

<b>TOWN OF SOUTH BETHANY TOWN COUNCIL REGULAR MEETING MINUTES DECEMBER 11, 2009</b>
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**ATTENDANCE**

PRESENT: Mayor Gary Jayne; Councilpersons John Fields, Jay Headman, Tim Saxton, Diane Matera, Marge Gassinger, and Rob Youngs; Town Manager Melvin Cusick; Chief Joe Deloach; and Administrative Assistant Pam Smith

**MEETING CALLED TO ORDER**

Mayor Jayne called the December 11, 2009, Town Council Regular Meeting to order at 7:00 p.m., followed by the Pledge of Allegiance to the Flag.

**PRESENTATION BY US COAST GUARD AUXILIARY FLOTILLA 12-01**

Mayor Jayne welcomed Bruce White, Elaine Gilgenast, and Bob Adams, representatives from the USCG Auxiliary Flotilla 12-01. Flotilla Commander Bruce White presented a plaque of appreciation to Mayor Jayne and thanked the Town for the use of South Bethany's Town Hall for meetings and safe boating classes and for displaying safe boating materials in the lobby. Mayor Jayne stated that South Bethany is a boating community, and it is important to the Town to have good responsible boaters on the waterways. Mayor Jayne said the Town appreciates the great job the USCG Auxiliary Flotilla does and the Town is happy to let Flotilla 12-01 use South Bethany's Town Hall.

**PROPERTY OWNERS' PARTICIPATION**

- Pat Van Cleve (152 Anchorage Dr.) – Stated that she was here to discuss the development of the Richard Hall Memorial Park. Ms. Van Cleve said that there has been a long term interest in creating a park for South Bethany residents. Ms. Van Cleve made the following points in her presentation:
  - In 2005 the Property Owners Association had a petition signed by over 150 residents indicating a desire to start some development of a possible play area. Diane Nazarian and Mike Matera were involved in leading this.
  - Several years ago a committee was formed by the Property Owners Association to assess the feasibility and cost for a playground and maybe a pavilion. The committee focused on a park to promote physical fitness, recreation for all ages, and a pavilion for the annual bull roast.
  - The committee thoroughly investigated and researched the existing local parks and playgrounds in Fenwick Island, Bethany Beach, Ocean View, and Bethany West. They investigated any possible restrictions on the deed for the Richard Hall Memorial Park, the status of the park as being uplands and not wetlands, the liability issues associated with park development, rules and regulations concerning a playground, potential vendors for purchasing any equipment, and funding options for the project.

Ms. Van Cleve stated that she was speaking on behalf of many South Bethany Property Owners who are in favor of creating such a park, and she said that she had a list of over 100 property owners from a casual polling of friends and neighbors in the off season since Labor Day that have expressed an interest in developing the park. Ms. Van Cleve recognized that some people are against the development of the park. Ms. Van Cleve suggested that the park idea has reached a tipping point, and the entire South Bethany community must be given an opportunity to make a decision. Ms. Van Cleve requested that the Council bring this issue to a public vote in the upcoming election. She stated that if the outcome of a public

vote is yes, there are many steps to follow and challenges to face in the months and years ahead, but we will work together to reach our mutual goals. Ms. Van Cleve believes the park would provide vibrancy to the town and will be an asset to the community and encourage young people to buy property in South Bethany in the future.

Ms. Van Cleve distributed a one page proposal for a multi-generational recreational development and an aerial photo to Council (attached).

Councilman Youngs said, "Mr. Mayor, consistent with the Town Charter § C-22G(1), consistent with Robert's Rules of Order, and the rules of FOIA, I wish to introduce at this time to the Town Council the following resolution that states: A Resolution for a Referendum on Richard Hall Park. Whereas, the South Bethany Property Owners Association has put in significant research and ground effort over the past few years; and whereas, detailed plans with costing are in hand; and whereas, the legitimate use of the plot as uplands has been established; and whereas, there are a number of residents who are interested in pursuing the notion; and whereas, there are a number of residents opposed to any ongoing effort; and whereas, the Town Council has taken no position on the issue; now, therefore, let it be resolved, by the Mayor and Council of the Town of South Bethany that a referendum will be conducted at the next annual election as a poll of all the residents of the town to determine if the majority want a park established on the property now known as Richard Hall Park." Councilman Youngs had copies of the resolution for Council.

Mayor Jayne asked Ms. Van Cleve if the proposal included the cost estimate and the legal brief. Ms. Van Cleve replied no.

Mayor Jayne stated that there are things in the resolution that Council has not seen, for example, detailed plans of costing, the legal finding that it is okay to use the property for this purpose (the legal brief that says it is okay with the Hall Family's transfer documents), and the fact that it is uplands. Mayor Jayne stated that what Council is being asked to do is to endorse the resolution and the things in it which Council has not seen. Mayor Jayne stated that as a matter of principle he does not have a problem with the issue going for referendum, but in order to have a referendum people have to know something about what it is they are voting on. People can't vote on whether or not they want something unless they know what that something is in terms of what it looks like, what it is going to be, what it is going to cost the taxpayer, etc. There are details that need to be done for the benefit of the people. Mayor Jayne recommended that Council take up the issue of the park at the December 17 Workshop and try to plan an approach on how to get the issue to referendum vote if that is what the people want and if that is what Council decides. Mayor Jayne told Ms. Van Cleve that any information she could get to the Council would be helpful. Mayor Jayne opened the discussion up to the Council.

Councilman Fields said he would not feel comfortable voting on the resolution until the Council has had an opportunity to discuss it. Councilman Fields agreed to discuss the issue at the December 17 Workshop.

Councilman Headman expressed that he would like to have more specific information and an opportunity to discuss it. He stated that his caveat is that if it is put on the December Workshop agenda, it needs to be given the amount of time necessary to have a full conversation.

Councilman Saxton stated that he does not have enough information to vote on the resolution tonight. He recognizes that the resolution is just whether we want it (the park/playground) or not, but he believes it has many more implications to the Town Council and the budget. Councilman Saxton does not think the Council should put a resolution out there until Council has a chance to have full disclosure of the plans. He believes that belongs at a Workshop

and that it needs to have accurate time for discussion. He stated that it may not get all done at one Workshop.

Councilwoman Matera agrees that Council should discuss it at a Workshop. She believes Council needs more information on the costs and how to budget for a park. She thinks it is a wonderful idea to put the question on the ballot at the next election and have the people in the town decide whether it is something they want.

Councilwoman Gassinger believes it should be discussed at a Workshop. She noted that the issue has never been presented to the Council. She added that it needs to be thought out and Council needs as much information as possible. She stated that the issue should be given the amount of time it needs.

Councilman Youngs stated that he is a little bit disappointed in the Council because the underlying assumption from Council is that the referendum will return a positive result that the citizens of the town want a park, and therefore the Council needs more time to consider the ramifications of that vote. Councilman Youngs stated that it is equally possible the referendum could return a negative result that the citizens of the town do not want a park and all of the discussion will be null and void because there is no future in it. Councilman Youngs believes a referendum by the Town of the whole town is the only way to move this issue forward in a reasonable matter that addresses the concerns of every citizen in this town. Councilman Youngs believes the Council is sidestepping their responsibility and putting obstacles in the way of citizens to discover what the will of the town is. Councilman Youngs accepted the Council's position.

Mayor Jayne asked for a second to Councilman Youngs motion. There was no second. Mayor Jayne said in the absence of a second the subject is over and Council will take the issue up at the Workshop.

Mayor Jayne thanked Ms. Van Cleve for bringing this to Council's attention and said that any additional information she can give Council in the meantime would be helpful.

- Kathy Jankowski (310 W. 4<sup>th</sup> St.) – Asked Mayor Jayne what information he needed prior to the Workshop to have the discussion regarding the park since citizens are not allowed to give any input at the Workshops. Mayor Jayne replied cost estimates, a legal brief of the use of the property, a letter from an engineer – the fundamentals. Councilman Headman requested that the representative have an opportunity to meet with the Mayor or Town Manager beforehand to review what information is needed. Councilman Saxton said he needed documentation that supports each of the points in the resolution. Mayor Jayne agreed.
- Sue Callaway (240 Bayshore Dr.) – Asked what the expectations can be in terms of a decision regarding a resolution as a result of the Workshop meeting. Mayor Jayne said he does not know right off hand. Council will have to discuss it and there is homework to be done. We have to find out what the steps are leading up to a referendum. Hopefully some plan of approach will come out of the December Workshop.
- Kay Lyttle (411 Bristol Rd.) – Requested that Council reconsider the approval of a street light at the corner of York Drive and Bristol Road. After a discussion, Mayor Jayne said that Council would address the issue at the December 17 Workshop.
- Pat Van Cleve (152 Anchorage Dr.) – Ms. Van Cleve inquired what she can expect the outcome of the "closed" Workshop meeting to be regarding the park. Ms. Van Cleve's hope is that there will be a well worded petition on the ballot in May. Mayor Jayne stated that the meeting is not closed. He explained that meetings that have to do with contracts, legal matters, or personnel matters can be held behind closed doors. Mayor Jayne stated that he does not know what the outcome of the meeting is going to be. He said that Council

understands that Ms. Van Cleve's objective is to have a referendum at the next election. Ms. Van Cleve asked if a public meeting was a precursor to having it on the ballot. Mayor Jayne stated that he does not know and added that he had brought that up because it was what he recollected from previous referendums. Ms. Van Cleve is concerned that just a small segment of the town's population would attend a public meeting regarding the issue of the park because there are quite a few homeowners that are not available in the off season to attend meetings. Therefore, she believes it is important to have it on the ballot in order to get everyone's opinion.

- Tom Roche (141 Henlopen Dr.) – Thanked the South Bethany Property Owners Association for funding the Christmas lights. Mr. Roche requested that the Budget and Finance Committee include the Christmas lights in the FY11 Budget. He added that the lights look beautiful, and South Bethany should be looking that way every year. Mayor Jayne officially thanked the South Bethany Property Owners Association for funding the Christmas lights this year.
- Kathy Jankowski (310 W. 4<sup>th</sup> St.) – Addressing Ms. Van Cleve, Ms. Jankowski stated that the Workshop is not a closed meeting, but the citizens are not allowed to give any input.

### **ADOPTION OF MINUTES**

- **Town Council Special Meeting/Workshop Notes, November 19, 2009** – A motion was made by Councilman Headman, seconded by Councilwoman Gassinger, to accept the November 19, 2009, Town Council Special Meeting/Workshop Notes. The motion was unanimously carried.
- **Town Council Regular Meeting Minutes, November 20, 2009** – A motion was made by Councilman Youngs, seconded by Councilwoman Matera, to accept the November 20, 2009, Town Council Regular Meeting Minutes as amended as follows:

Page 3, Sixth Paragraph: Change "She is going to speak to the Project Manager and hopes to have something accurate to **tell** next month" to read "She is going to speak to the Project Manager and hopes to have something accurate to **report** next month."

The motion was unanimously carried.

### **LEADERSHIP REPORTS**

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

Attended the Bethany Beach Fire Company's Annual Awards Night.

Attended the Delaware Chief of Police Association's Annual Christmas Luncheon in Dover.

Senator Carper is scheduled to visit South Bethany on December 18 to look at the beach and see the damage from the most recent nor'easter.

DNREC has been very busy on the beach and did an excellent job of cleaning up. The Town sent DNREC a letter thanking them for the fine job they did. As sand comes in, DNREC will push the sand up. Regardless of what is done with the dune, the Town will have the walkways ready for next season.

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

The Town has changed recycling companies from DSWA to Allied Waste starting January 1, 2010. Allied Waste and DSWA will be exchanging the DSWA carts with Allied Waste's carts

the third Friday of each month beginning in January for the next four months. The Town encourages property owners to put their DSWA cart out the third Friday of the month whether there is recycling material in the cart or not so the exchange can be made. The Town hopes to complete the exchange program in four months, but it may have to be extended. The Town has over 800 participants in the recycling program.

- **Treasurer's Report**—Tim Saxton reported as of November 30, 2009:

Councilman Saxton requested that the Budget and Finance Committee Report be a standard Town Council Regular Meeting agenda item under Committee Reports. Mayor Jayne agreed.

Balance Brought Forward	\$ 1,707,290
November Revenue	\$ 46,213
November Disbursements	\$ 108,749
Balance	\$ 1,644,755
Total Cash Available (General Fund Spending)	\$ 679,494

Councilman Saxton stated that from the total revenue side of the budget, things continue to remain extremely positive; however, all of the problems have not been solved. The Town is still highly dependent on the real estate transfer tax to cover a lot of the expenditures.

The Budget and Finance Committee has had two meetings. The December 11 Budget and Finance Committee Meeting was focused on reviewing the status of the FY 2010 Budget. The Committee finalized its recommendations and will report to Council at the December 17 Workshop.

Councilman Saxton stated that the Budget and Finance Committee meetings are open to the public and there is 15 minutes set aside at the beginning of each meeting and 15 minutes set aside at the end of each meeting for public input. Councilman Saxton encouraged input from property owners. Councilman Headman added that the Committee is hoping to have a public meeting on a weekend for people to give their input on the budget. Mr. Roche asked if there is a more timely way to announce the meetings. The Town Manager stated that the meetings are posted on the Town's Website on the Bulletin Board page seven days in advance. Mayor Jayne added that the meetings are also posted on the Town's bulletin boards at Town Hall. Councilman Saxton said that after he gets Council's approval of the dates of the Budget and Finance Committee meetings he will get that information out to the public. Councilman Saxton said he was disappointed because the Budget and Finance Committee has had two meetings and no property owners attended either meeting. Councilman Saxton encouraged property owners to attend the Budget and Finance Committee meetings. Mr. Cestone suggested advertising committee meetings on the Town's website on the Calendar of Events page.

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

- Nov. 4 Agency assist (Fenwick Island PD) with a traffic stop. The vehicle was impounded.
- Nov. 5 Criminal mischief on W. 9<sup>th</sup> St. Broken sliding glass door, but no apparent burglary. The contents in the house were secure.
- Nov. 6 Animal control on Elizabeth Way. A property owner found an animal in her furnace. The police gave her a pest control number and they came and got the animal out.

- Nov. 7      Parking violation on Layton Dr. Contractors were blocking the driveway. The vehicles were moved.
- Nov. 8      Agency assist (Bethany Beach PD) with a mental patient on Kent Ave. Suspect was taken to Beebe for evaluation.
- Agency assist (Bethany Beach PD) with a drunk, disorderly subject at the Wawa. Subject was taken into custody and transported to Sussex Correctional Institution.
- Violation of local code on Layton Dr. Contractor was working during prohibited hours. The site was shut down.
- Nov. 10     Agency assist (Delaware State Police) with a traffic accident on Kent Ave. Vehicle flipped over and struck a house. The driver was transported by ambulance to Beebe.
- Nov. 13     Several calls for service for lines down due to the Nor'easter.
- Burglar alarm on Seaside Dr. False alarm due to the storm.
- Burglar alarm on Petherton Dr. False alarm due to the storm.
- Nov. 14     Unexploded ordinance recovered from dune due to the storm. Ocean City PD Bomb Tech disposed of it. The ordinance turned out to be a corroded fire extinguisher.
- Nov. 21     Violation of local code on Elizabeth Court. Subject was burning leaves on the road. He was issued a ticket for that violation.
- Nov. 24     Burglar alarm on Bayshore Dr. Subject entered the incorrect code. There was no crime.
- Nov. 25     Local fugitive was apprehended after being stopped on Rt. 1 for traffic violations. Subject had outstanding warrants from JP Court 1. He was arrested and transported to court.
- Nov. 30     Agency assist (Ocean City PD) with a riot on 64<sup>th</sup> St. Approximately 400 subjects were fighting at the Castaway's Bar. They called for assistance and Delaware sent police down to help them out. The crowd got under control.
- Agency assist (Fenwick Island PD). A fugitive was stopped who was wanted for assaulting a police officer.

Chief Deloach has purchased, with grant money, 100 bicycle helmets at approximately \$4.65 each to use in his bicycle helmet initiative. The details of the program have not been finalized.

The South Bethany Police Department has purchased, with grant money, solar panels at approximately \$35 each for its police cars. The solar panels will allow the officers to turn off the police cars but keep the equipment in the car (e.g., camera, radio, and computer) running without draining the battery. This will also save gas.

## **ORDINANCES/RESOLUTIONS**

- **First Reading of Ordinance 152-09, Amending Chapter 20, Planning Commission, to Make Revisions and Updates (John Fields)**

Councilman Fields stated that Chapter 20 of the South Bethany Code contains regulations under which the Planning Commission operates. Ordinance 152-09 is intended to update and revise Chapter 20. There have not been changes to Chapter 20 since 2003 even though the duties and responsibilities of the Planning Commission have changed. Councilman Fields reviewed the proposed amendments to Chapter 20. Regarding § 20-5 Subdivision and Partitioning Hearings, Councilman Youngs asked how this role of the Planning Commission relates to the Board of Adjustment and if it is an overlapping responsibility. Councilman Fields replied that he does not believe it is an overlapping responsibility and added that the Board of Adjustment makes rulings on zoning variances. He stated that this was a responsibility that was given to the Planning Commission by the State of Delaware – it is a state law. Councilman Fields asked for other questions. There were none.

Mayor Jayne declared this the first reading of Ordinance 152-09.

## **COMMITTEE REPORTS**

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

- **Approval of the Revised and Updated Planning Commission By-Laws:**

Councilman Fields stated that the Planning Commission By-Laws have not been revised since February 1999. Councilman Fields reviewed the Planning Commission's proposed changes to the By-Laws (attached). Councilman Fields asked for questions. There were none. Councilman Fields made a motion, seconded by Councilman Youngs, that the Council approves the Planning Commission By-Laws as amended and revised at this meeting. The motion was unanimously carried.

Mayor Jayne thanked the Planning Commission and Councilman Fields for all of their work on the revisions.

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

Free booklets from the Department of Natural Resources titled Delaware Coast-A-Syst (An Environmental Risk-Assessment Guide for Protecting Coastal Water Quality) were on the sign-in table and are available at Town Hall. The booklet can also be viewed on the Town's Website on the Bulletin Board page. The booklet contains good tips on what citizens can do in order to improve water quality.

Anchorage Canal Drainage Area Assessment Study – On November 24, 2009, Councilman Headman and George Junkin (representing the Canal Water Quality Committee) met with the group that has been working on the Anchorage Canal Drainage Area Assessment Study (the area north of town from which stormwater runs down a pipe and straight into the Anchorage Canal). From the study there will be recommendations to reduce the amount of untreated pollution going into the Anchorage Canal. Councilman Headman has shared the draft report with Council and now it is going into a final report. The Committee plans to apply for grant money to implement the recommendations. DelDOT, the CIB, the Army Corps of Engineers, Middlesex, and South Bethany are working together to address the issue.

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

The Project Manager has been given approval from the regulatory agencies to extend the dredging through April, and he said the dredging of the Assawoman Canal will be completed in May for the next boating season.

**ADMINISTRATIVE MATTERS****• Appointment of Board of Adjustment Members**

Mayor Jayne nominated Laurence (Brad) Gough and Al Rae to serve on the Board of Adjustment. Mayor Jayne noted that Brad Gough was one of South Bethany's first lifeguards and Al Rae is the most recent former President of the South Bethany Property Owners Association. Council had copies of their resumes. A motion was made by Councilman Headman, seconded by Councilwoman Gassinger, to appoint Laurence (Brad) Gough and Al Rae to the Board of Adjustment. The motion was unanimously carried. Mayor Jayne swore in Mr. Rae. Mr. Gough was not present at the meeting.

**ADJOURNMENT**

A motion was made by Councilman Fields, seconded by Councilman Headman, to adjourn the December 11, 2009, Town Council Regular Meeting at 8:25 p.m.

PHS:Regular Meeting Minutes.12.11.09

Attachments: One page proposal for a multi-generational recreational development  
Aerial photo of the Richard Hall Memorial Park  
Planning Commission By-Laws and Procedures