

**TOWN OF BETHANY BEACH  
TOWN COUNCIL REGULAR MEETING  
APRIL 21, 2017 – MINUTES**

The Bethany Beach Town Council held a regular meeting at 2:00 p.m. on April 21, 2017 in the Town Meeting Room, 214 Garfield Parkway, Bethany Beach, DE 19930.

Members present for the meeting were: Jack Gordon, Mayor, who presided; Lew Killmer; Jerry Morris; Bruce Frye; Rosemary Hardiman; Joseph Healy. (Mr. Chuck Peterson was excused).

Also present were: Cliff Graviet, Town Manager; Lisa Kail, Administrative Assistant/Town Clerk; and interested members of the public.

Approval of the Agenda

Mr. Killmer made a motion to approve the agenda. The motion was seconded by Mr. Morris and unanimously approved.

Approval of minutes of regular meeting held on March 17, 2017

Mr. Killmer made a motion to approve the minutes. Seconded by Ms. Hardiman, the motion was unanimously approved.

Approval of minutes of public hearing held on March 17, 2017

Mr. Killmer made a motion to approve the minutes. Seconded by Ms. Hardiman, the motion was unanimously approved.

Approval of minutes of special meeting/workshop held on March 14, 2017

Mr. Killmer made a motion to approve the minutes. Seconded by Ms. Hardiman, the motion was unanimously approved.

Approval of minutes of public hearing held on March 14, 2017

Mr. Killmer made a motion to approve the minutes. Seconded by Mr. Morris, the motion was unanimously approved.

Approval of Financial Report

Mr. Morris explained that this report covers the Town's year to date fiscal performance through the month of March. The fiscal year begins on April 1<sup>st</sup> of each year so we are 100% through the year.

Operating Budget Revenues:

To date, we have collected 106.3% of our annual budgeted revenues. This compares to 107.7% collected at this time last year.

Operating Budget Expenses:

To date, we have expended 97.4% of our budgeted expenses compared to 98% expended at this time last year.

Recognizing that this report is subject to audit, Mr. Morris respectfully moved that Council accept and approve this unaudited financial report. Mr. Killmer seconded the motion and it was unanimously approved.

#### Announcements/Recognition of Visitors and Public Comment

- Mr. Frye explained that the Earth Day Celebration that was held at the Town's Nature Center on April 15, 2017, was a very nice event. He complimented the staff for a job well done.
- Mayor Gordon complimented Mr. Frye on the letter he prepared encouraging visitors to contact their local state legislators regarding the need for beach replenishment.

#### Report from Charter and Ordinance Review Committee (CORC)

Ms. Hardiman reported that the CORC committee met on April 7, 2014, and finalized draft technical amendments to Chapter 240 regarding Dogs and Other Animals for consistency with the Americans With Disabilities Act (ADA). It will be on the Town Council's agenda for a first reading in May.

Members also worked with draft language for a new Article III in Chapter 223 entitled Restrictions on the Use of Umbrellas, Tents and Canopies on the Beach, which incorporated some of the suggestions made by the Town Council at the March workshop.

CORC will not proceed to finalize the draft ordinance. Rather, it will take time over this summer to observe, document and determine whether it adequately addresses issues specifically related to our beach. Postponement will also allow the members to learn from Rehoboth Beach's implementation of a similar ordinance this summer. Based on the record developed, CORC will review the draft and bring an ordinance to Council for consideration this fall. This will also provide adequate time to provide notice to residents, property owners and realtors about any new beach rules.

CORC's next meeting is scheduled for Friday, June 23, 2017, at 10:00 a.m.

#### Report from Cultural and Historical Affairs Committee (CHAC)

Ms. Olmstead, Chair of the Committee, was recognized. She advised that the Committee met on April 11, 2017. The members finalized plans for a Cultural Evening to be held next Tuesday evening, April 25, 2017 at 7:00 p.m. This will be a presentation by Teddy Roosevelt impersonator, Brian Mulligan. Initial plans to create a Handbook for future docents was discussed. This will be an ongoing project with input from other towns as well as gathering information via the internet. Additional input for Periers Day 2017 was discussed. The itinerary for the days our French visitors are here was finalized and other ways to enhance the visit were considered. An update regarding the Dinker Cottage was given. This past Wednesday Mr. and Mrs. Clem Edgar along with members of CHAC went to Dover to have the nomination for the cottage to be included on the National Registry of Historic Places presented to the Delaware State Preservation Review Board. A few local citizens have worked with Madeline Dunn, Registry Coordinator for the state, for the past year gathering and compiling all necessary documents. The nomination was unanimously approved by the Board and will now go to the National Park Service for final approval. Next Tuesday, CHAC will conduct another trolley tour of the Bethany Beach Heritage Trail for members of the OSHA Institute of Lifelong Learning. Contact has been made with Elaine Faye, a professional Museum planner who previously worked in the DC area. She has locally worked with Lewes, Rehoboth and Ocean City in developing

museums. Mr. Gravier and Ms. Olmstead met with her to discuss the process as the Town moves forward once the cottage is ready.

#### Report from Fourth of July of Parade Committee

Mr. Frye advised that the Committee met on April 5, 2017. Bands are scheduled, T-shirts and bicycle decorations have been ordered. T-shirt sales will begin at the Annual Seaside Craft Show and will be sold nightly beginning on May 27, 2017, at the bandstand. A group of individuals have volunteered to serve as parade marshals. They will enforce parade policies that have been established for safety reasons.

#### Report from the Planning and Zoning Commission

Mr. Killmer advised that the Planning and Zoning Commission has been working on updating the Town's Comprehensive Development Plan. The members are down to the last 30 pages. A public hearing will be scheduled when the update is complete.

#### Report from the Town Manager

Mr. Gravier gave the following report:

##### Summer Season

This is the time of year when there is much going on behind the scenes as staff is preparing for the summer season.

##### Water Department

Billing was delayed by a few weeks because of the work on South Atlantic Avenue. Everything is now caught up and the last of the bills are out now.

The aerator that we recently had constructed at the water plant (2008/2009) has suffered a catastrophic failure. We are waiting on the company that built the aerator to evaluate the problem and will know more when they do. To date, the lack of an aerator has not been a problem because, for redundancy, the new tower has an aerator feature built in that is used when water is introduced into the tank. Water analysis indicates the plant is working as it should and the loss of the aerator is not impacting water quality.

#### Administrative Services/Code Compliance

##### Trolleys

John Apple has continued to tweak the Trolley tracking application. It will be a usable positive addition to the trolley experience in Bethany Beach. We will post information on how to access the tracking application at each pickup location. In addition, we have printed 2,500 brochures that we will distribute Town wide (realtors, stores. etc.) showing the route, schedule and how to access the tracking information.

##### Maps

Staff is working to create an understandable and accessible map that clearly delineates who can park where and for how long and for how much, using our GIS capabilities. We will try to make that information easy to find on the website. While we are doing that we will also try to show handicap spaces and accessible beach ramps. We hope to make this info available with one click on the

homepage. Other interesting and useful maps are in development and should be on the web by summer.

### Tidal Project

Staff is working to develop an interactive tidal flooding map of the Town that will show what areas are flooded in Bethany at the actual time they are flooded. In other words, you will be able to sit in your home and know first-hand to what extent and where the Town is flooded during a storm event. Again, hopefully this will be available by summer.

### Public Works

#### New Boardwalk Lights

New conduit is being run under the boardwalk to replace the old cabling that supplied electricity to the existing lights on the Boardwalk. We are hopeful that Delmarva Power and Light will install the new lights on the existing poles as soon as the new conduit is run and well before summer.

#### Blackwater

Preliminary work at the Blackwater property has begun. You will remember that the steel for the building was delivered last month. Driveways are being roughed in and work on the site that will receive the massive concrete pad that supports the building has begun also. The Town has received the Building Permit from the County and we look to have a usable storage facility long before summer is over.

#### Discussion, Consideration, and Possible Vote on a Resolution to Schedule a Public Hearing to be held at 1:00 p.m. on May 19, 2017, to Discuss and Possibly Vote on a Resolution to Open Access, As Necessary, of a Town-owned Alley Extending from Connor Lane at Delaware Route 1 to Pennsylvania Avenue

Mr. Killmer advised that he was approached by a property owner (Mr. Brad Connor) who would like to see the Town-owned alley extending from Connor Lane at Delaware Route 1 to Pennsylvania Avenue opened for pedestrian traffic only. The Town Charter outlines a process that must be followed in order to make this happen. One step is to schedule a public hearing to discuss the proposal and all affected property owners must be notified of the hearing. Mr. Killmer made a motion to authorize the Town Manager to initiate the process to open the alley including scheduling a public hearing on May 19, 2017 at 1:00 p.m. Mr. Healy seconded the motion.

Ms. Hardiman asked if the property owners that made the request gave reasons why they wanted the alley opened.

Mr. Killmer stated that they would like their renters to be able to avoid walking down Route 1 to get to the beach. It would be safer for them to walk behind the properties on the Town-owned alleys.

Ms. Hardiman said that while the Charter authorizes the Council to open an alley whenever the Council deems it to be in the best interest of the Town, that she could not articulate a reason why opening the alley would be in the best interest of the Town. She felt that the renters had a wide shoulder on Route 1 to walk on, while opening the alley could create a safety issue for property owners who live west of Route 1, off Pine St. Seeing the alley open between Route 1 and Pennsylvania Avenue, they may cross Route 1 in the middle of the street, without using the Central Avenue crosswalk. In addition, opening the alley seems like a convenience for a few people and it will hurt other's ability to enjoy the privacy of their properties.

Mayor Gordon agreed with Ms. Hardiman. He also expressed concern about the precedent that would be set. He questioned how many other alleys in Town could potentially be opened and who would pay for the costs involved. He added that there is no significant benefit to the Town.

Mr. Kilmer advised that there are no costs involved. Removing a couple of bushes is all that is needed. Today, the Town Council members are being asked if they would like to schedule a public hearing on the issue.

Mr. Morris was of the opinion that a nuisance would be created for those that live behind the alley. Their privacy would be gone.

Ms. Joan Kennedy, property owner, was recognized. She hoped that the alley would be opened. She explained that people that rent the house behind hers cut through her property and cause damage to the house and her cars. If the alley is opened, it will keep renters off her property and let the people who rent the Connor properties safely get to the beach. She was of the opinion that the neighbors might want to work together on this issue.

Mr. Eugene Arbaugh, property owner, advised that there is only one family that made this request. They are major renters. If the alley is opened, everybody will use it. It will not be limited to those that rent the Connor properties. This will also cause an increase in traffic and trash. Properties values along the alley will be devalued.

Ms. Raina Fishbane, property owner, was recognized. She expressed concerns about how opening the alley would affect the use of her property and privacy. She also raised concerns about littering and property damage that would happen by those walking through the alley. The convenience of having the alley opened for the Connor family does not outweigh her concerns. She asked the Town Council to focus on more important issues in the Town such as flooding. Let the property owners along the alley take care of the property without it formally being opened.

Ms. Tempe Steen, property owner, was recognized. She advised that approximately 30 years ago, she worked with the Town attorney to close all Town-owned alleys for safety reasons. If one is opened, it become harder and harder to keep others closed. This is a slippery slope and she encouraged the Town Council to keep the alley closed.

Mr. Killmer recommended that the neighbors behind the alley be given an opportunity to address this issue and that no formal action be taken by the Town. There was no objection.

Mayor Gordon called for a vote on the pending motion to hold a public hearing on the issue. The motion was denied. There will be no formal action taken by the Town with regards to this issue.

Discussion, Consideration, and Possible Vote on Scheduling a Special Meeting to Review and Determine an Official Town Position on Delaware House Bill #130 Which Would Apply an 8% Lodging Tax on Short Term Rental Vacation Units (e.g. Homes, Condos, Apartments) That are Rented for 120 Days or Less

Mayor Gordon gave a summary of Delaware House Bill #130. Following some discussion, Town Council members agreed that a special meeting should be held for the Council to take an official Town position on Delaware House Bill #130. Mayor Gordon made a motion to hold the special at 10:00 a.m. on Friday, April 28, 2017. Ms. Hardiman seconded the motion and it was unanimously approved.

It was agreed that all local real estate agencies should be notified of the meeting.

Discussion, Consideration, and Possible Vote on an Ordinance to Amend Section 425-87(B) of the Bethany Beach Town Code to Provide That Properties Less Than 5000 Square Feet In The C-1 Downtown Commercial Zoning District Are Exempt From Off-Street Loading Requirements

Mr. Killmer read the title and synopsis of the proposed ordinance. He suggested one minor word change to the ordinance to clarify its intent. The ordinance, as amended, would read: *An Ordinance to Amend Section 425-87(B) of the Bethany Beach Town Code to Provide That Properties With 5000 Square Feet (or less) In The C-1 Downtown Commercial Zoning District Are Exempt From Off-Street Loading Requirements.* He advised that the words “or less” should be added to the ordinance. There were no objections.

Mr. Killmer made a motion to adopt the ordinance as amended. Ms. Hardiman seconded the motion and it was unanimously approved.

Discussion, Consideration, and Possible Vote on an Ordinance to Amend Section 425-90 of the Bethany Beach Town Code to Clarify Language Relating to Variance Requests

Mr. Killmer read the title and synopsis of the proposed ordinance. The proposal simply eliminates the words “*but not loading facilities*” from Section 425-90 of the Town Code so it clearly articulates the Town Council’s legislative intent so that future construction complies with that intent. He made a motion to adopt the ordinance as presented. Ms. Hardiman seconded the motion and it was unanimously approved.

Discussion, Consideration, and Possible Vote Regarding the Re-Allocation of Funds in the Fiscal Year 2017 General Fund and Operating Budget and Water Fund Capital Budget

Mr. Morris advised that this amendment is to re-allocate the previously approved fiscal year 2017 General Fund Operating Budget and Water Fund Capital Budget. During the course of the fiscal year, several projects were added that were not included in the original budget and some costs significantly exceeded the amount originally estimated. Cost savings were found in several other areas. This amendment moves excess revenue to the areas where it was needed and does not alter the budget in total. Mr. Morris made a motion to approve the re-allocation of funds in the Fiscal Year 2017 General Fund and Operating Budget and Water Fund Capital Budget. Ms. Hardiman seconded the motion and it was unanimously approved.

Discussion, Consideration, and Possible Vote Regarding Adjusting the FY 2017 Special Fund Budget to Match Grant Funds Actually Received by the Town

Mr. Morris advised that the Town applies for grant funds from Federal, State, and other sources. This Fiscal Year 2017 budget was prepared over a year ago using estimates of the minimum grant funding we expected to receive during the year. Grant funds actually awarded to the Town have exceeded these early estimates. This amendment will adjust the revenue and expense budget of the Town’s Special Fund to match the grant funds that were awarded to the Town during the past year. He made a motion to adjust the FY 2017 Special Fund Budget to match grant funds actually received by the Town. Ms. Hardiman seconded the motion and it was unanimously approved.

Discussion, Consideration, and Possible Vote on the Town’s Investment Policy

Mr. Morris advised that the Town’s Investment Policy is reviewed and approved by the Town Council annually. It has been in place since March 2005 and was last revised in April 2015. He made a motion to approve the Policy as presented. Mr. Killmer seconded the motion.

Mr. Healy stated that he would like to make an amendment to the policy. He wanted to add Delaware Bonds to Item #7 and transfer the investment (of the Town-owned parking lot east of Town Hall) from the General Fund to the Water Fund.

Mayor Gordon recommended that the Town Council approve the Investment Policy as written and have the Budget and Finance Committee Review Mr. Healy's suggestions at their next meeting. All agreed.

Mr. Killmer recommended changing the wording in Item #3. The term "Finance Supervisor" should be changed to "Finance Director". There was no objection.

Mr. Morris changed his motion. He moved approval of the Town's Investment Policy as amended. Mr. Killmer seconded the motion and it was unanimously approved.

Discussion, Consideration, and Possible Vote on Contract Submitted by Dave Dunn Contractors to Replace Roof at the Comfort Station for the Amount of \$54,750

Mr. Graviet asked for a motion to approve the contract submitted by Dave Dunn Contractors to replace the roof at the comfort station for the amount of \$54,750. A total of five bids were received. This bid was the middle one received. It is being recommended based on the contractor's experience. Mr. Killmer so moved. Mr. Morris seconded the motion and it was unanimously approved.

Discussion, Consideration, and Possible Vote on Contract Submitted by Paul's Paving to do Site Work Construction at Blackwater Property for the Amount of \$162,295.08

Mr. Graviet asked for a motion to approve the contact submitted by Paul's Paving to do site work construction at the Blackwater Property for the amount of \$162,295.08. This is the low bid and the Town has experience with this contractor. Mr. Killmer so moved. Mr. Morris seconded the motion and it was unanimously approved.

Discussion, Consideration, and Possible Vote on Contract Submitted by Pyro Engineering for 2017 July 4<sup>th</sup> Fireworks Display for the Amount of \$30,000

Mr. Graviet advised that he is recommending that the Town switch companies this year for the July 4<sup>th</sup> fireworks display. The company used last year fell short on expectations. He recommended that the Town Council approve a contract submitted by Pyro Engineering for the 2017 show for the amount of \$30,000. Mr. Healy so moved. Ms. Hardiman seconded the motion and it was unanimously approved.

Discussion, Consideration and Possible Vote on a Contract for the Amount of \$85,125 from Oasis Design Group to Provide Construction Documents that will Allow the Town to Work in Multiple Phases Over a Period of Time to Construct Central Park Using the Final Concept Presented to and Accepted by the Town Council on October 21, 2016. The Construction Documents Do Not Include Design Work on the Pavilion and Pergola Selected by the Council as Features of the Park. Design and Engineering on the Pavilion and Pergola will be Done at a Future Time as Determined by the Council

Mr. Graviet explained that the contract presented from Oasis Design for the amount of \$85,125 would provide the Town with construction documents that will allow the Town to work in multiple phases over a period of time to construct Central Park using the final concept approved in October 2016. This will allow the Town to begin construction on the park in phases. He asked for a motion to approve the contract. Ms. Hardiman so moved. Mr. Morris seconded the motion.

Mayor Gordon asked if this means we will be finished with Oasis Design Group.

Mr. Gravier explained that the Town will continue to ask Oasis Design Group for some engineering oversight on aspects of the park. We will ask them for advice on design work, but we will have all the documents necessary to get pricing on that design work. Hopefully, construction can begin before the beginning of summer.

Mr. Healy advised that he would like to table this item until more information is provided regarding other pending projects in Town. There needs to be a focus on funding for other projects and/or the order we are going to do them. He asked where all of the funding coming from for pending projects.

Mr. Gravier explained that this step of the process is required before we can ascertain the costs to move forward with the park project.

Hearing no additional comments, Mayor Gordon called for a vote on the pending motion. The motion was approved with a 5-1 vote. (Mr. Healy voted against the motion).

Respectfully submitted:

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Lisa A. Kail, MMC  
Administrative Assistant/  
Town Clerk