

TOWN OF SOUTH BETHANY TOWN COUNCIL BUDGET WORKSHOP MEETING MINUTES FEBRUARY 28, 2013

MEETING CALLED TO ORDER

Mayor Jankowski called the February 28, 2013, Town Council Budget Workshop Meeting to order at 5:00 p.m.

ATTENDANCE

PRESENT: Mayor Kathy Jankowski; Councilpersons Jim Gross, Pat Voveris, Sue Callaway, and George Junkin; Town Manager Melvin Cusick; Financial Administrator Renee McDorman; and Code Enforcement Constable Pete Brockstedt

EXCUSED REMOTE ACCESS: Councilman Al Rae

UNEXCUSED ABSENCE: Councilman Mark Damato (Absent due to a personal emergency.)

PUBLIC COMMENT PERIOD

There were no comments from the public.

DISCUSSION OF ORDINANCE 169-13 TO REVISE CHAPTER 114, SOLID WASTE, WITH REPRESENTATIVES FROM ALLIED WASTE

Mayor Jankowski welcomed Tim Brubaker, Division Manager at Allied Waste/Republic Services.

Council reviewed Ordinance 169-13 as presented by Councilman Gross.

Page 2: Council agreed to the change in blue.

Page 4: Council agreed to the change in blue.

Page 5: § 114-76A Council agreed to the change in blue.

§ 114-76A(1): Councilwoman Callaway suggested using the text in blue (10 gallons per occupant) as a recommendation in the community education piece. After discussion Council agreed to delete the text in blue from this section, but use it as a recommendation in the community education piece.

§ 114-76A(2): *Containers larger than 55 gallons shall comply with American National Standard ANSI Z245.60 Type B/C.* After a discussion with Mr. Brubaker, Council agreed to change § 114-76A(2) to: *Containers larger than 55 gallons shall comply with American National Standard ANSI Z245.60 Type B or G.*

Councilwoman Callaway stated that the community education piece will say that containers larger than 55 gallons shall comply with American National Standard ANSI Z245.60 Type B and/or G. Councilman Gross said that the community education piece will have pictures and bin drawings.

§ 114-76A(3): *Rental units with occupancy greater than 10 people shall have recycle containers of 96 gallons.* Change to: *Rental units with occupancy greater than 10 people shall have recycle containers 90 gallons or greater (or over 90 gallons).*

§ 114-76A(4): Change the blue “may” back to “should”. Council agreed with the other two changes in blue in this section.

Regarding the last sentence of **§ 114-76A(4)**, *All brambles, sticks, tree trimmings and the like shall be securely tied together with cotton string in bundles which shall not exceed fifty (50) pounds in weight or four (4) feet in length*, the Town Manager said that the Town rules state 30 pounds and the contract with Allied Waste states 35 pounds. Council agreed to change 50 pounds to 35 pounds to coincide with the contract.

§ 114-76A(5): Council agreed to change the blue “may” to “should”. Council agreed with the other change in blue in this section.

§ 114-76A(6): *Such bins for storage of waste containers may be open on a side and should have no floor or a low floor to facilitate the removal of containers.* Change to: *Such bins for storage of waste containers shall be open on a side and should have no floor or a low floor to facilitate the removal of containers that are greater than 55 gallons.*

§ 114-76A(7): Council agreed with the change in blue in this section.

§ 114-76CB: Council agreed with the changes in blue in this section.

§ 114-76C(6): Items weighing more than *fifty (50)* pounds. Change to: Items weighing more than *thirty-five (35)* pounds.

The Code Enforcement Constable noted that he is concerned that the penalties and offenses provision provides for no notice and it provides for no appeal. In order to address the Code Enforcement Constable's concern, Councilman Gross stated that based on what Council agrees to in Ordinance 168-13, Property Maintenance, Council can also consider for Ordinance 169-13, Solid Waste. It was noted that the Town Solicitor had not yet reviewed Ordinance 169-13, Solid Waste.

Councilwoman Callaway verified the following:

- Allied Waste does pick up the mechanical trash cans.
- Property owners cannot purchase the mechanical trash cans from Allied Waste. (Mr. Brubaker stated that the containers Allied Waste buys have their logo on them and the company does not allow selling them to private individuals.)
- Mr. Brubaker does not see Allied Waste requiring mechanical lift trash cans in the near future.

Council thanked Mr. Brubaker for attending the meeting.

PRESENTATION AND DISCUSSION ON GRANT FUNDING AVAILABLE FOR SEA LEVEL RISE (SLR) ADAPTATION PLANNING IN DELAWARE

Councilman Junkin gave a presentation on SLR. Councilman Junkin's summary of the presentation follows:

- The majority of South Bethany west of DE Route 1 has an elevation that is less than 5.5 feet NGVD (National Geodetic Vertical Datum 1929). This was demonstrated by the flooding that occurred during Hurricane Sandy, when the tide gage read a maximum of 5.44 feet NGVD.
- Historical data recorded at local tide gages at Lewis Breakwater Harbor, Ocean City Inlet, Cape May, and Atlantic City show that over the last 100 years the sea level has risen by about 1.4 feet.
- Scientific data shows that over the last 200,000 years sea level has varied as much as 300 feet. The data shows that we are currently coming out of an ice age and sea level is approaching what it was about 120,000 years ago during the last full interglacial time, the time between two different ice ages.
- Data from the tide gage at West 1st Street shows that the canal tide has risen 0.28 feet in the last 5 years. This would equate to 5.6 feet if it continued linearly for 100 years.

- During the last 5 years York Road has flooded 43 times. For reference, York Road will flood when the canal tide exceeds 2.5 feet NGVD.
- The report, *Global Sea Level Rise Scenarios for the United States National Climate Assessment*, December 6, 2012, states that, "We have a very high confidence (bigger than 9 in 10 chance) that global mean sea level will rise at least 0.2 meters (8 inches) and no more than 2.0 meters (6.6 feet) by 2100." The low number, 0.2 meters, is based on a linear extrapolation from the previous 100 years. We must remember that this report is for the average global sea level rise. Our previous 100 years has seen a larger rise than the global average.
- The DNREC SLR Committee shows that locally we should expect a SLR of 0.3 meters if the past 100 years is extrapolated to 2100. The DNREC SLR Committee has looked at 3 scenarios; a 0.5 meter rise, a 1.0 meter rise and a 1.5 meter rise.
- The DNREC SLR Committee has developed a "bath tub" inundation model that shows the flooding caused by their three scenarios. These three scenarios can be applied to South Bethany.
- For reference, the average tide in South Bethany canals is about 1.0 feet NGVD. The SLR Model Base line is 2.8 feet NGVD. This is the type of flooding that now occurs during storms. This definitely floods York Road and will also flood Layton, Newcastle, West 1st, West 2nd, West 3rd, Kimberly, Bristol and parts of Canal Dr. This flooding occurred about 10 times during the last 5 years.
- The model shows what happens when there is an additional 0.5 meters (1.6 feet) due to SLR. This would mean that South Bethany average tide would be 2.6 feet NGVD since our current average tide is 1.0 feet NGVD. This means that the roads mentioned above would be seeing flooding every day. It means that during a storm the tide would be at 4.4 feet NGVD which is only 1 foot less than we saw during Sandy. Most of the properties west of DE Route 1 would see significant flooding at least two times per year.
- The model shows what happens when there is an additional 1.0 meter (3.3 feet) due to SLR. This would mean that South Bethany average tide would be 4.3 feet NGVD since our current average tide is 1.0 feet NGVD. If this scenario does happen, the South Bethany daily tide will be almost as high as what was seen during Sandy. The storm tides would be at an elevation of 6.1 feet NGVD. This would flood the entire DE Route 1 southbound lane and begin to flood the northbound lane. The center of the northbound lane is at an elevation of 6.5 feet NGVD.
- The third DNREC SLR scenario is for a 1.5 meter (4.9 feet) rise. During storms this would flood across DE Route 1 up onto the first lots just east of Route 1.

It Is A Fact – Sea Level Is Rising. What Strategies Will South Bethany Use To Adapt To Sea Level Rise?

- Ostrich Strategy – Sea Level is not rising – Do nothing.
- Protection Strategies – Actions that would keep rising waters out of a specific area. Examples for South Bethany include;
 - Raising bulkheads to restrain canal water
 - Adding bulkheads to restrain Little Assawoman Bay and Assawoman Canal
 - Pumps to remove storm water
 - Continued beach replenishment to build up dunes and beach
- Accommodation Strategies – Actions that allow continued use of area or structure without shoreline structures. Examples for South Bethany include;
 - Raising Buildings
 - Raising roads
 - Raising land – To raise a 5,000 ft² lot 1 foot requires 185 yd³ of soil.
- Retreat Strategies – Actions that plan for the eventual removal of structures. This is a non-starter for South Bethany.

A quick reading of the 61 potential adaptation strategies present by the SLR Committee says to me that the following items could be used by SB:

- #20, Incorporate SLR into the CDP
- #33, Educate public about SLR

- #40, Model potential stormwater inundation. On our roads we usually have more problem from high tides than we do with rainfall. If the tide is low enough our roads drain very well.
- #52, Improve accuracy of elevation benchmark network. We can survey our roads and bulkheads.
- #60, Conduct a cost benefit analysis for adaptation.
- #61, Develop a database of costs of adaptation for use by decision makers and the public.

After the presentation the discussions focused on "where we should go from here." A DNREC grant opportunity was discussed, and Councilman Junkin presented what was discussed with URS Inc. at a pre workshop meeting attended by Mayor Jankowski, Councilman Junkin, Councilwoman Callaway, Debbie Pheil, and Andy Wishart from URS Inc. URS indicated they could help us with writing the grant proposal. It was the consensus of the Council that we should continue to investigate the grant opportunity.

DISCUSSION OF ORDINANCE 168-13 TO REVISE CHAPTER 104, PROPERTY MAINTENANCE

§ 104-13A first sentence: Because this section includes yard waste, strikethrough the word "covered".

Council discussed the Town Solicitor's comments regarding Ordinance 168-13. Council agreed with the Town Solicitor's comments in the first paragraph of his review. Council did not agree with the Town Solicitor's comments in the second paragraph of his review. Council agreed with the Town Solicitor's comments in the third paragraph of his review. Council agreed to have the Code Enforcement Constable take Ordinance 168-13 back to the Charter and Code Committee for them to incorporate the lawyer's comments which Council had agreed to.

For future ordinances, Council agreed to send ordinances to the Town Solicitor for his review after the second reading.

Mayor Jankowski thanked the Code Enforcement Constable.

DISCUSSION OF ORDINANCE 170-13 TO REVISE CHAPTER 20, PLANNING COMMISSION

Council agreed to the following change:

§ 20-2 – *Members of the Planning Commission shall serve in their terms of office for a period of two years, except one year when required to maintain balanced staggered terms.*

Change to: Members of the Planning Commission shall serve a two-year term of office, with the exception of a one-year term, when required to maintain balanced staggered terms of the membership.

FY2014 DRAFT BUDGET REVIEW

Council reviewed the second draft of the FY 2014 Budget.

The information on the website improvement project will not be available until the March Workshop.

Mayor Jankowski thinks it is up to the Council to bring up training expenses for the Town Council, BOA and Planning Commission and to make sure it gets communicated to the Planning Commission and the Board of Adjustment. The Finance Director and Councilwoman Voveris said there is \$500 in that account and to keep in mind the contingency fund.

Councilwoman Voveris complimented the Finance Director and Budget and Finance Committee member Tony Caputo for their work on the Reserve page. Councilwoman Voveris said she thinks this page is now more transparent and more understandable.

Regarding the \$11,000 in Recycle Reserves, Councilman Gross said that when that money was collected the Town's constituents were told that the recycle fee would be reduced if the Town had

over collected. Councilman Gross believes the Town should credit it to this year's recycle bill and get rid of the Recycle Reserve. Councilman Junkin agreed.

Councilwoman Voveris said she was not on Council when there was talk about rebating this excess reserve to the property owner. Regarding crediting the recycle bill, Councilwoman Voveris stated that the Town does not separate recycle or yard waste on the property tax bill – the bill just says "Trash". Councilwoman Voveris suggested taking the Recycle Reserve and apply it to the trash removal costs from Hurricane Sandy because there will be a portion of costs from Sandy that will not be reimbursed from FEMA. She added that the Recycle Reserve would put a big dent, if not take care of, this cost. Councilwoman Voveris believes this would be a gesture of goodwill and property owners would be able to understand what the Recycle Reserve is paying.

Councilman Gross said he has problems with Councilwoman Voveris' suggestion from another view because the Town told the people it would reduce the recycle bill. Councilman Junkin said it should be put into the recycle bill which is part of the trash bill. Councilman Junkin added that it all comes out the same.

To show consistency, Councilwoman Voveris noted that in a previous budget year the Recycle Reserve was used to pay yard waste. Therefore, Councilwoman Voveris does not think the Recycle Reserve has to be used to pay recycling. Councilwoman Voveris thinks it has more meaning to say you are paying off trash expenses from Hurricane Sandy.

Councilman Junkin stated that on the Town's books it should show that the Recycle Reserve went toward recycling. Councilman Rae agreed.

After discussion, Mayor Jankowski clarified that the Finance Director is going to show on the Town's records that the recycle bill was decreased by \$11,000.

Referring to Councilwoman Callaway's Community Enhancement Committee budget request, Councilman Gross asked why there are labor costs for putting mulch down. Councilman Gross asked if the Maintenance staff could put the mulch down. The Town Manager said the Maintenance staff is currently doing road work, signage, and working on the lifeguard stands. The Town Manager stated that instead of contracting the mulch work out to a contractor and paying his labor costs as was done in the past, we found that it is cheaper for the Town to buy the mulch and bring in temporary labor to get the mulch down. Councilman Gross said he understands that answer. Councilman Gross asked the Town Manager to break out the cost of the labor and the cost of mulch. The Town Manager said he can do that once the temporary laborers are finished the job.

At 7:25 p.m. a motion was made by Councilman Junkin, seconded by Councilman Gross, that Council go into Executive Session. The motion was unanimously carried.

EXECUTIVE SESSION

Council went into Executive Session to discuss:

- Personnel Matters – Employee Compensation
- Discussion of Individual Citizens' Qualifications as Potential Candidates to Fill Board of Adjustment Vacancy
- Discussion of Individual Citizens' Qualifications as Potential Consultants for the Planning Commission

At 7:45 p.m. a motion was made by Councilman Junkin, seconded by Councilman Gross to come out of Executive Session. The motion was unanimously carried.

At 7:45 p.m. A motion was made by Councilwoman Voveris, seconded by Councilwoman Callaway, to go back into the Workshop session. The motion was unanimously carried.

ADMINISTRATIVE MATTERS

- **Consideration and Possible Vote to Appoint Board of Adjustment Member**

Mayor Jankowski recommended that Bob Buhner be appointed to the Board of Adjustment.

A motion was made by Councilman Junkin, seconded by Councilman Gross, that Council accept Mayor Jankowski's recommendation. Mayor Jankowski asked for a roll call. The voting was as follows:

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

AGAINST THE MOTION: None

The motion carried with a 6-0 vote.

- **Consideration and Possible Vote to Appoint Consultants for the Planning Commission**

Mayor Jankowski recommended appointing as consultants to the Planning Commission Linda Lewis, Keith Krenz, and Joe Conway with the understanding that they will be moved into full membership positions on the Planning Commission once Ordinance 170-13 has been passed.

A motion was made by Councilman Gross, seconded by Councilman Rae, to appoint as consultants to the Planning Commission Linda Lewis, Keith Krenz, and Joe Conway with the understanding that they will be moved into full membership positions on the Planning Commission once Ordinance 170-13 has been passed. Mayor Jankowski asked for a roll call. The voting was as follows:

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

AGAINST THE MOTION: None

The motion carried with a 6-0 vote.

PROPOSED ITEMS FOR CONSIDERATION BY THE SOUTH BETHANY CHARTER AND CODE COMMITTEE (SBCCC) (Pat Voveris)

- **Residency Qualifications for Town Council and Town Committees**

(Administrative Assistant note: The following Town of South Bethany Charter and Code sections are provided as a reference for the discussion that follows.)

Town Charter § C-5. Town Council.

A. Governing body. The government of the town and the exercise of all powers conferred by this Charter, except as otherwise provided therein, shall be vested in and exercised by a seven-member Town Council composed of a Mayor and six (6) other members, each of whom shall be elected by popular vote as hereinafter provided.

B. Qualifications.

(1) General qualifications. A candidate for the office of Town Councilmember or Mayor shall be a natural person at least twenty-one (21) years of age, a citizen of the United

- States, and otherwise qualified to vote at the annual municipal election as provided in § C-6A. No candidate for the office of Town Councilmember or Mayor shall have been convicted of a felony or a crime of moral turpitude.
- (2) Resident and nonresident members. At least four of the seven members of the Town Council must be residents of the town, but all may be residents of the town.
- (a) Resident members. Any person who, on the date of the filing of notice of intention to run (or on the date of his/her appointment to fill a vacancy) qualifies as a "resident" of the town {as that term is defined in § C- 6A (1) (d) [3] hereof} and certifies his/her intention of remaining a "resident" of the town shall be deemed to be a "resident" Town Council member upon taking office, whether or not such person is also a "freeholder" in the town {as that term is defined in § C-6A (1) (d) [1] hereof}; and if such person subsequently fails to maintain residency in the town, but continues to be a "freeholder" in the town during his/her term of office, that person shall continue to be deemed a "resident" member of the Town Council.
- (b) Nonresident members. Any person who, on the date of filing of the notice of intention to run (or on the date of his/her appointment to office in the case of a vacancy) is not a "resident" of the town but is a "freeholder" shall be deemed to be a "nonresident" member of the Town Council. If such "nonresident" member of the Town Council subsequently establishes residency in the town during his/her term of office, that person shall continue to be deemed to be a "nonresident" member of the Town Council; provided, however, that if any "non-resident" member shall, during his/her term of office, cease to be a "freeholder" in the town, that person shall be deemed to have vacated his/her office by reason of that fact, regardless of whether or not that person has also become a "resident" of the town.

Each Councilmember shall continue, throughout his/her term of office, to be either a resident or freeholder as described above.

- (3) Requirements for Mayoral candidates. A candidate for the office of Mayor shall qualify as a "resident" of the town, as that term is defined § C-6A (1) (d) [3] hereof, at the time of the election. The Mayor shall remain a resident of the town throughout his/her term of office.

Town Charter § C-6, Municipal elections.

A(1)(d)[3] A resident of the town. A "resident" shall mean any natural person who has been physically residing within the corporate limits of the town for at least nine (9) months, consecutively or nonconsecutively, of the twelve-month period immediately preceding the date of the election and who is physically residing within the town on the date of the election.

Town Code Chapter 145, Zoning, Article XV, Board of Adjustment, § 145-56.

Membership, terms, removals and vacancies. The Board of Adjustment of South Bethany shall consist of five members who shall be residents of the Town of South Bethany . . .

Councilwoman Voveris explained that it is currently written in the Town Code that Board of Adjustment members shall be residents of the Town of South Bethany. Councilwoman Voveris stated that previously when she had nominated Neil Brown to serve on the Board of Adjustment, the Town Solicitor's opinion was that Mr. Brown met the requirement as a landholder or a leaseholder – he didn't have to be a resident. Councilwoman Voveris thinks the Town Code should be changed from "resident" to "owner". During discussion, Mayor Jankowski asked Councilwoman Voveris to pull the Town Solicitor's opinion that she referred to. Councilwoman Voveris did not have the Town Solicitor's opinion with her at the meeting, but said she did have a copy of it and could provide that to the Council.

Councilwoman Voveris also referred to the following requirement in the Town Charter: § C-5B(2) Resident and nonresident members. At least four of the seven members of the Town

Council must be residents of the town, but all may be residents of the town. Councilwoman Voveris believes this requirement should be changed to owners because of the makeup of the Town's population – the Town has more owners than residents.

The following comments were made during the discussion:

- If it is a simple thing to change there is no need to send it to the Charter and Code Committee.
- Charter changes will not get done until the fall legislative session. The Town Solicitor prepares the Town's Charter changes. John Fields, Charter and Code Committee Chairman, has prepared Charter changes for the Town before.
- The Town Solicitor's past interpretation would apply now as well.
- Council should keep a list of Charter changes, and all of the Charter changes should be submitted together. The last Charter change cost \$1,800.

Councilwoman Voveris referred to the minutes of a previous Council meeting regarding Charter changes which said that Council should have the Charter and Code Committee work out the details for Council approval and then perhaps hold the changes until we have at least three in number.

Council discussed whether to keep the list of Charter and Code changes themselves, send the changes to the Charter and Code Committee for them to make a list, or send the changes to the Administrative Assistant to put on her "tickler" list. Later in the meeting Mayor Jankowski said the Charter changes should be put in a "tickler" file until it is the appropriate time to submit the changes to the Town Solicitor. The Town Manager said he would check with the Town Solicitor on when the changes should be submitted.

- **Town Code Chapter 18 Pension Language to Fit Actual Practices**

Councilwoman Voveris said Chapter 18, Pensions, reflects something from 10 years ago when the Town used an agency to do the pension. This is incorrect now. Now the Town is with the State of Delaware pension plan for both police and town employees.

(Administrative Assistant's note: A discussion ensued that this would require a Charter change. However, Chapter 18 is part of the Town Code and would require an Ordinance to amend it – it would not require a Charter change.)

During Council's discussion, Councilwoman Voveris stated that she should get the changes ready.

- **Chapter 16 Remove Alderman's Court Information**

After doing some research, Councilwoman Voveris learned that if the Town took this out of the Charter it probably could not get it back in, and ten years from now the Town may want to have an Alderman's Court. Councilman Voveris said it would not be responsible to take this out of the Town Charter.

PUBLIC COMMENT PERIOD

There were no comments from the public.

ADJOURNMENT

A motion was made by Councilman Gross, seconded by Councilwoman Voveris, to adjourn the February 28, 2013, Town Council Workshop Meeting at 8 p.m. The motion was unanimously carried.