

**TOWN OF BETHANY BEACH
TOWN COUNCIL REGULAR MEETING
FEBRUARY 15, 2019 – MINUTES**

The Bethany Beach Town Council held a regular meeting at 2:00 p.m. on February 15, 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; Joseph Healy; Bruce Frye; Patrick Sheplee and Faith Denault. (*Jerry Morris was excused*).

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

Approval of the Agenda

Mr. Healy moved approval of the agenda. The motion was seconded by Ms. Hardiman and unanimously approved.

Approval of minutes of regular meeting held on January 18, 2019

Ms. Hardiman made a motion to approve the minutes. It was seconded by Mr. Healy and unanimously approved.

Approval of minutes of special meeting held on January 18, 2019

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

Approval of minutes of special meeting/workshop held on January 23, 2019

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

Approval of Financial Report

Mr. Fulton Loppatto gave the report in the absence of Councilman Jerry Morris.

Mr. Loppatto advised that this report covers the fiscal year-to-date performance through the month of January.

Operating Budget Revenues

The Town is ten months into fiscal year 2019. The Town has collected 99.4% of the budgeted revenue compared to 104.5% at this time last year.

Operating Budget Expenses

The Town expended 80.7% of its budgeted expenses compared to 80.0% expended this time last year.

Recognizing that this report is subject to audit, Mr. Loppatto asked that the Council accept and approve this unaudited report. Mr. Sheplee so moved. Mr. Healy seconded the motion and it was unanimously approved.

Report from Audit Committee

Mr. Chuck Peterson, Chairman of the Committee, reported that the members met on January 25, 2019 and finalized the audit report for 2018, created and approved an audit plan for 2019, and schedule for the external auditor. There were no findings but minor recommendations. Last year, every month, all procurements, expenditures, and bank accounts were reviewed. That plan will continue for this year. Members reviewed infrastructure projects (Atlantic Avenue), medical reimbursements, new hire procedures, account clerk procedures, parking permit sales and reconciliation, payroll procedures, property tax, trolley fares and revenues, parking revenue, budget revenue and any event expenses in conjunction with contractual purchasing. The plan for 2019 is to cover the same areas as well as procedures for departing employees.

Report from Cultural and Historic Affairs Committee

Ms. Carol Olmstead, Chair of the Committee, advised that the members met on February 12, 2019. There are two upcoming cultural evenings, one on April 9, 2019, presenting Historic Movie Theaters and May 7, 2019, presenting the importance of our dunes. Further editions had to be made to the Heritage Trail Brochure. The Dinker Cottage located on Atlantic Avenue is set to be demolished, therefore it will need to be removed from the brochure. The interior of the Dinker-Irvin cottage is almost completed.

Report from the Planning and Zoning Commission

Mr. Killmer advised that at its January meeting, the Planning Commission approved an application to combine 515 and 517 Laurma Lane, Lots 52 and 53, Block 142 into one parcel.

Report from the Town Manager

Mr. Gravier gave the following report:

Comfort Station

Architects/engineers from Davis, Bowen and Friedel, Inc. formalized a proposal for design and bid work for the Comfort Station redesign. It was received too late to place on this agenda and it will be our March agenda for council consideration.

Park

The Kercher Group is working on the bid package for the park and we anticipate that we will be advertising the project for bids in the next several weeks. We anticipate that there will be work on the park during the summer months and we look for a completion of the project in the fall.

Rainwater

A new roof on the Town Center redistributed rainwater to the front of the building and onto Garfield Parkway from a downspout that was installed under the sidewalk. The storm-water was sitting in a fairly large puddle 30 to 40 feet in diameter. This went from a minor problem to a major one with winter because any precipitation accompanied by freezing temperatures created a small skating rink and as fate would have it the ice was directly under our handicap parking spaces in that area. We have been able to redirect the storm-water runoff to an existing grate on Garfield Parkway but that required the removal of pavement, the installation of pipe, and repaving.

Loop Canal

Contracts have been signed to bulkhead the street-ends of Third Street and Fourth Street, which are Town-owned property and are eroding into the canal they abut and contributing to the blockage of the canal in that area. Work will begin in the next few weeks

Riprap work on the north side of the Loop Canal is supposed to begin this week but the contractor is behind schedule because of all the rain we have seen this winter.

Discussion, Consideration, and Possible Vote regarding implementation of the recommendations contained in the 2017 Traffic Calming Study by the Kercher Group concerning Collins Street, to include: construction of a five-foot wide pedestrian pathway on the south side from Half Moon Drive to Kent Avenue; installation of stop signs and permanent speed humps; and edge line pavement striping.

Mayor Killmer advised that we have reached the new business portion of today's agenda and before the Council considers this item, he reviewed the ground rules for how we will proceed with this agenda item.

He read the agenda item into the record and noted that since Mr. Gravier placed this item on our agenda, he may brief the Council regarding the issue. He will then ask the Council for a motion and a second to move this item forward for Council discussion and consideration.

If the item receives a motion and a second for consideration, the Council will then have a preliminary discussion regarding the item. After that preliminary discussion, we will ask anyone who would like to comment to sign-up on the form at the rear of the room.

We would remind you that on January 18, 2019, we held a Public Hearing where 23 people had an opportunity to speak. Council members who were not able to attend that meeting have watched the video of the meeting. Everyone at the Council table is aware of the public comments and written submissions regarding a pathway on Collins Street.

Mayor Killmer turned the meeting over to Mr. Gravier.

Mr. Gravier read the following into the record:

The growth in southeastern Sussex County and the popularity of Bethany Beach as a vacation destination and destination for day trippers has been astronomical in the last few decades.

In the past twelve years, this concern has led the Town Council to commission two separate transportation reviews that focus on pedestrian safety in the last 12 years.

*Both reviews were performed by nationally respected engineering firms, the first performed in 2005 by JMT Engineering, and the other in 2017 by the Kercher Group. The JMT study was an extensive analysis of the **entire** Town that cost \$250,000. And the Kercher Group study, which focused on a half dozen problem streets identified by the Town, at a cost of \$10,000. The Council has reviewed both of these studies.*

Both studies collected traffic counts and data from Collins Street. The 2005 JMT study collected traffic and pedestrian counts from the summer of 2004. And the Kercher study reviewed traffic data from May and June of 2014, 2015 and 2016. Pedestrian and cyclist observations were made first hand by Kercher staff during the summer of 2016.

The JMT study identified Collins as “a major pedestrian thoroughfare to the ocean” and the Kercher study calls it “a collector street for the Bethany West Community”.

In actuality Collins is a collector street for 770 homes that include Bethany West, Turtle Walk and the homes south of Collins outside of Bethany West.

*I think the best observation of the conditions on Collins was expressed by a long-time resident of Collins who spoke at our recent public hearing when he said, and I quote **“always a steady stream of children in wagons, strollers, pedestrians, bikes, and cars. There is no room on the street.”***

Because of their counts and observations both Engineering firms recommended the creation of a pedestrian pathway on Collins. There was no hesitation on the part of either firm to make other recommendations or suggest that we work to change how people think or what they do; they simply recommended a pedestrian pathway. The professionals in both firms know that Federal Highway Safety data shows that paved shoulders reduce pedestrian crashes 70% and sidewalks reduce pedestrian crashes 88%.

And neither firm suggested we create a pathway that would force people to break the law by walking not facing traffic, because both firms were aware of the Delaware code that says:

§ 4146 Pedestrians on highways; penalty.

(a) Where a sidewalk is provided and is accessible, it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway.

(b) Where a sidewalk is not available, any pedestrian walking along and upon a highway shall walk facing traffic only on a shoulder, as far as practicable from the edge of the roadway.

(c) Where neither a sidewalk nor a shoulder is available, any pedestrian walking along and upon a highway shall walk as near as practicable to an outside edge of the roadway and shall walk facing traffic.

And both firms were aware of the Delaware Department of Transportation definition, which parallels the Federal Highway Administrations, of what constitutes a sidewalk. That definition is:

192. Sidewalk— is that portion of a street between the curb line, or the lateral line of a roadway, and the adjacent property line or on easements of private property that is paved or improved and intended for use by pedestrians.

With all of this in mind and knowing of the Council's continued interest in making Bethany Beach a safer place. I asked the Kercher Group what would be the most minimal action we could take in the Town's right of way that would create a safe pathway for pedestrians. Kercher advised that although not ideal, a path of 5 feet would offer a safe space for pedestrians, but ideally a pathway would have a buffer of 3 to 4 feet between it and the roadway. Ideally the Town should use 8 to 9 feet of the community's right of way to ensure the safety of its citizens. But in an effort to cause as little dismay and disruption to the residents of Collins we asked Kercher Group to work on preliminary design for a 5-foot pathway.

To be clear the public right of way on most of Collins is 40 to 50 feet wide and the paved portion of the street varies from 20 to 22'. There is more than enough right of way on Collins for the Town to do exactly what it has just done on South Atlantic Avenue, and that is to create safe walkways on both sides of the street with some form of buffers, but again in an effort to find a palatable solution to the problem we have opted for the least we could do instead of the best that we could do. Never a good solution, but a fact I think that has somehow been lost in the conversation about the proposed pathway.

I would like the Council to consider one last piece of information:

Both studies reference a narrow roadway. The portion of Collins from Kent to Bethany West was built early in Bethany's history. The right of way deeded to the Town was 40' (narrow by comparison with most of the Town's 50' right of ways) and the road was paved at a width of 20'. When Bethany West was built, the right of way deeded to the Town was 50' and the road was paved at a width of 22 feet.

To put 20' into perspective: the average car/SUV is 6' 5" wide. Rear view mirrors add an average 16 to 20 inches to the width of a SUV and 12 to 16 inches to the average passenger car.

*If two cars are passing each other on the 20' wide portion of Collins (Collins is 20 feet wide from Fairway east to Kent) and they are driving precisely in the middle of their traffic lanes, then there is 31 inches between them when they pass and **15.5 inches between the cars and the edge of the blacktop.** 20" mirrors on an SUV or truck leave 11.5 inches to the edge of the roadway.*

There is no safe place for a pedestrian on Collins when cars are on the roadway.

The engineer's estimate for the construction of this pathway is \$125,000. If the Council approves the project, I will be back to you with an updated estimate of costs that will include pervious pavement costs. I do not believe pervious that pavement will add more than 30% to the total project cost.

I would like the Council to consider a motion that would implement the recommendations from the 2017 Kercher Group study specific to Collins: the creation of a pedestrian pathway, which would be a 5-foot walk-able surface installed immediately adjacent to the south side of the roadway, constructed of pervious pavement. Edge line striping for the entire length of Collins, additional stop signs as professional analysis warrants and the installation of two permanent speed humps between Fairway Drive and Kent Avenue.

Mr. Frye made a motion to implement the recommendations from the 2017 Kercher Group study specific to Collins: the creation of a pedestrian pathway, which would be a 5-foot walk-able surface installed immediately adjacent to the south side of the roadway, constructed of pervious pavement. Edge line striping for the entire length of Collins Street, additional stop signs as professional analysis warrants and the installation of two permanent speed humps between Fairway Drive and Kent Avenue. Ms. Hardiman seconded the motion.

Mayor Killmer asked each Council member to explain how they will vote on the proposal.

Mr. Sheplee thanked everyone who communicated with the Town regarding this issue. He stated that although he was not present for the public hearing, he watched the video and read all correspondence multiple times. All input received was considered. Although some may not agree with his position, he was firm in stating that he gave very careful consideration to this proposal. Many concerns were identified both for and against proposed improvements, primarily the pedestrian path. He found some more persuasive than others. The Town and Council has heard on multiple occasions the importance of pedestrian, bicycle, and auto safety. It is stated in our Comprehensive Plan. It is one of the most important issues to our citizens.

Mr. Sheplee explained that the proposal for improvements recommended by Kercher Group includes stop signs, permanent speed humps, and the 5' wide pedestrian path. Obviously, the path is the most controversial item. He noted that he is not a permanent resident, but he and his wife walk on Collins year-round. If the pathway is built it will not eliminate the possibility of an accident, injury, or worse on Collins Street. However, he believes it will reduce the risks. The path is not the ideal solution. It is an attempt at a compromise and to do something to improve the over-crowding on Collins Street. We can't force pedestrians to use it. But we can offer the opportunity to use it. In some ways this has been a difficult decision. It is clear the residents directly affected are opposed to the path. But, when he weighs the reasons against the path with the improvement in safety that the path will bring, safety is the most important thing. The fact that no accidents have happened yet is often brought up. He stated fact that he does not want the first to happen when he had the opportunity to possibly prevent one. He stated that he supports this proposal and urged his fellow Council members to do the same.

Mr. Healy explained that he ditto's Mr. Sheplee's concerns. He added that Collins Street is the one street in Town that makes him nervous. The proposal offers some public safety. Speed bumps and stop signs will help, but the pathway is needed. He does not want to be the person who could have done something to help prevent an accident and didn't.

Ms. Hardiman read the following statement into the record:

First, I want to thank everyone who attended the hearing that we had on January 18 and who sent in comments regarding the recommendations made by Kercher Group concerning Collins Street. Although I was present at the hearing, I listened to the recording of the hearing later and also went back through all the comment letters we had received.

There were many public comments on the issue, both for and against. It was obvious that people had given a great deal of time and thought to their submissions. I'd like to respond to a few of those now.

There were two arguments made about pedestrians. First, that there is no data to show that any pedestrians have been killed or seriously injured on Collins, so there is no compelling reason to have a separate pathway. Second, pedestrians in the road serve a worthwhile purpose in that they slow traffic down.

One commenter stated that there were only 5 reported pedestrian accidents that have occurred on Collins since 2008; none of them serious injuries; and not a one of them during the busy season. This was a reason he and others oppose a pedestrian pathway.

Regarding the first argument—the absence of so-called “crash data” is similar to that used by DelDOT for not lowering speed limits or for not putting in pedestrian signals on Kent and Route 1. It’s an argument that has been roundly criticized by citizens and yet the same argument is being used to oppose the pedestrian path on Collins.

I believe that the fact that the 5 reported pedestrian accidents occurred in the off-season (May, June, September and October) indicates that there’s even more reason to have a pathway on Collins year-round, not just during the season. Perhaps during the off-season motorists aren’t as careful. We’ve been very lucky that no one has been killed or seriously injured on Collins Street.

The second argument was that pedestrians in the roadway is a good thing because they slow down traffic. In essence the argument is that pedestrians are useful as traffic calming devices, like speed bumps, to slow down traffic on the street.

I don’t think either of these two arguments regarding pedestrians holds any weight whatsoever for public officials whose duty it is to try to provide for the safety of pedestrians. In my research on the issues, one comment regarding pedestrian pathways struck me as applicable here. The comment, in a traffic safety study, stated that sidewalks should NOT be installed as a monument to dead or seriously injured pedestrians. I strongly agree with this statement.

Another assertion made at the hearing was that alternatives were not tried following the 2008 hearing. When asked what these alternatives were, the person mentioned a lower speed limit and a one-way street to cut down on volume. The fact is that those alternatives have been considered and it was determined that they are not workable solutions to the traffic volume problem. One-way streets, as Mr. Lober explained, require another similar one-way paired street, which Collins does not have. Without going into detail, the 2005 JMT study looked at this possibility and dropped it from further study saying that while it might aid in the reduction of any cut-through traffic, it would be more detrimental to the existing

neighborhood circulation. At the hearing last month, one homeowner on Collins spoke against this option.

Lower speed limit. As explained at the hearing, the Town cannot enforce lower speed limits. However, if considered nonetheless, I believe it would have to be made part of a broader study, since there are home owners on other streets who would also want the speed limit on their streets lowered. In addition, lowering speed limits doesn't take pedestrians off the roadway.

Making Collins a "local street only" was also suggested. However, as Mr. Lober pointed out, there are problems with enforcement; we can't prevent people legally from travelling down a public street or know who lives on the street. I spoke with a representative from another beach town who said they considered this and were told that they could risk losing municipal street aid, which is a grant the state provides each year to all the municipalities to help with street maintenance and repair. In addition, I'm not sure how much traffic this would divert. The 2005 JMT study of cut through traffic reported that about 23% of cars travelling on Collins cut through from Route 26. The remaining 77% was local traffic from Bethany West.

Lower property values—this was another concern expressed. I spoke with a couple of real estate agents and, in their professional experience and opinion, sidewalks actually enhance the value of property. One of them mentioned that in showing homes in the newer communities surrounding Bethany, clients are happy to see sidewalks.

Finally, some commenters suggested that the proposed walkway could cause homeowners and pedestrians to violate two Town ordinances. Mr. Gravier has already addressed the first, that of pedestrians violating Section §227-86 of the Town Code because those walking to the beach on the south side of Collins would be walking with traffic.

With regard to the second, a commenter pointed out that Section §425-87 of the Town Code requires homeowners to have a certain number of off-street parking places depending on the number of bedrooms in a home. If the Town uses 5-feet of its right-of-way property to construct a sidewalk, the owner felt that he and others would be in violation of that ordinance because they wouldn't be able to fit as many cars in their driveways. Regarding the ordinance, it was passed in May 2014 and applies to "new construction" or enlargement in dimensions of the home after that date. In addition, I don't believe property owners can claim Town-owned property as their own in meeting the off-street parking requirements.

Is the proposed sidewalk "ideal"? In my opinion it's not. I would prefer a wider sidewalk. But the proposal tries to strike a balance between our responsibility to

do what we can to provide for the safety of pedestrians on the one hand and the desires of homeowners on the other. The proposal attempts to do this while using as little of Town-owned property as possible.

There were some positive suggestions made regarding encouraging use of the trolley and pedestrian and bicycle safety education as well as additional pedestrian signs. These are worthwhile considerations and I would support them, in addition to, and not instead of a pedestrian walkway.

Mr. Frye advised that he agrees with everyone's comments. He has heard the argument that Wellington Parkway should be done at the same time as Collins Street. Collins Street is the issue and it should be dealt with as soon as possible. The concerns about parking when weighed against safety – safety has to win. The argument that there are no accidents should not be a factor. Near misses are just as important. Near misses count in industry and hazards must be removed. He fully supported the proposal.

Ms. Denault explained that she has gone through all the data regarding the proposal. She stated that she is totally in favor of anything that lends itself to helping with the safety of residents and visitors. Although there have not been any tragedies, she does not want to see one happen. She felt the pathway was the right thing to do.

Mayor Killmer advised that he agrees with everything that has already been said and did not have any further comments.

Ms. Debbie Vest, 604 Collins Street, was recognized. She noted that nobody wants a fatality in front of their home. However, in her opinion, the Town Council's job is to focus on Pennsylvania Avenue, not Collins Street. She felt that a vote should be delayed on the pathway until other options are considered (e.g. alternatives for parking). She suggested using the South Coastal Library for parking and have the trolley stop there. She noted that speeding was a real problem on Collins Street and needed to be addressed.

Mr. Martin Decree, 549 Fairway Lane, was recognized. He was of the opinion that the pathway will encourage more people to walk on Collins Street. He questioned what will happen when pedestrians get to Kent Avenue. There is no sidewalk and no pathway. The pathway will just push the problem up to the intersection of Kent Avenue and Collins Street.

Mr. Killmer advised that will be addressed. The Town is doing this in steps and the Delaware Department of Transportation (DelDOT) has already been contacted regarding this issue.

Mr. Graviet explained that according to both JMT and the Kercher Group, the pathway will not increase the number of pedestrians. It simply would let those who use the street do so safely. The Town has no leverage with DeIDOT, and we can't ignore Collins Street to fix Kent Avenue.

Hearing no additional comments, Mayor Killmer called for a vote on the pending motion. The motion was unanimously approved.

Mayor Killmer called for a motion to adjourn. Ms. Hardiman so moved. Mr. Sheplee seconded the motion and it was unanimously approved.

The meeting was adjourned at 2:50 p.m.

Respectfully submitted:

Lisa A. Kail, MMC
Administrative Assistant/Town Clerk