

MINUTES OF THE MEETING
SMYRNA TOWN COUNCIL
January 3, 2011

REGULAR MEETING

The meeting was called to order by Mayor Patricia A. Stombaugh at 7:30 p.m. Council members present were Regina I. Brown, Valerie M. White, Robert M. Novotny, William C. Raynor, Robert Riddagh, and Anthony H. DeFeo.

Also present were Town Manager David S. Hugg III, Captain Wilbert Bordley, Attorney John Terence Jaywork, and Recording Secretary Valerie L. Heritage.

Mayor Stombaugh asked everyone to rise for the Pledge of Allegiance. Mayor Stombaugh asked for everyone to remain standing for a moment of silence.

ADDITIONS/DELETIONS TO PUBLISHED AGENDA

Mayor Stombaugh asked if there were any additions or deletions to the published agenda. There were none.

Councilman Novotny made the motion to accept the agenda as presented. Motion was seconded by Councilman Raynor and carried unanimously.

MINUTES OF PREVIOUS MEETING

Mayor Stombaugh asked if there were any additions or deletions to the minutes of the public hearing and regular meeting of October 18, 2010. There were none.

Councilman DeFeo made the motion to accept the minutes of the public hearing and regular meeting of October 18, 2010 as presented. Motion was seconded by Councilman Novotny and carried unanimously.

REPORTS

A. Presiding Officer - Mayor Stombaugh wished everyone a Happy New Year. She said she hoped this is the beginning of a very prosperous and great year for the Town of Smyrna and for each and every person in our town and the people that serve here.

B. Town Attorney - Mr. Jaywork said he would like to echo Mayor Stombaugh's comments, and he just has a good feeling about

this year - he is not sure why - but he thinks it's going to be a good year for the United States and everybody. Mr. Jaywork said the Council might want to consider discussing at a workshop some day that you instruct your recording secretary to reduce or condense the minutes more, instead of trying to get every word everybody said maybe just a summary. He said he is saying this for two reasons: 1) it's taking a tremendous amount of time to get the minutes done because they are 18 - 20 - 30 page minutes, single spaced, and FOIA only requires - the bare minimum is that you record motions and what the vote was.

Mayor Stombaugh state the Finance Committee has been working on a couple of options so we are looking at that.

C. Police Chief - Chief Bordley said Happy New Year to everyone and he appreciates all of the support.

D. Town Manager - Mr. Hugg said Council has his report and if there are any questions he would be glad to answer them. He said the new yard waste program started January 1st; he thinks there were eight calls this morning. Mr. Hugg said also on your desk is the notice of the Delaware Local League of Governments meeting for the 27th. He said the Business Development Committee will meet Friday, January 7th. Mr. Hugg wished everyone a Happy New Year.

E. Committees - Mr. Hugg said the Utility Committee will meet Wednesday night at 5:00 p.m., and Business Development will meet Friday at 8:30 a.m., and Personnel and Finance Committees will meet next Tuesday.

Councilman Novotny said the Long Range Planning Committee will meet Monday - a week from today.

Councilman Riddagh said the Public Safety Committee will meet on the 13th.

RECOGNITION OF VISITORS

Visitors present were Daryl Jester, Al Kraft, Seth Clevenger, and Patrick Duff.

Mayor Stombaugh said this portion of the meeting we open to visitors. She said we invite you to step to the microphone, give your name, and address because it is recorded. Mayor Stombaugh said Council may not have an answer questions tonight; we may need to refer it to a staff member or to a committee.

She asked if anyone would like to address Council. Al Kraft, 772 Dorchester Court, Smyrna, came forward to speak. Mr. Kraft said he just wanted to be the first to wish everyone a Merry Christmas, which you've had, and a positive New Year. He said God bless you all.

Patrick Duff, 238 Ron's Way, Smyrna, came forward to speak. Mr. Duff said he has a little issue with crosswalks in this town, being that there isn't any going from Royal Farms across the street to the Acme area, which is pretty dangerous for anyone trying to cross there. He said he moved here and he has been around the country and he has seen a lot of different crosswalks that were put into towns - crosswalks not just for the safety of the pedestrians, but to slow the traffic down coming through the town so they can see the different businesses that are in the town. Mr. Duff said his suggestion would be to get one crosswalk in front of Royal Farms to go over to the Acme area; one crosswalk in front of Pat's going to Acme because a lot of people are coming from this section to walk to Acme and especially around 5:00 p.m. it's almost impossible to cross the street there; then third, put a crosswalk somewhere in the area of KFC where the bus stop is, so people can actually cross the street safely.

Mr. Hugg said he thinks these are great ideas, and it might be a good gesture for Council to send Senator Ennis, Representative Carson, and Secretary Wicks a letter expressing this concern and asking that they take a look at addressing it.

Mr. Duff said if you look at Odessa - they already have them, so maybe you could look at how they did it.

Councilwoman White said a few years back someone had suggested putting a light on Route 300 at the Acme to go across there, and there was a big issue with there being a light at Route 13, a light at Acme, and a light at Main Street.

Mr. Hugg said the Corridor Plan - Phases 2 and 3 of the improvements to the medians to Route 13 do include provisions for crosswalks as part of those projects so it's not a new suggestion and DelDOT should be aware of it, and supposedly there is money out there for corridor enhancement. He said it would be appropriate if Council wanted to instruct him to, he could draft it. Councilwoman White said that's a good idea.

Mr. Jaywork said he wondered if anyone on Council wanted to make a motion to have Mr. Hugg draft a letter for Council's consideration at the next meeting.

Councilwoman White made the motion to have Mr. Hugg write a letter. Motion was seconded by Councilman Raynor.

Mayor Stombaugh said she has been asking for some time - is anything going to be done about Route 300? She said that stretch that Councilwoman White was talking about - she even asked when they met with DelDOT at one time if they would even coordinate those two lights so that they would turn red at the same time - the one on Route 13 and the one on Main Street -if they just could coordinate those two lights to turn red at the same time people would be able to get out of that shopping center better than they can right now.

Councilman DeFeo said a couple of years ago some of these issues came up at Public Safety Committee meetings, such as egress from the Acme lot and Chief Baldwin had contacted DelDOT in an effort to get them involved - one of the issues he was after was trying to remove the first curb cut, but they just couldn't get DelDOT involved.

Mr. Hugg said that has been an ongoing discussion; we certainly can bring it to their attention.

Motion carried unanimously.

Mayor Stombaugh asked if anyone else would like to address Council. No one came forward.

Mayor Stombaugh said seeing no one step forward we will close this portion of the meeting and go back to the regular Council meeting.

OLD BUSINESS

A. Appointments to Tree Commission and Other Committees - Mayor Stombaugh said she has had a request - there is an opening on the Planning & Zoning Commission - she said she did pass out a résumé for Joe Thorn who is now serving on the Business Development Committee, and she would like to appoint him to the Planning & Zoning Commission. She asked Council if they wanted another résumé before they vote. Mayor Stombaugh said if you are okay with the résumé you received before she would like to appoint Joseph Thorn to the Planning & Zoning Commission.

Councilman Raynor made the motion to accept Mayor Stombaugh's appointment of Joseph Thorn to the Planning & Zoning Commission. Motion was seconded by Councilman Novotny and carried unanimously. Mr. Hugg clarified that Mr. Thorn is appointed for a 5 year term - to the last Tuesday in April in 2016.

B. Appointment of Police Chief and Set Salary - Mayor Stombaugh asked Mr. Jaywork if they had to go back into executive session to do this. Mr. Jaywork said no and explained what transpired at the last Council meeting.

Councilman Raynor said pursuant to Section 7.2 of the Charter of the Town of Smyrna, I move that the subcommittee shall recommend to the Town Council that it appoint Wilbert R. Bordley as Chief of Police. Bordley shall serve at the pleasure of the Town Council, subject to the rights afforded to Bordley under the Police Officers Bill of Rights. Bordley shall receive an annual salary of \$86,156.00. This salary may be periodically adjusted by the Town Council. Bordley shall receive the same benefits provided to all other police officers employed by the Town. Upon the appointment of Bordley to the position of Chief of Police, the Captain position shall be eliminated from the Town Police Department. The two Lieutenant positions in the Town Police Department shall remain. The position currently held by Lieutenant Wilson shall, however, be filled by a sergeant designated by the Chief of Police until such time as the hiring freeze is lifted by the Town Council. At that point, the Lieutenant position shall be subject to testing, and shall be open to any officers who qualify.

Mr. Jaywork said in Councilman Raynor's motion there was mention of the Police Officers Bill of Rights - hopefully this will never be an issue, but if it is there are two statutes - one is the Police Officers Bill of Rights, and then there is the Police Chief Due Process Statute, and he thinks Councilman Raynor probably meant the Police Chief Due Process Statute. He said the Police Officers Bill of Rights applies basically to officers under the rank of Chief and has a lot more details in it. Mr. Jaywork said the Police Chief Due Process Statute is essentially a one paragraph statute that says a chief can only be terminated for just cause.

Councilman Raynor amended his motion to delete the Police Officers Bill of Rights and include the Police Chief Due Process Statute. Motion was seconded by Councilman Novotny.

Councilwoman Brown asked if there is an effective date in that proposal. Mr. Jaywork said effective tonight.

Councilwoman White said Councilman Raynor said that he would receive the same privileges or benefits as other Smyrna police officers - is that how you phrased it? Councilman Raynor said yes - Bordley shall receive the same benefits provided to all other police officers employed by the Town. Councilwoman White said all of the other police officers are under a contract - is she correct in saying that he is not under a contract? She asked if the benefits that he will receive as a Captain just continue on and carry over because he can't receive the same benefits as Smyrna PD officers, as the Chief.

Chief Bordley said it depends on which benefits you are referring to. He said in the discussions we were talking about the healthcare benefits and pension.

Councilwoman White said you say this and Council is not aware there is no contract, so we don't know exactly what is being offered, because the contract said one thing, and these were very specific things to a contract - the new Chief does not... Mr. Jaywork asked which contract she was referring to. Councilwoman White said the old contract. She said so now we have a Police Chief who receives healthcare, pension, vacation, and sick leave, and that's it. Mr. Jaywork said his impression was that the original contract that the former Chief had - most of the provisions in that contract were simply paraphrased from the personnel policy, and he thinks the intent here is that when the new union contract is negotiated, which he understands has not been completed yet, but whatever that contract provides for the benefits for the police officers then the Chief would get those same benefits - he would be treated the same. He asked if that would make any difference - does the Chief get more vacation time than regular police officers; does it accrue at the same rate?

Councilman Novotny said that's one of the reasons why it was worded that way because we are in the midst of negotiations, and rather than putting down something specific, we don't know where we are going to end up. Mr. Jaywork said so the Chief will get basically the same thing as a Corporal will in terms of the benefits and such. Councilman Novotny said he will have the same pension, healthcare, that kind of thing.

Councilwoman White said also, and she may have read it wrong or misunderstood what she read in the newspaper, at the press conference - was that the position was being accepted conditionally - what are the conditions and what exactly does that mean. Mr. Jaywork said he is just interpreting this from what was just said - he really does not know - he is assuming it was accepted conditionally upon the Council voting tonight to accept these terms. Councilwoman White said she did not know because we were not made aware of anything that had happened and that is why she is asking.

Mayor Stombaugh said the press conference basically was just to announce who candidate F was, and that he had accepted contingent upon Council approval.

Motion carried with Mayor Stombaugh, Councilwoman Brown, and Councilmen Novotny, Raynor, and Riddagh voting for, Councilwoman White voting against, and Councilman DeFeo abstaining.

NEW BUSINESS

A. Annexation Request - Resolution to Set Legislative Fact Finding Hearing and to Consider Zoning Designation, 30 South Carter Road, Frederick & Michaela Shane (February 7, 2011 at 7:00 p.m.) - Mr. Hugg said this is step one in the annexation process. He said this property is on the corner of Lexington Avenue and South Carter Road. Mr. Hugg briefly explained the annexation process.

Councilwoman White made the motion to set the legislative fact finding hearing and to consider zoning designation for 30 South Carter Road, Frederick & Michaela Shane for February 7, 2011 at 7:00 p.m. Motion was seconded by Councilman Novotny and carried unanimously.

B. Authorize Kent County Levy Court to Administer CDBG - Mr. Hugg explained that Kent County held a public hearing the same evening as our last Council meeting. He said this is an annual event for the Town. Mr. Hugg said the action before Council is - there are actually two resolutions, both of which need to be adopted and ultimately signed by Council.

Councilman DeFeo made the motion to adopt the two resolutions authorizing the application for the FY 2011 CDBG, and authorizing Kent County Levy Court to act as the official representative of the Town of Smyrna in connection with the FY

2011 CDBG application, and if funded, administer the funded application on behalf of the Town of Smyrna. Motion was seconded by Councilman Raynor and carried unanimously.

C. FIRST READING: Ord. No. 001-11, An Ordinance to Amend Chapter 2, Article I, Section 2-1 ("Policies and Procedures") of the Town Code of the Town of Smyrna Regarding Composition of Committees and Subcommittees - Mr. Jaywork explained the reasoning for this amendment.

Councilman DeFeo made the motion for discussion. Motion was seconded by Councilwoman White.

Councilman DeFeo said this says 'shall include no more than three members of Council' and he understands the argument there - can that be less than three?

Councilman Novotny said one of the problems with that is if we don't have enough people wanting to be on committees - then what do you do?

Mayor Stombaugh said it says no more than three, so you could have two. She said she thinks the Finance Committee definitely needs three members of Council.

Councilman DeFeo said he would like to amend his motion to say that committees shall include no more than two members of Council. Councilwoman White seconded the amendment. Motion failed with Councilwoman White and Councilman DeFeo voting for, and Mayor Stombaugh, Councilwoman Brown, and Councilmen Novotny, Raynor, and Riddagh voting against.

Councilman Raynor made the motion to accept this as the first reading of Ord. No. 001-11, as written. Motion was seconded by Councilman Riddagh. Motion carried with Mayor Stombaugh, Councilwoman Brown, and Councilmen Novotny, Raynor, and Riddagh voting for, and Councilwoman White, and Councilman DeFeo voting against.

EXECUTIVE SESSION

A. Executive Session to Discuss Status of Negotiations - Councilman DeFeo made the motion to go into executive session to discuss the status of negotiations. Motion was seconded by Councilwoman White. Motion carried with Councilwomen Brown and White, and Councilmen Novotny and DeFeo voting for, and Mayor

Stombaugh, and Councilmen Raynor and Riddagh voting against. Council went into executive session at 8:13 p.m.

Councilman Novotny made the motion to come out of executive session. Motion was seconded by Councilman DeFeo. Council came out of executive session at 8:44 p.m. by unanimous vote.

POSSIBLE ACTION ON ITEM DISCUSSED IN EXECUTIVE SESSION

There was none.

OTHER COUNCIL BUSINESS

Mayor Stombaugh asked if there was any other Council business. There was none.

ADJOURNMENT

Mayor Stombaugh adjourned the meeting at 8:45 p.m.

Council Secretary

vlh