

TOWN OF SOUTH BETHANY TOWN COUNCIL REGULAR MEETING MINUTES AUGUST 13, 2010

ATTENDANCE

PRESENT: Mayor Jay Headman; Councilpersons John Fields, Bob Cestone, Tim Saxton, Sue Callaway, George Junkin, and Rob Youngs; Town Manager Melvin Cusick; M/Cpl. Lee Davis; and Administrative Assistant Pam Smith

MEETING CALLED TO ORDER

Mayor Headman called the August 13, 2010, Town Council Regular Meeting to order at 7:00 p.m., followed by the Pledge of Allegiance to the Flag.

PROPERTY OWNERS' PARTICIPATION

- Dan Cowell (110 Henlopen Dr.) – Announced that on August 19th at 7 p.m. at the Bethany Beach Bandstand there will be a special program to commemorate the twinning of the Town of Bethany Beach with a small town in Northern France.
- Tom Roche (141 Henlopen Dr.) – Referring to the Assawoman Canal dredging, Mr. Roche noted that there are "no wake" signs that have been in disrepair for over a year. Mayor Headman stated that Councilman Youngs is Council's liaison for the Assawoman Canal dredging and he will follow up on that.

ADOPTION OF MINUTES

- **Town Council Workshop Meeting Minutes, July 22, 2010** – A motion was made by Councilman Youngs, seconded by Councilman Cestone, to accept the July 22, 2010, Town Council Workshop Meeting Minutes. The motion carried with a 6-0 vote. Councilman Junkin abstained.

LEADERSHIP REPORTS

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

Through the help of our state and federal representatives, funding was obtained for replenishment of South Bethany's beach. The plan is to have the work done in the fall, but the Town does not have any details at this time.

Attended the Chamber of Commerce Annual Lifeguard Awards ceremony at the Bethany Beach Bandstand. At the ceremony the Chamber gave each of the Towns \$500 towards keeping the lifeguards on duty a couple weekends past Labor Day. The Lifeguard of the Year award was also given to each beach community. South Bethany's 2010 Lifeguard of the Year is William "Rocky" Weeks. It is the second year in a row that South Bethany's Beach Patrol members voted for Rocky.

Attended the SCAT Steering Committee meeting. Because the economy is not escalating at the level hoped for, there is concern among municipalities that State and Federal funding that support cities and towns could get cut back.

At the August 28, 2010, South Bethany Property Owners Association (SBPOA) meeting the South Bethany Police and the State Police will give a presentation on securing your house.

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

The Code Enforcement Constable's Report was available on the sign-in table.

The Delaware Coastal Cleanup day is scheduled for Saturday, September 25, from 9 a.m. to noon. Participants can sign up on DNREC's website:

<http://www.dnrec.delaware.gov/CoastalCleanup/Pages/default.aspx>

The South Bethany Beach Party Fundraiser for the Beach Patrol National Competition Fund is August 14 at 7 p.m.

The Beach Patrol Report, which included the competition results, was available on the sign-in table. Sussex County placed second overall in the National Competition. There were over 1,000 participants in the National Competition.

• **Treasurer's Report**—Tim Saxton reported as of July 31, 2010:

Balance Brought Forward	\$ 1,464,619
July Revenue	\$ 421,431
July Disbursements	\$ 258,263
Balance	\$ 1,627,787

At the August 13, 2010, Budget and Finance Committee meeting the Committee went over the end of first quarter review. Currently revenues are tracking at approximately 8% above expected for the year and expenditures are tracking to budget.

• **Police Department Report/Questions**—M/Cpl. Davis reported for the month of July, 2010:

The Police Department had a total of 36 complaints:

- Three traffic accidents (no injuries)
- Three loud parties
- Four fireworks complaints
- Eight thefts
- Three parking complaints
- Five different alarm complaints
- Two criminal mischief complaints
- Four Town Code complaints
- One missing child

M/Cpl. Davis reported that Chief Deloach and he were involved in the apprehension of five subjects who had stolen five cars and broke into a house. Chief Deloach apprehended three of the five subjects on his own. The arrests were made in Middlesex. Because of those arrests, twenty plus thefts (burglaries) were cleaned up in Kent County. The Police Department received recognition letters from Captain Chip Simpson and Detective J.S. Evans out of Troop 4 as well as a nice letter from Middlesex.

M/Cpl. Davis encouraged property owners to report an incident at the time it is going on regardless of what it is or how minor it is in order to be proactive versus reactive. To report an incident when South Bethany's dispatcher is off duty (if you don't want to call 911), call the non emergency number for Sussex County Communications (302-855-2980). They will dispatch the call directly to the South Bethany Police Officer on duty.

COUNCIL VOTE ON PROPOSAL TO PURCHASE THE REVERSION CLAUSE IN THE DEED TO TRACT II (RICHARD HALL MEMORIAL PARK)

Councilman Fields asked Council to keep in mind that they have no idea of what the value of this property may be for future generations who live in South Bethany. He stated that this opportunity will never come again for this amount of money. He added that time is of the essence in this purchase because it is limited. Referring to emails he had received, Mr. Fields said many people associated the purchase of the reversion clause with the development of the park which is not true.

A motion was made by Councilman Fields, seconded by Councilman Youngs, that the Council purchase from the Elizabeth Hall heirs the reversion clause in the deed to Tract II, also known as the Richard Hall Memorial Park, for the sum of \$32,000.00.

Mayor Headman asked Councilman Saxton to make a statement regarding the Town's finances. Councilman Saxton stated that the Budget and Finance Committee had met earlier in the day and looked at the end of the first quarter finances. Councilman Saxton said that this is not a recommendation for or against the purchase of the reversion clause. It is a factual statement from the Budget and Finance Committee of where the Town is financially. The Town's three big revenue sources are through property tax, real estate transfer tax, and rental tax. Property tax receipts are at 89%. Real estate transfer tax is tracking at approximately 8% ahead of target, and the Budget and Finance Committee believes that at the end of the second quarter it will track at about 10 to 12 percent ahead of budget. Rental tax is the wild card because it is not due until September. The two major rental companies in South Bethany told the Budget and Finance Committee that the rentals in 2010 were better than the rentals in 2009. The Committee took that as an indication that rental tax will track to budget which was set at what the Town received in rental tax in 2009. The remaining revenue line items are tracking to budget. Councilman Saxton stated that reserves are fully funded. The Town has \$163,000 above reserve funding that can be utilized in order to not touch the reserves. The Town is better off today at the end of the first quarter than it was at the July Town Council Regular Meeting, and there is another \$8,000 to move into the reserves area. The Budget and Finance Committee looked at long term plans and projections, and the Committee would like to remind Council that if it votes to approve the purchase, Council is moving this item to number one on capital expenditures.

Mayor Headman asked for comments from Council Members.

Councilman Cestone stated that he was against the purchase of the reversion clause at the July Town Council Regular Meeting, and he is even more against it now. From the emails received, Councilman Cestone counted 20 in favor of the purchase and 19 against the purchase. From people who approached him by phone or on the street, there were 29 against the purchase and 0 for the purchase. All totaled it was 20 in favor of the purchase and 48 against the purchase which is a 71% count against purchasing the reversion clause. Councilman Cestone does not believe the Town needs to purchase the reversion clause in the near future because the only possible proposed use is for a park. If a referendum shows that people do want a park and if Council agrees, the existing deed restriction that 10% of the property can be built on provides adequate space for a park. Councilman Cestone does not think it is a good value and noted that the value of the land is based on residential zoning, but the property is zoned public which carries a different value. He stated that as long as the deed restriction is not violated the reversion clause would be worth nothing. Most importantly, Councilman Cestone believes there are other priorities that are higher which would result in a benefit to most of the property owners and renters such as handicap beach access ramps, railings at the crossovers, and Mobi Mats. Councilman Cestone also mentioned that in the FY11 Budget Council withheld employee salary increases. He believes spending \$32,000 on the reversion clause will only benefit the Hall heirs. Although the Hall heirs gave the Town a deadline of August 31, 2010, Councilman Cestone believes they would still be willing to sell the reversion clause in the future. Councilman Cestone's last point was that he does not believe purchasing the reversion clause is fiscally responsible.

Councilman Saxton stated that this is a difficult decision, and based on the responses from the public he sees it as a 50/50 split as to whether to buy the reversion clause or not. Councilman Saxton believes an encumbered deed has less value than an unencumbered deed and that taking off the encumbrance creates a greater value than \$32,000. He believes the Town should have full control of how to utilize the land going forward. Councilman Saxton believes the purchase of the reversion clause and the development of the park are two separate issues, and he guesses there will be Council Members who will vote for the purchase of the reversion clause and would vote against the development of a park.

Councilwoman Callaway stated that she has spent many hours weighing the merits of each choice. She has given thoughtful consideration to the recent comments of many property owners. She has read Mrs. Hall's personal comments that expressed her wishes. And she has reviewed various documents from previous years. After Councilwoman Callaway recounted some history regarding the reversion clause, she stated that she understands that Council was asked to make this decision independent of the park, but she believes that if the citizens of South Bethany voted to develop a recreational park within only 10% of the existing piece of land, there

would be no violation of the deed restrictions. She believes if the Town does what the donor, Mrs. Hall, originally wanted, it is unnecessary to spend \$32,000. Therefore her vote is in opposition to spending the \$32,000 to purchase the reversion clause. She believes the Town should move forward with a survey to determine if the town agrees with honoring Mrs. Hall's wishes for developing a park for the benefit of South Bethany residents.

Councilman Junkin stated that he agrees that if a park was developed it would not violate the deed and the Town would not have to buy the reversion clause. But the fact that the heirs suggested the Town buy the reversion clause when they found out the town was thinking about building something on the land makes you consider that the heirs may challenge the development of a park and the Town would then have court fees to counteract that challenge. Buying the reversion clause takes the entire burden off and gives the Town control over the property it owns. He said it is a difficult decision. In emails he received 15 were for the purchase and 14 were against the purchase. He also received a phone call from a person who was against the purchase. A majority of the people who were against the purchase were looking at it from a priority point of view. Councilman Junkin stated that beach access is a big problem and has to be taken care of. Not knowing what will happen in the future, Councilman Junkin thinks it would be prudent for the Council to purchase the reversion clause for \$32,000.

Councilman Youngs read a letter (attached) that was sent to Council from Oskar Egger. Councilman Youngs stated that Mr. Eggers has been very outspoken against the development of a recreation area. Councilman Youngs went on record saying that he supports everything Oskar Egger says in the letter. Councilman Youngs said a vote to purchase the reversion clause is in no way related to the park proposal, and they are two separate and distinct items. Councilman Youngs said the lack of a definition of "park" in the reversion clause works to the Town's benefit and to the Town's disadvantage. The fact that there is not a definition of "park" brings the reversion clause into play at some point in the future, and according to the Town's lawyer that litigation will cost the Town somewhere in the vicinity of 10 to 15 thousand dollars even if it is dismissed by a judge. To recapitulate, Councilman Youngs said a recreation area was proposed and a letter was sent to the heirs that emphasized playground which led Council to looking at the purchase of the reversion clause which led to consideration of developing the handicap access that we should have to our beach areas. All three ideas are separate, distinct, and worthy considerations but not to be confused with one another. Councilman Youngs stated that with the exception of two of the emails that he received that were against the purchase of the reversion clause, the property owners were opposed to a recreation area being developed on the land, and they did not refer directly to the acquisition of the property for future generations of this town.

Mayor Headman stated that the office staff made a count of the emails and there were 12 individual emails in favor of the purchase and 9 against the purchase. Broken down by husband and wife the count was 17 in favor of the purchase and 13 against the purchase. Mayor Headman believes it is in the best interest of the Town to have a clear deed on the property. He believes \$32,000 is a bargain price. If he votes for the purchase of the reversion clause, it has nothing to do with the development of a recreation park in that land. Mayor Headman stated that the Town lawyer estimated that it would cost 10 to 15 thousand dollars just to dismiss a case and it would cost more if it actually went to court.

Mayor Headman asked for comments from the audience.

Barbara Jayne (1 S. 7th St.) stated that she would like to go on record as agreeing with everything Councilman Cestone said. She said the key word is priorities. She asked how the Town could buy a reversion clause to a piece of property when the Town could not give the Town Hall Staff and Police Staff their step raise.

Joy Sutherland (Oskar Egger's daughter – 206 Russell Rd.) stated that her grandparents built the house they live in on Russell Road. The house is 50 yards from the proposed park. She stated that she is in awe that Council would consider building a playground on that beautiful piece of land when we are trying to preserve our park land. Ms. Sutherland stated that she would like to know where each Council member owns property in South Bethany. She said her family members are hard working people and they come to South Bethany to vacation – to sleep, relax,

have fun, eat good food, and go to the ocean. She loves children, but she does not want kids in her yard at 6, 7, or 8 a.m. playing and screaming. She stated that her family has a right to have quiet and silence when they are down on vacation. Ms. Sutherland said that her father (83 years old) and her mother are the most affected by Council's decision regarding this issue. Ms. Sutherland is a real estate agent in Alexandria, Virginia. She said that in real estate the location of your house is everything. Building a playground across the street from the residences on Russell Road will decrease the property value of those houses. She said other factors to consider regarding a playground is the congestion and high rate of speed of the traffic on Russell Road. Ms. Sutherland asked Council if they want to live across the street from a playground.

John Eehalt (208 Russell Road) stated that years ago the State was looking at putting Rt. 26 through South Bethany, and his father and Oskar Egger put a case together and went to the State and defeated that proposal. Mr. Eehalt said \$32,000 is a steal, and he understands the desire to want to purchase the reversion clause, but it does say to the residents that the Town does want to do something with the property. He said if you don't want to put a park in why was Discussion on Finances for Park Survey item 5 on the Budget and Finance Committee's meeting agenda today. Mr. Eehalt believes the underlying issue is the development of the park. He stated that we really are not purchasing the land; we are purchasing the clause to be able to do whatever we want to do with that property. How can we know that in ten years we don't decide to put a new Town Hall there or a parking lot. Mr. Eehalt said why not leave it there as property for us to enjoy as we have for generations. He also does not buy the argument that there will be legal fees to the heirs if the Town wants to do something in the future.

Ted Haller (107 Layton Drive) stated that we are not in good financial times and he can't see any reason why the Town should spend \$32,000 to buy something we don't need.

Mike Matera (W. 9th St.) stated that he did not get a raise in his social security or pension. Mr. Matera stated that land value goes up and land is very good if you have a clear deed.

Dan Cowell (110 Henlopen Dr.) asked what would happen if the heirs decided to override the reversion clause and sell the land to a developer who may put up three houses.

Jim Gross (1 S. 3rd St.) asked what the Town's top three priorities for capital expenditures are, how much each of them would cost, and when they would be carried out. Councilman Saxton stated that at the current time there is not a capital expenditures list. Mayor Headman stated that over the last four years the Town fulfilled the "priorities" (building of the town hall and police building, dredging the canals, and other projects). The purpose of the survey that the Planning Commission is working on is to look at the future and what special projects we need to do as a town. Mr. Gross said that for a number of years it has been said that repaving Ocean Drive would be taken care of, but it continues to deteriorate. He wonders where that stands on the priority list versus spending money for something we now own.

Brad Gough (Henlopen Dr.) feels the Town made a deal with Mrs. Hall that she would give the Town the piece of land for free if the Town would keep it as a memorial park for her husband. Mr. Gough believes the land should stay as a park the way it is or as Mrs. Hall intended and then there will not be any issues with lawyers or anything else.

Cathy Eehalt (208 Russell Road) stated that Russell Road has become a very busy road. Ms. Eehalt likes the idea of handicap accessibility to the ocean. She stated that if you take away the reversion clause, who knows what the Council 10 years down the road is going to decide to put there. She thinks we need to preserve the green space and the quietness of South Bethany rather than having a playground or whatever future Councils would envision.

Nancy Spiotto (Victoria Drive) stated that her family has owned a house in South Bethany for 43 years and she asked if any of the Council Members had been here during the hurricane when Ocean Drive was completely wiped out and there were refrigerators on Rt. 1. She stated that she could not imagine why Council would be wasting \$32,000 on something we already own. Ms. Spiotto stated that she remembers the Halls and they wanted green trees in the park and they wanted you to be able sit on a bench and reflect about how beautiful the trees are and how

beautiful the beaches are. They did not want teeter totters and they don't want anything else. She stated that regular people are having trouble going to the beach, and beach access should be the Town's priority. She does not believe Council should waste \$32,000 because they are afraid of litigation. If the Town purchases the reversion clause, Ms. Spiotto stated that the Town could do anything it wanted with the land because the Town could change the zoning. The Town could build houses there and knock the trees down, it could store lifeguard chairs there, or it could put up another water tower. Ms. Spiotto does not believe Mrs. Hall wanted that. Ms. Spiotto opposes the purchase of the reversion clause.

Bonnie Lambertson (York Road) stated that she has been in South Bethany for almost 37 years and she knew the Halls to say hello to and she knew their wishes. She does not believe Council should spend \$32,000 to purchase the reversion clause when you pooh-pooed raising taxes to meet a budget. She said the town has weeds and we don't have handicap ramps that handicap people can get over. Ms. Lambertson stated that Andy Ross (who is an arborist) looked at the property and said in order to use the minimum space, at least 28 trees would have to be taken down. She believes the property should be left as an environmental quiet area.

Al Buhr (7 Cleveland Drive) stated that he would appreciate it if the Council bought the reversion clause for \$32,000 to get the land in South Bethany's control. He said he has a grandson that he takes to Millville's park and he finds it to be orderly. He has never seen a problem there. He hopes Council values the land and gets it under the Town's control.

Dan Cowell (110 Henlopen Drive) stated that after listening carefully to this discussion it is a difficult decision because there are different ingredients that get mixed up in it. It is a polluted process because it is not clear cut. His impression as he passes those trees to do business at the Town Hall is, "What a beautiful strand of trees that is." Mr. Cowell said it would be sacrilege to cut those trees down for any reason. The Town owns it, you don't have to do anything with it, or you can do something with 10% if you wanted, but it is beautiful as it is. It is a green space. It is a beautiful park by anybody's definition of what a park is.

Deloris Hughes (152 Layton Dr.) stated that the Town owns the land and we should keep it the way it is and see what the future brings. She believes there are more important things in town to spend the money on. She stated that the Richard Hall Memorial Park is gorgeous as it is, and if you want to make a good park put down some benches – that's all.

Addressing the families that live on Russell Road, Councilman Saxton went on record and said he is for purchasing the reversion clause, but he opposes the development of a park on Tract II. He said he can keep them as two separate issues.

Mayor Headman asked for a roll call on the motion. The voting was as follows:

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

AGAINST THE MOTION: Councilpersons Cestone, Callaway, and Junkin

The motion carried with a 4-3 vote.

COMMITTEE REPORTS

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

DNREC has authorization to continue dredging through August. September through December is more or less preapproved. They will complete the dredging process, but they don't know when. Part of what has slowed them down are storms and debris in the canals.

- **Beautification Committee** – Councilwoman Callaway reported:

The Beautification Committee met on July 20, 2010. The meeting summary is on file at Town Hall. The Beautification Committee continues to work as a partnership with the Canal Water

Quality Committee. The Town Manager and the Maintenance Supervisor have been attending the Beautification Committee meetings which has been helpful. The Town Manager has presented some grant opportunities, and Councilwoman Callaway had the opportunity to meet with the Department of Agriculture regarding grant opportunities. At the Beautification Committee Meeting, the Committee talked about the proposed Adopt-a-Canal program, which it will be introducing officially to the Town Council at the August 26 Town Council Workshop Meeting. The goal is to improve the water quality through beautification of the canal and road ends as well as options for preventing some of the runoff through the beautification of the median strip on Rt. 1. The Committee is challenged by the budget costs. The Committee is also looking at the walkway. The Committee is taking the recommendations from Sue Barton of the University of Delaware on how to improve water quality through beautifying the area and will come up with a strategy to present to Council.

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

There was nothing further to report.

- **Canal Water Quality Committee** – Councilman Junkin reported:

The Canal Water Quality Committee and the Beautification Committee are trying to create situations where the town gets water quality and beauty by planting native plants and perennials using recommendations from Sue Barton as a guide. The Canal Water Quality Committee and the Beautification Committee hope that by joining forces it will also help financially.

The Committee has been taking dissolved oxygen measurements and other water quality indicators in the Little Assawoman Bay and in the canals. The further you get from the "snap gut" area towards the dead end canals the worse the data becomes because there is not enough circulation.

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

The Planning Commission had a hearing to subdivide a lot on Bayshore Drive.

The Planning Commission reviewed the draft of the Municipal Comprehensive Land Use Plan Annual Report which the Town Manager had prepared. The report was submitted with minor revisions.

The Town Council had requested that the Planning Commission prepare a survey regarding priorities. The priorities from the previous survey such as dredging the canals and building a new town hall have been taken care of. The committee working on the survey is comprised of Dick Oliver (Chairman), Bob Johansen, and Kathy Jankowski (representing the SBPOA). When they are done, they will take their work to the Planning Commission. The Planning Commission will make recommendations and updates and will then take it to the Town Council. After the Town Council reviews the survey, the Planning Commission would like to consult a professional to make sure the questions are worded in a way to get reliable results.

- **Richard Hall Memorial Park Committee** – Councilman Fields reported:

There are presently three committees operating in South Bethany: The Park Conservation Committee, the South Bethany Park Committee, and the Richard Hall Memorial Park Committee. The Richard Hall Memorial Park Committee was appointed by Mayor Headman to try and sort out the desires of the property owners in South Bethany. The Park Conservation Committee and the South Bethany Park Committee are self-formed committees. The only committee that has been authorized by the Town Council is the Richard Hall Memorial Park Committee. The Richard Hall Memorial Park Committee is working on a carefully structured, carefully counted survey to determine the wishes of the property owners as to whether they want the Richard Hall Memorial Park to stay in its natural state or whether they want a recreation area there. The Committee is working on the

questionnaire as well as informational material to go with the questionnaire that will include potential costs. The Committee will present the packet to the Town Council for Council's approval. The Committee hopes to have the questionnaire out before Christmas. Each South Bethany property owner will get a form with a return postage paid envelope in order to return the completed form to Town Hall. The Committee will report the results to the Mayor and Town Council and the public.

Councilman Youngs stated that he would like to have a say on whether it will be a survey or a referendum. After a discussion, Mayor Headman stated that this subject will be discussed at the August 26 Town Council Workshop Meeting.

Carole Hetuck asked if both sides of the issue are represented on the Committee. Mayor Headman stated that two community people from outside the Council are on the committee – one is in favor of the park and one is opposed to the park. Ms. Hetuck inquired if the Council could override the results of the survey. Councilman Youngs stated that the Council could override the results of a survey or a non-binding referendum. He also stated that Council could not override the results of a referendum.

ADMINISTRATIVE MATTERS – APPOINTMENT/REAPPOINTMENT OF PLANNING COMMISSION MEMBERS

- Jim Gross (Reappoint): A motion was made by Councilman Junkin, seconded by Councilman Saxton, to reappoint Jim Gross to the Planning Commission. The motion was unanimously carried.
- Robert Johansen (Reappoint): A motion was made by Councilman Junkin, seconded by Councilman Fields, to reappoint Robert Johansen to the Planning Commission. The motion was unanimously carried.
- Richard Oliver (Reappoint): A motion was made by Councilman Junkin, seconded by Councilman Saxton, to reappoint Richard Oliver to the Planning Commission. The motion was unanimously carried.
- John Speer (Reappoint): A motion was made by Councilman Junkin, seconded by Councilman Fields, to reappoint John Speer to the Planning Commission. The motion was unanimously carried.
- Sandi Roberts (Appoint): A motion was made by Councilman Junkin, seconded by Councilman Saxton, to appoint Sandi Roberts as a new member to the Planning Commission. The motion carried with a 6-0 vote. Councilman Cestone abstained and stated that he did not know anything about Sandi Roberts' qualifications.

Jim Gross, Robert Johansen, and Richard Oliver will serve a two-year term and John Speer and Sandi Roberts will serve a one-year term in order to stagger the terms.

ADJOURNMENT

A motion was made by Councilman Fields, seconded by Councilman Youngs, to adjourn the August 13, 2010, Town Council Regular Meeting at 8:57 p.m.