

Town Of Dewey Beach

Minutes of May 12, 2012

Town Council Meeting

A regular meeting of the Dewey Beach Town Council was held at 9:00 a.m. on Saturday, May 12, 2012, at the Dewey Beach Lifesaving Station.

Mayor Hanson called the meeting to order and led the Pledge of Allegiance.
Mayor Hanson asked for a Moment of Silence.

Present: Mayor Diane Hanson, Commissioners Jim Laird, Martin Seitz, Anna Legates, and Joy Howell, Town Attorney Fred Townsend, Town Manager Robert Stickels, and Chief Sam Mackert.

APPROVAL OF MINUTES

March 30 Meeting Minutes

Commissioner Legates made the motion to approve the March 30 meeting minutes. Commissioner Howell seconded.

The motion carried unanimously.

March 31 Meeting Minutes

Commissioner Legates made the motion to approve the March 31 Meeting Minutes. Commissioner Seitz seconded.

The motion carried unanimously.

April 14 Minutes

Commissioner Legates had a few minor administrative edits to the minutes and supplied a written copy of those edits.

**Commissioner Howell made the motion to accept the minutes with Commissioner Legates' minor administrative edits. Commissioner Legates seconded.
The motion carried unanimously.**

ADOPTION OF THE AGENDA

Mayor Hanson stated that there were two items she believed needed to be tabled. She stated that the first one was #7, the motion to approve the Starboard's application for temporary expansion of premises and also # 6 should be discussed but not to be voted upon.

Fred Townsend, Town Solicitor, stated that in regards to item 6, it involved a potential amendment to the zoning code and required a public hearing which requires a 15 day public notice and an agenda which notes that a public hearing is being called. He stated that since Council is reacting to a recommendation from the Planning Commission meeting from last week, Council is not able to act within this time frame. He also stated that because Council cannot expand the current definition of temporary expansions of patron areas it would not be appropriate to take into consideration item #7 because at the current time Dewey Beach does not have the authority to grant a permanent or a third patron area.

Mayor Hanson stated that there would be discussion on #6 with no vote, an elimination of #7 until next month and the removal of #10, Discuss and vote to approve a draft DB 2011 Municipal Comprehensive Land Use Annual Report due to Commissioners not having enough time to review it.

Commissioner Laird stated that he would like to discuss the DNREC Surface Water Planning Grant or Mike Cotten's appointment to discuss Sea Level Rise and work on a date for the Advisory Committee to come and do a presentation.

Commissioner Seitz made the motion to accept the changes stated to the agenda. Commissioner Howell seconded.

The motion carried unanimously.

ANNOUNCEMENTS

Mayor Hanson announced that through donations from the citizens of Dewey Beach the Dewey Beach Banner that had been previously stolen has been replaced and returned to its rightful place of honor at the Dewey Beach Life Saving Station.

Mayor Hanson announced that the trash collection for the Memorial Day holiday would be on Monday for most trash collection companies.

Mayor Hanson stated that the Chihuahua Race Event had a great turnout of about 350 people. She thanked Joe Kane for all of his hard work in organizing the event.

Mayor Hanson made a Proclamation that Saturday, May 19, 2012 would be Kids to the Parks Day. She also stated that on the same day Beautification Day would be starting at 9 am with the Kids to the Parks Day starting at 11 am.

Robert Stickels, Town Manager, announced that the Town Hall would be open on Saturdays from 9 am to 5 pm for the sale of parking permits.

REGULAR AGENDA

1. Discuss and possibly vote to accept DNREC Surface Water Planning grant and matching 21st Century Fund grant for planning of flood mitigation on bayside.

Mayor Hanson stated that she was pleased to announce that the town did win the grant.

Robert Stickels, Town Manager, stated that the town has been offered two grants for the Council's consideration. He stated that the first was \$24,425 from Delaware Clean Water Advisory Council and the second was a matching grant of \$24,425 from the Delaware Watershed Stewardship Program for the purpose of the town to upgrade the storm water system.

Fred Townsend, Town Solicitor, stated that he felt that the commissioners' action in seeking the grant was appropriate and his recommendation in regards to the pending AG complaint is that the risk is not significant.

Rick Judge, Infrastructure Committee Chair, stated that he would like to move forward immediately and this would continue what the Bayard Avenue project did, on the north end, to the South end of the town.

Commissioner Legates stated that she recommended that as the grant is pursued and the terms are given to make sure Sea Level Rise is incorporated in the terms as a concern.

Commissioner Laird made the motion that Town Council of Dewey Beach authorized the acceptance of the grant from Delaware Clean Water Advisory Council in the amount of \$24,425 and a grant from the Surface Water Matching Grant Award in the amount of \$24,425 to create a master plan for upgrading through best management practices storm water discharge into Rehoboth Bay. Commissioner Legates seconded.

The motion carried unanimously.

2. Discuss and possibly vote to appoint Mike Cotten as the engineer to develop a plan using funds from the grant and matching grant for planning of flood mitigation on bayside:

Rick Judge, Infrastructure Committee Chair, stated that it is the recommendation of the Infrastructure Committee that Cotten Engineering continue with the design practice for the rest of the Storm Water and Flood Mitigation for Dewey Beach.

Robert Stickels, Town Manager, stated that the total grant amount is \$48,850 for the work and has a proposal from Mike Cotten for the work in the amount of \$43,965. He stated that there is an agreement with Mike Cotten and he was selected through a competitive process and would like to extend the agreement and the town is within the requirements.

Commissioner Seitz stated DNREC is comfortable with the contract for the work being under \$50,000 so he feels the town is compliant with the local and state regulations.

Commissioner Seitz made the motion be it moved that the Town Council of Dewey Beach have met in public session awards the Best Management Practice Storm Water Planning contract to Cotten Engineering, LLC not to exceed \$43,965. Commissioner Laird seconded.

Commissioner Legates stated that she was contacted by two engineers, House of Engineering and **Decabe,?** who would like to be considered for working with the Town of Dewey Beach in the future.

The motion carried unanimously

3. Discuss and possibly vote allow alcohol consumption for a town property owner's party on September 15, 2012:

David King stated that if the home owner's party was held in the parking lot of the Life Saving Station there would be no violations of the town code.

There was a lengthy discussion on the topic.

The council decided to have the home owner's party in the parking lot of the Life Saving Station.

4. Discuss and possibly vote on recommendations from the Ad Hoc Noise Committee: (a) to reduce the decibel readings in the Town's Noise Ordinance,

“Article II. Noise Control subsection 117-15, Maximum noise limits as measured by sound-level meter to 70 dBa during the daily hours from 7:00 a.m. to 10:00 p.m. and 60 dBa from 10:00 p.m. to 7:00 a.m.”

(b) to add that “the police should take multiple meter readings around the perimeter of the business, no more than 50 feet from the establishment, and permitting the officer to go closer if they cannot get an accurate measurement due to traffic or other ambient interference from the 50 foot distance.

(c) that the Ad Hoc Noise Committee provide a report of noise complaints at the monthly town meetings between May and October.

Gary Keith, Ad Hoc Noise Committee, stated that the Ad Hoc Noise Committee recommended staying with the measured decibel reading that was originally established by the Town of Dewey Beach of 70 dBa and 60 dBa.

Fred Townsend, Town Solicitor, stated that the proposed ordinance does not include language from the agenda item #4 which is stated in subsections (b) & (c). He stated that if those are to be considered then the motion to adopt needs to be amended to include that language.

There was a lengthy discussion on the topic.

Debbie Oller, 115 Chicago St, asked if the Noise Committee’s goal was to just look at the business noise.

Fred Townsend stated that the ordinance on the agenda to be amended was in the business license section.

Mayor Hanson stated that the Quality of Life Committee looks more at the noise on the street.

Hillary Bateman, 102 Dover Road, asked how many decibel meter readers are there, where are they located, and do they read the bass.

Mayor Hanson stated that there wasn’t the capability to read bass in the past but it is being done now.

Claire Walsh, Salisbury St, stated that she has lived 100 yards from the Starboard all of her life and it is not the noise from the restaurant that bothers her. She stated that it is the traffic noise from the stop light. She stated that this issue is all about one establishment. She stated that it should be handled with that establishment. She stated that she

recommended that it be placed under civil offenses and not be under the police jurisdiction.

Maryann Perrone, 108 Saulsbury St., stated that she and her husband own property behind the Starboard Restaurant and they don't have a problem with noise.

Mark Allen, Bayard Ave, stated that he did a noise survey and submitted it to the Council and the Town Manager. He stated that he thought it is important for the wind to be considered because it affected his readings by 20 decibels. He stated that he thought cooperative partnership between all parties is the way to go.

Marilyn Cannon, 116 McKinley St, stated that she agreed that everyone should work together but the problem has been going on for years. She stated that she and her neighborhood have been impacted with vibrations that rattle their houses. She stated that she is not going to be able to live in her house another season like that. She stated that Northbeach is the noise problem on her street and asked council to give the lowered decibel readings a try.

Linda Winton, Swedes St, stated that last week on a Wednesday and Thursday that it wasn't music that bothered her but she heard screaming and yelling on the deck of the Starboard around midnight. She stated that she had to close her windows.

Dale Cooke, Chesapeake St., stated he would ask Council to back up until they have all the data and do something about the bass level. He stated that the business should have to meet face to face with the people who complain so they will have to do something about the noise.

Betsy Damos, Swedes St., stated that tickets not only should be issued but there should be a penalty for repeat offenses.

Mayor Hanson read a list of 35 names in favor of lowering the decibels.

Mayor Hanson read a list of 5 names against lowering the decibels.

Mayor Hanson stated that the majority of the people in Dewey Beach are in favor of lowering the decibels.

Commissioner Laird stated that the numbers reflect how the town feels. He stated that he is most distracted by the roving noise in the town. He stated that noise comes from a lot of sources and Council has to do something smart. He stated that he thinks the lowered decibels can be tried and his concern is that Council is going to take a step forward and

then not be able to uphold what may be passed today. He stated that he doesn't want a number of lawsuits because of moving too quickly and wants whatever is put in place to hold.

Commissioner Seitz stated something could be done today to move forward. He stated there should be a 30 day assessment time with input from businesses, the town hall staff and he also would give his input. He stated that next month he would like to see the implementation of the noise offense becoming a civil offense.

Mayor Hanson stated that the C level will not be measured and no one will be in violation of C level until June 14.

There was a lengthy discussion on the topic.

Commissioner Howell stated that she would like to see the noise levels enacted as recommended by the noise committee, gather data for the next 30 days on the A level and come up with a recommended noise level on the C level. She stated she wants to see transparency.

There was a lengthy discussion on the topic.

Commissioner Seitz made the motion to accept the proposed ordinance as specified to amend chapter 117 Licensing the Businesses of the Municipal Code of the Town of Dewey Beach, Delaware 2005 as amended by amending section 117-15 relating to noise control with the change striking the numbers 80 and 75 decibel readings to 70 and 60 and to add subsection (b) the police should take multiple meter readings around the perimeter of the business, no more than 50 feet from the establishment, and permitting the officer to go closer if they cannot get an accurate measurement due to traffic or other ambient interference from the 50 foot distance. Commissioner Howell seconded.

The Vote:

Commissioner Seitz: Yes

Commissioner Howell: Yes

Mayor Hanson: Yes

Commissioner Legates: Abstain

Commissioner Laird: Abstain – He stated that he is for the concept but believes Council is on thin ice. He stated that he will support the recommendation going forward but thinks there is more work to be done.

The motion passes 3-Yes 0-No 2- Abstain

Commissioner Howell made the motion for the Ad Hoc Noise Committee to provide a report of noise complaints at the monthly town meetings between May and October. Commissioner Seitz seconded.

The motion carried unanimously.

5. Discuss and possibly vote to refer to the Quality of Life Committee to investigate the possibility of developing and implementing a Nuisance ordinance for Dewey Beach:

Gary Keith, Quality of Life Committee Chair, asked that council table this issue until the next meeting because he did not have a history of the topic to give to Council at that time.

Commissioner Seitz stated that he would like to see the committee develop some information to bring back to council at a later time.

6. Discuss and possibly vote to amend Table 3, Uses in Resort Business Districts, Section 185-25 Dewey Beach Code of Ordinances relating to temporary expansion of premises for off season events with Council approval:

Chase Brockstedt, Starboard Attorney stated that he and his client, Steve Montgomery, would not be available at the next town meeting and request that since this would be put on as a Public Hearing and a vote that it be done for the July meeting. He stated that the original application by the Starboard for the three expansions was submitted December 1, 2011 and if the code is changed on July 13 it will be inside of the 90 days contemplated under the new statute and they have an additional request that the town consider the three expansion request to go back to the original date of the filing.

Commissioner Seitz stated that in his point of view that seemed reasonable and should be an obvious consideration. He stated that he appreciated their patience in being able to allow Council to get to the details. He stated that in July he thought Council would be in a very comfortable place after having done their homework.

There was a lengthy discussion on the topic.

Steve Montgomery, Starboard Restaurant Owner, stated that this request for expansion is about a 2000 square foot area where the premise would be extended about 20-25% in ability to serve alcohol and for the Breast Cancer event it would just make the event run smoother so the race participants wouldn't have to be told that they can't take their drinks

inside the Starboard or couldn't take them outside of the Starboard. He stated that he worked with Council when this started to help get the ordinance on the books and the intent was that this event would not be done on the holidays and during the summer season when the town was at maximum capacity. He stated that the intent should remain the same which is to do fun events in the off season. He also stated that he did get upset when he saw a CPD Blast that said there would be 88 open container expansion events in town that stirred people up when that is not the truth. He stated that is not what his request is about but it is about the ability to go to council to request an event. He stated that he does not intend to do any other events except the two he has done for the last ten years and the Breast Cancer event.

There was additional lengthy discussion on the topic.

Harry Wilson, Planning Commission Chair, stated that the Planning Commission's report on the expansion was submitted in the form of the minutes from the meeting.

Mayor Hanson stated for the record that the Planning Commissioner voted expansion 5-1 in favor to recommend the approval of the expansion 2 in season and 2 in the off season.

Mayor Hanson read a list of citizens that wrote in that they were for and against the expansion.

Commissioner Seitz stated that he did appreciate the list and that the information given by the citizens is important. He stated that the amount of numbers on each side is not what is important because this is not a vote that is being taken by ad hoc submission of comments. He stated that it is the information that is given by the citizens in the emails that is the key in helping the Council to make a decision.

There was a lengthy discussion on the topic.

Beverly Gammage, Read St, stated that alcohol is legal and Council is trying to legislate something that it has no business in. She stated that it is time to start using common sense.

Mayor Hanson stated that Council is not saying the establishment can only serve a certain amount of alcohol and that there is no Constitutional right to be able to expand premises of your bars. She stated that Council is not trying to regulate the amount of alcohol that the Starboard sells or anyone else but are just discussing the expanded area into the parking lot and if they can serve alcohol there or not.

Denise Campbell, Bayard Ave, stated that she has been in town for 10 years and she

supports enforcement but thinks the town is trying to write an ordinance to punish the few versus the many. She stated that she was at last year's Breast Cancer event and there was alcohol, family, and kids and it was a very different scene than you would see on Memorial Day weekend.

Betsy Damos, Swedes St., stated that she doesn't think this is about the Breast Cancer event. She stated that this is changing an ordinance which will apply to everyone.

Dale Cooke stated that the current ordinance was intended to address the in season event and not the off season events.

- 7. Discuss and possibly vote to reconsider the February 14, 2012 motion to approve the Starboard's application for temporary expansion of premises for a fall non-profit special event:**

Council decided to table the topic.

- 8. Discuss and possibly vote to authorize the Mayor to send to the State Legislature:
(1) an act to amend the following sections of the town charter: 2(d); 5 (a); 5 (b); 5 (c); 10 (b); 15 (c); 16 (a); 16 (j); 17 (b); 22 (b); 22 (c); (3); 23 (a)- 13 (a);- (o); 23 (a)-16;
Section 26, borrowing money and issuing bonds, consistent with a referendum approved at the 2011 annual municipal election**

Mayor Hanson outlined the amendments to the sections listed with the exception of 17 and 23-16.

Commissioner Seitz made the motion to accept the changes as specified with the exception of Sections 17 Audit Committee Changes and 23-16 Long-term rental agreement in regards to Accommodations Tax along with section 26 Borrowing Money and 13(m) & 13(o). Commissioner Laird seconded.

The motion carried unanimously.

Mayor Hanson stated the entire Audit Section 17 has been removed and rewritten.

Robert Stickels, Town Manager, stated that the Council had indicated that they were not pleased with what was proposed at the last council meeting and there was a rewrite that was done.

Fred Townsend, Town Solicitor, read the proposed change to the Audit Section 17.

Commissioner Seitz made the motion to accept the change as read. Commissioner Howell seconded.

The Vote:

Commissioner Seitz: Yes

Commissioner Howell: Yes

Mayor Hanson: Yes

Commissioner Legates: Yes

Commissioner Laird: Abstain

The motion carried 4-Yes to 0- No 1-Abstain

Mayor Hanson stated that the next to be voted upon is the exclusion of Long Term Rentals from the Accommodations Tax.

David King, Budget and Finance Committee Chair, stated that the committee was informed that a number of the residents have rewritten their season leases to annual leases in an attempt to get around paying the Accommodations Tax even when they don't make their properties available for use by the leaseholder during the off season. He stated that it was the consensus of the Budget and Finance Committee to include everyone and all rental properties as is done in most jurisdictions.

There was a lengthy discussion on the topic.

Council decided not to take a vote on the topic at that time.

9. Discuss fair share policy initiatives to increase Town revenue in response to increased user demand for services and facilities:

David King, Budget and Finance Chair, gave a report on the progress of the Budget committee into what they feel is a viable solution to the town's financial sustainability. He stated that the goal is to build a restricted capital expenditures and infrastructure accounts and creates the general fund reserve to approximately one year's expenditures. He stated that this will likely require putting aside approximately \$400,000 a year every year over the next decade. He stated that the objectives in moving forward with this initiative are to do so in a fair and responsible manner using reliable and determinable revenue streams. He stated that it is the consensus of the committee that this cannot be achieved with cuts in operations nor are transfer tax revenues reliable enough to achieve this goal. He stated that the committee hoped to find a fair way, fitting in with Council's fair share initiative, to charge those who benefit from the Town's services and infrastructure. He stated that he would like to introduce four concepts:

1. The Hybrid Approach - to increase the occupancy multiplier
2. Town Safety Assessment – to have a town wide assessment on all business and

- residences to support town safety operations
3. Property Tax

Mayor Hanson stated that the Budget and Finance will be discussing this item at the next Budget & Finance Meeting and would address any question and concerns.

- 10. Discuss and possibly vote to recommend to the Town Commissioners for their approval, a draft Dewey Beach 2011 Municipal Comprehensive Land Use Annual report:**

Council decided to table this item.

- 11. Discuss and possibly vote to accept or reject a towing contract for 2012:**

Robert Stickels, Town Manager, stated that the town bid out towing services and only received one bid from Mag Towing and Auto Service Center, LLC, located 35001 Roxana Road, Roxana, DE. He stated that they proposed a bid of \$25 per each vehicle towed in town.

Commissioner Seitz made the motion that the Dewey Beach Town Council awards the vehicle towing contract for fiscal year 2012-2013 to Mag Towing and Auto Service Center LLC. Commissioner Legates seconded.

The motion carried unanimously.

- 12. Discuss and possibly vote to accept or reject proposal LED Street Light Upgrades for Coastal Highway (State Route One)**

Robert Stickels, Town Manager, stated that there were four bids submitted from Murphy Electric, Nickles Electric, Mid Atlantic Electric, and John W Tieder and Company who submitted the lowest bid in the amount of \$51,162. He stated that this would allow for 24 lights to be done but there are a total of 44 lights. He stated that he is asking Council to consider allowing for the 44 lights to be done that will cost an additional \$42,635.

Commissioner Seitz made the motion that the Dewey Beach Town Council awards the DB Led Street Lights Upgrades Contract to John W. Tieder and Company for \$51,162. Commissioner Legates seconded.

The motion carried unanimously.

PUBLIC COMMENTS

David Lynam, Lynam's Beach Concession Services, stated that this year he was asked to provide a performance bond but has run into a snag because all the insurance companies would not give him a performance bond unless he had 100% cash money for the bond which is \$340,000 in cash that he would have to come up with.

There was a lengthy discussion on the topic.

Robert Stickels, Town Manager, stated that his recommendation was reduce the contract to one year and to bid it next year.

Russell Catts stated that he was the unsuccessful bidder of the Beach Concession Contract and had copies of his performance bond associated with the bid for the Council to review.

There was a lengthy on the topic.

Robert Stickels stated this decision would give Russell Catts the opportunity to bid on the contract next year.

David Lynam stated that he would try to borrow the entire \$340,000 for the bond and would let the Town Manager know by Tuesday, May 15, 2012.

REPORTS

- **Police** – Nothing to report
- **Finance** – Bill Brown stated that the auditors are now auditing the financial records and that excluding the Bayard Avenue Project the revenues have exceeded expenditures by about \$343,000. He stated that with the inclusion of Bayard Avenue Project there is a loss of about \$58-59,000.
- **Town Manager** – Bob Stickels stated that he received a petition addressed to the Town of Dewey Beach to modify Town Ordinance 343C to allow sports on the beach. He stated that the petition requested that the lifeguards be allowed to regulate the sports in each assigned area. He stated that he received 32 petitions. He stated that he had for Council's consideration a public input procedure form to possibly be placed on the agenda at the next town council meeting.

COMMISSIONER COMMENTS

Commissioner Seitz: He stated that the first batch of address changes had been received from the county and Town Hall would be putting together the announcements to go to the individual property owners and instructions on how

to post them. He stated that they will have a year of delivery at the old address plus their new address. He stated that after the year is up mail will only go to the new address.

Commissioner Howell: She stated that she was proud to announce that the Marketing Committee now has a design for the Rack Card. She stated that it focused on the town's family friendly and beach events, and also mentions the free permit parking in town on Monday, Tuesday, and Wednesday nights.

Mayor Hanson: She stated that she would like to have after the next town meeting a Volunteer Appreciation Night reception for the people involved in committees and who volunteer. She also wished Commissioner Seitz a Happy Birthday.

Commissioner Legates: No Comment.

Commissioner Laird: No Comment

Commissioner Laird made the motion to adjourn the meeting. Commissioner Howell seconded.

The motion carried unanimously.

MEETING ADJOURNED-----

*These minutes are supplemented by an audio-video record of the meeting which will be maintained by Town Hall for reference and can be viewed/heard on the town website. The audio-video records will be purged from time to time.

Respectfully Submitted,

Bob Stickels
Town Manager

Approved: June 8, 2012