

**MINUTES:** The regular Quarterly Meeting of the Board of Commissioners of the Town of Henlopen Acres held on Friday, April 8, 2011 at 10:00 a.m. at Town Hall, 104 Tidewaters in Henlopen Acres, Delaware.

**PRESENT:**

David L. Hill	Commissioner
Beatrix Richards	Commissioner
Winifred W. Kee	Commissioner
John Staffier	Commissioner
Frank Jamison	Commissioner
Glenn Mandalas	Town Solicitor
Thomas A. Roth	Town Manager
Sharon Karl	Town Clerk
Ryan Mavity	Cape Gazette
Henry DeWitt	55 Fields End
Pierce Quinlan	52 Rolling Road
A. Martin Clark	59 Tidewaters
Robert Reed	96 Tidewaters
Hetty Hertrich	7 Dodds Lane
Gene Wilson	10 Tidewaters
Genevieve Wilson	10 Tidewaters
Michael Carr	19 Tidewaters

**ABSENT:**

Wanda Davis	Mayor
David Lyons	Commissioner

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

Commissioner Richards led the Pledge of Allegiance.

**2. Approval of Minutes**

**a. Quarterly Meeting – January 14, 2011**

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

**b. Special Meeting – March 11, 2011**

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

**3. Treasurer’s Report – Commissioner Hill**

Mr. Hill said, looking at the Profit and Loss Budget vs. Actual Statement year to date March 2011, we’re in good shape. Under Ordinary Income our collections are \$527,323.17 compared to the budgeted amount of \$564,100.80, with a few months left of this fiscal year, the largest outstanding item on income is the North Shores Security and that is just a timing issue. Mr. Hill said Ordinary Expenses we’re \$156,997.60 under budget. Under Other Income there is a significant increase due primarily to transfer taxes, where the

amount budgeted was \$45,000.00 compared to the amount collected of \$150,766.87. Mr. Hill reminded everyone that transfer taxes are an uncertain source of income that we can't rely on.

Mr. Hill said that the Town Manager prepared projections for the year end which confirm that we will meet our income budget and will be under in expenses. Also he said we have a big commitment coming up on the Phase III road project but that money was accounted for in this current budget and state funds are committed to the project as well. Mr. Jamison asked if the \$20,000.00 federal grant in Other Income was a timing issue. Mr. Roth said that was the energy grant which would not be in before the end of the year because we are still working on the engineering portion. Mr. Hill said that work will begin on the new budget next month and there will be a June Budget meeting. Mr. Mandalas, Town Solicitor praised the commissioners for doing very well at keeping to their budget.

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

Mr. Roth said that the Quarterly Water Report shows that water usage is right where it should be. Mr. McClure has marked all the areas involved in the Phase III street paving. All three of our maintenance men attended a mosquito recertification class last Tuesday. Mr. McClure is our licensed applicator for mosquito spraying.

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

Mr. Roth said that the Security report was included in the packet and that Mr. Stewart had nothing further to add, just that it has been quiet and things are going along well.

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

Mr. Roth said that his report is in the packet with one change, 8 Tidewaters is under contract. Construction has been busy, with seventeen building permits in one quarter. Mr. Roth said that he received a phone call from a resident that cars are speeding on Pine Reach. Ms. Kee said she has seen that workers are running the stop signs at quarter to eight in the morning. Mr. Roth said that he will make sure that Mr. Stewart is out there at that time to monitor all the streets and entrances. Mr. Hill asked if Security can issue moving violations. Mr. Roth said that they cannot issue speeding tickets but that they can issue stop sign violations and speeding warnings.

### **7. UNFINISHED BUSINESS**

#### **a. Kayak racks**

Gene Wilson, 10 Tidewaters, said that the original proposal for a storage and launch facility was approved at the December 2010 meeting contingent on a certain level of residents to commit financially. That threshold has been met, so they would like to proceed with the project. Mr. Hill asked what needs to be done to proceed. Mr. Wilson said that John Scheurer, Bob Reed and himself are to meet the third week of April to finalize the storage rack design then after that is completed they will meet with Mr. Roth and Mr. McClure to coordinate plans for installation and get the money needed to pay for the platform for launching and materials needed to build the storage area. He said the Environmental Review Committee has to approve the fence material. Mr. Wilson thanked the Commissioners for their consideration of the project.

#### **b. §C-5 Qualification of voters**

Mr. Hill said that this has become a very complex issue, but we are slowly moving forward. The whole idea is to get the one person one vote concept articulated in the Town Code. We took care of a technicality last meeting to make it clear that all voters must register to be entitled to vote.

Mr. Hill said looking at the bigger picture we need to answer the question: who should be entitled to vote in municipal elections, (a fundamental, basic political right). We've had confusion in the past of residents

and non-residents, property owners voting. One of the discussions at the last meeting, (what property interest does one need to hold to be entitled to vote), the Town Solicitor pointed out that the concept “undivided interest” is a term in real estate law that means people own property jointly, each has an undivided interest. Mr. Hill stated that is not the concept I think we want to use so I have drafted a change to make it a percentage of ownership, at least a 50% ownership in the property. Residents have a right to vote but the fundamental problem is with entity voting. In the Acres we have 55 Trusts (mostly Revocable Trusts but there is one, to complicate matters, with a Corporate Trustee), 9 LLC’s, 2 Partnerships and 3 Corporations.

Mr. Hill said that the proposed Charter changes are as follows: 1. Every natural person who shall have obtained the age of Eighteen (18) on or before the date of the municipal election, who shall be a citizen of the USA, and who shall be a bona fide resident of the State of Delaware and the Town of Henlopen Acres for a period of six (6) months immediately preceding the date of the municipal election shall be entitled to one vote provided such person shall be registered as a voter as provided for in the Code of the Town of Henlopen Acres. 2. Every natural person not a bona fide resident of the Town of Henlopen Acres, who shall have obtained the age of Eighteen (18) on or before the date of the municipal election, who shall be a citizen of the USA and who shall be a FREEHOLDER as defined herein in the Town of Henlopen Acres for a period of six (6) months immediately preceding the date of the municipal election shall have one vote provided such person is registered to vote as provided in the Code of the Town of Henlopen Acres. 3. As used herein, FREEHOLDER means a natural person who holds title of record to a fee simple estate or life estate in and to at least a 50% interest in real property in the Town of Henlopen Acres or a husband/wife who holds title of record to real property in the Town as a tenant by the entirety and who are both grantor/settlor and trustee of a valid revocable trust to which real property located within the Town has been conveyed, provided that a copy of such Trust document identifying the grantor/settlor and trustee is on file with the Town. (There may not be more than two such grantor/settlor and trustees of any such trust.) The FREEHOLDER in each category must occupy/utilize the real property held by the FREEHOLDER. 4. Only natural persons eligible under paragraphs (1) and (2) above shall be permitted to vote. Artificial entities shall not be entitled to vote. OPTIONAL : 4. Every trust (other than a revocable trust identified above), partnership, corporation or limited liability company, which holds title of record to a fee simple estate in and to an exclusive (100%) interest in real property in the Town of Henlopen Acres for a period of six (6) months immediately preceding the date of the municipal election shall have one vote provided such entity is registered to vote as provided in the Code of the Town of Henlopen Acres. Such entity must cast its vote by a duly executed and notarized power of attorney from the entity granting authority to a natural person as its attorney-in-fact to cast its vote. Such power of attorney shall be surrendered to the election officials who shall file the same with the Town Manager. The person casting the vote for such entity shall have obtained the age of (18) on or before the date of the municipal election and shall be a citizen of the USA. A new power of attorney shall be required for each election.

Mr. Hill suggested that the Town hold a public workshop in September 2011, with maximum public participation, input, comments and new ideas on how to clear up any ambiguity in the Charter and the Code. Mr. Hill made it clear that this year’s election will transpire with the existing rules, that no changes will take place until after this year’s election, August 27<sup>th</sup> because any changes have to be approved by the state to become part of the Charter and there is not enough time for it to be done by this year’s election. Ms. Kee said that it is important that the whole Town comes together and understands that this is not something to take lightly because we have been challenged on our elections and it is costing the Town money and we want our taxes to go to where they should be going instead of this kind of stuff. Mr. Hill said that Entity voting creates several unintended results for example, I can own a house in the Town and have one vote but also I can own a lot in the Town as an LLC and have an additional vote. We want to come to what is fair and to achieve one person one vote.

Mr. Jamison asked what has been the nature of the challenges. Mr. Mandalas, Town Solicitor, said there has been some question of voter eligibility under the Code verses the Charter that was pretty much taken care of in the last meeting with a Code amendment. There are questions about registration, which Entities in Town now are currently able to vote, whether they have been properly allowed to vote, or turned away and could not register to vote. Mr. Mandalas said that this is something that could use refinement in the Charter provision and doing it through the transparent mechanism of a public workshop is a good direction to take. Mr. Mandalas said that he has informed the Town through memos his concern with allowing Entity voting, that it opens the door to legal and political issues that we have to carefully maneuver and since Entity voting is currently permitted in the Charter it would be difficult to repeal it so going forward we have to get it right and a public workshop is a good place to start.

Mr. Roth said that administratively it needs to be cleaned up because the way it is written now, it is a nightmare for all the people that have property in Trusts that have to come to the Town Hall and fill out forms every year authorizing someone to vote. There are additional steps that can easily be corrected with some new language, specifically for the Trusts. Mr. Hill made a motion that we continue to review the proposed charter changes with respect to voting with a plan to have a public workshop/meeting sometime in September or October 2011. Mr. Jamison seconded the motion. Motion passed unanimously.

More discussion ensued about qualification of voters. Pierce Quinlan, 52 Rolling Road said that the Henlopen Acres Beach Club spends a great deal of time dealing with exactly these same sort of issues, who gets to be a member, and with the idea of a public workshop, comparing both our experience, perhaps we can come up with a good result. Mr. Hill said that is what we need, the broadest input, not only on the mechanics on how to do it but also on the principles. Mr. Mandalas said that crafty lawyers can make arguments about any provision in any Code at any time. The Town has traditionally looked at its' Code and put an election in place that most closely resembles the intent of the Code, so if a court were called upon to review the election, they would find that the Town is doing everything it can to meet the intent of the Code. Mr. Roth said that no results have been contested legally.

**c. §43-5.E(2)(b) Building Construction, Accessories, Windows**

Mr. Roth provided the Commissioners with a draft revised by the Environmental Review Committee and informed them that currently windows must be made of clad or solid wood, vinyl is prohibited. The revision states that "Windows must be made of clad wood or solid wood with exterior mullions on divided light. Any other materials, composites including vinyl and aluminum or mullions are prohibited unless approved on an individual basis by the Zoning Officer and Environmental Approval Committee". Discussion ensued about the inclusion of "exterior mullions on divided light" and the wording of the revised draft and its restrictiveness. Mr. Roth said this revision is an effort to be less restrictive on windows. Mr. Hill made a motion to table the matter subject to further development of the language. Ms. Kee seconded the motion. Motion passed unanimously.

**d. Employee Health Care**

Mr. Roth said at the last meeting there was anticipation of the employee health insurance rates going up significantly but the rates did not go up. He said that there is a Medicare supplement under the State plan that we are a part of and that most of the Town's Security men are Medicare eligible. Mr. Roth said that if we were to hire someone new that is already on Medicare we would like to offer them the Medicare supplement rather than giving them the whole plan but we need to verify if that is legal. The topic was tabled pending further investigation of the legality.

### **e. Phase III Street Improvements**

Mr. Roth said that the contractors were in Town yesterday doing tests on the base and everything was found to be okay. The engineer videotaped all the driveways of the area that will be affected so no one can claim that anything was done to damage their driveways. The Contractor plans to mobilize next Friday and start on Monday April 18<sup>th</sup>, they figure it will take one week per street. They are doing Tidewaters, from Zwaanendael to Dodd's Lane along the marina, the western block of Rolling Road between Dodd's Lane and Tidewaters and the Broad Hollow extension. All the residents and property owners will be given 48 hour notice prior to the start letting them know in the notice that they will need to move their cars out if they want to use them that day but by the end of the day they can move them back in.

## **8. NEW BUSINESS**

### **a. §130-58 Height restriction, Planning Commission recommendations**

Mr. Roth said that the Planning Commission met in January and March and had discussions on definitions of what is two stories and living area and on page two of the March Planning Commission meeting minutes they have put forward a proposal to the Mayor and Board of Commissioners to change the wording in the Zoning Code to use "floor area" as terminology throughout. They also put forward a proposal to the Mayor and Board of Commissioners that the Zoning Code (§130-58) be changed (or added) as follows; "if the livable first floor, as defined by FEMA, is more than the required "base flood" plus 3 feet and the area beneath has a clearance of more than 6-1/2 feet, as defined by the Zoning Code, then that area beneath the first floor will count as total floor area toward the maximum 6,000 square feet".

Bob Reed, 96 Tidewaters, said that the overall issue is that our Code says that houses are restricted to two stories above grade. If someone is building a home on a sloping lot, the front may be two stories above grade but the back of the house can end up being three stories above ground. What we should allow is two stories in the front of the house and two stories in the back of the house which would result in a split level house on a sloping lot and take care of the problem. Mr. Reed said that he thought what the Planning Commission had decided was that if floor area was above grade then that area counted as a story. Because the "uninhabitable basement" language we have already includes the floor area that has more than 6-1/2 feet of head room, a home being built in the flood plain had to count the area underneath the first floor of the house as livable space once they got more than 6-1/2 foot of head room, in spite of the fact that some of it was below flood elevation.

Mr. Hill said that this proposal doesn't seem to fit in §130-58. Mr. Roth read §130-58. "Height restriction – No building shall exceed 30 feet in height as determined in §130-4, definition of "height," and in no event shall any building have more than two floors above grade for living area." Mr. Hill said that "living area" has created the problems to date. Mr. Reed said that the Planning Commission has solved that problem by changing the language to "floor area". Mr. Reed said that we've had cases where people claimed a utility room or a garage was not "living area", changing the language to "floor area" would make that area count except there is also the issue of the two story limitation. Mr. Reed said that the Planning Commissioners need to decide exactly what they want the restrictions to be and put it into language that articulates it.

Mr. Hill said that the proposal put forth by the Planning Commission pertaining to a change in Zoning Code (§130-58), which relates to the flood plain should be sent back to the Planning Commission. Mr. Hill made a motion to prepare a resolution for a public hearing proposing to change the wording in the Zoning Code to use "floor area" as terminology throughout. Mr. Staffier seconded the motion. The motion passed unanimously.

**b. §50 Business Licenses, hours**

Mr. Roth said currently the only reference to hours is under Building Construction, section 43, there is no language anywhere else in the Code with regards to hours. Chapter 50 of the Municipal Code of the Town of Henlopen Acres, Section 50-2 title will be deleted and replaced with “Annual license required; applicability; hours”. Chapter 50 of the Municipal Code of the Town of Henlopen Acres Section 50-2 is to be amended by adding a new Subsection C as follows: (1). Commercial, promotional or construction activities shall be permitted only between the hours of 8:00 a.m., prevailing time, and 5:00 p.m., prevailing time, Monday through Friday of any week inclusive. Commercial, promotional or construction activities, except for emergency repairs, shall be prohibited on the following holidays: January 1, Memorial Day, July 4, Labor Day, Thanksgiving Day and December 25. Construction activity, except for emergency repairs, shall be prohibited on Saturday and Sunday. (2). As used in this Section, “commercial, promotional or construction activities” shall include but not be limited to: the installation of infrastructure, improvements, or new construction and may preparatory or clean-up work relating thereto: renovations, repairs, and alterations to structures; demolition of structures; installation or removal of trees or other landscaping, grass cutting, and debris removal; installation of antennas, cable television, electric, water, sewer or other utilities; cleaning with power tools, furnishing, delivering, loading or unloading materials or equipment to be used in any of the aforementioned or similar activities. (3). The Section shall not be construed to limit the hours during which a property owner or leaseholder, or a member of their immediate family, may directly perform commercial, promotional, or construction activities, at the property owned or leased.

Mr. Roth said that the property owner can still cut their own grass on Saturday or Sunday. Discussion followed about UPS, pizza delivery, cleaning of rental properties; real estate agents showing a house, a fund raiser for a charity, cottage tours, what is an emergency to one person may not be what the Town means as an emergency. Hetty Hertrich, 7 Dodd’s Lane, said that she would not like to see commercial activity coming and going in and out of the community on the weekends even if they were quietly working inside someone’s house, because she likes her privacy. Mr. Roth said it’s difficult and if this Ordinance were applied strictly, nothing would be permitted. He said that the only reference to hours, is “under construction” and we just want to clarify that you can’t come in and do whatever on the weekend or after five p.m. weekday, what that is, is open to discussion.

Mr. Hill said that he finds this Ordinance too vague. It needs to be more specific. Mr. Jamison agreed that it needs to be tightened up. Mr. Hill made a motion to table the proposal dealing with the Chapter 50 changes until it can be made more specific and the loopholes in it can be filled up. Mr. Jamison seconded the motion. The motion passed unanimously.

**Appointments to Planning Commission**

Mr. Hill made a motion to appoint John Scheurer, 62 Tidewaters, to complete the term vacated by Jim Maloney and to reappoint John Barto, 68 Fields End and Richard Thompson, 44 Rolling Road to the Planning Commission. Ms. Kee seconded the motion. The motion passed unanimously.

**c. Appointments to Board of Elections and Election Officers**

Mr. Hill made a motion to reappoint as Election Officers: Barbara M. Shortley, 59 Pine Reach, Inspector of Elections, Virginia Daly, 7 Tidewaters, Judge and Sarah Sunderland, 71 Fields End, Judge, and to reappoint to the Board of Elections: Tiffany Derrickson, 54 Rolling Road, Bruce Moore, 14 Tidewaters and Mimi Peters, 30 Pine Reach. Mr. Jamison seconded the motion. The motion passed unanimously.

**d. Appointments to Audit Committee**

Mr. Hill made a motion to reappoint to the Audit Committee Ray Murphy, 88 Tidewaters, Chairman, Barry Hale, 37 Pine Reach and Terry Billingsley, 64 Pine Reach. Mr. Jamison seconded the motion. The motion passed unanimously.

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

Martin Clark, 59 Tidewaters asked what the status was of the Comprehensive Plan. Mr. Roth said that every ten years we are required to do a complete review of the Plan, where we go through the entire process again and it gets recertified by the State, which will be in 2014. He said that he talked with the Office of State Planning Coordination, we gave them an update in 2005 and 2007 and are currently working on an additional update now. Mr. Hill said it is the burden of the Planning Commission to prepare something to present to the Board of Commissioners for approval and then it would go on to the State.

Mr. Quinlan, 52 Rolling Road complimented the Town on the new website.

**10. Executive Session**

None

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

None

**12. Adjournment**

Mr. Hill made a motion to adjourn the meeting. Mr. Jamison seconded the motion. The motion passed unanimously. The meeting adjourned at 12:02 p.m.

**Approved: \_\_\_\_\_, 2011**