



The Town of Fenwick Island

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REGULAR MEETING OF THE TOWN COUNCIL JULY 27, 2018

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 Manager Gary, Town Clerk Martin

President's Report

Mayor Langan began the meeting at 3:30 PM.

The beach replenishment will begin tonight, with the crossovers at both James and Indian Streets closed tomorrow. Town Manager Tieman added that Twitter, Facebook, and the Town website will be updated daily with beach closures.

Mayor Langan attended the presentation on offshore wind turbines on July 12th in Bethany Beach. At the presentation, he approached representatives of the Sea Grant and Deep Water Wind to hold a workshop in Town in the future. At the Association of Coastal Towns (ACT) Meeting on July 26th, it was noted that a lease has already been signed off on for the wind turbine installation on federal land.

Also at the ACT Meeting, it was announced that there will be a Coastal Storm Risk Management Study conducted on all of the back bays by the Army Corp. of Engineers. \$250,000 was submitted from the State for the study, which will look at all of the back bays and ways to mitigate storm surges, to include surge barriers and tidal gates.

No plans have been received from Verizon on the small cell installation. Verizon will be meeting with Town Manager Tieman next week.

For Discussion and Possible Action

Budget Revision for Lifeguard Competition

Town Manager Tieman read the revision which requests \$1,350 to be added to the budget for two additional lifeguards to attend the competition this year in August.

The MOTION was made by Vice Mayor Mais, seconded by Council Member Lee, to approve the additional \$1,350 for lifeguard competition. The MOTION passed unanimously.

2019 Street Program

Town Manager Tieman read the request to revise the budget by \$83,398 for the street resurfacing project. After Kercher Engineering completed their study, which was after the budget was approved, it was determined additional costs would be associated with the street repairs.

Council Member Williams asked what the street program entails. Town Manager Tieman responded that the streets will be microsurfaced, which will prolong the life of the streets. Council Member Williams then asked how long the microsurfacing would last, and Secretary Merritt responded 5-10 years.

Bill Weistling commented that the reason for the cost increase from what was originally submitted is that there are limited contractors available to do the microsurfacing.

Council Member Carmean noted that the Town used Kercher Engineering in the past and they did an excellent job.

A MOTION was made by Secretary Merritt, seconded by Council Member Carmean, to approve the additional RTT transfer of \$20,000 for the street program. The MOTION passed unanimously.

Approval of Minutes

A MOTION was made by Council Member Carmean, seconded by Vice Mayor Mais, to accept the minutes from the June 20, 2018 Special Council Meeting. The MOTION passed unanimously.

A MOTION was made by Council Member Carmean, seconded by Secretary Merritt, to accept the minutes from the June 22, 2018 Council meeting.

Treasurer Bunting noted that the Treasurer's Report on page 2 should read: "...no additional Realty Transfer Tax (RTT) funds will be added unless the fund falls below \$10,000".

The MOTION to accept the revised minutes as noted passed unanimously.

Treasurer's Report

Treasurer Bunting presented the report for the period ending June 30, 2018. The year should end with a surplus, but the Town will have to wait until the auditor's report is completed. He also noted that the Town received \$39,204 in RTT funds this week.

Council Member Carmean asked why the report shows a deficit in the lifeguard numbers. Treasurer Bunting responded that Sussex County and DNREC funds have not been received for the lifeguard coverage of the State beaches.

A MOTION was made by Council Member Carmean, seconded by Vice Mayor Mais, to accept the Treasurer's Report. The MOTION passed unanimously.

Town Manager's Report

Town Manager Tieman submitted her report. She thanked the Town Council and staff for their assistance with the Town's 65th birthday celebration. Mayor Langan added his thanks to the staff for their help with the Town's bonfire, as well as Becca and the entire Beach Committee.

Department Reports

Building

Building Official Schuchman stated that 9 business licenses were issued in June.

Public Works

Public Works Supervisor Reed had nothing to add to his report.

Mayor Langan asked if the mobi mats would need to be removed during the beach replenishment. Public Works Supervisor Reed responded that as of now, the Army Corp. of Engineers are allowing the mobi mats to stay in place during the entire beach replenishment project.

Beach Patrol

Lifeguard Captain Ferry thanked the Town Council for approving the budget revision so the two additional lifeguards can attend the competition in August.

Since his report was submitted, there have been additional beach rescues. So far this year, there have been 88 rescues (13 this time last year) and 285 side-by-side requests (74 this time last year).

Police Department

Chief Boyden added to his report that there have been an unusual amount of street light outages reported to the Police Department. Please contact the Police Department to report any street lights out. Delmarva Power usually responds within 24 hours to repair the outage.

Also, Larry Corrigan was hired as the new Police Officer and will be starting on August 1st.

Committee Reports

Beach

Becca McWilliams thanked the 29 businesses who donated to the bonfire. \$1,600 in contributions from the business community were received, along with contributions from residents and parents of the lifeguards. She also thanked Craig Pfeifer who donated t-shirts again this year, the McCullough family for their donation of the paddleboard, and the owners of Smyth Jewelers for their contribution. \$8,149 was taken in from t-shirt sales and donations. Becca also thanked Public Works for setting up for the bonfire, the lifeguards for their assistance, and Nancy Merritt for all of her work on the silent auction.

Business Development

Tim Collins thanked Alex Daly for his assistance with developing the Fenwick Locals Discount Program.

Tim heard from a business owner who is requesting that additional lighting be installed when the sidewalks are installed. As for the sidewalk installation, Tim is also requesting that Charter & Ordinance, with Town Council's approval, look into changing the code to allow compact car parking spaces on parking lots.

Dredging

Secretary Merritt stated that he is waiting to hear back from DNREC on the cost to dredge the two entrances to the Bay. There will be a meeting on August 13th at 1:30 PM with DNREC to discuss the dredging project.

Environmental

Mary Ellen Langan stated that the next meeting of the Environmental Committee will be held on August 9th at 2:30 PM.

Finance

No report.

Pedestrian Safety

Council Member Carmean reported that she will be making a presentation to DeIDOT on August 28th to document the Town's current sidewalk situation. Mayor Langan suggested using Google Earth for the presentation to show people walking on the street.

Council Member Carmean informed Tim Collins that she is happy with the response so far by the business community on the sidewalk installation and thinks adjusting the code to allow for compact car parking is a good idea.

Planning

Town Manager Tieman stated that in the meeting held in July, the Planning Commission reviewed the Annual Report that was submitted.

Technology

No report.

Charter & Ordinance

Proposed First Reading – Chapter 160-5A, Commercial Zone

A MOTION was made by Vice Mayor Mais, seconded by Council Member Carmean, for the first reading of Chapter 160-5A, Commercial Zone, to be included in the minutes (copy attached).

Bill Weistling commented that the change was due to the request from Willia Peoples who owns the Fenwick Pet Stop. She is requesting that her business begin to allow pet grooming. The Charter & Ordinance Committee met and amended the zoning code to allow pet grooming in the commercial zone only, but does prohibit a home occupation for grooming.

Council Member Carmean commented that she had a concern from a resident about the potential increase in parking at the Fenwick Pet Stop due to adding a grooming operation. After

investigation, Council Member Carmean found there was ample parking in that area and there should be no concerns.

The MOTION to accept the first reading of Chapter 160-5A passed unanimously.

Discussion on Height Limit

Council Member Lee addressed Bill Weistling on the "gray area" in the height limit ordinance and why it was never addressed at a Charter & Ordinance Committee Meeting. Bill Weistling responded that any request for a change needs to be initiated by the Town Council, and no one on the Town Council suggested to do so.

Council Member Lee then asked, on behalf of the Town Council, for the Charter & Ordinance to review the height restriction, as well as placing a temporary moratorium on all building permits until after the Charter & Ordinance Committee review. Bill Weistling commented that it needs to wait until after the Board of Adjustment meeting since years ago, a similar issue occurred and when lawyers got involved, the Town was instructed that any pending ordinance change would have to wait until after the Board of Adjustment hearing. Council Member Carmean stated that she is concerned about the building height being raised to 38', and Council Member Williams agreed that it needs to be addressed now before the Board of Adjustment.

Council Member Carmean then suggested that an Executive Session be scheduled. Mayor Langan stated that there can't be an Executive Session. Council Member Carmean disagreed, and stated that an Executive Session could be scheduled since Executive Sessions allow for legal strategy and personnel issues. She added that there should be a process established for any variances: they should first go to the Town Council for review, then the Board of Adjustment, then back to the Town Council. She also noted that it was absolutely wrong that 4 people were allowed to make a change. Bill Weistling responded that an Executive Session only allows for pending litigation, and there is nothing on the records currently of open lawsuits. Council Member Lee stated that Executive Sessions do allow for preliminary discussion on legal advice. Since the Town Attorney was involved with the current case, and since the opinion of the Town Attorney was not shared with all of Town Council, then an Executive Session is in order.

Bill Weistling explained the process of submitted building permits for new construction: if the Building Official receives a permit application that is over \$20,000, then two members from the Building Committee need to review the plans. Bill also added that he's been a member of the Building Committee for over 26 years and every time this policy has been followed. In those 26 years, if any members of the Building Committee have questions, they have contacted the Town Attorney. The Town Council has never been involved in any process of building permits. In this case, the application was received by Pat, then the Building Committee, who

disapproved the plans. Per Title 22 of the State law, the applicant has the right to go to the Board of Adjustment. In the Town Code, it states that no building shall exceed 30'. A building is defined in our Code as well as structure. Mechanical units are not part of a structure of the building and cannot be considered in the height requirement. The elevator is a shaft and part of the structure, so the Building Committee informed the applicant they needed to go for a variance. The height of the entire building is not being raised to 38'. We need to enforce what is currently on the books.

Council Member Carmean commented that she has read the Code and noted 10 references to exceptions to the 30' and 32' height that includes solar panels, wind turbines, and chimneys. She feels that adding 6' to either height regulation would allow any applicant who wants to build over the height regulation to receive a variance. Bill Weistling responded that we have to go by the current code and enforce the ordinance.

Council Member Carmean then asked the Town Council for an Executive Session. Mayor Langan responded according to the Town Attorney, an Executive Session is not required. Council Member Carmean then requested for an immediate moratorium on issuing of building permits. Bill Weistling responded that there cannot be a moratorium unless there is a change in the ordinance.

Bill Weistling noted that as for structures, solar panels, satellite dishes, and wind turbines have a height restriction. The only other structures that are allowed above the 30'-32' are chimneys or other mechanical units.

Council Member Lee felt that the request still should have been submitted to the Town Council for review and the ordinance needs to be changed. Council Member Carmean agreed and stated that 4 people should not be able to make decisions for the entire Town and the Town Council should have had the courtesy to review the plans. Mayor Langan disagreed and stated that the process was set up for Town Council to not be involved in building permits, and with the remarks by Council Member Carmean it sounds like she is requesting the Town Council to review all building permit plans. Council Member Carmean responded the Mayor Langan that was not what she or Council Member Lee said and he was "twisting our words around".

Council Member Lee does not understand how mechanicals are not part of a structure or building. Bill Weistling responded that the height is the building and structure, and that building systems (HVAC, mechanicals, etc.) are separate. He added that per the Town Attorney, something similar happened in Ocean View and after a lawsuit was filed, the judge sided with the property owner since the ordinance was vague.

Secretary Merritt commented that it is quite disrespectful to single out Bill Weistling and 3 others for a process that has worked in Town for over 27 years and "villainize" them. He agrees that the ordinance needs to be changed, but singling out staff and volunteers is wrong.

Council Member Carmean noted that she has been on the Town Council since 2001 and there has never been a situation like this before. The building permit process needs to be changed and the Code changed as well because she feels it is wrong that the Town Council did not examine the process before now. Bill Weistling commented that it was missed by both the Charter & Ordinance Committee and the Town Council, although there were 6 meetings total that were held on the mechanical equipment change over 4 months, and Town Council approved the changes, which included a brief discussion on the height. Council Member Lee added that there was never a discussion on the height of the mechanical equipment, just that they were allowed to be placed on the roof, and she felt that anything on the roof fell under the height of this Town. She added that it needs to be addressed and fixed by the Charter & Ordinance Committee as quickly as possible. Bill Weistling responded that it can be addressed, but it needs to wait until September after the Board of Adjustment meeting and also since no other building permits have been received. Mayor Langan agreed, along with Treasurer Bunting and Vice Mayor Mais. Council Member Lee and Council Member Carmean disagreed and stated that it needs to be discussed earlier.

Mayor Langan then asked the Council to vote on the 3 items as discussed:

A MOTION was made by Council Member Lee, seconded by Council Member Carmean, to schedule a Charter & Ordinance Committee meeting in August. The MOTION was denied (3-4, with Council Member Carmean, Council Member Lee, and Council Member Williams in favor).

A MOTION was made by Council Member Carmean, seconded by Council Member Lee, to have the Charter & Ordinance Committee meeting in September (after the Board of Adjustment) to discuss the height restrictions. The MOTION passed unanimously.

A MOTION was made by Council Member Lee, seconded by Council Member Carmean, to place a temporary moratorium on all building permits until the Code can be clarified on height limits. The MOTION was denied (3-4, with Council Member Carmean, Council Member Lee, and Council Member Williams in favor).

Bill Weistling requested confirmation on what the discussion should be for the September Charter & Ordinance meeting. Council Member Carmean responded that the meeting should clarify the height restrictions and Council Member Lee added that everything needs to be clarified and be specific on the 30' and 32' height restrictions so there are no "gray areas".

Council Member Williams added that the height on everything that is placed on a roof needs to be defined.

Old Business

None.

New Business

Council Member Carmean stated that per Section 12 of the Town Code, she along with Council Member Lee and Council Member Williams are requesting a Special Meeting of the Town Council to be held as soon as possible to discuss personnel issues.

Upcoming Events and Meetings

Mayor Langan confirmed the upcoming events and meetings as stated on the agenda. He added that the Environmental Committee Meeting will be held on August 9th, the Dredging Committee Meeting will be held on August 13th, and the Organizational Meeting of the Town Council will be held sometime after August 4th, which would have been the date of the Town election.

Public Participation

Mayor Langan began the public participation by commenting that it was raised by Council Member Lee that some Council members and employees should sign affidavits. Council Member Lee responded that there is a feeling among some people that it would be advisable that Council and some committee members sign a document stating they are receiving no personal or financial interest in the hotel. Mayor Langan asked Council Member Lee to name the people in question, since it is defamation. Council Member Lee responded that she is not accusing anyone, which Mayor Langan responded that he saw an email from someone else with an accusation. Council Member Carmean commented that if no one has any financial gain, then they should outright say so. Treasurer Bunting responded that it is absurd that she would ask such a request, and that no one has no financial interest in The Sands project, including staff, Council or anyone on any of the committees.

Nadia Butler, 7 W. Essex Street

Ms. Butler stated that someone must have financial interest since it makes no sense not to discuss the ordinance now. Mayor Langan responded that everything will be discussed at the Board of Adjustment hearing on August 23rd and should not be discussed now without the other party present since they have already applied for a variance and the Town could get sued. Ms. Butler commented that it doesn't make any sense and that without discussing anything today and delaying the ordinance change, it is giving residents an impression that the Town is "bulldozing" the project through.

Pete Frederick, 1605 Bunting Avenue

Mr. Frederick stated when he was on Town Council, a similar situation occurred with the Royal Farms store and it was discussed openly in public. He questioned why mechanicals aren't treated as structures and why there was an ordinance change if mechanicals are not structures. If the variance is approved and mechanicals are allowed on top of buildings with no height limit, to include screening to cover the mechanicals, then he is not sure why the Town had an ordinance

change defining setbacks of mechanicals. He added that there is a way of doing things and the Town is not doing it correctly. Mark Tingle (1605 Coastal Highway) questioned then what is the right way and sees no problem with mechanicals on rooftops, which is better than the backyard. Mr. Frederick responded that it should have been passed on to the Charter & Ordinance Committee before it went as far as the Board of Adjustment if there were any questions to the Code. He also commented that if the applicant's lawyer is saying they are going to sue the Town, then it sounds like they have a better lawyer than we do. He feels the Town is not doing things right, and "it is not going away as fast as everyone thinks it will".

Mark Tingle, 1605 Coastal Highway

Mr. Tingle commented that the issue with The Sands has been going on for years. No one has any financial interests and everyone just wants to see The Sands replaced. The same 10 people are the same that object every time. The Sands is an eyesore and needs to go. And Bill Weistling is above reproach to anyone in this Town.

Mr. Tingle also commended the lifeguards for their professionalism that has observed this summer.

Bill Weistling, 7 E. Indian Street

Mr. Weistling commented that the Town did not talk to the Town Attorney or "back off" because of being afraid of being sued. The applicant's architect and lawyer pointed out the deficiencies in the Code that states that mechanicals are not structures.

Bill Mould, 1 E. Indian Street

Mr. Mould commented that the request is not that simple: that he heard it is not just 1 elevator. He added that the Town has to take into account if the elevator is a hydraulic or a regular elevator.

Mr. Mould questioned when and if the Code is changed, will this distance the Town from the County regulations. Mayor Langan responded no, since this is a zoning ordinance. Bill Weistling also added if the Town wants to follow the County regulations, then that would allow 42' height in the commercial zones.

Faye Horner, 708 Bunting Avenue

Ms. Horner commented that she, like most residents, are wanting a clean and safe hotel. She added that the request is only asking for 6' additional in height for an elevator. Also, the Town should not be afraid of setting a standard since each building permit request is taken into account separately.

Adjournment

A MOTION was made by Mayor Langan, seconded by Treasurer Bunting, to adjourn the meeting. The MOTION passed unanimously, and the meeting adjourned at 4:53 PM.