

<b>TOWN OF SOUTH BETHANY TOWN COUNCIL WORKSHOP MEETING MINUTES MAY 26, 2016</b>
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**MEETING CALLED TO ORDER**

Mayor Voveris called the May 26, 2016, Town Council Workshop Meeting to order at 2:00 p.m.

**ATTENDANCE**

PRESENT: Council Members Sue Callaway, George Junkin, Tim Saxton, Wayne Schrader, Carol Stevenson, Frank Weisgerber, and Mayor Pat Voveris; Town Manager Melvin Cusick; and Code Enforcement Constable Joseph Hinks

**ADOPTION OF MINUTES**

- **Town Council Workshop Meeting Minutes, May 13, 2016** – A motion was made by Councilman Junkin, seconded by Councilwoman Callaway, to accept the May 13, 2016, Town Council Workshop Meeting Minutes. The motion was unanimously carried.
- **Town Council Executive Session Minutes, May 13, 2016** – A motion was made by Councilman Junkin, seconded by Councilwoman Callaway, to accept the May 13, 2016, Town Council Executive Session Minutes. The motion was unanimously carried.
- **Town Council Public Hearing Minutes, May 13, 2016** – A motion was made by Councilman Junkin, seconded by Councilwoman Stevenson, to accept the May 13, 2016, Town Council Public Hearing Minutes. The motion was unanimously carried.
- **Town Council Regular Meeting Minutes, May 13, 2016** – A motion was made by Councilman Junkin, seconded by Councilwoman Callaway to accept the May 13, 2016, Town Council Regular Meeting Minutes. The motion was unanimously carried.

**SEA LEVEL RISE VULNERABILITY ASSESSMENT REPORT SUMMARY BY RAM MOHAN, PHD AND Q & A**

Councilman Junkin introduced Dr. Ram Mohan from Anchor QEA.

Dr. Mohan applauded the Town Council and the Sea Level Rise Committee for proactively looking at the sea level rise issue. Dr. Mohan presented a PowerPoint Presentation titled Sea Level Rise Study Summary Town of South Bethany (attached) which included the following statements on the title page: *This presentation was prepared by Anchor QEA for the Town of South Bethany using Federal Funds under award NA14 NOS 419 0123 from the Delaware Coastal Programs and the Office for Coastal Management (OCM), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the authors and do not necessarily reflect the views of the OCM, NOAA or the U.S. Department of Commerce.*

The presentation was followed by a comment/question and answer period.

**PUBLIC COMMENT PERIOD**

Ed Bintz (302 N. Ocean Dr.) – Stated that he is not seeing what is different now that somehow the limit on bathrooms does not make sense anymore. Speaking to the worth of property, Mr. Bintz said it is an equity issue regarding property owners who built their houses per the following Town Code: *Maximum number of bathrooms and kitchens: No single- family dwelling in the R-1 Single-*

*Family Dwelling District shall contain more than one kitchen and more than four bathrooms and/or half bathrooms constructed for occupancy as a single-family residence.* Mr. Bintz questioned if eliminating the restrictions on bathrooms fits with the mission or goal statement on the Town's website which says South Bethany is a quiet, single-family residential town. Mayor Voveris said she does not think the Town encourages people to have tremendous rentals. She said the Town Code has the LAR and the FAR regulations which dictate how the space in the house can be used. Mayor Voveris stated that the reason for looking at lifting the bathroom restriction is because theoretically the restriction has encouraged illegal bathrooms by restricting it to four. Mayor Voveris added that civilized living today includes en suites – a bedroom and a bathroom. Also, if you have a beach house you might want to have a bath on the first floor so that people are not traipsing through the home with sand. Mayor Voveris said at the time the ordinance limiting bathrooms was passed it was thought the ordinance would restrict the number of people in the house, but it does not work. Mayor Voveris said if you want to fit people in your house you will fit them whether you have four bathrooms or six bathrooms. Mr. Bintz disagreed and said he has a hard time thinking that a four bathroom house is somehow uncivilized living space. Regarding realtors in favor of lifting the restriction, Mr. Bintz said he does not have any question the reason would be to rent a house with seven bathrooms for more money than renting a house with four bathrooms. Mr. Bintz asked if this was keeping with what the Town wants to encourage. Mr. Bintz asked Mayor Voveris if she would like to have a house next door to her to deal with that had seven or eight bathrooms. Mayor Voveris said she does and when they rented there were 30 people in the house though they do not rent anymore and so it is quiet. Mayor Voveris said the house on the other side of her has five bathrooms and there have been 30 people there too. Mayor Voveris said the rental charge is quite expensive and multiple families chip in and you end up with a group of people. Mr. Bintz said to him the bathroom restriction is an obvious relation to how big the group is renting a house. Mr. Bintz added that the trash piles up and there is a parking issue.

Councilwoman Callaway stated that she has a house next door with only four bathrooms that is a rental and she does not know if there have been 30 people staying in the house but she has seen eight or nine cars there. Councilwoman Callaway said it is probably pricey to rent so what people do is grandparents rent the house and their children come, or the grandchildren come, and friends of the family come, which is what the seasonal rentals are about.

Dick Oliver (410 Victoria Dr.) – Stated that his next door neighbor has 11 grandchildren and some great grandchildren and he has seen as many as 22 people at their house, and the house has two bathrooms. Mr. Oliver said they will wait in line for the bathroom if they want to come to the beach.

Councilman Junkin stated that the number of bathrooms is not going to restrict how many people come to a house.

Mr. Bintz stated that there is clearly a correlation between the number of bathrooms and the number of people you are likely to pull in.

Councilman Schrader said from his personal standpoint he is in favor of not having a limit on bathrooms not because he is going to rent the place but because he has four bathrooms and he has lots of family that come down and he would love to have five bathrooms. Councilman Schrader said he is sure there are property owners who would like to have an additional bathroom or two depending on their situations. Councilman Schrader stated that he understands and respects the fact that there are people who rent out their houses to hordes of people and you can maybe correlate the number of people that show up on these rentals with the number of bathrooms, but there also can be only four bathrooms in a house and you still get 30 people in the house. Councilman Schrader said it is more convenient and it is a nicer house. Councilman Schrader said once the ordinance is passed anybody who wants to add a bathroom to their existing house will be free to do so.

Mr. Bintz commented that the Town had a law for 12 years and decided not to enforce it, and people who flagrantly ignored the ordinance are okay.

**FIRST READING OF ORDINANCE 181-16 TO AMEND THE CODE OF THE TOWN OF SOUTH BETHANY, CHAPTER 145, ZONING, ARTICLE III, "DEFINITIONS", ARTICLE V, "NONCONFORMING USES", AND ARTICLE X, "DIMENSIONAL REQUIREMENTS", TO ELIMINATE THE RESTRICTIONS ON BATHROOMS IN HOUSES IN THE TOWN OF SOUTH BETHANY (PAT VOVERIS)**

Charter and Code Committee Chair John Fields said at the last Council meeting the Council directed the Charter and Code Committee to write an ordinance eliminating the restriction on all bathrooms within the code. The committee has done that with Ordinance 181-16. Mr. Fields reviewed Ordinance 181-16.

Mr. Fields said Ordinance 181-16 only contains those parts of the code that have some limitations to bathrooms and the limitations have essentially been struck.

During discussion regarding kitchens, the Code Enforcement Constable noted that per Sussex County Code it is illegal for a single family dwelling to have more than one kitchen.

Mr. Fields asked the Code Enforcement Constable to explain the Sussex County Code regarding windows in a house. The Code Enforcement Constable stated that most of the time the request is for a bathroom to adjoin a bedroom. The Code Enforcement Constable referred to the following Sussex County Code: *§ 71-14B - Light in habitable rooms. Every habitable room, except kitchens, toilet rooms, basement or cellar rooms and interior rooms of townhouses and row houses, shall have at least one window facing directly to the outdoors, a court or a porch. Every habitable room, except kitchens and toilet rooms, shall have at least one door or window which can be opened to adequately ventilate the room. Kitchens, toilet rooms without windows, basement or cellar rooms and interior rooms of townhouses and row houses shall have natural or mechanical ventilation. The size of window shall not be less than 8% of the floor area. When building a bathroom that adjoins a bedroom you are building to the exterior of the structure which will self-limit. Other things that self-limit commodes are the requirement of a four inch diameter flush pipe and the requirement of a certain number of vent stacks before larger vent stacks are required. The Code Enforcement Constable said that plumbing does self-limit in the end. The Code Enforcement Constable stated that there could be some creative ways which would be a house full of toilets, which does not equal a bathroom, but the Town has not yet had that problem.*

Mayor Voveris declared this the first reading of Ordinance 181-16.

**DISCUSSION AND POSSIBLE VOTE TO AUTHORIZE ISSUING A \$220 STIPEND FOR A SOUTH BETHANY PROPERTY OWNER TO REPLACE LOST DRIVEWAY STONES DISPLACED DURING THE CONSTRUCTION AND RAISING OF THEIR NEIGHBOR'S HOME, A PROJECT FACILITATED BY THE TOWN. IF APPROVED BY COUNCIL THIS CHECK WILL BE ISSUED TO MCCARTHY STONE, ROUTE 26.**

**Motion:** A motion was made by Councilwoman Stevenson, seconded by Councilman Weisgerber, to authorize issuing a \$220 stipend for a South Bethany property owner to replace lost driveway stones displaced during the construction and raising of their neighbor's home, a project facilitated by the Town. If approved by Council, this check will be issued to McCarthy Stone, Route 26.

Councilman Saxton asked for an opinion from the Code Enforcement Constable on whether the Town should be paying this. The Code Enforcement Constable stated that he approved the completion of the project and the fact that this item is on the agenda is in opposition to his judgement on the project. The Code Enforcement Constable stated that he cannot find any loss of stone. The Code Enforcement Constable stated that in the world of legal application a benchmark is needed to say here is the beginning and it was X dimensions and here is the end and it is X dimensions and clearly between point A and point B there is a loss of X dimensions. The Code Enforcement Constable stated that in absence of that he cannot conscientiously

require the contractor to furnish something that cannot be photographed or substantiated and which the contractor denies.

Councilman Weisgerber stated that he initially looked at the house from the road and thought it looked fine, but when he drove on the driveway the left side of his car went down. Councilman Weisgerber stated that in a similar situation heavy equipment had packed Councilman Weisgerber's neighbor's driveway. The Town Manager stated that in this case no heavy equipment was stored on the driveway, only a small rubber track loader crossed the driveway. The Code Enforcement Constable added that a track loader is preferred in a soft environment because it spreads the point load down to about 1.9 or less pounds per square foot. The Code Enforcement Constable stated that on a 12 inch spread track you would be very hard pressed to say it damaged any stone – it will not carry stone. The Code Enforcement Constable stated that he cannot find the loss of stone. Councilwoman Callaway said the property owner thinks that there is loss of stone. Councilwoman Callaway thinks that if this was a normal circumstance the Town would not be involved, but the Town was involved in the project. Councilwoman Callaway thinks what this has brought to light is that when somebody else's driveway is used the Town Code says permission of the owner is required. Councilman Weisgerber said no one has permission to use somebody's property unless you have it in writing. The Code Enforcement Constable said this is true. Councilman Weisgerber said the Town has nothing in writing to use the property. Councilman Weisgerber believes that exposes the Town. The Code Enforcement Constable said it is a contractor liability issue which is why the Town requires contractor liability insurance.

Councilman Saxton asked if the Town went to the homeowner that benefitted from the project and asked them if they wanted to raise their house. The Town Manager said no the homeowner came to the Town. Councilman Saxton said the homeowner is involved in this. Councilman Saxton said he has worked with that contractor and he is honest. Councilman Saxton believes that if the contractor felt he did something he would have put stone back in there. Councilman Saxton said ruts don't form that quickly. Councilman Weisgerber said it was a very wet spring.

Councilman Saxton said he does not think the Town should be paying taxpayer dollars to settle a feud between two property owners. Councilman Saxton said he thinks the Town has done a great job for both of the owners of raising their houses and taking the Town's personnel's time to work with FEMA/DEMA to get the grant money. Councilman Saxton thinks there is a place where you stop and you let the homeowners work it out. Councilman Saxton thinks that is where the Town has reached in this particular situation. Councilman Saxton said for him it is not the money, it is the principle and the precedent Council would be setting. Councilman Saxton believes that by approving this, the Town is going down a slippery slope because the Code Enforcement Constable signs off on everything.

Councilman Schrader questioned why the property owner that benefitted from the services of the contractor is not responsible. Councilman Schrader said it is either the contractor who is responsible or the person who benefitted from the contractor's service. Councilman Schrader said the Town paying the money is a terrible precedent to set. Councilwoman Callaway stated that to her the exception is that the Town was the facilitator of the project. Councilman Schrader asked why isn't the person who benefitted from the services of the contractor the person that is liable along with the contractor.

The Town Manager noted that DEMA also signed off on the project, to which Councilman Schrader asked why DEMA wasn't paying \$220.

Regarding the Town granting permission for the driveway to be used by the contractor, the Code Enforcement Constable said the Town does not grant permission on anybody's personal property – that is something worked out between the contractor and the property owner.

Regarding the argument that the Town was the facilitator on this project, the Town Manager said to that point it could be argued that the Town could be the facilitator for any project in Town because the Town issues permits for every project in town. Councilwoman Callaway believes the Town's role as facilitator for this project is at a different level because the Town was getting money from the grant to facilitate the project. Councilman Saxton stated that the homeowner that benefitted from the project would not have gotten money from the grant if the Town would not have done all of the work to help them get the grant. Councilman Saxton does not think that the Code Enforcement Constable's position is unreasonable of going back to the homeowner that got the benefit of the project and have them work it out between them and the contractor.

The Town Manager said the bottom line is he (the Town Manager) and the Code Enforcement Constable do not agree with the homeowner that there was damage to their driveway, and the Town signed off on the project. The Town Manager stated that it is the Council's right to take a vote to override the Town Manager's and the Code Enforcement Constable's decision.

Councilwoman Callaway read the following Town Code: *§ 42-14.1E. The use of any property, other than the construction site itself, for construction or other related activities shall require the advance written approval of the affected property owner.* Councilwoman Callaway asked if the Code Enforcement Constable got written approval to use the homeowner's driveway. Councilman Saxton said the Code Enforcement Constable is not the contractor. Councilwoman Callaway asked if the contractor got written approval to use the homeowner's driveway. The Code Enforcement Constable said he did not know. Mayor Voveris said the contractor did not get written approval to use the homeowner's driveway. Councilman Schrader said even if the contractor did not get written approval to use the homeowner's driveway, if there is no damage why would the Town pay. Councilwoman Callaway said according to the homeowner there was damage.

Mayor Voveris said that when she went and visually inspected this she thought the contractor had left the property in a nice way – the stones were raked and it looked good. When she called the homeowner, he asked if she would please come over and take a look – he wanted to show her pictures of what it was like before and he wanted her to see how his car now sits lopsided in his driveway because of missing stones. Mayor Voveris said she does understand the Town Manager and the Code Enforcement Constable's position because she also said the same thing until she investigated it further. Mayor Voveris said she is not questioning the Town Manager and the Code Enforcement Constable's judgment at all. Councilwoman Callaway agreed. Mayor Voveris said she has put in a lot of work and for \$220 on a Town facilitated project she can't spend another minute on it.

Councilman Saxton asked if the Town contacted the owner who got the benefit of the project and asked them to pay the \$220. Mayor Voveris said she did not. The Code Enforcement Constable said he can't contact the owner to ask for restitution if he does not believe there is damage. Councilman Saxton suggested contacting the owner who is party to the contract before approving this.

Councilman Schrader said if there is no damage there is no reason to pay \$220.

The Town Manager restated that he and the Code Enforcement Constable agree there was no damage and the contractor said there was no damage. Councilwoman Stevenson said the homeowner thinks there is damage. Mayor Voveris said that is it in a nutshell.

The Town Manager stated that it is evident the contractor drove across the driveway, but in his (the Town Manager) and the Code Enforcement Constable's opinion the contractor did not create any damage to the driveway that wasn't corrected.

The Town Manager suggested Council take its vote but he asked for clarification on whom to make the check to. After discussion, Mayor Voveris said to make the check out to McCarthy Stone and send the check to the homeowner's home in Wilmington.

Councilman Schrader asked where the number \$220 came from. Mayor Voveris said she got prices on the stone. The property owner said he lost two to three tons of stone. In the end he agreed to two tons.

**Vote:** After more discussion, the voting was as follows:

FOR THE MOTION: Mayor Voveris and Councilpersons Stevenson, Weisgerber, and Callaway

AGAINST THE MOTION: Councilpersons Saxton, Schrader, and Junkin

The motion carried with a 4-3 vote.

**REQUEST FOR STREET LIGHTING ON W. 9TH ST. – DISCUSSION AND POSSIBLE VOTE FOR THE TOWN TO POLL AFFECTED PROPERTY OWNERS, AS DETERMINED BY COUNCIL, AND REPORT THE RESULTS BACK TO COUNCIL FOR FINAL ACTION**

The Town Manager stated that he received a written petition from property owner Mike Matera with 8 or 10 names for a street light to be installed between 302 and 304 W. 9<sup>th</sup> St. Since all of the wiring there is underground, the light would be a new Granville street light. There are 12 property owners on W. 9<sup>th</sup> St. The Town Manager said what the Town typically does is send a letter/survey to those property owners. The Town Manager had a sample letter to send to the property owners along with a picture of the light. A self-addressed stamped envelope would be included in the mailing for the property owner to use in sending back their survey response.

The Town Manager said there is no cost to install the light but there is a monthly electric bill to the Town of \$15.64 per light.

**Motion:** After discussion, a motion was made by Councilman Junkin, seconded by Councilman Weisgerber, to go forward with the Town Manager sending out the letter to poll affected property owners regarding a request for a street light on W. 9<sup>th</sup> St.

The Town Manager said the letter will have a return deadline of June 21 in order for Council to make a decision on the light at the June 23, 2016, Town Council Workshop Meeting.

**Vote:** The motion was unanimously carried.

**COMPREHENSIVE PLAN (CP) REVIEW BY COUNCIL**

Mayor Voveris stated that she and Councilwoman Callaway have already edited the Comprehensive Plan for punctuation and grammar. Mayor Voveris said Council will talk about some issues in the document today and she and Councilwoman Callaway will rework the document and pass it out again.

Page 5: Councilman Junkin stated that regarding Town History two significant events were not included – Incorporation of the Town in 1969 and the year the moratorium was put in on building permits as well as the year the moratorium was removed (1981). Mayor Voveris thought the dates regarding the current buildings was also important.

Page 10: First Full Paragraph (begins with "Generally") – Mayor Voveris questioned if the paragraph was needed. Councilman Saxton suggested using "climate events" rather than "climate change".

Page 11: Goal 3, Number 6 – Change to "Research the need for a Town policy on the use of drones." Goal 4, Number 3 – Change "Pursue selected use of qualified . . ." to "Consider use of qualified . . ."

Page 12: Goal 1 – The first paragraph should be Number 1. Goal 1, Number 1 – Insert "Continue to" at the beginning of the sentence.

Page 13: Number 7 (top of page) – Delete "an immediate" and insert "a". Number 8 (top of page) – Move to Goal 5 (Maintain South Bethany's Fiscal Soundness) on Page 14. Goal 2 Number 5 – Delete everything after "public spaces". Goal 3 Number 4 – Delete the word aggressive. Goal 3 Number 5 – Councilwoman Callaway will rewrite this.

Page 14: Goal 4 – Delete Numbers 2, 6, and 9. Change Number 10 by taking out the last sentence and add a sentence referencing the Charter and Code Committee. Goal 5 – Delete Number 5.

Page 15: Delete Numbers 6 and 7 at top of page. Number 8 (top of page) – Delete the examples. Goal 6 – Councilwoman Stevenson will rewrite this section to make it more general. Third line from bottom of the page - Delete "however that recent".

Page 16: First three paragraphs – Delete.

Page 17: First paragraph – Delete the last sentence and Councilwoman Callaway and Mayor Voveris will work on the next to last sentence. Number 4, Second Paragraph – Delete everything after the first sentence. Bulleted list at the bottom - Add the Delaware Founders Insurance Trust (DFIT).

Page 18: There was discussion about deleting the bullets, but no decision was made.

Page 19: Councilwoman Stevenson suggested using "debris" and "periodic" just once in the document.

Page 20: Second and third paragraphs – Change the "must" to "should".

Page 21: b., Last sentence – Change to a positive statement. b.(1), First paragraph, Fourth line from the bottom – Change "see grass" to "sea grass".

Page 22: b. – Change "will" to "should". c., Second paragraph – The Town Manager stated that the handicap walkway is not ADA compliant and was never intended to be ADA compliant. Delete "ADA compliant handicapped walkway" and replace with something like "one hardened walkway", "boardwalk walkway", "hardscape walkway", "wooden walkway", or "one full length hardened walkway".

Page 23: Last paragraph, third sentence – Change to "Near term, it is important to consider funding the study already begun."

Page 24: Delete the first full paragraph. Number 2 – Mayor Voveris will rewrite this section.

Page 25: Second paragraph – Mayor Voveris and Councilwoman Callaway will rewrite this paragraph using less language.

Page 26: g. Parking – Delete the second paragraph. Third paragraph - Keep the idea but rewrite the paragraph. Last paragraph – Change "Street walkways" to "Pedestrian walkways".

Page 27: i. Street Maintenance, Second paragraph, Third sentence – Change the word "will" to "should". The Town Manager will review the Street Maintenance section for accuracy.

Page 28: j. Street Lighting, Last paragraph – Delete the word "master" wherever it occurs.

Page 29: c. Electricity, Second paragraph, Second sentence – Change "likely" to "not likely" or "unlikely". Last paragraph on page – Delete the last sentence.

Page 30: Town Finances – Mayor Voveris noted that from the State's cursory review of the plan they mentioned that all of the financial information in the plan may not be needed. Councilman Saxton will work on this section using the auditor's report.

Page 34: 2c. – Change "Consider" to "Continue".

Mayor Voveris said her goal is to bring the edited document to the June 23, 2016, Town Council Workshop Meeting for review

Councilman Junkin pointed out that Appendix D (Walking and Bicycle Paths Distances) on page 42 and Appendix F (Canal Circulation) on page 45 are incomplete. Mayor Voveris will connect with the Planning Commission regarding this.

### **ADJOURNMENT**

A motion was made by Councilman Saxton, seconded by Councilwoman Callaway to adjourn the May 26, 2016, Town Council Workshop Meeting at 5:15 p.m. The motion was unanimously carried.

phs:2016 05 26 Workshop Minutes Adopted 6 23 16

Attachment: *Sea Level Rise Study Summary Town of South Bethany*