

**MINUTES:** The regular Quarterly Meeting of the Board of Commissioners of the Town of Henlopen Acres held following a Public Hearing on Friday, April 12, 2013 in Town Hall, 104 Tidewaters in Henlopen Acres, Delaware.

**PRESENT:**

David L. Hill	Mayor
Andrew Brittingham	Commissioner
Frank Jamison	Commissioner
John Staffier	Commissioner
Beatrix Richards	Commissioner
Thomas A. Roth	Town Manager
Sharon Karl	Town Clerk
Glen Mandalas	Town Solicitor
Barbara Shortley	59 Pine Reach
Diana Beebe	Rehoboth Art League
Maurice Lewis	65 Pine Reach
Julie Lewis	65 Pine Reach
Herb Wilgis	35 Pine Reach
Henry DeWitt	55 Fields End
Marcia DeWitt	55 Fields End
John Scheurer	62 Tidewaters
Kit McNeilly	55 Rolling Road
Custis McNeilly	55 Rolling Road
Eileen Clark	59 Tidewaters
Martin Clark	59 Tidewaters
Hetty Hertrich	7 Dodds Lane
Gail McDermott	7 Pine Reach
Ryan Mavity	Cape Gazette

**ABSENT:**

David Lyons	Commissioner
Winifred W. Kee	Commissioner

**1. Call to Order, Pledge of Allegiance**

Mayor Hill called the Quarterly Meeting of the Board of Commissioners to order at 10:05 am.

**2. Approval of Minutes**

**a. Public Hearing – January 11, 2013**

Commissioner Jamison made a **motion** to approve the minutes. Commissioner Staffier seconded the motion. Motion passed.

**b. Quarterly Meeting – January 11, 2013**

Commissioner Richards made a **motion** to approve the minutes. Commission Jamison seconded the motion. Motion passed.

**3. Treasurer's report**

Mayor Hill, in the absence of the Treasurer, reviewed preliminary financial information as of March 31, 2013. He believed that the revenue portion of the budget was on target. The Balance Sheet net assets are down due to tapping reserves to cover the marina dredging and road projects. This was not unexpected, it was included in the budget.

#### 4. Maintenance report

Mr. Roth said water usage was up in the first quarter due to leaks. Wednesday and Thursday all the distribution lines were flushed. The town received an award from CDC for proper operation of our fluoridation system. All maintenance workers attended a mosquito/pesticide class in Ocean City on Tuesday.

#### 5. Security report

Mr. Roth said in addition to the security reports in the packet, the town is going to hire an additional part time patrolman to replace a man that is taking another job and will not be available as often. This results in no additional cost to the town.

#### 6. Town Manager's report

Mr. Roth reported that Commissioner Lyons met with the dredging contractor last week and he was informed him that the spoils may not be dried out by Memorial Day. They will make reevaluate on May 1<sup>st</sup>. In addition, two house sales are pending. State Health Insurance rates will be increasing 6% as of July 1. A letter is being distributed from John VanDyke concerning voter qualifications.

#### 7. UNFINISHED BUSINESS

##### a. Amendment to §130-71 Violations and Penalties

No public comment was received during the Public Hearing. Mr. Jamison made a **motion** to adopt the amendment to §130-71 of the Code for reasons stated by Mayor Hill. Mr. Staffier seconded the motion. The motion passed unanimously.

##### b. Amendment of ordinances

##### i. Amendment of Chapter 1, General Provisions, §1-12, §1-13, Penalties

Mayor Hill stated that in the Code where there is no specific penalty amount, this amendment provides for a default fine or civil assessment of \$50. Section §1-12 applies to civil offenses or anything that remains a criminal violation. In addition there is a minor correction to §1-13 that applies only to second or subsequent criminal violation convictions and clarifies that this section does not apply to violations designated a civil offense.

Mr. Mandalas said this is a general provision in Chapter 1, stating if the violation is not better described somewhere else in the Code, this is the default provision. Chapter 1 did not previously reference civil offenses and now that they are included, we needed to clarify this also relates to civil offenses.

Discussion about the wording in Section §1-12 was initiated by Mr. Staffier. The edited language shall reads shall be punished by a fine or civil assessment of \$50, plus the Victims' Compensation Fund assessment as when required by the State of Delaware for each offense, and the Town's costs and expenses, including attorney's fees. Mr. Staffier said that the paragraph seems to recur in subsequent offenses. He said where it does recur that the same changes should be made. Mr. Mandalas said in §1-13 we will add "plus" and change "as" to "when". Mr. Mandalas said that §1-13 would only apply if there was a criminal offense and judgment.

Mr. Staffier made a **motion** to approve the amendment with editorial changes to §1-12 and §1-13. Mr. Jamison seconded the motion. The motion passed unanimously.

##### ii. Amendment of Chapter 47, Outdoor burning, §47-2, Violations

Mayor Hill stated this section included an erroneous reference to §52. At the same time it will be amended to be a civil offense. There was no specific assessment for violation so it will rely on the default

of \$50. Mr. Jamison made a **motion** to approve the amendment to Chapter 47 as presented. Mr. Brittingham seconded the motion. The motion passed unanimously.

### **iii. Amendments to Chapter 96, Right-of-Way**

Mayor Hill said these are changes to Chapter 96, Right-of-Way. Not only do we want to make the penalties civil instead of criminal but we also cleaned up the language in some of the provisions and reworked some of it because we are maintaining parts of the present Code that give the town other tools to enforce the rules concerning rights-of-way, such as declaring something a nuisance, the town having the authority to go in and correct something that is in the right-of-way and charging for it. Those are in the existing Code and we want to keep them there because they are not inconsistent with the civil penalties.

Mr. Mandalas said that this clarifies that the right-of-way is the town's property. There is a process to put driveways in and connect to the street and this clarifies how and when that can happen.

Mr. Jamison made a motion to adopt the ordinance to amend Chapter 96, concerning Right-of-Ways relating to paving and penalties. Mr. Staffier seconded the motion. The motion passed unanimously.

Mr. Mandalas said that these ordinances become effective on passage. Any violations currently outstanding will be treated as prior to today.

### **c. Charter amendment, Chapter C-17 Auditors**

Mayor Hill said that the present Charter provides that the Commissioners appoint an Audit Committee. The Audit Committee then has the responsibility to audit the books and the records of the town giving them the authority to hire accountants and others to help them in that process. Mayor Hill said that this has been honored more in its' breach than in its' observance. Mr. Mandalas said that it is not unique to Henlopen Acres, he said that every town that he represents hires private auditors, the Audit Committee is pretty much non-existent.

Mayor Hill said the Charter amendment would permit the commissioners to hire an outside Certified Public Accounting Firm to do the audit of the books and records of the town.

Mr. Jamison said that the Audit Committee should remain in force. We have an Audit Committee, they hire the auditors, they come back and report to the Commissioners and that is the safest way for it to be done.

John Scheurer, 62 Tidewaters asked if the Audit Committee is covered under our existing E & O policy and how large is our E & O policy. Mr. Roth said that anyone who is employed or volunteers on a committee is covered.

More discussion ensued. Mr. Hill said that proper accounting of the town's financial situation is important to the citizens. We need procedures to eliminate or minimize the potential for fraud. If the mandate is let us try to make the Audit Committee concept work then we need to rework the duties of the Audit Committee and make it more palatable for someone to serve on it. No action was taken.

### **d. Process for evaluating Rehoboth Art League status, possible changes - questionnaire**

Mayor Hill said that in January the Commissioners approved a questionnaire that Mr. Staffier worked on to make an attempt to solicit information from the Art League that would be helpful with trying to evaluate their status in Henlopen Acres, in other words, what kind of activities, what kind of uses would be permitted, what would be the limitations if any on those uses, so that we can protect the essential residential nature of the community. We did not receive a response. We did get a letter from the Art Leagues attorney

basically saying that the questionnaire was unnecessary and untimely. Mayor Hill said that this is very important to our town. There have been efforts to move the debate to the newspapers and other media. That serves no purpose, it is misinformation and sensationalism. Mayor Hill said that we need to get this done and we need input from the Art League. Whatever we do it must be based on a comprehensive approach so that everyone knows the rules. Mr. Hill said that we have to consult with the Town Solicitor as to what are our options. We have to move forward and work with the Planning Commission as they move forward in their evaluation of the RAL's status and revisions to the Comprehensive Plan.

Mr. Staffier said that he shares Mayor Hill's disappointment. The questionnaire was intended to and would have elicited the information that we need, at least to begin to evaluate the impact of various changes to the town's relationship with the Art League. He said that it would be irresponsible of the Board to consider changing our relationship without having the information before us that would allow the Board to evaluate the impact of any such change. Mr. Staffier said the attachment to the letter received from the RAL's lawyer was not helpful; it was overly broad and did not provide any details. In that letter the reference to the Lewes cultural zone was very misplaced since obviously the Town of Lewes has very little in common with the Town of Henlopen Acres.

Mrs. Beebe, Rehoboth Art League claimed that the Art League presented to the Planning Commission an outline of a Cultural Zone in September of 2011. Mrs. Beebe had a letter with accompanying attachments that she asked to be put on record at this meeting she said because the RAL has been accused many times of saying that they did not ask for a Cultural Zone.

Mayor Hill informed Mrs. Beebe that the commissioners already had a copy of the letter and that this is not a public hearing to receive evidence from the Art League. He said the Board started a process to try to get information so we could evaluate and understand where the RAL is, where the RAL had been, where the RAL wanted to go so that we could develop hopefully a resolution of the problem. Mr. Hill said the failure of the RAL to provide the information requested puts the Commissioners at a significant disadvantage.

There were comments from Mrs. DeWitt, 55 Fields End, Mr. Clark, 59 Tidewaters, Mrs. McDermott, 7 Pine Reach. In response, Mayor Hill said that a Public Workshop was something that was supposed to flow from the RAL's answers to the questionnaire focusing on what the issues could be.

Mr. Scheurer, 62 Tidewaters said that he attended the Planning Commission meetings for the last two years. What Mr. Staffier just articulated is correct. He said that he has seen everything that has been submitted. He said that he has a ton of questions that would have to be answered. Part of the problem is that the RAL has been operating in a residential zone, as a non-conforming use for many years and nobody has ever quantified or qualified exactly what those things are that can be done within that area. There are a lot of questions and part of the reason for the questionnaire was to look at density, setbacks, parking, uses, and commercial activity going on. Mr. Scheurer said that as the Mayor said, we need to move this forward, and information is the key to help do that. There are so many issues on the table, not only from the town but from the people who live in close proximity to the Art League who are probably the ones that matter most.

Mr. Mandalas said that the Mayor said he did not know whether it was a rezoning, a special exception but it is something and we have to get there. While this proposal for a cultural zone may have been provided in September 2011, the Board is saying they are not sure what it means to say that for example, educational programs are permitted use. Where is the limitation on educational programs? Exhibitions and shows are a permitted use under the proposed ordinance. What are exhibitions and shows? How extensive are they? There is a real interest on both sides to resolve this.

Mr. Jamison proposed to get four people together; two representative from the Art League, Mr. Scheurer, Chairman of the Planning Commission and a Commissioner to draft a plan that we, a broader group, can discuss.

Mayor Hill again invited the RAL to reconsider submitting the questionnaire. He said that he will continue to discuss any of these issues with the Art League, formally or informally. With no further comments from the Commissioners, Mayor Hill ended the discussion.

## **8. NEW BUSINESS**

### **a. Rights-of-Way – Lewis, 65 Pine Reach**

Mayor Hill recognized Mr. Lewis, 65 Pine Reach. Mr. Lewis said that he was here to appeal a ruling by the Board concerning a rock in his front driveway. He said that there is a drainage problem with his lot. The lot is almost a foot higher in the middle of the driveway to where it slopes down. Mr. Lewis said that they had a driveway on the left side before they did the rebuild. The water sloped over there and they had nothing but ruts. He said that his neighbor across the street has a continual water rut there. He put dirt, sand, rocks and could not solve the problem. Mr. Lewis said that their house is on a high point and has a basement. To the asphalt driveway the earth was eroding so they put down stone a couple of feet to protect the grass and for drainage. In the process the paver said that it looked kind of bland that maybe we would like something a little more decorative so they decided to put a stone there. Mr. Lewis admits they did not have approval. The stone is in the center of the grade in the middle of the lot. Mr. Lewis asked the Board to be lenient on this issue.

Mayor Hill said that he would talk with the Town Solicitor and get back with him. Mr. Mandalas said that one option, if the Board feels that the stone is something that should be kept in place because it does solve drainage problem, is a license agreement permitting Mr. Lewis to use that part of the property, making it clear that it is the Town's property and that this is a license to use. Mr. Staffier said that the drainage issue distinguishes this situation from other situations. It is important to the town that homeowners deal with drainage issues, they can become very unsightly. Mr. Mandalas said that there is a process set out in the Code to be followed. There is an allowance for encroachments in the Town's right-of-way you have to follow the review process that is set up in the Code. Mrs. Richards asked Mr. Lewis if enough time has gone by that proves the stone has corrected the drainage issue. Mr. Lewis said it has corrected the issue. Mayor Hill told Mr. Lewis that he would get back to him on the issue.

### **b. Appointment of Election Officers and Board of Elections**

Mayor Hill said that these are groups that supervise the election process and the Board of Election hears any challenges. These are appointments for one election cycle.

Election Officers: Mayor proposed that Barbara Shortley, 59 Pine Reach be reappointed Inspector of Elections, Elinor Boyce, 11 Tidewaters be appointed to replace Ginny Daly as Election Officer and Sarah Sunderland, 71 Fields End be reappointed Election Judge. Mr. Jamison made a motion to approve the appointments. Mr. Staffier seconded the motion. The motion passed unanimously.

Board of Elections: Mayor Hill said that the three incumbents have agreed to serve again. Mayor Hill proposed Tiffany Derrickson, 54 Rolling Road, Bruce Moore, 14 Tidewaters, and Mimi Peters, 64 Pine Reach be reappointed to the Board of Elections. Mr. Staffier made a motion to approve the appointments. Mr. Jamison seconded the motion. The motion passed unanimously.

### **c. Personnel Policies - §5.9 Vacation**

Mr. Roth said that he drafted a change to the personnel policy because the current vacation policy is use-it or lose-it, there is no carry forward. When it gets to be December the workers want to use up their vacation and we have no one to clean up the town. This change to the personnel policy would allow them to carry forward 5 vacation days to the next year. It would be effective January 1, 2014.

The Commissioners discussed approving the concept and having Mr. Mandalas write it up for the next meeting. Mrs. Richard made a motion to authorize the Town Manager and the Town Solicitor to write an appropriate provision to the vacation section of the employee manual allowing 5 unused vacation days to carry forward to the following year. Mr. Brittingham seconded the motion. The motion passed unanimously.

**9. Any other business that may come before the Commissioners**

None.

**10. Town Solicitor's report**

No comments.

**11. Executive Session for the purpose of discussing potential litigation, in accordance with 29 Del. C. § 10004(b)(4).**

Mrs. Richards made a **motion** to go into Executive Session to discuss potential litigation. The motion was seconded by Mr. Jamison. The motion passed unanimously. The Board went into executive session at 11:40 am.

Mr. Staffier made a **motion** to come out of executive session, which was seconded by Mrs. Richards. The Board came out of executive session at 12:08 pm.

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

No action taken

**13. Adjournment**

Having no other business, the meeting was adjourned by Mayor Hill at 12:08 pm.

Approved: 7/12/13