

<b>TOWN OF SOUTH BETHANY TOWN COUNCIL REGULAR MEETING MINUTES MARCH 13, 2009</b>
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**ATTENDANCE**

PRESENT: Mayor Gary Jayne; Councilpersons John Fields, Jay Headman, Bonnie Lambertson, Richard Ronan, and Marge Gassinger; Town Manager Melvin Cusick; Ptlmn. Joshua Rowley; and Administrative Assistant Pam Smith

**MEETING CALLED TO ORDER**

Mayor Jayne called the March 13, 2009, Town Council Regular Meeting to order at 7:00 p.m., followed by the Pledge of Allegiance to the Flag.

**MEDIACOM REGIONAL VICE-PRESIDENT OF OPERATIONS – DAVID KANE**

Mayor Jayne stated that Councilman Headman has done a lot of work on this subject. Councilman Headman thanked the Administrative Assistant, Pam Smith, and the Financial Administrator, Renee McDorman, for their help with the survey. Councilman Headman also thanked the community – there were close to 250 respondents for the survey.

Councilman Headman presented an overview of the survey results noting that No. 12 and No. 18 received the highest ratings and No. 13 received the lowest rating.

Councilman Headman stated that the Town is in a 15 year agreement with Mediacom which is up in November of 2012. The Town can begin discussing the contract three years out.

Councilman Headman introduced David Kane, Mediacom Regional Vice-President of Operations for Mid Atlantic and West Regions. Mr. Kane's primary office is in Dagsboro.

Mr. Kane addressed the Mediacom Survey of South Bethany Summary of Concerns:

- ◆ *When contacting Mediacom by telephone, kept on hold too long (usually waiting for at least 10 minutes before customer service person comes on).*

Mr. Kane stated that since the survey was done last fall, Mediacom has made improvements to the regionalized call center. Mediacom has prioritized the calls. Outages and reception issues are now a priority and billing inquiries and adding a channel are secondary. The wait time for service related issues is down to under one minute. Questions regarding billing have wait times of up to four minutes.

- ◆ *Overall cost too much for what we receive.*

Mr. Kane explained that it is not uncommon that the most prominent concerns are rates and channel availability.

- ◆ *Channel 11 (NBC) and FOX channel out of Philadelphia have been fuzzy for months, yet no solution.*

Channel 11 and the Fox Channel out of Philadelphia have been fixed. Mediacom purchased a fiber interconnect to correct the problem.

- ◆ *Would like to have a choice of Philadelphia channels, especially for sports.*

Mr. Kane gave the following explanation of why that is not within Mediacom's control and that it won't happen. Mediacom is bound by federal regulation. South Bethany is in the Salisbury Designated Market Area (DMA). The local TV stations have a right to protect their

marketship. There are federal regulations called Syndicated Exclusivity and Must Carry. They are enforced by the local market stations. The FOX channel out of Philadelphia was "grandfathered in" because it was on prior to 1992 when the federal law was enacted. Anything past 1992, Mediacom has to pay a copyright fee of 3.75% on every gross revenue dollar. He is not permitted to go out and get WPHL – it is not their market.

Mr. Kane added that there is a new low band or low powered station that has received their license and is trying to launch. Their local tower will be in Sussex County. They have an agreement with WPHL for a small block of Philadelphia Phillies games. Mediacom is looking at that possibility in the near future.

- ◆ *Not enough HD channels, especially why not NBC and FOX. Comcast offers them and more HD channels.*

Councilman Headman noted that Comcast has 19 more HD channels than Mediacom. Mr. Kane stated that Mediacom currently has 16 HD channels. An additional 11 will be added over the course of the next year. Mediacom is 1/16 the size of Comcast. Comcast is the largest cable operator in the United States. Mediacom has 1.4 million customers throughout the United States. Comcast has 22 or 23 million customers. High Definition programming is a negotiated fact that the broadcaster that has a high definition signal enters with you.

- ◆ *Volume of sound different from one station to the next.*

Councilman Headman stated that this was one of the biggest complaints. Those attending the meeting agreed that volume of sound was still different from channel to channel. Mr. Kane said that is something Mediacom needs to fix. He will address that with the local staff on Monday and get back to Councilman Headman within a week.

- ◆ *Numerous times the audio is not synchronized with video.*

Mr. Kane said that is probably something Mediacom needs to fix. It needs to be synched up and that should be controlled at Omar.

Councilman Ronan stated that the WMPR channel sometimes freezes for a few seconds and then will start playing again. Mr. Kane speculated that it is probably WMPR's distribution. He added that PBS works on a small budget. Mr. Kane noted that one of the PBS stations is in digital transition. Mr. Kane said that he would look into it.

- ◆ *Why not offer a basic small package since many that are in the package are "junk".*

Mr. Kane stated that a basic small package would not be offered because it would not be profitable in a "seasonal market".

- ◆ *Offer winter rate for those property owners who rarely use their homes during the fall and winter.*

Mr. Kane said a seasonal rate is available if you have a forwarding address (a primary residence) at least six months of the year. It is not advertised and there are no plans to advertise it. The seasonal rate has to be requested. The seasonal rate is available after Labor Day and up to April 1. A property owner complained that he has spent hours on the phone trying to get the seasonal rate. He said that the people at the regional call center invariably get it wrong. Mr. Kane told the property owner that he will have the opportunity to not have to do that this year. Mr. Kane told the property owner to see him after the meeting.

- ◆ *Why does town even have a contract with a cable company?*

Mr. Kane stated that it is a partnership because the cable company is asking for the rights to go on the Town's easements and in return for that there is a franchise fee that the cable company pays to the Town.

- ◆ *Many stations run similar programs.*

Mr. Kane stated that he does not control the programming.

- ◆ *Where do you receive a listing of channels you have? Can it be posted on a website?*

The website is: //Dagsboro.mediacomtoday.com. Click on the prompt for TV Listing.

- ◆ *Why are customers sometimes required to pay an electronic charge of \$1.99?*

The fee, an administrative fee, is charged when you make a change to your service. The fee can be waived by contacting Mediacom.

### **Property Owners had the following questions/comments:**

Mr. Cestone stated that he believes that when Mediacom receives a complaint the trouble report should not be closed out until the trouble is fixed no matter if the trouble is at the residence or at the front end.

A property owner stated that her service has been terrible. The phone will work a little bit and then it will be off. It goes on and off. Also the computer doesn't work at times. She has had a lot of service calls, but the service can't seem to be right for any period of time. Mr. Kane told her to give his assistant her address and phone number and they will take a look at her trouble call history. Mr. Junkin stated that he has the same problem and a Mediacom employee taught him how to reboot the modem using a paperclip and now he can fix it himself.

A property owner asked what benefit the Town or residents derive from a monopolistic cable service. Mr. Kane replied that cable companies are federally mandated that they be non exclusive. Mr. Cestone stated that he was involved with the current contract and based on the FCC Rules and Regulations the franchise agreement that we have with Mediacom is non exclusive. Any other cable company can also come in here if they are willing to invest in the infrastructure.

Mrs. Junkin stated that it is aggravating when you call Mediacom to report an outage and they tell you that there are no outages in your area. Mrs. Junkin also stated that she believes that the Mediacom service has improved.

Mayor Jayne thanked Mr. Kane for coming to the meeting and for taking a lot of heat very gracefully.

### **PROPERTY OWNERS' PARTICIPATION**

- Ed Nazarian (20 Peterson Dr.) – Was glad that the water tower was being painted and wondered if the Town could get Artesian to get on a regular schedule to maintain the tower. The Town Manager stated that Artesian normally paints the water towers every 15 years but because of the salt air they are painting this water tower 3 to 5 years earlier.
- Lloyd Hughes (152 Layton Dr.) – Asked who on Council is in charge of global warming. Mr. Hughes suggested that the Town have a contingency plan. Mr. Hughes submitted a packet of information regarding global warming to Mayor Jayne.
- Mike Matera (311 W. 9<sup>th</sup> St.) – Inquired if DNREC's harvester would be coming to skim the algae out of the canals. The Town Manager said to report algae in the canals go to the Town's website ([www.southbethany.org](http://www.southbethany.org)) and on the Local Links page click on the DNREC link.
- Ed Nazarian (20 Peterson Dr.) – Inquired if Council had looked into regulations for property owners putting windmills on their property. Mayor Jayne stated that he had not forgotten about it, but Council has been preoccupied with the budget and had not had a chance to look into it.

## **ADOPTION OF MINUTES**

- **Town Council Regular Meeting Minutes, February 13, 2009** – A motion was made by Councilman Headman, seconded by Councilman Ronan, to accept the February 13, 2009, Town Council Regular Meeting Minutes. The motion was unanimously carried.

**Town Council Special Meeting/Workshop Notes, February 18, 2009** – A motion was made by Councilman Fields, seconded by Councilman Ronan, to accept the February 18, 2009, Town Council Special Meeting/Workshop Notes. The voting was as follows.

FOR THE MOTION: Mayor Jayne and Councilpersons Fields, Headman, Ronan, and Gassinger

AGAINST THE MOTION: None

ABSTAINED: Councilwoman Lambertson (was not present at that meeting)

The motion carried with a 5-0 vote.

- **Town Council Special Meeting/Budget Workshop I Notes, February 26, 2009** – A motion was made by Councilman Ronan, seconded by Councilwoman Gassinger, to accept the February 26, 2009, Town Council Special Meeting/Budget Workshop I Notes. The motion was unanimously carried.

## **LEADERSHIP REPORTS**

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

Attended the March SCAT Dinner Meeting. The Lieutenant Governor was the speaker and was asked a lot of questions about the stimulus money. Mayor Jayne asked him when the towns and cities in Sussex County would find out how much, if any, stimulus money they will get. He did not know. Mayor Jayne stated that the Sussex County Council is pursuing stimulus money on behalf of the Sussex County towns and cities.

The March SCAT Steering Committee Meeting was attended by a number of Sussex County representatives, senators, mayors, and county officials. A number of issues important to Sussex County were discussed regarding things the cities and towns want their legislators to look out for during the current legislative session. The top item was that the real estate transfer tax not be taken away from the cities and towns.

Dune Management and Coastal Landscaping Workshop – The Town will sponsor a workshop scheduled for May 15 from 9 a.m. to 12:30 p.m. at the old Bethany Beach Fire Hall. Presentations will be made by Tony Pratt, a Coastal Engineer for DNREC, and Dr. Wendy Carey of the University of Delaware. Dr. Carey is an expert on coastal planting and native plants. The workshop is open to the public.

The Annual 'Gardening for the Bays' Native Plant Sale will be May 16 at James Farm.

Council has been working on the FY 2010 Budget. Council has one more Budget Workshop and the budget will be presented at the April meeting and will take affect in May. Mayor Jayne stated that there will be a tax increase. Council held off as long as possible hoping that the real estate market would come back and replenish the Town's revenue source. It did not. It will be the first tax increase in 33 years. South Bethany property taxes are based on the Sussex County assessment which was done in 1974. Furthermore, the Town only uses 50% of the assessment to apply the tax rate to. Over the past year the Town Staff and Police Department have done an excellent job of cutting expenses. To bring in additional money, Council has raised fees such as building permits and mercantile licenses, and the Town has

two new sources of revenue – an agreement with Verizon to put antennas on the Artesian water tower and a beach vendor.

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

Council awarded Bid 09-01, Modification of Sand Walkways, to Tuscan Construction Co. of Lewes, Delaware in the amount of \$57,800. The project was originally estimated at \$80,000. The work should start the end of March.

Council awarded Bid 09-02, Beach Concessions Service, to Melvin McMahon, trade name Go-Melvo. That service will run from Memorial Day through Labor Day.

The Artesian contractor has started painting the water tower. They estimate that it will take two to three weeks depending on the weather. During the day when they are working the Town recommends that you not park in the Town Hall parking lot.

Mr. Matera stated that he was told by J & J Bulkheading that a couple of the Town's bulkheads are starting to cave in between 7<sup>th</sup> and 6<sup>th</sup> Streets. The Town Manager replied that the tiebacks have rusted and a few have broken. The bulkheads are not caving in. They need work but they are not in danger of collapsing. The Town is getting estimates on repairing them.

- **Treasurer's Report**—Melvin Cusick reported as of February 28, 2009:

February Revenue	\$ 19,999.65
February Disbursements	\$ 114,241.68
Balance	\$ 1,288,282.28

For the third month in a row the Town has had no transfer tax revenue.

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

February 2            Burglary on New Castle. Unknown persons kicked in the front door of the house. They stole three flat screen TVs and other electronic equipment. They caused significant damage to the walls of the house getting the TVs off. There have been no arrests made. The Police are working on it.

February 9            Assisted Ocean View Police Department with a subject who was wanted for multiple felonies. He took off running on foot and jumped in a car. There was a long pursuit on Rt. 26. When he was caught he had a taser on him (one that only police can have) and he was trying to stun one of the officers. He also had a large amount of marijuana prescription medication on him. For this area he is a middle level drug dealer. He was arrested.

February 10            A local fugitive was apprehended in town after a traffic violation. He was wanted out of New Castle County Superior Court. He was transferred and committed in default of bond.

February 11 & 12      False alarms due to the wind storm.

February 12            Local fugitive apprehended after a traffic violation. This person had a warrant out for his arrest since 1990. He was taken and had to pay off some outstanding fines.

February 19            With permission from the property owner, a Contractor was staying in an extensive remodel while working. The Police Department is working with the

Building Inspector to establish at what level on a remodel the house can be occupied.

February 21 Burglary/attempted burglary on South Ocean Drive. Unknown person used an umbrella to break the glass on a sliding glass door and unlocked the door. Initially there was nothing reported missing but now the victim is saying there may be some things missing.

Mr. Amoruso inquired if Ptlmn. Rowley would be presenting the session on preventing theft again. He said that it was very good and would serve the residents well. Ptlmn. Rowley said he plans to present it again in the summer.

Ptlmn. Rowley asked the property owners to call the police immediately if they see anything unusual.

### **ORDINANCES/RESOLUTIONS**

- **Second Reading of Ordinance 149-09, Chapter 104, Property Maintenance, Article III, Entitled "General Provisions" to Amend § 104-11. (Jay Headman and John Fields)**

Councilman Headman explained that adjustments to Ordinance 149-09 had been made after receiving questions and concerns via email and at the February Town Council Regular Meeting. The basic concept is to minimize the amount of stormwater runoff that goes directly into the canals and bodies of water. Councilman Headman pointed out that newly constructed outdoor showers could not drain within ten feet of any canal or body of water. The actual specific description was taken out of the ordinance.

Mr. Cestone stated that he had expressed his concerns at the February Town Council Regular Meeting. After that meeting he requested to see studies that were used to justify the ban. Mr. Cestone reviewed the information he received. Mr. Cestone believes the information he received does not address his concerns regarding roof runoff. Councilman Headman and George Junkin will provide Mr. Cestone with additional information.

Councilman Headman stated that all of the literature promotes controlling the stormwater the best you can and reduce the amount of impervious surfaces in your surrounding.

Mayor Jayne declared this the second reading of Ordinance 149-09.

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

Councilman Fields stated that pollutants settle on the roofs and gets washed into the canals and contribute to lowering the oxygen in the water which promotes algae blooms. Ordinance 150-09 is another attempt to get the stormwater to percolate through the soil so that when it does get to the canal a major portion of the pollutants have been filtered out. Councilman Fields reviewed the Synopsis. Councilman Fields stated that 65% of any required setback area be covered with pervious materials may be a little high. Councilman Fields said there will be plenty of space inside the setback to put a driveway or patio.

Councilwoman Lambertson stated that she thinks it is important to educate the citizens, and a lot of people will implement the strategies on their own. She said that if the State, County, and surrounding towns would pass ordinances regarding this then she would be more interested.

A property owner questioned if a five foot boundary on a driveway surface is realistic or fair to consider.

Councilwoman Gassinger was concerned about the side setback on a 50 x 100 foot lot and wondered if three feet would be enough.

Regarding § 145-14.3H, Mr. Cestone suggested replacing the percentages with a specific description.

Mr. Cestone suggested making an exception for the driveway.

Council will review Ordinance 150-09 at the March 18 Town Council Special Meeting/Budget Workshop III.

Mayor Jayne declared this the first reading of Ordinance 150-09.

- **Resolution No. 1-09, A Resolution to Revise South Bethany's Parking Permit Fees**

Councilman Fields read Resolution No. 1-09. Mayor Jayne stated that these rates are better than the other towns. A motion was made by Councilman Fields, seconded by Councilman Ronan, that the Council approve Resolution No. 1-09. The voting was as follows:

FOR THE MOTION: Mayor Jayne and Councilpersons Fields, Headman, Lambertson, Ronan, and Gassinger

AGAINST THE MOTION: None

ABSTAINED: None

The motion carried with a 6-0 vote.

### **COMMITTEE REPORTS**

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

The Project Manager said that the Federal permit expires in 2014 and the State permit expires August 2009. The State permit is already in the works for renewal. The Project Manager said that the permits would never be allowed to expire again. DNREC will start dredging September 1, 2009, with a completion date scheduled for the end of 2009 or the end of January 2010.

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

Mayor Jayne stated that the Town is going to put benches at the top of the walkways. The benches were built by the Maintenance Supervisor, Don Chrobot, and cost less than \$100 each.

- **Beautification** – Councilwoman Lambertson reported:

The plants have been ordered. Some were ordered last fall for spring. Another new bed was originally in the budget at a cost of \$10,000, but Council agreed to cut that.

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

There was nothing to report.

- **Tidal Pump Program Update** – Councilman Headman reported:  
Due to time, Councilman Headman will report at the next meeting.
- **Canal Water Quality** – Councilman Headman reported:  
Due to time, Councilman Headman will report at the next meeting.

#### **ADMINISTRATIVE MATTERS**

- **Approval of 2009 Election Board**

A motion was made by Councilwoman Gassinger, seconded by Councilwoman Lambertson, to appoint Carolyn Marcella, Betty Vahey, and Al Buhr to the 2009 Election Board. The motion was unanimously carried.

#### **ADJOURNMENT**

A motion was made by Councilman Fields to adjourn the March 13, 2009, Town Council Regular Meeting at 9:15 p.m.