

<p style="text-align:center">TOWN OF SOUTH BETHANY TOWN COUNCIL REGULAR MEETING MINUTES AUGUST 14, 2009</p>
--

ATTENDANCE

PRESENT: Mayor Gary Jayne; Councilpersons John Fields, Jay Headman, Diane Matera, Marge Gassinger, and Rob Youngs; Town Manager Melvin Cusick; Ptlmn. Joshua Rowley; and Administrative Assistant Pam Smith

EXCUSED ABSENCE: Councilman Tim Saxton

MEETING CALLED TO ORDER

Mayor Jayne called the August 14, 2009, Town Council Regular Meeting to order at 7:00 p.m., followed by the Pledge of Allegiance to the Flag.

PROPERTY OWNERS' PARTICIPATION

- Mike Matera (311 W. 9th St.) – Asked why the Town was filling holes that had sunk down a little bit instead of having the utility company that had originally made the holes fill them in. The Town Manager stated that the holes the Town was filling in were patched four to five years ago by the gas company. He added that the Town could get as much as a year guarantee for the company to come back and repair them, but not a four or five year guarantee. Therefore the Town has to maintain them. The Town Manager noted that repairing the holes was very inexpensive.
- Bob Apollo (142 Layton Dr.) – Inquired what laws, regulations, procedures, and guidelines the Council uses in enacting an ordinance. Mayor Jayne replied that the Council usually discusses it at a workshop and then one of the Council Members sponsors the ordinance. It then has to go through three readings. Mr. Apollo said that what he is hearing is that at the first two readings Council decides if it has to be reworked and Council has to wait until the third reading to vote on it. Mayor Jayne replied yes. Mr. Apollo inquired why Ordinance 150-09 (covering in the setback area) was postponed from the May 8 Council Meeting. Mayor Jayne replied that at the May 8 meeting there was a lot of discussion on the subject and the sponsors wanted to take it back and look at it some more. He added that he believes Council is going to review the ordinance at the August 27 Workshop. Mr. Apollo asked if it was correct that once an ordinance is proposed it is going to get passed one way or another as long as the sponsor keeps modifying it and postponing it. Mayor Jayne stated that it would depend on the ordinance and Council's attitude toward that ordinance. Mayor Jayne added that the members of the Council do not have to vote for an ordinance. They can vote against it if they want to. Mr. Apollo said that he attended the May 8 meeting and one of the sponsors declined to follow through on a vote. Mr. Apollo feels that 50 percent of the Council Members present believed the ordinance was not worthy of passing law. Mr. Apollo added that it seems to him that Council makes up the laws and rules to suit the sponsors. Mayor Jayne said no and added that because of the discussion at the May 8 meeting, in good conscience the sponsors wanted to take the ordinance back and do some more homework on it. Councilman Headman agreed with Mayor Jayne. Mr. Apollo asked if it was true that the basic principle of voting at the third reading is meaningless because if there is a little dissent for the third reading Council will go on until the ordinance gets through. Councilmen Headman and Fields stated that it was not true. Mayor Jayne stated that Council has postponed ordinances in the past and he added that there is a legal process that Council follows very precisely. Also the Town lawyer reviews all of the ordinances. Mr. Apollo asked for the laws and regulations governing moving an ordinance through to enactment. The

Town Manager stated that it is set up in the Town Charter. Mr. Apollo stated that it has been three months since the ordinance was postponed, and he supposes that Council is going to wait until he does not attend a meeting to present it. Mayor Jayne stated that that is not true and Council would never do something like that. Mayor Jayne told Mr. Apollo that he was welcome to come to the Workshop. Addressing the new Council Members (Councilwoman Matera and Councilman Youngs – Councilman Saxton was absent), Mr. Apollo stated that it is a bad ordinance, and if they would like any information on it, he would be willing to help them out. Mr. Apollo believes that the Interlocking Concrete Pavement Institute (ICPI) standards are for sidewalks in the street and not applicable to a patio, driveway, or walkway. Mr. Apollo asked the new Council Members to look into what is happening. Mr. Apollo said, "It is not right that these people can just go and change the laws if they want to." Mayor Jayne stated, "We do not change the laws as we go along. We do not make up the rules as we go along. The Town attorney is with us every step of the way and reviews all the ordinances. We have followed the procedures so far. We will review it again at the Workshop." Councilman Youngs stated that he was in attendance at the May 8 meeting and it was his understanding that it was suspended to go back and look at it again because of the questions raised regarding the standards. He added that it is waiting to be resubmitted and he is not clear on whether or not that will require three more readings. Councilman Headman stated that because of comments from the Council and the community, adjustments to the ordinance were made after the first and second readings. He added that they decided not to vote at the third reading because there were further questions from the Council and the audience that needed to be reviewed. Councilman Headman concluded that the purpose of the readings is to get it right.

- Tom Roche (141 Henlopen Dr.) – Regarding an article in the Coastal Point on the Town's recycling fees, Mr. Roche stated that he hopes whatever contract the Town enters into the Town won't be penalized in anyway with funds going up each time a contract comes up. He added that he believes the property owners are environmentally sensitive and want to do what is right. Mayor Jayne stated that the recycling contract with DSWA runs out January 1. Council will discuss what to do regarding recycling at the August 27 Workshop. Because it is a highly legalistic and involved contract it will be discussed in an Executive Session. Mayor Jayne stated that the price per pickup will be stipulated in the contract. There will be more information coming.
- Mike Matera (311 W. 9th St.) – Commented that there was a nice article in the Wave about Ocean View, Bethany Beach, and South Bethany trying to enforce the hard hat law for the kids. Also, there was a report on TV about an 11 year old kid who wasn't wearing a helmet and got killed. Mr. Matera inquired what can be done to force people to wear helmets, including local residents. Mayor Jayne stated that the Town can put the word out on the website and in flyers that are sent out with the rental licenses. The Chief has stepped up his program. He has brochures around town. Ptlmn. Rowley said the Department is trying to obtain a grant for next summer to purchase bike helmets to hand out to the kids. A majority of the people are weekly renters who don't know the law. It is not practical and it is not a good business practice to be taking an eight year old back to his/her house and trying to issue the parents tickets. The Department is trying to take a friendly approach to reducing any types of possible injuries. The Chief does hand out pamphlets and he makes 15 to 20 bicycle contacts a day, not only for helmets, but also for going the wrong way and other safety issues. Regarding local residents, Ptlmn. Rowley stated that he can't say that he has ever come in contact with the same person twice. He suggested that Mr. Matera talk to the Chief about the local resident and maybe the Chief can talk to the parents and possibly get the rider a helmet.

Mr. Matera complimented Ptlmn. Rowley for quieting down some people at 12 a.m. after he had made a complaint to the Police Department.

Because the Town people are here to serve the people, Mr. Matera cannot see why the Town Hall is closed between 12 p.m. and 1 p.m. He suggested an 11:30 to 12:30 lunch shift and a 12:30 to 1:30 lunch shift.

Mr. Matera stated that nobody is enforcing the no wake zones in the canals and snap gut area. Mr. Matera asked what he can do to stop the boaters from going fast. Ptlmn. Rowley said to get the tag number that is on both sides of the front of the boat and a description of the boat and report it to the Police Department. The Department can try to contact them to make them aware of the issue. He added that DNREC enforces the no wake zones, and unless they are there to witness it there is nothing they can do about it. The Police can try to prevent the problem from happening again by talking to the boaters.

- Carolyn Marcello (8 S. 9th St.) – Stated that Mary Suazo asked her to bring before the Council that this is the 40th anniversary for the Town of South Bethany. Ms. Suazo and some others would like to have a gathering of the town on a Saturday in September at Town Hall to recognize the 40th anniversary of the Town and the Mayors. The Town Manager said that he had suggested to Ms. Suazo burying a new time capsule at the end of the memorial bricks area where it is not concreted in. At some point in time the Town or the SBPOA could put a plaque over it so that future people will know where it is. Ms. Marcello said that if anyone has anything to add that she, Mary Suazo, or John Speer will take it and put it together. Mayor Jayne stated that the anniversary celebration is a very good idea.
- Jack Wise (146 Evergreen Rd.) – Believes that if the Police would follow up on the bike helmet issue, renters who come back the next year will buy their child a bike helmet.

Mr. Wise inquired if it is still the case that property owners cannot interject anything that might be helpful at a workshop meeting. Mayor Jayne said that is right. He stated that Council has a lot of things that have to get done at the workshops. Every once in a while if there is someone in the audience who has knowledge on the subject, Council may go to that person.

ADOPTION OF MINUTES

- **Town Council Regular Meeting Minutes, July 10, 2009** – A motion was made by Councilman Headman, seconded by Councilwoman Gassinger, to accept the July 10, 2009, Town Council Regular Meeting Minutes as amended as follows:

Page 3, Town Manager's Report, Paragraph 6: The Town Manager stated that he had misspoke. The amount the Town donates to the Bethany Beach Volunteer Fire Company is \$2,000.

The motion was unanimously carried.

- **Town Council Special Meeting/Workshop Notes, July 23, 2009** – A motion was made by Councilman Headman, seconded by Councilwoman Gassinger, to accept the July 23, 2009, Special Meeting/Workshop Notes as amended as follows:

Page 4, Last Paragraph: Change "Councilman Youngs replied that it is irrelevant to talk about the **ethicacy** of it" to read "Councilman Youngs replied that it is irrelevant to talk about the **efficacy** of it".

The motion was unanimously carried.

- **Town Council Executive Session Minutes, July 23, 2009** – A motion was made by Councilman Headman, seconded by Councilman Fields, to accept the July 23, 2009, Town Council Executive Session Minutes. The motion was unanimously carried.

LEADERSHIP REPORTS

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

Attended the Bethany-Fenwick Area Chamber of Commerce Lifeguard of the Year Award Ceremony. South Bethany's Lifeguard of the Year is William Weeks. This is his second year on South Bethany's Beach Patrol. Also at the ceremony, the Chamber donated \$500 to the Town to go toward keeping the lifeguards on duty after Labor Day. That is part of the Chamber's effort to extend the season, which is good for business.

Mayor Jayne stated that the Bethany Beach Volunteer Fire Company (BBVFC) only got about half the amount of grant money that they usually get from the State and County. The BBVFC is in a position of having to raise money. He also stated that the money property owners pay for the ambulance service on the tax bill stays in the ambulance service pot. None of it goes to the fire service. Mayor Jayne stated that if you get a request for a donation in the mail from the fire service, it is for that side of the Volunteer Fire Company and has nothing to do with the ambulance service.

Mayor Jayne announced that the Bethany Beach Volunteer Fire Company is having a spaghetti dinner on August 22. The flyer was available on the sign in table. He also announced that they will be having an AUCE Breakfast Fundraiser Saturday, September 6 (Labor Day weekend).

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

Over the past year representatives from South Bethany, Bethany Beach, Ocean View, Sea Colony, Bahamas Beach Cottages, Salt Pond, and the State Parks Commission have met several times to discuss the possibility of the Assawoman Canal Trail along the Assawoman Canal. A series of public information meetings are being planned for this fall, and there will probably be another series of public information meetings in the spring and summer of 2010. Representatives from the State Parks Commission will be there with renderings of what they think the trail will look like, and they would like input from the public of what they would like the trail to look like. The tentative dates for the meetings in the fall are September 16 at Ocean View Town Hall, September 24 at Bethany Beach Town Hall, and September 30 at South Bethany Town Hall. The tentative time of all three meetings is 6 p.m. to 8 p.m. After the dates have been confirmed, there will be advertisements in the paper, notices on all of the towns' websites, and flyers available at Town Hall. The meetings are not public hearings. This idea is in its infancy. Mayor Jayne stated that at this point the plans are not even preliminary and they are barely concept. The purpose of the public information meetings is to get people's comments on the idea of the trail.

While on the subject of the Assawoman Canal, Councilwoman Gassinger reported that she spoke with the Project Manager of the Assawoman Canal Dredging Project, Chuck Williams, and they plan to start again September 1.

With all the burglaries going around in Ocean View and Millville, Mr. Matera suggested locking the maintenance building garage doors during business hours. The Town Manager stated that there are cameras out there and the Police Department can monitor that building.

Beach Patrol Report 7/11-8/14 (The full report was available on the sign-in table):

- 28 rip current rescues (62 year to date)
- 10 Serious medical emergencies which required ambulance transport to the hospital, including one patient that required an air lifting out of South Bethany to Christiana Hospital (she made a full recovery).

- Lifeguard Competitions: The Beach Patrol has participated in various lifeguard competitions in Sussex County. The Patrol also had a team that attended the United States Lifesaving Association National Championship in Ft. Lauderdale. The trip to Ft. Lauderdale was funded by donations from individuals and businesses. The Town did not expend any money for the trip. The Sussex County team, of which South Bethany was a member, placed fourth overall at the national competition. On August 13 South Bethany Beach Patrol placed first in the Middlesex lifeguard competition. This was the first time South Bethany has won a lifeguard competition since 1994.

Councilman Fields stated that the Beach Patrol Report is the most interesting and enlightening single piece of information he has gotten since being on Council. He stated that he had no idea that all of this happens on the beach. Councilman Fields stated that there have been times when he thought the Town was overstaffed for lifeguards, but he is not sure anymore.

The Town Manager thanked the South Bethany Property Owners Association (SBPOA) for presenting a check to the Lifeguard of the Year. It is helpful to the guard for his/her college education.

Kathy Jankowski, President of the SBPOA, said that at the SBPOA meeting on August 26 the property owners will be proposing to approve the purchase of another beach wheelchair. Mayor Jayne thanked the SBPOA for their generosity.

- **Treasurer's Report**—In Councilman Saxton's absence, Councilman Headman reported as of July 31, 2009:

Balance Brought Forward	\$ 1,114,796
July Revenue	\$ 537,030
July Disbursements	\$ 263,699
Balance	\$ 1,388,128

Regarding transfer tax revenue (1½ % of the sales of the houses in South Bethany), after three months into FY 2010 the Town is \$51,000 below where it was at the same time last year. Councilman Headman stated that August through October are key months and are usually good months.

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

The Police Department had 74 complaints in the month of July.

- July 1 Theft of bicycles – one on Anchorage Dr. and one on Indian Street. Neither bike was recovered. The bikes were left unlocked underneath the home and stolen in the middle of the night.
- July 2 Disorderly conduct complaint on Petherton Dr. Two friends arguing. Subjects were separated and the police gave one a ride to Ocean City.
- July 2 Fireworks complaint. Fireworks were confiscated on S. Ocean Dr.
- July 3 Two loud parties – one on Layton Dr. and one on Brandywine Dr. Both parties were shut down.
- July 4 Two code violations – working during prohibited hours (4th of July).
- July 6 Code violation for a dog off the leash and on the beach. Subject was issued a ticket.

- July 8 Report of underage consumption on Bayshore Dr. One of the subjects had active warrants out for his arrest. He was taken into custody. The other subjects were issued criminal citations for underage consumption.
- July 8 Theft of bicycles from Indian St. Several bicycles were removed from under the residence. Also a theft of unsecured bicycles on N. 1st St.
- July 10 Violation of local code. A subject drove his vehicle on the beach after the Maintenance Department personnel told him he was not allowed to. He told them he could do whatever he wanted. Police found him up on the beach driving his car around. He was issued traffic violations and also town ordinance violations.
- July 11 Theft of a cooler from underneath a house in the middle of the night.
- July 11 Accident on Route 1 and N. 6th St. involving an unleashed dog that ran into traffic causing an accident. No one was injured except for the dog.
- July 15 Disorderly subjects on Anchorage Dr. Somebody reported that juveniles across the canal were throwing rocks at a residence. Police checked the area but were unable to locate the subjects.
- July 19 Two loud parties – one on Anchorage Dr. and one on Russell Rd.
- July 19 A phone harassment complaint. The victim stated that he was receiving harassing phone calls from an ex-girlfriend. The Police contacted her and told her to stop calling.
- July 20 Loud party on Russell Road at the same house the Police were at on the 19th for a loud party complaint. At 3 a.m. two subjects were screaming and cussing on the back deck. Ptlmn. Rowley told them to quiet down, but once he left they started cussing and screaming again saying they don't have to listen to the police because they were on private property. Ptlmn. Rowley went back out to the house and the subjects became disorderly and were arrested.
- July 21 Disorderly subjects at Grottos. The subjects were screaming and yelling. One of the subjects took a real estate sign and was swinging it around. Then they stole the sign and ended up at the Fenwick State Park where the Police found them with the sign.
- July 23 Local fugitive (outstanding warrants in Delaware) was apprehended. After being stopped for speeding, was found to have several outstanding warrants in New Castle. He was arrested and taken to Court 3 where he was committed to SCI.
- July 27 Handled a craigslist internet scam. Fortunately the victims did not fall for the scam. This is the fourth or fifth scam that the South Bethany Police Department has handled.
- July 31 Trespassing on Petheron Dr. An ongoing issue where people from a rental property go on the neighbor's property and use their beach items and deck. In this case it was young kids riding their bikes on the driveway. Because it is kind of a weekly occurrence, the neighbor reported it.

Regarding stolen bikes, Ptlmn. Rowley said to lock the bikes all together or put them inside. If you want your bikes, bodyboards, surfboards, skimboards, etc., to be there the next

morning, you need to lock them up. Councilman Headman suggested that rentals include a reminder on their information list to lock up items.

PtImn. Rowley said that the South Bethany Police Department has an engraving tool and will put an SB number on bikes if asked to do so. The State Police also has a program where they put a sticker with a unique serial number on the bike to help identify the owner of a recovered stolen bike.

Mr. Roche asked if there have been any accidents this year or previously at the traffic light at Rt. 1 and Evergreen Rd. Three times this year he has been very close to having an accident at that intersection with people trying to make a U-turn. PtImn. Rowley said that there have not been any accidents at that intersection that he can think of in the recent few years. He did note that at that intersection you are allowed to enter the intersection to make a left on green and sometimes the light turns red while you are sitting in the intersection and the cars coming off of Evergreen Rd. start to come out and they don't know what to do.

COMMITTEE REPORTS

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

The Planning Commission has finished its second drafts of the Bylaws and Code. Councilman Fields will be bringing the drafts to a future Workshop.

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

The Canal Water Quality Committee met on August 7.

On August 29 George Junkin and Jay Headman will be working under the direction of the Center for the Wetland Protection to do field studies for the Anchorage Drainage Area Assessment Study. The outcome of that study is to give retrofit recommendations to reduce the amount of stormwater entering into the canals.

Dave Wilson is now in charge of the Water Quality Monitoring Program in South Bethany. Councilman Headman thanked the SBPOA and the Town for splitting the cost of a piece of equipment that has been very efficient and useful to the program.

George Junkin is studying the possibility of a pilot program to install diffusers in one of the canals as a possible way to improve the water quality in the canals. The committee would look for grant money to fund the program.

Allan Allenspach is the coordinator for the Oyster Gardening Program. South Bethany has 110 floats growing oysters. Over 20 bushels of oysters have been planted in the Inland Bays. Also, the SBPOA donated money to buy spat to continue the program with the Center for the Inland Bays.

The committee has tried to make publications available that talk about what residents can do to help improve the water quality in our town.

Councilman Headman stated that the people on the committee do a lot of nice work and the goal is to improve the water quality in our town.

ADMINISTRATIVE MATTERS**• Reappointment of Board of Adjustment Member**

Mayor Jayne nominated Ed Chase to serve again on the Board of Adjustment. Mayor Jayne noted that Mr. Chase has served on the Board of Adjustment for sometime now and has done a fine job. A motion was made by Councilman Headman, seconded by Councilman Youngs, to reappoint Ed Chase to the Board of Adjustment. The motion was unanimously carried. Because Mr. Chase was not present, he will be sworn in by the Town Clerk.

• Reappointment of Planning Commission Member

Mayor Jayne nominated Jim Gross to serve again on the Planning Commission. A motion was made by Councilman Fields, seconded by Councilman Headman, to reappoint Jim Gross to the Planning Commission. The motion was unanimously carried. Because Mr. Gross was not present, he will be sworn in by the Town Clerk.

ADJOURNMENT

A motion was made by Councilman Fields, seconded by Councilman Headman, to adjourn the August 14, 2009, Town Council Regular Meeting at 8:10 p.m. The motion was unanimously carried.