

**TOWN OF SOUTH BETHANY
TOWN COUNCIL WORKSHOP MEETING MINUTES
APRIL 15, 2011**

ATTENDANCE

PRESENT: Mayor Jay Headman; Councilpersons John Fields, Bob Cestone, George Junkin, and Jim Gross; and Town Manager Melvin Cusick

EXCUSED ABSENCE: Councilpersons Tim Saxton and Sue Callaway

MEETING CALLED TO ORDER

Mayor Headman called the April 15, 2011, Town Council Workshop Meeting to order at 6:00 p.m. Mayor Headman changed the order of the agenda to the following: Draft Rental Ordinance, Yard Waste Discussion, Mediacom Draft Franchise Agreement.

PUBLIC COMMENT PERIOD

There were no comments from the public.

ADOPTION OF MINUTES

- **Town Council Regular Meeting Minutes, April 8, 2011** – A motion was made by Councilman Junkin, seconded by Councilman Cestone, to accept the April 8, 2011, Town Council Regular Meeting Minutes as amended by Councilman Cestone as follows:

Page 7, Planning Commission: Change “A hearing scheduled for April 12, 2011, for a request for the **petitioning** of property located at Coastal Hwy. and Anchorage where the turn around is has been postponed and will be rescheduled again sometime later” to read “A hearing scheduled for April 12, 2011, for a request for the **partitioning** of property located at Coastal Hwy. and Anchorage where the turn around is has been postponed and will be rescheduled again sometime later.”

The motion was adopted.

Councilman Gross requested that the attachments to the meeting minutes be included in Council's packets. It was noted that if Council was previously given the attachment, the attachment to the minutes is not given again. Mayor Headman stated that when Council does not have the attachment or can't reference it then the attachment will be included in Council's packet. Mayor Headman confirmed that the attachments to the minutes are on file with the minutes in the Town's files.

DRAFT RENTAL ORDINANCE

Mayor Headman explained that the Town has three major sources of revenue – transfer tax, property tax, and rental tax. The rental tax is an area where the Town needed to look at ways to improve the way it monitors those funds. Modifications, which included a due date of April 15, have been made to the Application for Rental or Non-Rental Declaration form. The second way to make improvements was to look at the Town's rental ordinances. Councilman Cestone and Mayor Headman have worked on this for a couple of months and have gotten feedback from the Town Attorney. Mayor Headman said his goal is to go through the ordinances, get feedback from the Council and make modifications, and go to a first reading at the May 13, 2011, Town Council Regular Meeting.

Chapter 84 (Draft Ordinance attached)

§ 84-13A: Discussion regarding **or offer to lease or rent out a property without first obtaining** a valid annual rental license. Councilmen Fields and Gross do not agree with this. Councilman Fields questioned how the Town would prove this. Mayor Headman stated that when an owner has a property in the Town that they plan to rent then it is a business and a rental license is required. Regarding property owners who rent their property without a Town Rental License, Mayor Headman said the Town has to prove that a property is being rented. He stated that it is not a problem with the property owners who use local real estate agents to rent their properties. If a property owner is advertising on the internet and has not gotten a Town Rental License this **offer to lease or rent** gets the Town around the issue of having to prove that they have rented. Mayor Headman stated that there are many people going away from renting their properties through local realtors and are advertising on the internet. Councilman Junkin agreed. Councilmen Fields and Gross did not agree. Councilman Gross thinks it is counterproductive. He believes there are property owners that will rent if they get a certain amount of money for the rental, but if they have to get a rental license first they won't even try to rent their property. Councilman Fields questioned if the Town would fine property owners who advertise on the internet and then they don't rent their property

After a discussion, a motion was made by Councilman Junkin, seconded by Councilman Cestone, to keep the wording in § 84-13A as written for the first reading. The vote was 3 in favor and 2 against. Councilman Junkin stated that the Council will get some public opinion on the issue at the first reading.

§ 84-13B: Council agreed to change: "**Rental license applicants shall** ~~The applicant shall be required to~~ certify, under penalty of perjury, that all prior rental tax forms have been filed and that all rental tax due and owing has been paid in full and that all information provided and statements made in the application are true and accurate" to "**Rental license applicants shall** ~~The applicant shall be required to~~ certify, under penalty of perjury, that all prior rental tax forms have been filed and that all rental tax **and penalties** due ~~and owing has~~ **have** been paid in full and that all information provided and statements made in the application are true and accurate.

§ 84-13D: Council agreed to change: "No rental license shall be issued for any residential or commercial property for which required rental tax forms have not been filed or for which all rental tax **and penalties** due and owing has not been paid by the owner" to " No rental license shall be issued for any residential or commercial property for which required rental tax forms have not been filed or for which all rental tax **and penalties** due ~~and owing has~~ **have** not been paid by the owner."

§ 84-14.1A: Council discussed the phrase "**be fined \$500 for each day of violation**". The Town Manager stated that he does not believe the Town can start assessing the penalty until the property owner has received official notification from the Town.

A motion was made by Councilman Junkin, seconded by Councilman Gross, to add words to § 84-14.1A that the \$500 per day starts at notification of a violation. The motion was defeated.

A motion was made by Councilman Fields, seconded by Councilman Cestone, to change **reasonable attorney's fees** to **reasonable Town attorney's fees**. The motion passed.

A motion was made by Councilman Fields, seconded by Councilman Gross, to change the fine from \$500 to \$250. After a discussion Councilman Fields amended the motion by changing \$250 to \$300. Councilman Junkin seconded it. The motion passed.

To clarify, Council agreed to the following regarding § 84-14.1A:

Change: Any person found guilty of violating ~~any section of this article § 84-13(A)~~ shall **be fined \$500.00 for each day of violation**, upon conviction by any court of competent jurisdiction, ~~be subject to a fine of not less than \$200 nor more than \$500~~, plus court costs, **reasonable attorney's fees** and Victim's Compensation Fund Assessment, if applicable. ~~Each day of continuing violation shall be considered a separate offense.~~

To: Any person found guilty of violating ~~any section of this article § 84-13(A)~~ shall, upon conviction by any court of competent jurisdiction, ~~be subject to a fine of not less than \$200 nor more than \$500~~ **be fined \$300.00 for each day of violation**, plus court costs, **reasonable Town attorney's fees** and Victim's Compensation Fund Assessment, if applicable. ~~Each day of continuing violation shall be considered a separate offense.~~

§ 84-14.2(B) Council agreed with Councilwoman Callaway's suggestion to change **in the case of rental license issued to in the case of a rental license issued**. They also agreed with Councilwoman Callaway's suggestion to change **oral and written notice of each such violation will be given to the licensed property owner and his/her realtor (if applicable) to oral and written notice of each such violation will be given to the licensed property owner and the owner's realtor (if applicable)**.

Chapter 118 (Draft Ordinance attached)

§ 118-16A Council agreed to reference § 84-14.1A instead of restating the same wording.

§ 118-16B Reference § 84-14.1B and C. Delete § 118-16B(1) and (2).

Council discussed whether referencing § 84-14.1 was the best way to do it or if having the words in both places was better. In the end, Mayor Headman said to try it first with referencing § 84-14.1 and see if Council is comfortable with that.

§ 118-16C Delete

§ 118-16E Council agreed with Councilwoman Callaway's suggestion to change **suspended to revoked**.

Mayor Headman said the first reading for both ordinances will be at the May 13, 2011, Town Council Regular Meeting.

YARD WASTE DISCUSSION

Should the Town charge all properties for yard waste pickup or just charge developed lots. Mayor Headman explained that the Town does not charge a trash fee to vacant lots. After discussion, a motion was made by Councilman Cestone, seconded by Councilman Gross, to not charge vacant lots for yard waste pickup. The motion was adopted.

Mayor Headman thanked the Town Manager for getting yard waste collection in place in town in a very short period of time.

Mayor Headman stated that Council had previously decided to have yard waste pickup once a month but to monitor the program to see if adjustments need to be made.

Council reviewed a spreadsheet prepared by the Town Manager titled Yard Waste Removal Costs March 2011.

The Town Manager recommended that the Town accept recyclable paper yard waste bags and not plastic bags for yard waste. Council agreed that starting in June 2011 the Town will not allow yard waste to be placed in plastic bags.

Mayor Headman stated that the Town's yard waste pickup contractor is recommending that the Town allow trash cans with the lid off for yard waste and the trash can not be in a bin on pickup day (the trash can must be curbside on pickup day). There were no objections.

Council agreed not to add another pickup in May at this time. Council will continue to monitor the yard waste program and look at it again next year.

MEDIACOM DRAFT FRANCHISE AGREEMENT

Mayor Headman stated that part of the process is to get feedback from the community. In 2008 Mayor Headman created a survey which was sent out in the fall of 2008. At the March 13, 2009, Town Council Regular Meeting, Mediacom Regional Vice-President of Operations, David Kane, made comments and took questions from property owners. Mayor Headman said the concerns were cost, customer service, and the variety of high definition channels.

The Towns of Millville, Bethany Beach, South Bethany, and Ocean View are the members of the Southern Delaware Cable Consortium. The Consortium is represented by the Cohen Law Group. Council reviewed the draft Cable Franchise Agreement prepared by the Cohen Law Group.

Councilman Junkin:

- § 3.7 Service Area Maps. Can the Town use a GIS format.
- § 6.2 Educational and Governmental (EG) Channels. The lawyer may be trying to allow something that is going to happen in the future.
- Regarding a customer complaint report that the Town can get annually from Mediacom, Councilman Junkin believes the Town should have somebody that is responsible to monitor that report annually. (Council agreed that Mediacom needs to come up with new procedures to handle complaints.)
- The agreement does not address most of the complaints the Town received from the Town of South Bethany Mediacom Survey.

Councilman Gross:

- Lack of high definition stations.
- Problems with the sound.
- Have a face to face meeting with Mediacom.

Mayor Headman:

- It needs to be spelled out that seasonal packages will be offered.
- Would like the floating TV guide to come back.
- Pushing to have a local customer service number in the agreement.

Councilman Cestone :

- § 1.2 Term of Franchise. 10 years – is that what the Town wants? It used to be 5 years but was upped to 15 years because Mediacom needed a longer commitment from all the franchises to get funding to upgrade.
- It should be in the agreement that Mediacom is not allowed to run their cables over the town's waterways.
- § 3.6 System Monitoring. Need to be more specific – in particular on the sound levels. In the existing agreement it says that one channel should not be significantly louder or lower than the other adjacent channels. Councilman Cestone suggests expanding that into the sound levels of commercials. Also, often the audio is out of sync with the video.

- Ask why the internet and telephone is mentioned in the agreement. It is supposed to cover only TV service.
- § 4.1 Cable System. Define headend, hubs, and nodes. Clarify two-way Cable Services. In the last sentence, can the Town require the part about Internet access service.
- § 4.2 State-of-the-Art. Second sentence says Mediacom has to be comparable with themselves. Councilman Cestone questioned if that was what the Town really wanted.
- § 6.2(e) Educational and Governmental (EG) Channels. The internet is referenced again. Councilman Cestone does not know that the Town can legally require that.
- § 7 Regulation by the City (should say Town)
- §§ 7.1(a) Right to Inspect and 7.2 Right to Conduct Compliance Review. There is a discrepancy for the same thing. 7.1(a) says 20 business days and 7.2 says 30 days.
- § 8.4 Government Reports. At the top of page 21 it refers to Section 7.1(c). There is no Section 7.1(c).
- The Table of Contents page numbers are wrong.
- § 9.3(b) Performance Bond. Is \$25,000 large enough?
- § 10.2 Broadcast Channels. Possibly require Mediacom to have a lesser basic package.
- § 10.4 Continuity of Service. Mediacom shall use its best efforts to interrupt service only during periods of minimum use – three weeks ago they interrupted the 6 o'clock news to do a test of the emergency broadcast system. May want to put some words in there. Councilman Gross said he does not think that is Mediacom's option. He thinks that is imposed.
- § 10.6 Tier Buy Through Prohibition. Mediacom may not agree to this.
- § 13.3 Notices. Questioned if sending notices to the Government Affairs Department will delay getting things fixed. In the old agreement the Town would send the letter to the general manager locally with a copy to the corporate headquarters.
- § 14 Definitions (i) Gross Revenues. It is not 5% on what the customer is ordering it is 5% of Mediacom's gross revenues which includes all of the things listed on pages 31 and 32. The one that bothers Councilman Cestone the most is the last one, Franchise fees. The franchise fee is a pass through. Whatever the Town charges Mediacom for a franchise fee they in turn charge the users. So now what they are doing is paying a franchise fee on the franchise fee.

PUBLIC COMMENT PERIOD

Bryant Elrod (113 Tern Dr.) – Suggested that an extra yard waste collection be scheduled for any month that has a five week period. Mr. Elrod agreed that recyclable paper yard waste bags or an open container should be required in order to keep costs down.

ADJOURNMENT

On motion made by Councilman Fields and duly seconded, the April 15, 2011, Town Council Workshop Meeting adjourned at 8:22 p.m..

phs:Workshop Minutes.4.15.11

Attachments: Draft Ordinance Chapter 84 dated 2/22/11
Draft Ordinance Chapter 118 dated 2/22/11