

**TOWN OF SOUTH BETHANY
TOWN COUNCIL REGULAR MEETING MINUTES
FEBRUARY 12, 2010**

ATTENDANCE

PRESENT: Mayor Gary Jayne; Councilpersons John Fields, Jay Headman, Tim Saxton, Diane Matera, Marge Gassinger, and Rob Youngs; Town Manager Melvin Cusick; Lt. Linda O'Malley; and Administrative Assistant Pam Smith

MEETING CALLED TO ORDER

Mayor Jayne called the February 12, 2010, Town Council Regular Meeting to order at 7:00 p.m.

STORM DAMAGE ASSESSMENT (TONY PRATT AND MARIA SADLER)

Mayor Jayne introduced and welcomed DNREC's Tony Pratt and Maria Sadler.

Tony Pratt gave a presentation regarding storm damage assessment in South Bethany which was followed by a question and answer period. His presentation included slides of South Bethany's beach following the March 1962 nor'easter (which at the time removed the frontal dune that was in South Bethany and destroyed every house that was oceanfront in South Bethany) as well as slides of South Bethany after other storms up to the present time. He touched on the history of work DNREC has done through the years to try to maintain the beach. He noted the transition in 2008 with the new dune which provided protection and recreation area unlike anything South Bethany has ever had before. Due to the November 13 storm, Ida, most of that dune is now either gone or very much in peril. The initial estimate in Delaware by the Army Corps of Engineers is about \$40 million in beach and dune damages. Mr. Pratt believes that number will come down. The Army Corps of Engineers is doing a deeper evaluation and will adjust their figures accordingly.

The only vehicle the Corps has in a mid budget year is through a supplemental. Because beach and dune damages are very high for the whole Mid Atlantic Region, Mr. Pratt doesn't think we are going to see a supplemental that will supply Delaware with recovery money for everything we've lost in this storm. Mr. Pratt encouraged property owners to keep in contact with Delaware's legislators and to write letters to other people within appropriations committees.

Mr. Pratt stated that DNREC is doing the following in the beach communities:

- Pushing as much sand as possible back up on the dunes (nature dictates how much).
- A dune grass planting day is scheduled for March 20 – many volunteers are needed.
- After the grass planting is complete, DNREC will begin to fence all of the communities and also build the crossings.

Mr. Pratt hopes to have the beaches in good condition by Memorial Day, but it is very much weather dependent. A late season storm could set the clock back.

Mayor Jayne thanked Maria and Tony for their presentation.

PROPERTY OWNERS' PARTICIPATION (Before beginning this portion of the meeting, attendees said the Pledge of Allegiance to the Flag.)

- Al Rae (131 Anchorage Dr.) – Complimented the Town Staff for doing a terrific job with all of the snow storms. Mayor Jayne stated that the credit belongs to the Maintenance Supervisor, Don Chrobot. He put in numerous hours outside of the regular 40 hour week.
- Richard Ronan (7 Logan St.) – Complimented Don Chrobot and Melvin Cusick on the work they did during the snow storms and showed his appreciation for the Town Staff.
- Ed Nazarian (20 Peterson Dr.) – Stated that both he and his wife thank Don for the fine job he did.

Mr. Nazarian stated that his neighbors are in Florida, and they were going to exchange their recycling cart when they returned to South Bethany in May or June. But now there is a recycling cart in front of their house and Mr. Nazarian has no way to put it in their garage. Mr. Nazarian complained that the exchange was not made according to the arrangements made by the Town and is concerned that when people see the bin sitting out front it will indicate that no one is home. The Town Manager explained that DSWA had sped the process up on their end and began picking up their carts before Allied Waste delivered the new carts. This caused confusion. To correct the problem, Allied Waste has been coming in town about twice a week to deliver carts. The Town Manager said that Mr. Nazarian's neighbors will be able to put their DSWA cart curbside when they return for DSWA to pick up. The exchange program will continue until all carts are exchanged.

- Barbara Junkin (8 S. 4th St.) – Stated that in the recycling cart exchange they received the 35 gallon cart instead of the 65 gallon cart. The Town Manager advised Ms. Junkin to contact Allied Waste directly and they will make the exchange. He stated that the Town will post Allied Waste's number on the Town's website.
- Dan Cowell (110 Henlopen Dr.) – Inquired why some houses on his street have the new recycling carts but he and his next door neighbor do not. The Town Manager stated that Allied Waste could not transport all of the carts at one time.
- Lloyd Hughes (152 Layton Dr.) – Inquired if the Town has an ordinance regarding cars parked on the streets during the winter months. Mr. Hughes noted that it was a problem during the storms with the snow plow coming through. Mayor Jayne replied that there is nothing in the Code that says you can't park a car on the side of the street. Mayor Jayne said he would talk to the Chief of Police about it.
- Tom Roche (141 Henlopen Dr.) – Commented that after the streets had been plowed people parked in the street rather than shoveling their driveway. The parked cars extend out into the road because of the snow deposited on the side of the road by the snow plow. Mr. Roche stated that the trash vehicle would not be able to get around the parked cars to come down his street. Mayor Jayne suggested that Mr. Roche contact the Police Department.
- Ed Nazarian (20 Peterson Dr.) – In order for property owners to be sure that they hire contractors with a Town mercantile license, Mr. Nazarian suggested posting a list of contractors with mercantile licenses on the Town's website. The Town Manager stated that it will create staff time keeping the list up to date because people come in daily and purchase a mercantile license. Mayor Jayne said property owners can contact Town Hall to see if a contractor has a mercantile license or they can ask the contractor. After a discussion, Mayor Jayne said the Town would look into it.

ADOPTION OF MINUTES

- **Town Council Regular Meeting Minutes, December 11, 2009** – A motion was made by Councilman Headman, seconded by Councilwoman Gassinger, to accept the December 11, 2009, Town Council Regular Meeting Minutes. The motion was unanimously carried.
- **Town Council Special Meeting/Workshop Notes, December 17, 2009** – A motion was made by Councilman Headman, seconded by Councilwoman Gassinger, to accept the December 17, 2009, Town Council Special Meeting/Workshop Notes. The motion was unanimously carried.
- **Town Council Special Meeting/Workshop Notes, January 28, 2010** - A motion was made by Councilman Saxton, seconded by Councilwoman Gassinger, to accept the January 28, 2010, Town Council Special Meeting/Workshop Notes. The motion was unanimously carried.
- **Town Council Executive Session Minutes, January 28, 2010** - A motion was made by Councilman Headman to accept the January 28, 2010, Town Council Executive Session Minutes. The motion was unanimously carried.

LEADERSHIP REPORTS

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

Announced that every year the Joshua Freeman Foundation sponsors a valor award which is given to the police departments and the fire departments in our area. This year's winner for the South Bethany Police Department is Lt. Troy Crowson. He received the highest evaluation in the Department for overall production for the year 2009. Lt. Crowson received the award at a ceremony at Bear Trap.

Council complimented and thanked Lt. Crowson for his service. Council also thanked the Joshua Freeman Foundation for sponsoring the program.

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

The annual Community Rating System mailings will go out within the next few weeks. The mailings are part of the CRS program which gives South Bethany residents a 10% discount on flood insurance.

Regarding the two snow storms in February, the State has asked the towns to track costs for snow removal for a FEMA declaration application by the State. There is a remote possibility that the Town could get reimbursed for some of the costs.

Mr. Junkin suggested putting damaged mailboxes in the report. The Town Manager stated that the Town is tracking those. If anyone has a mailbox that was damaged, please contact Town Hall.

Councilman Youngs stated that it came to his attention that the Town has no information that is readily accessible on who South Bethany's full-time, year-round residents are and where they live. Councilman Youngs believes that during emergency situations the Town should have a better feel for those residents who are here full-time, year-round.

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

Balance Brought Forward	\$ 1,574,835.27
January Revenue	\$ 36,039.75
January Disbursements	\$ 110,409.54
Balance	\$ 1,500,465.48

Councilman Saxton stated that we are now through the third quarter. The Town has not had to touch the reserves and is probably in a position to add to the reserves this year. Councilman Saxton complimented the Town Manager and Chief of Police for continuing to manage the expense side of the budget.

- **Police Department Report/Questions**—Lt. Linda O'Malley reported for the months of Dec., 2009 and Jan., 2010:

The town had a lot of burglaries in the month of December. Most of the burglaries had the same kind of mode of operation – kicking in the door.

- Dec. 1 Violation of local code on Bristol Rd. A construction site did not have a dumpster on the property and it was turned over to the building inspector.
- Dec. 5 & 7 False alarms – one on Bayshore Dr. and one on Anchorage Dr.
- Dec. 10–12 Five different burglaries predominantly in the Cat Hill development. They were discovered while on foot patrol. The investigations are still pending.
- Dec. 13 Agency assist with Fenwick Island PD with a traffic stop.
- Dec. 15 A burglary was discovered on Tamarac Dr. Investigation pending
- Dec. 18 Theft on Henlopen Dr. Kayak was removed from the yard.
- Dec. 19 Attempted burglary discovered on Tamarac Dr.
- Dec. 23 False alarm on Petherton Dr.
- Dec. 27 Agency assist. Assisted Bethany Beach PD with a traffic stop which resulted in an arrest for possession of marijuana.
- Dec. 28 Criminal mischief. Damage to a front door on W. 10th St. Unable to ascertain if this was a burglary.
- Dec. 31 Agency assist with a vehicle pursuit. Subject was arrested.
- Jan. 1 Violation of local code on W. 8th St. – working during prohibited hours. The site was shut down.
- Jan. 3 False alarm on Kimberly Dr. The residence was secure.
- Jan. 4 False alarm on S. Ocean Dr. The residence was secure.
- Jan. 8 Water leak on S. Ocean Dr.
- Jan. 8 Assisted Fenwick Island PD with a suicidal subject. He was taken into custody and transported.

- Jan. 14 Assisted Delaware State Police with a disorderly subject at the Chalkboard in Sea Colony. He was taken into custody.
- Jan. 16 Underage consumption arrest resulted from a traffic violation.
- Jan. 17 DNREC requested assistance with a suicide south of South Bethany.
- Jan. 20 Local fugitive apprehended after being stopped for a traffic violation. He had several outstanding warrants.
- Jan. 23 Disorderly subjects on the beach fighting about a dog being off a leash.
- Jan. 27 False alarm on Seaside Dr.
- Jan. 27 Verbal domestic on Russell Rd.
- Jan. 29 Alarm accidentally tripped by the contractor there.

Councilman Headman complimented the Police Force, Administrative Staff, and the South Bethany Property Owners Association for the quickness in which they got information regarding the burglaries out to the community through the websites.

ORDINANCES/RESOLUTIONS

- **Second Reading of Ordinance 152-09, Chapter 20, Planning Commission, to make revisions and updates. (John Fields)**

Councilman Fields stated that Ordinance 152-09 revises Chapter 20, Planning Commission. Chapter 20 authorizes and regulates the activities of the Planning Commission. There have been no changes in this ordinance since 2003. The Planning Commission worked on revisions to bring the Code up to date. There were no changes made at the first reading. There have been no changes made to this ordinance since the first reading. Councilman Fields asked Council for questions or comments. There were none.

Mayor Jayne declared this the second reading of Ordinance 152-09.

- **First Reading of Ordinance 153-10, Chapter 145, Zoning, to add § 145-14.3, "Ground covering allowed in setback area". (Jay Headman and John Fields)**

Councilman Headman stated that the Town has spent a lot of energy for many years to look at ways to improve the water quality in the canals because it is a very important source to the Town. The Town has put in place a list of things that do make a difference (picking up after pets, keeping grass clippings out of the canals, etc.) This ordinance is another step to try to keep the canals as clean as possible. In May 2007 the Town created the Water Quality Committee. Its commitment was to try to have the canals ultimately swimmable and fishable. It cannot be done by just one project. There are a lot of different things that need to be done. The Water Quality Committee has focused on educating the community as well as working with the Center for the Inland Bays, DNREC, and other agencies to put things in place that we believe will make a difference. This ordinance focuses on the impact impervious surfaces have with runoff into the canals. This ordinance restricts the amount of impervious surfaces in the setback to reduce stormwater runoff and to capture as much of the first half inch of rain as possible.

Councilman Fields explained that after the December Workshop the Town's attorney reviewed the ordinance and came back with three suggestions. Councilman Headman and Councilman Fields have changed the ordinance to comply with the attorney's suggestions.

They are the only changes that have been made in the ordinance since the December Workshop. Councilman Fields reviewed the changes:

- § 145-14.3A – The Town attorney suggested saying "at least 55 percent". Councilman Fields said this was the intent because we want 55% to be the minimum, but the property owner could have a higher percentage of pervious materials.
- § 145-14.3C – The Town attorney suggested adding "Pervious concrete, porous asphalt, and permeable interlocking pavers shall not be used in any Town right-of-way."
- The third question the attorney had was is the 55 percent of pervious materials to be contiguous on any lot. Councilman Fields said they did not intend that they be contiguous. The property owner could have that percentage anywhere on the property with the exception of the five foot perimeter. No changes were made in the ordinance in regard to this.

Councilman Fields asked for questions from Council. Councilman Saxton referred to an email from a concerned citizen whom he felt brought up some reasonable questions. Councilman Saxton believes they should be addressed before moving forward with the ordinance. The individual is asking for some quantified data – what the ordinance will gain for the community and its canals. Councilman Saxton noted that there may not be an answer at the end of the day that you can quantify, but he thinks it is a reasonable question and it should be answered. Councilman Fields said he and Councilman Headman will look at the email and take it into consideration. If it is something that needs to be addressed, they will come back to the Council.

Referring to the definition of Permeable Interlocking Pavers, Mr. Roche asked if there was a difference between using small stones or sand. Councilman Fields replied that sand is not pervious. If you are putting in permeable pavers, the ICPI guidelines require No. 57 stone, a small pebble, to allow the water to percolate.

Regarding ground decks, Mr. Cestone suggested not requiring a 1/8 inch space for salt treated wood because the wood shrinks and will cause a bigger gap. This could be a tripping hazard for high heel shoes. Mr. Cestone suggested changing the wording to say that you require 1/8 inch minimum except if salt treated lumber is used. Councilman Headman said that they have gotten that recommendation from construction people. Councilman Headman and Councilman Fields will look into it.

Mayor Jayne declared this the first reading of Ordinance 153-10.

COMMITTEE REPORTS

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

The Planning Commission has completed the revisions of their By-laws. Currently Ordinance 152-09 is before Council to revise Chapter 20 of the Town Code.

In December the Planning Commission held a hearing to consider an application to subdivide a lot in South Bethany. The Planning Commission would not approve this subdivision unless the property owner agreed to remove the deck that would have been in the setback after subdividing the lot. The property owner considered appealing that decision to the Council but decided to comply and remove the deck. Then the application was approved. Councilman Fields stated that the Planning Commission did a nice job and he appreciates them for holding their ground and not letting something like that slip through.

The Planning Commission is looking at the possibility of doing a town survey to get an updated feel for the kinds of things the residents of South Bethany would like to see done in town.

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

George Junkin (Water Quality Committee) put together and submitted a proposal to receive a grant to do a pilot program of diffusers in one of South Bethany's canals. We have not heard back if we were successful in receiving that grant.

There were two grants proposed regarding the Anchorage Canal Drainage Area Assessment Project.

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

The Budget and Finance Committee has been working since the beginning of November on overseeing and working with the Town Manager on the FY 2010 budget to assure we maintain what the Council has requested of us – that is to manage exactly to budget in FY 2010. That has gone very well and the committee has worked very diligently to make sure that occurs.

Tomorrow, March 13, is the community meeting where the Budget and Finance Committee will be presenting the FY 2011 budget to the community for their input. The Committee will also be reviewing the third quarter results publicly. The Committee will also be discussing recommendations to take to the Council at the Feb. 25 Workshop.

The Town Manager has brought forth the recommended budget that he, the Chief of Police, and Financial Administrator has worked on. It was reviewed multiple times by the Budget and Finance Committee in the month of December and early January. In December the Budget and Finance Committee gave their input to them on what they hoped to see in the budget for FY 2011. The first draft of that budget was presented to the Council and the Council has given initial feedback on that. The first draft is also on the Town website for the community to review and comment on at the public meeting on Feb. 13, 2010, from 12 p.m. to 2 p.m. The Committee plans to take the suggested revisions by the Town Council and the community back into a workshop of their own to develop the next draft that will be presented at the Feb. 25 Workshop.

At the December Town Council Workshop the Town Council requested that the Budget and Finance Committee review if \$5,000 in funds were available for park land research. The Budget and Finance Committee voted that the funds are available if the Town Council chooses to use them.

ADMINISTRATIVE MATTERS

- **Approval of 2010 Election Board**

A motion was made by Mayor Jayne, seconded by Councilman Fields, to approve the 2010 Election Board. Mayor Jayne asked for discussion.

Councilman Youngs inquired where the names came from and stated that they are supposed to be nominated by the Council, and the first thing he knew about it was there are three people designated. He inquired if any of them have experience on this Election Board. Mayor Jayne replied that Carolyn Marcello and Betty Vahey have experience. The Town Manager stated that Bonnie Rae is new and added that one member asked to be taken off the Election Board due to health reasons. Councilman Youngs' concern is if the Town uses the same people every year what do we do for experience if something happens to them. He

asked if the Town should bring in new people to gain experience. Councilman Youngs stated that he does not know how this works. The Town Manager stated that it is usually difficult to find people to serve on the Board. He told Councilman Youngs to let the staff know if he has anybody that wants to serve on the Election Board.

Mayor Jayne called for a vote. The motion was adopted.

- **Vote on Approval of Legal Expenditures for Park Research**

Mayor Jayne stated that there are two things as discussed at the December Workshop that Council feels are prerequisites for a referendum:

1. Be sure there are no obstacles that could prevent the playground from going forward.
 - Legal. Does the town have the authority based upon the endowment from the Hall Family to put a playground in the triangle woods?
 - The possibility that the triangle woods would be classified as wetlands.

Mayor Jayne and the Town Manager estimate this would cost \$5,000.

2. Get a good description of the project and its costs so that people know what they are voting on.

The Budget and Finance Committee has reviewed the expenditure and voted that the funds are available. Now it is up to Council to vote one way or the other as to whether or not to spend this \$5,000. Mayor Jayne asked for discussion from Council.

Councilman Fields stated that he is not in favor of spending \$5,000 out of this year's budget for anything that is not necessary to carrying on the business of the town for the benefit of its citizens. He stated that this is not the right time to authorize \$5,000 for something that is not necessary. Mayor Jayne asked if Councilman Fields proposes that Council go ahead with the referendum in the absence of investigating. Councilman Fields stated that he understands Mayor Jayne's point but on the other hand we can go to referendum without knowing that, and if the referendum fails then the Town doesn't have to spend \$5,000. He added that if the referendum passes then Council can come back and spend the money at another time.

Councilman Headman agreed with Councilman Fields. He believes a non-binding referendum is the way to go.

Councilman Saxton agreed with Councilmen Fields and Headman. Councilman Saxton cautioned the community that there are no monies in this year's budget for legal research at this time. If the referendum passes, Councilman Saxton recommends it goes to a long range planning committee to figure out how to do it. Councilman Saxton is in favor of a non-binding referendum.

Councilwoman Matera agreed with Councilman Fields, Headman, and Saxton. She suggested giving the public all of the information that we have – the estimated costs of the park that the South Bethany Property Owners Association has and clarify there are additional legal fees and surveying fees.

Councilwoman Gassinger stated that there is definitely a reversion clause on the property. She believes the Council would look foolish to go to referendum without knowing whether or not anything could be done on that property. Councilwoman Gassinger stated that it wouldn't

cost \$5,000 to get a legal opinion. She is for getting the legal opinion but go no farther than that. She believes it makes sense to have a legal opinion.

Councilman Youngs stated that he is prepared to move a motion to adopt a resolution for a referendum. Councilman Fields called for a point of order to finish the discussion on spending the money for park research. Councilman Youngs said he is opposed to spending any money prior to referendum.

Mayor Jayne asked for discussion from the audience. Mr. Roche stated that he thinks Council could answer the question to authorize expenditures less than \$2500 for legal fees to find out if that park can be developed.

Mr. Cestone agreed with Councilman Fields. He does not think the Town should spend a nickel until it finds out what the town people want.

Mr. Ronan said if it goes to referendum, say would you like a park and would you like any of the money coming out of the Town's treasury.

Mr. Junkin stated that he does not see why the Town would spend any money if the people in the town are not interested in the park. He agreed with Councilman Fields.

Mr. Nazarian agreed with Councilman Fields and Councilman Headman.

Mayor Jayne stated that if Council votes to go to referendum the explanation in the referendum has to be very good, thorough, precise, and as informative as possible. He also said a public hearing should be considered even though it is not required. Mayor Jayne stated that Council should have a committee to take it to referendum.

A motion was made by Councilman Youngs, seconded by Councilman Fields, to authorize no expenditure of any money for park research prior to the referendum. Mayor Jayne called for discussion. Councilman Saxton asked if that included monies to prepare the referendum. Mayor Jayne said no.

The voting was as follows:

FOR THE MOTION: Councilpersons Fields, Headman, Saxton, Matera, and Youngs

AGAINST THE MOTION: Mayor Jayne and Councilwoman Gassinger

The motion carried with a 5-2 vote.

Councilman Youngs said that if you will continue the motion he will move that Council adopt a resolution for a referendum on Richard Hall Park as circulated to the Council before. Mayor Jayne stated that there are things in the resolution that are not correct. Councilman Youngs did not agree. After a discussion, Councilman Youngs proposed that Council consider the resolution at the next Workshop.

ADJOURNMENT

Before adjourning, Council agreed to change the time of the Feb. 25 Workshop to 3 p.m.

A motion was made by Councilman Fields, seconded by Councilman Headman, to adjourn the Feb. 12, 2010, Town Council Regular Meeting at 9:25 p.m.