

**TOWN OF SOUTH BETHANY
TOWN COUNCIL REGULAR MEETING MINUTES
FEBRUARY 14, 2014**

MEETING CALLED TO ORDER

Mayor Pro-Tem Callaway called the February 14, 2014, Town Council Regular Meeting to order at 7:00 p.m., followed by the Pledge of Allegiance to the Flag.

ATTENDANCE

PRESENT: Mayor Pro-Tem Sue Callaway and Councilpersons Tony Caputo, George Junkin, and Pat Voveris; Town Manager Melvin Cusick; M/Cpl. Lee Davis; and Administrative Assistant Pam Smith

PRESENT BY REMOTE ACCESS: Mayor Kathy Jankowski and Councilman Al Rae

EXCUSED ABSENCE: Councilman Jim Gross

PROPERTY OWNERS' PARTICIPATION

There were no comments from the public at this time.

ADMINISTRATIVE MATTERS - APPROVAL OF 2014 ELECTION BOARD

A motion was made by Councilman Junkin, seconded by Councilman Rae, that Council accept Carolyn Marcello, Marge Schaefer, and Bonnie Rae as the 2014 Election Board and Pat Spangler and Mary Suazo as the two alternates to the 2014 Election Board. The voting was as follows:

FOR THE MOTION: Mayor Jankowski and Councilpersons Rae, Caputo, Callaway, Junkin, and Voveris

AGAINST THE MOTION: None

The motion carried with a 6-0 vote.

LEADERSHIP REPORTS

- **Mayor's Report**—Mayor Pro-Tem Callaway reported:

Mayor Pro-Tem Callaway, Councilman Caputo, Councilman Junkin, and the Town Manager attended the Sussex County Association of Towns (SCAT) Monthly Dinner Meeting in Lewes. The guest speaker was Governor Jack Markell.

On January 10 Mayor Pro-Tem Callaway and the Town Manager attended the SCAT Steering Committee Meeting in Georgetown. Discussion included the Delaware Legislative Session which began January 14, the Freedom of Information Act (FOIA) "road show" at which representatives from the Attorney General's office will talk about the FOIA rules and regulations, the SCAT Legislatures meeting at the Cheer Center, and the idea of developing a SCAT website.

On January 29 Mayor Pro-Tem Callaway, Councilman Caputo, and Councilman Junkin attended the Delaware Community Resiliency and Adaptation Workshop in Dover. Content of the workshop focused on national preparedness training, FEMA's risk map, community flood plain codes and ordinances, community drainage, land use plans and policies, and sea level rise. DNREC's Michael Powell seemed confident that the current proposed tentative draft FEMA flood maps are going to become effective March 2015.

On February 5 Mayor Pro-Tem Callaway, Councilman Caputo, and the Town Manager attended the SCAT Dinner Meeting in Georgetown. Elected officials from Sussex County spoke regarding the Legislative Session and related topics such as the Governor's proposed gas tax, realty transfer taxes, Sussex County road and infrastructure projects, and stormwater and septic problems.

On February 7 Mayor Pro-Tem Callaway and the Town Manager attended the SCAT Steering Committee Meeting in Georgetown. Discussion included the consultant serving as the lobbyist for SCAT, House Bill 81 regarding unionization of police departments, and the FOIA dates for testing the FOIA "road show". There is a lot of interest by SCAT on keeping a very close eye on HB 81 and FOIA.

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

The following Ambulance Service reports were available on the sign-in table: the December 2013 monthly report, the January 2014 monthly report, the 2013 fourth quarter report, and the 2013 yearly report.

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

For the past week the University of Delaware and Texas A&M University at Galveston have been conducting a research project on South Bethany's beach. They have been studying sand movements particularly after a northeast storm. They picked an area just south of the middle of South Bethany's beach to do the study.

The contractor for the Army Corps of Engineers has been working on the beach walkways on the east side of the dune. The walkways were supposed to be done to the exact template of the 2007 construction, but the ones that are completed are a little bit better than they were in 2007. They angle toward the south which will protect them better, and the slope has been decreased a little bit on the east side. Also on the east side the walkways now have the hard packed material which makes them easier to walk on. The Town Manager stated that the Mobi-Mats will not be needed on the east side of the dune. The Town Manager believes that all of the Mobi-Mats should go on the west side of the dune this year.

The Town Manager contacted DNREC regarding the repairs to the west side of the dune. DNREC is not sure when they will get to it because they are shorthanded, but they will do the repair work as soon as they can.

- **Treasurer's Report**—Tony Caputo reported:

Edmunds Finance System and financial reports

The Edmunds Finance System continues to operate smoothly, allowing us to operate more timely, efficiently and effectively. It will take a few more months experience to get our routine processes coordinated.

FY 2015 Budget Process

We have started the FY 2015 budget building process, which is different from prior years. Renee, Melvin, and Tony will be presenting the draft budget at the February 27 Town Council Workshop Meeting.

Budget & Finance Policy Manual

We are now beginning to build a B & F Policies Manual starting with the Budgetary Control Guidelines policy that was approved by Council at the January 23 Workshop. I plan to present to Council for approval Fixed Asset Capitalization and Depreciation guidelines at the February 27 Workshop. I plan to work with the Committee and be able to introduce to the Council these areas in the near future: Reserve Management, Investment Management and Budget Preparation Guidelines.

Town's Financial Status Year-to-Date

We are 9 months into the fiscal year and things are beginning to allow us to project our full year revenues with greater accuracy. We have concerns regarding Rental Tax and Realty Transfer Tax. There were no Realty Transfer Tax receipts for January. There are some Rental Tax payers who traditionally do not pay their Rental Tax until they have their personal income taxes completed, but we cannot determine the extent of these future receipts. We will be keeping a close eye on Revenues over the next few weeks and months.

On the expenditure side, we are over budget in 13 accounts most of which are not material. We will be implementing our new Guidelines in the near future. I wish to bring to your attention all of the items over \$1,000, plus a note on the Ambulance Service Expense Budget:

- 1) we are over budget by \$3,026 for DPS Training. We are looking into this further.
- 2) we are over budget by \$1,913 for G&A Computer Maintenance due to an unplanned equipment upgrade,
- 3) we are over budget by \$6,501 for DPW Street Drainage due to work that had to be performed for an unexpected drainage project,
- 4) we are over budget by \$1,557 for a DPS Sussex County Grant. This was caused by an accounting error and will likely be corrected through correction accounting.

We will **not** need to increase the BBVF Ambulance Service expense budget as originally thought. I will explain further at the February 27 Workshop. The May and June 2013 fees were paid and expended in FY 2013, and we will only have to expend 10 months of the fees in FY 2014.

Nothing else seems to be materially out of line.
I encourage you to ask questions.

On the General Fund Balance Sheet in Council's packet, Councilman Rae asked if Money Market Fulton Bank Account of \$417,000 is FDIC insured. Councilman Caputo said he will check on that.

- **Police Department Report/Questions**—M/Cpl. Lee Davis reported for the months of Dec., 2013, and Jan., 2014:

Overall: Three water leak complaints in December and 17 water leak complaints in January.
Five alarms in January (none in December).
A few agency assists in December and January.
No burglaries to report.

Mayor Jankowski asked about an incident on Victoria Road. M/Cpl. Davis stated that it was a broken window on the outside of a residence. It is not known if it was criminal mischief. There was blood on the broken window and a sample is being sent to the State of Delaware, but they said in the scheme of things the Town probably would not receive the result until within a year. It did not constitute a burglary because access was not gained to the residence and nothing was taken.

M/Cpl. Davis reminded those in attendance that if they ever have any questions or concerns to contact the police department and they will be happy to come out and check anything or answer any questions they can.

ORDINANCES/RESOLUTIONS

- **Second Reading of Ordinance 171-13, to Amend Chapter 145, Zoning, to Revise and Update Requirements (In Councilman Gross' absence, Charter and Code Committee Chairman John Fields led the discussion)**

Charter and Code Committee Chairman John Fields stated that the second reading will be dealing with changes that have been made in the ordinance since the first reading in December. The changes comprise of two groups: 1) Two sections have been added to the ordinance, and 2) The Town's attorney reviewed the ordinance and has recommended changes in the ordinance. Regarding the Town's attorney's changes, Mr. Fields stated that he spoke with the sponsor of the ordinance (Councilman Gross) and he gave Mr. Fields his view of the changes that should be made based on the attorney's recommendations. Mr. Fields stated that those changes are in this second reading of the ordinance.

Charter and Code Committee Member Bob Cestone reviewed the two sections that were added since the first reading, §§ 145-35 and 36:

Section 145-35K: Councilman Rae questioned if this paragraph is the intent of what Council wants. After discussion there was no objection to leaving this section as it is.

Section 145-35J: Councilman Junkin asked if § 145-38E(2) regarding Cat Hill had been researched. Mr. Cestone stated that the Code Enforcement Constable is working on getting a copy of a deed with the deed restrictions on it. Mr. Cestone stated that there are going to be future changes to Chapter 145, Zoning, and if something needs to be changed regarding this it can be done then.

Section 145-36E(3): Mayor Jankowski inquired if this change would have any impact on the owners of the York Beach Mall. Mr. Cestone said it would not. He stated that the McCabe's Gourmet Market outdoor eating area is 40 or 50 feet from the road and they could build up to 20 feet from the road. Mr. Cestone stated that if they did that they would lose parking spaces and there is a requirement in the Town Code for a minimum number of parking spaces for restaurants. Therefore if they built out to the 20 feet from the road they wouldn't be able to meet the parking spaces requirement.

Mr. Fields reviewed the attorney's recommendations:

§ 145-51C: The attorney agreed to make this section retroactive because it pertains to the safety of the town – for safety reasons, propane or heating oil fuel tanks need to be anchored. Mr. Cestone noted that Bethany Beach and Fenwick Island have this requirement and it is retroactive. He added that when it was put in effect, the Towns sent letters out to all the property owners notifying them of the ordinance and the effective date.

Mr. Fields said that he assumes it is okay with Council to leave § 145-51 as it is presented in the second reading. There were no objections from Council.

§ 145-17: Mr. Fields pointed out that this is a significant change regarding Nonconforming structures. Mayor Pro-Tem Callaway stated that she thinks the change is a good thing for people that want to upgrade their older homes and are not interested in remodeling but want to make what they have look better.

Mr. Cestone suggested the following grammatical change to the first paragraph on Page 4 (additions are **highlighted** and deletions are **marked through**): **Also considered repair is replacement of less than 50% (fifty percent) of components of a structure or accessory structure ~~components~~ such as but not limited to decks, outside showers, storage sheds and fencing.** There were no objections from Council.

Mayor Jankowski asked if the definition of repairs would have any impact on other ordinances or requirements regarding permits and permit fees or fees that the Town might have received before as revenue. Mr. Cestone said no. Mr. Cestone said this doesn't change anything other than it defines repairs, and permits were not required for this anyway.

Mr. Fields asked for any further suggestions from the Council. There were none. Mr. Fields said the Charter and Code Committee will make the minor changes that Mr. Cestone has suggested and the ordinance will have its third reading at the March 14, 2014, Town Council Regular Meeting. He added that a Public Hearing on Ordinance 171-13 will be held on March 14, 2014, prior to the Town Council Regular Meeting.

Mayor Pro-Tem Callaway declared this the second reading of Ordinance 171-13.

Mayor Jankowski thanked John Fields and Bob Cestone.

COMMITTEE REPORTS

- **Community Enhancement Committee** – Councilwoman Callaway reported:

The Community Enhancement Committee held a meeting on Thursday, February 13, 2014 at the Town Hall Meeting Room.

Discussion of *potential* Phase 4 Street Sign Project – The CEC approved a plan to continue its street sign improvement initiative on the west side of Route 1 including streets off Route 1; behind York Beach Mall; off Canal Drive; near Town Hall; and Cat Hill area. Phase 4 which will be included in the FY 16 Budget and implemented in the Fall 2015 will include the installation of approximately 37 new street signs and Phase 5 which will be included in the FY 17 Budget and implemented in the Fall 2016 will include the installation of approximately 25 various street sign posts within the designated areas. Work on Phase 3 will begin in the Fall 2014.

Discussion of potential landscaping plans for Route 1 bio-retention beds, circle beds, and pedestrian walkway rain gardens; York Beach Mall gardens; Richard Hall Memorial Park and Cat Hill Entrance Way was led by Don Chrobot and Rick Gentile, Maintenance Department. Capitalizing on Rick's extensive landscaping experience and contacts with vendors, he has proposed a plan that includes the March cutting of various grasses; the relocation and replacement of some grasses and plants; and the emphasis on planting several new varieties of grasses rather than mulching. The group also finalized plant ideas for the circle beds.

Earth Day Canal/Road End Adoption – The group agreed to adopt the canal end on Peterson Drive, near Anchorage, as continuation of the Earth Day celebration (April 22nd). The group will utilize its landscaping plan developed for the 2013 Earth Day adoption on York Road. CEC member, Pat Weisgerber, has volunteered to maintain the adopted canal end.

Review of CEC Flyers and recommended updates – The group reviewed all CEC developed flyers. The group discussed a few additional suggested changes to the proposed *Dog Waste* Flyer but agreed to keep the "*Trash Talk*", *Would You Like to Increase Your Rental Income?*" and "*Beautifying SB Makes Dollars and Sense*" flyers as is. All flyers will be prepared for distribution via email to homeowners, the website and at the forthcoming Meet and Greet with realtors on April 22.

Information Bulletin Boards – Weather permitting, the new bulletin boards will be installed within the next month. The group also discussed the advantages of potentially placing an additional Information Board along the Route 1 pedestrian walkway. CEC will research the best location along the pathway.

Update on Ocean Drive Solar Light Survey and follow-up – Follow-up letters, announcing the results of the Ocean Drive Solar Light survey, were mailed to Ocean Drive property owners on January 10th. The letter indicated that all responses had been counted and that out of 97 letters sent, 62 responses were received – 54 favored extending the lights and 8 did not favor extending the lights. Pending Council approval of the FY 15 Budget request, the lights will be installed in late spring.

East Side Bio-Retention Project – George Junkin noted that the most recent discussion with CIB's Bart Wilson indicated that the proposed completion date is May.

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

Councilman Caputo stated that the Budget and Finance Committee has had to cancel two potential meetings due to lack of a quorum. Councilman Caputo said the committee will keep trying to schedule meetings. Mayor Pro-Tem Callaway suggested increasing the local year-round resident membership.

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

Canal Water Quality Committee Status Report – February 14, 2014

➤ **Grant Activity**

- **Grant for Rain Gardens along the East Side of Route 1.**
 - Excavation/Construction is scheduled for March, 2014 so that planting will occur by May 1. Sue Barton has developed some plots of plantings and Larry Trout is going to send me copies.
- **Large oyster cages and floating wetlands in South Bethany Canals**
 - This grant will place a lot of oysters and floating wetlands in the SB Canals. Total surface area of the project is expected to be around 5,000 square feet. Potential locations are the south end of the York Canal or along the York Canal where the algae harvester worked from. The York Canal is our widest canal. Other potential locations are road ends at the South Anchorage Canal. The South Anchorage Canal is our second widest canal.
 - Telephone conference was held with participants on February 11, 2014.
 - Money from DNREC and permitting are good!
 - Need to finalize design and monitoring plans for the project
 - Expect to install the floating wetlands in August and the oysters in the fall
- **Bioretention areas in Sandpiper Pines**
 - This project is on schedule. We should receive the first inputs from Tetro Tech next week for our review.

➤ **Water Quality Monitoring is continuing on its once per month winter schedule**

- **Charter and Code Committee** – Councilman Gross reported:

There was nothing new to report.

- **Communications and Public Relations Committee** – Councilman Rae reported:

Councilman Rae is following up with the Delaware Tourism Office to get South Bethany up on their website. Councilman Rae received an email on January 24 in which they state they are doing certain updates to their website and once those are done they will have the Town of

South Bethany uploaded to the beaches page. Councilman Rae stated that he looked today and it is still not done.

The Town's Realtors luncheon regarding various issues associated with the Realtors is scheduled for April 22, 2014. The committee is working on the invitation and getting it out to the Realtors.

- **Sea Level Rise (SLR) and Storm Surge (SS) Committee** – Councilman Junkin reported:

Sea Level Rise and Storm Surge Committee Status Report – February 14, 2014

- Grant Activity
 - *Sea Level Rise Adaptation – Baseline Survey*
 - URS has completed the survey and delivered the maps
 - Public meeting to present SLR & SS issues and survey results will be held in May.
- Public Comment: Lloyd Hughes gave Councilman Junkin information on a Pentagon report regarding climate change.
- *SLR & SS Adaptation – Code Changes and Risk Assessment Mapping.*
 - On February 4, 2014 we submitted a grant proposal to DNREC
 - We are partnered with Pennoni Associates, the University of Delaware Disaster Research Team, and the SBPOA on this project.
 - Deliverables include: building code revisions to adapt to SLR & SS, Risk Assessment Maps and public meetings
- The SLR & SS Committee, at their 12/12/13 Committee Meeting, recommends that the Town Code Should be modified as follows to mitigate effects of SLR & SS:
 1. Require 3 feet of freeboard above that required by the FEMA Flood Insurance Rate Map (FIRM). This would make SB's Design Flood Elevation (DFE) equal to 3.0 feet plus that which is required by the FIRM. This is the most important item to protect new construction from damage due to SLR & SS.
 2. To allow space for this freeboard, make the height restriction the higher of 34 feet above the road or 38 feet NAVD.
 3. To protect construction that is allowed [Parking, Storage and an Entrance to the home] below the DFE, require that it be to FEMA Technical Bulletin 02.
 4. Relative to bulkhead height
 - Maximum bulkhead height should be limited to the BFE as documented on the most current FEMA Map.
 - Any bulkheads that require replacement should have a height of at least 3.0 feet NAVD.
 - Tony Caputo, Sue Callaway and I attended a *Coastal Community Resilience and Adaptation Workshop* on January 29, 2014 at the St. Jones Reserve Coastal Training Center. Presenters included Wendy Carey and Mike Powell who we have been working closely with and trainers from FEMA.

AREAS OF INTEREST

- **Assawoman Canal and Trail** – Councilman Rae reported:

Still trying to arrange a meeting with Senator Hocker to discuss the following two issues: 1) the debris in the Assawoman Canal and 2) the dredging of the south end of the Assawoman Canal.

- **Board of Adjustment** – Councilwoman Voveris reported:

Current Status:

The BOA hears appeals covering the interpretation and administration of the Zoning Code. Per Chapter 17 of our Town Code the BOA is not allowed to participate by remote access when such a public hearing is being held.

BOA Request:

BOA is asking Council to allow their participation by remote access when they are conducting a *working meeting*. Since June of 2013 the group has had 3 such meetings to review their internal procedures and duties. Had members been able to participate remotely these meetings would have been more productive by affording opinions and comments from all on the Board.

Action Needed:

Council consider the merit of the BOA request at a future Workshop Meeting during which the Town Manager would bring forward an opinion from our attorney on the legality of granting permission for remote access during a BOA *working meeting*.

Mayor Pro-Tem Callaway asked if the BOA would be required to have a quorum present in the room. Councilwoman Voveris said yes.

Councilwoman Voveris said the BOA falls under Chapter 22 of the Delaware Code and Chapter 22 says the BOA can't participate by remote access for a public hearing. There is nothing in the Delaware Code about a working meeting.

There was a consensus among Council that the Town Manager gets an opinion from the Town Attorney on the legality of granting permission for remote access during a BOA working meeting.

PLANNING COMMISSION REPORT – Mayor Jankowski reported:

The Planning Commission is happy that Council is using the strategy document to go forward with defining its strategies and objectives for the coming year.

ADJOURNMENT

A motion was made by Councilwoman Voveris, seconded by Councilman Junkin, to adjourn the February 14, 2014, Town Council Regular Meeting at 8:50 p.m. The motion was unanimously carried.