

MINUTES OF THE PUBLIC HEARING AND MEETING
SMYRNA TOWN COUNCIL
January 4, 2010

PUBLIC HEARING

The public hearing was opened at 7:15 p.m. by Mayor Patricia A. Stombaugh. Council members present were Memphis P. Evans, Valerie M. White, Anthony H. DeFeo, William C. Raynor, Robert Riddagh, and Lawrence O. Thornton.

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

Mayor Stombaugh stated this public hearing is to receive public comments on a proposed low interest loan in the amount of \$5,975,000.00 from the Delaware Water Pollution Control Revolving Fund for the purpose of constructing a number of wastewater system improvement and expansion projects to improve and upgrade the Town of Smyrna wastewater collection and transmission system. Under the terms of the loan, the interest rate would be set at 2 percent per annum if the Town has at least one of the proposed projects under contract prior to December 30, 2009 (which the Town Council intends to do) and repayment will be made over a period of not less than 20 years.

Mr. Hugg said almost this time last year he came to Council and made them aware of the possibility that the Town could be eligible for both water project stimulus funding under the AARA program and wastewater funding at a very low rate from the State of Delaware Clean Water program - the Wastewater Pollution Control Revolving Fund, and subsequent to that brought Council a number of projects which ultimately Council authorized the Mayor and Mr. Hugg to sign applications for and submit letters of intent which we did last spring. He said we were advised late last year that our projects had been accepted for funding, and so this is the final step in the process that secures the actual award of a loan of up to \$5,975,000.00 for a list of projects which include the possibility of sewer main replacements on South Street, West Cummins Street, North Main Street, East and West Commerce Streets, and the upgrade of pump stations at New Street, Green Meadows, and Greens Branch, and the possible extension of sewer services north of Duck Creek. He said as the resolution clearly indicates at least one of these projects had to be under contract by the end of this last year and the fact that at the December 7, 2009 meeting Council approved the award

for the South Street project, so we have met that requirement. Mr. Hugg said the action before Council tonight is to actually approve the borrowing documents of which this is the final resolution, following which the Mayor, Mr. Hugg, and Mr. Jaywork will conduct a settlement with the Department of Natural Resources that would authorize the borrowing of funds on an as required basis.

Mr. Jaywork said as Mr. Hugg indicated the contingency has been met so if the Council should pursue this it will be at the 2 percent interest rate and the loan will be amortized over 20 years. He said under the Town Charter notwithstanding any previous amounts that the Town has borrowed, and including this loan you are still at the level of borrowing where a supermajority of the Council - five votes of the Council - can approve this and not require an election of the citizens; this is something that is within the power of the Council. Mr. Jaywork said under the Charter the Council can just by itself borrow relatively small sums of money with a supermajority vote, and at the next level you must hold a public hearing and have a supermajority vote, and for the really big amounts - over 12 or 14 million dollars then you have to have a special election.

Mayor Stombaugh asked if there was anyone present who would like to speak against this. She said if there is anyone who would like to step forward you need to step-up to the microphone, give your name and address because it is being recorded. No one came forward.

Mayor Stombaugh asked if there was anyone present who would like to speak in favor of. No one came forward.

Mayor Stombaugh closed the public hearing at 7:20 p.m.

REGULAR MEETING

The regular meeting was called to order by Mayor Patricia A. Stombaugh at 7:30 p.m. Council members present were Memphis P. Evans, Valerie M. White, Anthony H. DeFeo, William C. Raynor, Robert Riddagh, and Lawrence O. Thornton.

Also present were Town Manager David S. Hugg III, Police Chief Richard H. Baldwin Jr., Attorney John Terrence 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

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

MINUTES OF PREVIOUS MEETING

Mr. Hugg stated Council does not have the minutes from the December 21, 2009 meeting - Council will have them at the next Council meeting.

Councilman DeFeo made the motion to accept the minutes of December 7, 2009. Motion was seconded by Councilman Raynor and carried unanimously.

REPORTS

A. Presiding Officer - Mayor Stombaugh said she had nothing to report this evening.

B. Town Attorney - Mr. Jaywork said he had nothing to report this evening.

C. Police Chief - Chief Baldwin stated Council has a copy of his written report in their packets. He said SSGT Bruce Graham is retiring - he could not be here tonight - he is a real loss. Chief Baldwin said he is an excellent police officer, and he is sorry to see him go. He said he also told Council a little bit about their 'shop with a cop program' in his report. Chief Baldwin said it went really well.

D. Town Manager - Mr. Hugg said he had no report this evening.

E. Committees - There were no committee reports.

RECOGNITION OF VISITORS

Visitors present were Ed Lehman, Hope Hicks, Shirley Williams, James E. Veit Sr., Bill Pressley, Sherry Steller, Cody Steller, Duane R. Young, Al Pickett, Dave & Bunny Pleasanton, Al Kemp, Terry A. Foley, Daryl Jester, Larry Koehler, Seth Clevenger, Melaine Minear, John Loftman, Robert L. Miller, Denise Moore, Jim Harkins, Regina Brown, William Wilson, Aaron Weisenberger, Wilbert Bordley, Cindy A. Cogar, Dale & Robin

Bruner, Quentin Schlieder, R. Gauley S. Butler Sr., and Francis Hartnett.

Mayor Stombaugh said at this time they would like to open the meeting to visitors. She said anyone who wishes to speak needs to step-up to the microphone and give their name and address - it is recorded. Mayor Stombaugh asked if anyone would like to address Council.

Aaron Weisenberger, 33 Leena Lane, Smyrna came forward to speak. Mr. Weisenberger said tonight he just wanted to quickly touch base with Council. He said he submitted a proposal back in August or September about bringing paddleboats and kayaks to Lake Como. Mr. Weisenberger said unfortunately his copier was not working so he could not bring a copy of the proposal again tonight, but hopefully - he is eager that once Town Council finished dealing with the budget and pressing matters over the holidays we can maybe readdress the issue of bringing the paddle shack to Lake Como. He said again it is a benefit everyone is going to be able to use, an attraction Smyrna is going to have, tough economic times, and a little fun to the town, obviously he can't do it without the Town Council's approval - he understands there are a lot of legalities with it. Mr. Weisenberger said he just wanted to formally address the Council and say hopefully we are still thinking about it, it is in the back of your mind somewhere and we can address it another future date.

Mayor Stombaugh said usually Council does not answer, but it is going to come up at the next Finance Committee meeting - if you are available to be there that would be... Mr. Hugg said it will be held on Tuesday, January 12, 2010 at 5:00 p.m. and he does have a memo in progress to Council - he just did not get it done over the holidays.

Edward Lehman, 161 Belmont Avenue, Smyrna came forward to speak. Mr. Lehman said he just had a few questions and a couple comments he would like to make to the Town Council. He said one is he wanted to thank the Council member that gave him the nickname last week - the rabble-rouser - he really appreciates that; it brings him back to his high school years. Mr. Lemman said second of all he would like to know what the plans are for the Town Council to reduce the budget in this down turned economy - what they are actually doing so we do not have to have a tax increase the following year, because he know we are not getting one this year. He said if we don't do something to keep the budget down and reduce whatever our output is - he does not know what this 3 percent raise has cost the Town this year, but

he would like a figure on that or somewhere they can read up on where we can get this figure. Mr. Lehman said the third one is basically what is the Town going to need to do to hire a new police officer in these down times. He said we just put on a new police officer with - he guesses it would be our free cop with the three year federal government paying for it, but why are we hiring a new police officer with this down economy. Mr. Lehman said he has gotten one answer but he is not sure if it is 100 percent, and that is because it is part of the federal regulations to hire one to keep it at the same force - he is not sure if that is positive or not. He said as before a new police officer was put on if that has to keep at the same level or not - he is sure the Police Chief would know that, but he is not positive on that. Mr. Lehman said he just wants to know what basically the plans are to keep the budget down because in this down economy - and we had the State representative here last week that said we shouldn't be raising or giving increases in pay raises in this type of economy - he knows you have contracts that you have to keep and they are something that you cannot get around, but why aren't we reducing our workforce even if you have to lay off a couple people to keep the budget at the same level.

Francis Harnett, 948 West South Street, Smyrna came forward to speak. Mr. Harnett said in five days he will be a 50 year resident of this town. He said this is only his second Council meeting that he has ever been to and he is not real pleased. Mr. Harnett said a lot of things have happened - he has a lot of pride in this town. He said again he has lived here for 50 years, but most of the people in this room know him and they know he does not have a sense of humor. Mr. Hartnett directed his next comment to Chief Baldwin - he said the article that was in the Delaware State News and it ends up on Jay Leno - he does not know how it got there, but personally he thinks not only does a police officer need to be reprimanded but he believes the Chief's office does as well because if you allowed that to happen and make us a joke then he thinks personally something should happen on both sides of that because that is absolutely wrong. He said we are a joke. Mr. Hartnett said this stuff about an undercover police officer from Smyrna, Delaware - there is no sense now - it was in the Delaware State News and then all of a sudden it ends up on Jay Leno. He said there is no excuse for that. Mr. Hartnett directed his next comment to Mr. Hugg - he said he works for the largest tower construction company in the country. He said his boss called him at the end of June and told said you will cut \$11,000,000.00 out of your budget. Mr. Hartnett said he did not ask me - he told me - he didn't care

how he did it; he had to make it happen by September 1, 2009. Mr. Hartnett said he got the letter from Councilman Raynor in his mailbox; he was concerned so he came up to the meeting and listened to that dog and pony show that this Council handed to the residents of this Town about how they can do this and can't do that, and how they understand, but yet they are still going to do this. He said it makes no sense because there are many things that can be done. Mr. Hartnett said you talk about unions and stuff like that, okay, so the union says we have to give them a raise, alright, the last one hired is the first one fired. He said he's sorry, but it is the economy; it is nothing personal - it is what it is. Mr. Hartnett said it is not the first time it has happened - it is happening everyday everywhere. He said he took a 13 percent pay cut personally, and he did it on his own to meet his \$11,000,000.00 budget yet everyone else is getting a raise - how come our Town Manager does not have to answer for that; how come the rest of the managers of this town do not have to answer for that? Mr. Hartnett said Madame Mayor you said that you don't like the fact that there are boarded-up buildings in town and we want to tearing ours down for whatever the cost may be and they are going to look into that - he sorry but we can hire somebody - a local contractor - and they can put blocks in the windows and the doors until the Town can actually afford to raze these buildings or whatever they decide to do with them or better yet why don't you contact local contractors and rent them out - he does not know - there are many things that we can do. He said but folks this is not a joke and you are talking about his money; you are talking about our money and he knows a lot of the residents of this town and most of them can't afford to pay the bills that they've got now and we're just going to make it worse? Mr. Hartnett said we are going to raise this just so the employees of the Town can get a 3 percent raise? He asked if the managers of this Town are getting a raise. Mr. Hartnett said if they are then that is even that much more wrong. He said another thing - he has been a volunteer for many organizations in this Town for over 30 years and he has not gotten his first paycheck yet, not that he'll ever get one and he has put multiple hours and have over the years - why does Council still get a stipend for coming up here to meetings? Mr. Hartnett said it is what it is; it isn't personal; its money and it's not yours - it's ours and you have to answer to us. He said again, back to Mr. Hugg - why is he allowed not to respond to the citizens of this Town with concerns - who does he answer to - who does he think he is - he's not God, he is an employee - he works for me; he works for these people and this crap about Town Council people - when you guys have an argument go

downstairs and close the door and call one another anything you want - don't put it in the Delaware State News. Mr. Hartnett said we are a joke; we are an absolute joke and now it's compounded when it ends up on Jay Leno on national TV. He said folks it's time to step-up and do your job, and if you don't he'll help you to the door. Mr. Hartnett said Mr. Hugg, don't take this personal, but it is a good thing that E. Reynolds Bradley is no longer with us because he'd grab you by the back of the neck and the seat of the pants and walk you out the front door. He said this is not the way we run this Town - we have a responsibility - do your job; if you don't want to do your job quit and let somebody else come in here and do it for you that's capable. Mr. Hartnett said look at your Finance Committee - two of the best people in finances quit because you people act like children. He said you act like two year olds - he said he has a two year old at home... Mayor Stombaugh told Mr. Hartnett that he was way over the three minutes.

Mayor Stombaugh said at the beginning of this session she didn't say a couple of things that she usually says. She said everyone is entitled to three minutes to speak to Council - we do have to call the three minutes to keep things rolling. Mayor Stombaugh said the other thing is a lot of things that may be asked of us or brought to the Council's attention may not be answered tonight because they may have to refer it to a staff member or to a committee.

Mayor Stombaugh said she would like to address a couple things that you said. She said there have been things that have been done with the budget - the budget has been cut a lot this year and it has been cut the last three years. Mayor Stombaugh said when we were told that the contract employees would have to get the 3 percent raise the police department was given another \$78,000.00 to cut and the electric department was given another \$15,000.00 to cut from their budget which would have been more than what the 3 percent raises would have been equal to, so something has been done. She said was are getting ready to go into a new year now with the Finance Committee we are going to have to sit down and talk about some of these things. Mayor Stombaugh said one of the last things that we wanted to do was to cut employment at this time because that does not help the economy to take peoples jobs away, so that was one of the last things that they were trying to do. She said she thinks the Town - for the people that have not been to the Finance Committee meetings there have been major, major cuts made this year. Mayor Stombaugh said there have been cuts made the last two years, and this year major cuts, so we are looking at it; we

met our budget this year; a lot of people are not happy with some of the things that we have had to cut such as the lifeguards at the lake, the special programs, the police department had to cut the junior police academy, she has attended those all three years she has been Mayor and it is an absolute wonderful program for the children and she really hated to see that go. Mayor Stombaugh said last year Wal-Mart stepped up to the plate and paid the \$4,000.00 so that the program could go on, and she hopes with all of her heart that somebody will step-up this year and make it possible. She said we have cut the special programs for the library - they have been cut almost in half, if not more than that. Mayor Stombaugh said you really would have to sit down and look at the budget and understand; these are tough times for all of us. She said she is here to represent you and she tries to do that; all of the members of Council need you to speak to us and come out to the meetings and let us know how you want us to vote, and she thinks some of the members of Council do that.

Cindy Cogar, 123 West Hamilton Lane, Smyrna came forward to speak. Ms. Cogar said she just wanted to comment - Mayor Stombaugh told everyone about cuts that Council had been making, and unfortunately those are a sign of the times. She said she thinks that in this time that the 3 percent increase for all of the employees across the board is inappropriate. Ms. Cogar said she keeps hearing that it is in the union contract for some of the employees and not for some of the others. She said it is unfortunate that the taxpayers have to pay the burden for the employees that didn't have the contract for the 3 percent increase, and she does not know how Council can vote for an increase across the board for all employees and then have to make additional cuts to cover for that. Ms. Cogar said she has a problem with every employee getting a 3 percent increase in pay when in today's world nobody's getting increases - they are all taking decreases and cuts in staff and in pay. She said she would also wonder who Mr. Hugg answers to - does he have a superior that he reports to? Mayor Stombaugh stated he answers to Council.

Melaine Minear, 41 South Main Street, Smyrna came forward to speak. Ms. Minear said she is a resident and the proprietor of the Found Object Studio. She said she is also a spokeswoman for a newly formed coalition. Ms. Minear said they have a P.O. Box as of today - P.O. Box 121, Smyrna, DE 19977. She said for now they are being called the Smyrna Citizens' Coalition. Ms. Minear invited anyone to contact her; her home phone number is on the front of her home, and her cell number is 632-0665. She

said she would like Mayor Stombaugh to know that the people that stand with her support the Mayor. Ms. Minear said there are many concerns that they have - there is a long list being drafted by several people. She said the Mayor of Milton, Mr. Post, would have been here, but his meeting is on the same evening. Ms. Minear said he comes to her shop regularly and he supports Mayor Stombaugh. She said for her three minutes she is asking again, as she and other people have, of Mr. Hugg that they be allowed, as the citizens who she believes own this building and pay your salaries, that they be allowed to use this building symbolically as a place for public forums and workshops because until we meet and greet each other at all levels of financial, social, ethnic, governmental, private residences and businesses, and meet and greet some very serious long term endemic problems there is no way that we will rebuild our downtown. Ms. Minear said now during the snowstorm she met some people who had brooms - they didn't have shovels - and they lived in some what she would consider some rather frightening dwellings as far as code enforcement and safety. She said they are her friends just as anybody is; she does not prescribe to any social strata. Ms. Minear said she offered \$500.00 at the last Council meeting as seed money for a community garden and 200 man/woman hours. She said the only way that we can possibly have a community garden is if we all work together and unveil which she believes is a very long series of questionable ethics on the part of several people in this room and some of their associates. Ms. Minear said she is asking Mayor Stombaugh if she would please help them to use this building. She asked what they have to do to have public forums.

Mayor Stombaugh asked Mr. Hugg if she was correct by saying that they would just have to put in a request. Mr. Hugg said the issue becomes one of someone being here to open it, close it, lock it, what have you. He said it is used much of the month two to three nights every week; there are usually committee meetings, or Planning and Zoning, or Council. Mr. Hugg said the question arises if it is other hours we end up having to pay a staff person or something to come in and lock the building up, open the building, set the alarm, and those are issues we would have to address.

Mr. Jaywork said from a legal perspective - if he understands Mr. Hugg correctly this building is used basically for Town business - Town committee meetings, Town Council meetings, and so on; it is not open to the public generally. He said he would, as the Town's legal advisor, counsel against this. Mr. Jaywork said the reason is because under the First

Amendment, once you open this up as a public forum you do not get to select which groups come in here - if the Hell's Angels decide that they want to have their meeting here, they have a right to have their meeting here; the KKK could have their meeting here. He said once you open this up as a public forum you cannot pick and choose who gets to use it. Mr. Jaywork said as long as this is maintained as a building that is used for governmental purposes, governmental meetings, Town Council, committees, and so on you can control who comes here. He said he has wrestled with this problem with other towns - in the town of Bethany Beach they have a bandstand on the boardwalk and it has been an ongoing problem because the town built their bandstand for the summer entertainment program and for the town to control it, and then people have come in and asked "I want to present this" or "I want to do that" and some of these are objectionable groups at least by mainstream - you get into all kinds of religious things like a particular religious group wants to come in and use that to tell about their faith and then you have got this group over here who doesn't believe in Christianity and they don't want it done - it can be a real mess. Mr. Jaywork said he would proceed very cautiously down that road if you decide to do that.

Ms. Minear said they will address legally their civil and constitutional rights. She said as far as - she knows the beeper went of, but since Mr. Jaywork spoke can she just make one more point. Ms. Minear asked Mr. Hugg if he received her email letter dated December 18th to all the men in her life. Mr. Hugg said he did. Ms. Minear asked if he forwarded it to anyone. Mr. Hugg said no. Ms. Minear asked why - you didn't forward it to our Mayor? Mr. Hugg said he did not believe he was instructed to - he asked why he should have done that. Ms. Minear said she gets the feeling that most of her email letters to Mr. Hugg have probably never been forwarded to anyone, because he certainly has not been very good at answering her emails regarding code enforcement, the streetscape project, etc... so she gave the Mayor a copy of that letter, and she is going to ask Mr. Hugg, as a taxpayer, that from now on her emails get forwarded on to the Mayor and the rest of Council. Mr. Hugg said then why don't you address them to the Mayor and Council to begin with - where does it become his responsibility to be your mailperson. Ms. Minear said she thinks it is his responsibility as Town Manager... Mr. Hugg asked Ms. Minear if she asked him to forward it to Mayor and Council. Ms. Minear said she has asked before, and you know what - she will FOIA. She said she has copies of all the emails and she will go ahead and start FOIAing him - okay? Mr. Hugg said sure. Ms. Minear said she

appreciated it, thank you. She said it is quite sad when a man's intelligence is so superseded by his arrogance.

Duane Young, 107 West Frazier Street, Smyrna came forward to speak. Mr. Young said he is chairman of the Election Board. He said he just got back from North Carolina yesterday, but he is here tonight to let her know that he is stepping down from the Election Board. Mr. Young said also Ms. Helen Miller is stepping down from the Election Board, and Ms. Linda Blow is stepping down from the Election Board. He said that leaves Naomi Wayman, Marie Bowers, Patricia Musto, and Ms. Wagner has not returned his call so he is not aware of her status at this time. Mr. Young said he wished to thank the Council for having faith in him and allowing him the opportunity to serve on the election board, and it is with great gratitude that he thanks Council very much.

Mayor Stombaugh said she left a message for Mr. Young and asked if he got it. Mr. Young said he got it today, but that Mayor Stombaugh had said that she was busy because she was working at Rite Aid, and he figured this evening he could... Mayor Stombaugh said okay. She said the other three... Mr. Young said he just has not heard from Martha. Mayor Stombaugh said on behalf of Council she would really like to thank the three of you - she thinks they are probably three of the people that have worked the longest on the Election Board and they have done an outstanding job and Council really wants to thank them for their service. Mr. Young said thank you.

Dave Pleasanton, 35 West Mount Vernon Street, Smyrna came forward to speak. Mr. Pleasanton said he is glad to see that we have decided to reconsider the vote on the Fiscal Year 2010 budget because the last meeting was an abortion. He said at the last Town Council meeting we citizens of Smyrna were subjected to a demonstration of just one example why Smyrna is considered by many as being the most corrupt municipality in the State. Mr. Pleasanton said during consideration of the 2010 budget Councilman Thornton moved to accept the presented budget and was immediately seconded, he believes, Councilwoman White. He said Councilman Raynor then offered a motion to amend Councilman Thornton's motion. Mr. Pleasanton said this motion to amend was duly seconded by Councilman Riddagh - so far, so good. He said what happened next however, was both unscrupulous and despicable. Mr. Pleasanton said Councilwoman White complained that there was a motion on the floor - meaning Councilman Thornton's - and implied that Councilman Raynor's motion to amend was improper. He said Mr. Hugg then chimed in with "there

is a motion on the floor and you cannot make a motion in the middle of another motion." Mr. Pleasanton said there were a number of problems with this scenario: 1) Councilwoman White did not know what she was talking about - there was nothing improper about a motion to amend; 2) by what authority does an unelected Town employee - meaning Mr. Hugg - butt into Town Council deliberations - his responsibility is to deliver reports and to answer questions when directed by the Chair to do so, and in circumstances other than those he is to remain silent; 3) his statement that you cannot make a motion in the middle of another motion hw believes was deliberately misleading - such a statement is absolutely incorrect and in direct violation of proper Parliamentary Procedures and published municipal guidelines, and he does not believe for an instant that this was simply a mistake on his part. Mr. Pleasanton said if this was Mr. Hugg's first ingenuous Parliamentary Procedure such a blatantly inaccurate statement might be able to be overlooked, but Mr. Hugg is a 67 year old career bureaucrat. He said the man has attended hundreds, if not thousands of meetings where Parliamentary Procedure was required. Mr. Pleasanton said common sense tells everyone this was deliberately misleading in order for him to benefit himself financially - he had a personal financial interest in seeing Councilman Thornton's motion pass un-amended. He said part of this 3 percent raise was to go directly into his own pocket and it was highly improper for him to have any input in this matter. Mr. Pleasanton said but the shenanigans did not end there - because of Mr. Hugg's statement Councilwoman White in obvious collusion asked that Councilman Raynor withdraw his motion. He said Mr. Hugg again injected himself in the deliberations and stated to Councilman Raynor that his motion could be resubmitted if Councilman Thornton would withdraw his motion to accept. Mr. Pleasanton said under such pressure Councilman Raynor agreed to withdraw it "for now."

Mayor Stombaugh let Mr. Pleasanton know he was coming up on his three minute time limit.

Mr. Pleasanton said he would be finished early. He said now asked if he would withdraw his original motion Councilman Thornton again joins the apparent conspiracy and stated that "his motion stands." Mr. Pleasanton said due to such unscrupulous maneuvering Mayor Stombaugh was left with no choice but to call for a vote, and the result was that Mr. Hugg got his three grand and we taxpayers got the glimpse of the reason for our Town's recently acquired and unwanted reputation. He said that vote was 4 to 3 with Councilman DeFeo being the swing vote. Mr. Pleasanton said considering the current state of the economy

he voted on the wrong side.

Mayor Stombaugh said she was sorry but Mr. Pleasanton's three minutes were up.

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 open the regular Council meeting.

OLD BUSINESS

A. Results of Public Hearing - Mayor Stombaugh stated we had a public hearing at 7:15 p.m. about the loan in the amount of \$5,975,000.00 for the purpose of wastewater system improvements and expansions. She said no one stepped forward to speak against, and no one stepped forward to speak for. Mayor Stombaugh asked if there was a motion.

Councilman Riddagh said so moved. Motion was seconded by Councilman Raynor.

Councilman Raynor said before we go any further can we get an update on the KRM and Capano projects - aren't they part of this. Mr. Hugg said his last conversation with them was probably right before Thanksgiving and they are still working on some issues raised by DelDOT involving the traffic impact study and certain improvements. He said they indicated to him that it is still their intention to proceed with the project, but it is at the moment along with a couple of other projects on hold. Mr. Hugg said they are focusing most of their concerns and their activities on a project that they have on the Maryland Eastern Shore at the moment so they are not ready to proceed immediately. He said the other project - the residential project that is also related has not proceeded beyond the preliminary site plan approval. Mr. Hugg said he has not talked to the developer recently about that project. He said in any case the extension of sewer to the north is still subject to Council ultimately agreeing to do so and to a developer agreement, so by accepting the authorization to borrow the money we are not borrowing the money until the project is ready to move forward.

Mayor Stombaugh asked if that isn't included in the loan at this point in time... Mr. Hugg said he was sorry, excuse me, he

had an update - apparently Mr. Capano and the Sharoff's are moving forward on their project on the west side of the highway - that is something that he was not aware of. Mayor Stombaugh said if we don't include that right now is there an option to bring that up. Mr. Hugg said no - the option is to include it and make it potentially eligible for the 2 percent funding, or not include it and it not have it be eligible for reduced funding. He said we have a lot of projects in front of that project - most notably the three pump stations and the Cummins Street-South Street sewer line. Mr. Hugg said if we get to that point and that project isn't ready to proceed we don't have to borrow the money - so we are not going to have to do the project if it is not ready to go forth. Mayor Stombaugh said she believes she has the correct understanding on this - she just wants to reiterate on it that we would be setting this a limit, but we would only be borrowing as we go along. Mr. Hugg said that is correct. He said these numbers and estimates were prepared just like the water estimates about a year ago, so they reflect numbers that are in most cases now turning out to be significantly higher than the cost of the work that we are actually doing. Mr. Hugg said if the projects came in as he expects they probably will somewhere between 20 and 30 percent above the engineers estimates - then we would only borrow the amount of money necessary to do those projects. Mayor Stombaugh said so it is not likely that we would be borrowing almost six million this year. Mr. Hugg said no - the projects that we are proposing to do this year are the South Street project, and two pumps stations - probably less than half of the funds, considerably less than half of the funds would be used some time during 2010. Mayor Stombaugh said and this was already put in the budget. Mr. Hugg said right. He said the debt service for this project - for all of these projects - was built into the budget based on the schedule that he shared with Council six months ago that extends out over to probably as long as 2014. Mayor Stombaugh said as each of these projects comes forward will they come back before Council. Mr. Hugg said they will come back before Council because Council has to approve the award of actual contracts.

Mayor Stombaugh asked if there were any other questions or any other discussion. There was none.

Motion passed with Mayor Stombaugh, Councilwoman White, Councilmen Evans, DeFeo, Riddagh, and Thornton voting for, and Councilman Raynor voting against.

B. FIRST READING: Ord. No. 009-09, An Ordinance to Amend Chapter 70, Utilities, Article III, Electric Rules and Regulations to Move Fees From the Ordinance to the Fee Schedule - Mr. Hugg explained that at the last meeting Council had asked that he give them a copy of the Fee Schedule which is not a very clean copy, but he tried to write on it all of the notations. He said the only portion of the Fee Schedule as you see it that is still in the general Code is the portion that relates to the commercial and industrial customers. Mr. Hugg said that is the full rate schedule as of... Mayor Stombaugh said this is everything that has been printed in the paper and nothing has been changed. Mr. Hugg said right, this is right off our website. Mayor Stombaugh said this will become part of the Ordinance. Mr. Hugg said as far as the Fee Schedule - it takes - this is the only piece that is left in the Ordinance, over the years the rest of it has been transferred to the Fee Schedule. Mayor Stombaugh said she just wanted the Fee Schedule to be part of this. Mr. Hugg said fine, he appreciates that and he should have gotten it to Council last session. He said at your last meeting we tabled this so this will be the first reading of this Ordinance. Mayor Stombaugh asked if there was a motion.

Councilman Thornton made the motion to take this item off the table. Motion was seconded by Councilman Evans and carried unanimously.

Mayor Stombaugh asked if there was a motion to accept this as the first reading. Councilman DeFeo said so moved. Motion was seconded by Councilman Evans. Mayor Stombaugh asked if there was any discussion. There was none.

Motion passed with Councilmen Evans, DeFeo, Raynor, Riddagh, and Thornton voting for, and Mayor Stombaugh and Councilwoman White voting against.

C. Discussion of Options for "Good Standing" Ordinance - Mr. Hugg stated he was going to turn most of this over to Mr. Jaywork. He said as you recall at our last meeting there were some concerns that Grant Prichard had raised about the draft ordinance which has been through its second reading, but it was tabled for the third reading. Mr. Hugg said he asked Mr. Jaywork to go back and address the concerns that Mr. Prichard had raised - in particular a potential loophole in the ordinance as then drafted. He said Mr. Jaywork has asked his associate Mr. Edwards to go through the ordinance and try and correct for those issues so he is going to let Mr. Jaywork or Mr. Edwards to

discuss not only the proposal but also an alternative that Dover and Kent County used.

Mr. Jaywork said this is called a Clean Hands or Good Standing Ordinance. He said in Kent County, City of Dover, City of Seaford, and he believes New Castle County - a number of government organizations have this ordinance and basically what it says is that if you are a person, a business, or whatever and you need town service, a permit from the town, or a review and approval or whatever, you have to have clean hands with the town - meaning you have to have no unpaid financial obligations to the town, you can't be in violation of any of the ordinances of the town, you can't be in breach of any contract with the town, and so if he were to be an applicant to come in for a permit or to get some sort of service from the town he would have to demonstrate that he was not - the town staff would make the determination as to whether or not he owed the town money or whatever. Mr. Jaywork said if he did then he would have to clear that up before he could get the service performed. He said that is what the ordinance is about and he thinks it is a pretty effective tool in terms of getting violations of municipal codes cleared up and getting monies that are owed to the town paid in a timely fashion. Mr. Jaywork said the specific thing that Mr. Prichard brought up is more of a drafting thing, and that is that we have to fine this in terms of an applicant, and Mr. Prichard brought up the concern that a property owner could owe taxes, but his contractor has clean hands - doesn't owe the town anything and therefore he comes in and he applies and it becomes a loophole, so we think we have addressed that. He said the second thing that he saw as he looked through this is that in situations right now in the present economy when you have developments where you have got say hundreds of vacant lots in a subdivision, and each of those lots has taxes owed on it - they are not large sums, he thinks maybe a hundred dollars per lot - that for a developer who came in and had a chance to build one house and sell that he wouldn't be able to get enough money out of that sale to pay the taxes on all of those other lots. Mr. Jaywork said he raised that with Mr. Hugg and asked him if that is what the town wants to do because he thinks this could really put a damper on someone building a couple houses in this economy in Smyrna if he has got to come in and cough up all the taxes on all of the other vacant lots, so what is in here now we created a special rule for developer's lots - they would have to pay the taxes on the particular lot they are getting ready to sell or build a house on, but they wouldn't have to pay the taxes on the other vacant lots. He said the one thing he does need to emphasize in that

situation is the town may not have the use of that money right now, but the town is not losing money - the tax is a lien against those lots and it does accrue as either late fees, or interest, or both. Mr. Jaywork said eventually when those lots change hands those monies will be paid. He said the third and possibly most important thing is that the ordinance that is in front of Council right now is modeled, he believes, after the City of Seaford ordinance and this is basically anywhere in town so if he has a building code violation on a house on East Mount Vernon Street and he comes in to build a house on South East Street, and the town staff determines that he has this violation over here then he can't get a permit until he clears up the other violation. Mr. Jaywork said when Mr. Prichard reviewed this, and he thinks Mr. Prichard worked for both Kent County and the City of Dover, he observed that the ordinances that they have are property specific - in other words you only have to show that you have clean hands with regard to the particular property you are asking the service for, or the inspection, or whatever. He said there is a big difference there and he wanted to give Council a chance to give him some direction as to how they wanted to approach this because the way we go now - if Council goes with the one in front of them now and if there is a violation anywhere in town, if there is money owed anywhere in town then he as the applicant or the owner doesn't have clean hands then he can't get the town service, he is going to have to go do something. Mr. Jaywork said he thinks that will be somewhat more onerous on people in the town - people trying to do things in the town - he thinks it may be a little more difficult for the town staff to enforce because they have to look everywhere so to speak - they have got to make sure there are no violations anywhere. He said if it was property specific like Kent County and the City of Dover then the only thing that you really have to look at is okay, he is coming in to get a permit on 119 South East Street - does he owe taxes on it, does he have any liens on it, are there any violations there. Mr. Jaywork said that is what he wanted to bring to Council's attention tonight. He said if Council wants to go with the property specific approach then he needs to revise the ordinance to make it more like the City of Dover and Kent County; if you want to stay with the original approach more like Seaford so it is really far ranging then we stick pretty much with what we have. Mr. Jaywork said one last consideration - he asked around in municipal law circles - he is not aware of these types of ordinances being challenged anywhere yet in Delaware. He said there is some safety in numbers if you are doing the same thing as Kent County and the City of Dover is doing there is more likelihood it will be upheld because of them - if you are one of

the towns that takes a different approach then you are kind of out there on your own. Mr. Jaywork said there are reasons to go with this property specific approach, but there are also reasons to go with the much broader approach, and he wanted to try to get some input as to which way Council is leaning before we finish it.

Mayor Stombaugh said before we go into discussion can we get a motion. Mr. Jaywork asked what kind of motion Mayor Stombaugh is looking for. Mayor Stombaugh said that this would be a first reading. Mayor Stombaugh realized this is not for a first reading but for discussion. Mr. Jaywork said basically he wanted to hear what the Council might have to say and then we can bring it up for a third reading at the next meeting or some later meeting.

Mayor Stombaugh said she would like it to be not specific to one property; she would like to see if someone comes into our town and if they don't abide by the rules for the one property why should they be allowed to move onto another property. She said secondly she doesn't like the idea of them not paying the taxes even if it becomes a lien. Mayor Stombaugh said a lot of the developers come in when we do the appeal days - several of them have come in - and asked for a lower amount on the lots that are not developed and they have been granted that. She said our budget in fact that is one of the things that's on the agenda tonight - our budget - people asked why we are having some problem. Mayor Stombaugh said some of the things are delinquent taxes. She said when we do our budget we figure a certain amount of taxes to be paid to the town and when it gets to the point from 2006 through 2008 - she didn't even do 2009 - the amount owed to the town is \$223,699.36 in delinquent taxes from 2006 to 2008. Mayor Stombaugh said people talk about fairness - we were considering doing a tax increase and part of the reason for that is the people that paid their taxes would be faces with paying an increase while there are a number of people who just haven't paid their taxes since 2006. She said there are a number of developers on here, a number of LLC's, and she will wait until it comes up on the agenda before she will discuss the rest of it.

Mayor Stombaugh asked if anyone else would like to address the subject. Councilwoman White had a question for Mr. Jaywork. She said for the far ranging one - the developer that had 20 parcels, but he is only building on two - so you are saying that this would only apply to those two, and he would still be in good standing as this reads now. Mr. Jaywork said the exception

that he put in there for the Council's consideration - this is not far ranging, this would be just the ordinance that you have in front of you - it would still say - it took the far ranging approach of the developer that wanted to build on one vacant lot he would only have to pay his taxes on that one vacant lot, and we can take that out. Mr. Jaywork said he put that in there just for Council to look at - again one concern is that if you are XYZ Development Company and you owed taxes on 120 lots that are vacant that last year were basically a field and now they have got roughed in streets and curbs, but they are basically vacant lots, and you have a chance to build a house on one lot but you have got to pay the taxes on the other 120 lots just to build that one house you may decide it is too expensive to build a house and you may just stop building. He said he is not arguing one way or another, but he is saying that could be one of the unintended consequences of the ordinance.

Mayor Stombaugh asked if anyone else would like to address the Good Standing Ordinance.

Mr. Hugg asked if this was recommended to one of the committees for consideration before the second meeting in January. Mayor Stombaugh said she does not believe it was discussed by a committee. Mr. Hugg said if you have the opportunity you might want to ask the Finance Committee to at least discuss some of the ramifications.

Councilman DeFeo said you said the Town of Seaford had the far reaching and they are the only ones within the State that have that as far as you know. Mr. Jaywork said he can't say that - no - he does not know that for a fact. He said we looked at several - this ordinance originally started being drafted about three years ago - we drafted it and sent it to the town and it just kind of fell off the radar screen and nothing happened with it, so he can't tell you - he just knows it was modeled after Seaford and he does not know what other towns might follow the Seaford model.

Mayor Stombaugh asked if they wanted to send this to the Finance Committee. Mr. Hugg said he just suggested that - he said that may be an opportunity to discuss the ramifications of these two choices if you want to. Mayor Stombaugh asked if there was a motion to send it to the Finance Committee.

Councilman Raynor made the motion to send it to the Finance Committee. Motion was seconded by Councilman Riddagh and carried unanimously.

D. Reconsider the Vote on FY 2010 Budget - Mayor Stombaugh said there was an error made at the last meeting. She said when you sit up here it is difficult to know everything and she doesn't think any one of us that sits up here wants to give the notion that we know everything. Mayor Stombaugh said it is tough - when you get everything thrown at you at one time sometimes it is really tough, but it was not done properly at the last meeting so she asked that it be put back on the agenda so that we could correct our mistake and make everything legal.

Mayor Stombaugh asked that there be a motion to rescind the vote on the 2010 budget. Councilman Riddagh said so moved. Motion was seconded by Councilman Raynor.

Councilman DeFeo asked what the issue was. Mayor Stombaugh said the issue was that Councilman Raynor made an amendment to the motion and he was told that he could not do that and that is not proper. She said when she was first elected Mayor one of the things that she realized was Council really didn't have any rules or policies to follow, so she took an online course for Parliamentary Procedure and there was one called basic meeting procedures and she presented that to Council and Council voted to accept it as basic meeting procedures to follow, and it specifies in there that - you can't amend a vote - the time to amend is in between when a motion is seconded and when it is voted on. Mayor Stombaugh said Councilman Raynor was told that he could not do that and that is what was done improperly. She said he has every right - in fact, Mr. Jaywork do we even have to vote to rescind this - it was an error that was made and it needs to be corrected. Mayor Stombaugh said she didn't see why it would have to be voted on - if it went to the AG's office right now we are in violation.

Mr. Jaywork said when he read through the transcript of the minutes, he will say it was initially confusing to him. He read "Councilman Raynor said he would like to amend the budget to delete the 3 percent pay raise" - when he first read that it sounded like Councilman Raynor was making a totally new motion; he wanted to amend the budget. Mr. Jaywork said he thinks that is what some of the people at this table thought, but when he read it over two or three times he came to the conclusion that Councilman Raynor motion was really to amend the main motion. He said Councilman Raynor was saying basically there is a motion to approve this budget and he is moving to amend that motion to take the 3 percent pay raise out and put that in the pension fund. Mr. Jaywork said his motion was seconded and he agrees that he thinks that looking at it and reading it several times

he thinks that in fact at that point there should have been a vote on Councilman Raynor's motion to amend. He said if that had passed then you would have had a budget in front of you without the 3 percent pay raise; if that failed then you would have been back to the original motion. Mr. Jaywork said unfortunately that was the night of the snowstorm and he was not here that night. Mayor Stombaugh said you usually come in with the Charter and everything so she did not have anything with her. Mr. Jaywork said had he been here - procedurally what should have happened, and again we have not adopted Robert's Rules formally, but we do look at Robert's Rules as kind of... Mayor Stombaugh said but we did adopt the basic meeting procedures which was addresses... Mr. Jaywork said technically what probably should have happened at that point is that Councilman Raynor should have said he is asking for a ruling from the Chair on whether or not his motion to amend is in order, and then Mayor Stombaugh as Chair would have ruled either yes it is or no it isn't and it would have gone on from there, and then depending upon the Mayor's ruling - if she ruled against Councilman Raynor's motion he could have appealed that to the entire Council or if she ruled in favor of Councilman Raynor's motion anyone else could have appealed her ruling to the Council and then the Council would have voted whether to uphold the Chair's ruling.

Councilwoman White said well then that leaves her a little confused because that is the reason that she said what she did to Mr. Hugg so that Councilman Thornton would have to accept Councilman Raynor's amended motion because there have been numerous times when she had to agree to amend the motion that she made to agree with - if the Mayor said well I want to add this to it, she had to agree to amend her motion for what she wanted. Mayor Stombaugh said that was improper. Councilwoman White said that is what happened in the past and that is the reason she spoke up at the meeting because it was in her past experience that it was done...

Mr. Jaywork said he thinks the confusion is that sometimes it will happen that somebody makes a motion and when you call this a friendly amendment somebody says they would like to change that, so you turn to the maker of the motion and say would you be willing to amend your motion to do this and that, and then the seconder is asked if they would be willing to amend their second - that is one way of doing it. Councilwoman White said that has been our practice. He said then if that occurs then basically it is the original motion - the maker of that original motion has accepted these other suggestions, but if the

original maker of the motion says no or if the seconder says they don't want to do that either then that motion is still on the floor and it is proper for another member of the Council to say "I make a motion to..." Mr. Jaywork said once the motion has been made and seconded it is no longer my motion it is the Councils' motion and then the Council acts on it, but he can see where there was confusion because probably many times in the past rather than having these adversarial motions a lot of time somebody would say would you be willing to amend your motion.

Mayor Stombaugh said do we just revote on this or how do we handle this. Mr. Jaywork said it seems like a simple question - he said let me put it in - a way of clearing this up and resolving the issue he thinks the proper thing to do would be a motion to ratify and confirm the previous vote, hopefully that would pass because he guesses the concern would be the count - there was a 4-3 vote at the last meeting to adopt this particular budget. He asked if anything has really changed other than the fact that the Charter says you are supposed to adopt this before the end of the year, but people have not been paid, contracts have not been entered into, there has been no substantial change in position of alliance on that prior vote within the past two weeks. Mr. Jaywork said that would be his concern if you voted 4-3 to approve something and then something changed in alliance upon that and then you come back tonight and your vote is 4-3 the other way then that would be a real problem.

Councilman Raynor said since it isn't a problem he guesses they can go through with it. Mr. Jaywork said he thinks it is proper. Mayor Stombaugh asked Councilman Raynor if he would remake his motion. Councilman Raynor said don't you have to vote on your original motion - okay - well if that's the case he makes the motion that we delete the 3 percent and apply it to the pension plan. Motion was seconded by Councilman Riddagh.

Mayor Stombaugh said the one thing she wants to say about this is she thinks it was a brilliant idea on your part because our pension plan is under funded at this point. She said somewhere along the line we are going to have to come up with the money to bring the pension plan up to where it should be and that is not because of any fault of the town - what happened there many pension plans have fallen into the same situation because of the economy. Mayor Stombaugh said most pension plans are where it is an interest bearing and that amount of interest - you all know what has happened to the interest in the market, so that is what happened to the pension plan. She said it

wasn't that anything was neglected or anything was done wrong it was just, again because of the economy. Mayor Stombaugh said we have a first and a second, is there any further discussion.

Mr. Jaywork said just so he is clear, Councilman Raynor's motion is to amend the original budget motion to take out the 3 percent and direct that money into the pension plan. Councilman Raynor said that is correct.

Motion failed with Mayor Stombaugh, Councilmen Raynor and Riddagh voting for, and Councilwoman White, Councilmen Evans, DeFeo, and Thornton voting against.

Councilman Riddagh said he would like to amend the original motion to delete the 3 percent raise from the budget. Motion was seconded by Councilman Raynor. Mayor Stombaugh asked if there was any discussion. Councilman Riddagh said he wanted to make this perfectly clear this is no disrespect to town employees or say that they don't deserve a raise - he has known a lot of the town employees before he was on Council, he has met a lot more since he has been on Council and from Mr. Hugg on down he has been treated with respect, courtesy, and everything he has asked for he has gotten, and he has no problem that some of the town employees probably do deserve a raise, but he feels in these economic times the next couple years is going to be critical to the Town of Smyrna - it is going to be critical to the citizens, it is going to be critical to the town employees. He said as it was just mentioned we have an under funded pension - we have approximately \$13,000,000.00 of debt coming up and he is not saying that that is wrong - he voted for a lot of that because he thought we needed it, but we do have to pay it back. Councilman Riddagh said we don't know what fuel costs are going to do, we depend a lot on transfer taxes - he does not believe transfer taxes and real estate fees are going to go back to where they were any time soon, he doesn't think the economy in Delaware is going to jump up that quick - we have lost a couple car manufacturers, we have 500 people we lost at Valero, a bunch of car dealerships, a bunch of satellite businesses, the ones that haven't closed have cut back and laid off employees - how many of those employees are in the Town of Smyrna he does not pretend to know but he is sure we have our fair share. He said he thinks, and he agrees with Mr. Hartnett, the people we lost on the Finance Committee he applauds them for being able to come back and propose a budget without a tax increase. Councilman Riddagh said he knows they worked very hard on it, he knows the Mayor worked very hard on it and they were good people and he is sorry to see them leave too, and he knows some of these things

that he is bringing up now are not new to them. He said we need people like Mr. Hartnett and people that have ideas to either attend the committee meetings or if they can't do that get with their Council people and relay their ideas and see if they will work. Councilman Riddagh said the only thing that you can do is raise taxes, cut revenue, or a combination of both, and he sees it coming down the lines it looks like it is going to be a combination of both eventually. He said he is against the 3 percent not because of the town employees, he is against - he hopes he is wrong, but he can see us sitting here next year laying somebody off and he does not want to do that - it does not help the economy if we have to lay people off in the town. Councilman Riddagh said he thinks just because we have the money we don't have to spend it, maybe he is a little frugal, maybe he is inexperienced, probably all of the above, maybe next year everything he says will be wrong and how bad off will we be if he is wrong - we will still be in good shape. He said he just thinks that - we had like Mr. Hugg brought up and he does not know who the idea came from where we are able to save \$8,000.00 to \$9,000.00 a month, if he understand the figures correctly on the credit card and debit card issue where we are going to forego taking them come February 1st - he thinks that was a brilliant idea - he does not know who brought that up but the person that brought that up they should get a bonus - instead of a raise they should get maybe a 10 percent bonus, 10 percent of \$100,000.00 is \$10,000.00 that is a lot of money, and \$90,000.00 saved is well worth it. Councilman Riddagh said we need to start cutting everywhere - he just believes we need - a few thousand here, a few thousand there it all adds up. He apologized to his colleagues for taking so long but that is how he feels about it, thank you.

Councilman DeFeo said there is obviously an elephant in this room with us and it has been upstairs here in this meeting room for several weeks and it has been downstairs where the Finance Committee has been meeting for several months, and it is all around the 3 percent raise. He said we have discussed union raise versus non-union raise and we see where the town's hands are tied with those employees that are unionized. Councilman DeFeo said the non-union employees and the number running around his head comes out to some where around 79 of them - when we went back - the Finance Committee went back and said that we need to cut, we need to cut, - and the raises were funded through cuts within the department. He said there were no taxes increased here within this town. Councilman DeFeo said the part of the non-union 3 percent raise and what he hears in this room and what he heard the last time that they met and the time

before that was that a lot of it seems to be directed at certain individuals, and he is not even going to speak to that but that is the impression that he gets. He said his fear is that there is a lot of collateral damage that is going to happen because of that. Councilman DeFeo said we have a Councilman who said "...that obviously deserve..." what they are going to get with this 3 percent increase - he would like to get one too but he is not, where he works they are not seeing that. He said but there are ways to make that happen; there was money that was cut, there were budget lines that were cut and the money was found for raises for everybody, and again it is that 3 percent. Councilman DeFeo said he is in favor of that so before the vote even goes through he is going to still stand his ground where he was the last time - he supports that, he thinks the people worked hard and it is well deserved, and he hates to see these folks suffer because of feelings for other individuals.

Mayor Stombaugh asked if there was any further discussion. There was none.

Motion failed with Mayor Stombaugh, Councilmen Raynor and Riddagh voting for, and Councilwoman White, Councilmen Evans, DeFeo, and Thornton voting against.

Mr. Jaywork suggested that Council vote to ratify and confirm the original motion that passed at the last meeting. Councilman Thornton said actually it was to accept the resolution that the budget be accepted as it is presented. Mr. Jaywork said this simply is a ratification/confirmation vote. Mayor Stombaugh said and we have a second so it doesn't have to be seconded again. Councilman Thornton said it has to be seconded because he just made the motion. Motion was seconded by Councilman DeFeo. Mayor Stombaugh asked if there was any discussion. There was none.

Motion passed with Councilwoman White, Councilmen Evans, DeFeo, and Thornton voting for, and Mayor Stombaugh, Councilmen Raynor, and Riddagh voting against.

E. Appointment (2) to Finance Committee - Mayor Stombaugh said she sent résumés out last week to Council - there are two people that have stepped up that would like to serve on the Finance Committee. She said she would like to make the appointment of Robert M. Novotney - you have his résumé - he is very, very qualified to serve, and she thinks he will bring a lot to the committee. Mayor Stombaugh asked Mr. Novotney if he would like to speak.

Mr. Novotney came forward and said he was chairman of the Audit Committee two years ago and at that time he provide Council with a detailed résumé, and this time around which was his fault he gave Council a thumbnail sketch, not taking into consideration that there are new members of Council. He said if he can indulge Council for a moment and give you a more detailed résumé if you think that would help he would be happy to do that. Mr. Novotney said his education is he has a B.S. in Economics from Delaware, he has a Master's in Business Administration with a concentration in management from Widener University, he is a Certified Financial Planner, he has worked 31 years at DuPont - the first couple years in manufacturing, he was a Business Analyst, a Financial Analyst, he was then an Accounting Supervisor for the Central Research and Development Department, he was then the Accounting Accounts Receivable/Accounts Payable, Shipping/Receiving Manager at Glenolden Lab, he then had the same capacity but for the entire Central Research and Development Department, he worked on special projects at the corporate level at DuPont - one of which was a sale/lease back of their aviation fleet - his recommendation was to do a sale and then lease it back, the accepted his recommendation and that is the way DuPont operates today. Mr. Novotney said he was then and as he retired a Global Credit Manager for the Textile Businesses worldwide until they sold those businesses about five or six years ago. He said in that capacity he was not only responsible for receivables in textiles, but he was also attending various major bankruptcies in the textile industry including Burlington Industries, Fruit of the Loom, he was on the unsecured creditors meetings, he was a member of that committee and he was the only non-lawyer there. Mr. Novotney said he retired after 31 years.

Mayor Stombaugh asked if there was a motion. Councilman DeFeo made the motion that we confirm Mr. Novotney for the Finance Committee. Motion was seconded by Councilman Thornton. Mayor Stombaugh asked if there was any discussion. There was none. Motion carried unanimously.

Mayor Stombaugh said that make six people on the Finance Committee - three Council people and three citizens. She said we usually try to keep an odd number on the committees because of votes - she did have another person step forward and Council has her résumé. Mayor Stombaugh said she thinks it is very important that we have cross-reference - people in all capacities. She said she is not here tonight because of another commitment, but she worked in accounting, cash management,

customer service, accounts receivable/accounts payable, she has quite a history here and she would be very well suited for the Finance Committee, so she would like to make the appointment of Michelle Swift-Howard.

Mayor Stombaugh asked if there was a motion. Councilman DeFeo said so moved. Motion was seconded by Councilman Raynor. Mayor Stombaugh asked if there was any discussion. There was none. Motion carried unanimously.

Mr. Hugg asked if he could get copies of both of those résumés. Mayor Stombaugh said yes. Mr. Hugg said he did not get copies before. Mayor Stombaugh said she thought she had sent them to Mrs. McKinney. Mr. Hugg said maybe it didn't come through. Mayor Stombaugh said sure she would get him copies.

Councilman Thornton said some of us had difficulty downloading them.

NEW BUSINESS

A. Good Faith Amendments to Pension Plans for Compliance with Section 415, Regulations, and for Compliance with the Pension Funding Equity Act of 2004 - Mr. Hugg said we received this information from Mr. Stulir regarding two amendments to the pension plan to make them consistent with the recent federal changes - Section 415, Regulations, and for Compliance with the Pension Funding Equity Act of 2004. He said there is a packet that Mr. Stulir had distributed to Council that has his communications back and forth with our pension advisors - the bottom line of which is we needed to sign these by December 31st so Mr. Stulir has done so in order to keep us in compliance, but Council should ratify these changes. Mr. Hugg said these are as described in one of the communications from Sandy Harrison who is our actuary - purely generic in nature for legal compliance purposes and do not have any practical effect on the plans themselves, so he would recommend that Council ratify these two changes.

Mayor Stombaugh asked if there was a motion. Councilman Thornton made the motion to ratify the changes put forth by the memo from Mr. Stulir regarding the pension plans. Motion was seconded by Councilman Evans. Mayor Stombaugh asked if there was any discussion. There was none. Motion carried unanimously.

B. Discussion of Delinquent Property Taxes - Mr. Hugg said he would like to bring Council up to date on some things that have been going on. He said Mayor Stombaugh is correct that particularly 2008 and 2009 we have seen an increase in the delinquency on property taxes ranging from simply being late to being unpaid. Mr. Hugg said that seems to be a growing problem everywhere. He said as you may recall back in July or August after working with Mr. Jaywork and Mike Rushe of his staff, Council agreed that we would start with the largest outstanding balances other than 2009 - pursue them with the possibility of initiating monitions actions thus taking to Sheriff sale, and see if we couldn't start to close that gap. Mr. Hugg said we have had a significant amount of success particularly in the last couple of months - he thinks that some of these property owners as we have gotten closer to the end of the year for whatever reasons they have decided to pay their property taxes - maybe get the write-off in this fiscal year or whatever. He said we had initially identified a list of about 30 high priority delinquent properties - we've collected on 20 of those accounts - we have four to six more that paid two years out of three, but still have payment agreements for the balance. Mr. Hugg said Mr. Rushe told him this morning that there are two properties that will go to monitions proceedings or initiate monitions proceedings this week, and four others that are moving to that point where we will actually file the notice for Sheriff sale. He said separately from that, before Christmas he talked to all of the large developers who had outstanding balances - most of those as you recall is that we did the scrap assessment to pick-up all of the previously untaxed, un-built lots, and so we had a lot of developers with sort of surprises. Mr. Hugg said Liborio paid their taxes in full, two others have advised him that they will pay them early this month, and he will remind them of that tomorrow. He said those accounts were also advised that we were also considering a rather strict good standing ordinance and it was to their best interest to make sure they had their accounts cleared, so we are moving in that regard. Mr. Hugg said all of those things together we have collected about \$80,000.00 in the last month, month and a half so we have made a significant dent in the amount of money that is owed to us. He said he would caution Council to be careful when they are looking at some of the raw numbers - there are a couple of large amounts that are subject to court cases or protective services arrangements where we will collect the funds at either the demise of the property owner or when the property owner sells the property, but we can't take any further action. Mr. Hugg said there is also a couple of pending bankruptcies, so we need to be very careful on an individual basis as we walk

through these to not automatically assume that this is just a huge amount outstanding and no action has taken place. He said the other thing that we had agreed, and he believes he has discussed this with the Personnel or Finance Committees back in October or November is that shortly after the 1st of the year we are going to assign one of the staff members who works for Mr. Stulir, who has been working on our small claims accounts - these are people who owe us small amounts of unpaid utilities or collection, enforcement action, or what have you. Mr. Hugg said we have assigned that person to basically start calling and contacting all of the \$200.00, \$300.00, \$400.00 accounts - we have been basically focusing on all of the ones that were above \$2,000.00 so that is where we have been putting out effort. He said he thinks we have a plan going forward - he said he was reluctant to actually give you a list of the paid and unpaid balances with individual names on them without having the opportunity to go through them and kind of say this one is what it is because - there are a couple of properties that are also tied up in dangerous building violations, and so what you see on the outstanding balances say a \$10,000.00, \$15,000.00, or \$20,000.00 delinquency most of it is cost of an enforcement action that was rolled over into a tax lien and so those have kind of a different process. Mr. Hugg said you do make a very good point that we need to be very diligent in trying to collect unpaid amounts that are due the town whether they are taxes, or enforcement actions, or whatever. He said it is a concern that there seems to be - not a huge portion, but a growing number of accounts that are - that he would have normally expected them to be paid and taken the 6 percent discount in the spring that didn't get paid in September, and now are not paid in December, and that is a bit of a concern.

Mr. Jaywork asked what the penalty is on those accounts. Mr. Hugg said it is 1½ percent a month or 18 percent a year and it is applied every month to these accounts. Mr. Jaywork said it sounds like he is going both ways here but he wants the Council and the public to not get excited - this is like money in the bank because that is real property that is not going anywhere - you have a first lien that comes ahead of even any mortgage and it is earning an interest rate of 18 percent a year so it is more a question of cash flow than it is the money.

Mayor Stombaugh said the reason she brought it up was because of - at our last, not the last account of the budget but the one prior to the last one, our budget was over \$261,000.00 and just through 2008, not counting 2009, the tax amount owed to us is \$223,000.00 - almost \$224,000.00 - that would have almost

taken care of that deficit. She said the main reason she wanted to bring this up also was for a couple hundred dollars or a couple thousand dollars she doesn't want to see somebody lose their home. Mayor Stombaugh said she was just going to ask if - and she wanted all of Council to be involved in it - she could have gone to go to Mr. Hugg by herself but she really wanted Council to hear some of the answers - have all of these people been contacted, and she - a couple of these on here she thinks maybe they are mistakes or the people don't realize that they owe a balance - a couple of these small ones. Mayor Stombaugh asked if everyone on the list been contacted. Mr. Jaywork said he can't speak for the town staff's point of view - he assumes they sent a letter, but he can assure you the very first step his office, before they even file monitions they send out a certified letter. Mayor Stombaugh said she is talking way before that. She said the other thing is she would like to get the word out to the public, if this is okay with the Council and the town, if people would come to us - these are tough times and you know with her business - she'll be the first one to tell you there have been a couple, not recently, but there has been a couple years she fell into tough times and her taxes weren't paid right when they were due, but she made a phone call, she went to see people, she let people know what her intent was and she thinks if the public would do that - we are basing our budget on numbers that we are expecting to come in; if people could come and talk to the town it would help us with being able to figure what our budget is going to be and she would like to see the town, if there is legitimate reason to work, which she believes we are doing. Mr. Hugg said we are doing that, and a number of the 20 that are, actually he thinks there are 18 that have paid in full, but some of those actually had a payment plan where they paid a third, a third, a third, or something. He said there are six others that right now have active payment plans and they range anywhere from full payment in 90 days to full payment in six months, and we worked that out with those property owners already. Mr. Hugg said if there are any of these that are outstanding - clearly that is something that we can do and are willing to do. He said in terms of process, everybody who owes us funds, has unpaid taxes and received at least one notice that they have outstanding taxes - a number of them have not received a second notice and that is kind of where we are going to go with having some staff make phone calls and some letters. Mr. Hugg said when they reach the point where we are considering some kind of formal action as Mr. Jaywork indicates the first step that his office does is a formal letter saying this is an attempt to collect a debt, blah, blah, blah. He said the bulk of the owed taxes are actually 2008 and 2009,

and 2009 is current - 2008 would have gotten at least two notices - the tax bill and the delinquency notice.

Mayor Stombaugh said she just wants the public to realize that - like you see advertisements now on television about foreclosures when they keep saying just don't do nothing. She said she just wants people to realize that they need to come to us and talk to us and it is true - just don't do nothing. Mayor Stombaugh said that is not going to help the situation any. She said we need to know what kind of figures we can use in our budget, but she definitely don't want to see someone's home taken away from them, but she thinks they need to come and talk to us.

Councilman Raynor said he does know of one person who is dead so you can't very well reach him and his name is on the list. Mr. Hugg said in that case there is probably an estate or if there is property still titled to that person - it is not unusual to have property that is still titled to somebody who is deceased, but ultimately when the estate is settled then if there is an outstanding tax obligation we have a first right to it. He said sometimes - we have had a couple of situations where part of our difficulty has been trying to find the heir.

Mayor Stombaugh asked if there was any further discussion. There was none.

OTHER COUNCIL BUSINESS

There was none.

ADJOURNMENT

Councilman Riddagh made the motion to adjourn. Motion was seconded by Councilman Raynor. Meeting was adjourned at 9:04 p.m. by unanimous vote.

Council Secretary