

MINUTES: The regular Quarterly Meeting of the Board of Commissioners of the Town of Henlopen Acres held on Friday, October 7, 2011 at 9:15 a.m. at Town Hall, 104 Tidewaters in Henlopen Acres, Delaware.

PRESENT:

Wanda Davis	Mayor
David L. Hill	Commissioner
Frank Jamison	Commissioner
David Lyons	Commissioner
Winifred W. Kee	Commissioner
John Staffier	Commissioner
Beatrix Richards	Commissioner
Thomas A. Roth	Town Manager
Glen Mandalas	Town Solicitor
Helene Rodgville	Transcriptionist
Herb Wilgis	35 Pine Reach
Jane Wilgis	35 Pine Reach
Freddie Noland	44 Pine Reach
Eileen Clark	59 Tidewaters
Martin Clark	59 Tidewaters
Ryan Mavity	Cape Gazette

1. Call to order

Mayor Davis called this portion of the meeting to order at 9:15 a.m.

2. Approval of Minutes

Quarterly Meeting – July 8, 2011

Commissioner Lyons made a motion to approve the minutes. Commissioner Hill seconded and the motion passed unanimously.

3. Treasurer's Report – Commissioner Hill

Mr. Hill referred to the financial statements in the packet. We're in the process of completing the audit, but the preliminary information shows that our cash assets increased by about \$120,000. Mr. Hill continued that under profit and loss items, based on three months of the current fiscal year, it looks like Henlopen Acres will be on target for revenue projection. Under expenses, Mr. Hill said he was particularly concerned that the property taxes and water rental fees were down and you'll see in the Town Manager's Report there are seven outstanding property tax bills. Mr. Hill did a straight line projection on the expense side in various categories and found them to be on budget. Mr. Roth also did an analysis and he indicates also that the town should be on target. Discussion ensued.

Mr. Lyons asked who the residents were that were late with their property taxes and thought that should be read into the record: Mr. Roth stated that two people had already paid and he was down to five

delinquencies: Fulchino, 2 Pine Reach; Fennel, 12 Pine Reach; Fishbach, 67 Pine Reach; Holter, 29 Tidewaters and Carr, 8 Tidewaters.

4. Maintenance Report – Sonny McClure, Maintenance Supervisor

Mr. Roth said that Mr. McClure's Water Report is in the packet. Regarding streets, potholes are being patched and the town light posts are being painted. Mayor Davis said we have hired another full time person, with the Maintenance Department. We had just one full time person and a part time person. He's helped us before and worked part time as a security patrolman and he's also helped Sonny out when we had the hurricane clean up. He can also do carpentry work and Sonny feels that he is capable of learning the Water Department and then next August he can be enrolled in that Water Operator's class, so we would have a back up. There were no objections.

5. Security Report – Lee Stewart, Security Supervisor

Mr. Roth said that the Security report is included in the packet. In the new year we will replace one vehicle which is in the budget.

Mr. Hill mentioned that there was an act of vandalism at North Shores Marina and we think it was localized and doesn't appear to be a trend. Mr. Roth concurred that it was a single incident.

6. Town Manager's Report – Thomas Roth, Town Manager

Mr. Hill said he had two comments to direct to the Town Manager. 1.) The Comprehensive Plan: there have been three meetings of the Planning Commission. He urged the Town Manager and anything that the Commissioner's can do, to get that final draft completed and set a date for the public hearing. 2.) The Rehoboth Art League: there have been notices of two upcoming events that will probably be overflow parking; the holiday fair on November 5th and then two weeks later there's an open house. He feels the town is responsible for assuring proper parking; that our streets remain open; and that the streets remain reasonably safe based upon the circumstances. Discussion ensued.

Mr. Lyons noted that in the Town Manager's report, there were citations for parking, which apparently were not paid; one of them being a Superior Court Judge. Mr. Roth said that several were from out-of-state and Henlopen Acres has no process for tracking that down. Two were paid and there are two still outstanding; in addition to those, apparently a Judge was given a citation for parking near a tree and we received a letter on the Supreme Court Chamber's letterhead, explaining that our citation has "utterly no validity". Mr. Mandalas was asked if Henlopen Acres owns the streets, if that gives Henlopen Acres any more power or authority to control the streets and control parking in the streets. Mr. Mandalas said it was our responsibility to maintain the streets. As a municipality we have more authority than other towns, because we own the streets. We probably do have a little additional authority than other towns in the area, and nobody has a right to park on the streets.

Mr. Roth said next Thursday he's meeting with representatives of FEMA concerning reimbursement of Hurricane Irene costs. Mrs. Richards asked if he knew how much the figure was. Mr. Roth said it was less than \$2,000.

7. UNFINISHED BUSINESS

a. Amendment of §130-56 Public Hearing

Mayor Davis asked if there was any discussion on the amendment to §130-56, which was presented at the public hearing.

Mr. Hill moved that we approve the amendment to §130-56. §130-56 will be deleted in its entirety and replaced by the proposed language; the purpose being to make it clear that zoning changes are by a majority vote. We do not change the protest provisions in §130-55, so if there were a protest it still would require a 3/4 vote. Mrs. Richards seconded the motion. Mr. Staffier noted that this section applies to a number of other things, besides zoning. Mr. Mandalas said any change to any word, provision, etc., in Chapter 130; anything in the Chapter entitled Zoning, that's what this ordinance applies to. This change, as proposed, puts things back in line with the State Code. Right now the Code for Henlopen Acres is the unconventional code; it's different than any other code from any other municipality that he has dealt with. Mr. Staffier stated that he had no problem making changes being subject to a majority vote; but an actual change in the zoning district doesn't seem to him to be that bad an idea to require a super majority.

Mr. Mandalas said that there was no problem in singling out zoning changes, there could be a provision that says that any changes or amendments to Chapter 130 shall be by a simple majority vote; except that any creation of a new district or change in district for a current property would require a super majority vote. He didn't think it could be done today, because it wasn't noticed that way and the public hearing wasn't on that issue.

Mr. Hill withdrew his motion and substitute thereof, a move to table this discussion and refer it to our counsel to rewrite, and include a super majority vote for any rezoning. Mrs. Richards agreed.

b. Ratification of Amendments to §130-58

Mayor Davis said this was voted on at the last meeting and we did not have a super majority, so it's back for the Ratification. Mr. Hill moved that we ratify §130-58 for the reasons specified at the July 14th meeting. Mrs. Kee seconded. Mayor Davis explained that Mr. Hill's motion was changing the "living area" in the code to "floor area". Motion was unanimously approved.

c. §C-5 Qualification of voters

Mr. Hill stated that the voting qualifications are in the Town Charter, under C-5(d). Some of the comments received, both written and some of the earlier discussions are as follows: We also use the term Freeholder. In the current section, sub-section D, there is no residency requirement for property owners, as he read it. It says every citizen who is not a property owner, has to be a bona fide resident for one year. So whether you vote as a Freeholder or a Resident, you still have to have established a six month residency. The more complicated part is who qualifies as a Freeholder. Here they have to own property fee simple or a life estate and there has to be at least a 50% interest; otherwise the concept is of undivided interest in real property; there could be 10 people with an undivided interest in real property in Henlopen Acres. If you buy 1/10th and you live in Portland, Oregon, you might not care that much. So we're trying to pick those property owners that are going to have a real commitment and tie to what is going on in their community. It's also consistent with the second category and that's a husband and wife who hold the property as tenants by the entirety or who are grantors settler or a trustee of a trust. A lot of people use these Living Trusts; but it's more to avoid probate and perhaps tax consequences; since it's revocable; and they're there because their interests are merged. The owners and trustees are one in the same. That category gets to vote. There could be three people owning a property who do something like that. Lastly, that a property owner needs to be involved in the property; either occupy or utilize. That was the idea that someone from the property lived on the other side of the country; maybe they would not be deemed a Freeholder; that wouldn't mean that you couldn't rent it, for part of the summer, but that one, is a difficult concept to quantify. Then to make it clear, only natural persons that are qualified under Paragraphs 1 and 2 can vote; artificial entities would not be entitled to vote.

Mr. Lyons asked how many artificial entities are here in Henlopen Acres. Mr. Roth said there were three corporations, two partnerships, nine LLC's, and 55 Trusts, (20 of which are residents). Mr. Jamison asked if the 35 trusts that are not residents were included in the voting process. Mr. Hill responded that they may lose their vote; depending on what kind of trust they are. If it is a living, revocable trust, a husband and a wife, and they're both grantors; and if they put the property in trust and also serve as the trustee, they get to vote. From scanning this list, the vast majority of those 35+ trusts, are that type. If you have a different type of trust, they may not be voting.

Mr. Mandalas said that the majority of towns do not allow any type of artificial entities to vote; including trusts; but there is more and more allowance for trust voting, whereas the grantor and the settler are the same person; only because each property is typically higher value and for planning reasons that you put those properties in trust. The issue with LLC's and Corporations becomes so sophisticated; you can end up with multiple votes. Unless it was dealt with delicately in your charter, you can literally have instances where one property could have 100 votes. Rehoboth has kicked it around several times and every time they come to the conclusion that entity voting isn't good. Rehoboth doesn't allow LLC's.

Mr. Staffier says allowing entity voting has some positive attributes to it. He also thought that one of the provisions that Mr. Hill has in here was that such entity is entitled to one vote, regardless of the number of properties owned, which he thinks is definitely a good point. One concern he has is that it doesn't take much to make one entity different from another and you can have Henlopen Acres Property Trust I, II and so forth; so he was thinking we could make a motion about affiliated entities. It could be considered 10% common ownership and they would only have one vote.

Mr. Jamison thinks that certain trusts that are listed get the vote; and define the other entities, the LLC's and the corporations, as having only one vote. That way you're not disenfranchising any person and we've defined what an entity these LLC's or corporations can do. Mr. Lyons agreed but to put one caveat in there for the one person, one vote rule.

Mr. Hill said if we can get something drafted and then have a Public Hearing to get some public input. Mr. Mandalas said that since this would be a Charter change, it would have to go to the General Assembly, and they don't like entity voting.

Mayor Davis said that Mr. Mandalas would bring back something for the Commission to look at the next meeting, that doesn't permit entity voting.

d. Proposed Ordinance on payment of obligations to town

Mr. Mandalas said this would be a new provision that's added to Chapter One, which would say "No person or entity shall be entitled to any permanent license or other town approval under any chapter of this code, if such person or entity owes the Town of Henlopen Acres unpaid delinquent fees, fines, penalties, interest, taxes, liens, assessments or other financial obligations." This provides more opportunity to ensure that anything to do with the town is paid, before the town gives a permit, or other type of service.

Mayor Davis said regarding contractors that have fines that have not been paid; and if they want to renew their business license next year; would this give you an opportunity to not renew unless the outstanding amount is paid in full. Mr. Staffier asked if someone gets a fine, if they have the right to challenge the fine. Mr. Mandalas said yes. Mr. Staffier continued by saying that if somebody has a legitimate objection to a fine, it would be their burden to seek remedy in a court; this new change would not apply to fines that are under challenge by the property owner or the licensee, but if you're just ignoring it and haven't made any

efforts to resolve it, then you're covered. Mr. Hill said we need to make our enforcement policy more efficient and see if we can get away from the criminal nature of it. Discussion ensued.

Mr. Hill moved that we approve the ordinance and allow the Town Solicitor to make some editorial changes to strengthen the language. Mr. Jamison seconded. Motion passed unanimously.

e. Zwaanendael entrance beautification

Mayor Davis said that a sketch was in the packet. Mrs. Wilgis, 35 Pine Reach, said this is a beginning drawing and we would like to hear your comments. Discussion ensued on different types of plants and also doing work on the Dodd's Lane entrance.

Mr. Hill made a motion that the decision on plantings be left to Mrs. Wilgis's discretion. Mr. Lyons seconded. Mayor Davis asked for approval and the motion was passed unanimously.

8. NEW BUSINESS

a. Appointment to Board of Adjustment

Mayor Davis announced that Pat Linn definitely wanted to continue, but unfortunately she has died and Mayor Davis has spoken to someone else and she'll mention it at the next meeting. Bob Stevens has agreed to continue on with the Board of Adjustment. Mr. Lyons made a motion to approve the appointment. Mr. Hill seconded the motion. The motion passed unanimously.

b. Appointment of Environmental Approval Committee

Mayor Davis said that Ann Weir has agreed to start on November 1st and she will replace Bryce Lingo who asked to be replaced. Hetty Hertrich's reappointment on the Environmental Approval Committee is for three years and Mayor Davis requested approval.

Mr. Lyons moved to accept the appointments to the Environmental Approval Committee. Mrs. Kee seconded the motion. The motion passed unanimously.

c. Discussion of change from criminal offense to civil

Mr. Mandalas said that both Rehoboth and Dewey have done this already. The difference that you have to those communities is they both have Alderman Courts; so the way that he generally sets them up is, if you want to migrate things from criminal offenses to civil offenses, you create a factor in the code that is a civil factor of how a civil offense will be dealt with. Initially you would create that chapter that says "In the Town of Henlopen Acres we have civil offenses." Then you would want to go through a process of going through the book and determining which offenses you want to decriminalize and make them civil offenses. Mr. Mandalas described the adjudication process.

Mayor Davis suggested that we look at what Rehoboth did and then decide next time.

d. Resolution Adopting Hazard Mitigation Plan

Mayor Davis said this is a Resolution adopting the principles of the Sussex County Hazard Mitigation Plan. Mrs. Kee made a motion to adopt the Sussex County Plan for Hazard Mitigation. Mr. Hill seconded. The Resolution was adopted unanimously.

9. Any other business that may come before the Commissioners

Mr. Lyons asked to bring a new issue. Where we get into a situation with renovation/construction projects, conflicts become the town against the property owner. He would like to see if we could move this from the town vs. the property owner to the town vs. the contractor. The contractors know that the property

owner is going to tell them to do something that is not within our rules; or the contractor does something after the fact; there's not much we can really do. We want to hold the builder much more accountable. If he knows that he's violating an ordinance of our town, that we can either pull his license or we can refuse to allow him to build in here for a three year period. That way we get the town away from the town vs. the homeowner and hold the builder accountable on the projects that they build in town. Mr. Mandalas said that some of zoning codes already have that in them. Mr. Lyons said that he was just bringing this up now and asked if we could have further discussion on it later. Mr. Mandalas said he thinks that the Code allows you to cite the contractor and the builder, as well as the owner \$200 for every day that the violation continues.

Mrs. Richards said there are utility lines lying on the ground in the bridle paths, (Verizon lines and Comcast lines). She has made numerous calls. Mayor Davis said she would make the call from the office. Mr. Lyons said he would like to revisit that later.

Mayor Davis said that one resident suggested we put speed bumps on the road because they think the traffic is going too fast up and down with children playing. She commented that she didn't think that most of the residents that lived here full time, would like speed bumps. Possibly there is some other thing that we could do to help out for the two months or so that it occurs during the year. She said to contact her with any suggestions. She will talk to people that live here year round and get their opinion on the speed bumps.

Mr. Staffier asked if something could be done at the meeting for the Planning Commission to expedite their process. The issue arose whether the Planning Commission should be involved in the Rehoboth Art League issue and whether or not that should be or can be removed from their process and if there would be ramifications. Mr. Mandalas said the Planning Commission is a creation of the State law. It has some obligations and rights, by virtue of being a creature of state law. They can take things up on their own or they can take things up that are referred to them. They are obligated to do the Comprehensive Plan and the updates that they are doing now. The Rehoboth Art League issue, is significant enough that at some point the Planning Commission is going to need to address it and he would suspect that the Board would need to make a recommendation to them whether nothing should be done with it or a new zone should be put in place or the current zone that is there should be adjusted some. The Planning Commission was pretty clear that they didn't want to take any significant action on the Rehoboth Art League in connection with the Comprehensive Plan Review that they're doing right now. But during their Update process, it probably makes sense for them to look at it more comprehensively. He thinks they've set out a good plan to have a separate hearing for the Rehoboth Art League itself. At some point, it will get presented to the Commissioners. Mr. Staffier mentioned that when the Planning Commission makes a recommendation, the Commissioners have 18 months to implement the recommendation. Mr. Mandalas said there is a State statute that says as to zoning recommendations within a Comp Plan, that if the Planning Commission says there will be a new district created, for example, anyplace in the Acres; once that Comp Plan is certified at the State level, you have 18 months, as a Board, to implement the zoning change. The difference is that he always thought, then why do the Commissioners have to conduct a public hearing and go through all of this; when it's a foregone conclusion that they have to adopt the recommendation; but the State statute says that. He has concluded that you would conduct a public hearing and if for some reason, you decided that the recommendation is just no good, and you don't want to adopt that recommendation; then you could go back to the State and seek a Comprehensive Plan Amendment to change that recommendation so that you would not have to implement it. But you do have to take action within 18 months.

10. Town Solicitor's Report

Mr. Mandalas had nothing to report.

Mayor Davis said she wanted to go into Executive Session to discuss a potential litigation with 51 Tidewaters. Mr. Hill made a motion to go into executive session. Mr. Staffier seconded the motion. The motion passed unanimously.

11. Executive Session

Executive Session began at 11:25 am.

Commissioners came out of Executive Session at 11:55 am.

12. Consideration and/or action on matters discussed in Executive Session

No action taken.

13. Adjournment

Mr. Hill made a motion to adjourn, second by Mr. Lyons. The Quarterly Meeting was adjourned at 11:56 am.

Approved: _____, 2012