

Village of Arden, Governance Task Force

Meeting Minutes: June 23, 2022

Attendance: Ray Seigfried (Chair), John Scheflen, Barbara Macklem, Lynda Kolski, Beverly Clendening, Steve Benigni, Kate Threefoot

Ray called the meeting to order 7:38 PM.

The minutes from May 26 meeting were reviewed, amended and approved unanimously with amendments.

Report from Sub-Task Force on Ordinances

Ray reported that the sub-Task Force is a little behind on its agenda.

Memo on policies and resolutions: Discussion on this item was tabled until John makes the changes as reflected in the May minutes.

Ordinance #3 Transfer of Local Services: Kate presented a new draft for this ordinance. The New Castle County code relevant to this ordinance has changed recently (the new code is effective July 1, 2022). In 1967, there was a change in the county code by which New Castle County took over local service functions and charged local municipalities. Ordinance #3 reflects the transfer of local service functions from Arden to New Castle County. The county code now reflects the fact that NCC provides local service functions services and municipalities may request exemption from charges if they provide a specific service. New version of ordinance 3 will reflect this.

The draft recommendation for a revision of Ordinance #3 changes the entire text except paragraph 3 regarding police. This will remain as written.

Recommended change to Ordinance 3:

This ordinance provides for the transfer of responsibility for certain local service functions (as such term is defined in Title 9, Delaware Code, Section 1102) from the New Castle County to the Village of Arden. Further details of the transfer and budgeting process are defined in Sections 1125-1128 in the same Title.

In accordance with the timelines and procedure in Title 9, Delaware Code, Sections 1125-1128, the Treasurer will apply for reimbursement from New Castle County for those local services which the Village of Arden has funded and administered in lieu of obtaining those services from New Castle County. These services may include, but are not limited to, (1) Local Parks, (2) Recreation.

The use of local service function of the police protection provided by New Castle County shall not limit the power and authority of the Village of Arden to employ a police force and to enact and enforce motor vehicle codes and other safety measures applicable to the Village, nor shall such transfer supersede, abrogate or nullify any existing ordinance adopted by the governing body of the Village of Arden providing for a motor vehicle or other safety measure.

It was noted that keeping the third paragraph contradicts what was agreed on previously and reflected in the minutes of May 26, 2022. After further discussion, it was decided for a second time to eliminate the third paragraph.

There was a motion to accept the draft for the revision of Ordinance 3 as shown above without paragraph three. The motion was seconded and approved unanimously.

Ordinance #11 Rights-of-way: Bev is still accumulating information related to this ordinance.

History: In 1967 the Deed of Transfer between the Trustees and the Village of Arden defined the right-of-way and gave the village responsibility for maintaining the rights-of-way. The rights-of-way as defined in the deed of transfer are shown in Ordinance #11, section 7. The Right-of-way for roads in Arden are typically a total of 30 feet (15 feet on each side measured from the center of the existing road). The definition of the rights-of-way in Ordinance 11 is controversial because in some cases these rights-of-way include parts of leaseholds as surveyed. This occurs because the existing roads in 1967 are different from the roads that exist now.

Responsibility for the enforcement of the rights-of-way has also evolved over time. The present text for Ordinance 11 was adopted on June 22, 2009. It replaced text adopted in September 1992 which itself replaced text from January 1981. The present ordinance has a revised purpose which is solely to promote safety in the village. The purpose of preserving the beauty of the village was dropped with the revision in 2009.

In 2009 the responsibility for enforcing rights-of-way was changed from the joint responsibility of the Civic and Safety Committee to the Safety Committee only. This was discussed at a Civic Committee meeting on October 20, 2008 and there was a Special Town Meeting to discuss these changes to the Ordinance.

Bev met with the Safety Committee to discuss the enforcement of Ordinance 11. The Safety Committee uses Section 1 as the criterion for enforcement of the rights-of-way. They do not pay attention to the defined widths set out in section 7. This appears to work fairly well but there may be issues if the right-of-way for a particular property overlaps the leaseholder's property survey. There are instances where this has happened because of changes in the widths and directions of roads. An appeals process was incorporated into Ordinance 11, Section 5. Leaseholder surveys take precedence over the right-of-way as defined in the Deed of Transfer.

The problem with leaseholds overlapping the rights-of-way also surfaces at other times, for instance when a dead or fallen tree needs to be removed. The rights-of-way are a part of the Village Common land and maintenance of the right-of-way should fall under the responsibilities of the Civic Committee. Technically, there are many encroachments on the rights-of-way within the Village. In the past a "revocable license" was used to deal with the encroachments that were not safety issues. The Civic Committee minutes of October 2008 refer to a "revocable lease" (later called a "revocable license") which was created by the Trustees. Revocable leases document leaseholds that have allowable encroachments on rights-of-way or other village common land. These revocable leases were meant to deal with encroachments that are not a safety issue. According to the Revocable License documents the leaseholder is required to maintain the area of encroachment. Revocable leases can be passed on to the next leaseholder. The trustees require a survey when there is a lease transfer (if one has not been done

in the last 5 years) to determine if there are encroachments. New “revocable leases” can be issued at the time of lease transfer. There are only three active revocable licenses in the Village and this mechanism has apparently been abandoned.

Currently when there is a lease transfer, a leasehold survey is required. The Trustees notify the Forest, Civic, Safety and Community Planning Committees of the pending transfer. Any encroachments on the rights-of-way should be identified at that time.

Ordinance 11 does not mention any of the above processes dealing with encroachments that are not a safety issue and does not address the issue of leasehold/right-of-way overlaps or conflicting surveys.

The Sub-Task force on Ordinances, Resolutions and Policy is considering re-writing this ordinance as a two-part ordinance: one dealing with right-of-way and safety and the other dealing with the non-safety issues. The Sub-TF also recommends that clear policies be written to deal with the leasehold/right-of-way overlaps and to deal with the responsibilities for maintaining the right-of-way.

Ordinance # 10 Public Utilities: There is no need for this Ordinance. This ordinance was written when Arden still provided the water service.

Ordinance # 5 Noise : It is unclear how we should deal with this ordinance. The ordinance as written is very vague. NC County code is very involved and has many exceptions. There will be a problem with enforcement which may be illegal due to vagueness. The ordinance lacks a process for giving due notice of what is allowed and not allowed.

Report from Sub-Task Force on the Charter:

This sub-committee has been working on section 5 and 11

No major changes are needed for Section 5. Minor changes include making all text gender neutral. The Sub-TF discussed regular and special meetings and sees no need for changes. The sub-TF questioned the types of records that should be required and how the records should be stored. Should digital records be required.

Next, the Sub-Task Force will work on Sections 6-10.

Other business

For the months of July and August the Charter Sub-Task Force and Full GFT meeting are cancelled. The Sub-Task Force on Ordinance and Policy will continue to meet.

At the last Public Meeting the issue of the Trustees came up. Ray would like to invite the Trustees to the September meeting. We would like to know what the Trustees think their relationship with the Town assembly should be and if the Trustees should be a part of Town Government.

The meeting was adjourned 9:08 PM