

MINUTES: The regular Quarterly Meeting of the Board of Commissioners of the Town of Henlopen Acres held on Friday, October 12, 2012 at 10:00 a.m. at Town Hall, 104 Tidewaters in Henlopen Acres, Delaware.

PRESENT:

David L. Hill	Mayor
Andrew Brittingham	Commissioner
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
Diane Beebe	Rehoboth Art League
Dick Poole	76 Pine Reach
Elizabeth Poole	76 Pine Reach
Christine Moore	14 Tidewaters
Sheila Bravo	12 Dodd's Lane
Tim Hidell	96 Tidewaters
Jean Stakias	51 Tidewaters
Herb Wilgis	35 Pine Reach
Jane Wilgis	35 Pine Reach
Maruice Lewis	65 Pine Reach
Julie Lewis	65 Pine Reach
Hetty Hertrich	7 Dodd's Lane

1. Call to Order, Pledge of Allegiance

10:07 a.m. Mayor Hill opened the regular Quarterly Meeting of the Commissioners with the Pledge of Allegiance.

2. Approval of Minutes

a. Quarterly Meeting, July 13, 2012

Mr. Lyons made a **motion** to approve the minutes. Mr. Staffier seconded the motion. Motion passed.

b. Special Meeting, September 4, 2012

Mrs. Richard's made a **motion** to approve the minutes. Ms. Kee seconded the motion. Motion passed.

3. Treasurer's report

Mr. Lyons said that the numbers at this point reflect two months into the new budget year and they are as expected. We have five unpaid taxes. The Audit is complete. Mayor Hill passed out copies of the Draft Audited Financial Statements for fiscal Year Ended June 30, 2012. We're waiting for final comments from the Audit Committee. We will approve the Audited Financial at the next Quarterly Meeting.

4. Maintenance report

In addition to the distributed report, Sonny McClure renewed his water supply specialist license through July 2014. Bob Ribinsky will receive his water supply license in October. The Town now has three licensed water supply specialist.

5. Security report

In addition to the written report, Mr. Roth said that he stressed to Security the importance of recording all incidents and contacts.

6. Town Manager's report

Mr. Roth added to his written report that there is one new home awaiting architectural review. The marina dredging started on Tuesday. The goal is to be completely finished by May 15th.

Mr. Roth stated that last winter a snow fence was erected as a deterrent to criminals using the path after some homes were broken into. He asked if the Commissioners if the snow fence should be installed again this fall. There was no consensus.

7. UNFINISHED BUSINESS

a. Amendment to §130-4.B Definitions, "Under Roof"

Mr. Mandalas stated that the community has determined that a 6,000 square feet limit is in the best interest of the community's health and welfare and this helps to clarify what makes up the 6,000 square feet. Mr. Jamison made a **motion** to approve the Ordinance. Mr. Lyons Seconded the motion. Motion passed unanimously. Mayor Hill stated that the amendment is in the best interest of the community's health and welfare. Mr. Staffier stated any improvement in clarity that will make the Zoning Officers job easier helps the town. Mr. Jamison, Mrs. Richards, Mr. Lyons, Ms. Kee and Mr. Brittingham all stated that they support the amendment for the reasons previously stated by the Mayor and Mr. Staffier. The Ordinance was adopted unanimously.

b. Change from criminal offenses to civil

Mr. Mandalas presented a prioritized list of code offenses to review that have been identified as to possibly be converted to civil offenses from criminal offenses. Mayor Hill felt this was a task too large to be under taken at this meeting. He felt the most pressing issue was the Zoning provisions. However, first We should review Exhibit A, an Ordinance to Adopt a New Chapter 55. Previously we discussed changing the time in which someone had to ask for a hearing from 15 days to 30 days.

Mr. Jamison asked that at the time we change an offense to civil, will we have to repeal the criminal offenses. Mr. Mandalas said what will happen is that Chapter 55 establishes that there can be civil offenses. Then there will be a second ordinance that would list the ordinances that are now on the books that are going to be converted to civil offenses. We will amend each of those provisions to point back to Chapter 55, and declare that offense as a civil offense now. Also the fines associated with an offense changed to civil may need to be reviewed and maybe changed. Mr. Mandalas will prepare Chapter 55 for formal consideration at the January meeting.

Mayor Hill said now we have to go through each and every criminal provision in the Code and decide whether to make it civil or leave it criminal. After discussion, Mayor Hill recapped that for the January Meeting will address the new Chapter 55, Mr. Mandalas will draft ordinance amendments for items in list 'A' and the Commissioners will be prepared to discuss the items on list 'B'.

c. Event Parking

Mr. Roth said that the outside show, from all the comments he has heard, went very well as far as parking is concerned. Again, there are a few minor issues that need to be worked on but overall it went well. Mr. Roth said that he and Mrs. Bravo are going to continue to talk on an event by event basis to address any needs. Mr. Roth said in reference to Town wide events that Mr. Stewart and he have made up a map showing where they feel it is appropriate to parallel park or perpendicular park if need be.

Mr. Roth stated that if other issues arise he will discuss them with the Commissioners who have volunteered to help out with this issue.

d. Comprehensive Plan Review

Mayor Hill, in reference to the latest letter from Constance Holland, Director, Office of State Planning Coordination, dated September 20, 2012 received at the Town Hall September 25, 2012, said that the letter relates to the five year Review of the Comprehensive Plan. Mayor Hill said in his view the five year Review is finished. He asked if any Commissioner felt otherwise. There was no comment. Mr. Hill stated, upon consultation with the Town Solicitor we will prepare an appropriate response in due course.

Mayor Hill said that along with the Planning Commissions we need to start work on the ten year update. We need to address the outstanding issues along with items previously identified by the Planning Commission.

Mr. Roth stated that the Town has submitted its' Comprehensive Plan annual report. A letter dated September 4, 2012 was received back from Bryan Hall, Principal Planner Office of State Planning Coordination that read "We have reviewed your report and are pleased to see that the town is actively implementing your adopted and certified Comprehensive Plan. We note that the town has worked to improve your zoning code definitions for easier calculation on a buildings square footage. In addition, we note that the Town is working to update your current comprehensive plan."

e. Trash and Recycling Service

Mayor Hill said that at the previous meeting it was suggested that the town may be better off with a single trash company to service the town because it would limit the number of trucks coming into town, less pollution, less noise and less wear and tear on the roads. Mr. Roth presented a Request for Proposal, which would be sent out to the various service providers. Discussion ensued on issues such as administrative burden, seasonal residency, frequency and exclusivity. No action was taken.

8. NEW BUSINESS

a. Review possible Charter changes

Mayor Hill said that we have an outstanding Charter change dealing with changes in voter eligibility and this was tabled by the State Legislature when a question was raised by a resident who has an irrevocable trust in which the grantor and trustees are identical.

Mayor Hill stated that the Town Manager has brought to his attention a couple more items which are included in your packet. These items include powers of the Office of Treasurer and functions of the Audit Committee. Mayor Hill felt the language is archaic and needs to be revised.

Mayor Hill expressed that in order to make the strongest possible presentation with the State Legislature he proposes that we give the public the opportunity for input on the issues and have the proposed changes prepared for the legislature for January. We have a meeting scheduled for December 14th and we should use this to focus solely of the Charter issues and public comment.

Ms. Kee made a **motion** to have a Public Hearing on Charter Changes at the December 14th meeting. Mr. Jamison seconded the motion. Motion passed unanimously. Mayor Hill said that if anyone sees any other changes to submit them to the Town Manager in order to get them included on the Agenda.

b. Process for evaluating Rehoboth Art League status and possible changes

Commissioner Staffier stated that one item that keeps coming up is this question of establishing a new "cultural" zone for the Art League. He expressed that he has concerns and he knows others do as well

because the facts on this proposal are not very clear. For instance he said that he does not find the term “Cultural Zone” to be a self-defining term. No one has ever come forward and explained what the rules and regulations would be in such a zone, what sort of activities could be conducted, what types of events or what would the rules be with respect to structures. We would need to analyze how such a zone would impact the residents and impact the community. Mr. Staffier said that he does not think that the Commissioners or the residents can rationally evaluate any proposal to establish a new zone without having those sorts of details available. Mr. Staffier felt the first step would be to develop a questionnaire, send it to the RAL and ask them to define, for us, what the proposal is they have in mind with respect to this “Cultural Zone”.

Mr. Staffier said that Mr. Mandalas and others have referred to the fact that establishing a new zone has a number of legal complexities involved and would also affect the Charter. It would be helpful if Mr. Mandalas prepare a memorandum of these issues. It has also been mentioned that there are other alternatives for change such as conditional use permits.

Mr. Staffier volunteered to draft a questionnaire that can be presented to the Art League and that in an effort to compile a hearing record we should get a formal response from the RAL. After we receive this, in writing, and receive Mr. Mandalas’ input, we should have a Public Hearing. The Art League should have representatives there that can answer questions and address what the impacts will be. In the final analysis after this record is assembled the Commissioners are going to have to make a decision as to whether or not we want to make a change, but at least at that point we will have a record before us where we would hopefully have thoroughly investigated all the issues and given everybody a chance to express their views and we would have an evidential record to base whatever the decision may be. Mayor Hill said that to some degree we need to coordinate with the Planning Commission to develop a record with respect to the ten year update. He iterated recommendations made in the letter received from Ms. Holland, Office of State Planning Coordination in reference to the RAL’s status. Mr. Staffier said that what we basically need to know is what the RAL wants to be able to do in this new zone that it can’t do now. This is not clear right now. Mr. Mandalas said that he has seen instances already where a group of Commissioners will first evaluate at this level and decide if it is a good idea or not. If you make a decision that it is a good idea and want to pursue it then you can send a framework of a new zoning district to the Planning Commission and request that they now finalize the details.

Mr. Lyons said that he takes exception to the State telling us how to run our town. He wants to know what the RAL is going to do about the continuous expansion. The residents should be able to have peace on Saturday and Sundays. Ms. Kee said that she does not want the state or other towns telling us that the RAL should stay open till 9 pm at night. She felt there should be a reasonable time for events to happen. Mayor Hill said that these are things that have to be discussed and balances reached. Mr. Staffier agreed, saying in terms of what Mr. Lyons said, he also takes exception to the state telling us how to run our town. He said that the only possible circumstance where that could actually occur would be if for some reason, the town were not addressing an issue that needed to be addressed. Once it is made clear that we are going to address the issue in a fair and open manner that should eliminate any further interference from the State.

Mayor Hill said that his fellow Commissioners seem to agree that this is something that should be pursued. He asked Mr. Staffier to prepare the questionnaire, with input from anyone else that has suggestions on questions to be asked. There will be a hearing for public input and for us to pose questions back and forth. That will help us develop a factual record.

c. Review of §130-20 Building setback

Mayor Hill said that currently §130-20. Building Setback reads; “The front yard shall extend back from the front property line a distance of at least 20 feet but not less than the established building line. The established building line shall be the average of the setback of existing structures on the same side of the

street considering six lots on either side of the lot under review.” Mayor Hill said that the new Zoning Officer is being very active and seeing issues that he is bringing to Mr. Roth’s attention. Mr. Roth stated that what the Zoning Officer is suggesting is adding the term “block” to the ordinance. The question as he sees it is should the front setback of 40 Rolling Road be determined by the setback of 20 Rolling Road when you can’t see one from the other and they are a whole block away.

Discussion ensued. Mayor Hill said this needs to be reviewed. Mr. Staffier made a **motion** to refer this to the Planning Commission. Mrs. Richards seconded the motion. Motion passed unanimously.

d. Review of §130-4.B Definitions, Front Yard

Mr. Roth said that there is an old typographical error that was made by the company that prepares our Code. Mayor Hill read, “FRONT YARD, The required open space unoccupied and obstructed”, which should correctly read unobstructed. Mr. Lyons made a **motion** to hold a public hearing on changing the word obstructed to unobstructed. Mr. Staffier seconded the motion. Motion passed unanimously.

Mayor Hill authorized Mr. Mandalas to prepare an ordinance and schedule a public hearing as soon as practical.

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), and for the purpose of reviewing and discussing executive session minutes, in accordance with 29 Del. C. § 10004(b)(6)

Ms. Kee made a **motion** to go into Executive Session to review executive session minutes. Mr. Jamison seconded the motion and the Board went into executive session at 12:20 pm.

Mr. Jamison made a motion to come out of executive session, which was seconded by Mr. Staffier. The Board came out of executive session at 12:35 pm.

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

Mr. Lyons made a **motion** to approve as corrected, the following executive session minutes; 1/14/11, 6/13/11, 7/8/11, 10/7/11, 1/20/12, 4/13/12, 5/25/12, 6/8/12, 7/13/12. The motion was seconded by Mrs. Richards and was approved unanimously.

13. Adjournment

Mr. Lyons made a **motion** to adjourn at 12:36 pm. Ms. Kee seconded the motion. The motion passed unanimously.

Approved: January 11, 2013