

TOWN OF FENWICK ISLAND, DELAWARE

Minutes of the June 17, 2016, Regular Council Meeting

Call to Order and Flag Salute at 3:30 p.m. by Mayor Langan

Council in Attendance: Gene Langan, Diane Tingle, Bill Weistling, Gardner Bunting, Julie Lee, Richard Mais, Roy Williams

Staff in Attendance: Town Manager Burke, Town Clerk Poole, Public Works Supervisor Reed, Building Official Schuchman, Chief Boyden

PRESIDENT’S REPORT

- Mayor Langan reminded everyone that June 30th is the last day for walk-in voter registration and July 8th is the last day for mail-in voter registration.
- Mayor Langan announced the proposed bill in the Delaware Legislature (that was passed in five days from the house and forwarded to the senate). The bill has to do with voting; it prohibits/restriction to people who lease. It will also change the time you have to register to vote. It will make all the municipalities/people register within 30 days of voting. It has been amended so there will be no charter change for this. It is currently with the Senate Administrative Committee and should be passed shortly.

TOPICS FOR DISCUSSION AND POSSIBLE ACTION

- **Comprehensive Plan** – Winnie Lewis – The commission has completed most of the work on the Comprehensive Plan updates and the Public Workshop will be held on July 16th at the Town Hall from 9:00 a.m. – 11:00 a.m. for public input. Copies of the updates and changes are available at Town Hall for review. If anyone has any questions or additions/likes or dislikes, forms are available at the Town Hall for submission to the Planning Committee. One section the town will be adding is a Technology Section which will be available at the public workshop. Copies of the updates/changes will be available at the Public Workshop along with the current copy of the Comprehensive Plan. Second Public Workshop has been scheduled for August 13th from 9:00 a.m. – 11:00 a.m.
- **Community Branding Public Workshop Date** – Town Manager Burke – Per Councils request, Diane Laird was contacted and will available to present on July 22, at 2:00 p.m. She will give the same presentation that was presented to the Business Development Committee and covered in her interview with the press following the meeting. Agenda for the Public Workshop will be posted seven days in advance of the public workshop.
- **2016 Homegrown Harvest Festival** – Town Manager Burke – The Home Grown Harvest Festival was unofficially approved at the last meeting for Sunday October 9th from 12 – 4:00 p.m. Today, council needs to review the special events permit filled out by Jeff and Scott Mumford to host the Home Grown Harvest Festival at Warrens’ Station on October 9th. The subcommittee asks that all fees be waived for the business owners. Warrens Station will host the Home Grown Harvest Festival and the town will hire an officer at overtime rates from 10:00 a.m. to 6:00 p.m. for safety and security.

Motion – Motion made to approve the Home Grown Harvest Festival Special Events Permit – Council Member Mais

Second – Council Member Bunting

Discussion – None

Vote: (7-0)

Town Manager Burke added that with the council’s approval of the Home Grown Harvest Festival you are instructing me to submit an application to the Delaware Beverage Commission for a one day group gathering permit to sell alcoholic on site from 12 noon – 4:00 p.m. If the council approves, Town Manager Burke will submit the application on Monday. The proceeds of the day, with council’s approval can be donated to charity, keeping proceeds to offset the event or choose something else.

Motion – Motion made to approve Town Manager Burke to submit the application to the Delaware Beverage Commission for a one day group gathering permit – Council Member Bunting

Second – Council Member Mais

Discussion – Council Member Weistling asked, “Does the town have any liability?” Town Manager Burke noted that he had spoken to the town’s insurance carrier and we are covered for that day.

Vote: (7-0)

APPROVAL OF MINUTES

Motion – Motion made to approve the Minutes of April 22, 2016 with amendment - Council Member Lee

Second – Council Member Mais

Discussion – Council Member Lee noted under Ad hoc Election Committee’s report should read “was given” instead of “asked for”. Correction to be made.

Vote – (7-0)

TREASURER’S REPORT

2016 Monthly Report

Summary The monthly report is a summary of all account balances through **May 31, 2016** and other pertinent financial information since the prior month’s Town Council meeting.

Cash Balance

- Beginning cash balance 4/1/2016 \$2,120,571.43
- Ending cash balance 4/30/2016 \$2,096,314.46
- Reserve Realty Transfer Tax Funds \$1,486,669.14 **included above in cash balances*

FY 2016 Operating Budget (8/1/15-4/30/16)

- 98.76% of Budgeted Income
- 81.66% of Budgeted Expenses

Realty Transfer Tax (1.5% local tax)

- Taxes collected in May \$0
- Total taxes collected in FY16 \$100,395.64

Outstanding Property Taxes

- \$ 9,030.15

Revenue Highlights

- 99.68% of real estate property tax budget (collected \$0 in May)
- 111.15% of rental receipt tax budget (collected \$5,966.51 in May)
- 79.92% of parking violations budget (collected \$300.00 in May)

Municipal Street Aid Report

- \$1,226.76 in expenses (Delmarva Power)
- \$0 (*Deposits*)

MSA Balance \$36,297.81

Dedicated Street Fund Report

- \$0 (*expenses*)
- \$0 (*Deposits*)

DSF Balance \$45,137.35

Parks & Recreation Fund Report

- \$2,089.65 in expenses
- \$0 (*Deposits*)

Parks & Rec Balance \$2,219.00

Motion – Motion made to **accept** the Treasurer’s Report as read – Council Member Lee

Second – Council Member Mais

Discussion - None

Vote: (7-0)

Treasurer’s Report accepted by Council

TOWN MANAGER’S REPORT

Projects / Updates

- The 2016 Election will be held on Saturday, August 6 from 1-5 pm at Town Hall.
- The FY 2017 Financial Plan was adopted at the May 27. Financial Plan documents will be added to the website for public review.
- Management created accounts with Soundcloud.com to post audio minutes (search Town of Fenwick Island) and Mail Chimp to send information to the community database.
- Social media websites were updated accordingly.
- The summer newsletter will be posted on the website no later than July 1.

Grant Applications (approved, pending, finalized)

- **2015 DNREC Recycling Grant (approved for \$2,689, 100% State of DE)**
 - All grant items were purchased except the rack card. The recycling rack card will be printed no later than July 4.
- **2015 American Lung Association Grant (approved \$1,389, 100% State of DE)**
- **2015 DNREC DTF Grant (pending \$42,585, 50% Town of Fenwick Island match)**
- **2016 DNREC Surface Water matching Planning Grant (pending, \$30,000, 50% Town of Fenwick Island match)**
 - DNREC approved \$15,000 in grant funds to engineer three (3) drainage projects along Route 1. The engineering will commence in FY17.

DEPARTMENT REPORTS

- **Building Official** – The monthly report was included in the Council meeting packet. Licenses issued 29 (business). Also, ATM will be installed at the Village of Fenwick.
- **Public Works** – The monthly report was included in the Council meeting packet.
- **Beach Patrol** – The Monthly report was included in the Council meeting packet. Bonfire will be July 3rd at 6:30 pm – 10:30 pm with rain date scheduled for July 4th.
- **Police Department** – The monthly report was included in the Council meeting packet.
-

TOWN COMMITTEE REPORTS

- **Charter and Ordinance** – Council Member Weistling read the proposed first reading – Chapter 116 – Article IV (Hunting) into the record.

Proposed First Reading – June 17, 2016

Chapter 116 – Peace and Good Order

New:

Article IV

Offenses Against Public Peace and Safety

§ Chapter 116-15. Hunting.

It shall be unlawful for any person to hunt any game bird or game animal within the incorporated limits of the Town of Fenwick Island with any type of weapon.

§ Chapter 116-16. Violations and penalties.

- A. The Town Council shall appoint a designee who shall have discretion in determining when a violation of the hunting prohibition set forth in § 116-15 has occurred.*
- B. In the event the Town Council’s appointed designee determines that a violation of § 116-15 has occurred, the person who is determined by said designee to have violated or failed to conform to any provision of this Article shall be subject to penalties imposed in accordance with the fee schedule established by Town Council by Resolution, as the same may be amended from time to time, and shall be responsible for all of the Town's costs and expenses, including reasonable attorney's fees, incurred to enforce the provisions of this Article and/or to collect the penalties imposed hereunder. Penalties assessed for a violation of this Article, together with any enforcement and/or collection costs as described in the foregoing sentence, shall be considered civil penalties and any action brought for the recovery of said penalties and costs by the Town shall be brought in any civil court of competent jurisdiction.*

§ Chapter 116-17. Appeals.

Appeals concerning the interpretation or application of this chapter shall be submitted to the Town Council for review. The decision of the Town Council concerning any such appeal shall be final.

Motion – Motion made to approve the first reading Chapter 116 – Peace and Good Order – New Article IV Offenses Against Public Peace and Safety – Chapter 116-15 Hunting, Chapter 116-16 Violations and penalties, Chapter 116-17 Appeals - Council Member Weistling

Second – Council Member Tingle

Discussion – Council Member Weistling stated that the recommendation was presented in the fall by Chief Boyden where there was an issue with hunting in the northern part of town.

Vote – (7-0)

Council Member Weistling, one other item at the last meeting of Charter & Ordinance, talking about voter's registration, he commented that prior to sending this to Charter & Ordinance he would like it sent to the town solicitor for review. Back in 2008, the town's solicitor was the one who worked with council and drafted the changes. Before preceding it was decided to ask her about some of the background history of the 2008 changes voting regulations, if she knows. Will also ask for pros and cons and recommendations, alternatives and guide lines for C&O to proceed with some legal parameters to work with rather than discussing issues that legally the committee is not able to proceed with. The prime example is what happened today as mentioned that the Delaware House of Representatives, Melanie Smith proposed legislation that would pre-empt any Town Charter or ordinance provision that would pose a residential or property ownership in excess of 30 days. What passed today based on a Supreme Court decision back in 1972 that put residential requirements in place only if they could justify a compelling state interest and Representative Smith's comments were that you cannot impose residential requirement for property ownership requirement in excess of 30 days. The longer residential requirement violates Supreme Court precedent. He feels it's best to wait for the town solicitor response before going to Charter & Ordinance.

- **Beach Committee** – Bonfire is scheduled for July 3rd with a rain date of July 4th. DJ Batman will be here again along with EMS personnel available. Public works will provide the lights, firewood and tables.
- **Environmental Committee** – Chair Mary Ellen Langan – Most of the dead trees have been removed. Letters are being prepared and will be sent out soon for properties with trees dead trees on their property. Next meeting will be August 11, 2016.
- **Technology Committee** – The next meeting will be in the fall.
- **Business Development Committee** – Council Member Bunting stated there will no meetings until September.
- **Ad hoc Election Committee** – Council Member Lee thanked Charter & Ordinance Committee for addressing the topics of discussion on the two items on voting qualifications. She noted an update on the resident lease holder. After deeper research it is clear that a bona fide resident of Fenwick Island, that is someone not only a resident of the State of Delaware but a bona fide resident of Fenwick Island, whether a lease holder or property owner is qualified to vote in the Town of Fenwick Island. The determination of bona fide resident will now be more defined by this new change in state law but would also require a driver's license to verify the address. Also, waiting on response from the town solicitor on non-resident property owner, held in trust voting clarification. Council Member Weistling noted that he was glad she made the correction because there are several errors/false statement on the committee submission. 1) It starts off by saying in your opening statement "After carefully reviewing the Fenwick Island Voters Qualification and the comparison of such neighboring municipalities, the Ad Hoc Election Committee made recommendations to C&O. Under number two, one request was "a resident who is a non-property owner should not be entitle to a vote". You made the correction but what was given to the committee stated "Fenwick Island is the only municipality that allows resident non-property owners that are renter to vote without some sort of qualification. That is a false

statement. In the Charter section 9(a)1 defines the resident as every natural born citizen of the United States age 18 or before date of the election a bona fide resident of the Town of Fenwick Island as of March the 1st, prior to the municipal election. Noted that Fenwick Island does have qualifications on non-resident property owners. The second sentence stated “Some municipalities require a lease of at least five years or longer” as pointed out several weeks ago in the Coastal Pointe, Council Member Weistling did some checking of all the local beach communities from Lewes down to Fenwick totaling 6. Her comment on some municipalities require of lease of five year or longer, only one community Dewey Beach, requires five years. Bethany Beach requires 6 months, South Bethany requires nine months, Rehoboth Beach requires six months, Fenwick Island requires a little over five months. The next sentence states, “Other municipalities do not allow residents non property owners to vote” that statement is false. Every beach community from here to Lewes allows non-resident property owners to vote. Finally, the second to the last paragraph stated “that the Ad hoc Election Committee believes these changes would make voters qualifications more equitable and in line with other municipalities”. The change that was requested “A resident who is a non-property owner should not be entitled to vote”. If the Town of Fenwick Island decides to precede with this, Fenwick Island would be the only town of all the six beach towns that would require this which would not make Fenwick Island equitable in line with the other municipalities. Mayor Langan stated that the Ad Hoc Elections Committee has done its job with turning this over to Charter & Ordinance Committee. After continued discussions the committee will continue until clarification comes back from town solicitor on non-resident voting for properties held in trusts.

- **Ad hoc Parks Committee** – Nothing to report. Mayor stated committee is no long needed.
- **Planning Commission** – Chair Winnie Lewis gave an update of the Comprehensive Plan and announce the public workshop for residents input scheduled for July 16 from 9:00 a.m. – 11:00 p.m. at the Town Hall.
- **Old Business** – Council Member Lee stated that at the Budget Committee meeting it was discussed at setting up a committee to review the rental receipt tax rates.

Motion – Motion made to create an Ad Hoc Committee to review the tax rate on rental receipts for both residential and commercial properties and have Council Member Williams head the committee.

Second – Council Member Williams

Discussion – Council Member Weistling stated that he agree with the committee he thought it might be better to wait until after the election with new people possibly adding some input. Mayor Langan stated that he had spoken to someone to head up the committee but also wanted to add canal dredging and beach replenishment fund, differences in receipt taxes and Bethany Beach Volunteer Fire Department fee. This would be an Ad Hoc Financial Committee

Vote – (2-5) motion failed.

- **New Business** - none

PUBLIC PARTICIPATION

- Richard Benn – 1306 Bunting Ave. – Commercial Rental tax and residential rental tax were discussed at the budget meeting, not sure why the committee is not being created now.
- Mark Tingle – Addressed to Council Member Lee, why is there such a push on the rental tax? She stated that she feels its needs to be addressed because there is a difference in rates for residential and commercial. Council Member Williams stated that this was referenced as a way to help with the beach replenishment.
- Vicki Carmean – 38 Ebb Tide Cove – Feels that the discussion of gross rental taxes and tax rates belongs in a committee meeting not open to everyone.

- Lynn Andrews – 1205 N. Schulz Rd. – July 9th is meet the candidates at the Town Hall at 9:00 a.m. Asked question in reference to the T-shirt shop across the street. Council Member Weistling stated that the store is being leased or rented by Ropewalk for selling apparel and they are allowed to have parking for their business. Building Official Schuchman stated that this was run by the town solicitor and it’s leased as Ropewalk Oyster House Parking Apparel LLC. And approved.
- Ben Waide – 1206 Dagsboro St – Stated that he was on the Budget Committee and the discussion was not a one issue committee but for several issue of concern.
- Kevin Carouge – 1006 Bunting Ave – Is supportive of Council Member Williams along with Ben Waide on the committee. On another note, regarding Lynn Andrews comment about Ropewalk, there is an inactive business in that building, at what point according to the towns ordinances does the business need to be functioning before they can use the parking? Owner, Marc McFaul stated that he spoke to the Fire Marshall and Building Official Schuchman today and I’m waiting for the final inspection from the Delaware Fire Marshall and so the business license can be issued. The Building Official stated that when they have their final inspection from the Fire Marshall’s Office the business license will be issued. It is a t-shirt/apparel business and she saw no reason to prevent them from using the lot until that happened.
- Alex Daly – Asked if there would be a summer mailing to the resident. Town Manager Burke stated the newsletter will be going out in the next week or so. Alex asked if a flyer for the Fenwick Locals could be included.
- Buzz Henifin –48 Windward Way - Questioned why 4 light house lights on the poles were missing? Public Works Supervisor Redd stated that the electrician is looking into some electrical/timer issues.

UPCOMING MEETINGS AND EVENTS

Mayor Langan announced the following upcoming meetings and events as follows:

a.	May 30	Memorial Day	Town Hall Closed
b.	June 7	9:30 a.m.	Charter and Ordinance Committee Meeting
c.	June 14	1:00 p.m.	Planning Commission Meeting
d.	TBD	9:30 a.m.	Ad hoc Election Committee Meeting
e.	June 17	3:30 p.m.	Regular Council Meeting

Motion to Adjourn – Council Member Bunting

Second – Council Member Mais

Discussion – None

Vote – (7-0)

Meeting adjourned at 5:21 p.m.

**Transcribed by Linda Poole, Town Clerk
for Council Member Diane Tingle, Secretary*