



The Town of Fenwick Island

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REGULAR MEETING OF THE TOWN COUNCIL

Friday, October 27, 2023

MEETING HELD VIA TELECONFERENCE

MINUTES

In Attendance

Town Council Members:

Mayor Magdeburger, Treasurer Rymer, Secretary Napolitano, Council Member Benn(via Zoom), Council Member Bishop, Council Member Bortner, Council Member Zanelotti(via Zoom)

Staff in Attendance:

Town Manager Schuchman, Police Chief Morrissey, Building Official Locke, Finance Manager Gary, Town Clerk Ellinger, Police Clerk Jowder

Others in Attendance:

Along with the Town Council and Staff, there were an additional 11 on Zoom and 7 in-person participants.

MOTION to proceed as discussed in Executive Session.

Moved by: Bill Rymer

Seconded by: Richard Benn

MOTION passed unanimously.

1. **President's Report - Mayor Magdeburger**

Mayor Magdeburger reported that BOEM has released their draft Environmental Impact Statement. They are accepting comments now. The Environmental Impact Statement confirms there will be major harmful recreational fishing effects and change the ocean viewscape from natural and undeveloped to developed. In addition, there will be damage to marine life. There is a virtual meeting on October 30th and information on how residents' can provide comments can be found on the Town's website.

The Centers for Inland Bays indicated they will be doing an impact study on the next round of windfarms. They confirmed publicly that they had received several donations from the windfarm companies, including one for \$100,000.00. They indicated their Board of Directors had recently voted to give that money back; however, by accepting the donation in the first place creates a great concern about their potential bias in the process.

There was a near tragedy at Southern Exposure in Fenwick when a customer lost control of her vehicle and drove into the building. Mayor Magdeburger thanked Corporal Clift for his excellent response. Both a customer in the store as well as an employee sustained injuries but both are expected to make a full recovery. Southern Exposure is now open for business.

Mayor Magdeburger announced that Town Manager Pat Schuchman will be retiring in April after 27 years of service to the town. Pat will assist Council in finding a replacement Town Manager.

2. Approval of Minutes from September 22, 2023, Regular Town Council Meeting

MOTION to approve the minutes from September 22, 2023, Town Council meeting.

Moved by: Bill Rymer

Seconded by: Janice Bortner

MOTION passed unanimously.

3. For Discussion and Possible Action:

3.1 Consulting services to support dredge RFP/Bid process and other efforts.

Council Member Rymer reported that at the recent Dredge Committee meeting, the Committee unanimously voted to recommend the attached request for \$59,000 of consulting services to support the RFP/Bid process to select a contractor to perform the dredging project. Anchor QEA has been our consultants for the majority of the town's efforts and will create the final engineering specifications and designs necessary to support the RFP process. They will also help create the final bid package which is very complex given the

nature of the project. Anchor has helped numerous municipalities as well as DNREC during this process. This \$59,000 fee is consistent with the fee paid to the sidewalk engineers in support of that RFP process. The entire \$59,000 will be covered by grant monies already set aside and therefore no transfers from RTT or the town's general reserves will be necessary. Therefore, I am making a motion to vote in favor of approving this consulting fee request.

MOTION to approve the revised quote for the replacement of Town Hall ramp and steps.

Moved by: Bill Rymer

Seconded by: Natalie Magdeburger

MOTION passed unanimously.

3.2 **Go Melvo contract**

Go Melvo is the concessionaire that sell refreshments on the state portion of the Fenwick Island beach.

Town Manager Schuchman reported the Town of Fenwick Island Code § 52-17 outlines the requirements for Beach Concessionaire (see attached). Go Melvo currently is the only concessionaire operating at the State Line Beach.

The original contract dated 5/13/2015 expired in 2018 and was extended for five years, expiring on December 31, 2023. At the time of the original bid process Go Melvo was the successful bidder by more than double of the second highest bidder. They currently pay the Town \$12,500 per year to operate on the State Line Beach.

Go Melvo has provided very satisfactory services to the State Line Beach area for the past eight years. The Town has not received a single complaint involving Go Melvo.

Go Melvo is requesting that the current contract be extended for an additional five-years with payment in the amount of \$12,500 per year (see email from owner Jeff McMahon attached).

Town Manager Schuchman believes an extension would be fair and beneficial to the Town.

Mayor Magdeburger stated she is not comfortable with agreeing to a 5-year contract extension without rebidding the entire process. She suggested a 2-year extension to the contract.

MOTION to extend the contract for an additional 5 years.

Moved by: Bill Rymer

Seconded by: Natalie Magdeburger

During discussion, Mayor Magdeburger stated that she feels Go Melvo has been a good partner with the town; however, she is concerned that five years is too long of an extension without a bidding process. Further discussion resulted in a consensus that a two-year extension would be more reasonable. **Bill Rymer withdrew his original motion and modified it.**

MOTION to extend the Go Melvo contract for an additional two years at a rate of \$12,500 per year.

Moved by: Bill Rymer

Seconded by: Natalie Magdeburger

MOTION passed unanimously.

3.3 **Restripe Streets**

Building Official Locke reported the lines on the streets have faded. They should be re-striped every year to 18 months. He is asking for \$6,801 to restripe the roads and suggests setting a yearly budget for this.

Mayor Magdeburger would like Mike Locke to talk to other surrounding municipalities about what type of paint they use and look into paint that would last longer than 1-2 years, if it exists. This item was tabled until the next Town Council meeting while more research is done.

3.4 **Monarch Way Station and Pollinator Garden Fence**

Town Manager Schuchman reported that on 4/28/2023 an Action Form was approved by Town Council for the Fenwick Island Environmental Committee to construct a Monarch Way

Station and Pollinator Garden which included lot clearing, fencing, survey, supplies, plant materials, etc. The estimated cost for the fence was \$700. DNREC waived the need for the survey which resulted in savings of \$1,800.

The Environmental Committee has researched fencing and believes a black aluminum fence around the garden would be more suitable. The additional cost would be \$5,412.

Work on the new park garden has already begun with the lot clearing and is expected to be completed this Fall. The Environmental Committee is requesting an additional \$5,412 be approved for the purchase of the fence.

MOTION for an expenditure of \$6,912 for Monarch Way Station fencing.

Moved by: Natalie Magdeburger

Seconded by: Bill Rymer

MOTION passed unanimously.

3.5 **Quote from Ad Art for new exterior town signs**

Town Manager Schuchman reported the two front exterior signs on the Town Hall building have become faded, are starting to chip and need to be replaced. The quote is to replace the sign on the left side of the entry with a new 42" sign with the Fenwick Island seal and replace the sign on the right side of the entry with a new sign that says Town Hall – Administrative Offices. The quote for the 42" sign with the Fenwick Island seal is the same as the original quote for the sign inside the meeting room.

MOTION for approval of \$2,950 to replace exterior Town Hall signs.

Moved by: Natalie Magdeburger

Seconded by: Jacque Napolitano

MOTION passed unanimously.

3.6 **Proco Inline 12" Check Valve**

Council member Benn stated that there is a reoccurring problem on Schulz Rd. with the backflow preventer. He believes that the newer Proco Valve would be more appropriate for that spot.

Building Official Locke requested \$2,146 to replace the existing valve.

MOTION to approve \$2,146 to replace the Proco Valve on N. Schulz Rd.

Moved by: Richard Benn

Seconded by: Bill Rymer

MOTION passed unanimously.

3.7 **First Reading: Chapter 100 (Licensing) Relating to the Operation of Marijuana Cultivation Facilities**

This ordinance originated from the Residential Concerns Committee and prohibits the sale of marijuana in town limits. Charter and Ordinance Committee has proposed the new ordinance with a unanimous recommendation and proposed ordinance has been reviewed and approved by the Town Solicitor.

MOTION to approve proposed new language to Chapter 100 (Licensing) Relating to the Operation of Marijuana Cultivation Facilities for a first read.

Moved by: Natalie Magdeburger

Seconded by: Jacque Napolitano

MOTION passed unanimously.

Mayor Magdeburger introduced the first reading of Chapter 100 Relating to the Operation of Marijuana Cultivation Facilities.

AN ORDINANCE TO AMEND CHAPTER 100 (LICENSING) OF THE CODE OF THE TOWN OF FENWICK ISLAND, DELAWARE

RELATING TO THE OPERATION OF MARIJUANA CULTIVATION FACILITIES, MARIJUANA PRODUCT

MANUFACTURING FACILITIES, MARIJUANA TESTING
FACILITIES AND RETAIL MARIJUANA ESTABLISHMENTS

WHEREAS, the General Assembly of the State of Delaware has enacted the Delaware Marijuana Control Act (the “Act”), declaring that the personal use of marijuana is legal for persons 21 years of age or older and should be regulated and taxed in a manner similar to alcohol; and

WHEREAS, section 1351(a) of the Act authorizes a municipality to prohibit by ordinance the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana establishments, as those terms are defined in the Act; and

WHEREAS, the Town Council (“Council”) of the Town of Fenwick Island (“Town”) has deemed it necessary and appropriate, and in the best interest of the health, safety and welfare of the Town’s residents and members of the public who visit, travel, or conduct business in the Town, to amend the Town’s Code, consistent with the Act, to prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities and retail marijuana establishments, as those terms are defined in the Act;

NOW THEREFORE, BE IT ORDAINED, this ____ day of _____, 2023, by the Town Council of the Town of Fenwick Island, Delaware, in session met, in the manner following:

Section 1. Amend Chapter 100 (Licensing), Section 100-1 (License requirement; fees) of the Town Code, by inserting a new paragraph after the existing paragraph thereof, to read:

No person or business shall operate in the Town of Fenwick Island, and no license shall be issued by the Town of Fenwick Island to a person or business that seeks to operate, a marijuana cultivation facility, a marijuana product manufacturing facility, a marijuana testing facility, or a retail marijuana establishment, as those terms are defined in the Delaware Marijuana

Control Act, 4 Del. C. section 1302, and as may hereafter be amended.

Section 2. Amend Chapter 100 (Licensing), Section 100-2 (Definitions) of the Town Code, by inserting the following new definitions, to read:

MARIJUANA CULTIVATION FACILITY

Shall have the meaning defined in the Delaware Marijuana Control Act, 4 Del. C. section 1302, and as may hereafter be amended.

MARIJUANA PRODUCT MANUFACTURING FACILITY

Shall have the meaning defined in the Delaware Marijuana Control Act, 4 Del. C. section 1302, and as may hereafter be amended.

MARIJUANA TESTING FACILITY

Shall have the meaning defined in the Delaware Marijuana Control Act, 4 Del. C. section 1302, and as may hereafter be amended.

RETAIL MARIJUANA ESTABLISHMENT

Shall have the meaning defined in the Delaware Marijuana Control Act, 4 Del. C. section 1302, and as may hereafter be amended.

Section 3. This ordinance shall take effect immediately upon its passage by the Town Council of the Town of Fenwick Island.

FIRST READING passed unanimously.

3.8 **First Reading: Chapter 135-3 (Signs) (General Provision, Restrictions & Prohibitions) Relating to Electronic Signs**

Mayor Magdeburger said St. Matthews By the Sea requested that Council amend the sign provision prohibiting the use of

any electronic message boards. Charter & Ordinance voted 6-1 and recommended a change to section H to maintain the no flashing or blinking signs but allow an expansion of the use of electronic signs.

MOTION to accept proposed changes to Chapter 135-3 (Signs) (General Provision, Restrictions & Prohibitions) Relating to Electronic Signs for a first read.

Moved by: Natalie Magdeburger

Seconded by: Richard Benn

Discussion- Council Member Bortner stated this ordinance change will encourage other businesses to change their signs and will have negative long-term effects on the Dark Skies initiative.

Council members agree this needs to be looked into further as far as pedestrian & auto safety, lumens and Dark Skies standards.

Mayor Magdeburger withdrew her motion and tabled pending further review by Charter & Ordinance given the concerns raised regarding Dark Skies' parameters.

4. Treasurer's Report - Treasurer Rymer

Treasurer Rymer said as mentioned in last month's town council meeting, the town typically generates cash during the first two months of each fiscal year. For the month of September, overall cash increased by \$440,000 which combined with August resulted in a cash increase of almost \$800,000 since July 31. Total cash on hand as of September 30 was slightly over \$5.5 million. Revenues and expenses for the month of September were in-line with expectations. The town also reported another strong month of RTT revenues which totaled \$81,000 for the month and \$230,000 for the first two months. The town has now exceeded the full year budget of \$225,000 related to RTT revenues. It was another strong financial month for the town.

MOTION to accept the Treasurer's Report.

Moved by: Natalie Magdeburger

Seconded by: Jacque Napolitano

MOTION passed unanimously.

5. Committee Reports- Audit, Beach & Recreation, Budget & Finance, Commercial Planning & Building Review, Business Concerns, C&O, Dredging, Emergency Mgmt., Environmental, Information Technology, Infrastructure, Planning Commission, Residential Concerns, Pedestrian Safety

Audit-Treasurer Rymer reported there was no Audit Committee meeting last month. The auditors will be here next week. Finance Manager Gary has been working with them and the audit process has begun.

Beach- Secretary Napolitano reported the Fenwick Freeze will be January 1, 2024, at 10:30 a.m. on Bayard St. beach.

The Residential Concerns Committee reached out to the Beach Committee about placement of benches for dune ends. Two committee members evaluated the dune ends and will report their findings at the next committee meeting.

The Beach Committee will be decorating the town's Christmas tree on December 8th.

Beach Patrol Captain Ryk request \$2,100 for supplies for the FIBP and was approved by the committee.

Budget & Finance- No update.

Building Review- No update.

Business- Council Member Zanelotti reported the next meeting will be November 7th at 10 a.m.

C&O- Mayor Magdeburger reported the next meeting would be held November 30th. They will be discussing rental policy, electronic signs, noise ordinances and changing misdemeanor code violations into civil fines.

Dredging- Treasurer Rymer reported the committee meeting was earlier this week and discussed several topics. At the request of the US Army Corps, a historical review and field study were completed for the proposed

disposal site. There were no items of significance noted during any of the fieldwork. The final report has been filed with the US Army Corps and we expect that no additional work will be necessary. We are also working on the final wording of the Land Access Agreement with the property owner. Regarding permits, the final public comment period closes on October 31. We expect final responses to our permit applications will be received from the various regulatory agencies over the next 60 days. If all goes well, we will begin the RFP process in January, select a winning bid in February and begin the dredging project in March. Our goal is to have the project completed before the summer season. We still have multiple steps to complete including a few outside of our control but we continue to make good progress towards meeting that goal.

Emergency Mgmt.- Chief Morrissey reported the first meeting will be in December.

Environmental- Committee member Susan Brennan reported the next meeting will be November 8th. Comprehensive Plan tasks will be reviewed. Plant locations in the Pollinator Garden will be discussed once the fence is in place. The committee is creating a native plant and shrub list, and they are open to donations for the plants and volunteers.

Fenwick will be included in the dune grass planting in March. Committee member Deborah Cowell presented information about tree canopies.

There is a link on the website for a native tree giveaway.

There is a hearing on Monday on the windfarms, link is on the town website. The Environmental Committee is not in favor of this project moving forward and encourages residents to make comments to BOEM.

Information Technology- Committee Chair Lisa Lange presented the new website design. Town hall staff is currently editing content. The committee is waiting to hear from the state when the home page will be complete.

The committee is looking into improving administrative databases and document management. We will be doing an inventory of town files in the upcoming year.

Infrastructure- Council Member Benn reported the committee met with DNREC for a Q&A. It was found that raising existing bulkheads will be permitted. The only problem will be with the properties directly on

Assawoman bay and a seawall may be needed there. He hopes for an engineering study in the future to deal with trapped rainwater.

The Resiliency Sub-Committee has been out measuring bulkhead heights and will be reporting findings at the next committee meeting.

The RFP for went out for street resurfacing and there will be some money left for additional projects. Most of Dagsboro and surrounding streets will be done hopefully by Memorial Day. All impacted citizens will be notified when work begins.

Planning Commission- Commission Chair Susan Brennan reported an open workshop was held on October 19th with committee chairs and council members explaining the purpose, roles, and implementation. There is a liaison for each committee to assist with implementation of specified goals. Each committee will present the implementation format at the committee meeting to educate everyone about the plan. The Commission will focus on responses to the Plus Review over the next few weeks.

Residential Concerns- Council Member Bortner reported the Dark Sky Initiative and the Green Infrastructure Project was discussed at the last meeting. Sub-committees have been formed for both projects and will be doing a workshop at the next meeting November 6th at 10 a.m.

Pedestrian Safety- Council Member Bishop reported the first meeting was Tuesday, October 24th. The Comprehensive Plan concept was introduced. DelDOT has approved the sidewalk budget and will be doing the design phase this fall. Century Engineering will be around town while planning the project. Crosswalk safety and cleaning up signage will be a committee priority. The next meeting is November 14th at 1 p.m.

6. **Old Business**

Chief Morrissey reported the officers' tasers need to be upgraded as they are out of date. The total cost over 5 years will be \$41,982.85. Violent Crime Grant funding will pay \$6,000 a year. He is requesting the initial payment of \$6,801.43 for January 2024. This will be the only town investment; the remainder will come out of the Violent Crime Grant funding.

Town Manager Schuchman reported a Homeland Security Grant was applied for in January requesting \$26,335 for exterior security cameras for Town Hall and Police Building. Also requested was \$72,000 to replace the

Town Hall entry doors with bullet-proof glass. We have been approved for the \$26,335 for security cameras and \$60,000 for the entryway which leaves a balance of \$12,000 for the entryway. There is a meeting to discuss this in December and Town Manager Schuchman expects this will take place early 2024.

7. **New Business**

Chief Morrissey reported he is working on funding to start a bicycle patrol for the FIPD beginning this upcoming season. Funding will be obtained to purchase three bicycles and uniforms. He will be using overtime funds already allotted to pay the officers. This grant will be submitted on October 31st.

Chief Morrissey said a Kubota RTV 900 was dropped off by former Chief Devlin to Burke Equipment Company a year ago for an evaluation. The equipment was reported to have been obtained as excess government property but the Town Council was not aware that the vehicle had been obtained and had not approved the same. The cost for repairs would be \$3,200. Chief Morrissey feels it's not serviceable or worth the money to fix it. He recommends we sign the vehicle over to Burke Equipment as they will agree to forgo the cost of the evaluation if the vehicle was signed over to them.

MOTION to sign over ownership of the Kubota RTV.

Moved by: Natalie Magdeburger

Seconded by: Jacque Napolitano

MOTION passed unanimously.

Chief Morrissey reported the FIPD Policy & Procedures Manual is out of date and a draft had been worked on for several years but was "cut and pasted" from other police departments. Chief Morrissey stated that using another department's manual was not good practice as the underlying basis for the procedures was unknown and updates not available. Chief Morrissey is recommending that Fenwick explore using Lexipole. Lexipole is a leader in police policy development, used by many small municipal departments and is updated continuously after being vetted by police personnel and attorneys familiar with police procedures. Chief Morrissey will submit a proposal to create a new policy manual from them at the December Council Meeting.

8. Upcoming Events and Meetings:

- 8.1 **Beach Committee-November 2 @ 10:15am**
- 8.2 **Residential Concerns Committee-November 6 @ 10:00am**
- 8.3 **Business Committee-November 7 @ 10:00am**
- 8.4 **Environmental Committee-November 8 @ 9:00am**
- 8.5 **Town Hall Closed for Veterans Day-November 10**
- 8.6 **Infrastructure Committee-November 14 @ 10:00am**
- 8.7 **Pedestrian Safety Committee-November 14 @ 1:00pm**
- 8.8 **Technology Committee-November 21 @ 10:0am**
- 8.9 **Town Hall Closed for Thanksgiving-November 23 & 24**

9. Public Participation

*Council welcomes community input but in order to work within FOIA policies and Zoom technology, public wanting to comment on issues should do the following. **1)** Raise hand to be recognized by the Chair (Town Hall participants first and then virtual attendees); **2)** Provide name and address; **3)** Direct comments to items covered by the agenda; **4)** Limit comments to 5 minutes*

Kathy Hessler requests changing the schedule for allowing dogs on the beach to September 15 and allow them later than May 1st. Mayor Magdeburger stated we will put this issue on the December's Council Agenda.

11. Adjournment

MOTION to adjourn at 5:12pm.

Moved by: Bill Rymer

Seconded by: Richard Benn

MOTION passed unanimously.

DRAFT