



**SURFSIDE BEACH PLANNING & ZONING COMMISSION  
TOWN COUNCIL CHAMBERS  
MARCH 4, 2014 ♦ 6:00 P.M.**

**1. CALL TO ORDER.**

Chairman Pruitt called the Planning & Zoning Commission meeting to order at 6:00 p.m. Commission members present: Chairman Pruitt, and members Abrams, Elliott, Johnson, Lauer, and Lowery. Vice Chairman Rhoades was absent. A quorum was present. Others present: Planning Director Morris, Public Works Director Adair, and Town Clerk Herrmann.

**2. PLEDGE OF ALLEGIANCE.**

Chairman Pruitt led the Pledge of Allegiance.

**3. AGENDA APPROVAL.**

Ms. Johnson moved to approve the agenda with an amendment to add public comments after number 5. Ms. Elliott seconded. All voted in favor. **MOTION CARRIED as AMENDED.**

**4. MINUTES APPROVAL.**

Ms. Lowery moved to approve the February 4, 2014 meeting minutes as submitted. Ms. Johnson seconded. All voted in favor. **MOTION CARRIED.**

**5. DIRECTOR'S REPORT.**

Ms. Morris reported that 94 permits were issued in January. No subdivision requests approved. Because of the ice storm, staff is trying to work with homeowners on broken tree limbs. Property owners have been advised to go ahead and remove broken limbs, but they must not remove the tree without a permit. So far, homeowners have complied and no problems were reported. All commission members were enrolled in the planning commission membership with the American Planning Association (APA) which gives them all the same benefits that staff receives: digital and printed copies of the planning magazines, *Flagship* and *The Commissioner*, both of which are very good resources; e-news; online training resources and information about upcoming education and network events. The commission members were also enrolled in the local chapter, SCAPA (South Carolina American Planning Association), with opportunities to share with other commissioners and planners. SCAPA has chapter meetings, conferences, and training events. The members will also have access to specialized resources available on *The Commissioner* web portal. Members have complained about the outdated training offered through Waccamaw Council of Governments, and these memberships will provide opportunities for other training that fulfills the mandatory training requirements.

**6. PUBLIC COMMENTS- Agenda Items.**

Mr. Alan Beck of 10<sup>th</sup> Avenue North said he believed the commission should consider the dock issue using the Golden Rule. He did not understand why this was such a big issues. He first learned about the dock problem about four years ago when he surveyed his neighbors. Then he learned that council had adopted a policy. He just did not understand; it seemed that any measure to discourage docks was being taken. Last spring he was told docks would be approved; when he returned from vacation he learned they were not approved, because some people said the lakes were polluted. The town had a workshop with experts who said the water was excellent in Dogwood Lake and Elizabeth Lake, which is where owners want to build docks. Then the liability to the town was an issue, but his understanding was that the Municipal Association said the premiums would not change a bit. After that,

56 FEMA was contacted and staff was told that FEMA wanted engineered water displacement designs. The  
57 US Army Corp of Engineers was contacted for a certificate of jurisdiction, but that applies to navigable  
58 bodies of water for interstate commerce. In his opinion, these were bureaucratic excuses to spend around  
59 \$8,000 and delay the docks another year. He understood some councilmembers wanted to hear the  
60 ordinance quickly and asked the commission to review it again. He disagreed with requiring a \$1 million  
61 insurance policy and a recorded hold harmless agreement; those, too, were ways to discourage property  
62 owners from building docks. The specifications for building docks were changed to the point where most  
63 people could not build. In his opinion, a political mountain was being made of a mole hill, and he wished  
64 the Town Council would repeal the prohibition on docks. Too much time was wasted on this. Minimal  
65 guidelines should be developed for docks. In his opinion, the whole issue came about so one particular  
66 person could not build a dock, which was wrong public policy.  
67

68 Mr. Ron Whitcomb of Harbor Lights Drive agreed most of what Mr. Beck said. This was  
69 ridiculous. There were a few docks on the lakes, and there may be two or three more. This was not a big  
70 risk problem. There was already liability for the existing docks. He asked Town Council at its meeting if  
71 the town got permits to build the docks at 16<sup>th</sup> and at the other locations. He said everyone looked like  
72 the "cat that swallowed the canary" and he took the response to mean "no." The whole issue was so  
73 blown out of proportion that it was crazy. There might be some underlying issues, but he personally  
74 thought it was a grudge match between councilmembers and a lake resident. He said a councilmember  
75 told him there was a lot of truth to that. The result was that many residents suffered, because of the  
76 grudge match. He was concerned that existing docks could not be repaired, and encouraged commission  
77 members to provide for repairs and maintenance on existing docks. There was liability at all town parks  
78 and he believed it was selective liability, which was not right. Some councilmembers said there were a  
79 small number of people affected by this. Based on his calculations, there were about 125 families on  
80 water boundaries in town; three people per household equaled roughly 10-percent of the town's  
81 population. He was also told it was the town's property; the town's property belongs to the public. The  
82 people are the town. He knew the commission had been "beaten to death" on the issue, and he  
83 apologized for them having to hear all the comments. He knew they were trying to do their best, and  
84 encouraged them to resolve the issue. He had heard discussion about the property owners going to  
85 FEMA and the Corp for permits, but whatever the end results might be, please allow docks.  
86

## 87 **7. BUSINESS.**

### 88 **Request to amend Section 17-417 of the Town Code of Ordinances to allow for the** 89 **placement of docks on town lakes and to add Section 17-418 Penalties for violations.** 90

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92 Ms. Abrams moved that Planning Commission respond to town council as follows: "Planning  
93 Commission appreciates receiving some of the requested information, but we remain unable to make a  
94 responsible recommendation for or against approval of this ordinance. Communications from MASC  
95 indicate that the town's insurance coverage does not extend to 'unlawful use of bodies of water' when  
96 such use violates any federal, state or municipal law or regulation.' Planning Commission needs to  
97 understand what constitutes 'unlawful use.' FEMA and the US Army Corps of Engineers are the sources  
98 of federal opinion on unlawful use. Because town council failed to authorize the expense of the  
99 engineering information required by FEMA and Corp of Engineers, we are no further along in obtaining  
100 these opinions. An additional issue for Planning Commission is the letter from Horry County. The town  
101 administrator represented this letter to council as saying "there would be *no impact* to the 30/70  
102 agreement." We do not agree with this interpretation. The letter says "...*we do not see* where it would  
103 impact..." Therefore, we are not satisfied with this alleged assurance from Horry County. *We respectfully*  
104 *request that whoever presents this report to town council read publicly our complete response rather than*  
105 *an edited version.*" Ms. Elliott seconded.  
106

107 A lengthy discussion was held regarding the town's liability and the lack of information available  
108 to the commission so its members could make an informed recommendation. Ms. Abrams believed to  
109 prematurely recommend against the ordinance would be unfair to residents that would like to have a  
110 dock. However, to prematurely recommend adopting the ordinance without the necessary information  
111 would be irresponsible to all the town's taxpayers.

112  
113 Ms. Elliot believed it was unfair to residents that wanted a dock, and it was also unfair and  
114 irresponsible for the Town Council to send the matter to planning commission without complete  
115 information or without considering authorizing the administrator to get the two engineering reports. In her  
116 opinion, this would be like putting a gazebo or dock on some else's private property. Ms. Elliott supported  
117 docks, but also wanted to ensure that all town residents were protected. In her opinion, spending  
118 \$17,000 for the reports was necessary.  
119

120 Mr. Lauer said it would nice if the federal agencies would just tell us that the docks would not be a  
121 factor, but they will not do so. Until FEMA makes its inspection, there is no way to predict what the  
122 inspection might reveal.  
123

124 Ms. Johnson was also concerned about the FEMA inspection. She believed the decision should  
125 be postponed until after the FEMA inspection, because FEMA might downgrade the town's rating if docks  
126 were added prematurely.  
127

128 Ms. Lowery was undecided on the issue and believed both sides had merit. This was not an  
129 issue of the commission trying to prevent a particular individual from building a dock as some implied.  
130 She was concerned with ensuring that this action would not negatively impact the future. Insofar as non-  
131 conforming structures, they are allowed to be repaired and maintained, unless 50-percent of it was  
132 destroyed, then it could not be rebuilt. Ms. Lowery expressed dismay that the commission's  
133 recommendations to council were amended to the point that they did not resemble the recommendation.  
134 She personally was tired of this discussion, and was ready to finish it, but she was not comfortable  
135 without all the questions answered.  
136

137 Chairman Pruitt believed the fundamental question was whether the docks would have a negative  
138 impact to the lakes. He said one negative would be docks washing away during storm events leaving a  
139 lot of debris to clean up. He also believed people might be out on their docks late at night have too much  
140 fun disturbing the neighbors. In his opinion, the question was whether the commission was willing to  
141 accept those possibilities to move forward. He personally was willing to accept, even though the  
142 commission wants more information. He did not expect to ever receive it, but he did believe there was  
143 enough information to make a decision.  
144

145 Members Abrams, Elliott, Johnson, and Lauer voted in favor. Chairman Pruitt and Member  
146 Lowery voted against. **MOTION CARRIED.**  
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148 Ms. Morris explained that Ms. Lowery was right about maintenance and repair of existing docks  
149 and the 50-percent rule. The town will not let the existing docks just disintegrate; if more than 50-percent  
150 of the value is destroyed, then the dock could not be rebuilt. The \$1 million insurance policy was  
151 recommended by the town attorney, and the town requires that for anything that involves an  
152 encroachment permit. For instance, the sidewalk cafes on Surfside Drive have to provide that coverage.  
153

154 Chairman Pruitt said there seemed to be a common misconception that the docks were being  
155 singled out for specific things, but in reality the rules were applied across the board to protect the town.  
156

157 Ms. Lowery understood that Town Council originally adopted a policy to prohibit docks a long time  
158 ago, but it was never codified. There was no law to enforce if someone chose to build a dock in spite of  
159 the policy. She expects docks to be built in the future, and she believed there would be more than just a  
160 few, which may create an undesired impact.  
161

162 Ms. Elliott said to clarify an earlier statement that the engineered drawings from DDC were to be  
163 delivered to Katherine Todd, ISO/CRS Specialist with FEMA, who would make a decision based on the  
164 professional report from DDC, which cost \$6,800.  
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166 **9. DISCUSSION ITEMS.** Any other matters of concern or information to be discussed by  
167 Planning Commission.

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Ms. Elliott asked if the yard maintenance ordinance applied to cleaning underbrush on undeveloped lots to help prevent wildlife populations like coyotes and snakes. Ms. Morris said the International Building Code Property Maintenance Code is used by the town. The code does not address vacant lots that are in their natural state. The commission can consider the issue if it wishes. Ms. Elliott said she would like to discuss it further.

Ms. Johnson said the issue came up a while back and it was determined that it was detrimental to wildlife.

**10. PUBLIC COMMENTS - General.**

Mr. Alan Beck, 10<sup>th</sup> Avenue North, was glad that Ms. Elliot explained what the FEMA requirement was for the study, and that FEMA would be interested in the displacement of water for potential stormwater capacity. The displacement of a dock is probably about 50 gallons of water. Compared to the total amount in all the lakes, it was absolutely insignificant, a fraction of a fraction of one-percent. In his opinion FEMA would report that the displacement of water would not be an issue and asked why they should be paid to give that opinion. The Corp of Engineers just needs to know whether the town lakes are a TNR (traditional navigable waterway, which the Supreme Court ruled is defined as being a body of water used for interstate commerce.) In his opinion, the Supreme Court would tell the Corp it has no jurisdiction over the town lakes, because the Corp is federal government and has no jurisdiction in local government. When the Corp is involved, it is with salt water-the ocean and tidal waters, like Myrtle Lake that would need a state permit. Mr. Beck reiterated obtaining the reports would be a waste, because neither would provide any new information. In his opinion it was a delay tactic to prevent the ordinance from being brought forward.

Ms. Judy Allen, 10<sup>th</sup> Avenue North, said she called FEMA and its only concern was if the lakes were salt water, otherwise it was not a matter of concern to FEMA.

Mr. Robert Barrett, Harbor Lights, said if the decision was put off again because of lack of information, he wanted the planning commission to ask the council why it built a dock on 16<sup>th</sup>. If council did not have all the clearances, he believed the dock should be taken down.

Mr. Ron Whitcomb, Harbor Lights, believed 50 gallon displacement would apply to floating docks. Fixed docks, which only has posts in the water, so water displacement would be much less, possibly a milk bottle full per post. Mr. Beck seemed to have done is homework insofar as the town lakes being navigable waterways. The planning commission, in his opinion, has tried to get information. He said council was “very good at puffing their chest out, and sounding real professional, and passing the buck to you with no information and no instructions.” He wanted someone to find out if the town lakes were not navigable waterways; if so, this was a moot point.

Mr. John Cunningham, Cedar Drive North, said he was an engineer and he assured the commission that there was, in fact, very little water displacement with docks. He did not have a dock, but would the ability to have one, if he chose to do so. If a storm hits the town, he believed there would more to worry about than docks breaking loose. There are plenty of out buildings and roofs that would end up in the lake. If the docks were limited to 12 x 12, it would be difficult to have a large, rowdy party. In his opinion, most property owners around the lakes were mature adults and would act responsibly.

**11. COMMISSION COMMENTS.**

Ms. Abrams understood that the displacement study was “absolutely silly.” Her understanding of what was told to the town administrator was that a displacement study was required before FEMA would issue an opinion letter on its letterhead. She argued the navigable water way point in 2002 when she wanted to build a dock. The Corp of Engineers also has jurisdiction over wetlands; lakes have wetlands in and around them, and that needs to be cleared up. She said she “was not willing to have this commission to serve as the goat for Town Council, who are the ones that need to bite the bullet on this.”

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225 Ms. Lowery said she was really, really sorry to keep putting the public through this process, and  
226 that the commission had to continue through it. She wished there was more that could be done.  
227

228 Ms. Johnson asked how many were here during Hurricane Hugo. (*Several people raised their*  
229 *hands.*) She said that Hurricane Hugo was not a direct hit, but it looked like a bomb had been dropped.  
230 Since Hurricane Hugo, the town has developed extensively. There are fewer places for water to drain.  
231 There was no way to know what would happen if a major hurricane hit the town. Water did most of the  
232 destruction during the storm; not the wind. If there were many docks and water was flowing from the  
233 county and the ocean was advancing inland, and the docks were torn up, it could cause flooding in many,  
234 many homes. That was why she believed they should wait until after the FEMA inspection to make a  
235 decision. The recent construction by the town was of decks, not docks. They are on town property.  
236 Owners can put decks on their property that was up to the water line, but does not extend over the water.  
237 (\*\* conversations in the audience.)  
238

239 Mr. Lauer said FEMA has control of the flood plain, which involves a large area of the town. He  
240 believed the town would be in trouble, if it did not allow FEMA to weigh in on the decision, which could  
241 cause the town to have higher insurance premiums, and possibly lose the CRS rating. This process  
242 began with considering health issues on the lake and they were ruled out. The scenic problems like  
243 obstructing views were dealt with by the specifications for construction. The only issues remaining are  
244 the insurance requirement, and the FEMA issue. He believed the \$1 million policy addressed insurance  
245 liability, and the FEMA approval was the last one. He feared making any decision against the federal  
246 government until its agencies had an opportunity to express its opinion. Mr. Lauer believed that FEMA  
247 would determine the docks would not be a problem, but still preferred to wait until after the inspection.  
248

249 Chairman Pruitt thanked everyone for attending to discuss the docks again. Although a decision  
250 was not made this evening, he thought one would be made soon. He reminded everyone that the town  
251 has a General Election on April 8<sup>th</sup> to seat three councilmembers. He encouraged everyone to vote.  
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253 **12. ADJOURNMENT.**  
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255 Mr. Lauer moved to adjourn at 6:49 p.m. Ms. Abrams seconded. All voted in favor. **MOTION**  
256 **CARRIED.**  
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258 Respectfully submitted,  
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261 Debra E. Herrmann, CMC, Town Clerk  
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264 Approved by duly adopted motion on April 1, 2014.  
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268 Mikey Pruitt, Chairman  
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270 Clerk's Note: This document constitutes minutes of the meeting that was digitally recorded. These are action minutes and not intended to be a  
271 complete transcript. Appointments to hear recordings may be made with the town clerk. In accordance with FOIA, meeting notice and the  
272 agenda were distributed to local media and interested parties. The agenda was posted on the entry door at Town Council Chambers, and in the  
273 Town Hall reception area. Meeting notice was also posted on the Town marquee.