

# Town of Henlopen Acres

104 Tidewaters  
Henlopen Acres, DE 19971

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**MINUTES:** The Board of Commissioners of the Town of Henlopen Acres held their Quarterly Meeting at **10:00am on Friday, January 8, 2016** at Town Hall, 104 Tidewaters, Henlopen Acres, Delaware.

**PRESENT:**

David Lyons Sr.	Mayor
Joni Reich	Commissioner
Frank Jamison	Commissioner
John Staffier	Commissioner
Andrew Brittingham	Commissioner
Tim Hidell	Commissioner
Thomas Roth	Town Manager
Glenn Mandalas, Esq.	Town Solicitor
Christine Moore	14 Tidewaters
Maurice Lewis	65 Pine Reach
Gail McDermott	7 Pine Reach
Martin Clark	39 Tidewaters
Barbara Shortley	59 Pine Reach
Henry DeWitt	55 Fields End
John Schroeder	Rehoboth Art League
Ryan Mavity	Cape Gazette

**Excused:** Beatrix Richards Commissioner

## **[Minutes are Not Verbatim]**

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

The meeting was called to order by Mayor David Lyons at 10:00 am.

### **2. Approval of Minutes**

#### **a. Quarterly Meeting-October 9, 2015**

**Motion** to approve the minutes was made by Commissioner Joni Reich and seconded by Commissioner Andrew Brittingham. **Motion** passed.

### **3. Treasurer's Report**

Ms. Reich reviewed the financials included in the meeting packet. As the balance sheets show, the Town's current total assets are \$4 million with \$1.8 million in cash and \$2.2 million in fixed assets. Ms Reich reviewed some research Mr. Roth prepared showing the strength of the Town's current financial position. In 2005 the Town's cash assets were under \$500,000 and in 2010 the cash assets were at \$1 million. On the current budget, income is on target and expenses are slightly higher due to increased legal fees and

equipment issues in both the streets and water departments. Ms. Reich expects transfer tax income to exceed the budget this year. Overall, the Town is in good financial shape.

#### **4. Maintenance Report**

A water report was included in the meeting packet. Mr. Roth reviewed that the water usage is up significantly over the last several months. The streets department is currently looking for leaks. Mr. Roth will ask Delaware Rural Water to help if Town employees cannot find the leaks within the next week. Mr. Roth is also making changes to the current reporting system to better evaluate the monthly water usage.

#### **5. Security Report**

A security report was included in the packet. Mr. Roth discussed security's concern about the frequency of drivers running stop signs. Security will issue tickets. The majority of the violations are being committed by residents. Mayor Lyons suggested putting a reminder in the next newsletter.

#### **6. Town Manager's Report**

A written report is included in the meeting packet. The well pumps at well three and well nine were recently replaced. These were the original pumps from 1994. AECOM is continuing to work with the Town on a solution to the silting problem in the marina. A site visit is planned in the near future to evaluate possible solutions. The Town is still evaluating upgrades required by the ADA including replacing the walkway in front of town hall. The paving project contract is also on the agenda to be discussed. The project is to be completed this spring. The County sewer project is to be finished by Memorial Day. Mayor Lyons wants to see the sewer project completed before Easter. He also asked about moving the millstone at the marina in order to level the ground around it and eliminate the standing water. Mr. Roth said it will be done this spring.

#### **7. Unfinished Business**

##### **a. Tree Committee update**

Mr. Roth is still waiting for a response from the State to schedule an evaluation of the current tree canopy. Mayor Lyons asked about having individual trees evaluated because he has a tree on his property that he believes needs to be removed. Mr. Roth suggested he contact the Delaware Forest Service to have them come out and evaluate the tree. The next tree committee meeting will be scheduled after the evaluation by the State.

##### **b. Discussion and possible action on cable TV franchise agreement, Town Code §A134**

Mr. Mandalas discussed the current cable TV franchise agreement with Comcast. The biggest change in the current renewal is that Comcast is changing the definition of gross revenue which will affect the total franchise tax the Town receives. Currently the franchise tax is 3% but the Town can raise it up to 5% by law and Mr. Mandalas recommends the Town make the increase. He would like more time to work on the agreement before finalizing it with Comcast. A discussion ensued about the possibility of having Verizon Fios in Town. While there is nothing in the Charter that prevents that, Verizon Fios is not currently an

option. Commissioner John Staffier asked Mr. Mandalas if he could include cable rates for the homeowners in the franchise agreement. Mr. Mandalas said that he could not negotiate cable rates.

**c. Review of recommendations from the State of Delaware and possible action on the Comprehensive Plan**

Mr. Mandalas discussed the status of the Town's Comprehensive Plan. On November 19, 2015 several Commissioners, Mr. Mandalas and Mr. Roth met with the Cabinet Committee on State Planning Issues regarding the certification of the Town's Comprehensive Plan. The Office of State Planning has refused to certify the Plan. The Cabinet Committee voted to recommend the Governor not certify the Plan until the Town works out either rezoning or an MOU with the RAL. The Plan was sent to the Governor on December 31, 2015 with the Cabinet Committees' recommendations. Mr. Mandalas anticipates that the Governor will not certify the Comprehensive Plan but will send it back to the Town with the same recommendations as the Cabinet Committee. He has drafted a new ordinance to ratify the Comp Plan after the Governor's recommendations assuming the Town chooses not to follow those recommendations. He read the ordinance to the Commissioners. This new ordinance would again ratify the Comp. Plan effective November 13, 2015 as was originally voted. Mr. Staffier questioned whether the new ordinance should still reflect the November date. Mr. Mandalas agreed and it was decided the new ordinance will be dated the date of the new vote instead of November 13, 2015. Mr. Staffier also wanted to mention several findings of the Cabinet Committee. The Committee noted there were no legal deficiencies in the Town's Plan. It was also noted that the Town had made numerous efforts to negotiate with the RAL and the Cabinet Committee didn't side with either party. The Committee recommended the Town continue to try and negotiate with the RAL and recommended an MOU to address the concerns of both the Town and RAL. Obviously the Town has tried that in the MOU that was presented to the RAL over a year ago without success. Mr. Staffier is still hopeful the RAL will come back with comments on the MOU. Mayor Lyons questioned whether the Town should try again to negotiate with the RAL after receiving the Governor's comments prior to passing the new ordinance to ratify the Comp. Plan. Mr. Staffier didn't feel that was the correct way to proceed. As part of the response the Town will send the Governor, it will be noted that the door remains open to continue negotiating with the RAL and should any new agreement be reached, the Comp Plan would be amended and resubmitted to the State. Mr. Mandalas agreed.

**John Schroeder-Rehoboth Art League**

Mr. Schroeder welcomed the opportunity to sit down with the Town and continue negotiations. Mr. Staffier requested again that the RAL respond to the MOU that was presented to them. Mr. Schroeder responding by outlining the twelve meetings between the Town and RAL prior to receiving the MOU and how the RAL was not expecting to receive an MOU. He said the MOU was reviewed by their legal counsel, deemed contract zoning and therefore illegal. Mr. Schroeder emphasized that the RAL is willing

to sit down with the Town again as long as everyone involved understands what the object of the meeting would be. Mr. Staffier asked Mr. Schroeder to clarify what the object of the meeting would be. Mr. Schroeder responded that the object is to rezone the RAL to something mutually agreed upon by both the Town and the RAL.

Mayor Lyons agreed that discussions need to restart between the Town and the RAL. He reminded Mr. Schroeder that both the State of Delaware and the Governor's Counsel stated that in their view an MOU is acceptable. There obviously needs to be a starting point otherwise discussions will not take place.

## **8. New Business**

### **a. Review of bids and recommendations for Phase VI paving and possible contract award.**

Mr. Roth reviewed the bid proposal that Beacon Engineering put together for the last part of the paving project which is the Crossways Entrance, Zwaanendael and Broad Hollow to Rolling Road. The Town received three bids, the lowest was from Utilisite at \$88,000 which is within the Town's budget. The second highest was twice the cost and the last was three times as much. Utilisite is the company that did the last phase and both Mr. Roth and Mr. Kollar, the zoning officer, recommend accepting their bid. Mayor Lyons felt the total costs could increase due to the amount of tree roots and water issues the contractor will probably face. He questioned if any of those extras were addressed in the contract. Mr. Roth did allow for tree roots and said the bid is in unit prices to address any changes that come up. A **motion** to award the contract for the Phase VI paving project to Utilisite was made by Mr. Staffier and seconded by Commissioner Frank Jamison. **Motion** passed.

### **b. Review of draft amendment to zoning and possible resolution for public hearing, relating to group rentals, Town Code §130-4 and §130-18**

Mr. Mandalas began the discussion by notifying the Commissioners if their desire was to change or remove the mention of group rentals in the Zoning Code Chapter 130 it would require a public hearing. Mr. Staffier felt strongly that the Commissioners wanted to keep the prohibition of group rentals in the Zoning Code, but better define group rental and continue to prohibit any and all group rentals in Town. Mr. Mandalas would like to work with Mr. Staffier to clarify the definition of group rental and then make another amendment to Chapter 95, which wouldn't require a public hearing. Mayor Lyons noted that any changes made would become effective for the 2017 rental season.

### **c. Approval of Audited Financial Statements**

There were no questions or comments on the Audited Financial Statements. A **motion** to approve the Audited Financial Statements was made by Mr. Jamison and seconded by Commissioner Tim Hidell. **Motion** passed.

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

Mr. Roth notified the Commissioners that the Town may be approached by the Postal Service about installing mailboxes at the street for each home. The current carrier is spending approximately two hours just in Henlopen Acres because the route has to be

done on foot. Mr. Staffier questioned Mr. Mandalas on whether the Town could be forced to install the mailboxes. Mr. Mandalas felt that in an established Town or community such as Henlopen Acres, the Postal Service could only suggest or request mailbox placement, whereas in new communities, it mandates the mailboxes location. Mayor Lyons mentioned that if the Town is approached by the Postal Service it would need to address whether the mailboxes would be placed on the Town easement or the homeowner's property.

**10. Town Solicitors Report**

Mr. Mandalas discussed a Bill to be introduced in the General Assembly restricting the use of drones. The current Bill would address drone use in highly populated areas such as beaches and sporting events but not residential areas.

**11. Adjournment**

A **motion** to adjourn was made by Ms. Reich and seconded by Mr. Staffier. The meeting was adjourned at 10:56am

**Approved 04/08/2016**