

**TOWN OF SOUTH BETHANY
TOWN COUNCIL REGULAR MEETING MINUTES
JULY 11, 2008**

ATTENDANCE

PRESENT: Mayor Gary Jayne; Councilpersons John Fields, Jay Headman, Bonnie Lambertson, and Marge Gassinger; Town Manager Melvin Cusick; M/Cpl. Eric Watkins; and Administrative Assistant Pam Smith

EXCUSED ABSENCE: Councilman Richard Ronan

MEETING CALLED TO ORDER

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

PRESENTATION BY SOUTH BETHANY PROPERTY OWNERS ASSOCIATION

Mr. Al Rae (President), Mr. George Junkin (Vice President), and Mr. Mike Matera (Past President and Bull Roast Chairman) presented a framed 2' x 3' aerial photograph of South Bethany to Council. Mr. Rae read the inscription, "2008 Congratulations on our New Town Hall and Police Building from the South Bethany Property Owners Association". Everyone applauded. Mayor Jayne thanked Mr. Rae stating, "That was very nice of the Property Owners Association to do that. We appreciate it."

PROPERTY OWNERS' PARTICIPATION

- Jack Wise (146 Evergreen Rd.) – Asked the Town Manager if the property tax monies go into an interest bearing account. The Town Manager replied that most of them do. He added that the only money that is in a non interest bearing account is the checking account used to pay weekly bills. Mr. Wise wondered why it would take over a month for the Town to deposit his check for his property taxes. The Town Manager stated that it takes a while to process the property tax checks because:
 - The Town has only one Financial Administrator.
 - It was particularly difficult this year because the recycling fee and the ambulance service fee had to be processed.
 - The Town has a lot of properties that pay their tax bill and their mortgage company also pays it. In these cases, refunds have to be issued.

Mr. Wise recommended that the Town use a lock box where the check is deposited instantly and interest begins that day. The bank sends the Town a daily report on the computer with a list of payments. The Town Manager stated that the Town would look into it.

Referring to the Account Balances Summary on the Treasurer's Report, Councilman Headman commented on whether or not the interest rates were the best the Town could get.

Mayor Jayne noted that the Council needs a Treasurer.

- Ted Haller (107 Layton Dr.) – Complimented the lifeguards, particularly a lifeguard by the name of Joe and another guard, who brought Mr. Haller out on the beach in the beach wheelchair.

Mr. Haller commented that about 41% of the property owners signed up for recycling and 59% of the property owners did not. Mr. Haller asked what happened to the surplus recycling funds. The Town Manager stated that the Town has been paying DSWA for recycling since January 1, 2008. The Town has to recover the expenses incurred during January, February, March, and April, which was before the tax bills went out. Mayor Jayne said all the money for recycling and the regular trash collection goes in the solid waste department. Councilman Fields stated that the recycling program is revenue neutral and excess income this year will go to reduce the trash/recycling fee next year. Mr. Haller wanted to know the physical location of the money. The Town Manager stated that not all of the tax payments have been received but the money is in the bank.

- Ed Nazarian (20 Peterson Dr.) – Because he received solicitation from Mediacom to buy a converter box, Mr. Nazarian inquired if the Town had received information from Mediacom regarding converter boxes for digital. Councilman Headman asked Mr. Nazarian to put a copy of the notice he had received from Mediacom in his mailbox. The consensus of the people in attendance of the meeting was that if you already have cable you do not need the converter box.
- Mr. Jack Wise (146 Evergreen Rd.) – Inquired who was responsible for removing the barricade at Black Gum Drive at 10 a.m. The Town Manager replied that the Police Department removes the barricade. Mr. Wise stated that there have been times when the barricade is still there at 10:15 and he believes it is dangerous for traffic. Mr. Wise suggested moving the barricade ten minutes before 10 o'clock. The Town Manager is going to discuss this with the Chief of Police.

ADOPTION OF MINUTES

- **Town Council Regular Meeting Minutes, June 13, 2008** – A motion was made by Councilman Headman, seconded by Councilwoman Lambertson, to accept the June 13, 2008, Town Council Regular Meeting Minutes. The motion was unanimously carried.

LEADERSHIP REPORTS

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

The General Assembly concluded the Legislative Session for this year and they did not take away the real estate transfer tax. The bad news is that the real estate market does not show signs of rebounding very much. Therefore, when putting the budget together next year, Council will probably have to raise taxes. At the next workshop Council will review the Town's fee structure to see where the Town can reasonably raise fees.

Editorial changes have been made to the Ambulance Service Sponsors Agreement which Council had approved. At the July Workshop, Mayor Jayne will show Council what the changes are and then vote on it again before signing the agreement.

Mayor Jayne noted that the Supervisor for the ambulance service has been hired and the ambulances are on order. Bids on the ambulances came in less than had been budgeted. The Town Manager has requested that when the ambulances come in they bring one to Town Hall for a Council meeting for the public to look at.

Senator Bunting will hold a press conference at Cape Henlopen Park on Monday, July 14, at 2 p.m. on alternative energy and why he is opposed to offshore drilling.

South Bethany's Beach Patrol won second place in the Sea Colony Lifeguard Challenge on June 30. The competition included the beach patrols from Ocean City, Fenwick Island, Delaware State Parks, Middlesex, Sea Colony, Bethany Beach, Dewey Beach, and Rehoboth

Beach. The Beach Patrol received a second place plaque. Mayor Jayne recommended seeing a lifeguard competition and said that the next competition would be in Rehoboth Beach in about two weeks.

Mayor Jayne turned the floor over to Councilman Headman to report on the recycling program. Councilman Headman stated that the Town is very pleased with the number of participants in the recycling program. The biggest issue is the carts being left near the street or not in a bin. There are two groups of property owners who are particularly having problems – property owners who rent and property owners who come to South Bethany on weekends. The Town will be sending letters to property owners who rent their homes reminding them of the process and what is expected. More information will be put on the website including good examples of modified bins for the recycling cart. DSWA needs to be able to roll the cart out of the bin. The Code Enforcement Constable is taping reminder flyers to carts in violation and keeping a record to see if the flyers make a difference. A press release will be sent to the Wave and the Coastal Point regarding the Town's recycling program. There are currently over 700 properties in the program. Mayor Jayne stated that Councilman Headman is on the right track and has put a lot of effort into the recycling program.

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

The Code Enforcement Constable's Report was available on the sign-in table. A new category has been added – recycling container violations. The June report showed that thirty-nine recycling containers were tagged in June.

DNREC has filled in the depression on the beach which was a result of the May nor'easter. They used three pieces of heavy equipment to re contour the beach.

The Town has completed modifications of the walkway at N. 4th St. The slope of the walkway has been decreased and the sand fence has been raised. The slope exceeds ADA requirements. The cost was less than \$5,000. The Town had hoped to also make modifications to a walkway at the south end of town, but it is too difficult to do in the summer because of the congestion on Ocean Drive. Mayor Jayne stated that he would like to get feedback from the community on the walkway. The Town Manager said that he will be meeting with DNREC's Tony Pratt in the fall to discuss scenarios for making the crossings more accessible.

The auditors are performing the annual audit for the Town.

Mr. Elrod asked who has jurisdiction regarding improvements to the beach walkways. The Town Manager said DNREC. He added that the beach replenishment project was an Army Corps of Engineers project and they have not yet turned it over to the State of Delaware. Eventually it will be turned over to the State.

- **Treasurer's Report**—Melvin Cusick reported as of June 30, 2008:

June Revenue	\$ 342,793.05
June Disbursements	\$ 246,732.53
Balance	\$ 1,404,565.42

The June 2008 transfer tax increased by \$31,205.84 over June 2007. However, May 2008 had a decrease of \$25,078.86 over May 2007.

- **Police Department Report/Questions**—M/Cpl Eric Watkins reported for the month of June, 2008:
 - June 2 Drug arrest on Rt. 1. The subject was stopped on traffic violations and was found with possession of alcohol and cocaine. He was arrested and taken to JP Court 1 for arraignment.
 - June 3 Violation of local code. A subject was throwing grass clippings in the canal. It was turned over to the Code Enforcement Constable.
 - June 5 Violation of local code. Juveniles were found sleeping in their car at York Beach Mall. They were issued summons for the violations.
 - June 5 Agency assist in Fenwick Island for a fugitive from Florida. The subject had outstanding warrants for auto theft. He was arrested and later extradited to Florida.
 - June 7 Fugitive apprehended for traffic violations on Rt. 1. Subject had several warrants from New Castle County for theft. Subject was taken to Court 1 for arraignment.
 - June 7 Violation of local code. Subject drove around the barricade on Black Gum Drive. He was issued a summons.
 - June 10 DUI arrest on Ocean Drive.
 - June 10 Loud party on New Castle Drive. It was shut down and a summons was issued for violation of local code.
 - June 12 Public assist on S. 8th St. Subjects were evicted by the realtor for loud parties and underage consumption.
 - June 13 Loud party on Kewanee St. The party was shut down prior to the arrival of the police.
 - June 14 Alarm on W. 6th St. The residence was secure. False alarm.
 - June 15 Loud party on Bayshore Drive. Party was shut down. No further action was required.
 - June 16 Theft from Bayshore Dr. Unknown suspects removed a canoe from the victim's deck. No suspects at this time.
 - June 18 Theft on Seaside Dr. Unknown suspects removed some deck furniture from the victim's porch.
 - June 19 DUI accident on Ocean Dr. and S. 3rd St. The driver was injured and had to be taken to Beebe. The driver was later charge with DUI and careless driving. The accident occurred at 3 p.m. No pedestrians were injured.
 - June 20 Loud party on Tern Dr. The party was shut down. No further action was required.
 - June 21 Drug arrest on Rt. 1. The subject was found to be in possession of PCP and marijuana. Subject was arrested and taken to Court 3 for arraignment.
 - June 25 Theft to services on Ocean Dr. Subjects fled from a cab without paying the fare. No description was obtained by the cab driver and the subjects were never located.
 - June 25 Series of thefts from unsecured vehicles on Henlopen Dr. No witnesses and no suspects.

- June 27 Drug arrest on Rt. 1. The subject was stopped for traffic violations and was discovered to have marijuana in his possession. He was arrested and taken to Court 3.
- June 28 Violation of local code on Carlisle Dr. Subjects were working during prohibited hours. Site was shut down and it was turned over to the Code Enforcement Constable.
- June 29 Fireworks complaint on Division St. Subjects were gone prior to the arrival of the police.

Mayor Jayne thanked and complimented the Police Department for the great job they did regarding "June Bugs". Mayor Jayne noted that the Department put extra police officers on duty and Chief Deloach set up a zero tolerance policy. M/Cpl. Watkins added that some local realtors also worked with the Department by evicting some houses.

Mr. Morabito stated that he sees people drive through the stop signs in Cat Hill. He requested that the Police Department stop them. M/Cpl. Watkins said he would pass his request on to the Police Chief.

To address Mr. Wise's earlier statement regarding the barricade on Black Gum Drive, M/Cpl. Watkins stated that the Department makes every effort to remove the barricade at 10 a.m. The Parking Enforcement Officer usually removes the barricade but on the days that she does not work the police officer on duty removes the barricade. There are times when the police officer is responding to another complaint and cannot remove the barricade at 10 a.m.

Ms. Alred complimented the Police Department and appreciates their service. Regarding loud parties, Ms. Alred inquired what time the violation incurs and if there is a fine. M/Cpl. Watkins replied that there is not an actual time and the base fine is \$50.

Mr. Matera inquired what the fine is for young children on bicycles not wearing helmets. M/Cpl. Watkins did not know the amount of the fine off hand but noted that the Department has a fine sheet to refer to. M/Cpl. Watkins said the Chief will contact the parents when he stops children not wearing helmets. Mr. Matera believes the Department should fine the parents or give them a warning.

Regarding the break-ins to automobiles on Henlopen Drive, Mr. Roche inquired if the Town or the Police Department had a policy on reporting these things to the local newspaper for publishing crime reports. M/Cpl. Watkins replied that the Police Department will usually do that if there is a large ration of crimes. Regarding the break-ins to automobiles, Chief Deloach posted information on the Town website and contacted Mr. Rae to pass the information onto the Neighborhood Watch. M/Cpl. Watkins added that sometimes when they issue a press release the papers don't publish the information.

Mr. Elrod inquired if there was a license that grass cutting contractors are required to have to operate in the Town. He added that he has seen on several occasions the grass cutting contractors blowing grass clippings into the canals. The Town Manager stated that they are required to have a Mercantile License and the Code Enforcement Constable gives the contractors guidelines.

ORDINANCES/RESOLUTIONS

- **Second Reading of Ordinance 142-08, Amending Chapter 42, Building Construction, to Control the Use of Portable Fuel Powered Electric Generators and Fuel Powered Air Compressors for Construction Purposes. (John Fields)**

Councilman Fields stated that the Town has received complaints regarding noise from contractors using gas powered electric generators which sometimes run five or six days a week for months. This ordinance would eliminate the use of fuel powered electric generators and fuel powered air compressors. This ordinance does not create a situation where the contractors cannot get electric power. The local power company can supply an electric

power pole and it is very inexpensive to contractors. The ordinance has a provision for exceptions to be granted by the Town. The phrase, "only in an event of an emergency that affect the electric company" was added at the suggestion of Mr. Romeo at the June Town Council Regular Meeting.

The Town Solicitor has reviewed the ordinance. Councilman Fields asked Council to bracket the phrase "for a limited period of time in the event of emergencies that affect the electric company" because the attorney's concerns are directed towards this phrase. Councilman Fields reported that the Town Solicitor said there was nothing patently or fundamentally illegal about Ordinance 142-08 the way it is written, but the attorney can envision issues arising from the very limited nature of the ordinance. Councilman Fields believes the phrase he asked Council to bracket does limit the ordinance considerably. Mr. Fields suggested taking the bracketed phrase out of the ordinance and put a period after "town" in order to address the concerns that the attorney has. The following are the concerns the attorney had:

- The amount of time it would take to grant the exception. (Councilman Fields stated that the issue would come before the Town Manager and he can grant exceptions right away.)
- Would it be done on a case by case basis? (Councilman Fields said it would be done on a case by case basis but it could also be done on a several case basis.)
- Is an application required? (Councilman Fields said that an application would not be required – it would be a simple matter of bringing it to the Town's attention.)
- How would a request be processed? (Councilman Fields said the contractor would address the Code Enforcement Constable or the Town Manager.)
- Is there an appeal? (Councilman Fields said the appeal process would be the same as for all ordinances – if the Constable makes a decision it can be appealed to the Town Manager, then to the Mayor and Council, and then the courts.)
- It does not permit any use of these devices prior to temporary electric being provided to the site.
- It does not allow work to be done when the electric service may need to be turned off to complete a task that is not a problem associated with the electric provider.
- Amish builders often use compressors to power their tools so they would be unable to work in the Town. (Councilman Fields believes the Town Manager can make that exception for a limited time.)

Councilman Fields proposed taking out the last two phrases and have the ordinance read, ""Fuel powered generators and fuel powered air compressors are prohibited within the corporate limits of the Town of South Bethany for construction purposes. Exceptions to this prohibition may be approved by the Town."

Councilman Fields asked for comments. The following points were made:

- Councilman Headman stated that he believes Council wanted to limit the exceptions.
- Councilman Headman stated that Council recognized that there may be an emergency that would prevent the power company from putting the pole in. The exception would be limited to a short period of time and only in the event of emergencies.

The Council and property owners participated in a lengthy discussion. The consensus was to not make changes to the second reading of Ordinance 142-08.

Mayor Jayne declared this the second reading of Ordinance 142-08.

Mayor Jayne thanked everyone for their input and cooperation.

COMMITTEE REPORTS

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

DNREC plans to restart the program in mid August and they have approximately a mile to complete. They expect to finish this year. DNREC is waiting for permits from the regulatory agencies. Chuck Williams is optimistic that everything will go well and they will start in mid August and go through completion.

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

Councilman Ronan was absent and Council had nothing more to add to what had already been discussed earlier in the meeting.

- **Beautification** – Councilwoman Lambertson reported:

Roses have been planted in front of Town Hall.

Mayor Jayne said that he has had a lot of compliments about how nice the town looks.

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

Councilman Fields plans to have Ordinance 143-08 ready for Council's review at the July Workshop. This ordinance will address impervious surfaces based on recommendations from the Planning Commission.

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

The Tidal Pump Committee will be meeting with the Joint Permitting Processing Committee on July 17. This is an opportunity for the Tidal Pump Committee to present where they are and to get feedback from different agencies on what the permitting process would be. Councilman Headman made it clear that the Tidal Pump Committee is not starting the permitting process, but is getting feedback from different agencies on what the permitting process will be.

- **Windmills** – Councilwoman Lambertson reported:

Delmarva Power and Bluewater Wind signed a contract for an offshore wind power deal.

The company stated that the contract will cost the average residential customer about \$5 a month more over 25 years.

A bill will be introduced to spread out the added costs of the wind power among all Delmarva customers including industrial customers.

Some notes:

- Delmarva Power will buy up to 200 megawatts of power from the offshore wind farm rather than the 600 megawatts originally proposed.

- The wind farm will be located 11 to 14 miles off the coast of Rehoboth.
- Fifty-five to seventy turbines will be included in the project rather than the original 150 to 200.
- Bluewater Wind said once they get these turbines established the project is either open for expansion and/or they will find other places along the shore.
- This wind farm will most likely be the first offshore wind farm in the country.
- Bluewater Wind still has a long list of State and Federal permits to acquire before it can build.
- Both chambers of the General Assembly quickly enacted a new law last week to clear the way for the establishment of the offshore wind farm in order to facilitate the new contract between Delmarva Power and Bluewater Wind.
- It is expected that the wind farm will go into operation in 2012.
- Bluewater Wind also said that since Delmarva Power would be buying 200 megawatts they would look for somebody else to buy power also.

NRG may be converting from coal to natural gas. Two of the stacks are supposed to be shut down by 2012. Hydroelectric power is still being considered.

NRG, the power plant at Indian River, cannot shut down with the wind power. It still has to keep running.

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

The water monitoring program is up and is still looking for volunteers.

Councilman Headman will be asking Council to look at purchasing a piece of equipment that would make the monitoring easier.

The Oyster Gardening Program continues. Allan Allenspach reported to Councilman Headman that the oysters came through very well.

There was a recent article in the Delaware Today titled "Keeping Pollution at Bay" in which South Bethany is cited for being environmentally involved.

Mayor Jayne added that he believes South Bethany is probably more represented at the Center for the Inland Bays than anybody else. Mayor Jayne thanked Councilman Headman and the Water Quality Committee for their great effort.

ADJOURNMENT

A motion was made by Councilman Fields, seconded by Councilman Headman, to adjourn the July 11, 2008, Town Council Regular Meeting at 8:50 p.m.