

Town Of Dewey Beach

Minutes of Aug 10, 2012

Town Council Meeting

A regular meeting of the Dewey Beach Town Council was held at 6:00 p.m. on Friday August 10, 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 Martin Seitz, Anna Legates, and Joy Howell, Town Attorney Fred Townsend, Acting Town Manager Chief Mackert and Assistant Town Manager Jim Dedes.

Commissioner Jim Laird was not present.

APPROVAL OF MINUTES

June 30 Meeting Minutes

Mayor Hanson stated that she recommended removing a line from the fourth paragraph that stated the town manager had a contract with the State Police for two additional policemen and council did not accept the contract.

Commissioner Seitz stated that he recommended adding a line at the end that stated "The meeting concluded with a motion to close the meeting by Commissioner Seitz. The motion was seconded by Commissioner Howell. The Commissioners voted unanimously to close the meeting.

Commissioner Seitz made the motion to accept the minutes of the June 30th meeting as amended. Commissioner Legates seconded.

The motion carried unanimously.

July 27 Special Meeting Minutes

Commissioner Seitz made the motion to accept the July 27 Special Meeting Minutes. Commissioner Howell seconded.

The motion carried unanimously.

ADOPTION OF THE AGENDA

Mayor Hanson stated that she recommended that item #4 be tabled.

**Commissioner Legates made the motion to adopt the agenda as amended.
Commissioner Howell seconded.**

The motion carried unanimously.

ANNOUNCEMENTS

Jim Dedes announced that the meeting scheduled for Sept 14 has been cancelled and rescheduled Sept 7. He also stated that the lifeguard services will end coverage of the beach at the close of business day on Sept 13. He stated that the reason for these changes is that the town election is scheduled for Sept. 15 and the Election Committee requires the use of the Life Saving Station to set up the room, install the voting machines and to secure the building. He also announced that the Planning Commission meeting has been cancelled for Sept 7.

Mayor Hanson stated that Commissioner Laird was absent from the meeting due to being sick and would not make it.

REGULAR MEETING

1. Presentation of the Audited Financial Statements and Supplemental Information for the Year Ended March 31, 2012. Discuss and possibly vote to approve or reject the audit report, in whole or in part.

Don Ziegler, Audit Committee Chair, stated that he was introducing Tom Sombar, managing partner of the town's independent accounting firm Sombar & Company, who would make a presentation regarding his firm's report on their examination of the financial statements of the Town for the fiscal year ending March 31, 2012.

Tom Sombar gave an overview of the audit report on the Town's net assets. He stated that the town is very fortunate to be in the position it is in, in spite of the expenditures that were done in the past year particularly the Bayard Avenue project when the town decided not to borrow the entire amount.

There was a lengthy Q & A discussion on the subject. (Video Recording Mark 20:35)

Commissioner Howell thanked Don Ziegler for presenting the audit report within the required time period stated in the Charter which has to be done by Aug 15 and stated that she would like for the public to have the opportunity to review it. (VRM 36:48)

Don Ziegler stated that the audit report will be placed on the website for the public to review but the auditors have rendered a clean opinion on the accounts and consequently it's complete. He stated that over the years he has said to council that he would like them to approve the financial reports and the audit report and there isn't anything in the town Charter in the past that states that this is a requirement. He stated that what they did when the Charter was passed years back is put in there that the Audit committee would ask the Council to approve the audit report and consequently have done that from year to year. He stated that he will ask Council to approve the audit report at the end of the day.

There was a lengthy discussion on the subject. (VRM 38:46)

Commissioner Seitz stated that Council has a request from the chairman of the Budget & Finance Committee. He stated that he thinks that Council could proceed with what Mr. Ziegler has and would also like to accommodate the recommendation of the Budget & Finance Committee.

Commissioner Howell stated that the Budget & Finance Committee were unable to attend this meeting and would like to have the opportunity to look over the report with the Audit Committee

Mayor Hanson stated that she recommended tabling the item until the Audit Committee and the Budget & Finance Committee could meet to discuss the audit report.

Don Ziegler stated that he was opposed to tabling the item because the audit report has been issued and a clean opinion has been rendered. He stated that Council should approve the report for the putting onto the website and for putting a condensed version in the newspaper. He stated that he would be happy to talk to the Budget & Finance Committee about any concerns they may have.

There was additional discussion on the subject.

Rick Solloway, Read St., (VRM 49:31) stated that in his opinion, Council should approve the audit report and there should not be the two committees having the oversight of one another. He stated that the Audit Committee works off of a state mandate on government financials and a modified accrual basis. He stated that if the Budget and Finance has some guidance or issues they would like to raise to Commissioners then they should be making the recommendation, as their committee, to Council. He stated that Council

should move forward and approve the audit report.

Mark Allen, Budget & Finance, stated that historically the town always had a nice amount in the capital reserve accounts and although the picture may look good, the town reserves are a third of what Budget & Finance would normally like to see. He stated that the town is not as healthy as the Budget and Finance committee would like and the reserves remains to be the challenge and getting the reserves replenished are critical.

Marcia Schieck, Saulsbury St., stated that she is uncomfortable with the rush to approve the audit report and would personally like to look at it to understand where the additional \$800,000 in cash came from. She asked if there was an adverse occurrence that would happen if Council waited to vote on it and for the public to review it. She stated that with the AG's report we want to be as transparent as possible and she would welcome, if there is no adverse effect to the town, to vote on it a later date.

Graham Smith, Read Ave, stated that the audit report was prepared by an independent auditor and submitted to the town. He stated that all Council needed to do was to formally accept the audit report as required by the state and then Council could go an analyze it.

Mayor Hanson stated that Council has received a formal letter from several members of the Budget & Finance Committee who have serious concerns about issues in the audit report. She stated that she would like to see the item tabled until the audit committee meets with the Budget and Finance Committee.

Don Ziegler stated that the Council could just accept the audit report as opposed to approving it so that it could be published.

Fred Townsend, Town Attorney, stated that the Charter makes reference to accepting or rejecting the report. He stated that it is not a question of approving the report but of accepting the report.

Jim Dedes read the Budget and Finance Committee letter into the record.

Don Ziegler stated that that he felt there was misinformation in the letter that was read into the record. He stated that he recommended accepting the audit report so that it could be published.

Commissioner Seitz stated that made the motion for Commissioners to accept the audited financial statement and supplemental information for the year ending March 31, 2012 and recommends Budget and Finance to meet with the Audit

Committee and auditors to discuss the report. (1:25:38) Commissioner Legates seconded.

The Vote:

Commissioner Seitz: Yes

Commissioner Howell: No

Mayor Hanson: Yes

Commissioner Legates: Yes

Commissioner Laird: Not Present

The motion passed 3-Yes to 1-No.

2. Discuss the possible vote to appoint a town manager and/or an Acting Town Manager, and/or Search Committee:

Mayor Hanson gave an update from the Executive Session on Aug 4. Mayor Hanson stated that Council authorized her as Mayor to reconstitute the search committee as needed and also decided to look for an acting town manager. She stated that three candidates for town manager would be interviewed and one candidate on a phone interview.

3. Discuss Update by former Commissioner and former Ethics Board Member Faith Duncan regarding forming a Dewey Beach Board of Ethics. Discuss and possibly vote on an initiative to amend Chapter 10 of the Dewey Beach Code of Ordinances relating to Code of Conduct, specifically to create a Dewey Beach Board of Ethics that includes review and approval from the Delaware Public Integrity Commission:

Faith Duncan stated that she had previously presented Council with a draft of Code of Ethics. She stated that she had a few town citizens came to her with some concerns.

She read a letter from Bill Kloepper. She stated that other citizens including former Mayor Dell Tush have approached her expressing their concerns or uncertainty about the advisability of establishing an ethics board. She stated that these citizens are concerned that in a town of this size it would be extraordinarily difficult to find enough board members who would be unbiased. She also stated that she received a letter from Mark Allen who stated he does not believe the current commissioners are capable of exercising good judgment and therefore should not be making a decision on this matter.

She stated that the draft establishes an ethics board of five members who are appointed by the council that are in power at the time and the draft suggests that one member be appointed each year. She stated that Janet Wright would have preferred that all members be residents of the town and a larger board of seven members with terms as long as 10 years. She also stated that the draft stated that members may be removed from office for substantial neglect of duty, gross misconduct in office or for violation of this chapter.

She stated that at the July meeting Beverly Corelle presented a series of concerns about clarity. She asked if the ethics board is advisory or independent and if advisory, who does it advise. She asked if the board is autonomous who enforces its actions.

Faith Duncan said that the concerns of Beverly Corelle should be looked at closely. She stated that it is her recommendation that Council not become involved with changing the code until they come to the conclusion that they do want to go forward with approving an ethics code that includes a board of ethics. She stated that the PIC is in favor of towns establishing a board of ethics but once established the town may not go back under the state.

Fred Townsend, Town Attorney stated that he believed once an ethics board has been formed the state will not take back over the responsibility.

Mayor Hanson recommended that a public hearing be held for next month where the public can speak and ask questions.

4. Discuss and possibly vote to amend 85-1301A of the Dewey Beach Code of Ordinances related to disorderly use of the dwelling by converting it from a criminal to a civil offense:

Council decided to table the item.

5. Discussion and possibly vote to hold a public hearing on enacting further restrictions on non-profit gambling:

Mayor Hanson stated that she recommended having a public hearing to see if there is enough concern to finalize the changes to the law on this subject.

Commissioner Seitz made the motion to hold a public hearing to identify possible further restrictions or modifications on non-profit gambling. Commissioner Howell

seconded.

The motion carried unanimously.

6. Discuss a possible ordinance requiring land use decisions to be made by ordinance rather than regulation, resolution, vote, consensus or any other Council action:

Fred Townsend stated that he recommended that at this time Council be given the opportunity to consider what is on the books and then determine the need for anything additional, in the way of safeguards, to require official action on the part of Council before any land use decision is made.

There was a lengthy discussion on the topic

Fred Townsend stated that the topic is something that needs to be studied. He stated that he would come forward with an ordinance for Council to consider and advise in what difficulties it would prevent in the future or what problems it may present.

Mayor Hanson stated that this item would be place on the agenda in the future.

7. Discuss the Planning Commission's draft Municipal Comprehensive Land Use Plan Annual Report (11/19/2011), and vote to amend and/or submit to the Office of State Planning Coordination as the Town's 2012 annual report:

Commissioner Legates stated that she had no issue with the report. Commissioner Howell stated that she had no issue with the report. Commissioner Seitz stated that he had no issue with the report.

Commissioner Howell made the motion to accept the Planning Commission's draft Municipal Comprehensive Land Use Plan Annual report. Commissioner Seitz seconded.

The motion carried unanimously.

Commissioner Howell made the motion to submit the Planning Commission's Municipal Comprehensive Land Use Plan Annual report (11/19/2011) to the Office of State Planning Coordination as the Town's 2012 annual Report. Commissioner Seitz seconded.

The motion carried unanimously.

PUBLIC COMMENTS

Dale Cooke stated that he does not understand the July 27 meeting process where Commissioners did not go into Executive Session. He stated that there is the perception that Mayor Hanson will allow some to speak out from their seats without being recognized and not allow others to do so.

Mayor Hanson stated that if that has occurred she was not aware that it was being done and when running a meeting it is easy to forget.

Pamela Bunting Lewis stated that she want to say something about the 171 public urination violations. She stated that here in Dewey Beach there is a lot of alcohol consumption and Dewey Beach does not do a good job in providing restrooms for the public.

Graham Smith stated that he felt that prior to the public hearing on the ethics board Council needs to do a canvas of other towns in Delaware first because some of the towns that have ethics boards are sorry they have done this. He stated that Council should schedule a public meeting a few days after an executive session instead of immediately following to allow for proper advanced public noticing.

Marilyn Seitz stated that the town has the most open Council that publicizes the meetings on webcast which can be viewed anytime and the meetings are archived. She stated that she thinks the Council should be applauded because the meetings are as open as possible.

REPORTS

- **Police** – Lt. Hocker stated that there no major incidents to report. He stated that there was a theft of a moped from St. Louis St. on July 6 and a theft of a purse from an unlocked vehicle on Cullen St. He stated that there a lot of transient people at the end of the summer season who will commit burglaries and thefts from vehicles and advised residents to make sure to lock their vehicles and secure their belongings.
Officer Wechtenhiser gave the noise report.
- **Town Manager** – Acting Town Manager Sam Mackert read a grant letter from Jim Sullivan, DNREC, that was awarded to the town. Assistant Town Manager Jim Dedes stated that the town could possibly receive additional funding from the Solar Grant for the street lights project.

COMMISSIONER COMMENTS

Commissioner Seitz: He stated that he is looking forward to a successful Town Manager search and Acting Town Manager search.

Commissioner Howell: No Comments

Mayor Hanson: She stated that David King asked for items to be put on the agenda for September to discuss and vote in public hearing on sustainable financing.

Commissioner Legates: She stated that she wanted to be as open as possible about the decisions Council makes concerning what is forwarded to the Attorney General. She stated that she wanted to have an agreement among Council before anything is sent to the Attorney General on behalf of the town.

Commissioner Laird: Not Present

Commissioner Howell made the motion to adjourn the meeting. Commissioner Seitz 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,

Marc Applebaum
Acting Town Manager

Approved: September 7, 2012