



The Town of Fenwick Island

800 Coastal Highway, Fenwick Island, DE 19944-4409
302-539-3011 ~ 302-539-1305 fax
www.fenwickisland.delaware.gov

REGULAR MEETING OF THE TOWN COUNCIL MARCH 27, 2020 *MEETING HELD VIA TELECONFERENCE*

MINUTES

In Attendance

Town Council Members:

Mayor Langan, Vice Mayor Mais, Treasurer Bunting, Secretary Merritt, Council Member Carmean, Council Member Houser, Council Member Weistling

Staff in Attendance:

Town Manager Tieman, Chief Boyden, Town Clerk Martin

Others in Attendance:

Along with the Town Council and Staff, there were an additional 19 participants that called in for the meeting.

Mayor Langan began the meeting at 3:30 PM. He noted that all materials for the meeting were posted online.

Roll Call

A roll call of all Council Members and Town Staff was conducted.

President's Report

Mayor Langan commented that all non-essential businesses, the beaches, and playgrounds are closed due to COVID-19. Governor Carney has been conducting two conference calls a week with Mayors and Town Managers.

For the safety of residents, the parking permits will be mailed out this year. Also, a drop box will be installed in front of Town Hall.

Mayor Langan noted that no ordinance was changed to accommodate the Sands hotel in regards to the liquor license they are obtaining. The owner of the hotel, Spiro Buas, has provided in writing that he will have no outdoor music without the approval of Town Council. The Town does not get involved with liquor licenses since they are State issued. Council Member Weistling added that when the Town received the liquor license notification, himself along with Town Manager Tieman and Building Official Schuchman discussed the notification with the Town Solicitor. Mr. Buas agreed that if he would have outside entertainment that he would notify Town Council. Town Manager Tieman added that the liquor license is not the jurisdiction of the Town and the building permit for the new hotel was issued as a hotel with amenities, which included a bar. Mr. Buas has noted that the bar would not be open to the public and would only be for hotel guests. The Code was not changed and if it were changed, it would need Town Council action to change it. Zoning changes would also require two public readings and a public hearing. The variance for the liquor license is with the liquor board and not a variance to the Town Code.

For Discussion and Possible Action

Personal Identifiable Information Policy

Town Manager Tieman noted that this Policy was initiated to protect Personally Identifiable Information (PII) of Town employees and volunteers.

A MOTION was made by Vice Mayor Mais, seconded by Council Member Weistling, to accept the Personal Identifiable Information Policy. The MOTION passed unanimously.

COVID-19 Policy

Town Manager Tieman noted that the purpose of this Policy is to maintain a safe and healthy workplace, to maintain operational continuity, and aid in the concern for the well-being of employees, residents, and visitors. She added that this Policy would allow any employee who is either infected, or taking care of anyone that is infected, with COVID-19 to be paid 14 days of the regular wages without taking their sick time.

A MOTION was made by Treasurer Bunting, seconded by Council Member Houser, to accept the COVID-19 Policy. The MOTION passed unanimously.

Approval of Minutes

A MOTION was made by Council Member Houser, seconded by Council Member Carmean, to accept the minutes from the February 21, 2020 Regular Council Meeting. The MOTION passed unanimously.

Treasurer's Report

Treasurer Bunting presented the report for period ending February 29, 2020. He noted that an additional \$8,625.00 of RTT was received last month, which brought the total for the year to \$308,670.00.

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

Town Manager's & Department Reports

All reports were submitted.

Committee Reports

All Committee reports that were received were submitted.

Upcoming Events and Meetings

All events and meetings noted on the agenda have been cancelled along with the Town Council Meeting on April 24, 2020. All Town Committee meetings have been postponed until further notice.

New Business

Council Member Carmean noted that the moratorium on hotels has expired as of February 27, 2020. Mayor Langan noted that the Town Council will address at the next Council Meeting.

Council Member Weistling commented that a lot of out-of-town property owners, along with visitors to house rentals and hotels, will be coming in Town soon. With the lack of facilities and doctors, if the Coronavirus continues, the Town could be devastated due to the lack of medical facilities. Mayor Langan agreed and noted that is why the Governor opposes those coming in from out of state because our medical facilities cannot handle additional people.

Public Participation

Paul Breger, 1707 Bay Street

Mr. Breger questioned if the hotel amenities would be used only for those staying at the hotel. Town Manager Tieman replied yes, according to the building plans approved.

Mr. Breger then questioned if the original plans contained an outdoor bar. Town Manager Tieman noted that the plans did include an area near the pool, but according to the liquor board variance, it will be an outside bar. Council Member Weistling added that in the plans, it showed an area at the pool that could be a bar area. The bar is an amenity of the hotel, and the Town has no control on where an amenity is located.

Mr. Breger then asked about the outdoor music. Council Member Weistling responded that there is an ordinance in the Town Code about outdoor music. If there would be outdoor music, a Special Events Application would need to be submitted to the Town Council for approval. Each time the hotel would want outdoor entertainment they would need to apply for a Special Events Application with the Town Council.

Mr. Breger questioned if the outdoor music would be on an ongoing basis. Council Member Weistling responded that he didn't believe so since the owner agreed in writing that he would come to Town Council if he were to have outdoor music. Town Manager Tieman commented that the Town has worked with Mr. Buas and his attorney on an agreement that if live entertainment would take place at the hotel that Mr. Buas would need prior approval by the Town Council. The Town also sent a letter of clarification to the liquor board that the Town Code requires prior approval for outside entertainment.

Mr. Breger asked about the status of the Town on the windfarm project. Mayor Langan noted that the Town has not changed their position on opposition to the project. Mr. Breger then asked if Maryland plan to hold another meeting. Mayor Langan replied that he has heard nothing from either DNREC or Ørsted in regards to the project or conducting another meeting.

Pete Frederick, 1605 Bunting Avenue

Mr. Frederick commented that he is concerned about the hotel, especially with the changes made. Mancini's requested an outside bar several years ago and were denied. Per Town Code, 160-5, a bar must be associated with food and 85% of the area must be serving tables. Bars are not permitted outside or without a restaurant area, and bars must be on the same floor as the restaurant. Council Member Carmean agreed with Mr. Frederick, noting that no bar or grill has ever been allowed to be outside.

Council Member Weistling commented that 160-5 refers to a restaurant and not a hotel. Council Member Carmean noted that a hotel is incorporated but a bar/restaurant section is a separate incorporation. Mayor Langan asked how Council Member Carmean knew that they were two separate incorporations. Council Member Carmean replied that she has had a legal person tell her and added that although in Delaware it is hard to prove the two separate incorporations, since the law does not allow anyone to see who is involved in a LLC, she knows for liability issues that a bar/grill area would be separate from a hotel due to a lot of liability questions.

Council Member Weistling commented that the Town Solicitor was contacted and she stated that a bar is an amenity of the hotel and the bar can be put anywhere in the hotel. Also, the word "bar" in the Code is only referenced under restaurants and service areas, but if an outside agency came in to run the bar/restaurant, then the Town would be able to enforce the ordinance. Town Manager Tieman added that Mr. Buas received a business license for a hotel, and the liquor license is for a hotel and not a restaurant.

Julie Lee, 703 Bunting Avenue

Ms. Lee noted that Mr. Buas is stating no outdoor music but does not say if it is live or recorded music. Ms. Lee questioned if the Town is supporting the use of outside speakers for recorded music or a paging system. Town Manager Tieman replied that the Town is not supporting nor denying the use of speakers but has noted that no outdoor events can take place without the prior approval of Town Council.

Ms. Lee commented that the Town Solicitor has made an interpretation that 160-5 does not apply to all bars, even in hotels. In the past the Town has become involved with liquor licenses and has opposed outside liquor licenses.

Jeannie Nedwick, 19 Oyster Bay Drive

Ms. Nedwick commented that she has listened to the comments and does not want Fenwick Island to change their logo as one of the "Quiet Resorts".

Jackie Napolitano, 2 E. James Street

Ms. Napolitano noted that it has not been made clear if recorded music will be played. Town Manager Tieman commented that anyone can play recorded music. The Town has a noise ordinance and if the noise is disturbing, then the Police Department should be called to enforce the ordinance. As stated before, Mr. Buas would need to apply for a Special Events Application for live music. Anyone could have outdoor music that someone could consider disturbing. Council Member Weistling added that the noise ordinance (107-2) applies to both commercial and residential properties.

Nadia Butler, 7 W. Essex Street

Ms. Butler commented that when she owned her business and her attorney recommended what could and could not be done, the attorney worked for Ms. Butler and Ms. Butler did not work for the attorney. The Town does not always have to listen to what the Town Solicitor recommends or says. The Town Solicitor is trying to find ways to go around what is written in the Code for this hotel, in particular with the height limit and now for the outside bar.

Jodie Hayden, 4 E. James Street

Ms. Hayden noted that she received correspondence from Town Manager Tieman on clarification to the liquor license application but her response did not state if the Town is opposed to the wet bar nor the definition of a wet bar. Town Manager Tieman commented that the Town Code does not have a definition of a wet bar. The variance is with the liquor board and not Fenwick Island. If there was a variance with the Town, it would have to go through the Board of Adjustment. Any questions about the variance would need to be addressed with the liquor board.

Sally Craig, 1700 Coastal Highway

Ms. Craig commented that she hopes that everyone that lives within a mile of the hotel received notices from the liquor board about the variance request and she encourages everyone to provide documentation or sign a petition in objection to the license. All documents must be submitted to the liquor board by April 1, 2020.

Christine Keisling, 711 Bunting Avenue

Ms. Keisling agrees with the comments made by Ms. Lee and Ms. Butler. She added that the Town should support the residents and not agree with the Town Solicitor. She would like the Town Council to consider all the comments today and to give residents some assurance by conducting a meeting soon with our Town Solicitor and other attorneys.

Natalie Magdeburger, 32 Ebb Tide Cove

Ms. Magdeburger noted, as an attorney, she always lists the pros and cons to her clients. She added that there has never been an outside open bar in Town and any request in the past for an outside bar has been upheld by the ordinance. With this request there has been no opposition from the Town and the Town should get an opinion from a second attorney. She feels the Town should take the position of our ordinance. Town Council needs to enforce the ordinance and get an attorney that will advocate for the Town.

Janet Dudley-Eshbach, 1711 Coastal Highway

Ms. Dudley-Eshbach agrees with Ms. Magdeburger and feels that the Town Council needs to advocate for the residents of the Town.

Adjournment

A MOTION was made by Council Member Houser, seconded by Vice Mayor Mais, to adjourn the meeting. The MOTION passed unanimously and the meeting adjourned at 4:44 PM.