

**TOWN OF TOWNSEND**  
**December 5, 2012**  
**Council Meeting Minutes**

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**7:30 pm – Council Meeting**

**I. Call to Order: 7:30 pm**

**II. Opening Ceremonies**

- a. Roll Call: Mayor Joes Esler, CW Karen Jennings, CM John Ness, CM Dwain Haines, CM Jermaine Hatton, Attorney Fred Townsend, Engineer Tom Wilkes, ES Cathy Beaver.
- b. Pledge of Allegiance: Pledge was said
- c. Recognition of Visitors: 12
- d. Announcements:
  - Town Hall closed Friday, December 21, 2012 at noon, Monday, December 24 and Tuesday, December 25, 2012 for Christmas. Town Hall also closed Tuesday, January 1, 2013 for New Years Day.

**III. Additions/Deletions to Published Agenda:**

- a. CM Ness asked to change the name under State Police from Captain Jason Sapp to Lt. Douglas Deveney.
- b. CM Haines asked to delete storm water.
- c. Mayor Esler added under new business, volunteer for Board of Adjustment
- d. CM Ness motioned, CW Jennings seconded with unanimous vote to approve agenda.

**IV. Council Minutes**

- October 24, 2012 Workshop minutes approved at workshop
- November 7, 2012 Council minutes approved at workshop
- Copies on back table

**V. Reports of the Officers**

- a. State Police: Lt. Douglas Deveney
  - Lt. Deveney thanked Council for having him and stated they will try to have someone at all the meetings in the future.
  - Trying to set patrols up for traffic and have made some arrests with 4 wheelers, one incident even involved the helicopter.
  - Daytime burglaries have picked up in the area, if see a suspicious car write the tag number down, make and color of car and call the police. We have made a few arrests with information provided by citizens, the more information you can give, the better. Trouble areas recently have been on Fieldsboro Road, Ebenezer Church Road, Black Stallion Road and Pine Tree.
- b. Representative Jeff Spiegelman
  - Thanked Council for having him and said he plans on attending all the meetings.
  - Legislative Hall is quiet now, the calm before the storm. Setting up offices and committees.
  - My contact information is going out on my website this week, business cards still in printing but personal cell and home number on them, please call anytime.
  - Website information: personal website – [www.jeffderepresentative.com](http://www.jeffderepresentative.com) and state website – [www.jeffspeigelman.com](http://www.jeffspeigelman.com).
  - Mr. High asked if there was an anticipated storm he was looking for.
  - Jeff said no, he only wants to do what is best for Delaware residents, bring jobs to the area and make people's lives better. That usually causes a storm.
- c. Townsend Fire Department: Keith Shoemaker/Jeff Dawson
  - Breakfast with Santa will be on Sunday, 12/16/12, 8:00 am – 10:30 am.

**VI. Reports**

- a. Fred Townsend III, Attorney:
  - Board of Adjustment.
    - I.** The information we have is confusing.
    - II.** There is nothing in the charter about the BOA, yet the UDC recommends we create a Board of Adjustment consisting of 3 residents.



## VII. Committee Reports

- a. Finance Committee: Chair – CM Jermaine Hatton
  - Finance Report – Total assets \$3,593,454.79, Total equity \$3,562,381.57.
  - Annual audit will be done in next couple weeks by Debbie Horn.
- b. Streets Committee: Chair – CM Dwain Haines
  - CM Haines stated the manholes were cold patched around them but still need to be fixed. Asked to have TM Green check into it.
  - Mayor Esler said we received a courtesy letter/contract from DelDot stating they will be paving Rt. 71 from Rt. 13 to just south of Middletown. There is no date to start on it but the hours of operation will be 7:30 pm – 5:30 am.
  - Jeff Spiegelman offered to try and get the start date for Council.
  - CM Haines said the blacktop plants close down when it gets cold, probably won't be until spring.
- c. Zoning Committee: Chair – CM Jermaine Hatton
  - Creation of zoning board.
    - I. We have some zoning adjustments that need done to bring our zoning maps into compliance with the comprehensive plan. The zoning board will be made up of 2 residents and the Town Engineer.
    - II. Lorraine Gorman, Rick Anibal and Bud Higgins all volunteered to be on the board. Since we only need 2 residents, Bud graciously withdrew.
    - III. CM Hatton motioned, CM Ness seconded to appoint Lorraine Gorman, Rick Anibal and the Town Engineer to the zoning committee.
    - IV. In the following discussion it was clarified that this committee is completely separate from the Board of Adjustment.
    - V. Vote: ayes unanimous.
    - VI. CM Hatton stated TM Green will be in touch with the new committee members tomorrow about some dates to have a meeting with the U of D about some necessary zoning updates.
- d. Health & Public Welfare Committee: Chair – CM John Ness
  - DEMA Classes
    - I. Sent email to TM Green and Council with DEMA classes I recommend they take.
  - Traffic issues
    - I. Torie Baker said she read in old minutes about the problems with parents dropping off and picking up school children in TVI. She added that there is a problem with it in TVII East; buses have hard time getting around circle and I have witnessed two very near accidents.
    - II. CM Ness said he will have the police come by in the mornings and afternoons to tell parents they can't park there. He said they responded to TVI with mild success, it is an ongoing problem. He asked that if Ms. Baker sees something really dangerous to call the police.
- e. Veterans Committee: Co-Chairs – Mayor Joel Esler & CM Dwain Haines
  - Coupons
    - I. CM Haines asked residents to bring their coupons to the Town Hall.
    - II. Mayor Esler added that if you don't use your coupons from the Transcript to please bring them in, we send them to our military overseas.
  - Mr. High said the veteran plaque dedication went very well, was very touching and thanked Council for finally getting the plaque installed and dedicated. He also thanked Sandy Sturgis' son Tim Wyatt who designed the plaque for the Town.
  - Mayor Esler thanked Mr. High for attending and speaking and for the food he arranged to have there.
- f. Energy & Environment Committee: Chair – CW Karen Jennings
  - Townsend Wildlife Habitat Project
    - I. Always available if you want to winterize your habitat, call or email.

- Astronomy Night in the Park

**I.** Hope to have class in January.

g. Police Committee: Chair – CM John Ness

- Stay safe over the Holidays.

h. Parks & Recreation Committee: Chair – Mayor Joel Esler - nothing

**VIII. Unfinished Business**

**a.** Engineer Proposal Discussion – Mayor Joel Esler

- Mayor Esler stated the Town put out an RFP for an Engineering firm. Received 3 bids from RVB, KCI and VanDemark & Lynch. Per the RFP, the bids were opened at the 11/22/12 workshop and Council will vote tonight. The contract will be signed within 10 days with the firm that is chosen. The contract is for two (2) years. Our current contract with RVB expires 12/31/12.
- CW Jennings opened the discussion by saying after reviewing all the bids, considering our ongoing projects and past history her support is to continue with RVB.
- CM Hatton asked what criteria CW Jennings used to come to this decision and reminded Council that within the RFP is a criterion of six items to evaluate the firms.
- CW Jennings stated she used everything including RVB's relationship with the Town, ongoing projects with TVI and TVII with the streets, streetscape, Town Hall project and the amount of projects they had in Town for the last 10 years.
- CM Hatton said the total factor score for the criteria is 100 points. The criteria are lead engineer experience (25 points), team experience (20 points), understanding and approach quality of proposal (15 points), charges for services (15 points), references (15 points) and proximity (10 points). CM Hatton added using this criteria and point system; KCI came out on top for him.
- Resident Steve High asked Council if this was something they needed to table to the workshop for more discussion.
- Mayor Esler and CM Hatton stated a decision has to be made by December 7<sup>th</sup> so the firm, if not RVB has time to do the transition. RVB's contract is up at the end of the year. It is a small transition window. This information is all included in the RFP and Council has had time to study the bids for 2 weeks.
- Resident Torie Baker asked if the rest of Council used this formula and did they come up with similar results.
- CM Ness said he came up with similar results except he took RVB's past history with us into consideration and after talking to our engineer Tom Wilkes, some of the hourly rates are higher but are negotiable.
- Chris Fazio, regional manager for RVB stated Tom Wilkes is an excellent engineer. He stated that it would possibly take Tom much less time to do something than another engineer. He doesn't believe anyone should get hung up on rates. RVB has enjoyed the relationship with the Town and proud of our 10 years of service. Would be happy to sit down with you to discuss the rates if this is the issue. We do not bill for night meetings. We have been part of this community for years and are the first ones there for all the events.
- Mr. High asked CM Hatton again if it is imperative to make this decision tonight.
- CM Hatton stated that per the RFP, a decision would be made on 12/7/12 and the winning bidder would be contacted. That leaves until the end of the year for the transition to be done in a timely manner which is a major concern. On January 1<sup>st</sup> we don't want to end up without an engineering firm. If we do nothing, RVB's contract rolls over status quo which has happened for several years now.
- CM Haines asked what will happen with the two projects going on if RVB doesn't get the contract.
- CM Hatton said RVB will continue with the pipeline. The only thing currently going on are the Town inspections, streetscape has not been put out to bid yet. All that is going on with the new Town Hall is the re-bid process which will be done by the end of the year.
- Mr. High clarified that inspections is code enforcement and asked if an RFP was put out for it.
- CM Hatton said code enforcement/inspections were included in this RFP.

- Resident Sandy Sturgis asked if the procurement policy comes into play with this decision.
- Fred stated the firm will be considered an employee of the Town and will have nothing to do with the procurement policy.
- CW Jennings added that we don't always go with the lowest bidder on things, sometimes that isn't the best way to go. She said some of the services that were bundled with KCI's bid didn't sit well with her.
- CM Hatton explained the KCI proposal was long and drawn out. As an example, if someone comes to inspect a fence, it could be a junior engineer rather than a senior engineer which means a lower charge to the Town. VanDemark and Lynch would send senior engineers for inspections which is a higher cost. RVB charges \$85.00 per hour for inspections and KCI would charge \$10.00 - \$40.00 per hour based on the service needed. He added he talked to Tom on Monday about the rates and Tom said they were negotiable and would get new numbers to him. No one saw those numbers until tonight.
- Tom stated in the RFP they also offered to train Town employees to do inspections.
- Mr. High stated at one time the Town had a code enforcement official.
- Mrs. Sturgis added that when Mr. Green was hired he was to take classes to do inspections. She asked why Council doesn't have Mr. Green taking classes now to do the inspections and save the Town money.
- Mr. High asked if the Town is pursuing this.
- Mayor Esler said there was discussion after the RFP was put out about Mr. Green taking over some of the inspections like patios and fences. Mr. Naples, who does the inspections now through RVB, has a long list of credentials. RVB's rate schedule for Dave was lowered.
- Chris stated Dave is one of 700 in the world who is a master code inspector.
- Mrs. Baker asked if anyone reached out to the other firms with the offer to lower the rates as RVB was offered.
- Chris Fazio said no one reached out to them (RVB), they offered to do this.
- CM Hatton stated he did reach out to Tom on Monday.
- Tom verified this and stated CM Hatton said if they would like to re-submit a rate schedule prior to tonight that Council might consider it. He added he doesn't have the authority to change the rates.
- CM Hatton stated it did not happen.
- Mr. High asked Chris if he was aware of the rate conversation prior to tonight.
- Chris stated he did not come to discuss rates tonight; he is here to show his support of Tom.
- Mayor Esler said to wrap up; part of the RFP included the firm's inspector training Mr. Green to do inspections. CW Jennings supports RVB, CM Hatton supports KCI. I don't vote unless there is a tie. I try to balance things out. I have asked why this RFP was even put out to bid and I've heard the contract is up and want to try to get a better rate. I respect RVB's service to the Town. Feel we need to be more diligent with communication amongst Council. As I understand it, the fee was much higher for Mr. Naples inspections than what we brought in for the permit fees. This is a concern and Council needs to fix things to ensure the Town isn't in the negative with everything we do.
- Resident Rick Anibal verified that Mayor Esler stated the Town takes a loss on inspections and was told yes. Mr. Anibal then asked how long this has been going on.
- Fred stated this isn't a simple question, if you have an employee who does the inspections, you pay him a salary and benefits, and this is more sophisticated than that.
- Mr. Anibal said the Town needs to fix the permit rates as soon as possible.
- CM Hatton stated the Town is working on the fee schedule for permits. An example would be when an inspection fails the inspector has to go and do a re-inspection. The Town gets charged for this from the engineer firm yet we don't charge a fee to the builder.
- CM Ness stated in reviewing the RFP bids he understands there is a difference in rates, some other factors that come into play, I favor RVB with the understanding that we will look into negotiating the rates and if happy with that we can accept the proposal from them. If not happy with the results we should reject the proposal and put it back out to bid.

- CM Hatton stated we can't do that. We have an RFP in front of us based on the same criterion that was sent out to everyone. You can't say we will accept it with the right to reject it later. We can't do that. It is not fair to accept one bid with the caveat that you are going to come back and re-price it for us. That isn't fair to the other contenders. We have to be fair to everyone.
- Mrs. Baker asked if we could get into trouble for doing this and was told yes.
- Mr. High asked again if the December 7<sup>th</sup> date could be changed.
- CM Ness asked Fred if it could be changed.
- Fred stated he has not seen the contract so he doesn't know the extent Council is restricted. He was asked and gave his opinion that Council could award the contract and appoint a representative to negotiate a rate to the winning bidder. Should the Mayor be unable to negotiate the rates to an acceptable level, you could then pull the contract and re-bid the contract.
- CW Jennings verified they can award the contract pending rate negotiations and Fred said yes.
- Chris stated the RVB contract does not automatically renew. We can have our services cancelled by Council at any time.
- CM Hatton stated Council has to give notice.
- Chris said you have to give notice but can transition immediately.
- CM Haines said he had his mind made up and a lot of things were brought out tonight. He is ready to vote.
- Mr. High asked Fred if a legal opinion is recommended for this decision with the magnitude of what is being decided on. Shouldn't Fred have an opportunity to review this decision and the recommendations provided by Council?
- Fred stated this isn't a decision for the attorney to decide. If Council feels they have sufficient information they should move forward with a decision.
- Mayor Esler asked Fred if he feels he should have reviewed the RFP before it went out and Fred said no. It was established Fred will review the contract before it is signed.
- Lorraine Gorman said she doesn't want to be negative but if Council re-negotiates the rates and it doesn't work out and has to go back out to bid, it isn't fair to the other companies that bid and they may not bid again.
- Mayor Esler stated he believes if we let one firm re-negotiate rates, we have to let all the firms that bid re-negotiate.
- CM Ness stated going with the lowest price is not always the best decision.

## **IX. New Business**

### **a. Motion to hire engineer firm – Mayor Joel Esler**

- CW Jennings motioned, CM Ness seconded to award RVB the Engineer contract.
- CM Ness asked for an amendment to the motion to award the bid to RVB pending additional negotiation of some of the rates.
- Mayor Esler asked if this motion is legal.
- Fred said he interprets this as a motion to award the contract to our current engineer conditional upon the appointment of (I assume) the Mayor to ask them to remit better rates to the Mayor's satisfaction. It is OK.
- Mr. Rocke asked if all the firms were being given this offer.
- CW Jennings said no, only RVB.
- Mayor Esler said only RVB and that is why I'm asking Fred if it is legal. Fred said yes.
- Mayor Esler stated the motion is to award the Townsend Engineering position to RVB with the understanding the Mayor will be responsible for negotiation of the rates prior to awarding the contract.
- Mr. High started to question this motion and Fred interrupted and said it is not appropriate to have an open discussion at this point. Mayor Esler called for a vote.
- Vote: CW Jennings, CM Ness – aye, CM Haines, CM Hatton – nay. Tie breaker, Mayor Esler – aye, motion carries.

- The Engineer contract will be awarded to RVB contingent on Mayor Esler's approval of new rates being submitted.
- Mr. Roche asked why the other companies aren't being given the option of re-negotiating their rates.

**X. Citizens Comments & Participation**

a. CM Ness thanked the residents for volunteering for the zoning board.

**XI. Adjournment:** 9:30 pm, CM Ness motioned, CW Jennings seconded with unanimous vote.

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