

TOWN OF SOUTH BETHANY TOWN COUNCIL REGULAR MEETING MINUTES NOVEMBER 12, 2010

ATTENDANCE

PRESENT: Mayor Jay Headman; Councilpersons John Fields, Bob Cestone, Tim Saxton, and Sue Callaway; Town Manager Melvin Cusick; Chief Joe Deloach; and Administrative Assistant Pam Smith

EXCUSED ABSENCE: Councilman George Junkin

MEETING CALLED TO ORDER

Mayor Headman called the November 12, 2010, Town Council Regular Meeting to order at 7:00 p.m., followed by the Pledge of Allegiance to the Flag.

Having received calls from property owners who are upset and concerned about what they witnessed at recent Town meetings and what they have read in the local papers, Mayor Headman shared his expectations for comments and behavior at this and future meetings. In his statement Mayor Headman said, "Nothing is fundamentally wrong with disagreements or stating your opinion. It is okay and welcomed. People can disagree and still be civil to each other. People can disagree without making personal attacks. People can disagree without accusing the other side of being corrupt or unethical." Mayor Headman also stated, "My hope is for the citizens of our town on both sides of this issue to refrain from personal attacks and instead focus your comments on why you believe your position is the best for our town. In order to achieve that goal, I need your help and the town's help. Starting tonight in this meeting, I will expect everyone to be quiet while someone is speaking, to refrain from personal attacks, and focus your comments on why you believe it is in the best interest of our town to support your position. If someone chooses not to follow these expectations, I will ask them to stop." Mayor Headman added, "I think we can disagree, but I do expect and believe that we can do it in a decent way to each other."

PROPERTY OWNERS' PARTICIPATION

Property owners were given three to five minutes to make their comments.

- Bonnie Lamberston (324 York Dr.) – Believes the Richard Hall Memorial Park Committee was biased because it included two people from the original SBPOA group that was "pushing the playground". Ms. Lambertson stated that everyone has an opinion, but that doesn't mean that they are biased. After recapping past events regarding the park issue, Ms. Lambertson inquired if Council had asked the Police Department about the safety issues of the location of the park with police cars flying by when they get a call or if they had considered the gas and water trucks that come down Evergreen Road. Ms. Lambertson noted a report by the United States Consumer Product Safety Commission titled Public Playground Safety Handbook. Ms. Lambertson quoted the first paragraph of the handbook, "In recent years it is estimated that there were more than 156,000 injuries annually on public playgrounds that required emergency room treatment." She added that the handbook gives more specifics on playground construction and feasibility and lists questions to answer before constructing a playground. Ms. Lambertson believes that even if only 10 trees are removed, others will be impacted. Ms. Lambertson believes this development will cost the Town money. She stated that there are no funds allocated right now and there will always be maintenance costs. Referring to the property owners on either side of the Richard Hall Memorial Park, Ms. Lambertson told Council Members that it is not Council Members' property values or tranquility that are threatened.

- Karis Brown (5 S. 5th St.) – Spoke in opposition to Ordinance 155-10. Ms. Brown explained that she was the appellant in the September 2010 Board of Adjustment case. Ms. Brown believes that in the last six years this code was not consistently applied as it was intended. Ms. Brown stated that FEMA says you can build three things on ground level: provide parking, storage, and you can have an entry (Ms. Brown added that Sussex County further governs that by limiting the size of the entry). She stated it has nothing to do with the size of the home. The setbacks remain the same and the height of the building remains the same – you are providing functionality to the home. Ms. Brown does not believe storage should be counted into the square footage. For safety reasons, Ms. Brown does not believe elevators should be counted into the square footage. She believes the house size is not changing by building under the home – you still have the same setbacks and height restrictions.
- Oskar Egger (206 Russell Rd.) – Encouraged Council Members to vote for leaving the park the way it is. He stated that if the survey results come close to 50/50, then it should be Council's prerogative to decide on leaving the property alone.
- Tom Roche (141 Henlopen Dr.) – Thanked Mayor Headman for expressing his thoughts at the beginning of the meeting. Mr. Roche agrees that the park issue is driving a wedge between a lot of the citizens of the town. Mr. Roche read his suggestion to Council for the best way to come forward with solicitation of the citizens without so much input from the con side and the pro side.
- Jean Roche (141 Henlopen Dr.) – Regarding the park survey, Ms. Roche believes it is unfair that property owners will only get one vote per household.
- Ed Chase (105 Godwin Pl.) – Inquired if there was other property the Town owns that could be considered for the proposed park development. Mayor Headman replied no. Mr. Chase inquired what other property the Town owns. Councilman Cestone said the wetland area, the beach accesses, and the right of ways.

ADOPTION OF MINUTES

- **Town Council Workshop Meeting Minutes, October 28, 2010** – A motion was made by Councilman Cestone, seconded by Councilwoman Callaway, to accept the October 28, 2010, Town Council Regular Meeting Minutes. The motion was unanimously carried.

LEADERSHIP REPORTS

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

Attended the monthly SCAT meeting. With the state government hurting for funds and revenue, one concern among the Towns is Municipal Street Aid (MSA) funds. Last year MSA funds were cut. This year the Towns received MSA funding but less than what they had received in the past.

Represented the Town of South Bethany at Returns Day.

Attended the South Bethany Historical Society meeting. Mayor Headman complimented the group for their diligence and commitment.

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

The Code Enforcement Constable's Report was available on the sign-in table.

The Beach Patrol Report (attached) was available on the sign-in table. The Town Manager gave the highlights of the report. Mayor Headman stated that the Beach Patrol leadership was outstanding.

The Town has been recertified for another year in the Community Rating System (CRS) Program. South Bethany is one of nine communities in the State of Delaware that are in the CRS program. Certification in the CRS program gives South Bethany property owners a 10% discount on their flood insurance. Based on an average insurance premium of \$842, the Insurance Services Office estimates that each policyholder saves \$91 a year. That is approximately a savings of \$81,611 overall for the town. Since entering the program three years ago, the overall savings for South Bethany property owners is \$245,000. South Bethany residents should receive the discount automatically, but the Town Manager suggested that when property owners call for flood insurance that they ask their agent if they are getting the CRS discount. If there is a problem, property owners can call Town Hall for the Community Code Number.

- **Treasurer's Report**—Tim Saxton reported as of October 31, 2010:

Balance Brought Forward	\$ 1,519,183
October Revenue	\$ 542,164
October Disbursements	\$ 108,145
Balance	\$ 1,953,202

Councilman Saxton stated that the Beach Patrol budget came in on the penny. He is very appreciative of the Beach Patrol's performance of managing the beach as well as managing their budget. He stated that they did an extremely good job.

At the November 12, 2010, Budget and Finance Committee meeting the Committee did a six month review. The Town is in good financial shape. Rental tax revenue came in above budget so the Town's revenue is about 6% higher. Property tax revenue is at 100% with additional revenues still expected. Transfer tax revenue is at around 69%. The Committee feels comfortable that the Town will hit the budgeted number regarding transfer tax. Mayor Headman noted that the Town was extremely conservative in the budget regarding transfer tax. He stated that transfer tax revenue is not back to where it was.

- **Police Department Report/Questions**—Chief Joe Deloach reported for the month of Oct., 2010:

- Oct. 3 Verbal domestic on Anchorage Dr. No crime was committed and all parties were separated by the police.
- Oct. 7 Alarm on Russell Rd. Residence was secure. False alarm.
- Oct. 9 Fireworks on N. 6th St. and the beach. The fireworks were confiscated by the police.
- Oct. 13 Prohibited construction on N. 5th St. The site was issued a summons and it was shut down. Because the workers did not speak English, Chief Deloach called Ptlmn. Wiley, who speaks fluent Spanish, to assist him. (Chief Deloach stated that the Police Department is very fortunate to have Ptlmn. Wiley on board.)
- Oct. 15 Counterfeit money complaint. Information was received that unknown subjects may be passing \$20 bills in the beach area. The Police Department contacted nearby businesses to make them aware of the complaint.
- Oct. 16 Agency assist Selbyville Police. Units were requested to assist with a large fight at Pomeroy's Bar.
- Oct. 16 Medical assist on Rt. 1 and N. 1st St. Police assisted Station 70.

- Oct. 18 Alarm on W. 4th St. The house was found to be secure. False alarm.
- Oct. 24 Alarm on Seaside Dr. That house was found to be secure. False alarm.
- Oct. 26 Criminal impersonation on Rt. 1 and N. 6th St. Subject used false information during a traffic stop. A subsequent investigation was conducted and the subject was issued a warrant for the initial violation and additional charges.
- Oct. 29 Alarm on Black Gum Dr. Residence was found to be secure. False alarm.

ADMINISTRATIVE MATTERS – TOWN COUNCIL VOTE ON THE RICHARD HALL MEMORIAL PARK SURVEY PACKET

Mayor Headman stated that the Richard Hall Memorial Park Committee was formed in June 2010. Councilman John Fields was appointed the Chair and Council Members Sue Callaway and Tim Saxton were appointed to the committee. Mayor Headman stated that he also asked Pat Van Cleve and Andy Ross to join the committee. They had a challenging task to accomplish. They were charged with establishing a timeline to investigate potential development, establishing a process to obtain feedback from the community, and they were to create a document that would provide information of the potential costs and plans for the park that can be shared with the community. Council discussed the survey package at the October 28 Workshop. Modifications were made and a decision on the type of ballot was voted on. Mayor Headman thanked Councilman Fields and the Richard Hall Memorial Park Committee for their time and effort on an extremely challenging task. Mayor Headman believes it is a best effort to do what the Council set out to do.

A motion was made Councilman Fields, seconded by Councilman Cestone, to approve the Richard Hall Memorial Park Opinion Survey packet as printed in the November 12, 2010, Council meeting folder for distribution to South Bethany property owners on November 18, 2010. Mayor Headman asked for discussion from the Council.

Councilwoman Callaway stated that she was going to vote against the packet presented this evening. She stands by her belief that the South Bethany citizens deserve a fair, open, and unbiased process. She does not believe the final product presented tonight is such an endeavor. Councilwoman Callaway stated that park advocates have continuously promoted a multi option survey. She believes such a selection of options would help people better understand the estimated cost page and that it is not a choice for the Town spending \$174,000 or not. For the record, Councilwoman Callaway stated that no park advocate wants to spend \$174,000 of South Bethany tax payer dollars on a park. Councilwoman Callaway said that Mayor Headman has stated that if the survey indicates support for the recreation area, a second survey will go out to determine the scope of that. Councilwoman Callaway believes this is a needless waste of additional dollars spent to mail a second survey. She also objects that this message is not conveyed in the survey packet. On behalf of absent Council Member Junkin and herself, Councilwoman Callaway requested that Council insert a clearly visible sentence in a cover letter or somewhere on the survey page that says, "If survey results indicate a park development is desired, the scope of such future efforts would be determined by a second survey." Councilwoman Callaway's second request was to work out an open, fair process for retrieving, tracking, and counting the survey results. Because it was not in previous versions of the survey packet, Councilwoman Callaway was surprised to see that on page one of the survey packet it states that survey forms may be hand delivered to the Town Hall until a closing date. Councilman Fields stated that he had put that in there at the request of Councilman Cestone.

A motion to amend the survey packet was made by Councilwoman Callaway, seconded by Councilman Saxton, that Council insert a clearly visible sentence in a cover letter or somewhere on the survey page that says, "If survey results indicate park development is desired, the scope of such future efforts would be determined by a second survey."

Councilman Fields stated that he believes the second sentence of the second paragraph of page 4, "The final design, staging of development, and funding for the project would need to be determined by the Town Council at a later date", says essentially the same thing. Councilwoman Callaway disagreed. After a discussion, Mayor Headman called for a vote. The voting was as follows:

FOR THE MOTION: Councilperson Callaway

AGAINST THE MOTION: Mayor Headman and Councilpersons Fields, Cestone, and Saxton

The voting result was 1 in favor and 4 against. The motion was defeated.

Council had a discussion regarding survey forms that are hand delivered to the Town Hall. Councilman Fields stated that he intended to change the fourth sentence of the last paragraph of page one from "Survey forms may be hand delivered to the Town Hall until the close of business on December 10, 2010" to "Survey forms may be hand delivered to the Town Hall in **the enclosed stamped marked envelope** until the close of business on December 10, 2010." Councilman Saxton asked what process would be used to assure that the hand delivered surveys were delivered by December 10. After a discussion, Councilman Saxton stated that the hand delivered survey envelopes should be stamped with the date they were received. Envelopes stamped after December 10, 2010, would be invalid. Mayor Headman stated that Council wants a procedure in place that is ethical and will make sure that anything hand delivered after the close of business on December 10, 2010, is not counted and is put in a separate place. Councilman Fields stated that the Town Clerk can provide that procedure.

A motion to amend the survey packet was made by Councilman Fields, seconded by Councilman Saxton, to amend page one in the Richard Hall Memorial Park Opinion Survey packet to include the words **enclosed stamped envelope** after the words **Town Hall** in the third sentence on the bottom of the page. The voting was as follows:

FOR THE MOTION: Mayor Headman and Councilpersons Fields, Cestone, Saxton, and Callaway

AGAINST THE MOTION: None

The motion carried with a 5-0 vote.

Mayor Headman asked for discussion on the main motion. Councilman Saxton stated that he believes his position regarding the park issue is in the middle of the road. Councilman Saxton clarified that his vote for the \$32,000 purchase of the reversion clause was separate from the park issue – his vote was about the Town having control of the property it owns. Councilman Saxton said his vote on the survey packet tonight is separate from his vote on the purchase of the reversion clause. Recalling a resolution brought to the Town Council at the December 2009 Town Council Regular Meeting, Councilman Saxton stated that he supported the referendum which was a yes or no vote regarding the park. At that time the Town Council said they wanted a financial statement and an opportunity for the pro and con sides to make their presentations. When the Richard Hall Memorial Park Committee was formed, the Committee was given a charge to try and resolve this issue in a manner that was similar to what Council was trying to do for the referendum. Councilman Saxton said the Richard Hall Memorial Park Committee has delivered a ballot that says yes – no, a financial statement, and the ability for both sides to write a pro statement and a con statement. Councilman Saxton stated that he is going to cast his vote in the manner of what was asked of Council in December of 2009. Councilman Saxton believes the Richard Hall Memorial Park Committee has done its job. Councilman Cestone agreed with Councilman Saxton's comments.

Mayor Headman called for a vote on the main motion. The voting was as follows:

FOR THE MOTION: Mayor Headman and Councilpersons Fields, Cestone, and Saxton

AGAINST THE MOTION: Councilperson Callaway

The motion carried with a 4-1 vote.

ORDINANCES/RESOLUTIONS

- **Second Reading of Ordinance 155-10, Chapter 145, Zoning, to clearly define definitions and word use, to amend the Southern Building Code to the International Code, and to add permit requirements from FEMA, DNREC, and any other state or federal agency. (Bob Cestone)**

Councilman Cestone reviewed Ordinance 155-10. Councilman Cestone noted two changes made since the first reading: (1) A change in the Floor-to-Area Ratio (FAR) definition, and (2) A change in the Nonlivable Area definition.

Councilwoman Callaway asked what the overall intent of limiting the space underneath the house is. Councilman Cestone replied that the overall intent is to limit the size of the house. The intent is to not further limit people from paving or putting a boardwalk underneath the house if they are building a house on pilings. He added that the intent is to limit the bulk of the house – a slab on grade is not bulk. Referring to the difficulty of enforcing incidents with too many people in a rental house, Councilwoman Callaway said it seems the Town is being punitive to property owners that want to build a storage shed or something underneath their house. She does not believe the ordinance is getting at the overall goal. Councilman Cestone stated that the intent of limiting the number of bathrooms was to make it less attractive to large numbers of people. He added that the intent of limiting the number of kitchens to one was to not allow a house to be built that could be used as a duplex. Referring to the 1999 Comprehensive Development Plan Town Survey, Councilman Cestone said property owners indicated they wanted some control over the open space and the size of the houses. In addressing the size of the houses issue, Council came up with the Floor-to-Area Ratio (FAR). Councilman Cestone said Ordinance 155-10 is changing nothing – it is trying to clarify what the Town has been doing all along. Karis Brown disagreed stating that it was not consistently enforced that way.

Mayor Headman declared this the second reading of Ordinance 155-10.

COMMITTEE REPORTS

- **Assawoman Canal Dredging** – Mayor Headman reported:
DNREC expects the project to be finished by the end of November. They have found two shoals (one under the bridge at 26 and one in the area to the loop canal in Bethany Beach) that have to be taken care of. Trees that have fallen since they did the work will be cleaned up. DNREC expects all of this to be done by the beginning of the boating season. Mr. Roche inquired about the piers that were built on government property. Mayor Headman said he would ask DNREC about the piers.
- **Beautification Committee** – Councilwoman Callaway reported:
The Beautification Committee met on October 19.

The Adopt a Canal Program is moving along well. Two property owners have responded to the program flyer.

The Beautification Committee thoroughly went over the remaining FY 2011 beautification budget and has been working on its FY 2012 budget.

There will be new holiday decorations in the welcoming areas (seven reindeer) and the holiday lighting along Rt. 1 will be put up.

The next meeting will be November 19. The Committee will be meeting with a landscaper who will help look at the areas along the Rt. 1 median and the walkways. The landscaper will help design a strategy for the type of plants to use and what the costs are. The Committee would like to come up with something that is distinctive to South Bethany. The Committee will also be incorporating the recommendations from Sue Barton. Should the Committee go forward with plug planting, a date will be set for a plug planting party in April. The Committee will be asking for volunteers for that project.

The Maintenance Supervisor met with DeIDOT regarding trimming the brush on the east side of Rt. 1. He is waiting to hear back from DeIDOT for a better understanding of what trees belong to property owners and which are on DeIDOT property.

Councilman Junkin and Councilwoman Callaway were interviewed for the Delaware News Journal regarding beautification efforts and water quality improvements. An article was published in the October 31 issue of the News Journal under the Native Delaware column.

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

The Budget and Finance Committee met Nov. 12, 2010. The Committee reviewed the budget versus actual and did the next six month projections. The overall analysis is that the Town will be on budget for the year.

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

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

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

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

- **Richard Hall Memorial Park Committee** – Councilman Fields reported:

Councilman Fields went over the Richard Hall Memorial Park Opinion Survey timeline:

November 12	Town Council vote on the Richard Hall Memorial Park Opinion Survey packet.
November 18	Survey packet will be mailed to property owners.
December 10	Surveys returned to Town Hall by mail must be postmarked by December 10, and surveys hand delivered to Town Hall must be received by December 10.
December 16	South Bethany Election Board will count the survey votes starting at 9 a.m. in the Town Council meeting room. Observers will be allowed to watch. After the survey forms have been counted, a certified count will be presented to the Mayor. The results will be posted on the window at the door of Town Hall and on the Town website.

ADJOURNMENT

A motion was made by Councilman Fields, seconded by Councilman Cestone, to adjourn the November 12, 2010, Town Council Regular Meeting at 8:45 p.m.

PHS:Regular Meeting Minutes.11.12.10

Attachments: Beach Patrol Report