

MINUTES: The regular Quarterly Meeting of the Board of Commissioners of the Town of Henlopen Acres held on Friday, January 14, 2011 at 10:00 a.m. at Town Hall, 104 Tidewaters in Henlopen Acres, Delaware.

PRESENT:

Wanda Davis	Mayor
David L. Hill	Commissioner
Beatrix Richards	Commissioner
Frank Jamison	Commissioner
David Lyons	Commissioner
Winifred W. Kee	Commissioner
Glenn Mandalas	Town Solicitor
Thomas A. Roth	Town Manager
Sharon Karl	Town Clerk
Henry DeWitt	55 Fields End
Larry Sweigert	Rehoboth Art League
Bob Stevens	66 Fields End
Ryan Mavity	Cape Gazette

ABSENT: Linwood R. Miller Commissioner

1. Call to Order - Pledge of Allegiance

Mayor Davis led the Pledge of Allegiance.

2. Approval of Minutes

a. Public Meeting – October 8, 2010

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

b. Quarterly Meeting – October 8, 2010

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

c. Special Meeting – December 10, 2010

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

3. Treasurer's Report – Commissioner Hill

Mr. Hill said that, as of December 31, 2010, the Balance Sheet shows \$1,328,476.55 for checking and savings and reported assets of \$3,933,489 which is \$137,551 more than this time last year. Mr. Hill said that as of December 31st we are on budget for both the income side and the expense side of the profit and loss statement. Mr. Hill said in reference to the Capital expenditures the big item is the Phase III street resurfacing and storm drain extension that will cost \$135,000 and is scheduled to be done this spring. Mr. Hill said that we also modified the capital budget by agreeing to expend \$5,000 to \$7,000 on the kayak project and roughly another \$1,500 on the Zwaanendael entrance. Also on the capital side there are town hall improvements that were approved for around \$35,000. Mr. Hill said we just have one delinquent property tax payment due.

Mr. Lyons asked Mr. Roth what the depreciable life was on the roads. Mr. Roth said on the micro-surfacing 10 years.

4. **Maintenance Report – Sonny McClure, Maintenance Supervisor**

Mr. Roth said the biggest thing is leaks, there were four in December and already two in January, due to outside showers that are not winterized. Mr. Roth said that Rehoboth had a leak on Zwaanendael and had to tear up our roads. Mr. Roth said there are ten properties in Henlopen Acres that have Rehoboth water so Rehoboth water lines run through our town.

5. **Security Report – Lee Stewart, Security Supervisor**

Mayor Davis said that she has gotten several calls that Sonny, Rob and Charlie have done a good job of plowing the streets. Mr. Roth said we have used a ton and a half of salt in the past week.

6. **Town Manager’s Report – Thomas Roth, Town Manager**

Mr. Roth said that Business Licenses are still coming in strong; we have one unpaid real estate tax and two sales under contract. Ms. Karl said that she and Mr. Roth have a meeting on Thursday January 20th with the web designers to add and/or subtract items on the web page and that by the following week they should have a launch date set for the website.

Mr. Hill asked how the town effectively collects unpaid taxes. Mr. Roth said by Code we can’t do anything for twelve months but since the water bill is on the tax bill there is language in the Code that says if water is delinquent for ninety days we can send a shut off notice. Mr. Roth said that when he has sent a water shut off notice in the past he received a quick payment of the entire tax bill. Mr. Lyons asked if there was interest charged on past due tax bills. Mr. Roth said yes, we have made our budget on past due fees. Mr. Roth added that the town received \$3,892.00 from the state for trees.

7. **UNFINISHED BUSINESS**

a. **Kayak rack**

Mayor Davis asked Ms. Richards to report on the kayak racks. Ms. Richards said that she and Mr. Scheurer are waiting for the Environmental Review Committees report; once it comes through they are ready to proceed. Ms. Richards said that they have a letter ready to send out to the homes in Henlopen Acres. Mr. Roth said that the ERC is scheduled to meet Thursday the 20th and hopefully they can finalize it then.

b. **Voter Eligibility**

(i) **§16 Elections; Article III, Voter Registration**

Mr. Hill said we want to make it clear that all voters must register under our registration procedures to be entitled to vote. Mr. Hill said prior to last August’s election ambiguity in the wording of §16-22 and §16-24 was pointed out to us by an attorney in Dover. To correct this we propose eliminating the last sentence in §16-24 and change §16-22 to read “In order to be qualified to vote in any election in the Town, a person, including entities if permitted to vote, shall be registered to vote and shall meet the qualifications established in the Charter and state law”. Mr. Hill made a motion to approve this version of the change to §16-22 and eliminating the last sentence in §16-24. Ms. Kee seconded the motion.

Mr. Mandalas, Town Solicitor said he had a little concern about saying “if permitted to vote” and then saying “shall meet the qualifications established in the charter” because the qualification established in the charter are where you find out if someone is eligible to vote or not, so it seems redundant, however it does not create ambiguity and he has no problem with this language if all the commissioners are satisfied with it. Mr. Mandalas pointed out that the deletion of the last sentence in §16-24 is the most important part of this legislation. Mr. Lyons said that it is his understanding that an individual who is registered to vote does not have to re-register to vote every year but entities and trusts do and he said he does not understand the reasoning for that. Mr. Hill said that entities do not have to re-register but the designated person who is voting for them has to submit a resolution from the entity each year.

Mr. DeWitt, 55 Fields End said that it is not clear that the wording in §16-22, “if permitted to vote” is relating to entities only. He suggested that §16-22 read “including any entities permitted to vote”. Mr. Hill modified his motion to change §16-22 to read, “In order to be qualified to vote in any election in the Town, a person, including any entities

permitted to vote, shall be registered to vote and shall meet the qualifications established in the Charter and state law” Ms. Kee seconded the motion. The motion passed unanimously.

(ii) §C-5 Qualification of voters

Mr. Hill, referring to the 12/30/2010 revised draft, Voter Eligibility, Proposed Charter Changes (C-5), said that we changed “Chapter 16 of the Town Code” to read “the Code of the Town of Henlopen Acres”, and we changed the period that a person needs to be a resident before they are eligible to vote from 6 months to 12 months. Mr. Hill said that he has been informed that the state legislature does not like long eligibility periods for municipalities and questioned whether the time period for eligibility to vote should go back to 6 months.

Mr. Hill said on the Draft items 1, 2 and 3 deal with residents and certain classifications of property owners. Mr. Hill said that anyone who lives here and is a resident of the Town of Henlopen Acres in the State of Delaware and is 18 years of age and is a United States citizen has the right to vote. Mr. Hill said it does not matter if they are renting the property or own the property.

Mr. Hill said that Draft item 4 states that an entity, (every trust other than a revocable trust whether a partnership, corporation or limited liability company), must have an “undivided ownership interest” to have one vote. Mr. Hill said that this means there can’t be three entities who own one piece of property each having one vote just as there can’t be three property owners who own a piece of property each having one vote. Mr. Hill said that there can only be one entity that owns the property. Mr. Hill said Draft item 4 has simplified the process for the designated person who is going to vote for the entity, if entities are going to be allowed to vote, by using a power of attorney, instead of a resolution from the corporation, by clarifying that the designated person who is going to vote for the entity must be a natural person, a citizen of the United States and eighteen years of age. A power of attorney will still have to be submitted 30 days in advance of the election.

Mr. Hill said residents have a right to vote but the fundamental problem with entity voting, (trusts or LLC’s) is the owner gets another vote. Mr. Hill said that he would like to approve a basic format for entity voting and send it out to all the citizens, so they can’t claim that they were blindsided and not informed of the changes. Mr. Hill asked should we go forward with this and if so when should it become effective, should it be by this election or next. Mayor Davis said that it has to be approved by the state to become part of the charter and it does not look like it will be done this year.

Discussion ensued about entity voting. Mayor Davis said that the majority of the Towns she has talked with do not allow entity voting. Mr. Mandalas said that once entity voting is permitted there are many loopholes that do open the door for wrong doers.

Mr. Mandalas said that the term “Undivided” is a term within the law that does not mean that only one person has an interest in the property. Mr. Mandalas said for example a husband and wife create what is call “tenants by the entirety” when they own a property which gives them an undivided interest which means that everyone who has an interest in the property does not have a limited interest, the husband can enjoy the entire property and the wife can enjoy the entire property there are no halves or portions. Mr. Mandalas said that there are some legal relationships that can be created that are not an undivided interest, but most interest in property is undivided, for example if three LLC’s come together and owned a property, typically they would own it as “tenancy in common”. Mr. Mandalas said that “tenancy in common” is undivided interest, so each of the LLC’s would have the right to enjoy the entire property. Mr. Hill said that maybe “undivided interest” is not the right term that they are looking for in the proposed charter changes.

Mr. Hill said the difficulty is we have allowed entity voting and now to take it back is difficult. Mr. Lyons said with a normal house, a husband and wife and any children of voting age, all have a vote. Mr. Lyons asked what the objective is. Mr. Hill said one man one vote. Mr. Hill said that with entity voting a resident votes as a citizen, puts his house in a trust or LLC and gets a second vote through that entity. Mr. Lyons said in state and national election entities can’t vote; only one citizen, one vote. Mr. Hill said that what needs to be clarified is what property interest does one need to hold to be entitled to vote. Mr. Mandalas said for estate planning there are ways to recognize a trust. For example, the IRS will tax the individuals on a property, even if the property is held by a trust, if the individuals who created the trust are the trustees of the trust, because they still control the property. Some towns have taken the IRS’s lead on this.

Mayor Davis asked Mr. Hill if he and Mr. Mandalas need to spend more time on the subject of entity voting. Discussion on §C-5 was tabled until the next quarterly meeting.

§435.E (2) (b) Building Construction, Accessories, Windows

Mr. Roth said that Mr. Brockstedt the Zoning Officer is working on a draft for the Environmental Review Committee and will get back with the Commissioners.

c. Employee Health Care

Mr. Roth said that he and Mr. Lyons are going to review the health care and get back with the Commissioners at the next meeting.

8. NEW BUSINESS

No new business.

9. Any other business that may come before the Commissioners

No other business.

10. Executive Session to discuss personnel issues, potential litigation and executive session minutes

A motion to go into executive session was made by Commissioner Hill, seconded by Commissioner Lyons and approved at 11 am.

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

The Board of Commissioners came out of executive session at 11:30 am. A motion to approve the executive minutes reviewed in executive session was made by Ms. Richards, seconded by Mr. Lyons and approved.

12. Adjournment

Having no other business, Mayor Davis adjourned the meeting at 11:32 am.

Approved: _____, 2011