

MINUTES: The regular Quarterly Meeting of the Board of Commissioners of the Town of Henlopen Acres held on Friday, January 20, 2012 at 10:00 a.m. at Town Hall, 104 Tidewaters in Henlopen Acres, Delaware.

PRESENT:

Wanda Davis	Mayor
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
Sharon Karl	Town Clerk
Henry DeWitt	55 Fields End
Marcia DeWitt	55 Fields End
Le Rowell	4 Broad Hollow
Jane Wilgis	35 Pine Reach
Herb Wilgis	35 Pine Reach
Christine Moore	14 Tidewaters
Ryan Mavity	Cape Gazette

EXCUSED: David L. Hill Commissioner

1. Call to order

Mayor Davis called the meeting to order at 10:00 a.m. and led the Pledge of Allegiance

2. Approval of Minutes

a. Public Hearing – July 8, 2011

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

b. Organizational Meeting – October 7, 2011

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

d. Public Hearing – October 7, 2011

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

d. Quarterly Meeting – October 7, 2011

Commissioner Kee made a motion to approve the minutes. Commissioner Staffier seconded and the motion passed unanimously

3. Treasurer's Report

Mr. Roth said that we are doing well on the budget. With administrative costs, if we stay on the same pace we will only be over on legal. Other than that, we replaced the maintenance truck which was in the budget and we are shopping for a new security vehicle that is also in the budget.

4. Maintenance Report

We got a new truck for maintenance and will be trying to sell the old truck. Our newest street employee, Bob Ribinsky will be starting the water operator's class. All the street signs have been replaced. We are caught up with the leaves and are now working on cleaning the storm drains.

5. Security Report

Mayor Davis said that we also have security signs available that not too many people in town have ordered. They cost \$47.00. Mr. Jamison said that it is unusual to have three break-ins. It seems obvious that the thieves come in off Ocean Drive. Mayor Davis said that they have talked with security and we're planning to put up snow fence across the majority of the opening there, leaving only a small section to come and go to the beach. It will be taken down in the spring. We are hoping that will deter the criminals.

Commissioner Kee suggested, since Rehoboth Beach has criminal activities posted on line, that we put a link on our website in order to increase resident awareness of a possible threat. Christine Moore, 14 Tidewaters agreed with Ms. Kee about the helpfulness of Rehoboth's crime postings and suggested more low lights on the bridal path that come on dusk to dawn.

6. Town Manager's Report

We installed a rest room in the shop that's complete and we will begin shortly a new HVAC system for the town hall. Also Sharon has completed her 40 hour certificate for clerk training through the University of Delaware.

7. UNFINISHED BUSINESS

a. Amendment of §130-56 Public Hearing

Mr. Mandalas, Town Solicitor, said that this is a change to Section §130 of the Municipal Code of Henlopen Acres Zoning, by amending Section §130-56, relating to the Zoning Amendment Procedure. The way the code was drafted any zoning change would have required a $\frac{3}{4}$ super majority vote. Under the State Code there is process by which commissioners can be forced to take a super majority vote to pass a zoning regulation. After discussion the conclusion was to have a simple majority pass regulations except in the instance where you have a change in zoning boundary or a change in zoning district. Under those two instances a super majority vote will be required. We have already had a public hearing on this zoning ordinance on October 7, 2011.

Mr. Mandalas read §130-56, Public Hearing into the record. "Subsection A. No such amendment, supplement or change shall become effective until after a public hearing before the Commissioners of Henlopen Acres in relation thereto at which hearing interested parties and citizens shall have an opportunity to be heard. At least 15 days' notice of the time and place of such hearing shall be published in an official paper or a paper of general circulation in the Town of Henlopen Acres. Subsection B. No such amendment, supplement, or change resulting to a revision to zoning district boundaries or the establishment of a new zoning district shall become effective except by a favorable vote of $\frac{3}{4}$ of all Commissioners of the Town of

Henlopen Acres.” These two exceptions remain, where it requires a ¾ vote to change a district boundary or creating a new zoning district.

Ms. Kee made a motion to accept the amendment of §130-56. Mr. Staffier seconded the motion. The motion passed unanimously. Since it was a zoning change a line call proceeded. Mr. Jamison yes, Mr. Lyons yes, Ms. Kee yes, Mr. Staffier yes, Mrs. Richards yes and Mayor Davis yes.

b. §C-5 Qualification of Voters

Mr. Mandalas said that this would ultimately have to be an amendment to the Charter and go through the General Assembly. As drafted this new version will allow the following individuals to have the right to vote; freeholders (property owners), bona fide residents and a special class of individuals who have created revocable trusts and conveyed real property in trust. Currently there is a provision in the Charter that allows certain entities the right to vote. This amendment does not have a provision that would allow LLC’s, Corporations and Partnerships the right to vote, which are consistent with the voting categories of Rehoboth Beach.

Mr. Mandalas said that in the packet is a page that shows how §C-5 will be amended and he read the underlined portion where the changes are and the strike out portion deleted.

“Subsection C. (3) For purposes of this Charter, a “freeholder” shall be deemed to include any person who holds fee simple title of real property in his own name, or who holds title to an undivided interest in real property, or who holds title to real estate as a tenant by the entirety, or who is both grantor/settler and trustee of a valid revocable trust to which real property located within the Town has been conveyed, provided that a copy of the trust document identifying a grantor/settler and trustee is on file with the Town.

Subsection D. (1) At such annual election, every natural person who shall have attained the age of Eighteen (18) years and who shall be a freeholder, as defined in this Section, in The Town of Henlopen Acres for a period of Six (6) months immediately preceding the date of such Annual Municipal Election, whether or not a resident of the State of Delaware or of The Town of Henlopen Acres shall be entitled to One (1) vote, provided such person is registered on the books of registered voters. ~~Every property owner, whether an individual, trust, partnership, corporation or limited liability company shall have one vote.~~

Subsection D. (2) ~~A entity other than an individual shall vote by a person named in a certificate signed by the president, vice president or person with authority, attested by the secretary or an assistant secretary, and with the corporate or appropriate seal affixed. A partnership shall vote by a person named in a certificate signed by all of the general partners. No vote shall be cast by a person named in a certificate given pursuant to this paragraph until the certificate is filed with the Town Manager. A new certificate shall be required for each election.~~

Subsection D. (3) (2) Every citizen of the United States, State of Delaware, and Town of Henlopen Acres who is not a freeholder, as defined in this section, property owner but who is a bona fide resident of the Town of Henlopen Acres for one year prior to the date of the annual election of the Town of Henlopen Acres, and is over the age of Eighteen (18) shall ~~have~~ be entitled to One (1) vote, provided such person is registered on the books of registered voters.

Subsection E. These provisions shall be construed in accordance with the principle of “one-person/entity, one vote”: If a voter is entitled to vote by virtue of being both a resident of the Town of Henlopen Acres and a freeholdern owner of real property, the voter is entitled to only One (1) vote; if a voter is entitled to vote by ownership of two or more parcels of real property, the voter is entitled to only One (1) vote.”

Mr. Mandalas said that this is consistent with what the Board has been considering and it is bringing Henlopen Acres more in line with the other coastal communities, with the same kind of trust voting and where entity voting is not allowed. Mr. Staffier asked if the new language will result in anyone who has voted, not being able to vote. Mr. Roth said, there were 9 LLC's and 2 partnerships but only three have voted in the past.

Mr. Mandalas said on the question of whether a trust should be entitled to vote, the IRS has generally taken the position that you can undo a revocable trust; where an irrevocable trust, once created, is a trust for all time. With a revocable trust, the person who currently owns the property is going to set up this trust, so they are the creator/settler of the trust and remain the trustee. They still have control over the property. They have set up the trust, put property into the trust, they are the trustee of the trust, they decide what gets done with the property and they have the power to revoke the trust. The IRS has said this is much like an actual ownership so in that limited circumstance they see that as an individual, an actual being for the purpose of taxation. Many of the towns that don't allow entities to vote do allow this limited circumstance.

The Board discussed proof of residency; however no action was taken. Mr. Mandalas said that the State Code says that eligibility to vote shall be established within the Town's Charter. Currently the Charter says one year residency required or if a freeholder, 6 months. The Board discussed the definition of the term "bona fide". Mr. DeWitt, 55 Fields End said that the qualifications to be a Commissioner need to be the same as the qualifications to vote. Currently to be a Commissioner one only needs to be a fulltime resident of the town for 30 days and the qualifications for someone to vote in an election here requires them to be a fulltime resident for one year. A Commissioner should be qualified to vote.

Mr. Staffier made a motion, seconded by Mrs. Richards, to authorize the Town Solicitor and the Mayor to work together to make the eligibility for running for commissioner consistent with the eligibility requirements for voting. Mr. Mandalas asked if it is the intention that after he and the Mayor make those changes that we can put it in the form of an Act to the Charter and then take it to the General Assembly. Mr. Staffier said that the Mayor and the Solicitor should then put it in a form that they can take to the General Assembly. Motion passed unanimously.

Mr. Staffier made a motion to authorize all the changes that have been drafted by Mr. Mandalas in section §C-5 of the Charter and to authorize, after the eligibility changes are made, the Mayor to forward all of the changes to the General Assembly for adoption. Ms. Kee seconded the motion. The motion passed unanimously.

c. Discussion of Change from Criminal Offenses to Civil

Mayor Davis said that in the packet is a copy of Chapter 126, Civil Offenses from the Rehoboth Beach Municipal Code. She said that we are trying to change many of the criminal offenses to civil offenses which will make it easier for us to enforce them.

Mr. Mandalas said that traditionally municipal offenses have been dealt with within the municipality or in Henlopen Acres, at JP Court, and really no place beyond that. In the old days there was no criminal record established if someone violated a municipal ordinance. What has happened is the State has developed the state recording system, DELJIS. DELJIS has gone through all the municipalities' Code books and identified which violations they view as criminal. Walking your dog on the boardwalk in Rehoboth Beach used to be a criminal violation. This needed to be fixed. A municipal violation typically is both quasi criminal/quasi civil. Some municipalities created a new chapter that establishes what criminal violation are going to be declared as civil violation. If there is a State Code that says for example DUI is a

criminal offense there is nothing a municipality can do to make that less of an offense. There are some offenses that are purely municipal and they should remain within the town's realm. We don't want someone to have a criminal record for an offense of leaving their trash can curbside. The town should be able to declare it a civil offense. This has been done in Rehoboth Beach and in Dewey Beach.

Discussion ensued. Mr. Mandalas said that we would not be creating new violations, just taking what is on the books and looking at them. Mayor Davis said that if everyone is in agreement we will start going through the book and review each offense. All agreed.

8. NEW BUSINESS

a. Audit

Mayor Davis said that in the packet is a letter from the auditor. Mr. Lyons made a motion to approve the audit. Mr. Jamison seconded the motion. Motion passed unanimously.

b. Comprehensive Plan Review

Mayor Davis said that this is the Planning Commission recommendations of the Draft that needs our approval to send to the state for PLUS review. Mayor Davis confirmed that everyone had already read the draft. Mr. Lyons made a motion to approve the Comprehensive Plan Review Draft. Mrs. Richards seconded the motion. Motion passed unanimously.

Mayor Davis thanked John Barto for his hard work in heading up the Planning Commission.

c. Personnel Policies

Mr. Roth said that he met with our insurance carrier and they reviewed our personnel policies and in the packet are their suggestions. In addition to that Mr. Roth said that he and the Mayor revised the uniform policy to be consistent with Security. Mayor Davis said that the Town provides uniforms to Security and maintenance personnel but that Security employees are responsible for keeping their uniforms clean where the town provides cleaning of the maintenance department uniforms and the employee pays half of that cost. There were no objections to the policy changes.

d. Review of Business License Ordinance

Mayor Davis said that in the packet is a copy of the Code and the procedures for enforcing the Code. There is a procedure before a license is issued and another after a license is issued.

Discussion ensued. Mayor Davis said that nothing has been changed, it just list the steps a business would have to take if they wanted to appeal a suspension or revocation of their business license. Mr. Roth said that there was a question under §50-5 where it said "upon payment of a fee as provided by the fee schedule". The Town does not a fee on the fee schedule for that. Mayor Davis said it is up to the Commissioners if they want to charge a fee, at this time it would not cost a business anything. Mr. Lyons asked the Mayor and Town Manager if they could present a draft. Mr. Roth said that we would do so. It was agreed by all.

e. Freedom of Information Act policy

Mr. Roth presented a draft policy for review. Mr. Mandalas said that there were a couple of things he found of interest. He referenced 4.3 (A) "Denied requests may be appealed by submitting to the Town commissioners a written appeal that specifically indicates "Appeal of FOIA Request" and identifies the reason or reasons for reversal or denial." In the State Code the appeal is directly to the Attorney General's office. He said he likes this because it gives an administrative at the local level avoiding

lengthy FOIA responses. He said he has never seen this before but does not foresee any legal problems with it. Mr. Mandalas said also 5.1 (C) “The Town reserves the right to refuse to make copies for requesters who have an outstanding balance for previous copy charges owed to the Town.” The State Code says that a FOIA request “you shall give it” and that you can “charge a reasonable copy fee”, but nothing in the State Code sets out that you can refuse to demand pay. Mr. Roth agreed that we can delete (C), adding that 5.4 (A) says “Payment for copies and /or administrative charges will be due at the time copies are released to the requestor.” Mr. Mandalas agreed.

Ms. Kee made a motion to adopt the Freedom of Information Act Policy with 5.1 (C) deleted. Mr. Jamison seconded the motion. Motion passed unanimously.

f. Marina Dredging

Mayor Davis said that the town was contacted by a contractor that is going to evaluate the need for dredging of the North Shore marina this fall. She said he approached us and asked if we were interested in having our marina done at the same time, that it would be a lot cheaper to have it done while the dredging equipment is already here. At this time we just need to know whether the Commissioners want to pursue finding out what it will cost. Mayor Davis said that work cannot be done September 1st through December 31st, because of the flounders spawning. She said that she is not sure when they plan to do the work.

Mr. Jamison said it is hard to get in and out of the marina already and that it would be an asset to the community to dredge. Mr. Lyons said that the real issue is the money. Mayor Davis said that it would be part of the next year’s budget.

Mrs. Richards made a motion that the marina dredging be researched. Mr. Lyons seconded the motion. The motion passed unanimously.

g. Lighting

Mayor Davis said that the lighting is on the agenda because the Planning Commission is looking for some coordination of the lighting in the town. Some lights are high, some low, some this color and some that color. Additionally, individual neighbors have put up lights for safety but when they go on they shine in the neighbor’s yard. The Art League has put up a lot of lights and neighbors complain about it. It was decided that no action should be taken until the Planning Commission addresses the issue.

9. Any other business that may come before the Commissioners

None.

10. Town Solicitor’s Report

Mr. Mandalas said that North Shores has contacted him and asked him to be their general counsel. He said he will not pursue that relationship if the commissioners see anything wrong with it. He said that he does not see any conflict. There was no objection.

11. Executive Session

Mrs. Richards made a motion to enter Executive Session to discuss matters relating to possible litigation. Mr. Jamison seconded and the Board entered executive session at 11:37 am.

The Board came out of executive session at 11:52 am.

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

No action was taken.

The Board briefly discussed the Comprehensive Plan.

13. Adjournment

Mr. Lyons made a motion to adjourn, seconded by Ms. Kee. The meeting was adjourned at 12:02 pm.

Approved: _____, 2012