

**Unapproved  
Minutes of the General Meeting of the  
Ocean Beach Surf Club - Unit One**

October 15, 2016

Vice President Tom Pospisil called the meeting to order @ 7:01 pm at the Union Church, corner of Grand Central Avenue and Philadelphia Avenue, Lavallette, NJ.

**Present**, Vice President Tom Pospisil, Treasurer Jim Pendergast, Recording Secretary Jeff Mucha, John Tedesco, Ellen Downes, Jeff Conger, Claire Sadankas, Greg Gere, and Renee Severs.

**Absent:** President Bob Blair, Kevin Kelly

Sgt at Arms Renee Severs opened the meeting with the Pledge of Allegiance and a moment of silence for U.S. soldiers and deceased members of the association.

**Notice of the Meeting:** Tom Pospisil confirmed that all members had been notified of this general meeting on October 15, 2016. The Board of Trustees mailed to the members of OBSC1 and posted to our website a notice of this general meeting in accordance with our By-laws.

**Quorum:** Vice President Tom Pospisil informed the membership that the necessary quorum of 25 or more members is present to continue the meeting in accordance with our By-laws.

**Minutes of the General Meeting:** Having received a copy of the Minutes of the May 28, 2016 general meeting, via our website and at this general meeting, Tom Pospisil asked if there were any corrections to the minutes. Hearing none, the minutes of May 28, 2016 were approved by the members on a motion made by Cheryl Mucha - 29 East Barnegat Way, seconded by Ray Diliberto – 30 East Beach Way, and voted unanimously by the members.

Vice President Tom Pospisil informed the membership that we have arranged to have the Association's legal counsel, Paul Leodori, Esq. in attendance to discuss the status of dunes/beach easements. After Mr. Leodori's presentation we will start with the Fall General Meeting.

Mr. Leodori introduced himself to the membership. He is an attorney in Medford, NJ and has been the club's legal counsel since 2007.

To summarize, OBSC 1 and other beach associations went to court to stop the DEP from condemning property for the dune replenishment project. The court case is being handled by Anthony Della Pelle of the law firm of McKirdy and Riskin, PA. We are stating that the DEP did not have the right/power to condemn the property to construct the dunes. The court sided with the DEP and said that the DEP does have the right, so our lawyers filed an appeal. This is where we currently stand. There are several other cases/suits brought by other associations that are in appeal and will be heard before our case. The question is whether the DEP has the authority to condemn property. It is Paul's opinion that they do and we will lose the appeal. The case will then go to a Commissioner's Hearing to decide a value for taking. This hearing is presided by 3 government appointed commissioners. Right now, the value for

taking is \$750.00. According to the NJ and US Constitution, the State cannot take private property for public use without engaging in bonafide negotiations. The DEP has not done this.

The 3 commissioners will hear the DEP's appraiser state why he feels that \$750.00 is a fair value. Our lawyers' will not have an appraisal at this time. Our lawyers' plan is to punch holes in the appraiser's report/value and get an adverse rating from the commissioners. We will then have a trial by jury in Toms River court and at that time our appraiser will state why the value of our property is more than \$750.00.

The State has said that they will give us more beach once the project is completed. However, there was an editorial in last week's (Sunday or Monday's) New York Times newspaper that stated that each beach will need to be replenished every 4-6 years and there will be no funds available for this. All this will come out at the trial.

The judges that have heard the preliminary cases are all political appointees and know that they need to do for the government. Our counsel feel that a jury will be more favorable and will have more knowledge than the judges'.

There was a case in the early 1960's that basically stated that when you live in a community like OBSC1, each resident has the right to file a claim for the loss of value of property/taking of our beach. Both the community as a whole and the individuals have the right to get compensation. As you get farther and farther away from the beach, the value of the home decreases. If the access to the beach is changed, the value will decrease more. The Board/Association cannot fight this on behalf of the individuals, the Board can only act on behalf of the Association as whole. Mr. Della Pelle/McKirdy & Riskin have preserved our individual rights to file a claim. Each member can ask the commissioners for compensation, however, you will need to hire an appraiser and have your own lawyer.

The legal theory that the government is using is that they (NJ) is going to give you a new beach, so they do not have to pay you for taking a portion of your current beach. BUT! The extended beach will wash away. If the distance to the beach is extended and the access is changed, your property has lost value. It is Paul's opinion that in 3-4 years we will probably have no beach at high tide.

If you (the individual) have an appraiser who can present this argument, you could get compensation and a trial. Paul will send all club members a letter outlining this. You should talk to a condemnation/eminent domain lawyer. Don't give up this right.

Tom then opened the floor to questions for Paul.

- a) Ray Diliberto – 30 East Beach Way stated that if part of the deal is that NJ will replenish the beach every 4-6 years and but if this isn't true, then what? Paul – NJ can say whatever they want, but no one will say that they guarantee it will be done. Ray then added that the bottom line is that the dune is coming in 1-2 years? Paul replied that they will be here sooner than that.
- b) Joe Zipp – 22 East Shore Way asked if the dunes could be manicured by us and could we keep them at a certain level? Tom replied that if you recall what was said at the May General meeting, the officials in attendance stated that we could keep at 22', but once grass is planted, the dune cannot be touched. Joe added that if it can't be touched, then it will keep growing like Lavallette's dune.

- c) John Tedesco (trustee) added that if the beach gets washed away, we (the club) will have to put it back to the way it was and get a slap on the wrist. Paul stated that the best way to act maybe not to ask permission.
- d) Ray Diliberto asked if the value of our property goes down, will our real estate taxes go down? Paul & Tom replied that we don't know.
- e) Ken Hoffman – 3036 Ocean Road asked if this work will be done in the summer of 2017. Tom – we don't know.
- Paul stated that he had previously worked in the DEP Condemnation Department and his feeling is that what is being done to us is terrible, what the government is telling us is all mis-information.
- f) Ken Murry – 17 East Bay Way asked if this could be a class action suit. No replied Paul, it has to be a parcel by parcel suit, and in addition, the cards are stacked against the individual homeowner.
- g) Carolyn Wilson – 211 Bay Beach Way stated that she pays taxes to Lavallette, not Toms River. Paul stated that the Association spans both communities and this will be taken into account when dealing with the DEP.
- h) Chandler Johnson – 17 East Barnegat Way asked if we will still be able to put up storm-fencing and bulldoze the excess sand? Tom responded that the officials at the May meeting said that Toms River would maintain, but this would be open to discussions with Toms River.
- i) A member asked for an estimate on the legal and court fees that the club is incurring. Paul responded that it is costing the club -0-. There are 3 homeowners on the ocean side who are footing the bill, and they will be reimbursed their costs from the proceeds, if any.
- j) Frank Varela – 25 East Bay Way asked for clarity on what the club not signing the easement caused. We own the beach. If we signed, wouldn't we still own the beach? No.
- k) A member asked if Paul if he had any knowledge of any takings being done and how would an appraiser be able to come up with a value for the properties? Paul responded that all cases are still in court and the appraiser has professional standards and methods that are used.
- l) Ken Hoffman asked how does the government justify a \$750 value for the easement? Paul stated that their rational is that they are giving us a more eastward beach and a dune that protects us. However, this dune also protects the highway and other property, not just OB1's property, and most of the flooding came from the bay.
- m) Chandler Johnson stated that our sand is perfect. Toms River piled orange sand on other beaches. Can we stop this? Yes, Tom said that the trustees contacted Toms River that we would take care of our beach and not to put any sand on it. The other beaches signed the easements and allowed Toms River to do this.
- n) Roxane DiVuolo – 221 Bay Beach Way stated that at the May meeting we were told that if we didn't sign the easement, we would have to fund the walkways. Tom and Paul responded that we don't know this, and nothing has been finalized on what will happen.
- o) Maryellen Lavin – 11 East Barnegat Way asked when all is done, will we still own the beach? Paul responded that what the government is telling us is that we are getting a new beach. The Tidelands Resource Council draws up a deed and gives it to the governor to sign. This law goes back to King George. NJ is promising a beach that won't last without giving just compensation.
- p) Maryellen Lavin asked if we don't own the beach, will we still be liable for insurance, etc.? Tom responded yes, we will still have to pay for insurance, lifeguards and such.
- q) Roxane DiVuolo stated that the dunes in Lavallette are 31 years old and she doesn't see a significant decline in their dunes, and Lavallette is getting a new beach. Do we plow the beach every year? Tom - yes, each year we do. Once a storm hits the 'new beach' it will be washed

away. Roxane also asked if we are trying to stop the dune from being built. Paul replied yes, we are saying that the DEP does not have the authority to do this.

r) Joe Zipp stated that going back to when Lavallette's dunes were made, they were small and you were able to see the ocean. Now they have grown over 5 times as high. This is what we should be afraid of. The front of the dune gets longer and longer with the new dune. Tom stated that we would be able to maintain everything east of the snow fence. Joe added that it was the breakthrough in Mantoloking that caused all the flooding. Also, he said that the electric company has put in 2 poles on his property and they are abusing the right of way. We should call News12 about the abuses going on.

s) Pat Fleischer -3076 Ocean Road asked how does DEP justify that the newly added beach will stay there? Paul responded that the ACE concedes that they will have to replenish the beach every 4-6 years, but there is no guarantee that there will have the money to do this. Mother Nature herself will make dunes in some places and take them away in others.

With no other questions, Tom thanked Paul for his time and concluded this part of the meeting at 7:45pm. Tom also added that he is a real estate professional and many beach property renters are adding to the lease that they cannot guarantee access to the beach during the rental period. Also, it has been discussed that the DEP/ACE will close approximately 1,000 feet of beach at a time and work on 400 foot sections. The bids were put out last week and the work will be done from South Mantoloking to Ortley Beach, with an estimated time of 1 ½ years from start to finish.

Vice President Tom Pospisil commenced with the meeting by introducing the trustees to present their reports at 7:47pm.

#### **OFFICERS AND COMMITTEE REPORTS:**

##### **Lagoon Report: (Reported by Greg Gere)**

Greg reported that this was a decent season at the lagoon. We had quite a few renters for slips, the most we have had since Sandy hit. Greg wanted to thank all the volunteers for helping this season, and recognized Paul Salvesen for helping to power wash the storage trailer, John Baker for donating his electricity and Jim Pendergast for painting the storage trailer.

The water will be turned off by the end of October and the dumpster pick-up will end by the end of the month also.

A member stated that the rescue ladder by slip 36 was in bad shape and Greg stated that he would check on it and replace if necessary. Greg also stated that we would be replacing the walkways with either stone or slabs for next season.

There are still slips open for next season, so if anyone is interested please contact Greg.

### **Bay Beach Report: (Reported by Jeff Conger)**

Jeff wanted to thank all the members who helped at the Bay Beach, including Dave Finter who helped put up the storm fence earlier today. This was a good season at the Bay Beach, with a lot of members using the beach.

### **Sergeant-At-Arms Report: (Reported by Renee Severs)**

Renee stated that we had a pretty good summer. The security firm dealt with several issues, most common were noise and fireworks. The major problem was the parking in the streets. This was out of control. We need to have the homeowners and homeowners who rent to tell their guests and renters that this is strictly forbidden. Homes are being rented to multiple families and there is not enough parking on the premises for all the cars. Renee has seen security ask a renter to move their car, and the person basically drove around the block until security left and then parked back in the street. The board has No Parking notices that will be put on the offending vehicles. These signs will be placed under the windshield wipers. If the car is not moved it will be towed.

There will not be any security for the winter season. If you have an issue, please call Toms River Police.

Lois Castronuova – 107 West Shore Way stated that she never saw security all summer. Renee said that the firm was told to get out of car and walk the street if unable to drive down the street.

Renee also stated that she had complaints about the lack of security presence on the beach and she followed up with the firm.

Karen Taylor – 10 East Bay Way asked if we had a towing service in place. Yes, once the offenders were threatened with towing they moved car. Karen also asked why aren't the homeowners/renting owner contact when there is a problem with their renters? She would like a phone call when there is an issue. Tom stated that the Board will consider this procedure. Karen also suggested that the homeowner/renting owner be notified of any rule violation by their renters.

Ray Diliberto – 30 East Beach Way asked if we have the option of calling Toms River Police when there is an issue? Yes, but it may take a while before they respond.

A member stated that all members got a 1 page memo of the Club's Rules when the badges were handed out. This notice should be placed on the refrigerator to notify the renters. Renee stated that we also give this memo to the renting agencies.

Cheryl Mucha – 29 East Barnegat Way asked if we still have the renting homeowners fill out a list of who is renting their house. Ellen Downes replied that we still do this, and most of the time the rental agency does not follow up with the renters on the rules.

### **Buildings and Grounds Report: (Reported by Kevin Kelly- absent)**

Tom reported that there currently 5 construction permits outstanding, 2 permits pending and 4 homes under construction. Please remind your contractors that there is no parking in the street.

Debra Dzuibinsky – 25 East Spray Way stated that there is a house on the street in foreclosure and property across the street that is an empty lot. Can we do anything? Jim Pendergast stated that if the dues are being paid, there is nothing that can be done. Tom stated that if the property is unkempt or in disrepair, the homeowner will be notified and have until the later of May 1<sup>st</sup> or 14 days after notice to correct the situation. If not, they will be fined \$100/week until cleaned up.

Cheryl Mucha asked about some of the new construction having a 3<sup>rd</sup> floor and balcony. Is this allowed? Tom responded that we have no recourse -this is controlled by Toms River.

Tom also reminded homeowners that for 2017 the construction rules will state that no work will be allowed during the time the beach is open. For 2016, there were lingering grants and issues, but for 2017 there will be no exceptions. No hammering or banging during the beach season! The beach will open on June 24 and close the week of August 26 (last day September 3) Lifeguards will be on duty June 24-September 3, with the Labor Day Picnic scheduled for Saturday, September 2.

Anthony Caratzas – 112 West Bay Way asked that we remind the board member who is a contractor of this rule and that he inform his subcontractors of this. He also wanted to find out what the Board's position is on builder's encroachment on property is. John Tedesco informed him that this is not allowed and to call the Toms River Police if there is an issue.

Candy Hoffman – 3036 Ocean Road asked why the season is being reduced from 11 weeks for 2016 to 10 weeks for 2017? Tom stated that we have problems staffing the beach with lifeguards and badge checkers due to the school schedule.

Bill Parrett – 3000 Ocean Road asked if any dune work will be done in the summer of 2017 or 2018? Tom stated that we will not know until February/March 2017 of the timetable.

Eric Simone – 25 East Surf Way asked who should he speak to regarding paving of road issues? Tom stated that the water company would only pave an 18-foot area, and he and Bob Blair have been in constant contact with them regarding various issues on the paving. Karen Taylor – 10 East Bay Way suggested that we contact the Board of Public Utilities about the paving.

Phil and Roxane DiVuolo – 221 Bay Beach Way asked about the pile of sand on Bay Beach Way and when the repaving was going to happen. Roxanne was told that the club asked that the repaving be delayed from June until September. The road still is not paved. Jeff Conger stated that the water company did not know that the gas company was planning on doing work. Tom added that there is a new gas line being put in and hopefully once this is done; the paving will happen. The water company has walked away from the job.

Candy Hoffman – 3036 Ocean Road stated that she is concerned about the beach season only being 10 weeks long. Is it possible to have a skeleton crew for the 1<sup>st</sup> week? Last year it opened June 18<sup>th</sup>. Is there some way this can be changed? Most colleges are done in May and the lifeguards should be available. Tom reiterated that we have difficulty finding lifeguards and budget constraints add to the matter. Kathy Conger – 219 Bay Beach Way stated that she thought that a 10-week season was the norm. Yes, responded Tom, and occasionally, the calendar falls in a way that we get 11 weeks.

### **Vice President's Report: (Reported by Tom Pospisil)**

Vice President Tom Pospisil stated that there were 3 new members. As they were announced, he asked if any of the new members were present to please stand up.

Tom reported the following new members:

- a) Tom & Kathy Rohan – 14 East Shore Way
- b) Robert & Diana Cella – 3050 Ocean Road
- c) Dan & Teresita Levato- 28 East Bay Way

### **Ocean Beach Report: (Reported by John Tedesco)**

John reported that the beach still looks good. We had 3-4 storms so far and we are in good shape. We are looking for lifeguards for the upcoming season, so if anyone is interested they should contact the club.

Lois Castronuova – 107 West Shore Way asked if the showers will be repaired for next season. John replied that we are waiting to see what happens with the dune project. He has blown out the water lines and will fix/replace the showers next year based on dune timetable.

Ray Diliberto – 30 East Beach Way asked what the time schedule for the beach lights is. Tom stated that the lights go on at dusk and off at 11PM. Candy Hoffman said that Toms River approved lights from dusk to midnight set by a mechanical timer. Tom stated that there was a power outage and the timer was compromised. When this happens, we will have to manually correct the timer.

Karen Taylor – 10 East Bay Way had a suggestion from another homeowner. A beach-goer had a seizure on the beach and asked if the badge checkers could have walkie-talkies to contact the lifeguards in case of emergency. She doesn't think we are addressing emergencies correctly. Is there a way to contact lifeguards? Jim stated that we are buying a new PA system that will provide better sound quality on the beach, in addition to our lifeguards being connected to other beach's lifeguards. Also, the badge checkers have cell phones and there is always someone in the badge booth.

### **Badge Booth Report: (Reported by Ellen Downes)**

Jim Pendergast reported on behalf of Ellen that total badge income for 2016 was \$45,530, which exceeded the budget by \$530. The current minimum wage for the badge checkers is \$8.38/hour and there is a bill to raise it to \$10.10 for 2017.

### **Treasurer's Report: (Reported by Jim Pendergast)**

As of September 30, 2016, there is \$10,876.34 in the checking account, \$96,640.74 in the Capital One Money Market account and \$ 36,981.00 in the TD Bank Money Market account for a total of \$144,498.08. A motion to accept the Treasurer's Report was made by Cheryl Mucha – 29 East Barnegat Way and seconded by Pat Gere – 117 West Bay Way and approved unanimously by the members.

Jim stated that the financial report is not good. He had to transfer \$17,000 from savings to the checking account. The major causes were unplanned legal fees related to the new lights brought about by a homeowner and a 32% increase in our insurance. Kathy Conger – 219 Bay Beach Way stated that looking at the financial report, it appears that the new lights cost us around \$9,000 to date. Candy Hoffman replied that the Club was required to go to the Board of Utilities and we should not blame her for the cost overrun. Jim added that we put a new fence on the west side of Rt. 35 South for approximately \$5,000 that was not originally budgeted, and spent \$3,500 for storm fence installation. We had previously done this ourselves but there have been no volunteers so we needed to sub this out. Finally, last year's dues were too low – they should have been in the \$400-\$425 range.

Taking this into account, Jim presented the 2017 Budget which requests the 2017 dues be \$450/household. This budget does not take into account any dune related work, i.e.: new walkways. Roxane DiVuolo – 221 Bay Beach Way thought that the 3 ocean front owners were going to pay for the walkways. Tom stated that the entire dune project and what the government is providing is still not known. Roxanne also asked if we end up coming in under budget, where does the excess funds go, and do we need to keep the excess? Jim replied that the money goes to the general fund and yes, we need to keep the extra funds. Sandy cleanup cost us \$50,000 and we did not have to institute a special assessment to cover the costs.

Lisa Della Terza – 12 East Beach Way asked how disabled people will get to beach. Tom stated that the DEP had said that there will be a handicapped walkway in the center but nothing is guaranteed until the final plans come out.

Phil DiVuolo – 221 Bay Beach Way asked if we were trying to cut back expenses in order to control the budget. What is the social allotment of \$12,000? Did we raise the badge fees for renters? Jim replied that the \$12k is for the picnic, movies on the beach, 4<sup>th</sup> of July party and other activities on the beach during the year. Ellen stated that we have raised the badge prices for next year also.

With no other questions on the budget, Tom asked for a motion to accept the budget. Bob Miller – 17 East Beach Way made a motion to accept and Pat Gere – 117 West Bay Way seconded the motion and the motion passed.

Bill Parrett stated that he misread the e-mail about running for the Board and withdrew his application for the Board. Tom asked if there was anyone else interested in running for the Board. Since there were no other candidates, Tom asked for a motion from the floor to accept the 6 trustees for re-election. Dave Finter – 236 Bay Beach Way made the motion to accept and Kathy Conger – 219 Bay Beach Way seconded the motion. Motion was passed. Re-elected to the Board were Kevin Kelly, Jim Pendergast, John Tedesco, Renee Severs, Claire Sadankas and Ellen Downes.

### **New Business:**

Karen Taylor – 10 East Bay Way asked about possibly updating the website, as it seems outdated. Also, could the members be notified when new information is added to the website? Claire Sadankas stated that the Board is looking to get a new website up and running in the next few months and there is plans to notify members when there is new information posted.

Roxane DiVuolo – 221 Bay Beach Way stated that her neighbor, Kathy Scotty – 22 Bay Beach Way sent 2 emails to the club's email address and has not received a response. Claire asked her to contact OBSC1 - this has Claire's e-mail address. Don't go thru g-mail account – [OBSurfClub1@gmail.com](mailto:OBSurfClub1@gmail.com) has had a lot of issues and Claire has changed back to old address. Roxanne stated that we have addressed Kathy Scotty's issues at this meeting.

Karen Taylor also wanted to add that the badge checkers did a nice job this summer.

**Old Business:**

Phil DiVulolo -221 Bay Beach Way asked about the status of a refund for the collection of the street opening fee that he brought up at the last meeting and Bob Blair was going to look into. Roxane DiVuolo added that the issue was the \$200 fee they paid for opening the road and the fee was supposed to be used by the Club to repair roads. Since we have gotten the roads paved, the fee should be returned. Tom stated that he would follow up with Bob, but the fee collected is for 2 things – if the contractor does not repair the road we will have to, and if he does it will go into the general fund.

With no other new business to discuss, a motion was made by Pat Wright -28 East Channel Way to adjourn the meeting and was seconded by Ronnie Pendergast -103 West Bay Way. The meeting was adjourned at 8:47 pm.

Respectfully submitted

Jeff Mucha  
Recording Secretary