

**TOWN OF BETHANY BEACH
TOWN COUNCIL REGULAR MEETING
JUNE 21, 2019 – MINUTES**

The Bethany Beach Town Council held a regular meeting at 2:00 p.m. on June 21, 2019, in the Town Meeting Room, 214 Garfield Parkway, Bethany Beach, DE 19930. Members present for the meeting were: Lew Killmer, Mayor, who presided; Rosemary Hardiman; Jerry Morris; Faith Denault; Joseph Healy; Bruce Frye; and Patrick Sheplee.

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

Approval of the Agenda

Mr. Sheplee made a motion to approve the agenda. Ms. Hardiman seconded the motion and it was unanimously approved.

Approval of minutes of regular meeting held on May 17, 2019

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

Approval of Financial Report

Mr. Morris advised that this report covers the fiscal year-to-date performance through May 31, 2019. The Town is 16% into this fiscal year.

Operating Budget Revenues

The Town has collected 42.8% of the budgeted revenue compared to 42.1% at this time last year.

Operating Budget Expenses

The Town expended 16.3% of its budgeted expenses compared to 14% expended this time last year.

Recognizing that this report is subject to audit, Mr. Morris made a motion to accept and approve this unaudited report. Mr. Sheplee seconded the motion and it was unanimously approved.

Announcements/Recognition of Visitors and Public Comment

- Mr. James McGrath, property owner, was recognized. He explained that there is a foul odor coming from the Sussex County Pumping Station located at Tingle Avenue and Route 26. The odor is very strong and the smell fills the neighborhood. Mr. McGrath asked the Town Council members if they were aware of this situation.

Ms. Hardiman advised that she knew the problem existed a couple of years ago, but she thought that it was resolved.

Mr. Gravier explained the problem did go away and recently resurfaced. He further advised that staff has been in contact with the county administrator. This is a county building and a county problem. He will reach out again.

Mr. McGrath advised that he has been told that the odor is a by-product of hydrogen sulfide, which is a poisonous and flammable gas. He is asking the Town to help rectify this problem.

Mayor Killmer stated that when this became a problem the first time, he talked to the county administrator and the county engineer. He said that he would approach them again to try and get it fixed. He feels it is unacceptable. He added that he would also talk to the President of the County Council.

Mr. Gravier added that the Town Attorney may need to get involved again. He was able to resolve the issue the first time. However, when it was resolved, Mr. McGrath began to complain about the actual design of the County's pumping station and its approval process.

Report from Fourth of July of Parade Committee

Mr. Frye explained that the Parade Committee is ready for the parade. He offered thanks to the many volunteers and staff members that have helped prepare for the event.

Report from the Planning and Zoning Commission

Mr. Michael Boswell, Chairman of the Commission, reported that the members met last week and approved plans for Planned Residential Development (PRD) for a property identified as Lot 5, Block 33, at 857 Garfield Parkway, Bethany Beach, DE. The development will have five homes and will be called Serenity at Bethany.

Report from the Town Manager

Mr. Gravier gave the following report:

Central Park

ADEL Construction has moved the start date for the park construction to July 1.

Franchise Agreement- Mediacom

The Town is approaching the end of the franchise agreement it has with Mediacom. As it did in 2013 the Town is joining forces with Millville, Ocean View, and South Bethany Beach in discussing our options with legal counsel.

Meeting with COMCAST

Staff met with a number of representatives from Comcast's Commercial Division this week. Preliminarily, it seems as if Comcast will be installing fiber optic lines to our commercial areas in downtown Bethany and on Route 26 in the fall for internet and voice service! This is a change in their policy. We are still told, however, that their internal policy precludes them from entering a community to provide residential

internet/voice where another provider holds a cable-TV franchise. There is some feeling that Comcast may be slowly changing this policy and we are certainly pushing for this.

Collins Street

In January when the Town Council approved the construction of the pathway on Collins Street, they also approved the installation of additional stop signs, speed bumps and roadway striping. We have installed temporary speed bumps, (we will install permanent bumps as part of our project in the fall), we have added additional stop signs including a three-way at the water plant, and may wait for fall for the edge striping as recommended by Kercher Engineering.

At this time, Ms. Hardiman took over as Chair of the meeting.

Discussion, Consideration, and Possible Vote on Setting a Date for the Town Council Election – Saturday, September 7, 2019 – 12:00 Noon to 6:00 p.m.

Mr. Killmer made a motion to hold the Town Council election on Saturday, September 7, 2019 from 12:00 Noon to 6:00 p.m. He noted that anyone wishing to file as a candidate for the election must file a written Notice of Intention (Application for Candidacy) in the Town Manager's Office at Town Hall no later than 4:30 p.m. on Wednesday, July 24, 2019. Mr. Sheplee seconded the motion and it was unanimously approved.

Discussion, Consideration, and Possible Vote on Appointments to the Election Board and Election Officers

Mr. Killmer made a motion to approve the following individuals to serve as members of the Election Board and as Election Officers. Mr. Morris seconded the motion and it was unanimously approved.

Election Board

Charles McMullen, Chair
Chris Aumiller
Phillip Rossi

Election Officers

Joan Thomas, Inspector
Cathy Davis, Judge
Suzanne Evans, Judge
Lonny Moore, Judge
Susan Street-Wingate, Judge

Discussion, Consideration, and Possible Vote on Setting a Date for the Town Council Organizational Meeting – Monday, September 16, 2019 at 10:00 a.m.

Mr. Killmer made a motion to hold the Town Council Organizational Meeting on Monday, September 16, 2019 at 10:00 a.m. Mr. Morris seconded the motion and it was unanimously approved.

Mayor Killmer resumed Chair of the meeting.

Discussion, Consideration, and Possible Vote on a Resolution to Approve the Final Annual Assessment List as Presented on June 21, 2019

Mr. Morris made a motion to adopt a resolution to approve the Final Annual Assessment List as presented. Ms. Denault seconded the motion and it was unanimously approved.

Discussion, Consideration, and Possible Vote on a Supplement to the FY 2020 General Fund Capital Budget of \$223,000 for Contract Administration of the Central Park Construction Contract

Mr. Gravier advised that the Town Council recently approved a contract submitted by A-Del Construction for Earthwork, Utilities, Hardscape Features and Landscape Plantings for Central Park for the Amount of \$1,113,985.

He advised that a supplement is needed to the budget to cover contract administration of the project. The project administration and oversight includes: staff on site to confirm that the contractor is performing work according to project plans and specifications, review of billing on a monthly basis, review of project schedule, review of material submittals, and to insure materials meet requirements of project plans and specifications. It also includes a review of possible changes that may become necessary.

Mr. Morris made a motion to approve a supplement to the FY 2020 General Fund Capital Budget of \$223,000 for contract administration of the Central Park construction contract. Mr. Sheplee seconded the motion and it was unanimously approved.

(First Reading) An Ordinance to Amend Chapter 223 (Beach) Article II (Unlawful Activities) by adding Section 223-9 (Beach Access) limiting dune access to Town designated pedestrian and vehicle crossovers (Council may elect to Waive the First Reading Pursuant to Chapter 45.5 of the Town Code)

Mr. Gravier explained that the Town does not have an ordinance that limits dune access. The Town has always referenced the state code. Now that we have code enforcement officers working on the beach, staff thought it was time to have our own ordinance on the books. The proposal simply prohibits a person from being on or damaging dunes. He recommended adoption of the ordinance and that the first reading rule be waived.

Ms. Hardiman made a motion to adopt an Ordinance to Amend Chapter 223 (Beach) Article II (Unlawful Activities) by adding Section 223-9 (Beach Access) limiting dune access to Town designated pedestrian and vehicle crossovers (Council may elect to Waive the First Reading Pursuant to Chapter 45.5 of the Town Code) and to Waive the First Rule Pursuant to Chapter 45.5 of the Town Code. Mr. Frye seconded the motion and it was unanimously approved.

Discussion, Consideration and Possible Vote to direct the Town Manager to explore the possibility of the Town acquiring the last large parcel of open space and wetlands in Bethany Beach to preserve as a conservation area

Mr. Frye read the following prepared statement into the record:

I believe one of the many positive things that set Bethany Beach apart from so many other communities, is the strong commitment past Town Councils have had in conserving and preserving open space. From the Town's acquisition of the 26 acres the Nature Center sits on, to the 5+ acres of our future Park, Bethany Beach Town Councils have had the foresight and wisdom to invest the community's resources to make Bethany Beach a better place, not just for today, but also for the future.

Today I suggest this Council exercise the same initiative past Councils have by exploring whether it is in the best interest of Bethany Beach to acquire the last significant parcel of open space in the community. That parcel is the 12-acre piece of property located immediately east of Jennmar Way with 380 feet of frontage on Delaware Route 26. The property is 500+- feet wide at its midpoint and approximately 1700' feet deep and borders the loop canal. It is owned by Stanley Walcek.

I think we all know that over the years, Mr. Walcek has considered a number of different development scenarios for this property, but has not been able to overcome regulatory issues to develop the property the way that he had hoped. The difficulties Mr. Walcek has encountered are directly related to the fact that the entire 12 acre parcel is regulated in varying degrees as some form of Federal or State protected wetland.

And even though there is an absolute ban on construction for a large segment of the property, there is a significant area that could be developed, despite its designation as a "Nationwide Wetland" by the federal government. Mr. Mayor, in my mind, and for this fact alone, the preservation of the entire parcel as a conservation area, precluding the development of these wetlands forever in our community, make the acquisition of this parcel worthy of Council consideration. But maybe more importantly we all have recently seen the incredible ingenuity employed by a local developer on Delaware Route 1 south of the Indian River Inlet. The developer was able to bypass regulatory review by creating a "boardwalk" street to reach homes on pilings. That same strategy, or some variation of it could be used to develop the Walcek property.

Mr. Frye made a motion to have the Town Manager proceed to see if there is any interest from Mr. Walcek to sell his property. Ms. Hardiman seconded the motion.

Ms. Hardiman stated that one of the purposes of this conversation is to try to gauge the interest of the entire community is in acquiring the wetlands property for preservation, because some may look at the acquisition as benefitting mostly those who live north of Route 26 and Garfield Parkway.

In explaining the importance of the wetlands she referred to the record of a hearing held by the Delaware Department of Natural Resources and Environmental Control (DNREC) in March 2016, in response to an application from Mr. Walcek to fill in 1.92 acres of federally regulated non-tidal wetlands in order to construct six multi-family residential buildings. The DNREC Secretary relied on that record in issuing a decision in September 2016.

Ms. Hardiman summarized the following testimony of a hearing witness and quoted a post-hearing letter, which were both included in the Hearing Officer's Report, dated September 1, 2016, to demonstrate that these wetlands affect not just Bethany Beach, but the entire Inland Bays.

The testimony was that of Chris Bason, Executive Director of the Center for Inland Bays,

. . . who opposed the loss of the Wetlands, which he described as the last wetlands around. He commented that the Project was inconsistent with the Regulations and the Town's Comprehensive Plan, which seeks to preserve wetlands in order to reduce flooding. He also commented [that] the loss of the Wetlands would reduce the ability to reduce nitrogen and phosphorous discharges into the Indian River Bay and the Little Assawoman Bay, which are impaired because of high nitrogen and phosphorous levels. He further noted that these waters are classified as Exceptional Recreational and Ecological Significance ("ERES"), which he stated affords them more regulatory protection from any pollution. [See page 10-11, *Hearing Officer's Report*.]

The post-hearing letter, dated March 22, 2016, was from the U.S. Environmental Protection Agency (EPA), which the Hearing Officer summarized, in part, as follows:

The EPA comments strongly oppose any USACE approval of the permit to fill the Wetlands to build the Project. The comments set forth the EPA's position that the Wetlands are valuable forested wetlands and are an important part of the Delaware Inland Bay Watershed, which is one of 28 National Estuary Programs designated an 'estuary of national importance.'

The EPA comments went on to state, in part: . . . They provide a suite of ecological functions which are not only necessary locally but also to maintaining the quality of the Inland Bays watershed, including providing habitat for wildlife, food chain production, flood storage, groundwater

recharge, nutrient recycling, sediment transport, and organic matter input and processing.

[See page 12, *Hearing Officer's Report.*]

Ms. Hardiman concluded by saying that these two comments demonstrate the importance of these wetlands not only to those living north of Route 26 and Garfield Parkway, but to the Town of Bethany Beach and the entire Inland Bay Watershed.

Mr. Patrick McGuire, President of the Bethany Beach Landowners' Association, was recognized. He read the following prepared statement into the record:

I am today speaking with the unanimous approval of the BBLA Board of Directors to address New Business item G on the agenda, that is: exploring the possibility of the Town potentially acquiring a large parcel of open space and wetlands area in Bethany Beach to preserve as a conservation area. The BBLA Board supports this initiative.

We all know from personal experience, that our tidal, non-tidal and storm flooding conditions are a serious and regularly recurring problem. This is especially true of all the areas north of Garfield Parkway. Conditions have worsened because the speed and power of the Loop Canal water flow has eroded the dirt banks and submerged significant areas of habitat adjacent to the canal. These water flow problems are damaging and removing portions of our wetlands that will not return.

Our wetlands serve a vital purpose in controlling flood waters, filtering that water and providing a habitat for wildlife. The wetlands are our natural first responders, our first defenders against flooding. Any loss of wetlands will be felt very quickly by the adjacent properties and shortly thereafter by a wider area of the Town.

Several BBLA Board members have taken a preliminary look at publicly available maps and aerial photographs, and talked to members and other residents regarding flooding issues and potential relationships to the loss of wetlands in our community. We believe that there is an urgent need to more thoroughly assess the conditions of remaining wetland areas in light of the important functions they provide, and discuss ideas regarding appropriate ways to preserve and protect them.

The economic impact of flooding is already being felt, as more insurance carriers increase premiums or step out of the market. Flooding and standing water afterwards can also adversely affect some businesses as well as homeowners.

You, and previous Council Members, are to be commended for every action you take to preserve wetlands in our Town and for exploring acquiring

wetlands tracts. The BBLA board encourages the Town Council to explore solutions to wetland preservation, including possible purchase of wetlands thereby preserving this critical asset.

We will inform our 1,266 Bethany Beach member households of this and any other initiative to protect our wetlands areas. We stand ready to help to the extent we can. The BBLA shares the same objective as the Town Council, to act in the best interests of our Town.

Thank you for this opportunity and your attention to this vital issue.

Mr. James McGrath, property owner, asked how many lots Mr. Walcek can get building permits for.

Mayor Killmer explained that a definite answer is not known, but there is a possibility that four lots are buildable.

Mr. Graviet advised that it remains to be seen at this time. It depends on how he offsets his surface coverage.

Mr. McGrath asked if there have been any discussions with Mr. Walcek yet regarding the sale of his property.

Mr. Graviet advised that there has not been any official discussions.

Mayor Killmer asked for a vote on the pending motion. The motion was unanimously approved.

Discussion, Consideration and Possible Vote on Going into Executive Session to Discuss Personnel Matters in which the Names, Competency and Abilities of Individual Employees

Mayor Killmer asked for a motion to go into Executive Session to Discuss Personnel Matters in which the Names, Competency and Abilities of Individual Employees. Mr. Sheplee so moved. Mr. Healy seconded the motion and it was unanimously approved.

Mayor Killmer recessed the regular meeting at 2:56 p.m.

Mayor Killmer called the Town Council back into open session at 3:30 p.m.

Mr. Sheplee made a motion to approve the personnel actions discussed in the Executive Meeting. It was seconded by Ms. Denault and unanimously approved by Council.

Ms. Hardiman made a motion to close the meeting. It was seconded by Mr. Frye and unanimously approved by Council.

The Mayor closed the meeting at 3:35 p.m.

Respectfully submitted:

Lisa A. Kail, MMC
Administrative Assistant/Town Clerk