

MINUTES: The regular Quarterly Meeting of the Board of Commissioners of the Town of Henlopen Acres held on Friday, April 13, 2012 at 10:00 a.m. at Town Hall, 104 Tidewaters in Henlopen Acres, Delaware.

PRESENT:

Wanda Davis	Mayor
David Hill	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
Sharon Karl	Town Clerk
Dave Boyce	11 Tidewaters
Herb Wilgis	35 Pine Reach
Jane Wilgis	35 Pine Reach
Eileen Clark	59 Tidewaters
Martin Clark	59 Tidewaters
Diana Beebe	Rehoboth Art League
Norma Lee Derrickson	49 Tidewaters
David Auten	20 Tidewaters
Betsy Wilgis	32 Tidewaters
Shaw Wilgis	32 Tidewaters
Ryan Mavity	Cape Gazette

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 – Quarterly Meeting, January 20, 2012

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

3. Treasurer’s Report

Commissioner Hill said that the balance sheet looks good, assets have increased. The operating budget will be tight. The revenue, based on some projections that Mr. Roth has made, will be slightly over budget. Our general and administrative expenses are also going to be over budget. We had projected about a \$3,000 operating loss; we are now looking at a \$12,000 operating loss. We bought two vehicles this year, one for security and one for maintenance and the fourth phase of the road repaving is underway. After adjustments, considering the increase in fuel costs, we are projecting a budget deficit of \$106,000. If our forecasts are accurate, at June 30th we will have about a \$90,000 total loss. One unfavorably item is our anticipated legal costs. The increase is largely contributable to the Comprehensive Plan activities.

4. Maintenance Report

Mr. Roth said the he and Mr. McClure attended the annual water conference in Harrington and the street department attended Mosquito/Pesticide training. Mr. Roth said that there is an issue of fencing that runs behind the water plant, toward town hall. It has been torn up for some time now. He said that he got one price of \$2,300 but will get other prices. It is approximately 400 feet of fence that will be replaced, just the chain link. The money is in the budget and this needs to be done.

5. Security Report

Mr. Roth said that there is nothing out of the ordinary other than a report of a bullet hole in a resident's car door. The State police are sure it did not happen in the town. Mr. Jamison asked if the snow fence that was put up off Ocean Drive has deterred crime. Mayor Davis said that there have been no further break-ins reported. She said that fence will be taken down before Memorial Day Weekend.

6. Town Manager's Report

Mr. Roth said that the written report is in the packet. Since the report was printed, there have been five more kayak storage rentals and one for access. Mr. Roth said that currently we are working on mapping the wells in the town. He said that information is needed by the planning commission for their discussion on well heads. We want to add to that map private wells that residents have. There are 60 of them that we know of.

Mayor Davis said that we should be appreciative to the County, that we received a grant to help pay for the security vehicle. Each town that did not have a police department received a set amount of money and we used it toward the security vehicle. Also a thank you goes to George Bunting who saw to it that we received \$20,000 that went towards our repaving and the roads. We also traded the old maintenance pick-up to Below Book for four new tires, priced at \$660.

7. UNFINISHED BUSINESS

a. Discussion of change from criminal offenses to civil

Mr. Mandalas, Town Solicitor, said Mr. Roth made a list of violations that could be changed to civil violations. The default in Delaware is that violations of municipal ordinances are typically treated as a criminal violation which is contrary to how you would think. Mr. Mandalas said that he recently spoke with Alan Davis, Chief Magistrate and he said that he has seen the same problem in the Justice of the Peace Courts and his view is that a lot of the municipal violations should not be viewed as criminal violations. In the state DELJIS system, these criminal violations go on a citizen's record making it difficult for them to get into a military academy, being able to take the bar exam, etc. and they create difficulty in future years. Some towns have migrated some of the offenses from criminal to civil. To do that we specifically set up in the Code a chapter that addresses civil ordinances.

Mr. Mandalas said that a security officer within the town will be able to cite someone for a civil violation then the violator will have an opportunity to either pay a voluntary assessment, designated in the code, typically \$25. - \$150 depending on what the offense and be done with it, (with no criminal record, the record of the incident will just stay within the town), or they can request a hearing at the Justice of the Peace Court. If the violator chooses to do neither, not pay the voluntary or have a hearing at the Justice of the Peace Court then it defaults to a voluntary assessment that the town can collect upon as it does any other obligation due the town. Mr. Mandalas said that the next step would be to create an ordinance that specifically goes through each of the criminal violations that have been identified as civil violations and specifically, in the Code, refer to the new civil ordinance chapter saying that this violation is hereby declared a civil offense pursuant to the civil offense chapter created for this purpose.

Mr. Roth said that the list in the packet is a list of all assessable offenses. The Board needs to determine which are to be reclassified to a civil offense. Mayor Davis asked Mr. Mandalas to review the offenses and determine the ones he thinks should be changed to Civil Offenses and for the next meeting of the Commissioners. All Commissioners agreed that the dollar amount of a civil offense should be a specific dollar amount. Ms. Kee asked about Rehoboth and Mr. Mandalas said that Rehoboth has a \$25 default if a violator is willing to just pay a voluntary assessment. If they want to have a court hearing then sometimes that dollar amount specified in the violation section is a larger amount. Mr. Staffier said that \$25 is good except for zoning violations. Mr. Staffier said also, someone renting a house for a couple of thousand a week, if they are violated for being too loud, they may be happy to pay the \$25 dollars a day not to have to change their behavior. Mayor Davis said that the \$50 violation gets the attention of the violator. Mr. Staffier said what about continuous violators. Mr. Mandalas said that it is more difficult on the civil side then on the criminal side to increase violations for second and third time offenders, but it can be done. Mr. Mandalas said that a criminal assessment is meant to punish the offender and penalize them even more for the next time. A civil assessment should be what it costs the town to undo whatever civil offense was done. Mr. Mandalas said that he has seen on several occasions that courts have upheld in limited circumstances increasing civil penalties for additional violations, so it can be done but it is not as clearly sustainable as in a criminal case.

Mr. Hill said that in reference to zoning, if a violator got a \$75 fine and came in within two weeks to pay it he could pay \$50 in voluntary assessment. Mr. Staffier said that there should be a fixed amount for each offense and a discount if it is paid in a timely manner. The discount could be the same percentage but would not be the same amount. Mr. Roth said that this needs more time to be reviewed more closely because all offenses are not equal. Mayor Davis asked that anyone with any suggestions to please send them to Mr. Roth. He can compile them and make sure that Mr. Mandalas receives them.

b. Business Licenses

Mr. Roth said that 7b in the packet “Business Licenses §50-5.1 Appeals from determination of revocation” was drafted by he and Mayor Davis for review at this meeting because we do not have an Appeal fee on our fee schedule as indicated in §50.5. Mr. Staffier asked if someone files an appeal and pays \$100, if they win the appeal, do they get the \$100 returned to them. Mr. Roth said no. Discussion ensued and it was agreed that the \$100 non-refundable fee remain.

Mr. Staffier asked if there is a process that defines when the Town Manager can revoke a license. Mr. Mandalas read ordinance, §50-4.

After further discussion Mr. Mandalas read a proposed revision of §50-5 as follows: “Any applicant or licensee may appeal the decision of the Town Manager to revoke or not renew his or her license to the Commissioners of Henlopen Acres. Such appeal shall be in writing setting forth the reasons for the appeal and shall be filed with the Mayor of Henlopen Acres by certified mail with return receipt requested, together with a non-refundable fee of \$100 within 10 days after the receipt of the notice from the Town Manager to revoke or not renew the license. Upon receipt of the appeal, the Mayor shall fix a time and place for hearing the appeal, which said time for hearing the appeal shall be not more than 30 days following receipt thereof by the Mayor of Henlopen Acres. The filing of an appeal by any licensee shall not operate as a stay of the determination of the Town to revoke or not renew the license.” Mr. Hill made a motion to delete §50-5 in its entirety replacing it with new language that the Town Solicitor read to the Commissioners. Mr. Staffier seconded the motion. The motion passed unanimously.

c. Outdoor Lighting

Mr. Hill said at the last meeting of the Commissioners, which he did not attend, outdoor lighting was discussed and referred to the Planning Commission. Mr. Hill said the Town makes the rules within the town right of ways. The town requires every homeowner to have one lamp post. Further outdoor lighting has to be subject to a review process to set some standards. Fenwick Island has a good lighting Code that sets limits on how powerful bulbs can be, shielding, etc. The purposes it states is the reasonable use of outside lighting for nighttime safety, mobility, security and enjoyment, minimize glare and intrusive outdoor lighting and conserve energy. Those are good goals. Mr. Hill said we will pass this on to the Planning Commission and that is a good place for this to be thoroughly reviewed.

8. NEW BUSINESS

a. Personnel Polices

Mayor Davis said that she and Mr. Roth worked with a representative of the insurance company on the Town's smoking policy and the cell phone/texting use policy. After discussion, Mr. Hill made a motion to approve the smoking policy and the cell phone policy as presented. Ms. Kee seconded the motion. The motion passed unanimously.

b. Marina Dredging

Mayor Davis said at our last meeting we informed you that the town was contacted by a contractor that is going to dredge the North Shore marina this fall. She said that it would be a lot cheaper to have it done while the dredging equipment is already here. Mayor Davis said that the last time the marina was dredged was in 2003 and it was 2005 before all the spoils were hauled away. Currently the contractor is proposing to put the spoils in bags, similar to those used at North Shores, last time, and were very successful. We received two proposals; one for 3000 cubic yard of spoil and the other for 4000 cubic yard of spoil. The 3000 price came to a little more than \$160,000 and the 4000 over \$198,000.

Mr. Roth passed out a cost analysis he prepared on the marina, including dredging. He said that from 2003-2012 Total Revenue of \$647,080 less Total Expense \$643,429 left a surplus of \$3,651. Mr. Roth said that work would not begin until fall and that the expense would be in next years' budget.

More discussion ensued about the need for the dredging and the asset that the marina is to the community. Mayor Davis said that at the next meeting they will begin work on the Budget and need to know whether to include the dredging cost in the budget discussion. All agreed that dredging of the marina was needed. Mayor Davis said that we can make a decision today to dredge and have the Contractor come to the next meeting and explain the benefit of dredging 4000 cubic feet as opposed to 3000 cubic feet, and have him answer other questions. Mrs. Richards made a motion to proceed as Mayor Davis suggested. Mr. Jamison seconded the motion. Mayor Davis, to clarify, said that we are going to proceed with the dredging the marina and that she will call the contractor and ask him to come to the next Commissioners meeting to answer questions. The motion passed unanimously.

c. Event Parking

Mr. Hill said that the time has come for us to be more organized about event parking. The results of last year's Outdoor show, showed us that some planning needs to be done in order to keep the streets safe and open so no harm comes to anyone driving, walking or bike riding on the roads. Inconvenience to residents needs to be kept at a minimum. He proposed that the Mayor preside over an event parking committee that requires input and cooperation from the Art League and all others having events in the town that create overflow parking. The RAL must give us their preliminary plans. The Town needs to have enough security present to have a serious enforcement mechanism so if guests do not comply, there will be consequences. The goal is safety, efficiency and minimizing the impact on the neighbors.

Mr. Jamison agreed to work with Mayor Davis and Security on the event parking. Mr. Hill made a motion that the Commissioners establish an Event Parking Process that the Mayor, assisted by another Commissioner, to inform the event coordinator to provide preliminary parking plans within a certain time period, then have as many meetings necessary to refine the plan and to put in place an enforcement mechanism. Mrs. Richard seconded the motion. The motion passed unanimously.

e. Appointments to the Board of Adjustment and the Environmental Review Committee

Mayor Davis nominated Joni Reich as an appointment to the Board of Adjustment to complete Pat Linn's term that expires August 31, 2014. Also, the Mayor nominated Wilkes Coleman and Debra Fischer for re-appointment to the Board of Adjustment for a three year term. A motion to approve was made by Mr. Hill and seconded by Mr. Lyons. The motion passed unanimously.

Mayor Davis said that Anne Weir asked to be replaced on the Environmental Review Committee. Mayor Davis said that she would like to appoint Bryce Lingo, who has agreed to serve again for a three year term. A motion to approve was made by Mr. Lyons and seconded by Mr. Jamison. The motion passed unanimously.

f. Appointment of Election Officers and Board of Election

Mayor Davis said that she would like to appoint Barbara Shortley, Virginia Daly and Sarah Sunderland as Election Officers for a one year term. Motion to approve made by Ms. Kee and seconded by Mr. Jamison. The motion passed unanimously.

Mayor Davis said that she would like to appoint Tiffany Derrickson, Bruce Moore and Mimi Peters to the Board of Election for a one year term. Motion to approve made by Mrs. Richards and Seconded by Ms. Kee. The motion passed unanimously.

g. Appointments to Audit Committee

Mayor Davis said that she would like to appoint to the Audit Committee for a one year term, Ray Murphy as Chairperson, Barry Hale and Terry Billingsley. Motion to approve made by Mr. Lyons and seconded by Mr. Jamison. The motion passed unanimously.

h. Appointment Planning Commission

Mayor Davis said that she would like to appoint to the Planning Commission for a five year term, John Scheurer who had filled in a vacancy up till now. Motion to approve made by Mr. Lyons and seconded by Mrs. Richards. The motion passed unanimously.

9. Any other business that may come before the Commissioners

Mr. Roth said that the Town is getting the HVAC system replaced. The cost is approximately \$23,000 and we are getting a Federal Grant for \$20,000.

Mr. Mandalas in response to questions posed by Eileen Clark, 59 Tidewaters, said that by State Code the Planning Commission controls the Comprehensive Plan Document. Once they are satisfied that it is in a form sufficient to send to the Commissioners, they will send it to the Commissioners with their recommendation that the Commissioners approve it. The Commissioners can send it back to the Planning Commission for additional work, or they can approve it as it has been sent to them and send it on to the State Office of Planning Coordination for final certification.

Herb Wilgis, 35 Pine Reach asked Mayor Davis what the State reply was to her request for clarification on the PLUS review. Mayor Davis said that the letter has not yet been distributed to the Planning Commissioners but as soon as they have reviewed it, a copy will be available to those who request it.

Mr. Wilgis said on the question of conversion of offenses from criminal to civil, he hopes that when the conversion is made that the commissioners will adopt some kind of due process when it comes to the issuance of citations. He said that a person who has innocently violated the Code should be given a warning to let them know what the Code is that they violated. Once they have been warned, they know the Code, so if they do the offense again, then a citation with a fine is justified.

10. Town Solicitor’s Report

Mr. Mandalas said that he has nothing to report. Mayor Davis asked if he had any information on our Charter change. He said he has not but will check and respond.

11. Executive Session

Mr. Hill made a motion to enter Executive Session to discuss matters relating to potential litigation. Mr. Staffier seconded and the Board entered executive session at 12:02 pm.

The Board came out of executive session at 12:46 pm.

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

No action was taken.

13. Adjournment

Mrs. Richards made a motion to adjourn, seconded by Mr. Hill. The meeting was adjourned at 12:46 pm.

Approved: _____, 2012