

TOWN OF SOUTH BETHANY TOWN COUNCIL REGULAR MEETING MINUTES MAY 13, 2011
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ATTENDANCE

PRESENT: Mayor Jay Headman; Councilpersons John Fields, Bob Cestone, Sue Callaway, George Junkin, and Jim Gross; Town Manager Melvin Cusick; Ptlmn. Patrick Wiley; and Administrative Assistant Pam Smith

EXCUSED ABSENCE: Councilman Tim Saxton

MEETING CALLED TO ORDER

Mayor Headman called the May 13, 2011, Town Council Regular Meeting to order at 7:00 p.m., followed by the Pledge of Allegiance to the Flag.

Mayor Headman welcomed Dane Zimmerman, a Boy Scout working on his citizenship badge.

PROPERTY OWNERS' PARTICIPATION

- Diann Nazarian (20 Peterson Dr.) – Suggested that the Town create a compost for yard waste near the Town buildings. Mayor Headman said Council would look into it and get back to her.
- Barbara Jayne (1 S. 7th St.) – Announced that the 7th Annual Gardening of the Bays Native Plant Sale is Saturday, May 14, 2011, from 9 a.m. to 1 p.m. at the James Farm Ecological Preserve on Cedar Neck Road in Ocean View.
- Ron Wuslich (130 Petherton) – Referring to Page 10 of the **TOWN OF SOUTH BETHANY COMPREHENSIVE PLAN 2006** under *Implementation Strategies*, Mr. Wuslich would like to see the following strategy accomplished: Install a fence at the east end of the Anchorage Canal similar to the fence around the perimeter of the retention pond (forebay). He stated that the fence would go from the north end of the forebay to the far corner of the turn around. Mr. Wuslich added that the bulkhead on the north side of the turn around has trees growing out of it. Referring to the bulkhead, Councilman Cestone stated that it is private property. Mayor Headman stated that the Town does a yearly bulkhead inspection and makes recommendations to the private owners for improvements. The Town Manager stated that he will mention it to the Code Enforcement Constable who is currently in the middle of the bulkhead inspections. Regarding the fence, Mayor Headman said he does not know the answer to that. He stated that Council will discuss the issue during the Town survey discussions regarding future needs. Council will look into it and make a decision.
- Tom Roche (141 Henlopen Dr.) – Referring to the Assawoman Canal Dredging Project, Mr. Roche stated that he is not sure that the depth is correct at low tide. He inquired if the Town was going to follow up on the moving of the stumps and piers and if the Town was going to keep the property owners informed on where the project is. Councilman Cestone suggested telling the property owners to let the Town know if they have problems so that the Town can send an all-encompassing letter to DNREC. Mayor Headman stated that Council will follow up and continue to have a member assigned to the Assawoman Canal Dredging Project even though it is not a standard monthly meeting agenda item.
- Ed Nazarian (20 Peterson Dr.) – Stated that Ocean City picks up trash two times a week in the summer.

- Diann Nazarian (20 Peterson Dr.) – In a meeting with Delaware Forester Henry Poole several months ago, Mr. Poole told Ms. Nazarian about the State's Urban and Community Forestry Program in which the Delaware Forest Service assists towns with the management and care of their urban forest resources. It is free for towns that qualify for the program. Mr. Poole told Ms. Nazarian that there were some "suppressed trees" in the Richard Hall Memorial Park.

ADOPTION OF MINUTES

- **Town Council Workshop Meeting Minutes, April 15, 2011** – A motion was made by Councilman Junkin, seconded by Councilman Cestone, to accept the April 15, 2011, Town Council Workshop Meeting Minutes.

Because she was not present at the April 15 Workshop Meeting, Council Callaway asked what the timeline was for the public hearing regarding the Mediacom Franchise Agreement. Mayor Headman stated that the Town will use the input received from the Town's Mediacom survey as its source of information.

The motion was adopted.

LEADERSHIP REPORTS

- **Mayor's Report**—Mayor Headman reported:

Attended the Sussex County Association of Towns (SCAT) Breakfast Meeting and the SCAT Dinner Meeting. The dinner meeting was sponsored by Bethany Beach and the Governor was the guest speaker.

The Southern Delaware Cable Consortium Members are meeting next week.

Attended a meeting with Council Members Junkin and Callaway regarding the Anchorage Canal Drainage Area Project and the impact it will have on the Town.

Announced that the Ocean View Homecoming event is May 14, 2011, from 10 a.m. to 2 p.m.

Mayor Headman thanked Councilman Junkin for attending the meeting called by Senator Carper's office regarding the beach replenishment project. Through that meeting and through the efforts of DNREC and the U. S. Army Corps of Engineers the beach replenishment was postponed until the fall. Mayor Headman stated that Councilman Junkin did a wonderful job of representing the Town.

Mayor Headman thanked the South Bethany Property Owners Association (SBPOA) for their donations to the Town for beautification and water quality projects.

Mayor Headman thanked Council Members Cestone and Gross for stepping up and filling vacancies on Council this past year.

- **Town Manager's Report**—Melvin Cusick reported:

The Bethany Beach Volunteer Fire Company EMS day is May 14, 2011, from 10 a.m. to 2 p.m. Flyers were available on the sign in table.

Yard Waste Program – At the May 26, 2011, Town Council Workshop Meeting, Council decided to stop the use of plastic bags for yard waste as of the June 2011 pickup. The reason for the change is that Blue Hen Organics is raising the price from \$20 a ton to \$50 a ton if the yard waste is in plastic bags. In order to keep the costs down, the Town has instructed the contractor not to pick up yard waste that is in plastic bags or yard waste that

has trash comingled in it. The May pickup took 2 ½ days to complete. The contractor picked up close to 11 tons of yard waste. Mayor Headman stated that the yard waste program will be monitored and will be on the Workshop agenda every month for Council to discuss whether changes need to be made.

- **Treasurer's Report**—Tim Saxton reported as of April 30, 2011:

In Councilman Saxton's absence, there was no report.

Mayor Headman publicly thanked Councilman Saxton for his service to the Town.

- **Police Department Report/Questions**—Ptlmn. Patrick Wiley reported for the month of April, 2011:

- April 2 Domestic dispute on Cleveland Dr. Ex-boyfriend was gone upon police arrival. No further action.
- April 12 Local fugitive was apprehended on Rt. 1 after being stopped for traffic violations.
- April 13 Residential alarm on W. 10th St. False alarm. The residence was checked and found to be secure.
- April 18 Responded to a loud party on S. 3rd St. The party was shut down and no further action was required.
- April 18 Residential alarm on Seaside Dr. False alarm. Residence was checked and found to be secure.
- April 20 Agency assist – Assisted DNREC with a beached seal just out of town limits. The police contacted the MEER Institute, which specializes in rescuing marine wildlife. They responded and took care of the seal.
- April 20 Received a call from a resident in the Cat Hill development on Kent Avenue notifying the police that one of her family members living with her suffers from severe Alzheimer's.
- April 21 Public assistance call. Subject needed an escort to collect property.
- April 21 Phone harassment complaint from a residence on N. Ocean Dr. Investigation is pending.
- April 24 Residential alarm on W. 8th St. False alarm. The residence was checked and found to be secure.
- April 26 Residential alarm on Cleveland Dr. Alarm malfunctioned while the owners were home.

Before going to the next agenda item, Councilman Gross stated that the Beautification Committee has a sub group that is looking at improving the looks of Ocean Dr. Councilman Gross said that the Town Code addresses that to some extent. Councilman Gross referred to § 104-3 of the Town Code and asked if a written report had been submitted to the Council. Councilman Gross believes there are a number of properties that are out of compliance. The Town Manager stated that the report has not been submitted in the seven years that he has been with the Town. The Town Manager said he had been told that § 104-3 was in place for when the driveways were destroyed by storms. There was a date set for the Code Enforcement Constable to do an inspection to make sure the property owners had replaced the driveways. The Town Manager stated that the Code Enforcement Constable routinely

checks for compliance. He told Councilman Gross to let him know of any properties he believes are out of compliance and the Town Manager will have the Code Enforcement Constable check them. Councilman Cestone stated that he does not recall a written report ever being done. He said before the dune was installed, storms would knock people's driveways out as well as move rip rap around. The intent of the Code was to inspect the properties to see which ones had to be brought into compliance and get the people to correct it. Councilman Cestone said it does not have to do with appearance. It has to do with the protection of the road. Mayor Headman said Council will put that on the Workshop agenda for discussion.

ORDINANCES/RESOLUTIONS

- **First Reading of Ordinance 156-11, to amend Chapter 84, Licenses and Permits, to increase penalties, limit use of voluntary penalty, and add denial and/or revocation of rental license for violations of Chapter 100, "Peace and Good Order".**

Mayor Headman reviewed information about the Town's current procedures regarding rental licenses and rental tax. He stated that there are three major sources of revenue in the Town: property tax, rental tax, and transfer tax. Last year rental tax revenue was the second highest source of revenue for the Town bringing in over \$450,000. Rental tax revenue is very important to the Town. Last year the Town issued about 280 rental licenses and for the last four years the Town has averaged about 227 rental licenses (about 18% of the houses in the Town). The Town's current ordinances require property owners to complete the Application for Rental License or Non-Rental Declaration Form under "penalty of perjury". Last year over 200 property owners (about 15%) did not sign and return the form to Town Hall. The current fine for not obtaining a rental license and renting is \$100. As far as Mayor Headman knows, the Town has never fined a property owner for renting without a license. The burden of proof is on the Town. The number of homes being rented over the internet by owners has dramatically increased over the last few years. Most of the internet sites charge the owner a flat rate to advertise on their site. Mayor Headman stated that one site that he had checked charges \$329 a year. Rental prices in town range from approximately \$800 a week to \$9600 a week. Administrative changes have been made to the Application for Rental License or Non-Rental Declaration Form and Mayor Headman is recommending changes to the current town ordinances. Council wants to ensure that every property owner who rents pays their fair share. Council thanks all of the property owners who rent and who also obtain a rental license and have always paid their appropriate rental tax. Mayor Headman stated that the proposed changes will not have any impact on those who are following the Town's ordinances. Mayor Headman noted that Councilman Cestone helped him with the proposed ordinances and they conferred with the Town's lawyer.

Mayor Headman reviewed Ordinance 156-11. Mayor Headman stated that the goal is not to fine people. The goal is to get people to adhere to the ordinance.

Councilwoman Callaway suggested replacing the word "offer" with "advertise". She also had a few editorial items.

Referring to § 84-13A, Councilman Fields stated that the following does not make sense to him: . . . **or offer to lease or rent out a property without first obtaining** a valid annual rental license. It does not make sense to Councilman Fields that a property owner has to have a license to offer their property for rent. Councilman Fields stated that renting your property and offering it for rent is not the same thing. Councilman Fields noted that a property owner could offer their property for rent but then the property does not rent for whatever reason. He believes the property owner has lost \$150 for nothing. Councilman Fields is also concerned about the enforcement of the ordinance. He questioned who would check the internet and the newspapers everyday.

Councilman Gross agreed with Councilman Fields. Regarding §§ 84-13, 14, 14.1, and 14.2 of the Town Code, Councilman Gross believes that a major rewrite is needed so people can understand what the requirements are.

Councilwoman Callaway inquired if a property owner is required to have a rental license to list their property to rent with a realtor.

Regarding the enforcement of the proposed ordinance, Mayor Headman stated that if the Town receives a complaint about a property owner renting without a rental license, the Town can go to the internet, copy the ad, and send the property owner a letter. As the ordinance is currently, the property owner can say that advertising their house is not proof that they are renting. The Town has to prove that they are renting. The Town does not have the staff to follow up and prove that money has exchanged hands.

Councilman Cestone looks at rental licenses in the same way as mercantile licenses. If a contractor bids on a job in town and wins the bid, the contractor has to get a mercantile license to do business in town. If the contractor doesn't win the bid, the contractor doesn't need to get a business license. Councilman Cestone said that he can also see Mayor Headman's point of view.

Mayor Headman stated that he believes renting property is a business.

Councilman Junkin agrees with requiring a rental license in order to offer to lease or rent. Councilman Junkin's concern is with the penalty. Mayor Headman stated that the lawyer's response regarding the penalty was that once the Town has given a property owner notice that they are in violation of the ordinance and until they come into compliance, each day of non compliance is a new violation with a new penalty attached. Each case will be different. The Town may have very specific information that the property owner began renting it on a certain date. The Town can go to court with that information and the violation (it could be prior to that). The lawyer told Mayor Headman, "However, where the rubber meets the road is in court. The Town will be required to prove in court that the property was in violation for each day for which the Town is seeking a violation."

Frank McNeice (304 W. 7th St.) – Believes the Town is chasing a problem that is a non issue. He stated that if people advertise and they have no success in getting renters, why should they be required to have a rental license.

Ron Wuslich (130 Petherton Dr.) – Suggested lowering the cost of the rental license fee or do away with the rental license fee and raise the rental tax to 9%. Councilman Cestone noted that at one time the rental license fee was raised to equal the mercantile license fee because at that time contractors were being charged more to do business in the Town then renters were being charged to do business in the Town. Councilman Fields noted that per the Town's Charter the rental tax rate cannot exceed 8% of the gross rental receipts. Mayor Headman added that when Council had previously looked at this, neighboring towns' rental tax rates were lower than South Bethany.

Ed Nazarian (20 Peterson Dr.) – Inquired about what other towns are doing in regards to this and how they are enforcing it. Mayor Headman replied that the other towns have not touched it and it is enforced as an honor system.

Mayor Headman said the Town has made changes administratively and the Town will look at the data closer than it has in the past. He stated that his position is that the Town does not have the ability to investigate. Mayor Headman wants to make sure that property owners are encouraged very strongly to get a rental license if they are going to rent in the Town. Councilman Headman sees rentals, rental income, and a house as a place of business.

Mr. Nazarian inquired what would be done in regards to property owners who do not return the Application for Rental or Non Rental Declaration Form. Mayor Headman replied that for the first time the Town will send a follow up to those property owners. Then Council will have to talk about the expense of sending a follow up and whether or not to add a late fee in the future. Mayor Headman stated that the Town needs to get the property owners to turn their form in. It is an important document for the Town.

Regarding § 84-14.1A, Councilman Fields stated that if no changes were made (to the existing ordinance) it would work perfectly and it would be enforceable. Regarding **be fined \$300.00 for each day of violation**, Councilman Fields believes the problem is when does the violation start. Mayor Headman said it can begin at different spots. He said the violation begins when the property owner is notified. He said the Town's lawyer made it clear that if the Town has documentation or evidence that the property owner had been in violation before the day the Town sent the notification, the Town can identify that. However, it does not ensure that the Town will get those monies. If the property owner chooses not to take care of the issue and waits until the end of court, the property owner is in violation for every day that they have not gotten the rental license. Councilman Fields believes this would result in the Town getting into a messy court system as opposed to the Town simply getting a fine out of it. Councilman Cestone stated that the fine needs to be big enough that there is an incentive for the property owner to not try and get away with not paying their tax. Councilman Fields stated that he has problems with that. Regarding § 84-13A, Councilman Fields stated that if no changes were made (to the existing ordinance) it would be perfectly fine. He said at the least the phrase **or offer to lease or rent out a property** has to be taken out.

Mayor Headman declared this the first reading of Ordinance 156-11.

- **First Reading of Ordinance 157-11, to amend Chapter 118, Taxation, to change rental tax due date, increase penalties, and add voluntary assessment penalty option and limitations.**

Mayor Headman reviewed Ordinance 157-11. Mayor Headman stated that the purpose of changing the rental tax due date from September 30 to October 31 was to keep property owners from having to estimate their rental tax owed for September.

Mayor Headman clarified a question a Council Member had asked regarding why the property owner has to go to court rather than just paying a fine. Mayor Headman said the Town's lawyer made it clear that in the State they need due process and due process means you go to court. Mayor Headman added that in Delaware State Law a traffic fine can be paid in advance by mail but for all the rest there needs to be due process.

Referring to § 118-14C, Councilman Gross suggested striking "residential and commercial".

Mayor Headman declared this the first reading of Ordinance 157-11.

COMMITTEE REPORTS

- **Beautification Committee** – Councilwoman Callaway reported:

Councilwoman Callaway thanked the SBPOA for their donation of funds that were used to landscape the Richard Hall Memorial Park entrance, the South Bethany Cat Hill entrance, and the area underneath the outside Town bulletin board at Town Hall. Councilwoman Callaway thanked Diann Nazarian for her work on all three of those projects. Councilwoman Callaway said the Committee is working hard to use perennials so that this becomes less of a cost issue every year. Councilwoman Callaway thanked the Maintenance Supervisor and the Town Manager for their work.

The Beautification Committee met on April 27, 2011. The beautification status on the Rt. 1 median and the status of the Adopt-A-Canal End & Adopt-A-Road End Program were reviewed.

Councilwoman Callaway formed a sub group of property owners to explore beautification efforts on the east side of Rt. 1. Ideas will then be presented to the full Beautification Committee for them to review and prioritize. The first meeting of the sub group is May 16, 2011, at Town Hall.

The next Beautification Committee meeting is May 31, 2011, at 9:30 a.m. at Town Hall.

- **Budget and Finance Committee** – Councilman Saxton reported:

In Councilman Saxton's absence, there was no report.

- **Canal Water Quality Committee** – Councilman Junkin reported:

Met with Marianne Walsh of DeIDOT and Sue Barton of the University of Delaware.

Work has been done in the ditch near Sea Colony that is an implementation of one of the retrofit suggestions made in the Anchorage Canal Drainage Area Assessment Project. It is expected to get 10% of the nitrogen and 11% of the phosphorous of the total of all the retrofits that were suggested (getting about 1/10 of it with this one project).

The next phase is the medians along Rt. 1. It is expected to get 5½% of the nitrogen and 12% of the phosphorous of the goals that were set by the Anchorage Canal Drainage Area Assessment Project. For this phase, DNREC is funding \$46,000 and the Center for the Inland Bays (CIB) is funding \$15,000 plus \$1,200 for advertising/educational signs. There is a matching requirement from the Town of around \$20,000 for which in kind services can be used. The CIB grant will be used for the excavation required to turn these areas into efficient rain gardens in order to get the pollutants out of the water. The Town will be responsible to pay for the vegetation to cover the rain gardens.

The Canal Water Quality Committee will be meeting the week of June 6, 2011. The Committee will talk about the water quality monitoring in the canals. The Committee has had one full year of continuous monitoring in the Anchorage Canal and they are helping DNREC monitor four sites in the Little Assawoman Bay. Comparing the 10 sites in the town canals with the sites in the Little Assawoman Bay, the sites in the Little Assawoman Bay are very close to the site at the tidal gage (this is where the Little Assawoman Bay comes into South Bethany). The further you go from the tidal gage towards the dead end canals the worse off the canals are.

The contract to clean out the forebay has been let and DeIDOT has told the contractor that they want it done before it gets crowded this summer.

Oyster Gardening Program – Getting more spat and oyster baskets this year. Twenty or more new people are needed for the program. If interested contact George Junkin or Allan Allenspach.

Al Rae worked with Sally Boswell from the Center for the Inland Bays on the *Taking Care of Your Lawn* flyer that was in the May 2011 ZEPHYR. This was done in an effort to try and educate the property owners from a water quality point of view. Councilman Junkin has received many good comments regarding the flyer.

Storm drain stenciling would like to be done to help educate or inform people that whatever goes down the drain ends up in the canal.

The Canal Water Quality Committee is working closely with the Beautification Committee on the medians and they have asked one of the contractors that is working on the retrofit project near Sea Colony to give the Committee some ideas on what should be done on the east side where the water comes down some of the roads straight into the catch basin.

The Committee is looking at putting a diffuser system in one of the canals. The Committee is getting details on that. It is something that would have to be proposed to the Town Council to get the money to do it.

Regarding the South Bethany Comprehensive Plan Community Questionnaire (Town Survey), Councilman Junkin stated that 859 surveys have been returned to the Town (about a 66% return). Councilman Junkin and Councilwoman Callaway are gathering the responses from the surveys and putting them into a report. Councilman Junkin will make a presentation of the summary at the May 26, 2011, Town Council Workshop Meeting. Mayor Headman thanked Council Members Junkin and Callaway for their work on this project.

- **Planning Commission** – Councilman Gross reported:

There have been no Planning Commission meetings since the last meeting of the Town Council. The Planning Commission is considering planning an educational workshop.

ADJOURNMENT

A motion was made by Councilman Fields, seconded by Councilman Gross, to adjourn the May 13, 2011, Town Council Regular Meeting at 8:35 p.m.