

**TOWN OF SOUTH BETHANY
TOWN COUNCIL REGULAR MEETING MINUTES
OCTOBER 9, 2009**

ATTENDANCE

PRESENT: Mayor Gary Jayne; Councilpersons Jay Headman, Tim Saxton, Diane Matera, Marge Gassinger, and Rob Youngs; Town Manager Melvin Cusick; Ptlmn. Joshua Rowley; and Administrative Assistant Pam Smith

EXCUSED ABSENCE: Councilman John Fields

MEETING CALLED TO ORDER

Mayor Jayne called the October 9, 2009, Town Council Regular Meeting to order at 7:00 p.m., followed by the Pledge of Allegiance to the Flag.

PROPERTY OWNERS' PARTICIPATION

- Kathy Jankowski – President of the SBPOA (310 W. 4th St.) – On behalf of the SBPOA, Ms. Jankowski asked the following questions and asked for a follow up name for each of the questions to direct property owners to if they have additional questions:

What is being done to address the standing water on the beach side of homes on Ocean Dr which becomes very stagnant, looks disgusting, and is probably a breeding area for mosquitoes?

Mayor Jayne stated that the problem exists on private property. If oceanfront property owners want to bring in sand, they can come to the Town for an application for the DNREC permit. DNREC has been issuing the permits quickly. Mayor Jayne said that a number of property owners have gotten together and hired a contractor to bring in sand. Councilwoman Gassinger noted that the standing water is not from rain but from tides. She stated that the Center for the Inland Bays has said that it would be a very good idea to do plantings there. Councilman Headman stated that DNREC made it very clear that it is private property and they were leaving it to the property owners to fill it in. Councilwoman Gassinger said that prior to doing the beach replenishment there were two nor'easters that had come in and that is the reason it is like it is. The Town Manager said that the Town contacted the Delaware Mosquito Control and they are checking for mosquitoes periodically. Thus far they have reported that there has been no breeding of mosquitoes in that area.

Is there a plan to fill in the patched areas on some streets where they are sinking, and, if so, when?

The Town Manager stated that the utility companies are responsible to make the repairs. He said that Sharp Energy hires a contractor to come in and fix theirs and they usually wait until they have four or five to make it worthwhile. He stated that he keeps a list and notifies Sharp Energy when they are up to four or five. Property owners can contact the Town Manager to add any to his list. The Town Manager added that the Town will be requiring utility companies to get a permit for road cuts in order to track them better.

What alternatives are there for residents still interested in pursuing developing the Robert Hall Park?

Mayor Jayne stated that no one has approached the Town regarding the park. He noted that there are a number of things that have to be addressed before the project could go ahead.

He stated that the Town has no money and is in no position to take the initiative to do it. There is an enormous amount of homework that has to be done which in itself would cost money. The Town would have to check with the lawyers regarding the endowment from the Hall Family, whether or not it is wetlands, and the list goes on and on. Mayor Jayne noted that when the Halls deeded the property to the Town they had a limit of 15% on the development of the property. He believes that has been used with the Town buildings.

Is a permit required for the community yard sale held on Election Day?

Mayor Jayne stated that the Town has never required a permit for that. The Town Manager stated that the Code is not clear. The Code states that anything that is done for profit requires a Mercantile License. The Town Manager noted that at the last Council meeting Mayor Jayne wanted a Council Member to look at the ordinance and see if it needed to be revised. Mayor Jayne said that theoretically if someone is selling something in town they've got to have a Mercantile License. Regarding yard sales, the Town has never enforced it. But Council should fix the ordinance to allow yard sales without a permit or maybe with a permit. The Town Manager said as it is now, if the Code Enforcement Constable receives a complaint regarding yard sales, according to the Code he has to enforce it. Mayor Jayne said that he feels if somebody wants to have a yard sale, let them have a yard sale. But if they are going to have one every week or two or three times a month that is different. Councilwoman Matera volunteered to look into the ordinance regarding yard sales.

- Mary Suazo (7 S. 3rd St.) – Asked that Council change the ordinance in the Zoning Chapter regarding setbacks to allow items such as swing sets, hot tubs, and clothes lines. Councilman Saxton said he is looking into this ordinance because he has received multiple complaints from property owners about not being able to put in a swing set. He noted that it is complex because setbacks are different throughout the town. Councilman Saxton plans to bring it to the October Town Council Workshop. Ms. Suazo stated that storage sheds are also a problem. Mayor Jayne said that they are not allowed. Ms. Suazo requested that the Town get the word out and keep the property owners posted on the yard sale issue and the setbacks issue. Mayor Jayne said that the Town has some homework to do. Mr. Cestone said in 2001 the Planning Commission had looked into this and there is documentation to refer to.
- Ed Nazarian (20 Peterson Dr.) – Regarding recycling, asked what property owners who are out of town when DSWA's contract ends should do before turning in their DSWA recycling cart. Mayor Jayne stated that DSWA's contract with the Town ends at the end of the year. The Town Manager said that he negotiated with Allied Waste, the Town's current waste hauler, for \$1.60 per pickup of recyclables beginning January 1, 2010, for the remainder of the Town's trash contract which is three years and four months. Mayor Jayne said that he, the Town Manager, and Councilman Headman have been working on the recycling contract for some time. The results of the Town Manager's negotiations were presented to Council at two Workshops. He added that the Town Manager did a terrific job of negotiating a good deal for the Town getting the best price on the coast. The Town Manager stated that DSWA made an agreement with Allied Waste to pick up the recyclables for the remainder of DSWA's contract with the Town because DSWA is losing money statewide and they want to start cutting expenses. Allied Waste began picking up the Town's recyclables on Friday, October 2. The Town will be charged \$1.00 per pick-up until January 1. Property owners do not need to do anything different. Allied Waste will switch out the containers as property owners put out their recycling carts. For residents that return in the spring, their carts will be exchanged when they put them out at curbside for regular recycling pickup. Allied Waste will do this for as long as it takes. Property owners will still have a choice of container size. It is still single stream recycling. Ms. Jankowski asked how the additional cost would be absorbed. The Town Manager stated that it will be included in the trash bill next year. He added that there is enough money in the recycling account to cover January, February, March, and April. The

residents will not be billed until May 1. Ms. Jankowski asked if the residents will be forewarned. The Town Manager said yes.

- Ed Nazarian (20 Peterson Dr.) – Stated that he had asked in the spring what was going to happen to the beach patrol truck since the Town purchased an ATV vehicle for the lifeguards and he was told that the Town was going to sell the truck. Mr. Nazarian inquired if the truck had been sold. The Town Manager said that the Town never said it was going to sell the truck. The Town still uses the truck to empty the trash barrels on the beach early in the morning which requires a four wheel drive truck. Mayor Jayne said he does not remember saying that the Town was going to sell the truck, but if he did, he misspoke and apologizes.
- Bob Cestone (140 New Castle Dr.) – Regarding establishing a permit for utility companies when they dig a road, stated that he started work on that when he was on Council and there should be paperwork on file as well as copies of the code in Fenwick and contact names and numbers. He said one problem he had was after notifying the utility companies, their lawyers sent letters citing the Delaware Code saying you can't hamper them from doing their job. What they didn't say is the Delaware Code says in the next paragraph that municipalities have the right to protect their roads and their infrastructure. The Town Manager stated he had the same experience in Maryland but did it anyway. He added the Town is not charging for the permit. It is an inventory tracking for the Town because they are responsible for fixing the road.
- Mike Matera (311 W. 9th St.) – Turned a blue sheet in for the Code Enforcer about three months ago about limbs on the corner of Russell Road and Canal Drive growing over the canal. The limbs have stopped him from cleaning out the dead end of the canal. He stated that the limbs have not been cut.

Mr. Matera stated that except for the annual yard sale, any yards sales he has is to sell bicycles that he fixes that people have given him instead of throwing them in the trash.

ADOPTION OF MINUTES

- **Town Council Regular Meeting Minutes, September 11, 2009** – A motion was made by Councilwoman Gassinger, seconded by Councilman Saxton, to accept the September 11, 2009, Town Council Regular Meeting Minutes. The motion was unanimously carried.
- **Town Council Special Meeting/Workshop Notes, September 22, 2009** – A motion was made by Councilman Headman, seconded by Councilwoman Gassinger, to accept the September 22, 2009, Town Council Special Meeting/Workshop Notes. The motion was unanimously carried.
- **Town Council Executive Session Minutes, September 22, 2009** – A motion was made by Councilman Headman, seconded by Councilwoman Gassinger, to accept the September 22, 2009, Town Council Executive Session Minutes. The motion was unanimously carried.

LEADERSHIP REPORTS

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

This year's Coastal Cleanup Day was very successful. It was good to see so many people take part. Not only was it beneficial to the beach but it was a community effort that brought people together.

The 40th Anniversary Celebration was very successful and a milestone in the Town's history. It was an opportunity for people to come together in the spirit of community. Mayor Jayne thanked all who participated and all who worked so hard to put on the celebration.

Mayor Jayne attended a National Incident Management Systems (NIMS) Seminar titled *ICS Overview for Executives/Senior Officials* at the Sussex County Emergency Operations Center. NIMS is emergency management training which the Town Staff and Police Officers are required to complete and have completed. The Town is NIMS Certified.

The Town of Bethany Beach asked the Town of South Bethany to join them in opposing an AT&T telecommunication cell phone tower immediately north of Arby's. Bethany Beach's lawyer, who is also South Bethany's lawyer, filed a position paper with the Sussex County Board of Adjustment opposing the tower. Mayor Jayne's understanding is that Middlesex and Sea Colony have also opposed it. Mayor Jayne said he thinks that in the meantime AT&T has found alternatives. Diane Nazarian asked why South Bethany submitted the letter in opposition to it. Mayor Jayne replied that the attorney submitted the letter on behalf of South Bethany and Bethany Beach. Because of the time frame the letter had to be done quickly. The Town Manager polled the Council Members for their approval. The Town Manager stated that the objection was that people did not have enough time to comment. The Public Hearing posting on the property was placed in the wrong place by the County workers and a lot of people were not aware of what it was. He added that he believes Bethany Beach's complaint was that there are homes really close to where the tower is going to be. Councilman Saxton stated that he appreciates the fact that Council was polled, but questioned why the lawyer did not notify the Town earlier. He feels it is unfair to have to vote when there are questions not answered. Mayor Jayne stated that he does not know the details, but it was a matter of timing. The Town Manager said that he believes the letter submitted did not state the Towns were opposed to the tower, it stated that the Towns wanted the hearing reopened due to incorrect posting.

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

An Informational Meeting for the Proposed Assawoman Canal Pathway was held at South Bethany last week. Meetings have also been held at Ocean View and Bethany Beach. The final meeting for the fall is being held at Sea Colony tonight. Comment sheets will be taken until October 16. The State Parks Commission will compile the comment sheets, and the committee will work over the winter to decide what they are going to do next. The plan is to have more hearings in the spring and summer. Posters depicting the proposed pathway are at Town Hall.

The Town Manager thanked Mary Suazo and Carolyn Marcello for working with the Staff for the 40th Anniversary Celebration. He also thanked the SBPOA for paying for the 40th Anniversary Celebration.

Bob Cestone asked if the Police Department had given their thoughts on the pathway. He stated that the police would not be able to pursue suspects that run down the path because the police car is probably not going to fit down the path. The Town Manager replied that security has been discussed. It is State property and the Park Rangers will patrol it. Mr. Cestone noted that the Rangers would not be there all of the time. The Town Manager stated that security is the main concern of citizens whose properties border the proposed pathway.

- **Treasurer's Report**—Tim Saxton reported as of September 30, 2009:

Balance Brought Forward	\$ 1,363,553.30
September Revenue	\$ 151,943.05
September Disbursements	\$ 145,726.23
Balance	\$ 1,369,770.12

Councilman Saxton said that he is pleased with where the Town is for the year regarding operating revenue. He said the Town is ahead of where he thought it would be on property transfer tax, and he thinks there is a reasonable chance of hitting the budgeted amount for this year. Houses seem to be moving. Councilman Saxton said the Town is getting close to receiving the amount budgeted for rental tax income, although he believes the Town will be short.

Councilman Saxton stated that he has finished soliciting members for the Budget and Finance Committee. He has submitted three names and an alternate to Mayor Jayne.

Councilman Headman noted that the Town is at 75% of the budget on Public Works and 106% of the budget on Beach Patrol. The Town Manager stated that Public Works will be coming down because the part-time seasonal worker has been let go, and Public Works does not spend that much in the winter. He said Public Works will probably come in under budget. He stated that the Beach Patrol is over this year because most of the guards were returning guards and they usually get a 25 cent an hour raise which put the Town over on payroll.

- **Police Department Report/Questions**—Ptlmn. Joshua Rowley reported for the month of Sept., 2009:

- Sept. 1 Suspicious person called in on Russell Rd. It turned out to be a contractor that was working on the neighboring property.
- Sept. 2 A burglary alarm at 904 S. Ocean Dr. Checked the residence. Everything was secure and there were no signs of a burglary.
- Sept. 3 A burglary alarm at Grottos. The Police found the rear door open. Apparently the workers didn't secure properly. The Police checked and there were no signs of a burglary.
- Sept. 4 Telephone scam. A lady received a call from a man saying that because she was such a good shopper at Wal-Mart she had won a prize. He talked her into giving him her bank account numbers, her credit card numbers, her address, etc. She contacted the police and the police got a hold on all the accounts. The man called back threatening her with fines and fees for placing the holds on the accounts.
- Sept. 5 911 disconnect at 149 Brandywine Dr. Children were playing on the phone.
- Sept. 6 An officer was on York Road when a vehicle came down York Rd. going about 40 mph with no tail lights. The officer pulled the vehicle over behind York Beach Mall. The subject gave a fake name. While the police were doing a car search, the subject took off on foot. They were not able to capture him, but they did identify him with information they found in the car. The police got a warrant for his arrest and he turned himself in the next day. He was charged with possession of marijuana, resisting arrest, criminal impersonation, driving with a revoked license, speeding, and not having tail lights.
- Sept. 10 Alarm at York Beach Mall. An employee inside set off the alarm accidentally.
- Sept. 13 Took care of a roll over accident on Kent Ave. Vehicle lost control on the curve and flipped multiple times. The driver crawled out of the car and fled on foot. There weren't any State Police in the area.
- Sept. 13 Burglary alarm at 407 Plymouth Rd. Everything was secured. Often the wind sets off these alarms.

- Sept. 13 Loud party at 40 Seaside Dr. The police contacted the subjects and advised them to keep the music down. There were no additional complaints.
- Sept. 13 Violation of local code on Evergreen Rd. – construction on Sunday.
- Sept. 13 Traffic stop for speeding. The driver of the vehicle was found to have active felony warrants out of the Georgetown Police Department for assault 2nd degree, unlawful imprisonment, and endangering the welfare of a child. The subject was transferred to the custody of Georgetown.
- Sept. 16 Dispatched to Happy Harry's for a robbery in progress. A South Bethany officer apprehended the subject with some Bethany Beach Units. There weren't any State Police in the area.
- Sept. 17 Local fugitive apprehended off of a traffic stop. Subject had outstanding traffic tickets. He was taken to court, pled guilty, and paid the fines.
- Sept. 18 Sent into Ocean View to assist with an incident that started in Dewey Beach. A drunken subject tried to run over two Dewey Beach Police Officers. There was a pursuit and then the subject tried to ram an Ocean View Officer. The subject was arrested without further incident at Rt. 26 and Central Ave.
- Sept. 19 Loud party at 20 Cleveland Ave. Subjects were advised to turn down the music and go inside.
- Sept. 21 Sent to Fenwick Island to assist with a burglary in progress. Subjects broke into a jewelry store. The subjects got away.
- Sept. 22 Code violation at 28 Seaside Dr. Construction after 6 p.m. Subjects were given a warning. A construction work hours sign was not posted on the property.
- Sept. 27 Handled a traffic accident involving a Bethany Beach police car and a vehicle in the parking lot of the York Beach Mall.

Ptlmn. Rowley stated that recently there have been two burglaries on opposite ends of Bayshore Dr. The Neighborhood Watch captain reported the burglaries. In both cases the houses had been left unsecured. Ptlmn. Rowley asked residents to report to 911 anything suspicious such as construction vehicles parked in driveways after construction hours. Ptlmn. Rowley reminded residents to keep their doors and windows locked.

ORDINANCES/RESOLUTIONS

- **Withdrawal of Ordinance 150-09, Chapter 145, Zoning, Article IV, Entitled "General Provisions" to add § 145-14.3, "Covering allowed in setback area". (Jay Headman)**

Due to the lapse of time from the Third Reading at the May Town Council Regular Meeting when the ordinance was tabled, and due to changes to the ordinance, Councilman Headman stated that Ordinance 150-09 will not go on. He stated that the sponsors will start the process over with a first reading. The ordinance is not ready yet, but Council is working to get that in order.

COMMITTEE REPORTS

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

In Councilman Fields' absence, there was no report.

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

Dave Wilson and his team have continued to monitor the water quality in the canals. The information is critical to the Town. It is the first long term information that the Town will have for the water quality. Councilman Headman thanked the South Bethany Property Owners Association for providing funds for equipment that allows the committee to monitor the water very easily. DeDOT also gave the Town a continuous monitor that is even more helpful.

A preliminary draft of the recommendations from the Anchorage Canal Drainage Area Assessment Study Project will be submitted to the Town in November.

ADMINISTRATIVE MATTERS

- **Appointment of Budget and Finance Committee Members**

Mayor Jayne explained that Council established a Budget and Finance Committee at the beginning of this Council. The charter for that committee calls for three citizens to be members in addition to the Treasurer (Tim Saxton) and a Council Member (Jay Headman). The Treasurer has recommended John Rubinsohn, George Junkin, and Keith Krenz to serve on the committee. Mayor Jayne recommended John Rubinsohn, George Junkin, and Keith Krenz for membership on the Budget and Finance Committee. A motion was made by Councilman Saxton, seconded by Councilman Youngs to accept John Rubinsohn, George Junkin, and Keith Krenz as Budget and Finance Committee members. The motion was unanimously carried. Mayor Jayne said that they can be sworn in at anytime by the Town Clerk, Dee Burbage.

ADJOURNMENT

A motion was made by Councilman Headman, seconded by Councilman Youngs, to adjourn the October 9, 2009, Town Council Regular Meeting at 8:10 p.m. The motion was unanimously carried.