

**TOWN OF SOUTH BETHANY
TOWN COUNCIL REGULAR MEETING MINUTES
OCTOBER 10, 2008**

ATTENDANCE

PRESENT: Mayor Gary Jayne; Councilpersons John Fields, Jay Headman, Bonnie Lambertson, Richard Ronan, and Marge Gassinger; Town Manager Melvin Cusick; Lt. Linda O'Malley; and Administrative Assistant Pam Smith

MEETING CALLED TO ORDER

Mayor Jayne called the October 10, 2008, Town Council Regular Meeting to order at 7:00 p.m., followed by the Pledge of Allegiance to the Flag.

The Bethany Beach Volunteer Fire Company brought one of the two new ambulances to Town Hall prior to the meeting for people to view. Mayor Jayne introduced and thanked the Chief of the Bethany Volunteer Fire Company, Brian Martin, and said that South Bethany appreciates the work that the Fire Company does. Chief Martin thanked Mayor Jayne for his support and then took questions.

ADMINISTRATIVE MATTERS

- Appointment of Planning Commission Member – Bob Johansen

At the request of Mr. Johansen, Administrative Matters was moved to the beginning of the agenda.

Council had a copy of Mr. Johansen's resume. (Attached)

Mayor Jayne explained that the Mayor recommends the appointment of a Planning Commission Member and the Council approves. Mayor Jayne recommended that Bob Johansen be appointed a member of the Planning Commission.

A motion was made by Councilman Headman, seconded by Councilwoman Gassinger, to appoint Bob Johansen to the Planning Commission. The motion was unanimously carried.

Mayor Jayne told Mr. Johansen to stop by Town Hall at his convenience and have the Town Clerk, Dee Burbage, swear him in. Mayor Jayne stated that Council appreciates his service and he believes Mr. Johansen will find working with Councilman Fields and the other Planning Commission Members to be a very interesting and rewarding experience.

PROPERTY OWNERS' PARTICIPATION

- Ed Nazarian (20 Peterson Dr.) – Asked when the Artesian water tower was scheduled to be painted. The Town Manager stated that he had met with Artesian this past summer. Artesian is waiting until the fall and winter so that they can switch to another water tower because they are going to drain the water tank down. Artesian plans to clean the interior and paint the exterior.
- Mike Matera (303 W. 9th St.) – Stated that someone had complained to him about a house on Russell and Periwinkle that had two trash bins and thought they probably had two kitchens in the house because they had remodeled the house. Mr. Matera said that he spoke to the

Code Enforcement Constable and he said that he cannot go in the house without permission. The Town Manager agreed that the Code Enforcement Constable cannot enter the building without the property owner's permission. In the past when the Town discovered through a real estate or rental ad that there was a second kitchen, the Code Enforcement Constable sent the property owner a letter and gave them a certain amount of time to correct it.

- Ed Nazarian (20 Peterson Dr.) – Inquired if the Town had an ordinance pertaining to inoperable watercraft left sitting on a property for a long period of time. Mayor Jayne stated that the Property Maintenance chapter of the Town Code mentions boats.

ADOPTION OF MINUTES

- **Town Council Regular Meeting Minutes, September 12, 2008** – A motion was made by Councilman Headman, seconded by Councilwoman Gassinger, to accept the September 12, 2008, Town Council Regular Meeting Minutes. The motion was unanimously carried.
- **Town Council Special Meeting/Workshop Notes, September 25, 2008** – A motion was made by Councilman Ronan, seconded by Councilwoman Gassinger, to accept the September 25, 2008, Town Council Special Meeting/Workshop Notes. The motion was unanimously carried.

LEADERSHIP REPORTS

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

The University of Delaware's Coast Day was a great event and really worthwhile. Mayor Jayne added that it was nice to see folks from South Bethany there.

Coastal Cleanup Day went very well. South Bethany had a lot of volunteers. The beach is very clean. The Town appreciates everybody's participation.

It was Candidates Night at the SCAT meeting this month.

On October 22 at 7 p.m. at the South Bethany Town Hall there will be a presentation by Dr. Wendy Carey who is from the University Of Delaware College Of Marine Science in Lewes. The title of the presentation is "An Overview of Coastal Landscaping".

On October 24 at 7 p.m. at the South Bethany Town Hall there will be a Crime Prevention Seminar presented by the South Bethany Police Department. The seminar will cover proper installation and use of locks and dead bolts, indoor and outdoor lighting, use of landscaping as a criminal deterrent, and other security devices.

Because a lot of balloons were picked up on the beach on Coastal Cleanup Day, Mr. Nazarian asked if Council could request that Grottos do away with balloons. Mr. Nazarian stated that the fish will eat the balloons. Mayor Jayne stated that there have been a lot of weddings on the beach that had balloons. Mayor Jayne said that the Town does not have anything in the Code and Council maybe should look into that.

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

The Town is in the recertification process for the Community Rating System which gives South Bethany property owners a 10 percent savings on their flood insurance. The Town has passed the first review and the Town Manager expects the Town to pass the second review.

- **Treasurer's Report**—Melvin Cusick reported as of September 30, 2008:

September Revenue	\$ 186,343.73
September Disbursements	\$ 121,116.76
Balance	\$ 1,304,756.00

The transfer tax for September was up over last year's September total by a little over \$4,000.

- **Police Department Report/Questions**—Lt. Linda O'Malley reported for the month of Sept., 2008:

September 3	911 disconnect – an accidental call to 911.
September 4	Subject was stopped for traffic violations and was discovered to have drug paraphernalia and charged.
September 14	Agency assist with an attempted murder in Ocean View. Units in conjunction with State Police and other municipal agencies were able to apprehend the subject. The subject committed suicide prior to being arrested.
September 14	Subject arrested for burglarizing several residences on Evergreen Rd. He was also going into vehicles and stealing items out of the vehicles. He was located and arrested.
September 16	Violation of local code on Black Gum Dr. Subjects charged with not having a Mercantile License or a Building Permit.
September 22	Theft on Periwinkle Rd. involving a cleaning lady who was arrested for theft after removing property.
September 26	Unexploded ordinances found on the beach after the storm. Lt. O'Malley stated that people were picking up the ordinances. Lt. O'Malley stressed that it is very dangerous to touch these ordinances. If you discover an ordinance, call the police.
September 27	Loud party that was shut down.
September 29	Trespassing on Carlisle Dr. There was a verbal argument. The victim denied prosecution.

Regarding the Police Department Monthly Report, Councilwoman Lambertson asked if it was because the Town is missing a police officer that the administrative hours were higher, the total patrol hours were lower, and the total on duty was also lower. Lt. O'Malley said it is partly due to the missing officer. Lt. O'Malley has brought it to the Chief's attention.

ORDINANCES/RESOLUTIONS

- **First Reading of Ordinance 143-08, Amending Chapter 104, Property Maintenance, Article II Entitled "Grass and Weeds", to clarify. (John Fields)**

Councilman Fields explained that Chapter 104 of the South Bethany Code says that grass and weeds cannot be more than 10 inches high. If the grass and weeds are more than 10 inches high, the Town will mow the grass and weeds and bill the property owner.

Councilman Fields reviewed the synopsis.

Councilman Fields noted that since the Town Council's last Workshop someone had substantially improved the ordinance. The Town Manager stated that the Town Attorney had reviewed the ordinance and made some revisions.

Councilman Fields said that there was one change in § 104-8B that he believes should say *including a photograph* instead of *consisting of a photograph*. Councilman Fields stated that he believes the word *consisting* is too loose and that the word *including* is a more definable legal term. There was a discussion. Councilman Fields made a motion to change the word *consisting* to *including*. Mayor Jayne asked for a second on the motion. There was no second. Mayor Jayne stated that the motion failed for a lack of a second and it will stay the way it is.

Councilman Headman stated that his concern was with § 104-8A which states, "The Town shall annually notify all property owners via first class mail addressed to the property owner at the address shown on the Town's property tax records . . ." Councilman Headman believes it is a manpower cost to the Town. Councilman Headman agrees that the Town needs to notify property owners of the ordinance and get it out in the ZEPHYR but does not believe the Town should be obligated for the next 10 to 20 years to notify property owners through a letter. Councilman Headman concluded that it is not necessary and it is an obligation or precedent that Council should not set.

The Town Manager stated that in his discussions with the attorney, this is one of the few ordinances that the Town takes action before notifying the property owner that they are taking action. He added that the Town had over 100 grass violations this past spring, some of which went up to the lawyer.

Mayor Jayne stated that it won't cost anything to send the notification out with the Application for Rental License or Non-Rental Declaration form. Mayor Jayne stated that he wouldn't argue with the lawyer because people have threatened to take the Town to court over grasscutting. If it would go to court, the lawyer wants to be able to say that everybody in Town was given adequate notification.

Councilman Ronan said that by saying in this ordinance that the Town has to send out a notification does not obligate the Town to send out notification for other ordinances. He also believes sending the notification will save the Town money and aggravation in the long run.

Mayor Jayne stated that the notification will hopefully reduce the number of violations.

Mayor Jayne asked for any additional comments from Council. There were none. Mayor Jayne stated that he believes the consensus of the Council is that Ordinance 143-08 is okay the way it is.

Mayor Jayne declared this the first reading of Ordinance 143-08.

Mr. Rae said that this ordinance does not state who is responsible for cutting long grass and weeds in the right-of-way. Councilman Fields stated that the right-of-way is the Town's responsibility. Mayor Jayne asked Mr. Rae if he has seen places where the right-of-way is not cut. Mr. Rae said he had. Mayor Jayne told him to tell the Town Manager. The Town Manager stated that he only knows of a few places on May's Way that the Town has to cut. The rest of the property owners cut their grass all the way up to the street side. It is not a problem for the Town.

- **First Reading of Ordinance 144-08, Amending Chapter 84, Licenses and Permits, to Remove the Mercantile License Fee and Rental License Fee, Make Administrative Changes, and Add Permit Requirements for Propane Gas Connection and Geothermal Well Installation. (Gary Jayne)**

Mayor Jayne reviewed Ordinance 144-08 and then asked for comments from the Council. There were no comments from the Council. Mayor Jayne asked for comments from the audience.

Regarding the propane gas connection, Mr. Cestone suggested putting the word "Central" in front of the word "propane" if the intent is for the central propane system and not for a propane tank. Mayor Jayne agreed.

Mr. Cestone suggested that §§ 84-16 and 17 ought to be in §145-68 of the Zoning chapter where it discusses permit requirements. Mayor Jayne stated that the Town will check with the attorney.

Councilman Headman recommended changing number 15 of the Schedule of Fees to Central propane service connection. Council agreed.

Mayor Jayne declared this the first reading of Ordinance 144-08.

- **First Reading of Ordinance 145-08, Amending Chapter 141, Water Service, to Remove the Water Connection Permit Fee and Make Administrative Changes. (Gary Jayne)**

Mayor Jayne stated that this ordinance removes the water connection permit fee and has the fee set by resolution of the Town Council.

Mayor Jayne reviewed § 141-5D in which the *\$10 per single-family dwelling* is deleted and the following phraseology is inserted: *as set by resolution of the Town Council and available in the Town Office.*

Mayor Jayne asked for comments. There were no comments

Mayor Jayne declared this the first reading of Ordinance 145-08.

- **First Reading of Ordinance 146-08, Amending Chapter 145, Zoning, to Define Renovation/Remodeling/Alteration and Add Permit Requirements for Interior Renovation/Remodeling/Alteration. (Gary Jayne)**

Mayor Jayne stated that Ordinance 146-08 adds a definition, a new building permit requirement, and a fee for renovation, remodeling, and alteration. Currently the Town does not require a permit for interior alterations.

Mayor Jayne read §145-3 and §145-68A(6). Council had a short discussion but no changes to the ordinance were suggested.

Mr. Roche stated that his refrigerator sits in a wooden structure and if he changes the refrigerator he will probably have to change that wooden structure. Mr. Roche inquired if that would require a permit. Mayor Jayne said it would if it involved tearing down a wall and taking studs out. He added if it is just cabinetry then you do not need a permit. The Town Manager stated that this ordinance excludes countertops and built-in furniture.

Mr. Cestone stated that because this is a change to the Zoning Chapter it requires a public hearing advertised 30 days in advance. He added that the public hearing is usually

scheduled at the beginning of the meeting before the third reading of the ordinance. Councilwoman Gassinger agreed.

Mayor Jayne declared this the first reading of Ordinance 146-08.

- **First Reading of Ordinance 147-08, Amending Chapter 42, Building Construction, to Control the Use of Portable Fuel Powered Electric Generators and Fuel Powered Air Compressors, Except Pile Drivers, for Construction Purposes. (John Fields)**

Councilman Fields stated that Council had passed an ordinance prohibiting the use of portable fuel powered electric generators and fuel powered air compressors. By passing that ordinance, Council inadvertently prohibited driving pilings in South Bethany because it is necessary to use portable fuel powered air compressors to drive pilings. Ordinance 147-08 corrects an ordinance that was previously passed. Councilman Fields noted that the only change was in § 42-12 by adding *except pile drivers* to the first paragraph.

Councilman Fields asked for questions from Council. There were none.

Mayor Jayne declared this the first reading of Ordinance 147-08.

- **Resolution 2-08, a Resolution to Revise South Bethany's Schedule of Fees. (Gary Jayne)**

Mayor Jayne stated that Council had reviewed Resolution 2-08 at the Workshop and there were no changes since then.

Councilman Fields stated that Council can pass and sign the resolution and the Administrative Assistant can change Number 15 of the Schedule of Fees to *Central propane service connection* after the meeting.

- **Resolution 3-08, a Resolution to Permit the Use of Gas or Diesel Fuel Powered Generators or Compressors for Pile Drivers. (Gary Jayne)**

Because an ordinance requires three readings before being passed, Councilman Fields stated that the Town needs a resolution permitting contractors to use pile drivers in the Town of South Bethany until Ordinance 147-08 has been passed.

Council voted on Resolution 2-08 and Resolution 3-08 as follows:

Mayor Jayne asked for a motion on Resolution 2-08 to revise the fees. A motion was made by Councilwoman Lambertson, seconded by Councilman Ronan, to accept the revised Schedule of Fees. The motion was unanimously carried.

Mayor Jayne asked for a motion on Resolution 3-08 to permit the use of gas or diesel fuel powered generators or compressors for pile drivers. A motion was made by Councilman Fields, seconded by Councilman Headman, that Council approve Resolution No. 3-08. The motion was unanimously carried.

COMMITTEE REPORTS

- **Assawoman Canal Dredging** – Councilwoman Gassinger reported:

The state started dredging again last month. Photos of the dredging were displayed in the back of the Town Council meeting room.

Councilwoman Gassinger attended a meeting where Representative Hocker was speaking and he felt confident that the dredging would be completed this year. However, Councilwoman Gassinger noted that they have had delays and the regulatory agencies dictate when they can and cannot work. If they do not complete it this year, they will have to start again next year.

- **Beach Replenishment** – Councilman Ronan reported:

Mayor Jayne stated that the Beach Committee is working on recommendations on walkways, handrails, and security to present to Council at the next workshop meeting.

Councilman Ronan stated that Council has a lot of decisions to make on the beach, especially on the walkways.

Councilman Ronan was thankful that South Bethany's beach was not really affected by the last storm.

Mayor Jayne said that Dewey Beach and Bethany Beach are going to get pumped up in November.

- **Beautification** – Councilman Ronan reported:

Beautification is moving ahead for the winter. The Maintenance Supervisor is taking out some of the plants and will hold them over in the Maintenance Building until next year. Also, winter pansies will be planted out by the South Bethany signs on Rt. 1.

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

Bob Johansen was appointed to the Planning Commission this evening. The Planning Commission is now at full staff. Councilman Fields will have an organizational meeting with the Planning Commission the end of October or the beginning of November to elect a chairman and to set an agenda for the months to come.

- **Tidal Pump Program Update** – Councilman Headman reported:

Had a beneficial meeting with a professor who is a department head at the University of Delaware to discuss issues regarding environment impact that the Tidal Pump would have if constructed. He has responded with a letter summarizing his issues and some points that the committee needs to follow up on. Councilman Headman will share the letter with the Tidal Pump Committee.

- **Canal Water Quality** – Councilman Headman reported:

One of the concerns in South Bethany and all the coastal towns from Dewey south to Fenwick Island is the impact that stormwater is having on our canals and the inland bays.

With the help of the Center for the Inland Bays, specifically Chris Bason, we submitted to the Army Corps of Engineers an assessment project to assess retro fits or strategies to impact on the stormwater coming into the Anchorage Canal and other areas in the canals. We received \$70,000, part of which was matching funds (\$35,000) from DelDOT. We are beginning to create and write the RFP for that. Then we will be assessing and getting recommendations. From that we are hoping to get some money to address some of the issues and recommendations made during the assessment.

Councilman Fields and Councilman Headman are coming back to Council with an ordinance that addresses the issue of runoff and impervious surfaces. They are trying to create an ordinance that Council can agree on that will benefit South Bethany now and in the future.

Mayor Jayne, Councilman Headman, and George Junkin attended the DeIDOT Capital Transportation Program Public Hearing regarding future capital improvement projects for DeIDOT. Mayor Jayne submitted a letter to DeIDOT regarding stormwater runoff. They also met with David Baker, Administrative Assistant to the Sussex County Council. They have asked for the County Council's support, in addition to their recommendations, that stormwater needs to be addressed in the coastal communities because the stormwater is going right into the inland bays. They will also be meeting with DNREC regarding this issue. Mayor Jayne is trying to get the coastal communities to work with us.

ADJOURNMENT

A motion was made by Councilman Fields, seconded by Councilman Headman, to adjourn the October 10, 2008, Town Council Regular Meeting at 8:25 p.m.

PHS:Regular Meeting Minutes.10.10.08

Attachment: Mr. Johansen's Resume