

<b>TOWN OF SOUTH BETHANY TOWN COUNCIL REGULAR MEETING MINUTES NOVEMBER 12, 2011</b>
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**ATTENDANCE**

PRESENT: Mayor Jay Headman; Councilpersons John Fields, Pat Voveris, Al Rae, Sue Callaway, George Junkin, and Jim Gross; Lt. Troy Crowson; and Administrative Assistant Pam Smith

EXCUSED ABSENCE: Town Manager Melvin Cusick

**MEETING CALLED TO ORDER**

Mayor Headman called the November 12, 2011, Town Council Regular Meeting to order at 10:00 a.m., followed by the Pledge of Allegiance to the Flag. In observance of Veterans Day and on behalf of the Town and the Town Council, Mayor Headman thanked our veterans and all those who are serving us now and protecting our country.

**PROPERTY OWNERS' PARTICIPATION**

- Terry York (4 N. 5<sup>th</sup> St.) – Inquired if the Town could put an ordinance in place regulating the growth of trees and vegetation on the ocean side. She noted that some of the growth is getting out of control, is very unattractive, and blocks the ocean view (particularly Leyland Cypress which Ms. York believes should be banned when it blocks others views.) Ms. York added that if it is not possible to put an ordinance in place at least could the Town put something in one of its publications in order to sensitize people to appeal to their conscience or their good neighborliness to watch what they plant. Mayor Headman stated that a few years ago he began working with the University of Delaware to put an ordinance in place to ban certain types of trees but found it very difficult to do. Mayor Headman stated that he does not know where this Council stands on an ordinance like that, but a Council Member would have to sponsor it and bring it to the Council for discussion. Councilwoman Callaway stated that the Beautification Committee developed the “Beautifying South Bethany Makes Dollars and Sense” flyer which addresses the issue of people maintaining their trees and bushes. The Beautification Committee has also been working closely with the Code Enforcement Constable regarding notification to homeowners who have dead trees or overgrowth, and that may be an avenue to follow. Councilman Gross stated that Council can comply with Ms. York’s request to publish an article suggesting that people be sensitive to other people’s views. He added that the idea of getting people to cut down those trees is going to take a lot of convincing. Councilwoman Voveris stated that she had brought this issue to the Code Enforcement Constable, and he confirmed that there was nothing in the Town Code to address this, but he suggested contacting the phone company or electric company because if the trees are interfering with the lines they will trim the trees.
- Mike Matera (311 W. 9<sup>th</sup> St.) – Stated that he and three of his neighbors put in a request to the Town Manager for the Town to take down six pine trees on township property which make a mess in the street. Mayor Headman stated that Council is discussing what to do and will get back to Mr. Matera. Mr. Matera stated that if the Town does not have enough money to take down all six trees, only take down some of them this year.
- Diann Nazarian (20 Peterson Dr.) – In reference to Ms. York’s comments, Ms. Nazarian asked if the Maintenance Department had finished doing their trimming on the east side. Councilwoman Callaway stated that they had completed the Town right-of-ways on the east side of Route 1, and they are starting on the Town right-of-ways on the west side of Route 1.
- George Rosenburg (409 Black Gum Dr.) – Suggested that the Town provide on its website a means for people to communicate with each other in case of emergencies. Mr. Rosenburg stated that during Hurricane Irene he did not have a central place to figure out what was

happening in South Bethany. Mayor Headman stated that the Town sends "News Updates" via email to property owners who have registered in the Town's Email Communications Program and during Hurricane Irene the Town spent a lot of time on the News Update in order to give property owners information as quickly as possible regarding the storm. Also, in response to comments on the Town Survey regarding the Town's website, the Town will be working with its website host, Coastal Images, to make improvements as well as look at other towns' websites for ideas that will improve South Bethany's website. Councilman Junkin expressed concerns with allowing people to post what they want on the Town's website.

Mr. Rosenberg inquired what the Town's position is on the Assawoman Canal Trail. Councilman Rae stated that the Town Council supports the trail (Council passed a resolution in support of the trail) and is working with the State and the other towns in the planning of the trail. A plan was passed recently, and the next step is an engineering study which will take months. When the engineering study is complete, everyone will evaluate the plan again.

- Tom Roche (141 Henlopen Dr.) – Thanked Councilman Rae for interceding on his behalf with the officials regarding the depth of the Assawoman Canal. DNREC did contact Mr. Roche and requested that he identify where it was that he was hitting bottom.
- Mary Suazo (7 S. 3<sup>rd</sup> St.) – Speaking on behalf of the Historical Society, Ms. Suazo encouraged everyone to join the Historical Society which is a community based organization. Ms. Suazo thanked the Town Council and the South Bethany Property Owners Association (SBPOA) for their donation to the Historical Society. Ms. Suazo announced that on Thursday, November 17, at 1:30 p.m., in cooperation with the South Bethany Women's Club, the Historical Society will be sponsoring a forum to which everyone is invited (men and women). Among the people scheduled to speak are Roger Knox (South Bethany's first lifeguard), John Speer, Margaret Young, and Robert McCarthy (former South Bethany Mayor). Ms. Suazo also noted that the Historical Society is planning a forum in the future regarding the '62 storm. Mayor Headman thanked the Historical Society for their work and encouraged people to join or contribute to the organization.
- Ed Nazarian (20 Peterson Dr.) – Inquired if anybody from the Town had investigated the loud booms that had occurred over the last couple of weeks. Lt. Crowson stated that he had called the 911 Emergency Center but no one knew anything about it. Mayor Headman stated that the Town would follow up and try to find out. Councilman Fields stated that he believes the booms were from old World War II ordinances that were pumped up on the beach from the ocean during beach replenishment and then expert government officials set them off in a safe manner in a hole they dug in the State Park. Mayor Headman said that he thought the same thing but had been told (unofficially) that the boom was not from ordinances.

### **ADOPTION OF MINUTES – TOWN COUNCIL WORKSHOP MEETING MINUTES, OCTOBER 27, 2011**

The adoption of the October 27, 2011, Town Council Workshop Meeting Minutes was postponed until the November 17, 2011, Town Council Workshop Meeting.

### **LEADERSHIP REPORTS**

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

Attended the Sussex County Association of Towns regular monthly meeting.

The Southern Delaware Cable Consortium (Bethany Beach, Millville, Ocean View, and South Bethany) is finalizing the draft Cable Franchise Agreement to give to the lawyer.

Mayor Headman has been meeting with Councilman Junkin and Councilwoman Callaway regarding the bioretention areas on Route 1. Mayor Headman thanked Councilman Junkin and Councilwoman Callaway for their leadership on the project.

Mayor Headman, Councilwoman Voveris, and Councilman Junkin met with George, Miles & Buhr, LLC (the company that did the Town's engineering report in 1995 regarding stormwater management). The focus of the meeting was looking at ways to reduce the amount of untreated stormwater going directly into the town canals.

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

In the Town Manager's absence, there was no report.

- **Treasurer's Report**—Pat Voveris reported as of October 31, 2011:

Balance Brought Forward	\$ 1,767,854.66
October Revenue	\$ 505,024.17
October Disbursements	\$ 124,495.26
Balance	\$ 2,148,383.57

Profit and Loss Statement: Revenues were at \$1,845,456 and expenditures were at \$1,236,761 leaving excess revenue of \$608,694.

All departments are operating within budget.

Currently revenue is at 79% and expenses are at 57%.

The bulk of the rental tax money is in, and the Town has collected \$476,986.05 which is 1.5% over what was budgeted and 3.2% over what was brought in at this same time last year (to the good \$14,568.08.)

Collected \$14,906.47 in transfer tax for the month of October which is down 18.5 percent for the same period last year. However, after seeing numbers from Rose Walker (Real Estate Agent), Councilwoman Voveris believes that next month she will be reporting a bigger number than anticipated.

- **Police Department Report/Questions**—Lt. Troy Crowson reported for the month of Oct., 2011:

- Oct. 1 Public assist on W. 7<sup>th</sup> St.
- Oct. 2 Theft of a bicycle on N. 6<sup>th</sup> St. Bicycle was found and returned to the owner.
- Oct. 3 Theft of a check on W. 4<sup>th</sup> St. Suspect removed the victim's check and forged his name. Check was cashed in Virginia for \$5,000. He was later identified, but the victim declined prosecution.
- Oct. 8 Loud party on S. 3<sup>rd</sup> St. The party was shut down and a warning was issued.
- Oct. 9 Loud party on N. Ocean Dr. Police were unable to locate complaint.
- Oct. 13 Subject stopped for traffic violations was wanted for theft by the Washington, Pennsylvania Police Department. Extradition was declined, and the subject was released.
- Oct. 15 Phone scam on Carlisle Dr. Victim was advised she had won money from the Publishers Clearing House. Caller requested the victim give out her personal information to claim the prize. Victim did not give out her personal information.
- Oct. 17 Public assist on Carlisle Dr. to remove personal property of the former roommate.
- Oct. 20 Alarm on Kimberly Rd. Residence was secure.
- Oct. 22 Agency assist with a traffic stop involving a road rage incident.
- Oct. 22 Missing person on Petherton Dr. Subject was located several hours later.
- Oct. 26 Agency assist with Troop 7 with a suicidal subject in Sea Colony West.
- Oct. 28 Transported a subject to the State Mental Hospital in New Castle County.

## **ORDINANCES/RESOLUTIONS**

- **Resolution 8-11, A Resolution to Recognize David Baker, Sussex County Administrator (Jay Headman)**

Mayor Headman stated that the Town of South Bethany and the other towns in Sussex County have been very fortunate to receive support over the years from David Baker, County Administrator. Mayor Headman stated that the Town would like to recognize David Baker with Resolution 8-11. Mayor Headman read Resolution 8-11. A motion was made by Councilman Gross, seconded by Councilman Junkin, to approve Resolution 8-11. The voting was as follows:

FOR THE MOTION: Mayor Headman and Councilpersons Fields, Voveris, Rae, Callaway, Junkin, and Gross

AGAINST THE MOTION: None

The motion carried with a 7-0 vote.

- **First Reading of Ordinance 158-11, to Amend Chapter 42, Building Construction, to Update § 42-5C to Agree with § 145-68A(6). (Jay Headman)**

Mayor Headman explained that the Code Enforcement Constable realized that § 42-5C was out of compliance with § 145-68A(6) which had previously been changed. Mayor Headman read § 42-5C. Mayor Headman asked for discussion. Hearing none, Mayor Headman declared this the first reading of Ordinance 158-11.

- **First Reading of Ordinance 159-11, to Amend Chapter 145, Zoning, to Allow Permeable Pavers within the Town Right-of-Way and to Allow a 36 Inch Wide Access Path of Impervious Material in the Town Right-of-Way to Accommodate Wheelchairs or Other Mobility Aids. (Jim Gross)**

Councilman Gross explained that the Board of Adjustment (BOA) had two requests for variances to accommodate handicapped individuals in the town right-of-way where paving is not permitted. The BOA granted those variances which resulted in two driveways being extended with permeable pavers between the driveway and the street. The BOA has asked that Council consider amending the Town Code to permit this kind of construction. Councilman Gross stated that the ordinance was originally drafted by the Code Enforcement Constable, was reviewed by the Planning Commission who voted unanimously in favor of what the BOA requested, was reviewed by Mayor Headman and Councilman Gross (at which time it was redrafted), and was reviewed by the Town Council at the October 27 Town Council Workshop Meeting. The first reading includes changes requested by Council. Councilman Gross noted that § 145-14.3D was added to the first reading at the request of Councilman Fields.

During discussion, Councilman Fields noted that § 145-3, Definitions and word use, would need to be changed. He also noted an editorial (formatting) change stating that numbers need to be written numerically and spelled out in parentheses; for example, "4 inch" should be written "4 (four) inch".

Regarding § 145-14.3D, Councilman Fields believes an ADA compliant 36 inch wide access path of impervious material should be allowed across the right-of-way and it would not have a big impact regarding stormwater runoff. Councilman Fields feels that by requiring permeable pavers in the Town right-of-way to accommodate wheelchairs or other mobility aids, the Town would be asking the property owner to undertake an expense that is not necessary.

Councilman Junkin stated that from a water quality point of view he would like the pavers to be permeable. He added that it is also easier to tear up pavers and put back pavers than it is to tear up and put back concrete and asphalt.

After discussion, a motion was made by Councilman Junkin, seconded by Councilman Gross, that Council remove D from the ordinance because it is not required. The voting was as follows:

FOR THE MOTION: Mayor Headman and Councilpersons Voveris, Rae, Callaway, and Junkin

AGAINST THE MOTION: Councilman Fields

ABSTAINED: Councilman Gross

The motion carried with a 5-1 vote.

Mayor Headman declared this the first reading of Ordinance 159-11.

Ms. York stated that this ordinance is great news because her husband is in a wheelchair and often they struggle with getting stuck in the rocks in the right-of-way. Ms. York believes the simplest thing would be to put "bricks", if they are considered, in the ordinance. She believes the ordinance would be easier to read if the word "bricks" were mentioned in the ordinance.

Regarding the following wording in § 145-14.3C "Permeable pavers may be used within the Town right-of-way along the front of the property, no wider than 50% of the lot width, and no closer than 5 feet to any side boundary line", Mr. Cestone recommended that it apply to the entire town because every summer there are more and more people parking on the west side of Route 1.

## **COMMITTEE REPORTS**

- **Assawoman Canal and Trail Update** – Councilman Rae reported:

Councilman Rae had nothing to add to his comments made during the Property Owners Participation portion of the meeting regarding the Assawoman Canal and Trail.

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

The Beautification Committee met on October 26. Since that meeting the focus has been on the bioretention project in the Rt. 1 median. As of October 28 the work is completed except for a few punch list items which will include putting down sod in the grass areas at no additional cost. South Bethany now has 11 bioretention areas. All of the trees (88) were funded by grants from the Department of Agriculture. Shrubs that are permitted to be planted in the fall have been planted, and the rest of the landscaping will occur in the spring prior to May 1. Councilwoman Callaway stated that none of this would have happened without the efforts of the Center for the Inland Bays (CIB) to seek grants from DNREC, DelDOT, and federal and state resources. Councilwoman Callaway credited Dr. Susan Barton, University of Delaware and a project leader for the Enhancing Delaware Highways project, with designing the plan for the types of plants and trees to plant in the bioretention areas. A final report with photographs and diagrams will be posted on the Beautification Committee page of the Town's website. Councilwoman Callaway thanked the South Bethany Property Owners Association (SBPOA) for their donation toward the project. Mayor Headman stated that it was an incredible amount of work done without a major expense to the Town.

At the October 27 Workshop, Council approved the concept of the Beautification Committee's "Blueprint for Ocean Drive" plan which will begin this spring. Councilwoman Callaway thanked John Speer for his leadership in this project. Councilwoman Callaway stated that the "Blueprint for Ocean Drive" would be posted on the Beautification Committee page of the Town's website. Councilwoman Callaway thanked the SBPOA for their contribution which will cover the cost of the materials to rebuild the trash can receptacles.

The committee received word that the Town will be getting a substantial grant from DeIDOT to redesign the beds that are along the walkway on Route 1 by developing rain garden areas, improve the rain garden circle beds in the Route 1 median, and make improvements in the York Beach Mall area. All of this is being done with an emphasis on water quality.

- **Budget and Finance Committee** – Councilwoman Voveris reported:

The Budget and Finance Committee will meet Friday, November 18, 2011, at 3 p.m. All are welcome to attend the meeting.

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

Met with George, Miles, and Buhr (GMB) regarding stormwater that comes down the side streets on the east side of Route 1 and pours into the drains. Councilman Junkin asked them for a budgetary estimate for developing a design study recommending what the Town would have to do on the east side to trap the stormwater similar to the bioretention project in the Route 1 median.

Regarding the bioretention areas in the Route 1 median, part of the work was from water quality and part was from beautification. The water quality part was getting the excavation done so that the bioretention areas would trap water for up to 72 hours. All of the beds did fine except for the bed that is furthest north. In that bed the drain pipe needs to be lowered, and ways to solve that are being looked at. After all the grants and donations from the CIB were in place, the Town's portion for the excavation part was about \$18,000. The following is a breakdown of that \$18,000: \$3,500 donation from the SBPOA, \$4,000 from budgeted excavation in the current fiscal year, and \$10,000 from reserves in order to get the whole project done in one year.

The Canal Water Quality Committee will be submitting the following items to the Budget and Finance Committee for consideration in the FY 2013 Budget:

- \$21,000 to permit, procure, and install a diffuser system in one canal which the committee expects will increase the dissolved oxygen level in that canal to about 4 parts per million.
- Monies for the study contract regarding stormwater that comes down the side streets on the east side of Route 1 and pours into the drains.
- A recommendation to put dredging of the canals as a capital depreciation item with a book value of \$300,000 (the Budget and Finance Committee has already done this).

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

The Planning Commission met October 27. The principle item of discussion was updating the Comprehensive Plan (CP). They also discussed the feasibility of a town wide Wi-Fi site. The Planning Commission Chairman, Mr. Oliver, is looking into this and will come forward with a recommendation. In addition, they discussed and would support Town Hall being open at noon during the summer (they did not make an official recommendation to the Council).

The Planning Commission has a meeting scheduled on December 2. Brian Hall, Circuit-Rider Planner for Sussex County (State of Delaware Office of State Planning Coordination), will be conducting a training session. In addition, they will be working on drafting additions and changes to the Comprehensive Plan.

## **ADJOURNMENT**

A motion was made by Councilman Fields to adjourn the November 12, 2011, Town Council Regular Meeting at 11:25 a.m.