

# **MINUTES OF THE SPECIAL MEETING OF THE WARDEN AND BOARD OF BURGESSES**

**THURSDAY, September 23, 2021**

**4 NIBANG AVENUE and Via Zoom**

A Special Meeting of the Warden and Board of Burgesses was held on Thursday, September 23, 2021. Notice of the meeting was posted in a timely manner on the Fenwick kiosk and on the website.

**PRESENT:** Warden Newt Brainard, Frank Keeney, Pam Christensen, Jonathan Gengras, Duby McDowell, Art Wright, Ann Pulver, General Manager Jeff Champion (GM), and Zoning Enforcement Officer/Land Use Administrator Marilyn Ozols (ZEO), Michael Zizka, Land Use Counsel.

**PRESENT via ZOOM:** None.

**ABSENT:** None.

**MEMBERS OF THE PUBLIC:**

Present: Chuck Chadwick, J. D. Rehm

Present via Zoom: Julie LeBlanc, Wayne Arute, Lucy Borge, Bill, Charlie Robertson, Rick Neely

## **1. Call to Order**

The Warden called the Meeting to Order at 4:03 p.m.

## **2. Moment of Silence (Ellen Patterson, Courtney Haviland, Will Shrauner, Taysen Van Itallie)**

A moment of silence in memory of Ellen Patterson, Courtney Haviland, Will Shrauner, and Taysen Van Itallie was observed.

## **3. Approval of Burgess Meeting Minutes from August 26, 2021**

**A Motion was made by F. Keeney, seconded by A. Wright, to approve the August 26, 2021 Minutes as corrected.**

**PASSED UNANIMOUSLY.**

## **4. Open Forum for Fenwick Residents to Speak**

No residents spoke.

## **5. Short Term Rental Discussion of Options – Attorney Mike Zizka to attend**

Attorney Zizka reviewed the status of the lawsuit and the pros and cons of a zoning regulation versus an ordinance.

The superior court decision was not based on the merits of the case but on the technicality as to whether the Middletown Press where the legal notice was published is a “newspaper having general circulation in the community”. An application for certification to appeal has been submitted to the Appellate Court because of the far-reaching implications created by basing “general circulation” on home delivery of paper copies when the internet provides free access to legal notices. It is anticipated that there will be a decision on certification by the end of October. At the current time, based on the Superior Court decision, the regulation is unenforceable.

The primary difference between a zoning regulation and an ordinance is with the process and cost of enforcement. A zoning violation can be addressed with a Cease and Desist Order (appealable to ZBA and then to the court, but the court will likely support the municipality/ZBA). The initial enforcement cost is negligible and there is the potential to recover court costs. Additionally, if it becomes necessary to obtain an injunction to obtain compliance, each day of future noncompliance is generally considered as a separate violation and fines accumulate. An ordinance would require setting up a process that includes a citation hearing officer and would entail going to court for enforcement. This is a much more expensive process and the Borough would be the one that would have to prove the allegations.

A discussion of “grandfathering” clarified that this is a zoning concept that is codified in the state statutes which provides that any use lawfully established prior to a change in the regulations is “grandfathered” and must be allowed to continue. There is no similar statute for ordinances, but there are constitutional law cases under the fifth amendment relative to vested rights that would come into play if a use had been ongoing prior to the ordinance.

After additional discussion, it was decided to defer any decision on a potential ordinance until there was a decision from the court on certification. It was agreed that it would not be a problem to proceed with an ordinance in the winter in this particular case since the subject has previously been vetted at multiple public hearings and the public will be able to attend meetings remotely.

## 6. General Manager’s Report

- a. **Pier Repair** – discussion and possible action. No action. See discussion below.
- b. **Golf Course Irrigation System** - When storm Ida hit the Borough, a lightning strike compromised our irrigation system. Repair is currently estimated at about \$20k. The insurance company has been notified; the Borough’s deductible is \$5k. We are still in a discovery process, so no claim has been filed. Before any recommendations are made, we will be considering the age of the system and what makes the most sense for the future.
- c. **Golf Course** - Aeration is complete and went well. The new tee box on #4 (Red) is well underway and construction on #3 (complete tee box) will follow starting next week. Fenwick Golf Course won Best of Shoreline (Shoreline Times). Congratulations to Daryl and his crew.
- d. **Pier Update** – There has been concern over cracking, which has been inspected by Tilcon and includes both mapping cracks and expansion cracks. Tilcon is not concerned but has recommended sealing. Charles Brown, engineer, has inspected and we are awaiting his report, both regarding the cracks and for work on the middle section of the pier.
- e. **Garbage & Recycling** – Options to address the high volume include going to two recycling pickups during the summer months (extra labor required), having two trucks which helps the operation in many ways (added maintenance costs, extra labor required), limiting the amount of recycling that residents can put out, keeping things the way they are currently with the understanding that this involves extra cost, or subcontracting an outside company for the busier months. **It was agreed to go to trash and recycling on both Monday and Thursday next summer (June 15 to September 15) recognizing that this will dedicate two people to this for two full days each week and the increased labor cost will probably be around \$800 per month.**
- f. **Road Repaving** - Sealing companies have been reached out to determine the cost difference for chip sealing or oil/stone roadways versus paving. Frank Keeney spoke with Chief Spera regarding speed bumps and was informed that they are not permitted on public roads because of the negative impact on emergency vehicle response time. **It was agreed that Pettipaug Avenue should be returned to gravel for its full length except for the first 20 feet at the Fenwick Avenue intersection, but this should not take place until spring.**

Art Godbout would like to add gravel to sections of Wilson Avenue. The Borough does not currently have any extra gravel available. He also expressed concern with the condition of the cart path which has big ruts. Newt Brainard stated that in the spring, dirt and stone should be placed where there are potholes.

- g. **Audit** - The first round of information has been delivered to the auditor.
- h. **Play Class and 3-Day Member Guest** – There are still outstanding payments; close out will occur when they are received. Newt Brainard will follow up in order to collect the remaining payments.
- i. **Insurance & Email Security** – All emails need to be converted to Multi-Factor Authentication (MFA) so Cyber Liability coverage can be quoted. Members were reminded that they should use their Fenwick email address, not their personal emails, for all Borough business.
- j. **Entrance Lighting** – Because of continued issues obtaining computer chips, the lights are on site but not able to function. The electrician would like us to put up the posts and arms before weather conditions change and we're dealing with frost and freezing temperatures. Once the computer chips arrive, the heads can be easily installed. All lights are dimmable and can be programmed separately. If we are not installing all four, electrical work needs to take place, and there will be a cover (like the green covers over Frontier electronics) put over the concrete base. The number of lights was discussed previously but not voted. Newt Brainard stated that the Borough will be getting a landscape plan from Rick Worcester shortly. Since the number of lights should be reviewed in conjunction with the landscape plan, this item will be carried on a future agenda. Planting should occur no later than mid October.
- k. **Parking/Tent Plan** - Because of the recent surge in requests for parking, a parking plan has been started to show where parking can take place as well as where septic is at 4 Nibang and where water lines, drainage lines, and electrical runs are located in the field next to the playground so that this information can be provided to tent companies. The cost of upgrading the septic system behind 4 Nibang (which has probably failed) so that it can support cars is estimated to be in the \$15,000 range. Members did not support upgrading the system if it is only to allow parking. Newt Brainard requested that we have someone look at the existing system to determine if it is working properly.

## 7. Treasurer's Report

It is near the end of the first quarter. To date land management and property tax collection have surpassed their budget amounts. Golf revenues are close to one half of the full year's budgeted amount.

Potential expenses this fiscal year include:

- Irrigation system repair - \$20k
- Pier mid-section repair – bid in progress, \$150k estimate
- Tee boxes - \$10k
- Road refurbishment - \$100k
- Bonuses - \$8k over budget
- Borough Entrance - \$20k over with \$50k estimated (lights & landscaping)
- Insurance Premiums (increase received after the budget) - \$10k

Planned equipment purchases are already in the budget and not an additional expense.

## 8. Use of Borough of Fenwick property for private events throughout the year, including July and August – Clarification of Policy

There has been some confusion as to both the boundaries of areas and the length of time for approved uses of Borough property, as well as the expectations relative to Borough employees and the need to

return Borough property to its pre-event condition. Frank Keeney will work with Jeff Champion and Marilyn Ozols to develop proposed revisions to the application and guidelines for discussion at the next meeting.

## **9. Road Paving – discussion and possible action**

See discussion above.

## **10. Board, Commission, and Committee Reports**

- a. HDC: Pam Christensen – Applications for a second floor deck at Keeney and for Maura Bulkeley's renovations were approved.
- b. LPLT: Pam Christensen – There is a meeting this Saturday; officers were elected at the last meeting; the annual letter will be coming out soon.
- c. Commissions Coordinator: Duby McDowell – She is working with Chuck Chadwick on the P&Z vacancy created by the passing of Taysen Van Itallie.
- d. Harbor Management: Jonathan Gengras – They will be scheduling a meeting to discuss the Shoreline Planning Units.
- e. ZBA: Ann Pulver – No meeting.
- f. Park Commission: Frank Keeney - The Park Commission discussed the pier and tennis courts, plus 2022 rates and the issue of slow play.

- i. Request for \$10,000 additional funding for the golf course project for Tee #3 and Ladies' Tee #4 plus a request to FIF for an additional \$10,000 match - discussion and possible action.

This work was originally estimated at \$50,000. As discussed at the last meeting another \$20,000 is needed (\$10,000 from the Borough budget and \$10,000 from FIF).

**F. Keeney moved to authorize another \$10,000 from the Borough budget and request \$10,000 from FIF. J. Gengras seconded the motion and it was approved unanimously.**

- ii. **2022 Golf Fees** – Jeff Champion is preparing an analysis of the impact on revenue of extending the interval between tee times. Any recommendation for 2022 fees has been deferred until this information is received. Newt Brainard suggested that there could be a trial week of a bigger interval between tee times to see the effect.
- g. FIF: Art Wright – The \$10,000 for the golf course was approved in anticipation of the Burgess' vote.
- h. P&Z: Art Wright – No meeting.
- i. Concerns Committee: Pam Christensen – No report.

## **11. Warden's Report**

- a. Borough Employees Additional Employment

Deferred to next meeting.

## **12. Other Business**

None.

## **13. Next Meeting**

The next meeting was set for Thursday, October 21, 2021, at 4:00 pm, 4 Nibang Avenue. It will be a hybrid meeting.

**14. Burgess Comments**

None.

**15. Adjournment**

There being no further business, a motion was made by J. Gengras, seconded by F. Keeney, to adjourn the meeting at 6:32 pm.

**PASSED UNANIMOUSLY.**

**Respectively Submitted,**

**Marilyn Ozols, Acting Clerk**