

**TOWN OF SOUTH BETHANY  
TOWN COUNCIL WORKSHOP MEETING MINUTES  
SEPTEMBER 24, 2015**

**MEETING CALLED TO ORDER**

Mayor Voveris called the September 24, 2015, 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; Code Enforcement Constable Joe Hinks; and Administrative Assistant Pam Smith

**ADOPTION OF MINUTES – AUGUST 27, 2015, TOWN COUNCIL WORKSHOP MEETING**

A motion was made by Councilman Junkin, seconded by Councilwoman Callaway, to accept the August 27, 2015, Town Council Workshop Meeting Minutes. The motion was unanimously carried.

**PUBLIC COMMENT PERIOD**

Betsi Baker (309 W. 7<sup>th</sup> St.) – Asked where the Town Audit was posted on the Town's Website. The Administrative Assistant explained that the audit was posted on the Budget and Finance Committee page under the Audits tab.

As a member of the South Bethany Property Owners Association, Ms. Baker asked if she could get a copy of the report from the University of Delaware on the Town's Charter and Code that was commissioned by Town Council. Ms. Baker asked if the report was posted on the website. Mayor Voveris stated that the report was not posted on the website and that Ms. Baker could submit a FOIA request for the document.

**DISCUSSION AND POSSIBLE VOTE REGARDING TRASH, RECYCLING, YARD WASTE COLLECTION CONTRACT**

The Town Council had a memo from the Town Manager in their meeting packet regarding the Town's trash, recycling, and yard waste contract.

The Town Manager stated that the current trash contract expires April 30, 2016. He added that the Town puts the contract out to bid this time of year in order to have the numbers when the Town starts working on the budget.

The Town Manager recommended putting the trash, recycling, and yard waste contract out to bid (rather than negotiating and extending the contract with the current contractor) for the following reasons: 1. The bid documents need updating due to changes from the original contract which was placed for bids in October 2007 (at that time the contract did not include recycling and yard waste collection) – the new bid documents would include trash, recycling, and yard waste collection and the bid would be awarded as a lump sum bid for all three categories. The Town Manager stated that the new bid documents would require the contractor to place trash and recycling containers back in the trash bins after pickup (this was not a requirement in the current contract). 2. It is good to have competition.

The Town Manager recommended doing a five-year contract in order to get a better price from the companies that submit bids.

The Town Manager noted that the recycling carts are owned by the company. If a different company is awarded the bid, the current recycling carts would have to be exchanged.

**Motion:** After discussion, a motion was made by Councilman Saxton, seconded by Councilman Junkin, to accept the Town Manager's recommendation. Mayor Voveris asked for other discussion.

Public Comment: Jim Gross (1 S. 3<sup>rd</sup> St.) – Suggested that in addition to replacing the carts back in the bins that the contractor be required to replace the carts from where they picked up the carts. The Town Manager stated that he is going to include that in the bid documents.

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

### **DISCUSSION ON COASTAL ENGINEER ACTIVITY FOR FEMA FIRM REGARDING OCEAN DRIVE**

Mayor Voveris stated that Council has been covered with a report from Taylor Engineering as well as the report that the property owners contracted for from the Woods Hole Group. Mayor Voveris stated that she had also forwarded both reports to an independent engineer for some thoughts.

Mayor Voveris read the following responses from the Taylor Engineering letter dated August 14, 2015, in response to three questions the Town had submitted to Taylor Engineering in a letter dated July 13, 2015: **1) Does South Bethany have solid grounds for an appeal?** Response: *The 2015 preliminary maps applied a base flood elevation (BFE) based on potential wave runoff. In our opinion, the maps should apply the overtopping criteria we described in our report because such mechanism is more realistic. We reached this conclusion after studying South Bethany's topographic characteristics and 1% annual chance storm conditions.* **2) Can you elaborate on your verbal indication that the FEMA BFE10 for Ocean Drive was not accurate?** Response: *A: A BFE of 10 feet (NAVD88) appears too low because of: 1) historical evidence of overtopping, and 2) the modeled "still water" elevation of 8.1 feet, when combined with waves, would likely overtop the 10.4-foot road. In other words, for a BFE of 10 feet to hold true in the Ocean Drive area, the overtopping water cannot reach more than a few inches above the road. Based solely on historical evidence, this estimate does not appear reasonable.* **3) What results can the suggested analysis on overtopping produce? How much lower a BFE for Ocean Drive might result?** Response: *A: We cannot predict what results the overtopping analysis would produce. However, given that FEMA's guidelines cap the mapping of overtopping and wave runoff at 3 feet above the crest of the road, the BFE cannot result higher than 13 feet. An elevation of 10 feet is unlikely as explained in question 2 above. Therefore, we expect that the proposed overtopping analysis would yield a BFE between 11-13 feet.*

Mayor Voveris said that Taylor Engineering stated in their letter that they would be unable to help the Town with any further action on an appeal.

Referring to the report from the Woods Hole Group, Mayor Voveris said basically they have developed an approach for several activities:

- They want to review the Army Corps design study for the Bethany Beach and South Bethany dune project.
- They want to do modeling and flood zone mapping using pre-dune topography and realistic assumptions for erosion.
- They want to develop a strategy of appeal for the FIRMs, and that they would take this and prepare to file an appeal.

Mayor Voveris read the following response she received from an independent coastal engineer who has been advising her: *It is doubtful that the bathymetry that the Woods Hole Group mentions will have much effect on results. Most Atlantic open coast analyses involving dune erosion/overtopping and overland flooding are relatively insensitive to the profile seaward of the shoreline.*

*Did the Woods Hole Group consider the stability of the 2013 nourished beach and dune at South Bethany before running their analysis? Given the erosion history there, using the 2014 post nourishment LiDAR may not be appropriate. Once it can be demonstrated that the post-construction profile has equilibrated, then use of the equilibrated profile would be more suitable. This is a persistent issue with flood hazard mapping on nourished beaches and is why FEMA makes some of the determinations it does.*

*Another comment on the analysis procedure, the standard dune erosion procedure dates to 1986, and there have been several recommendations to revisit/confirm or revise these. The standard method represents an average eroded dune profile from beaches on the Atlantic and Gulf coasts, and site-specific erosion geometrics are always welcome when it comes to dune erosion analysis. I have not seen the details of what procedure/data the proposed map was based on, but I will say that "standard" does not always mean better or more correct.*

*The crux of the matter comes down to: 1) Whether the 2014 topography had equilibrated and was suitable for use in flood mapping, and 2) Whether FEMA could be given assurance that the nourished beach and dune would be maintained in such a way that flooding and wave overtopping near the oceanfront properties and road would be prevented. I cannot say whether or under what conditions FEMA would consider the dune as providing protection.*

*Changing BFEs by a foot may not be impossible because coastal BFEs are rounded to the nearest whole foot, so a few tenths difference in analysis may result in a foot BFE difference, but I suspect changing a BFE by several feet would be tough sledding.*

Mayor Voveris stated that she does not think there is a glaring opening, but there is a glimmer of hope. Mayor Voveris said Council needs to think about the potential for change in what FEMA has determined so far.

Councilman Weisgerber asked if he was correct that an appeal is not free. Mayor Voveris said an appeal would not be free and she elaborated on the costs that would be associated with an appeal.

Councilwoman Callaway asked why South Bethany cannot go back to 10 since Fenwick Island and Bethany Beach are at 10. Councilwoman Callaway questioned if that could be part of the argument. Mayor Voveris said that would be subjective rather than scientific.

Councilman Schrader stated that the argument could be made that FEMA's effort to go back and reanalyze just South Bethany was discriminatory and inappropriate under FEMA's own rules because they didn't really have the type of data that would permit them to reanalyze. Councilman Schrader added that he is not saying they are necessarily winners, but they are decent arguments. Councilman Schrader said FEMA could be asked if their analysis was wrong (incorrect) that produced the number 10 for other places nearby.

Councilman Schrader stated that he suspects taking an appeal is not going to be successful, but his concern is that there are a lot of property owners who think that something the Town did took a "gift" away from them. Councilman Schrader thinks the property owners deserve a shot at trying to reverse that – to at least win the argument that there is one set of analysis they applied to everybody and got 10 feet and then suddenly South Bethany got treated differently. Councilman Schrader thinks Council needs to think about joining with the property owners who want to make those arguments. Councilman Schrader stated that he thinks Council needs to approach the property owners who have written to Council and say the Town is prepared to file the property owners' appeal and that Council would prefer that the property owners put the appeal together. Councilman Schrader suggested letting the property owners control the process and make sure they are adequately supported and get their "day in court". Councilman Schrader said, "If they win, terrific – we all win at that point."

Public Comment: William Timothy Shaw (104 S. Ocean Drive) – Stated that he is one of the property owners that has been impacted by this issue. Mr. Shaw said he has contacted Ocean Drive property owners, and he has 14 to 16 property owners who support him coming to this meeting and talking to the Town Council.

Mr. Shaw said his group of property owners is not happy about the BFE change, and some of that derives from the financial impact – some of the owners are very concerned about what it does to the property value. The group of property owners thinks that this BFE change is bad for the town – not just for the owners along the oceanfront. The lower the BFE, the better everyone in town is going to be. Mr. Shaw said every foot the BFE comes down changes the flood insurance premiums and makes the property a little more valuable.

Referring to the cross sectional area of the dune, Mr. Shaw encouraged Council to sit down with the Army Corps of Engineers when the time comes for the next replenishment and ask if as part of the replenishment can they increase the dune – make the dune a little deeper and wider – something so that it falls within the model where FEMA can give credit for the dune. Mr. Shaw said that maybe we can't get the BFE lowered now, but it may be in the future we can make it better by augmenting the dune.

Mr. Shaw stated that what he has been asked to do is bring to the Council that his group of property owners thinks it would be appropriate that the Council fund at least the next step of an appeal. They would like to see the Council step up and possibly be willing to pay for one level of appeal – not an unlimited sum of money. Mr. Shaw said he does not like the Town spending his tax money on useless and valueless activities. Mr. Shaw said any reduction in the BFE is going to be valuable and good for everybody.

Mr. Shaw believes there probably is desire amongst his group of property owners that the group manages the appeal. The group does have a consultant, and Mr. Shaw is going to be talking to the consultant this afternoon to discuss what they think the most viable approach would be going forward to try and make an appeal. Mr. Shaw said the group has put their own money into this to this point.

Mayor Voveris told Mr. Shaw that he should relay the conversation at this meeting to the Woods Hole Group and then come back to Council with something organized for the October Council Meeting. Mayor Voveris said she would put on the meeting agenda a discussion and a vote moving forward on this issue.

Councilman Junkin stated that he thinks Council needs to know whether the property owners group wants to go forward with the appeal based on the fact that the new dune should be counted or whether the approach is to go with the fact that South Bethany was treated differently than everybody else.

Mayor Voveris asked if there couldn't be multiple facets – one would be the overtopping, one would be the dune, one would be the subjective "why were we treated differently". Mr. Shaw said the group's impression from talking to their consultant is that they can file any number of attacks to go after this issue.

Mr. Shaw stated that within the property owners group there are several attorneys, and it may be that going with some legal action as a completely separate route regarding not being treated equally might be a basis for that. Mr. Shaw said that wouldn't be a technical appeal.

Mr. Shaw stated that he is not prepared to throw money into something if he does not believe there is a shot of winning.

Public Comment: Joe Conway (160 Henlopen Dr.) – Stated that it seems to him the Army Corps of Engineers who decides on a design approach believes it is worthwhile to spend taxpayers'

money on construction of the dune and then FEMA does not believe that the design is good enough to satisfy their criteria. Mr. Conway suggested getting the engineers' opinions with respect to the construct of the dune. Mayor Voveris said the Town did have conversations and raised questions regarding this, but there were no real answers. During this discussion the following questions were given as suggestions to ask the Army Corps of Engineers and then take the answers to FEMA: Why did you build that dune and spend all that money to protect houses if it is not up to FEMA's standard? Do you think that you accomplished that (protecting the houses) the way you built it and designed it? Regarding what the Army Corps of Engineers was tasked to design the dune to, later in the meeting Councilman Junkin read the following from the FEMA June 12, 2015, Open House Meeting Presentation in South Bethany: Designed to provide the maximum net economic benefit; not to a specific design storm (i.e. 50-yr or 100-yr return period event).

Mayor Voveris told Mr. Shaw that when his group comes back to Council with information and a strategy at the October 9, 2015, Town Council Regular Meeting, she would like Council to have the information at least a week in advance of the meeting. Mayor Voveris told Mr. Shaw that she is available for conversation anytime.

**RECOMMENDATIONS TO COUNCIL FROM THE COMMITTEE APPOINTED TO RESEARCH AND STUDY BOAT LIFTS AND FLOATING DOCKS ON PARAMETERS TO CONSIDER FOR SOUTH BETHANY**

Joe Conway submitted a letter to the Administrative Assistant from South Bethany property owner Meredith "Rob" Roberts. The letter was addressed to Joe Conway. The letter was dated August 10, 2015. The following are excerpts from the letter:

*...writing this letter in hope you will relate my concern and dismay related to.. 153 New Castle, a beautiful home.... total green space obliterated and massive, oversized equipment installed for watercraft..... similar to that found in commercial boatyards and generally aesthetically obtrusive to a beautiful neighborhood.*

*Each day I view this property I am dismayed at the negative visual impact on the canal environment.*

*It is my hope that our leaders would examine what has taken place and establish some common sense standards..... (to) ensure lots are aesthetically pleasing to residents and property values protected.*

*Please register my concerns to leadership..... To ensure our neighborhood continues to be a beautiful , inviting waterfront community ....*

Joe Conway, Chair of the committee appointed to research and study boat lifts and floating docks on parameters to consider for South Bethany, presented the following PowerPoint Presentation. Throughout the presentation there was discussion among the committee, the Council Members, the Code Enforcement Constable, the Town Manager, and the public.

Ad Hoc Committee  
on  
Boat Lifts and Docks  
  
Report to S.B. Town Council  
24 September 2015

- Goals**
- Review and make recommendations for potential update to S.B. Code(s) related to docks, piers, floats, davits, setbacks, and other restrictions.
    - Understand basis for current Code.
    - Understand what others are doing and DNREC SAA and Guidelines require.
    - Investigate new technologies in watercraft handling and docking.
    - Maintain sensitivity to S.B. aesthetics and impact on neighboring property owners

### What We Investigated

- Ocean City Codes
- Fenwick Code
- Bethany Code
- Contacted DNREC
- Visited OC Lift Company
- Floating Platform manufacturers
- Jet ski rental operator
- S.B. Code background

Developed 10 Issues for Consideration/ Recommendation

### Issue #1

- **Are there any State or County restrictions that inform or constrain this Code update?**
  - **Recommendation: Yes; however, the State generally defers to the Codes of Small Towns, in particular where they are more stringent.**
  - **Comment:** Any construction in the tidal artificial lagoon systems in the State of DE are subject to Statewide Activity Approval (SAA) and Permitting. The State also has a set of Guidelines for Town use.

### Issue #2

- **Should we change the South Bethany Code to allow drive –on modular floating platforms?**
  - **Recommendation: Yes. Change Code to allow for use of drive –on modular floating platforms (MFP) subject to current SAA Guidelines and SB limitations.**
    - Write letter to obtain DNREC approval to waive seasonal removal. (DNREC does not enforce this rule.)
  - **Comment:** The State SAA allows modular floating vessel platforms (i.e., for jet skis/boats) subject to the following:
    - The platform shall be the minimum size necessary to properly support the docked personal watercraft or other vessel.
    - Shall be removed during the off season
    - Is subject to the same set back and intrusion limitations of 20%

### Issue #2 ctd

- MFPs reduce pollution from bottom paints : TBT, CuOxide, etc.
- New MFPs have integrated mooring systems
- Wake still created, but not significant. See Link below




[www.glide-n-ride.com](http://www.glide-n-ride.com)

### Issue #3

- **Should we remove 22' length limitation and allow lifts, floats, etc. up to 30' on a standard 50' lot?**
  - Recommendation: Yes. Remove length restriction;**
  - Comment:** Generally, the committee felt less restriction was better provided it was within the 10' side setback requirement. Current Code allows floating docks up to the 30' limit. SAA allows up to 40', however, they defer to SB Code.

### Issue #4

- **How do we deal with larger/double lots?**
  - **Recommendation: No action required.**
  - **Comment:** The Committee felt that the side setback and 20% rule, combined with the SB 30' and SAA limitation of 40' were sufficient to address these cases.

### Issue #5

- **Should we limit the raised height of lifted boats?**
  - **Recommendation:** Yes. Add language to Code that restricts height of lifted craft to no higher than that necessary to provide safe dockage from high tides or floods and to minimize risk of failure due to high winds. The raised height of the bottommost surface of the craft (excluding rudders, engine and/or propellers shall be no higher than BFE.

### Issue #5 Ctd

- **Comments:** Lifted boats at higher elevations fared better than some of those left afloat or unsecured on land during hurricane Sandy. The Committee generally agreed that a boat would be safe to normal and storm tides when lifted to BFE. However, there was general agreement that the community aesthetic would suffer if all owners did this routinely.
- See following examples

### Lift Height Examples



### Ocean City



### Issue #6

- **Should we limit "elevator lift" mast heights to only that which is required to operate the lift(s) safely in the property's waters?**
  - **Recommendation:** Yes. Consistent with the State SAA, "jet -ski lifts shall be the minimum size for the craft". Add Language to SB Code to adopt the SAA language and add a sizing description and review to the required building permit.
  - **Comment:** The Committee received a letter from Mr. Roberts on Henlopen Dr that expressed concern for the scale of new lifts installed across from his property. The photo below shows the issue.

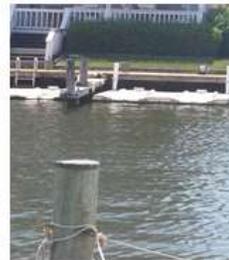


### Issue #7

- **Should we impose the recommended minimum depth of 2-3 ft as suggested by vendors and imposed by Ocean City?**
  - **Recommendation: No**
  - **Comment:** The property and boat owner is ultimately responsible to select the docking approach suitable for his property and use within Town Code.

### Issue #8

- **Should we require Code language to assure safe securing of floating docks?**
  - **Recommendation:** The method for securing the floating dock should be added to the Permit application for approval.
  - **Comment:** The Committee discussed the need to assure that MFP and floating dock owners not only protected their own property, but also did not create a risk to others by inadequately securing their docks. MFPs must be able to rise and fall thru the complete expected tidal range w/o breaching the 20% rule or unsafe boarding. PVC pipe risers and lines outfitted with rollers are example methods.



### Issue #9

- **Should we allow owners to rent their docks, floats, etc. to others?**
  - **Recommendation: No**
  - **Comment:** Committee consensus was not to restrict use among fellow property owners, but to restrict commercial rental.

### Issue #10

- **Should we change the wording in the current Code that discusses dock installation on the longer of the two sides for corner properties?**
  - **Recommendation: Yes.** Allow docks on either bulkhead subject to permit review and other SB Code constraints.
  - **Comment:** The Committee obtained background information on current Code from Bob Cestone. The general consensus was to remove the language requiring a corner property owner to place his dock on the longer of the two sides.

## Additional Recommendations

- **If not to be removed, MFPs must meet industry standards for winter use ( i.e., icing) and be so documented on the Permit.**
- **MFPs should be required to be marked on their seaward extremities with white reflective tape.**
- **Possibly, the SBPOA might enjoin its members to maintain minimum raised heights while in residence.**

## Conclusion

- The Ad Hoc Committee recommends Council:
  - adopt its recommendations
  - remand the recommendations to the Code and Charter Committee for appropriate Code modifications and processing.

After the presentation, Mayor Voveris said she thinks Council should discuss the committee recommendations at the October Town Council Workshop Meeting. Mayor Voveris said she was not ready to send the recommendations to the Charter and Code Committee and noted that she barely understands all of the recommendations.

Mr. Conway said the committee hoped to have done at least a reasonable job to bring up some of the issues, and the committee can help Council Members with questions they might have. Dick Oliver commented that Joe Conway did 90% of the work on this presentation. Councilwoman Callaway said that she thinks the committee did an awesome job on the presentation and her learning curve was huge.

### **CONSIDERATION AND POSSIBLE VOTE TO SEND RECOMMENDATIONS REGARDING BOAT LIFTS AND FLOATING DOCKS TO THE CHARTER AND CODE COMMITTEE**

No motion was made to send recommendations regarding boat lifts and floating docks to the Charter and Code Committee.

### **PUBLIC COMMENT PERIOD**

Councilman Weisgerber inquired about a notice the Town received from DNREC regarding Middlesex wanting to push sand up to build a dune. The Town Manager said that is a notice the Town gets from DNREC when a community near the Town is applying for a permit. The Town Manager noted that he has to get a permit from DNREC to put sand on the Town's walkways. Councilman Weisgerber expressed concern about how it may affect South Bethany's beach.

### **ADJOURNMENT**

A motion was made by Councilman Junkin, seconded by Councilwoman Callaway, to adjourn the September 24, 2015, Town Council Workshop Meeting at 4:15 p.m. The motion was unanimously carried.