

<p>TOWN OF SOUTH BETHANY TOWN COUNCIL REGULAR MEETING MINUTES APRIL 11, 2008</p>

ATTENDANCE

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

MEETING CALLED TO ORDER

Mayor Jayne called the April 11, 2008, Town Council Regular Meeting to order at 7:00 p.m., followed by the Pledge of Allegiance to the Flag.

PROPERTY OWNERS' PARTICIPATION

Mayor Jayne reviewed the following ground rules: Limit your comments to 3 to 5 minutes, one topic at a time, raise your hand to be acknowledged, and wait until everyone has had their first chance before speaking a second time on a separate subject.

- Jo Ann Kirk (408 Periwinkle Rd.) – Stated that the house next door to her has been under construction for 17 months and that she has endured construction noise for much longer than anyone who lives in South Bethany should have to. Ms. Kirk stated that because the house covers as much allowed for the property, she has endured a lot of water seeping onto her lot and under her house. She added that many days she cannot get to her garbage cans due to the amount of water. Stones on the north side of her property have sunk into the ground. She believes that trees she planted will probably die because they are so wet. This week pavers were delivered. After writing to EP Henry, she learned that the pavers would not allow water to go down into the sand. The Code Enforcement Constable informed Ms. Kirk that the owner has been told that he has to bury a pipe to take the water away from Ms. Kirk's property. She does not want to be immersed in water again this summer. Ms. Kirk stated that she is counting on the Town to take care of the situation.

Mayor Jayne replied that the Town Code does not prohibit pavers. Mayor Jayne said that the Planning Commission is studying the subject of impervious surfaces and whether or not to allow impervious pavers. Mayor Jayne stated that Melvin Cusick and Joe Vogel have a lot of experience with drainage and the French drain should keep the water off Ms. Kirk's property. Regarding the completion of the construction, Mayor Jayne said the Town allows an extension period. At the end of the extension period the property owner has to go to the Board of Adjustment. The Town Manager stated that he thinks the Code Enforcement Constable has told the property owner that if it is not finished by May 15 a stop work order will be issued and they will have to go before the Board of Adjustment.

Through research, Ms. Kirk learned that 90% of the bodies of water in Delaware are polluted due mostly to runoff. In regard to this, Delaware is one of the worst states in the country. Ms. Kirk gave copies of her information to Council.

- Carolyn Marcello (8 S. 9th St.) – Inquired if the Town still had the Senior Call-In Program. Mayor Jayne said the Town has not had the program for over a year. The Town encourages residents to get the 24/7 lifeline type of systems which are more reliable and better.

- Ed Nazarian (20 Peterson Dr.) – Asked Councilman Headman if an ordinance had been passed regarding recycling carts being stored in bins. Mr. Nazarian has noticed recycling carts being stored next to bins and in bins that do not have a door. Councilman Headman replied that Council did pass an ordinance and there is a fine. The Town Manager said there are still a lot of people that aren't in town. DSWA reports about 100 pickups. The Town Manager said the Town will start checking. Councilman Headman said one of the concerns is enforcement.
- Jim Cole (137 New Castle Dr.) – In reference to the new beach replenishment and the dune, Mr. Cole suggested installing handrails on the crossovers for safety reasons. Mr. Cole wonders if the current crossovers violate some Delaware law for safety. Mayor Jayne said it is not a Town project and there is no Town money in it. It is a State and Federal project. Mayor Jayne said, "Our powers here are simply the powers of persuasion." Mayor Jayne said he can take the request to DNREC. Mr. Cole also suggested having two more "easy access" to the beach. Mayor Jayne said the Town is going to look into that.
- Mike Matera (311 W. 9th St.) – In regard to the recycling carts, inquired if the container can be stored in back of the trash bin. Council answered no.
- Al Rae (Property Owners Association) – Invited the candidates to attend the Property Owners Association's Meet the Candidates program on April 19 at 10 a.m. Mayor Jayne replied that the Town will not be having an election this year because not enough people signed up, but he would be happy to attend. Mr. Rae said it is an opportunity for property owners to meet their elected officials.
- Dan Whorton (306 W. 9th St.) – Inquired what he would need to do to get the Code changed to allow plastic floating jet ski docks. Mayor Jayne said a new ordinance would have to be written, it would have to be approved by the Town attorney, someone on Council would have to sponsor it, and it would have to go through three readings. Councilman Ronan added that the ordinance would have to be passed by a majority of the Council.

Mr. Whorton asked why the floating jet ski docks are prohibited. Mayor Jayne said in order to get the jet ski up onto the floating dock the operator typically has to rev up the jet ski. This makes a lot of noise and sometimes pushes water over to the other side of the canal and has the same effect as a wake. It also turns up the bottom and makes the water turbid. Councilman Ronan said that it is kind of dangerous to get the jet ski up on the dock because the operator is coming at a pretty good speed. Councilman Ronan added that there were a lot of complaints.

- Mike Matera (311 W. 9th St.) – Inquired if there was an ordinance against putting a boat lift in. Mayor Jayne said there is nothing in the Code to prohibit boat lifts. Councilwoman Lambertson added that there are restrictions on the location of the boat lift.
- Ed Nazarian (20 Peterson Dr.) – Inquired if Council was considering adding handicapped ramps at either end of Ocean Drive. Mayor Jayne stated that the Town is going to look at that. The Town is getting the specs, plans, and price on the existing handicapped ramp. Mayor Jayne makes no promises but will go to DNREC and see what can be done. He added that everyone agrees it would be a good idea to have at least two more handicapped walkways like the one at S. 3rd St.
- Jim Cole (137 New Castle Dr.) – Stated that he had to pull over to read the bottom of the "Move Over" sign on Rt. 1. He believes the signs are a safety hazard and should be in black and white so you can read it.

ADOPTION OF MINUTES

- **Town Council Special Meeting/Budget Workshop II Notes, March 6, 2008** – A motion was made by Councilman Headman, seconded by Councilman Rubinsohn, to accept the March 6, 2008, Town Council Special Meeting/Budget Workshop II Notes. The motion was unanimously carried.
- **Town Council Regular Meeting Minutes, March 14, 2008** – A motion was made by Councilman Fields, seconded by Councilwoman Gassinger, to accept the March 14, 2008, Town Council Regular Meeting Minutes. The motion was unanimously carried.
- **Town Council Special Meeting/Workshop Notes, March 27, 2008** – A motion was made by Councilwoman Gassinger, seconded by Councilwoman Lambertson, to accept the March 27, 2008, Town Council Special Meeting/Workshop Notes. The voting was as follows:

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

AGAINST THE MOTION: None

ABSTAINED: Councilmen Fields and Rubinsohn (were not present at that meeting)

The motion carried with a 5-0 vote.

- **Town Council Executive Session Minutes, March 27, 2008** – A motion was made by Councilman Headman, seconded by Councilman Ronan, to accept the March 27, 2008, Town Council Executive Session Minutes. The voting was as follows:

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

AGAINST THE MOTION: None

ABSTAINED: Councilmen Fields and Rubinsohn (were not present at that meeting)

The motion carried with a 5-0 vote.

LEADERSHIP REPORTS

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

Attended numerous meetings regarding the ambulance service.

Attended the South Coastal Library's official ground breaking ceremony. The foundation is laid. It is a big building. It was a nice ceremony and it is going to be a nice building. The library will be a tremendous asset to the community. The Town of South Bethany and the Property Owners Association along with the other towns are contributing to the building fund. It is a cooperative community effort.

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

The Code Enforcement Constable's Report was available on the back table. The Code Enforcement Constable would like to remind everyone that it is time to cut your grass. Next week he will start handling enforcement issues on grass.

Next week parking will be limited around Town Hall while the top course of paving is completed. Also the parking area will be striped.

- **Treasurer's Report**—Councilman Rubinsohn reported as of March 31, 2008:

Balance Brought Forward	\$ 1,726,000
March Revenue	\$ 46,000
March Disbursements	\$ 203,000
Balance	\$ 1,569,000

- **Police Department Report/Questions**—Ptlmn. Joshua Rowley reported for the month of March, 2008:

There were 26 calls for service. The following incidents were notable:

Domestic incident on Elizabeth Way between family members. No crimes committed but a report was taken.

- March 15 Off of a traffic stop subject was arrested for 17.1 grams of marijuana, 36 pills of a schedule two narcotic, and 62 pills of a non controlled prescription substance. Arrested for possession with the intent to deliver controlled substances across state lines.
- March 16 Off of a traffic stop, two subjects were apprehended for the possession of crack cocaine. One of the subjects had several warrants for her arrest out of New Castle. Both arraigned and committed to Sussex Correctional.
- March 17 An incident resulting off of a traffic stop of illegal immigrants. The owner of the vehicle, who was the boss of the illegal workers, came and started an argument. She ended up being arrested for permitting undocumented people to drive her vehicle.
- March 19 Drug arrest for schedule two narcotics and possession of drug paraphernalia off of a tag violation.

Mr. Rae asked about the latest status on the burglaries from December through January. Ptlmn. Rowley said there were still no suspects. It went onto Delaware's Most Wanted 1-800 Tip Line. The last burglary was in early February. Mr. Rae asked if there was any pattern with other places that are having beach replenishment. Ptlmn. Rowley said no, nothing to tie in with the beach construction. Mr. Rae asked what was the total number of houses burglarized in South Bethany. Ptlmn. Rowley said three confirmed and one possible.

Mr. Nazarian asked what had happened to the undocumented people that were in the vehicle. Ptlmn. Rowley said they were given citations and released.

Mr. Matera said he believes he heard on TV that the state is passing a law that you have to be 18 to ride a bicycle without a helmet. Ptlmn. Rowley said he read about it in the News Journal but thinks it is still in committee and hasn't been voted on.

ORDINANCES/RESOLUTIONS

- **Second Reading of Ordinance 141-08, Amending Chapter 134, Vehicles, Operation of, to Allow Enforcement and Penalties for Offenses of Traffic-Control Devices. (John Fields)**

Councilman Fields stated that local municipalities have the authority to erect traffic control devices that pertain to controlling traffic in their jurisdiction. This ordinance will allow the police to issue citations for traffic control devices in the Town of South Bethany that have

been approved by the Town Council. This ordinance also sets the fine for the violation of the Town Council approved traffic control devices within the Town of South Bethany.

A property owner asked what traffic control device does the Town need that the State doesn't offer. Councilman Fields referred to prohibiting vehicles on the beach and prohibiting turning onto Black Gum Drive during certain hours and certain days of the year.

Mr. Speer inquired if it was calling for any new type of a traffic control device. Councilman Fields replied that this ordinance covers current traffic control devices in town as well as any traffic control devices approved in the future.

Mayor Jayne declared this the second reading of Ordinance 141-08.

COMMITTEE REPORTS

- **Assawoman Canal Dredging** – Councilman Rubinsohn reported:

The project is close to being finished but they do not know if they will be able complete it by December 31. They are going to try to extend the season either by starting a little earlier than September 1 or, more likely, extend into January. They do not want to have to come back for another year to complete the project. The north end is nearly complete. The south end needs more work.

A property owner asked if there was a place to keep up to date with the project. The Town Manager said that dredging operation information is posted on the State of Delaware's website under DNREC. However, he added that there is not a lot of up-to-date information.

Mr. Roche asked if the Town could verify if the boat ramp on the canal by the bridge is open. Councilman Rubinsohn said he believes it is open.

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

The project is pretty well finished and they did an excellent job.

Councilman Ronan is concerned about getting over the steep walkways. The Town is looking into the possibility of adding additional disabled ramps. This is something the Town will be working on for a while. Council is very interested in having people get on the beach as easily as possible.

Mayor Jayne stated that the last several days the Town had a pretty severe storm with steady northeast winds. Before beach replenishment the water would have been under the houses and probably would have slopped onto Ocean Drive and maybe even gone down the side streets. The Town would have had a big cleanup job on Ocean Drive with debris everywhere and sand fence damage. The dune works, no question about it. Mayor Jayne added that where the waves are breaking looks very good. One of the lessons learned from Rehoboth/Dewey was to put a different slope on South Bethany's beach. The waves are breaking on water that is two or three feet deep instead of slamming on bare sand.

Mr. Roche asked if consideration had been given to cleaning the new beach. Mayor Jayne said mechanical cleaning is in the budget again this year.

Mayor Jayne said the Beach Committee will continue to try to identify issues prior to the season and will watch it during the season.

A property owner asked if there was additional landscaping to be done on the street side of the dune, noting that after it rains there is a lot of water that collects there. Mayor Jayne said

that water is on private property. Councilman Headman said that there was a conversation about putting sand on areas where water accumulates on the walkway. Mayor Jayne stated that most of the water had dissipated. Councilwoman Gassinger added that the sand fences will build up sand and should take care of it.

- **Beautification** – Councilwoman Lambertson reported:

It is spring and so we will be gearing up again. The committee has a meeting coming up in the next week and a half or so. The Maintenance Supervisor is working on a new bed at the south end of town and getting flowers in.

- **Canal Dredging** – Mayor Jayne reported:

Still working on the canals. We are pretty confident that we are going to finish before the end of the month. We are still within our contingency schedule.

Material accumulated over 50 years or so that did not show up on the map survey was not anticipated. The dredge had to deal with obstacles which stopped work. A number of times the pipe got plugged up with pine needles. Another time it got plugged up with a cement block. The lesson learned is that the canals have to be maintained just like streets are maintained, although the canals do not have to be dredged as often as streets need to be paved.

Mayor Jayne's recommendation is to allocate a certain amount of money in the budget every year for maintenance of the canals.

Mayor Jayne believes a bathymetric survey should be done every ten years.

Mr. Roche asked if the Town was dredging all the way down through the canals. Mayor Jayne replied that the permit limits the dredging to a depth of four feet. We are only dredging in places where the depth is less than four feet. You cannot dredge an estuary any deeper than the mean average depth of the main body of water that it is connected to. The mean average depth of the bay is four feet.

Mr. Roche asked if the section between the island and the mainland where the pipe goes up into the spoil site is part of the Assawoman Canal Dredging project. Mayor Jayne asked the Town Manager to look into it.

Mr. Matera stated that on Russell Canal at low tide the very end has a lot of dead pine needles. He stated that ten years ago or so a backhoe was used to clean those corners out. Mayor Jayne stated that part of this contract was to stay eight feet away from the bulkheads to prevent damage to the bulkheads. The corners were left alone. Mayor Jayne added that there is a theory that it is good for circulation in the canals to have shallow corners; although that is not the reason the Town did it.

- **Town Hall/Police Building Construction** – Councilwoman Gassinger reported:

The top coat of paving will be completed in a week or so.

Our Grand Opening is scheduled for Saturday, May 3. The schedule is as follows:

9:00	a.m.	Town Hall Police Station Open for Tours
9:30	a.m.	Remarks by the Mayor
10:00	a.m.	Ribbon Cutting
10:15	a.m.	Tours Continue

The Town is currently accepting orders for honorary and memorial bricks to be located around the flagpole. The cost is \$100 a brick. As of this meeting, 21 bricks have been sold. The proceeds will be used for beautification.

- **Planning Commission and Comprehensive Plan** – Councilman Fields reported:

The Planning Commission will make a presentation at the April 24 Workshop with recommendations and information concerning pervious and impervious surfaces in South Bethany.

Mr. Romeo hoped that Council would consider an amendment to the construction code prohibiting generators. Councilman Rubinsohn said that Council had addressed this issue about a year ago. The Town Manager stated that the Code Enforcement Constable's construction packet puts a time limit on the use of generators; however, if anyone ever challenges it you need it in ordinance form.

Councilman Fields said he has a copy of the draft ordinance that Bob Cestone worked on.

Councilman Fields said he will bring it up at the April 24 Workshop.

Mr. Romeo believes that when the Town issues a permit to start rehab of a house or new construction the permit should say that you can't start until you install an electric pole line.

Mayor Jayne would like to include compressors in the ordinance. Council will discuss it at the workshop.

- **Tidal Pump Program Update** – Councilman Headman reported:

In order to move further, it is critical to have the support and backing of DNREC.

The Tidal Pump Budgetary Study confirmed that the Tidal Pump System designed by Lloyd Hughes does work and it can flush the system.

The Tidal Pump Committee met with DNREC in November. In December the committee met with the Secretary of DNREC.

DNREC submitted a written review to the Tidal Pump Committee which included the following statement, "Considering the cost of the project as well as the other issues regarding permitting, construction, and operation and maintenance of the system, we are not convinced that building the Tidal Pumping System is the best management action that can be taken for improving the water quality of South Bethany's canal system."

Even though DNREC is currently holding that position, they are willing to work with us. The committee, especially George Junkin, is working to address some of DNREC's issues and concerns. The committee plans to meet with DNREC in late spring.

The committee is made up of Bob Apollo, Lloyd Hughes, George Junkin, and Gary Jayne. They are all engineers. Very capable people.

- **Windmills** – Councilwoman Lambertson reported:

Bluewater Wind has invested in a million dollar research vessel to study bird activity about 11½ miles off of the beach at Rehoboth where they would like to build their wind farm. Councilwoman Lambertson believes there are several other things to be studied as well.

Delmarva Power is opposed to an offshore wind farm partly because they would be required to buy power from Bluewater Wind for 25 years. Delmarva Power says it would be extremely expensive. Bluewater Wind says it will be expensive for a while but will taper off and will be less expensive.

Delmarva Power said that power from inland wind farms would be cheaper for their constituents than off shore wind power.

The News Journal reported that the State Senate said if we are going to do wind power at all we should do it inland. Today the House of Representatives said just the opposite.

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

This committee's goal is to make our canals and the surrounding inland bays fishable and swimable.

The Town is working with DeIDOT to address stormwater runoff issues. Stormwater from Sea Colony and Middlesex is piped into the Anchorage Canal. In addition, all of the other canals receive stormwater directly from Rt. 1. Because of the way the canals were built in order to ensure water, there is very little flush.

DeIDOT has been very helpful to the Town. They put in the forebay to try and address some of the issues regarding stormwater coming from the north. However, it is only 28% effective in capturing sediment. It does not address phosphorous, nitrogen, and other pollutants, and it does not address stormwater coming into the other canals.

Chris Bason of the Center for the Inland Bays (CIB) wrote a grant to do a study on stormwater retrofit strategies to address the northern stormwater that is coming into the canals. The Army Corps of Engineers is willing to provide a \$35,000 matching fund. We are working with DeIDOT and DNREC to try and come up with the other matching funds. This study is to determine what we need to do. It is not to design and implement.

The Canal Water Quality Committee is trying to educate the community on things that can be done to improve the environment.

Al Rae heads up the Citizens Monitoring Committee. Seven citizens monitor and test the water quality and systematically collect information.

Some small things the community can concentrate on: Pick up after dogs, what type of fertilizer is used on lawns, look at pavers, and look at other ways and strategies that can be put in place to improve the canals and not let them get any worse. We believe this will also impact the surrounding inland bays.

Mr. Matera asked if there was an ordinance with restrictions on new houses regarding runoff. Councilman Headman said that he is working on an ordinance but it has not been brought to a Workshop.

Mayor Jayne said that this topic is on the agenda for the next Coastal Towns meeting the first week in May.

ADMINISTRATIVE MATTERS

- **Approval of Ambulance Service**

Council had a copy of the "Big 4 revision of 4/11/2008 with final BBVFC changes" (attached) which incorporated the results of the meeting held this morning.

Mayor Jayne said the agreement had been approved by the Town's attorney, Terry Jaywork.

Mayor Jayne reviewed the changes stating that they were largely editorial types of changes.

Councilman Headman questioned the 4% annual increase for rental space. The Town Manager believes it is based on the amount of space in the fire house that the ambulances were going to use. He believes they had a chart that showed that their expense to run the building will increase 4%. The Town Manager stated that the oversight committee will review the budget quarterly.

Mayor Jayne stated that he wanted a 10% contingency rather than a 5% contingency. He lost that argument. They did build contingencies into the line items which are in addition to the 5% overall contingency.

Mayor Jayne said the bids on the ambulances are below what was budgeted. This is very positive.

The annual cost is \$45.

A motion was made by Councilman Fields, seconded by Councilman Headman, to approve the ambulance service agreement dated 4/11/08. The voting was as follows:

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

AGAINST THE MOTION: None

ABSTAINED: None

The motion carried with a 7-0 vote.

Mayor Jayne gave the Bethany Beach Volunteer Fire Company a lot of credit noting that they worked very hard on this.

- **Approval of FY 2009 Budget**

Mayor Jayne stated that this is the most austere budget he has seen in his six years on Council. There are no new starts, no new projects, and no increase in taxes. Mayor Jayne said it is basically a maintenance type budget. The Town's auditor recommends 6 months of operating funds in reserves. Mayor Jayne stated that it is a good budget of what is needed to operate the Town. Mayor Jayne added that if the real estate market does not pick up next year, Council will have to raise taxes. Mayor Jayne noted that property owners will be charged a recycling fee (\$34) and an ambulance fee.

Councilman Headman said that to balance the FY 2009 budget, \$200,000 is being taken from reserves. He stated that Council is doing this with concern and that it is not a possibility next year.

Mayor Jayne said that the budget is public information and can be reviewed at Town Hall.

A motion was made by Councilman Fields, seconded by Councilwoman Lambertson, to approve the FY 2009 Budget. The voting was as follows:

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

AGAINST THE MOTION: None

ABSTAINED: None

The motion carried with a 7-0 vote.

Approval of FY 2009 Rental Tax – Mayor Jayne stated that Council is not proposing to raise the rental tax, but the rental tax has to be approved by Council every year.

A motion was made by Councilman Ronan, seconded by Councilman Fields, to approve the 2009 rental tax at a rate of 8%. The voting was as follows:

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

AGAINST THE MOTION: None

ABSTAINED: None

The motion carried with a 7-0 vote.

ADJOURNMENT

A motion was made by Councilman Fields, seconded by Councilman Headman, to adjourn the April 11, 2009, Town Council Regular Meeting at 9:00 p.m.

PHS:Regular Meeting Minutes.4.11.08

Attachment: Ambulance Service Agreement