



# The Town of Fenwick Island

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## REGULAR MEETING OF THE TOWN COUNCIL AUGUST 25, 2017

### MINUTES

#### In Attendance

##### Town Council Members:

Mayor Langan, Vice Mayor Mais, Treasurer Bunting, Secretary Merritt, Council Member Carmean, Council Member Lee, Council Member Williams

##### Staff in Attendance:

Town Manager Tieman, FIPD Chief Boyden, Lifeguard Captain Ferry, Building Official Schuchman, Public Works Supervisor Reed, Finance Administrator Brittingham, Administrative Assistant Martin

#### President's Report

Mayor Langan began the meeting at 3:30 PM by urging everyone to contact State officials in regards to dredging. The contact list is available on the Town's website. He attended the ACT meeting in Lewes on August 17<sup>th</sup>, along with Secretary Garvin and Tony Pratt from DNREC, and the main topic was dredging.

5 permits are been considered for seismic testing. He was informed that the Governor has written letters opposing the testing. However, it looks like there is no opposition to windmills, so they are "here to stay" due to renewable energy, but they will be stationed at least 5 miles off of the coastline.

It is the time of year to submit the application to volunteer for one of the Town's committee. The application forms are available in the hall and will need to be submitted by September for announcement at the October Council Meeting.

Mayor Langan has heard that the beach replenishment will begin in the middle of October and should be completed by November 1<sup>st</sup>. Ocean City also has beach replenishment scheduled.

#### Presentation

Mr. Allen Hansen and Ms. Alicia Hatcher presented the Town a panoramic photo of Fenwick Island. Mr. Hansen explained that he has been visiting Fenwick Island for over 40 years, and the photo is a thank you for all of the enjoyable times he has had while on vacation.

#### For Discussion and Possible Action

##### Request for Tent Permission

Building Official Schuchman presented, on behalf of Mr. & Mrs. Serabian, a request for tent usage for a charity event to be held on Friday, September 8<sup>th</sup>. The Code does not allow for tents, but they are requesting the tent usage for the one day of the event.

Council Member Carmean commented that she hopes the tent holds up if there is any bad weather that evening. Council Member Lee asked the Serabian's if they had talked to their neighbors about the tent, and they responded that they had and none of the neighbors had any problems with it.

Motion – Council Member Carmean asked for a motion to approve the usage of the tent.

Second – Secretary Merritt.

Approved – 7-0.

Resolution #84-2017 (Opposition to Seismic Testing)

Town Manager Tieman read the resolution to the Council and audience.

Council Member Carmean commented that she thought that this was a good idea to let others know about our opposition against seismic testing and drilling.

Motion – Council Member Carmean asked for a motion to approve Resolution #84-2017.

Second – Treasurer Bunting.

Approved – 7-0.

Resolution #85-2017 (Hazard Mitigation Plan)

Town Manager Tieman read the resolution to the Council and audience.

Council Member Williams questioned if there was anything we had to implement to adopt the Sussex County mitigation plan. Building Official Schuchman responded that all that is needed is for the Council to sign off on the resolution, just like 5 years ago when the mitigation plan was adopted then approved by Council in 2012. Town Manager Tieman added it must be approved by the Council in order for us to receive federal assistance if the Town ever needs it.

Motion – Council Member Carmean asked for a motion to approve Resolution #85-2017.

Second – Secretary Merritt.

Approved – 7-0.

Resolution #86-2017 (Sidewalk Initiative)

Town Manager Tieman read the resolution to the Council and audience.

Motion – Council Member Carmean asked for a motion to approve Resolution #84-2017.

Second – Treasurer Bunting.

Approved – 7-0.

**Approval of Minutes**

Motion – Mayor Langan asked for a motion to approve the minutes from the July 28, 2017 meeting.

Second – Council Member Carmean.

Approved – 7-0.

### **Treasurer's Report**

Treasurer Bunting presented the report for period ending July 31, 2017. He added that the Town finished the fiscal year with a little money left over and the audit, to be done in September, should increase the figures on the report.

Council Member Williams questioned about the RTT reserve fund on the report that was depleted by over \$37,000. Treasurer Bunting responded that we finished within the budget and that the RTT account is always used for capital expenditures. If RTT funds are not used, the State could take them away. Town Manager Tieman also referred to page 5 of the report. \$274,088.00 from the RTT reserve needed to be transferred funds from the account to a reserve in the general fund for the Net Ordinary Income of \$313,131.45. There is actually an excess of revenue in the reserve.

Motion – Vice Mayor Mais asked for a motion to approve the Treasurer's Report.

Second – Council Member Carmean.

Approved – 7-0.

### **Town Manager's Report**

Town Manager Tieman highlighted in her report that the total billing of tax bills sent was \$912,197.08. As of yesterday, the total amount received was \$331,409.53.

### **Department Reports**

#### **Building**

Building Official Schuchman stated that 7 business licenses were issued in the month of July.

She also informed the Council that she has been working with the Villages of Fenwick on their deteriorated drainage pipe and sinkhole repair. A contractor started repairing the problem this past Wednesday (August 23<sup>rd</sup>), and the project was completed today. Council Member Carmean questioned if we have had problems in the past with sinkholes. Building Official Schuchman responded that this particular problem was due to the developer adding on a corrugated pipe to the existing storm water pipe that was installed in 1972. The corrugated pipe deteriorated and caused the sinkhole, not the actual concrete pipe. Town Manager Tieman added that this will never occur again with any new development since Building Official Schuchman would follow up on the project.

#### **Public Works**

Public Works Supervisor Reed had nothing to add to his report that was provided in the Council packet.

#### **Beach Patrol**

Lieutenant Reisz attended the meeting on behalf of Lifeguard Captain Ferry who was not able to attend. He congratulated all the medal winners in Daytona and also the Lifeguard of the year (James Davidson), Rookie of the Year (Jacob Wheatle) and Captain of the Year (Griff McWilliams).

He alerted the Council that the lifeguards assisted beach goers with the eclipse this past week and also informed everyone that the FIBP recently received an A.D. which was donated by the State.

There is a nor'easter expected to arrive this upcoming Monday evening and high surf is expected. The FIBP will be monitoring the weather and will send updates out via Facebook and Twitter.

Town Manager Tieman read a letter she received in regards to the FIBP assisting someone who had sprained their foot while on vacation. She congratulated the lifeguards on doing a great job.

#### Police Department

Chief Boyden added that he had 2 additions to the report that was included in the Council packet – he will provide Council Member Carmean the numbers she requested by next week, and he let everyone know that we are entering the peak season of hurricanes, so if there are any questions, concerns, or if anyone needs help with a hurricane prep kit to contact the Police Department.

#### Committee Reports

##### Beach

No information. Next meeting has not been scheduled.

##### Environmental

No information. No date set for the meeting to be held in September.

##### Sidewalk

Council Member Carmean said the meeting on August 18<sup>th</sup> went well thanks to the efforts of Town Manager Tieman. She added that Fenwick Island is the only coastal town without a connecting sidewalk. She encouraged everyone to contact our representatives and Governor with our concerns. She has been in contact with Senator Hocker and he said if we do apply for a grant for the project to let him know. There will be a DelDOT Cap Transportation Hearing on September 27<sup>th</sup> at 4:00 PM that Mayor Langan will be attending.

The next Sidewalk Committee meeting will be held on Friday, September 15<sup>th</sup> at 10:00 AM.

##### Business Development

The next meeting will be held on Wednesday, September 20<sup>th</sup> at 2:00 PM. Postcards are being mailed out to all business owners next week about the meeting. To be discussed at the meeting will be the "Fenwick Friday's" kickoff that will be held on Columbus Day weekend, and shoulder season promotion for businesses.

##### Ad hoc Financial

Vice Mayor Mais stated the beach replenishment project is being funded 100% by the Federal Government and hopes for good news on funding on dredging as well.

##### Planning Commission

Vice Mayor Mais said the comp plan has been forwarded to the State and if approved, we are good for another 10 years. Council Member Williams asked if there were any glitches in the comp plan. Town Manager Tieman responded that the Planning Commission had to tweak some of the wording because of the way the State laws are structured.

Council Member Williams then asked why we paid URS over \$25,000 to produce the plan. Town Manager Tieman responded that this was typical for a comp plan. Council Member

Carmean noted that we budgeted only \$10,000 for the last comp plan, and Town Manager Tieman responded that the comp plan this time was more stringent due to the State. Vice Mayor Mais added that the Council has to look at the fact that the \$25,000 is over 10 years, and a comp plan needs to be submitted in order for the Town to obtain State funding. Town Manager Tieman also added that this could not be done in-house since it is the law, and 10 years from now the cost will probably increase.

#### Ad hoc Election

Motion – Council Member Lee asked for a motion to rescind the second reading of Section 9 (Qualification of Voters) (copy attached).

Second – Vice Mayor Mais.

Council Member Carmean stated that she was opposes of wiping the whole reading out. She does, however, have no objections to the "Resident" definition (Section 9.A.) and thinks the Council should at least approve that. Mayor Langan said that no portion of the reading can be approved without a public hearing first and he feels that both this Charter change along with the debt ceiling change should be combined to one public hearing.

Council Member Carmean moved to approve the changes. She was taken aback by the hostility at the last election and said that the behavior is not typical of Fenwick Island.

Council Member Lee said she would like to work through this and the proposed change needs to happen. She would like to thank Secretary Merritt on researching the legal costs for elections which showed why this change needs to occur. She has done research and found a first reading was approved back in the spring of 2007 but was never discussed publicly and in the minutes is not was actually adopted. After that, Charter & Ordinance never had a public hearing on trusts and LLC's, and it looks like Bill Weistling rescinded the change. At that time, the State mandated the update of our Charter on election procedures and absentee ballots. There were no State requirements to change our voter qualifications. She feels until we can work through this that we should either continue to follow the change that was adopted in 2008 and keep incurring legal costs, or we address and resolve the trust issue. She requested the Council meeting on either September 15<sup>th</sup> or September 22<sup>nd</sup> at 2:00 PM in a workshop to discuss a solution.

Secretary Merritt commented that we need to end this change now because it is getting way too complicated and costly, and requiring a lot of the Town staff time.

Council Member Lee said if we continue with what we have, we are going to just incur legal costs every election. Town Manager Tieman responded that when she examined the legal costs, most were deed searches which we can now do in-house with just a minimal subscription fee. Council Member Carmean added that \$25,000 is way too much to spend every year on election and thinks it needs to be discussed further in a Council Workshop.

Vice Mayor Mais said that we have been exploring this same issue for a while and there is no simple solution.

The Council approved to rescind the second reading 7-0.

Council Member Lee motioned to schedule a Council Workshop on September 15<sup>th</sup> at 2:00 PM. Mary Langan asked if it would be open to the public, and Mayor Langan responded yes. Council

Member Carmean said that the Council Workshop is a great idea since this change needs to be finalized.

Vice Mayor Mais stated that he thinks the only fair thing to do is let only residents to vote. The change would only confuse the voting situation further. He thinks if we don't change to residents only that we should continue forward with what we currently have. According to him, someone needs to come up with something acceptable for the Council to look at.

Mayor Langan said that we have already had two workshops on voting. Council Member Lee responded that we only had one, and that was on December 8<sup>th</sup> of last year. Council Member Carmean thinks that we should discuss one more time.

Motion – Council Member Lee asked for a motion to have a Council Workshop on voter qualifications.

Vote:

Vice Mayor Mais – stop now.

Secretary Merritt – stop now.

Mayor Langan – stop now. There are only 249 residents voting and 422 non-residents. If the change occurs, we are going to be adding 40+ votes that are non-residents.

Treasurer Bunting – he is willing to do a Council Workshop as long as information is presented ahead of time for him to review. He thinks the Workshop will help the Council discuss the individual issues each member has and legal counsel should also be present.

Council Member Carmean – thinks we should do a Council Workshop at least one more time.

Council Member Williams – he wants a Workshop. He also questioned Vice Mayor Mais on why he is against non-residents voting, which Vice Mayor Mais responded that no other local municipality allows non-residents to vote.

Vote – 4-3 (in favor of the Council Workshop).

#### Charter & Ordinance

#### Chapter 52 (Beaches – Smoking)

Motion – Vice Mayor Mais asked for a motion for the second reading of Chapter 52 (Beaches – Smoking) to be included in the minutes (copy attached).

Second – Council Member Carmean.

Bill Weistling explained the addition of the definition of smoking in 52.1 and including smoking prohibited on the beach in 52.11.

Council Member Carmean asked if "beach" should also be defined since some of the Town's lifeguards cover the State beach area as well. Bill Weistling responded no, since the Charter is for the Town only and we can't define an area that does not belong to us. Building Official Schuchman added that the Code book does define our area by street.

Vote – 7-0. Motion passed.

### Chapter 116 (Peace and Good Order - Smoking)

Motion – Vice Mayor Mais asked for a motion for the second reading of Chapter 116 (Peace and Good Order – Smoking) to be included in the minutes (copy attached).

Second – Treasurer Bunting.

Bill Weistling explained the addition of the definition of smoking as also stated in Chapter 52.

Vote – 7-0. Motion passed.

### **Old Business**

No old business to discuss.

### **New Business**

Alex Daly gave a presentation on the study completed by the Environmental Committee on the canals and channels for dredging.

Council Member Williams asked how many people have access to canals. Alex responded that he wasn't sure.

Mary Langan thanked Alex for all of his hard work on getting the presentation together. Vice Mayor Mais added that he heard nothing but positive comments from Tony Pratt (DNREC) and Senator Hocker at the Dredging Workshop held earlier in the month.

Bill Weistling asked Alex if to save costs if the Fenwick Island Yacht Club could possibly do the survey of the water depth instead of involving State. Alex responded no, that a formal study needs to be done since DNREC requires it before they can issue a permit for dredging.

Vice Mayor Mais commented that at the Dredging Workshop, the Town only expressed their concern about the bigger waterways. Bill Weistling added that where his dad lives, the canal is 7-8' deep and doesn't need dredging, and the Town's immediate concern is with the Little Assawoman Bay, then the canals will be addressed. Alex responded that some canals are shallow and do need to be dredged.

Lynn Anderson questioned what will be done with the dredge spoil. Alex responded that his thought would be to rebuild Seal Island. Vice Mayor Mais added that the only economical solution is to use Seal Island.

Council Member Lee agreed with Bill Weistling on the Yacht Club doing the survey, but feels it is counterproductive to do our own survey if the State is going to do one as well. Someone should look into if the State will allow us to do the survey instead and if it would be acceptable.

### **Upcoming Events and Meetings**

Mayor Langan confirmed the following upcoming events and meetings:

September 1<sup>st</sup> at 9:30 AM: Charter & Ordinance Meeting

September 16<sup>th</sup> at 9:00 AM: Beach Cleanup

September 20<sup>th</sup> at 2:00 PM: Business Development Meeting

September 22<sup>nd</sup> at 3:30 PM: Regular Council Meeting

Council Member Carmean added the Sidewalk Committee Meeting to be held on September 15<sup>th</sup> at 10:00 AM. Council Member Lee added the Council Workshop on voting to be held either on September 15<sup>th</sup> or September 22<sup>nd</sup> at 2:00 PM.

### **Public Participation**

#### **Gail Warburton, 10 W. Farmington Street**

Ms. Warburton asked how Fenwick Island compares to other small towns in regards to voting. Vice Mayor Mais commented that when the Town was incorporated, there were hardly no legal residents, so they allowed non-residents to vote. Council Member Lee added that all coastal communities allow all property owners to vote, but our Town is the only one that allows artificial entities to vote. Also, South Bethany limits voting to 8 people per property.

Ms. Warburton then questioned if other small towns allow non-residents and we end up restricting non-residents if it would hinder people buying homes in Fenwick Island. Mayor Langan responded that Ocean City only allows residents to vote and it does not affect their property values.

#### **Ben Waide, 12 W. Dagsboro Street**

Mr. Waide commented that if the majority of the Council thinks that the 400+ non-residents don't have the same concerns as residents, then the Council is wrong. We would be disenfranchising non-residents if their vote is taken away.

Mike Quinn asked that if we take away a non-residents right to vote does that also disqualify them from serving on the Town Council. Council Member Lee added that trustees should be allowed to vote and be treated as people, and should be able to serve on Council as well.

#### **Lynne Andrews, 1205 Schulz Road**

Ms. Andrews commended the 4 Council members for wanting the Council Workshop and pursuing the change in the Charter. She feels that we should not be contacting legal counsel for voting questions and that our Town Solicitor is doing the Town an injustice.

Bill Weistling commented that trusts should be treated the same as LLC's and LP's. Our legal counsel suggested that LLC's get 1 vote only. He also added that having another workshop is a waste of time since there is no easy solution to the trust voting. If you want to vote, you should not put your property in a trust. He also stated that according to the State, a trust should be considered the same as an LLC. Council Member Lee then asked how other municipalities can allow trusts to vote. He commented that Mary always said to keep it the same and keep it simple.

#### **Mark Tingle, 1605 Coastal Highway**

Mr. Tingle wanted to know how much has been spent on legal expenses. He also questioned why should the Town bend over backwards to allow trusts and non-residents to vote.

### **Adjournment**

Motion – Mayor Langan asked for a motion to adjourn.

Second – Vice Mayor Mais.

Vote – 7-0.

The meeting adjourned at 5:18 PM.