

<b>TOWN OF SOUTH BETHANY TOWN COUNCIL REGULAR MEETING MINUTES MAY 8, 2009</b>
---

**ATTENDANCE**

PRESENT: Mayor Gary Jayne; Councilpersons John Fields, Jay Headman, Bonnie Lambertson, Richard Ronan, and Marge Gassinger; Town Manager Melvin Cusick; Chief Joe Deloach; Financial Administrator Renee McDorman; and Administrative Assistant Pam Smith

**MEETING CALLED TO ORDER**

Mayor Jayne called the May 8, 2009, Town Council Regular Meeting to order at 7:30 p.m., followed by the Pledge of Allegiance to the Flag.

**FRIENDS OF THE SOUTH COASTAL LIBRARY PRESENTATION**

Representing the Board of Directors of the South Coastal Library, Al Rae presented a "Good Neighbor Award" to the Town of South Bethany. Mr. Rae said, "The Board of Directors of the South Coastal Library were very appreciative of the South Bethany Town Council to graciously let the board meet in this room while the new library was being constructed." Mr. Rae presented a plaque to the Town. Mayor Jayne thanked the Friends of the South Coastal Library.

**FY 2010 BUDGET**

- **Presentation of FY 2010 Proposed Budget**

Mayor Jayne said Council will vote on the FY 10 Budget on May 16 at 10 a.m.

Mayor Jayne stated that there was a lot of opposition to the original budget. Mayor Jayne gave a PowerPoint presentation (attached) in which he showed and explained cuts Council had made to reduce the budget.

Mayor Jayne stated that the reductions, which total some ninety thousand dollars, gets the tax rate down to \$1.30. The tax rate in the previous budget was \$1.65. Currently the tax rate is \$0.65. This is a doubling of the tax rate.

Mayor Jayne stated that in this proposed budget with a tax rate of \$1.30, \$120,000 is in the budget to reimburse the reserves in order to maintain a certain level of reserves. He added that Council budgeted \$240,000 for real estate transfer tax. If the Town does not get the budgeted real estate transfer tax revenue, the \$120,000 will have to be used to cover the shortfall on transfer taxes.

Mayor Jayne stated that South Bethany does not have any industry and does not have much in the way of commercial. He said that real estate is South Bethany's industry. There are two things you can do with real estate – sell it or rent it. That is where most of the Town's revenue comes from. He said it is very important to stay on top of what the real estate market is doing in town. Mayor Jayne thanked Rose Walker, a real estate agent who lives in South Bethany, for all of the hard work she has done for the Town. She keeps the Town up to date regarding real estate in South Bethany.

At the conclusion of the PowerPoint presentation, Mayor Jayne took questions.

George Junkin (8 S. 4<sup>th</sup> St.) – Thanked the Council for taking seriously the things people have said regarding the tax increase of 154%. Mr. Junkin believes there is problem with budgeting more transfer tax in FY10 than in FY09. From the data he has looked at and from talking to realtors he does not think the Town will get more transfer tax in FY10 than in FY09. Mr. Junkin recommended putting in the budget what you think the transfer tax will be so that you don't have to draw from reserves. He suggested not making up for the reserves this year by refilling the coffers and budget the transfer at zero. Mayor Jayne explained that it has two purposes – one is to replenish the reserves if it actually materializes, and the other is to cover a shortfall in transfer tax if that materializes.

David Kunko (304 S. Ocean Dr.) – Thanked the Mayor and Council for their great service. Suggested covering the shortfall by increasing the property tax by 50% and increasing the rental tax to 10%. He believes it is a bad precedent to double taxes. Mayor Jayne replied that the 8% rental tax is the highest of any of the coastal towns. The advice from the real estate industry is that if we raise the 8% rental tax it will make us less attractive to renters. Regarding doubling the property tax, Mayor Jayne noted that Bethany Beach doubled theirs two years ago and the next year had to raise them again. It is a dilemma the coastal towns are having to face.

Bob Coleman (230 Carlisle Dr.) – Stated that it is commendable that Council has taken the advice offered by the public and factored it in the budget. Mr. Coleman is concerned that the tax rate will not go back down. Suggested having a special assessment with a set expiration date rather than doubling the base tax rate. Mayor Jayne stated that if and when the real estate market rebounds and the Town starts getting four or five hundred thousand dollars a year of real estate transfer tax, we will reduce taxes. He said it is the same thing as making it a temporary tax except you can't put a time limit on it because you can't predict what the real estate market is going to do. Mayor Jayne added that with this budget the chances of having to raise taxes next year are pretty good, and he cannot say this tax increase is only for one year because he does not think it is true. Mayor Jayne said that we have to face up to this. Councilman Fields noted that according to the Town Charter the Town cannot legally do a special assessment for general revenue.

Joe Conway (160 Henlopen Dr.) – Suggested looking at the increase in the dollar amount rather than looking at percentages. He stated that on an absolute basis it does not seem like it is that crazy. Mayor Jayne stated that the taxes in South Bethany have been artificially depressed for 33 years because of the real estate transfer tax. Mayor Jayne said, "The party is over folks. The goose that laid the golden egg is dead. And we've got to face up to this. We've got to start paying our own property tax."

Sue Cassidy (55 S. Anchorage Ave.) – Inquired if the properties in South Bethany have been assessed every year. Mayor Jayne said the Town is going to continue to use the 1974 Sussex County assessment.

Mary Suazo (7 S. 3<sup>rd</sup> St.) – Stated that she is paying \$12,000 county property tax on her house in Virginia which is of similar value to her house in South Bethany. Her South Bethany property tax is \$200. Regarding rental tax, Ms. Suazo believes the renters are the Town's lifeblood. They are the reason South Bethany got beach replenishment. We need to protect our renters.

Jim Martinek (145 Henlopen Dr.) – Inquired if there is something that mandates the Town to use Sussex County assessments as the assessment tool. Councilman Headman stated that each town makes that decision. Some towns have paid for a private company to assess their houses. South Bethany is one of the few towns that continues to only assess 50% value of the Sussex County Assessment. Mr. Martinek inquired why every little town in Delaware has to have their own police department. Councilman Ronan said because people want them. Mayor Jayne replied that there is no county police force. The county sheriff only delivers papers and transports prisoners. Mr. Martinek suggested that two or three towns go together with their police force. Mayor Jayne stated that he does not see that the Towns are going to get rid of their police forces or combine them anytime soon. Councilman Headman said that it has come up on the county

level but it hasn't gotten anyplace and it doesn't look like it is ever going to get anyplace. Mayor Jayne stated that years ago the Town had a five person police force. The Town set up a public safety committee and looked at the whole thing and came up with a requirement for six police officers. The Town has 24/7 coverage. The Town has a mutual assistance agreement with Ocean View, Bethany Beach, and Fenwick Island. Our officers sometimes leave town to help other jurisdictions, and other jurisdictions help us from time to time. Mr. Martinek asked why the rental tax is the "sacred cow" when there are increases everywhere else. Councilman Ronan replied because renters don't have to come to South Bethany. If the Town loses 10% of its rental tax revenue it would wipe out a percentage of the tax increase.

A property owner stated that she believes the 100% property tax increase is a problem for retirees. Mayor Jayne stated that he is retired too and so are most of the people in this room. He added that it is unfortunate, but we are going to have to face up to it.

Jim Gross (1 S. 3<sup>rd</sup> St.) – Believes the only way to make any impact on this tax amount is to not put additional money in reserves this year. Mr. Gross thinks Council is very optimistic about the increase of transfer taxes up to \$240,000. He suggested keeping transfer taxes at \$200,000. He suggested not replacing or spending anymore funds out of reserves. He stated that these are hard economic times. Other municipalities are reducing staff, having mandatory furloughs, and are not increasing salaries. Even the Governor of Delaware is calling for an 8% reduction in the cost of salaries for employees. Mr. Gross suggested not giving the employees the 2.5 percent step increase. Mayor Jayne stated that he is not in favor of denying the employees the COLA let alone taking the step increase away.

Bonnie Rae (131 Anchorage Dr.) – Commended the Town of South Bethany staff. Ms. Rae stated that she has no quibble with where the budget stands now. She noted that she has often bragged about her taxes here and the services she receives in the Town of South Bethany.

Mayor Jayne thanked everyone for their input and attention.

### **COMMENTS BY COUNCIL CANDIDATES AND QUESTION AND ANSWER PERIOD**

The following Council candidates had three minutes to make their presentation followed by a question and answer period:

- Jay Headman
- Bonnie Lambertson
- Diane Matera
- Mike Matera
- George Morabito (Was not present.)
- Richard Ronan
- Timothy Saxton
- Robert Youngs

### **ADOPTION OF MINUTES**

- **Town Council Regular Meeting Minutes, April 9, 2009** – A motion was made by Councilman Ronan, seconded by Councilwoman Lambertson, to accept the April 9, 2009, Town Council Regular Meeting Minutes as amended as follows:

Page 2, Bullet 6: Change "Requested that the issue of a **park** in the Hall Memorial Park as discussed by the South Bethany Property Owners Association be put on a future agenda" *to read* "Requested that the issue of a **playground** in the Hall Memorial Park as discussed by the South Bethany Property Owners Association be put on a future agenda."

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

AGAINST THE MOTION: None

ABSTAINED: Mayor Jayne (was not present at that meeting)

The motion carried with a 5-0 vote.

- **Town Council Special Meeting/Workshop Notes, April 21, 2009** – A motion was made by Councilman Headman, seconded by Councilman Ronan, to accept the April 21, 2009, Town Council Special Meeting/Workshop Notes. The motion was unanimously carried.
- **Town Council Executive Session Minutes, April 21, 2009** – A motion was made by Councilman Headman, seconded by Councilwoman Lambertson, to accept the April 21, 2009, Town Council Executive Session Minutes. The motion was unanimously carried.

### **PROPERTY OWNERS' PARTICIPATION**

- Ed Nazarian (20 Peterson Dr.) – Now that Grotto's had reopened, requested that someone talk to them to try and get them to stop using balloons so that they don't end up on the beach.

### **LEADERSHIP REPORTS**

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

The Town Manager and Mayor Jayne attended a meeting at Ocean View Town Hall. There were also representatives from Ocean View, Bethany Beach, and Fenwick Island present. Kevin Smith, Administrative Assistant to Senator Kaufman, was the guest. The stimulus bill was discussed in some detail. The representatives of the towns made the point that it is the small towns and the small municipalities that can put people to work the quickest. Because of the revenue situation, most small towns have had to postpone small pick and shovel, backhoe and dump truck type of jobs. Kevin Smith was not able to tell the group very much. Mayor Jayne said it is frustrating because it is very difficult to get information and it is almost impossible to tell if and when the municipalities will get anything from the stimulus bill. Mayor Jayne said it is not promising that much stimulus money, if any at all, is going to trickle down to the municipalities.

Mayor Jayne made the following announcements:

- May 13 at 7 p.m. at the Millville Fire Hall – Delaware Family Emergency Preparedness Workshop.
  - May 9 is World Fair Trade Day. This is an annual event at the store next to McCabe's.
  - May 15 at 9 a.m. at the old Bethany Beach Fire Hall – Delaware Dunes and Coastal Landscaping Workshop. The speakers will be Dr. Wendy Carey and Tony Pratt.
  - May 16 from 9 a.m. to 1 p.m. at the James Farm – The Center for the Inland Bays Annual Native Plant sale.
- **Town Manager's Report**—Melvin Cusick reported:

Work on the beach walkways has begun. Due to bad weather, the contractor may not make the deadline of May 22. About 75% of the walkways will be completed by that date.

The Maintenance Department has installed the new beach walkway signs.

The Maintenance Department built and installed the resting benches at the top of the dunes.

The Beach Patrol is gearing up and will be ready for Memorial Day weekend.

Council approved a reduction of the ambulance subscription fee for South Bethany property owners from \$45 to \$38 for the coming year. The ambulance service is coming in under budget. Subscribers from outside the incorporated towns have enabled us to lower the fee.

- **Treasurer's Report**—Melvin Cusick reported as of April 30, 2009:

April Revenue	\$ 39,369.32
April Disbursements	\$ 134,217.67
Balance	\$ 1,126,482.99

In April the Town took in \$10,904.22 in transfer tax. That is \$60,395.76 short of what the Town took in last year at this time. So far in May, the Town has taken in \$7,650.

- **Police Department Report/Questions**—Chief Joe Deloach reported for the month of April, 2009:

Chief Deloach explained that a local fugitive is someone who is wanted in the state.

- April 2      A local fugitive was apprehended after being stopped for traffic violations on Rt. 1. The subject was taken to Court One for arraignment and release.
- April 5      Minor accident without injuries on Rt. 1 and Evergreen Rd.
- April 8      Agency assist. Burglary in process at Hickman's Package Store. Units assisted with evidence collection and secured the scene.
- April 8      Local fugitive was apprehended after being stopped for a traffic violation on Rt. 1. Subject was taken to JP 1, arraigned, and released.
- April 17     Local fugitive was apprehended after being stopped for traffic violations. He was taken to Court of Common Pleas for numerous warrants.
- April 18     Agency assist. Traffic control in Fenwick Island. Power was out for several hours and all the traffic lights were not functioning. Assisted in directing traffic.
- April 18     Agency assist. Assisted State Police at Shore Foods in Middlesex. Unknown subjects stole \$10,000 from the manager's office.
- April 19     Burglary. Theft from Division St. Unknown subjects kicked the owners front door in and removed property from the residence. Chief Deloach stated that this burglary takes about five minutes at the most. Chief Deloach asked the property owners to please contact the police immediately if they see a car they don't recognize at their neighbors'. The crime does not take that long. South Bethany has been lucky. It is more severe in surrounding towns.
- Sept. 14     A young man arrested eight months ago (Sept. 14) on 26 counts, including theft of a fire arm, burglary theft, criminal mischief, and resisting arrest, plead guilty to theft of a fire arm, possession of a deadly weapon during a felony, and multiple counts of trespassing and theft.

There was also a burglary on Ocean Drive and a burglary on Layton Dr. They kicked the door in and they were in and out in 5 minutes or less. Mayor Jayne asked if these robberies are increasing. Chief Deloach said they are increasing and the economy probably has something to do with it.

Click It or Ticket is starting this month. Please buckle up and tell everyone else to buckle up.

### **ORDINANCES/RESOLUTIONS**

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

Councilman Headman stated that this ordinance mandates that any new construction or installation of rain gutters or outdoor showers not be piped directly to the canals. All of the literature supports delaying stormwater, however small, from going directly into a body of water in order to promote the infiltration of rain water to reduce surface runoff.

George Junkin stated that he supports the ordinance.

Bob Cestone stated that he is against the ordinance. He questioned if it is justified to not allow the water to go directly into the canals from the roofs. He had asked for studies, and other than one, he believes the documentation he has been given really doesn't support this. He disagrees that harmful heavy metals are coming from the roof materials because roofs constructed after the 1950s were not made using these harmful heavy metals. He acknowledged that there is zinc on the roof, but he believes zinc would be good because it would retard the growth of algae. Mr. Cestone accepts that nitrates would cause algae in the canals to grow; however, he noted that nitrogen is also a fertilizer which makes the grass grow. If nitrates were on the roofs, the grass at the bottom of downspouts that go onto the lawns should be green and plush. Mr. Cestone has not seen that. He concluded that either the nitrogen is not there or there is insufficient quantity to cause the growth. Mr. Cestone believes that by banning the direct piping of the roof water to the canal will create other problems, the most serious being the collection of water on properties which will harbor the growth of mosquitoes. Mr. Cestone cited a Delaware law, Title 16 (Health and Safety) that says you can't do anything that might harbor the growth of mosquitoes.

Councilman Headman stated that he has not found any literature that does not say that we should do everything in our power to reduce the runoff from going directly into any body of water.

Mr. Cestone agrees that stormwater picks up pollutants as it runs down in drainage swells or down streets, but what better way to avoid that than to pipe the downspout water directly into the canals before it picks up any pollutants.

Mr. Cestone agrees with the outdoor shower part of the ordinance.

Mayor Jayne stated that the pollutants that come from the roof are not necessarily from the roofing materials. It is polluted air that deposits onto the roof that is the problem.

Referring to nitrogen from the poultry farms and sulfuric acid (acid rain), Mr. Cestone said in one of the studies he was given it stated that it is not really a problem along the coast because the salt sprayed from the ocean neutralizes it.

Councilman Headman stated that he respects Mr. Cestone's views. He referred to a book put out by DNREC (Coastal Programs). The book states that if gutters empty onto grass areas, the water will have a chance to soak into the ground. It also says that what you want to do is ensure that it is not going directly into a body of water.

Mr. Youngs asked if a French drain would be acceptable. Councilman Headman said it would be acceptable. Mr. Youngs asked why the ordinance is not retroactive on outside showers that drain directly into the canal. Mayor Jayne said legally you have to be careful with retrofitting.

Councilwoman Gassinger asked if Council had looked into the health issue that Mr. Cestone mentioned regarding the Delaware law. Mr. Cestone said it is Title 16, Chapter 19, Mosquito Control paragraph 1902 Item 2. It says, "Treat as nuisances all stagnant pools of water or other breeding places of mosquitoes to help protect the public's well being and health." Further on is a declaration of what a nuisance is, "Any accumulation of water into which mosquitoes are breeding or likely to breed is declared to be a nuisance." Councilwoman Gassinger asked if this ordinance would be causing people to do that. Councilman Headman stated that he did not think so. Mayor Jayne stated that after a rain storm around town we have mud puddles. A lot of the drainage problems have been taken care of, but there are still some drainage problems.

Bob Apollo said draining outside showers into the sewer system will dump sand into the sewer system and 10 or 15 years in the future will block it up. Councilman Ronan stated that the Town had received a letter from the Sussex County Health Department stating that an outside shower cannot drain into a sewer system. Councilman Ronan added that if the shower is completely enclosed, the county allows it to drain into the sewer system. Councilman Headman said the county does not want stormwater going into their sewer system.

A motion was made by Councilman Fields, seconded by Councilman Headman, that the Council approve Ordinance 149-09. The voting was as follows:

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

AGAINST THE MOTION: Councilwoman Lambertson

ABSTAINED: None

The motion carried with a 5-1 vote.

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

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

Councilman Fields stated that the purpose of this ordinance is to attempt to capture a half inch of rain from running off a lot and have it percolate through the ground. Councilman Fields noted that this ordinance is not anywhere near as severe as a similar ordinance in Fenwick Island. Fenwick Island does not allow any impervious surfaces.

Councilman Fields changed § 145-14.3B sentence 2 from, "The construction of driveways is exempt from this requirement" to read "The construction of driveways and walkways is exempt from this requirement." Councilman Fields asked for questions or comments from the Council.

Councilwoman Gassinger stated that she thinks we should do everything we possibly can for the environment.

Councilwoman Gassinger stated that Council has received four emails from a property owner, Bob Apollo, who had concerns about this ordinance. Councilwoman Gassinger received the last email today. Councilwoman Gassinger said she was told by the sponsor of this ordinance that Council would address Mr. Apollo's comments at a workshop and that never happened. Councilwoman Gassinger does not intend to vote on this ordinance without reviewing Mr. Apollo's comments.

Councilman Fields stated that after working and working on this ordinance, he is convinced that it is a good ordinance and that the objections Mr. Apollo made are without foundation. Councilwoman Gassinger stated that Council owes it to Mr. Apollo to review his comments. Councilman Headman said that he had reviewed Mr. Apollo's comments and had made some adjustments to the ordinance based on Mr. Apollo's comments. Councilwoman Gassinger stated that she had asked that Mr. Apollo's comments be reviewed at a workshop. Mayor Jayne asked if the objections or comments in the previous emails from Mr. Apollo have been addressed. Councilman Fields and Councilman Headman said that they have been addressed. Councilman Headman discussed some of Mr. Apollo's objections. Regarding a finished driveway surface between the street and the homeowner's driveway, Councilman Headman noted that by existing Code you cannot have a continuous driveway. Regarding interlocking pavers, Councilman Headman stated that they decided they would say it is considered a pervious surface but they were not going to mandate that. Regarding § 145-14.3A, Councilman Headman stated that they changed the number to 55% to allow for some of the concerns Mr. Apollo had expressed.

Bob Apollo stated that his objection is that the ordinance mandates that the construction of interlocking pavers must be installed per ICPI construction standards. Mr. Apollo said that the ICPI is simply a trade organization and it is only one way of constructing. Councilman Headman noted that if the pavers are not put down properly they do not function properly. Mr. Apollo inquired how he could buy interlocking pavers and set them on a bed of sand and get it approved by the Town. Councilman Headman said he would not be able to get that approved.

Councilman Ronan said that he had spent a lot of time reading Mr. Apollo's email. He said the ordinance requires people to put the pavers in according to the standards of the trade organization instead of allowing them to put the pavers in according to federal and state standards. It may cost the property owners a lot of money in a situation where it does not require it. Councilman Ronan does not think at this time the Town should be putting undo burdens on the property owners.

Councilwoman Gassinger stated that she sees nothing wrong with a property owner buying pavers and getting some sand to lie down and putting the pavers on top. She noted that she has bricks that have been put down on top of sand and the water does not sit there. The water runs right through. Councilman Headman stated that people who install interlocking pavers indicated that the pavers do not work and function as an interlocking paver if they are not installed properly. They will become impervious if installed improperly. Councilman Headman noted that a property owner could install pavers on top of sand but it will be considered as part of the setback area that is impervious. He added by installing per ICPI standards the product is considered pervious and would give property owners the ability to expand their hard surface.

Mayor Jayne noted that the Code refers to associations like this for other things.

Councilman Fields said that federal and state regulations for how to install pervious pavers don't exist. Mayor Jayne stated that he would not worry about the ICPI standards because he believes it is a good industry and it tells people what is an acceptable way to install the pavers so that it will work.

After more discussion, Mayor Jayne called for a vote. Councilman Headman stated that he believes Council needs to have a workshop and bring in some of the experts to talk to. He stated that he does not feel comfortable with Councilman Ronan's concern and he does not have an answer for Councilman Ronan regarding the standards.

A motion was made by Councilman Fields, seconded by Councilman Headman, that the Council postpone the third reading of Ordinance 150-09 pending further review. The motion was adopted.

### **COMMITTEE REPORTS**

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

Nothing to report.

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

Nothing to report.

- **Beautification** – Councilman Ronan reported:

Regarding beautification, the Town will not be doing too much this year. Councilman Ronan stated that South Bethany is a "beautiful, fine little town which is a gem."

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

Nothing to report.

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

Nothing to report.

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

Nothing to report.

### **ADJOURNMENT**

Before adjourning, Council agreed to cancel the May 28 Town Council Special Meeting/Workshop.

A motion was made by Councilman Fields, seconded by Councilman Headman, to adjourn the May 8, 2009, Town Council Regular Meeting at 10:55 p.m.