 5 or 6 two inch
230 trees to replace it. She has to buy 5 or 6 two inch trees on top of buying a palm tree and
231 has to pay for them to be planted and we're talking, it's going to be over \$1,000 to
232 replace a dead palm tree in her yard and then she's going to have to stick 4 or 5 trees
233 somewhere else in her yard and we don't have any problem with trees, we like trees just
234 like everybody else, just in whatever laws are amended you look to change just think on
235 the opposite by doing this, how does it affect the opposite side. Thank you."

236
237 Mr. Hanson stated that he feels that the town needs to be careful what they do with palm
238 trees adding that this is the Palmetto state and the state tree is the Palmetto palm. Mr.
239 Hanson added that they have a small root ball and are ideal to plant in some places. Mr.
240 Hanson stated that most are not indigenous to the area; they come in from Florida, they
241 have been imported so the town needs to be cognizant of what they do. Ms. Barnard
242 added that the palm trees are indigenous south of Georgetown but not to the north.

243
244 *Kurt McQuiddy, developer:* "I just want to say that number one I'm very, very glad to
245 hear that this is not a public hearing on an ordinance because we've been trying to get a
246 copy of it to sort of understand what you all are considering and 4 of the last 11 or 12
247 years I've been here, it's always been an ordinance formulated based on council's

248 request that staff, the competent people who we pay to do these things, look into
249 something for them that they're concerned about and put together an ordinance as
250 Connie, as former chairman knows, it's put together by staff and staff takes it to you all
251 and you discuss it and so forth and so I'm glad to see that we're at that point where staff
252 will now undoubtedly take concerns of council in whole and put it together in some sort
253 of order and fashion and have it to you folks to consider. So I'm glad that we're at the
254 beginning of the process and the only thing I really have to say is that the real issue
255 you're going to have as the recommendatory body for council, the people who review it
256 and see whether or not you think it's appropriate for our town; it benefits our citizens,
257 protects our citizens and protects our property rights is you're going to come to the lynch
258 pin issue of, in this tree ordinance, if a person owns a piece of property, who's property
259 rights are protected by the Constitution, we're not talking about builders, developers,
260 towns, we're talking about individual land owners; your fellow citizens, who own pieces
261 of property in this town that have not been built upon. When they go to get a building
262 permit to try and build a house on that property, which they should be entitled to do, are
263 they going to face unreasonable restrictions in the placement of the home which was the
264 intended purpose of the property on that piece of land and to me it is painfully
265 unreasonable to think that a person who has a lot and has a house they would like to
266 build on that lot within the setbacks of that lot, legally permissible and the intended use
267 of that lot, would not be allowed to remove the trees that would impede, whatever the
268 tree is, would impede the construction of a home on that lot. That's our fundamental
269 right as citizens of this country, to own property and to use it for its intended purpose.
270 Zoning restricts that, if in fact that usage, somehow infringes on the community in
271 general. Building my house on my lot does not infringe on my neighbor in any way
272 regardless of whether I have what's termed a grand tree or not in the building pocket of
273 my lot and I think that's going to be the real lynch pin issue that you all are going to
274 have to deal with and I'm absolutely certain that many of you I know, common sense
275 will dictate that if you recommend an ordinance that protects those individual property
276 rights while still protecting the rights of the community to preserve as many trees as we
277 possibly can, in a reasonable fashion. Thanks."

278
279 Mr. Hanson asked if anyone else wanted to speak. Ms. Barnard stated that if there were
280 individual who did not want to speak out they could always e-mail their views. Ms.
281 Donevant stated that they could e-mail zoning@surfsidebeach.org

282
283 Ms. Donevant stated that Mr. Britton would now discuss the memos he prepared
284 regarding landscape and tree protection.

285
286 Mr. Britton stated that the commission has a copy of the draft that was prepared after the
287 council workshop and based on Mr. Booth's comments with the fresh look they will be
288 taking in looking at this he would not go through each individual point of the
289 memorandum unless there was a specific question.

290
291 Mr. Britton stated that he would recommend looking at certain areas of the ordinances
292 with the overriding issue being what the intent of the ordinance is as it is reviewed. Will
293 it need to be more restrictive or less restrictive and what would the desired outcome be
294 and then it would need to be approached from the least restrictive means. Mr. Britton
295 stated that the cost to the private property owner and impact would need to be considered
296 and added as an example the recent corner lot provisions that were reviewed where there

297 were impacts that were created by some of the zoning text amendments. Under a zoning
298 ordinance there is a safety valve mechanism called Board of Zoning Appeals that has the
299 ability to issue variances. If for instance a landscape, setback or tree protection
300 requirement were set there is that mechanism for relief for individual property owners.
301 Under the State statute those requirements are set under hardship or unusual or unique
302 conditions meaning that whatever ordinance is put in place would set the standard and a
303 high percentage of lots should be able to comply with that standard understanding that
304 every lot is not going to be able to. If the standard is too high where a good number of
305 lots do not comply and that becomes a rule as opposed to the exception then the BZA
306 has a difficult time issuing a variance. There would then be the issue of taking whether
307 it be a full or partial taking. Mr. Britton stated that there are several resources out there
308 that should assist the commission during the course of the review. Clemson University
309 put out a study back in 2003 which compared all of the tree preservation ordinances
310 within the State of South Carolina. A survey was sent out to all of the municipalities and
311 counties, they then collected and analyzed different tree preservation ordinances,
312 landscape ordinances and timber harvesting ordinances and issued a 300-400 page report
313 on it and added that in this document there are some good examples of ordinances with
314 respect to tree preservation.

315
316 Mr. Britton stated that the terminology within the ordinance would need to be consistent;
317 one of the problems with the tree ordinance draft that was being worked on was
318 inconsistencies with terminology, it was unclear at certain points what was being
319 regulated. The second item is enforcement; whatever is adopted the town would need to
320 make sure it could be enforced and whatever is written must be user friendly so that it is
321 clear to a property owner when a permit is required and when a permit is not required
322 and it needs to contain information that is easily understood. Mr. Britton asked if the
323 commission members had any questions regarding the memorandum.

324
325 Mr. Hanson stated that he, Ms. Donevant and Mr. Britton spent 3 hours last week going
326 over the proposal adding that there is a lot to it.

327
328 **Commission Comments**

329 Mr. Smith stated that he has very specific items he is interested in. The first one when
330 trying to determine how many trees and what kind of cover there is there should be two
331 types of measurements used. There should be an actual count of the trees and then the
332 diameter of the trees needs to be calculated. If there is a lot with many trees versus a lot
333 with not many trees it would not be fair to penalize the person who has many trees. Mr.
334 Smith stated that his thought was that the town set the standard on some of the diameters
335 of the trees on the left of the lot, set a minimum standard and this way there would be
336 two measurements when a decision is to be made as to what should be left on the lot to
337 meet the minimum requirements. Mr. Smith stated that in District R-1 it was 10 trees
338 per lot and for an R-1 the town may want to have the sum of the diameter of those trees
339 to be 60 inches. Mr. Smith stated that if one visualized seeing 10 trees each with a 6
340 inch diameter it would seem to be a reasonable number. Mr. Smith stated that he chose
341 this number but of course it is up for discussion along with if this is the way it should be
342 approached. Mr. Smith stated that another thing he believes to be important is if there is
343 a protected or specimen tree, a public body like the planning commission should give the
344 final approval of whether it should be removed or not. Mr. Smith stated that he feels that
345 staff does a good job but to protect these types of trees he feels that a public body should

346 look at it with a staff recommendation. Mr. Smith stated that he also made some
347 changes to the document that had passed 1st reading and included these types of changes
348 and sent it to all of the commission members.

349
350 Ms. Donevant asked if Mr. Smith was referring to trees within the building pocket, any
351 protected or specimen trees. Mr. Smith stated that any tree, protected or specimen would
352 have the planning and zoning commission approve their removal. The thought process
353 is that the commission would more than likely approve it most of the time but there may
354 be cases where other options could be considered from council. There was clarification
355 that if a homeowner had a protected or specimen tree and it was in the footprint of the
356 home they would need to come before the board for approval on the removal. Mr. Booth
357 stated that legally the town cannot disallow someone to build on their lot that they own.
358 Mr. Smith stated that he would then suggest that staff work up something that meets
359 these requirements but yet achieves the objective. Mr. Hanson stated that the town
360 already has a standard of 10 trees at 4 inches which is 40 inches set up in the current
361 ordinance and the same holds for R-2 and R-3. Mr. Hanson stated that this standard
362 does not meet with the numbers Mr. Smith presented but that there was a standard
363 already in place. Mr. Smith stated that his concern was when they discussed the tree
364 replacement, that if one of the specimen trees were to be cut down then it would have to
365 be a one for one inch replacement and he feels that if an individual had sufficient tree
366 coverage outside of the footprint then they should not have to pay any additional
367 replacement to cut down that specimen tree and added that he understood the first
368 reading to be that an individual would need to pay for this specimen tree. Mr. Smith
369 stated that he would like to see if an individual had the minimum diameter requirement
370 of trees then an individual would not have to pay additional. Ms. Donevant stated that
371 the ordinance reads that if an individual falls below the minimum requirement of trees
372 that would be when the replacement trees apply adding that staff will review Mr. Smith's
373 suggestions.

374
375 Ms. Barnard stated that she needed confirmation on the tree replacement issue. Mr.
376 Barnard stated that if a mature tree is replaced with 10 trees adding up to the same
377 diameter of the tree removed, if they are young trees they are going to grow to be large
378 trees and asked if the town should use the potential measurement of what size the tree
379 may eventually become adding that the town does not need that many very large trees
380 and learned this from experience. Ms. Barnard stated that the prospective growth needs
381 to be considered when reviewing the ordinance. Mr. Hanson asked Ms. Donevant what
382 her thoughts were on tree replacement. Ms. Donevant stated that a 4 inch diameter tree
383 usually has a large root system and she feels that there would be a better chance for a
384 tree to live if it were replaced with 2 inch trees. Mr. Booth stated that there was a
385 difference between the circumference of a tree and the diameter of a tree and there is a
386 formula to determine the diameter. Mr. Hanson stated that it was DBH, diameter,
387 breadth, height. There was some discussion regarding 4 inches reaching the maximum
388 of what could be replanted and expected to live.

389
390 Mr. Seibold stated that there is a lot to consider with this ordinance. Mr. Seibold stated
391 that if someone wanted to place a swimming pool in their yard and there is a tree in his
392 yard where the swimming pool would go would they be allowed to remove the tree and
393 asked what the homeowner would need to do adding that it would not be fair if their
394 neighbor had placed a pool a few years prior and did not have to replace a tree that came

395 down. Ms. Donevant stated that any time an individual falls below the minimum
396 requirement of trees set in their district they would need to replace it. The current
397 ordinance reads that 50 percent of the caliper removed must be replaced. Mr. Seibold
398 stated that the next question would be where the trees would be replaced if there is no
399 longer room once you put in a pool and added that these are the types of things the
400 commission would need to consider. Mr. Seibold stated they would need to consider the
401 intent of the ordinance and how to handle reiterating that there is a lot to consider with
402 this ordinance. Mr. Booth stated that council had discussed a tree bank where if
403 someone was unable to replace a tree on their property they would pay into a tree bank.
404 Mr. Seibold stated that he does not see penalizing a homeowner.
405

406 Mr. Booth stated that the commission could make any recommendation to council
407 including to keep the current ordinance. It was confirmed that this meeting was for
408 public input and the commission was informed by Mr. Booth that they did not need to
409 make a decision at this time. Mr. Hanson stated that Mr. Britton's memo stated that the
410 commission at this time should accept the ordinance from council, reject it or suggest
411 changes. Mr. Booth stated that since the ordinance changes presented was not accepted
412 by council the commission would need to come up with an ordinance that council would
413 accept. Mr. Booth stated that this is not an easy task.
414

415 Mr. Hanson stated that he believes that the town should protect its existing trees and
416 views trees as a renewable resource and he considers replanting and reforestation almost
417 as important as protection. The town had worked hard to become a tree city and the
418 town needs to renew this status. Mr. Hanson added that he believes that thinning is a
419 very important part of forestry and if the town wants large trees then it must thin out the
420 small ones or they will choke each other out. Mr. Hanson stated that he had a tree farm
421 in the upstate for 25 years and added that the town needs to educate the population on
422 the value of trees and how they turn carbon monoxide emissions into oxygen and help
423 slow global warming adding that this is a very important issue. Mr. Hanson stated that
424 the town has collected money in the past for the illegal cutting of trees and believes that
425 this money should be used for replanting and that the town should give seedlings out to
426 people who want to plant more trees in their yard. Mr. Hanson stated that if the tree
427 mitigation gets too high for landowners the town may have to place a cap on it. Mr.
428 Hanson stated that the town does not want someone who has 80 trees to have to pay
429 \$40,000 to build a house on their lot and there are lots in town that have many trees on
430 them that are over 4 inches. Mr. Hanson stated that some of the pines in town are 30 or
431 more inches in diameter and 100 feet tall and it is like a "10,000 pound missile standing
432 up in your yard and if it comes down on your roof it is very liable to not only hurt the
433 building but hurt you". Mr. Hanson stated that he loves pine trees but in this beach area
434 with high winds and the possible damage they could cause, they are a hazard on the
435 small lots in town. Mr. Hanson asked if trees should be planted in the right of way. Mr.
436 Booth stated that perhaps the town could look at planting palm trees on Ocean Blvd as a
437 decorative addition and to control some parking issues but as a norm trees are not placed
438 in right of ways because there has to be an area for vehicles to get through and they also
439 allow for better vehicular vision.
440

441 Mr. Britton stated that the last page of his memorandum noted that the commission
442 would have 30 days to reply to council and explained that when there is a text
443 amendment formally referred to from council the state law requires 30 days for the

444 commission to reply and it is his understanding after talking to Mr. Booth that the
445 council had not submitted a formal text to the commission and if that is the case then the
446 30 days would not apply. Mr. Hanson stated that the commission could hold a special
447 meeting if need be. Mr. Booth stated that he would like to get the intent from the
448 commission so that staff can either put together another ordinance or change the
449 ordinance presented or take no action and put it back to the council.

450
451 Ms. Barnard stated that she would like to see if the town can encourage builders and
452 developers not to clear cut lots and then go back in and put in new trees but to leave
453 whatever large trees they can and build a home around those trees. Ms. Barnard asked if
454 this could be done where the town builds an incentive into the ordinance. Mr. Britton
455 stated that there are some examples of how this can be done. Mr. Seibold asked Ms.
456 Donevant of the town already had something like this in place because he knows that he
457 had around 3 tree surveys approved by the town prior to building his home and he was
458 told to keep certain trees. Ms. Donevant stated that according to the ordinance an
459 individual is allowed to remove trees within the building pocket and any trees within 10
460 feet of the structure but then again with a ten foot setback that pretty much takes out the
461 trees and if there are existing trees that can be saved that do not interfere with the
462 building pocket then those are marked to remain and the homeowner then would have to
463 make up the difference. Mr. Seibold stated that this sounds fine to him.

464
465 Mr. Saunders stated that given the opportunities the commission really should work at
466 resolving the issues and not just “bounce it back to council”. There has already been a
467 lot of input and he feels that the commission along with the staff is capable of reviewing
468 this ordinance. Ms. Donevant stated that she will provide the commission with any
469 information they need and told them that they can call her or Mr. Britton any time to
470 answer any questions they may have. Mr. Hanson asked if Ms. Donevant and Mr.
471 Britton could write up a proposed ordinance with all of the information they have. Mr.
472 Booth stated that the staff would need the intent of the commission and would need
473 answers to certain questions before staff drafted an ordinance to present. These
474 questions would include answers on footprint, mitigation, number of trees, whether a
475 tree bank would be established, etc. Mr. Booth stated that he would provide the
476 commission with a list of questions to consider.

477
478 **Public Hearing was closed at 7:05 pm.**

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480 **Business Portion of Meeting was then Opened**

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482 **CALLED TO ORDER**

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484 **PLEDGE OF ALLEGIANCE.**
485 Chairman Hanson led the pledge of allegiance.

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BUSINESS

a. *Article VII Landscaping and Tree Protection Sec 17-367 Tree Protection*

It was determined that this discussion was covered under the public hearing section

b. *Article II Review*

Mr. Hanson stated that this is part of the review process that the commission is undertaking. They reviewed Article I at the last meeting and now the commission is on Article II. Mr. Britton stated that the plan was to go over Article II and perhaps the start of Article III but Article VII moved ahead of III so there will not be much review on Article III at this meeting. Mr. Britton went over Article II. This is the administration article and is probably the most important article to staff because it talks about the process under which staff permits certain items under the code. Mr. Britton stated that in section 17-21 the *establishment of the code enforcement official*, the commission may want to look at enumerating the powers of the code enforcement official in this section. The powers are in the ordinance but they are spread out in the ordinance and most ordinances do enumerate these in the establishing provision. Mr. Britton stated that section 17-24 *exceptions and modifications* which are the clauses of the ordinance and include things that are exempt and here would list perhaps a modification to the requirements of the ordinance. Mr. Britton stated that one of the exceptions or modifications is the lot of record requirement which provides the zoning administrator or code enforcement official the ability to deviate certain lot requirements by up to 20 percent where there is an existing lot of record that does not meet lot size requirements. This provision is uncommon to zoning ordinances and the only item that the commission may consider changing is the phrase "lot requirement" to specify what those requirements are. It appears that the intent of the section is to give the ability to adjust certain setback and lot width requirements which are fairly standard, however, the phrase "lot requirements" could mean a lot of things which was thought to not be the intent of this provision. Mr. Britton stated that under "multiple buildings" there is a provision that limits one principal building per lot which is a modification or exception where you could possibly have more than one principal building on a lot if it met a certain acreage requirement through a special exception issued by the planning commission adding that there are statutory problems with that particular provision in this ordinance. The planning commission by definition cannot issue special exceptions adding that this is the role of the Zoning Board of Appeals (BZA). Mr. Britton stated that the other potential problem is that it is not really a special exception but a variance and the question would be whether having multiple or deviating from a single unit lot to multiple units on a lot which would be a use variance because the number of units it tied to density which is tied to use and use variances are problematic under State law unless there is a specific provision which allows them and are typically considered unlawful. Mr. Britton stated that this section could be revised by amending the section that it refers to which is section 17-265 to build something into the existing provision and the commission may also want to look at striking this when they get to compiling the list later in the year.

Mr. Britton stated that there is another exception in the ordinance regarding height and did not see any technical problem with the current listing; the exemptions from the height standards is a fairly lengthy list and the only concern that there was regarding the policy and he added that the commission may want to look at the listing and revise it

537 adding that several items in there are common to zoning ordinances when referring to
538 steeples and chimneys and things that do not have occupancy but the ordinance also lists
539 a dozen or so items including amusement devices which are exempt from height
540 requirements so technically, from a policy standpoint, it may be something that the
541 commission would like to consider revising. Mr. Britton stated that amendment section
542 17-25 is a section that probably needs to be rewritten from the standpoint of clarity
543 adding that there are several examples where communities have written the same
544 provisions but in a more clear and concise way. The current provision needs to be read
545 three times to comprehend it. Mr. Britton stated that there are a couple points for
546 clarification that should be included in this section; a requirement for a planning
547 commission states that there is 30 days given to make a recommendation to council on
548 text amendment rezoning and the question is “when does the 30 days start?” The State
549 statute is not clear on when it begins and the question would be does it start when an
550 applicant submits their application or does it start when it was received via e-mail or
551 does it start when it is presented at a regularly scheduled meeting. Many ordinances
552 state that the 30 days starts when an application to rezone or a text amendment is
553 submitted to the commission at the regularly scheduled meeting with the reason being
554 that it would be possible for an applicant for rezoning to run the clock out based on
555 whether it was submitted 2 days prior to the meeting or if there were a gap where there
556 were 31 days in between the meeting and added that potentially this could happen. Mr.
557 Britton stated that there is also a provision that allows an application to be submitted 2
558 weeks before the planning commission for consideration at the planning commission
559 meeting and that is a problem provision from the standpoint if the commission decided
560 to have a public hearing, the public hearing notification requirement is 15 days so if an
561 application can be submitted 2 weeks prior and have it heard at the meeting there would
562 not be a public hearing.

563
564 Mr. Britton stated that another provision that may need to be specified is who holds the
565 public hearing for rezoning or text amendments; the State statute says that it can either
566 be the city council or if the city council gives the jurisdiction by ordinance to the
567 planning commission. The intent of the State statute was that the ordinance would
568 choose one or the other and the way the ordinance is currently written it says “or”. Mr.
569 Britton stated that the best way to word it may be for the planning commission to hold
570 the public hearing however, if the town council chooses to hold their own public hearing
571 they have the ability to do so.

572
573 Mr. Saunders asked if Mr. Britton would be making any recommendations or revisions
574 or would it be up to the commission. Mr. Britton stated that the intent is for him and
575 staff to go through all of the articles and list what potentially needs to be changed and
576 because many of the provisions of the articles are intertwined they are basically
577 developing a list and then would bring this list once the process has been completed to
578 the commission and then the commission will inform staff of which ones need to be
579 amended and which ones to leave as is. Ms. Donevant added that there would also be
580 legal review.

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582

583 Mr. Britton stated that on the 17-26 provision *building and fine permits* there is a
584 reference to the Board of Appeals which should read Board of Zoning Appeals adding
585 that there is a lot of inconsistencies throughout the ordinance on the titling of the BZA.
586 In section 17-29 *certificate of occupancy* the ordinance confuses the term certificate of
587 zoning compliance and certificates of occupancy and those are two legally different and
588 significant types of documents that need to be clarified. Certificate of zoning
589 compliances is a letter or permit from the zoning administrator or code enforcement
590 official that says something complies with the zoning ordinance whereas a certificate of
591 occupancy certifies that whatever is built complies with the building code; they are two
592 legally significant and different things. On section 17-33 the header is *appeal to*
593 *decision of the code enforcement official* and this is not what the provision is and it
594 appears to be a repeat. The *fees established* section probably needs to be amended to
595 cross reference the schedule of fees and section 17-53 *procedures and powers* of the
596 board, is a section that will probably have to be rewritten because it is misaligned. The
597 wording is straight from the State statute, however, the order is incorrect, the first thing
598 that is done is once it is established powers are specified and then it goes into procedure
599 and it is the reverse in the ordinance. Mr. Britton stated that one thing the commission
600 may want to consider when talking about article III is the concept of special exception
601 which is what some communities allow when they are classifying uses. Under state law
602 there are 4 designations for use, it could be a prohibited use in the zoning district; it can
603 be a use allowed by right, single family in a residential district is a use allowed by right;
604 conditional uses which have certain “strings attached”, the permit is issued as long as the
605 requirement is met such as a distancing requirement; and the other type is the special
606 exception which are uses which may or may not be appropriate to a district and an
607 example would be a church or school in a residential district. These types of uses go
608 before the BZA to determine whether the use is appropriate for the site and the ordinance
609 would list the criteria they would have to meet before a permit is issued and the current
610 ordinance does not have special exceptions in them and many ordinances usually do.
611 Mr. Britton stated that this would allow a higher level of review. Mr. Britton stated that
612 the remaining items deal with mis-numbering of sections and are fairly simple to correct.
613 Mr. Britton stated that the following month Article III would be reviewed and this would
614 be getting more into policy from the standpoint of what uses are allowed in certain areas
615 and what the requirements in the districts are and suggested possibly breaking it down
616 into 2 separate segments; residential one night and commercial another to keep things
617 more focused. Mr. Britton stated that he believes that the commission had a community
618 they wanted to review.

619
620 **MINUTES APPROVAL**

621 Ms. Barnard made a motion to approve the minutes from the February 3, 2009 meeting. Mr.
622 Seibold seconded the motion. **All voted in favor. MOTION CARRIED.**

623
624 c. Continuing Education

625 Mr. Britton passed around a tentative schedule of training classes. There was mention of
626 setting up a training session in Surfside.

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PUBLIC COMMENTS

There were not public comments.

COMMISSION COMMENTS

Ms. Cook requested to receive material for review in a reasonable amount of time and would like the option of meeting with commission members prior to the meeting to discuss.

Mr. Hanson stated that if commission members contact each other it is considered a ‘rolling meeting’ and this is not allowed.

Ms. Cook asked if the commission could have a workshop to discuss material and added that she was surprised to find that there was a public hearing this evening and added that thanks to Mr. Saunders notifying her she knew to come to the meeting at 6:00 PM.

Ms. Donevant stated that the commission members should contact her by phone or e-mail on any questions or concerns they have. Ms. Donevant stated that she, Mr. Britton and Mr. Hanson usually meet a month before the meeting to discuss the agenda.

Ms. Barnard asked for confirmation on what the commission needs to have prepared by the following meeting. Ms. Donevant stated that it is her understanding that Mr. Booth was going to e-mail the commission some questions and the commission would answer them so that staff knows what direction to take. Ms. Donevant stated that she and Mr. Britton would be getting together information on tree cities, tree studies and tree ordinances. Ms. Donevant stated that they would be looking for feedback and ideas and they would go from there. There was some discussion regarding the tree ordinance and confusion on direction. Mr. Hanson stated that the commission will review and discuss changes, if any, and then it would be directed back to council. Mr. Hanson stated that the commission will also be discussing Article III at the next meeting. Mr. Seibold asked why the tree ordinance has come up as a priority to review and Ms. Donevant stated that some council members had concerns about the enforcement of the tree ordinance and thought that it needed to be reviewed because it was not doing what it was intended to do.

Mr. Saunders stated that he would like to be told when the time of meetings are changed and added that he needs more time to research items on the agenda and would like to receive information more in advance.

Mr. Smith had questions regarding the training classes.

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ADJOURNMENT

Mr. Saunders made a motion to adjourn. Mr. Seibold seconded the motion. **MOTION CARRIED.** The meeting was adjourned at 7:35 PM.

Approved: April 7, 2009

Sharon Pinnell, Town Clerk

Bob Hanson, Commission Member



Connie Barnard, Commission Member Ron Saunders, Commission Member

Absent

John Culbertson, Commission Member

Carol Cook, Commission Member

Charles Seibold, Commission Member

Rod Smith, Commission Member

Clerk's Note: This document constitutes minutes of the meeting, which was audio taped. In accordance with FOIA, meeting notice and the agenda were faxed and/or emailed to local media and interested parties. A complete list is on file in the clerk's office. The agenda was posted on bulletin boards outside Council chambers and in the town hall reception area. Meeting notice was also posted on the town marquee.