

<b>TOWN OF SOUTH BETHANY TOWN COUNCIL WORKSHOP MEETING MINUTES NOVEMBER 20, 2014</b>
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**MEETING CALLED TO ORDER**

Mayor Voveris called the November 20, 2014, Town Council Workshop Meeting to order at 5:00 p.m.

**ATTENDANCE**

PRESENT: Council Members Sue Callaway, Tony Caputo, Jim Gross, George Junkin, Al Rae, Tim Saxton, and Mayor Pat Voveris; Town Manager Melvin Cusick; and Chief Troy Crowson

**APPROVAL AND VOTE OF THE AGENDA**

A motion was made by Councilman Junkin, seconded by Councilman Rae, that Council move the Public Comment Period until after Item 5 on the Agenda. Councilman Junkin stated that a lot of the property owners present at the meeting are probably interested in what is going to happen during Agenda Item 5. The motion was unanimously carried.

**DUE TO THE TIME CONSTRAINTS IMPOSED BY DNREC/FEMA ON THE APPROVAL OF THE FLOODPLAIN ORDINANCE, DISCUSSION AND POSSIBLE VOTE TO REMOVE THE MANDATORY 2 FEET OF FREEBOARD FROM THE DRAFT FLOODPLAIN ORDINANCE AT THIS TIME.**

**Motion:** A motion was made by Councilman Junkin, seconded by Councilman Caputo, that due to the time constraints imposed by DNREC and FEMA on the approval of the floodplain ordinance Council remove the mandatory two feet of freeboard from the draft floodplain ordinance at this time.

**Discussion:** Mayor Voveris asked for discussion.

Councilman Gross stated that he has recognized the community has spoken on this matter and he accepts that. Councilman Gross said he will vote for the motion, but he wanted the property owners to know a little bit of background. Councilman Gross stated that none of the five Council Members that voted for the two feet of mandatory freeboard have anything to gain personally. Councilman Gross said the Council Members attempted to do what they thought was right in order to mitigate flood damage, and both FEMA and the State of Delaware have strongly recommended that there be freeboard. Councilman Gross recommended that South Bethany property owners read the FEMA publication titled **Home Builder's Guide to Coastal Construction** which has eight pages of very good discussion of freeboard. Councilman Gross read the following section from the publication: *Elevation Recommendation – FEMA 499 recommends new and reconstructed residential buildings be elevated above the effective BFEs with freeboard equal to that specified in ASCE 24-05, plus 3 feet.* Councilman Gross noted that ASCE 24-05 specifies one foot. Councilman Gross added that the State of Delaware has had a committee made up of mostly private sector people from all sectors which developed a report titled **Delaware Floodplain and Drainage Standards and Recommendations**. The report has been issued to the Towns by the Secretary of DNREC, then Secretary O'Mara, and in his cover letter he said to *"encourage adoption of common-sense local drainage codes and floodplain ordinances that will reduce both flood damages and the significant costs to the state, while also considering ways to reward the local governments that are doing their part, such as giving greater priority to investments that are needed in those communities."* Councilman Gross stated that Standard 7 in the report deals specifically with freeboard. Councilman Gross read Standard 7: *All new construction or substantially improved structures (as defined by local governments) located within a FEMA mapped floodplain (Councilman Gross noted that this was all of South Bethany) shall have the lowest floor, including basement, and all equipment and machinery elevated to or above 18 inches above the base flood elevation.* Councilman Gross added that it also covers from one to three feet. Councilman Gross said he points this out because he wants the property owners to know some background on why Council did what it did. Councilman Gross said during the last few weeks there has been a great deal of misinformation and

misunderstanding taking place in South Bethany. With this change in Council's approach, Councilman Gross believes it is up to the Town Council to make an extraordinary effort to educate and perhaps develop educational documents to help people understand and make decisions about freeboard.

Councilman Junkin said that it's not that he doesn't think that mandatory freeboard is the right thing (Councilman Junkin noted that he sent out information in an email News Update on his rationale for mandatory freeboard), but due to time constraints Council doesn't have time to get there trying to convince people that mandatory freeboard is a good thing for South Bethany.

Councilman Rae said that he will also vote for the motion but he wanted to bring to everybody's attention that there has been a lot of misinformation about why Council is doing this ordinance at this time of the year. Councilman Rae stated that the Town received letters from DNREC and FEMA in September saying the Town has less than six months to demonstrate that its floodplain management regulations fully comply with the National Flood Insurance Program (NFIP) regulations. Councilman Rae stated that the letter states that if this is not done before March 16, 2015, your community will be suspended from the NFIP and the floodplain program. Councilman Rae stated that Council was not trying to wait until everybody got out of town – Council is drafting the ordinance to represent the property owners' best interests.

Mayor Voveris called for a vote. The voting was as follows:

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

AGAINST THE MOTION: None

The motion was unanimously carried.

Mayor Voveris thanked the property owners for their input, and she thanked the Council for their hard work.

#### **PUBLIC COMMENT PERIOD**

Naomi Staley (132 and 134 Brandywine Dr.) – Explained the history of her property regarding flood insurance and her concerns regarding freeboard (Ms. Staley noted that they have owned their two lots in South Bethany prior to incorporation). Councilman Junkin stated that with the vote Council took today property owners don't have to have freeboard, and currently if a property owner wants to have freeboard they can (freeboard has already been voluntary). Councilman Junkin said a property owner can put their house as high as they want as long as the top of the house doesn't exceed the height limit. Councilman Junkin said if a property owner has a ground level house and wants to raise it they can. If a property owner has a ground level house below base flood elevation it does not have to be raised unless it is a substantial improvement (any repair, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the start of construction of the improvement). Councilman Junkin explained that independent of what Council has done, substantial improvements have to be raised to at least the base flood elevation.

Kent Stephan (46 S. Anchorage Ave.) – Stated that at the November 14, 2014, Town Council Regular Meeting no property owners said that freeboard is a bad idea. Mr. Stephan said the property owners are not against freeboard. Mr. Stephan said what the property owners are saying is they don't want Council to make them do it because each property owner has individual situations. Mr. Stephan stated that if Council resurrects mandatory freeboard, Council will run into resistance again because Council has not come close to showing the property owners why they have to have freeboard.

Glenn Tom (309 W. 7<sup>th</sup> St.) – Inquired what substantial improvement is. Councilman Junkin replied that if the improvement is more than 50% of the value of the building (not the land) it is a substantial improvement.

Bob Coleman (230 Carlisle Dr.) – Stated that he would like his email exchanges with the Mayor today added to the record without rehashing them at this meeting. The following are the email exchanges:

**From: Robert coleman <[rcoleman@wildblue.net](mailto:rcoleman@wildblue.net)> Date: Wed, Nov 19, 2014 at 6:14 PM**  
**Subject: A question on S. Bethany FEMA rating To: Pat Voveris <[patvoveris@gmail.com](mailto:patvoveris@gmail.com)>**

Hi, Pat. I have been spending some time getting up to speed on the FEMA rating systems used to determine insurance discounts, in light of all the current activity on this subject.

I have not been able to find anything on the town's website about the actual number of "points" FEMA arrives at for our Community Rating Score which determines our % discount on flood insurance premiums. Do you know the specific points number for the rating?

I'm looking into this from the perspective of whether or not mandating 3 ft. freeboard has any numerical possibility of raising our points score sufficiently to get us into the next higher discount bracket? If there's no possible way, via more restrictive requirements, to raise our score enough to get the larger discount, then this turmoil over mandating freeboard is an unjustified waste of effort.

Thanks for any info you can provide.

One of the other alleged reasons given for making freeboard mandatory is that "FEMA has raised its recommendations 3 times in the past 30 years. Yes, in fact, for the past 30 years FEMA has raised its recommendations every time there has been a major storm loss, i.e. Florida, Louisiana, Gulf Coast, Northeast (Sandy). People need to be reminded that FEMA is **NOT** a science based organization, they are a government appointed insurance broker for flood insurance. As such, their recommendations are not based on any scientific justification, rather the recommendations are based on trying to minimize loss claim payments. Therefore, it is my opinion that any ordinance should be limited to the minimum, as required to meet their required actions. I and others in town appreciate your efforts to have logic prevail.

Thanks. Bob Coleman "You are not just one, you are one more"

**On Wed, Nov 19, 2014 at 6:24 PM, Pat Voveris <[patvoveris@gmail.com](mailto:patvoveris@gmail.com)> wrote:**

Bob, Thank you for your email.

There is no guarantee our CRS rating will allow more than a 10% discount. Out of 11 participating municipalities only 1 has a rating giving more than 10% discount. As far as I know we do not have criteria to substantiate discount ... we have suggestion.

May I forward your email for Council consideration? It is thought provoking. Pat

**On Wed, Nov 19, 2014 at 6:52 PM, Robert coleman <[rcoleman@wildblue.net](mailto:rcoleman@wildblue.net)> wrote:**

Yes, Pat. You have my permission to forward my email to Council.

Do you know, or do you know where I can get the specific rating points number for S. Bethany? The only municipality with a higher than 10% discount is City of Newark. I don't see how that city can be comparable to S. Bethany, so far as geographic characteristics and proximity to tidal or storm surge.

**From: Pat Voveris <[patvoveris@gmail.com](mailto:patvoveris@gmail.com)> Date: Wed, Nov 19, 2014 at 7:14 PM Subject: Re: A question on S. Bethany FEMA rating To: Robert coleman <[rcoleman@wildblue.net](mailto:rcoleman@wildblue.net)>**

Bob, I will look into this for you. Pat

Mr. Coleman asked what the Town's actual credit points rating is with FEMA. The Town Manager stated that in order to get to the 15% range 1499 points are needed. Therefore the Town is somewhere below 1500. The Town Manager told Mr. Coleman he would get the number for him. Based on the maximum the Town can get for freeboard, Mr. Coleman stated that if the Town is more than 150 to 200 points below 1500 there is no way that mandating freeboard can get the Town to 1500 points. Councilman Gross said not with freeboard alone. In regards to the points, Councilman Gross added that freeboard is not the only issue – there are a whole series of things. Councilman Gross stated that he thinks the Town's educational efforts will gain some points for the Town too. Councilmen Rae and Junkin noted that in 2017 there will be a new CRS manual and the Town may lose points because of different rules and the Town may gain points because of different rules.

Dick Oliver (410 Victoria Rd.) – Stated that there have been a lot of comments made about the members of the Council and their motivations. Mr. Oliver stated that he is echoing what Councilman Gross said – none of the Council Members have any dogs in the fight. Mr. Oliver said we may disagree with them but they are honorable people trying to do the best thing for the town and he appreciates that.

Jay Headman (436 Black Gum Dr.) – Followed up on Mr. Oliver's comments. Mr. Headman stated that being a member of the Town Council is a tough job and it is voluntary. Mr. Headman added that the Council Members do the best they can based on the information available. Mr. Headman stated that they did their work and they tried to do the best for the town. Mr. Headman complimented the Council for their work. Mr. Headman said all of the members of this Council are working for the best interest of the town. Mr. Headman thanked the members of Council.

Glenn Tom (309 W. 7<sup>th</sup> St.) – Asked if Council had a time table for when they may reconsider mandatory freeboard. Councilman Junkin said it would at least be after the proposed floodplain ordinance is passed and he does not know how long after that.

Barbara Junkin (8 S. 4<sup>th</sup> St.) – Stated that she attended the November 14, 2014, Town Council Regular Meeting and she thought that the audience was horrendous overall in the way they treated the Council. Ms. Junkin said she hopes there is never another meeting where the audience treats volunteers that are working for the town that way. Ms. Junkin said you can be respectful and disagree, she has no problem with anybody disagreeing, but to be disrespectful and say that members of Council acted like Nazis is horrendous. Ms. Junkin stated that she hopes that never happens again.

**DISCUSSION AND POSSIBLE VOTES ON WORDS TO BE INCLUDED IN A PROPOSED DRAFT ORDINANCE TO REPEAL AND REENACT CHAPTER 145 (ZONING) ARTICLE XIV (COASTAL FLOODPLAIN REGULATIONS.)**

Council reviewed the packet titled *Draft Ordinance to amend Article XIV for 11/20/14 Workshop*. Council pointed out formatting and punctuation changes. In addition, Council agreed to the following:

**Pages 3-8:** Councilman Junkin noted that the first six pages were struckthrough because the existing Article XIV will be completely deleted (repealed) and replaced (reenacted).

**Page 9:** Second paragraph change *10/6/197* to *10/6/1976*.

**Page 14:** Item (7): Councilman Junkin will work with the Code Enforcement Constable and Rebecca Quinn on making the wording in this item more specific.

**Page 16:** § 145-46.5A(3)(c) Add *Delaware* after *Sussex County*.

**Page 17:** § 145-46.7A – Delete the *d* in *Certificated* in the third line.

**Page 18:**

§ 145-47.2B – There was a discussion regarding the follow up procedure with the utility companies. Councilman Junkin said separate from this ordinance the Sea Level Rise Committee will be looking at this kind of thing after these ordinances are in place.

§ 145-47.4A – Delete the words *plus 2 feet*.

**Page 19:**

Delete the words *plus 2 feet* in the three places it appears.

§ 145-47.4F – Do not include *and previously filled areas where the filled ground surface is less than 18 inches above the base flood elevation*

§ 145-47.5B(4) – Mr. Cestone suggested that the Town may want the slope to be more stringent. After discussion Councilman Junkin suggested leaving this the way it is for the first reading and if someone comes up with a better idea Council can discuss it at the first reading. Councilman Junkin will also check with Ms. Quinn regarding this. Councilman Gross stated that this slope is too steep for South Bethany.

**Page 20:**

§ 145-47.8B – Delete the hyphen between *at* and *grade*.

§§ 145-47.8B and C(1) – Delete *plus 2 feet* in the two places it appears.

§ 145-47.9C – Change *4.8* to *145-47.8*.

**Page 21:**

§ 145-48.1 – Change § 145-47.0 to § 145-47.

§ 145-48.2 – Delete *plus 2 feet* in the three places it appears.

**Page 22:**

Delete *plus 2 feet* in the four places it appears.

§ 145-48.2B(4) – Councilman Junkin asked for someone to write up what the words should be, and he will check with Rebecca Quinn on changing this from one entire side of the foundation wall to all sides.

A discussion ensued regarding Manufactured Homes. No definitive conclusions were reached. It was agreed that it should be addressed as a different issue.

**Page 23:** Delete *plus 2 feet* in the four places it appears.

**Page 24:** Delete *plus 2 feet* in the one place it appears.

**Page 25:** Delete *plus 2 feet* in the one place it appears.

**Page 26:**

Delete *plus 2 feet* in the one place it appears.

§ 145-49.4, Next to last sentence – Delete *and the Division of Watershed Stewardship of DNREC*.

**Pages 26 – 28:**

Remove § 145-50 from Article XIV and put it in Article XV Board of Adjustment. § 145-50 will remain to reference where it will be (Article XV Board of Adjustment § 145-61). Councilman Junkin will check with Ms. Quinn about this.

At Mr. Cestone's suggestion, Councilman Junkin will check with Ms. Quinn about "unnecessary hardship" versus "exceptional practical difficulties".

After discussion, it was agreed that Article XIV would be repealed and reenacted after the third reading. The Town Manager said the Town will verify the legality of this with the Town's attorney.

**Motion:** A motion was made by Councilman Gross, seconded by Councilman Junkin, to approve the changes to the proposed draft ordinance to repeal and reenact Chapter 145 (Zoning) Article XIV (Coastal Floodplain Regulations).

**Discussion:** Mr. Fields said he thinks there will be two ordinances – one ordinance for Article XIV and one ordinance to include the remaining articles. Councilman Junkin stated that as Chair of the Charter and Code Committee Mr. Fields and the Administrative Assistant can put it together in a way that makes sense. After more discussion, the Town Manager suggested that after the third reading Council may have to take two votes – one to repeal and one to reenact. Mr. Cestone suggested that it could be done in one sentence (one motion).

**Vote:** Mayor Voveris called for a vote. The motion was unanimously carried.

**DISCUSSION AND POSSIBLE VOTES ON WORDS TO BE INCLUDED IN A PROPOSED DRAFT ORDINANCE TO AMEND CHAPTER 145 (ZONING) ARTICLE III (DEFINITIONS.)**

Council reviewed the packet titled *Draft for 11/20/14 Workshop Chapter 145: ZONING Article III*. Council pointed out formatting and punctuation changes. In addition, Council agreed to the following:

For Article III Definitions, only list the definitions that have changes.

BASE FLOOD and BASE FLOOD ELEVATION – Should be in black, not red.

Breakaway Wall – In the second line delete *registered professional* before *architect*.

FLOOD INSURANCE RATE MAP (FIRM) – Show the current definition in the Town Code as struckthrough.

FLOOR-TO-AREA RATIO (FAR) – It was agreed to not address the Code Enforcement Constable's request for more specific wording regarding "including lattice or boards with spaces between them" at this time.

HOUSE TRAILER, MOBILE HOME, CAMPER or RECREATIONAL VEHICLE – Do not strikethrough this definition. It is needed for elsewhere in the code.

LETTER OF MAP CHANGE – Alphabetically it belongs after the definition of KITCHEN.

VIOLATION – In the first sentence change *section* 145 to *Chapter* 145. In the second sentence change the *A* to *a*.

**Motion and Vote:** A motion was made by Councilman Junkin, seconded by Councilman Gross, that Council accept the changes discussed. The motion was unanimously carried.

**DISCUSSION AND POSSIBLE VOTES ON WORDS TO BE INCLUDED IN A PROPOSED DRAFT ORDINANCE TO AMEND CHAPTER 145 (ZONING) ARTICLE XV (BOARD OF ADJUSTMENT.)**

As discussed earlier in the meeting, Council agreed to move § 145-50 from Article XIV and put it in Article XV Board of Adjustment. § 145-50 will remain to reference where it will be (Article XV Board of Adjustment § 145-61).

**Motion and Vote:** A motion was made by Councilman Junkin, seconded by Councilman Gross, that Council accept the changes that Council marked up for Article XV Board of Adjustment. The motion was unanimously carried.

**DISCUSSION AND POSSIBLE VOTES ON WORDS TO BE INCLUDED IN A PROPOSED DRAFT ORDINANCE TO AMEND CHAPTER 145 (ZONING) ARTICLE XVII (ADMINISTRATION, ENFORCEMENT AND PENALTIES.)**

Council agreed there are no changes required to Article XVII.

**DISCUSSION AND POSSIBLE VOTES ON WORDS TO BE INCLUDED IN A PROPOSED DRAFT ORDINANCE TO AMEND CHAPTER 145 (ZONING) ARTICLE XI (SETBACK REQUIREMENTS.)**

Councilman Junkin explained that this proposed draft ordinance is not required by FEMA. The changes in this proposed ordinance were asked for by the Town Council at the October 23 Town Council Workshop Meeting to allow steps to be in the setback for houses that have two feet of freeboard.

Council had a packet titled *Draft ordinance to allow steps in the setback when there is at least two feet of freeboard – For 11/20/14 Workshop Distributed 11/19/14.*

**Motion:** A motion was made by Councilman Junkin, seconded by Councilman Gross, that Council accept the language for Article XI Setback Requirements to allow steps in the setback if there is two feet of freeboard (as presented in the packet). Councilman Junkin stated that the changes were recommended by the Sea Level Rise Committee and the Charter and Code Committee and Councilman Junkin incorporated the changes into the document.

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

FOR THE MOTION: Councilpersons Junkin and Gross

AGAINST THE MOTION: Councilpersons Saxton, Rae, Callaway, Caputo, and Mayor Voveris

The voting result was 2 in favor and 5 against. The motion was defeated.

Mayor Voveris stated that Council needs to do more work on this issue, and she asked if Council wants to bring it up at a future workshop and talk about it. Councilman Junkin said the Council Members are asking for more data on this issue and he does not know when that data can be provided. Councilman Rae said he likes the idea, but he wants to understand the implications. After more discussion no timeline was set to address this issue again.

**DISCUSSION AND POSSIBLE VOTES ON WORDS TO BE INCLUDED IN A PROPOSED DRAFT ORDINANCE TO AMEND CHAPTER 42 (BUILDING CONSTRUCTION).**

It was agreed that the changes to Chapter 42 need to be in a separate ordinance because it is a separate chapter.

After reviewing the proposed draft ordinance to amend Chapter 42, Councilman Junkin asked if anyone had any issues with anything relative to Chapter 42 Building Construction. Council had no issues.

§ 145-23: Council agreed with Ms. Quinn's suggested change to § 145-23.

**DISCUSSION AND POSSIBLE VOTE ON THE SCHEDULE FOR THE PUBLIC HEARING AND THE THREE READINGS OF THE DRAFT FLOODPLAIN ORDINANCE**

Council discussed rescheduling the January 22 Workshop to January 29 in order for Councilman Junkin to be present at the meeting.

Councilman Junkin stated that he had called Ms. Quinn and asked her if Council passed the ordinance by February 13, 2015, would the Town be able to meet the FEMA deadline. After talking to Ms. Quinn, Councilman Junkin concluded that the third reading should be scheduled no later than February 13, 2015.

**Motion and Vote:** A motion was made by Councilman Junkin, seconded by Councilman Caputo, that the first readings be scheduled for December 12, 2014, the second readings and public hearings be scheduled for January 29, 2015, and the third readings be scheduled for February 13, 2015. The motion was unanimously carried.

**PUBLIC COMMENTS**

A property owner asked if the three readings of the ordinances are public readings. Councilman Junkin said yes. Mayor Voveris stated that agendas will be posted and there will be an ad in the paper.

A property owner asked who Rebecca Quinn is. Councilman Junkin replied that she is a consultant to FEMA and to DNREC who is an expert in floodplain regulations and what FEMA will accept.

**ADJOURNMENT**

A motion was made by Councilman Junkin, seconded by Councilman Gross, to adjourn the November 20, 2014, Town Council Workshop Meeting at 6:50 p.m. The motion was unanimously carried.

phs:Workshop Minutes 11 20 14 Amended and Adopted 12 18 14