

MINUTES OF THE MEETING
SMYRNA TOWN COUNCIL
February 16, 2010

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 Thomas I. Barrows, 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.

Mr. Hugg asked that item 8(a) be tabled and rescheduled for the next meeting. He said we will be having a Finance Committee between now and then, and there are some items that need to be discussed with Finance.

Mayor Stombaugh asked for a motion to table item 8(a). Councilwoman White said so moved. Motion was seconded by Councilman Evans and carried unanimously.

Mayor Stombaugh asked if there were any other additions or deletions to the published agenda. There were none. Mayor Stombaugh asked if there was a motion to accept the amended agenda. Councilwoman White said so moved. Motion was seconded by Councilman DeFeo and carried unanimously.

MINUTES OF PREVIOUS MEETING

Mayor Stombaugh asked if there are any additions or deletions to the minutes of January 19, 2010. There were none. Mayor Stombaugh asked if there was a motion to accept. Councilman DeFeo said so moved. Motion was seconded by Councilman Riddagh and carried unanimously.

REPORTS

A. Bills & Financial Statement - Mr. Hugg said other than what is in Council's packets he had nothing to report tonight.

B. Presiding Officer - Mayor Stombaugh said she would just like to say that she thinks the Town staff has been doing a wonderful job under the conditions given to us and she hopes we don't have too many more.

C. Town Attorney - Mr. Barrows stated he is here tonight because he had a matter on the agenda that required his presence and Mr. Jaywork didn't believe it was necessary to have two of us here.

Mayor Stombaugh asked Mr. Barrows to take back to his staff that your new employee did a wonderful job at the last Council meeting. Mr. Barrows asked if Mayor Stombaugh was referring to Barrett Edwards. Mayor Stombaugh said yes, he did an excellent job.

D. Police Chief - Chief Baldwin stated he had no report this evening.

E. Town Manager - Mr. Hugg said Council has his report in their packets and he has nothing to add.

F. Committees - Councilman Thornton stated the Public Safety Committee was cancelled due to the weather.

Mayor Stombaugh stated the Finance Committee was also rescheduled for February 23, 2010 at 5:30 p.m.

Councilman Raynor stated the Personnel Committee was cancelled also.

Mr. Hugg said Council does have the minutes from the Utility Committee meeting which was held on February 3, 2010 and there is an item on the agenda tonight for further discussion.

Councilman DeFeo said he would like to add one more thing about the Utility Committee meeting held on February 3rd. He said they did ask the Town Manager to temporarily suspend the increase of the deposits as a late charge. Councilman DeFeo said right now residents were being charged an extra \$50.00 to

their deposit, bringing that to \$250.00. He said they felt with the economic times right now that was a bit burdensome. Councilman DeFeo said that will be suspended until June 1 - Mr. Hugg will gather some data that the Utility Committee can review at that time to see just how severe that this has been.

Mayor Stombaugh asked if there were any other reports. There were none.

RECOGNITION OF VISITORS

Visitors present were Bill Evans, Ed Lehman, Cindy Cogar, Daryl Jester, James E. Veit Sr., Melaine Minear, Ron Menninger, James Harkins, William Wilson, Pamela Anderson, Joseph Sheridan, Seth Clevenger, Grant Prichard, and Regina Brown.

A. Presentation ref. Kent County Sports Complex - Mayor Stombaugh stated this portion of the meeting we like to recognize visitors. She said tonight we have a special presentation from Kent County Sports Complex.

Bill Strickland came forward and said he is the President of L&W Insurance in Dover and he is here tonight representing the Greater Dover Committee.

Linda Parkowski came forward and said she is the Director of Tourism for the State of Delaware, and she is also representing the Greater Dover Committee.

Mr. Strickland said the Greater Dover Committee is an organization that is comprised of 58 business owners in the greater Dover area, and is looking at a project that they refer to as the Kent County Sports Complex as a project that will have a profound economic impact on Kent County, and frankly speaking, the entire State of Delaware. He said their membership has charged the Executive Committee and the Economic Development Committee of the Greater Dover Committee to find a project that would accomplish two very specific items as relates to economic development, and those items are to: a) find a project that is quasi in a way recession proof - when you think about this economy one thing that we all spend money on and continue to spend money on is our children. Mr. Strickland said they think the proposed Kent County Sports Complex meets the criteria of being somewhat quasi, if you will recession proof. He said the second item that they were looking for in endorsing this project was one that would have a relatively quick economic impact. Mr.

Strickland said for the last three months they - he, Ms. Parkowski, and Cindy Smallwood of the Kent County Tourism Office - have been making the rounds and explained the project to various towns, governmental agencies, as well as businesses to give them a better understanding of this proposed project and to gain a better understanding of how this might be something that might have a real positive impact on your community. He said with that being said he would like to introduce Linda Parkowski with the State of Delaware Tourism Office.

Ms. Parkowski came forward to give a PowerPoint presentation. She said the Greater Dover Committee endorsed this project, and she wanted to give everyone a little background of how it even started. Ms. Parkowski said she took over as Director of Tourism in September of 2008 and when she got into her position she realized that there were RFP's - requests for proposals - coming in to the State of Delaware, and there were quite a few of them for sporting events and they were for long field sporting events. She said so she tried to place them in different facilities - there is Kirkwood Soccer in New Castle County, there is Hudson Fields in Sussex County - she tried to place them but one of the requirements was that they really needed multiple fields in order to do these tournaments. Ms. Parkowski said then she started looking at the tournaments, and you will see in this presentation that there is quite a bit of economic development involved in tournaments. She said this facility would not just handle tournaments; it would also be a community generator and fill a need for Kent County. Ms. Parkowski said the other thing that they did was create a Delaware Sports Commission which actually goes out and bids and recruits tournaments for the State, and right now Kent County is not in a position to bid on anything because they do not have the facilities large enough in order to attract these tournaments. She said we are in a great location in Delaware on the northeast corridor, right off of I-95 in order to generate interest in these tournaments, and also from her perspective in the tourism perspective it generates a lot of economic development as far as people staying in hotel rooms, spending money in restaurants, and all of the above.

Ms. Parkowski began her PowerPoint presentation. She said she asked herself what could meet the needs and wants of the majority of the youth in Kent County; what can serve as an economic generator; what is somewhat recession proof because everybody knows we are still spending on our children, and especially if they are playing sports; what is healthy; and what

can enhance overall economic quality of life for everyone in Kent County. Ms. Parkowski said the answer is sports and a sports facility. She said then they started to look into what could it be - 15 multi-purpose fields that could host soccer, lacrosse, football, and field hockey, a lit turf field with seating at least up to 1,000, concession and pro shop, locker rooms, meeting rooms, restrooms, and you can imagine thousands of children using this facility from Kent County and also thousands of spectators and outside visitors into Kent County. Ms. Parkowski said their closest competition is the United States Training Center in Downingtown - they did a field trip and took a look at what they had to offer and pretty much modeled, at least the outside portion, on what they were doing. She said this facility fills hotel rooms up to 26 miles, the local convention and visitors bureau has six full time sales people selling this thing because sports is so big in that area - it is definitely a generator. Ms. Parkowski said the benefits that they see of a facility like this would be economic impact, increased visitors, improved quality of life, a recreational outlet, increased taxes, increased property values, and also good visibility. She said they went to the City of Dover and asked if they had any land and they looked around - they needed at least 85 to 100 acres for a facility like this. Ms. Parkowski said then they went to the County and asked them if they had any land, and they said that they had a couple areas that were land banked and that they would certainly look at it. She said then they made a presentation to the Kent County Levy Court and they have agreed to donate the land, so the land portion of the capital costs would be covered by the County. Ms. Parkowski said the other thing this allows is it allows Kent County to bid on larger tournaments, and the State to bid on larger tournaments that right now they can't place anywhere. She said it would create jobs, be a better ORI, increase revenues for the hotels, restaurants, and shopping - because if anyone has ever traveled for one of these tournaments you know you do spend money on all of the above.

Ms. Parkowski said just a few quick facts about economic impact: in amateur sports the average spent is 3.3 to 4 billion dollars a year - that is 10 times more than the 2005 Super Bowl; the Greater Chattanooga Sports and Events Committee estimated in 2005 that they hit the 23.5 million mark in economic impact from sporting events. She said just this past year the US Youth Soccer Regional I championship - this is one tournament in Charleston, West Virginia - provided over 12 million dollars in economic impact. Ms. Parkowski said over 20,000 people spent

five days in Charleston, West Virginia.

Ms. Parkowski said why tournaments - well they shop in our shops, they eat in our restaurants, they stay in our hotels, they pay the accommodations tax, they buy groceries, pay tolls, and this is all without State money. She said as she hinted before some of the selection criteria for tournaments is they need, at least for long fields of the sports she mentioned before, they need at least 14 fields in one location, a minimum number of hotels, a variety of restaurants, and essential geographic locations. Ms. Parkowski said Kent County has all of that, easily. She said in 2007 we hosted what was called the Tournament of Bands, so it is not just sports related - there were over 6,000 participants in a band tournament; it looked like NASCAR weekend on Route 13. Ms. Parkowski said they held it at Del State. She said they wanted to make Kent County their permanent home for the Tournament of Bands - this East Coast Tournament. Ms. Parkowski said the economic impact was \$4,000,000.00 - the issue was Del State had home games every other weekend so we could not be their permanent home, but a facility like this could certainly do that. She said imagine four to six regional tournaments with each of the sports listed, and a small tournament would have 2.5 million economic impact. Ms. Parkowski said two to four national tournaments could be up to 3 to 6 million each, and then add Tournament of Bands to that and a conservative estimated impact could be of 30 million - and that is just the tournament play that would be in a facility like that - that is not the recreational use and the club sports, and the camps and everything else that could be held at a facility of this such. She said when she was talking about the money that was coming in when she first started her job - these are some of the tournaments that we lost out on: US Lacrosse Under 15 National Championship - that was 2.7 million of loss; Amateur Youth Football - that was 1.8 million in loss; and then the Tournament of Bands, so when she started her job she saw that they were losing 8.5 million in just 12 weeks and she thought they really need to do something about that - they are really missing the boat and the opportunity. Ms. Parkowski gave an example with just one tournament if you have 5,000 spectators and about 1,500 participants the economic impact - and these multiplier figures are what the National Association of Sports Associations use - that's \$9,000,000.00 for one tournament of economic impact. She said Kent County needs the business; the recession has certainly put a severe effect on the County; hotel occupancies have dropped dramatically; more and more hotels have been built and the facility can certainly help,

especially in the slower non-Summer months. Ms. Parkowski said there is an excess demand for fields alone in Kent County; thousands of youths play; Schutte Park is filled all the time; all of the soccer associations and everything talk about how there is a need for fields of this type. She said soccer has grown - in 2000 it had 10,000 participants, and it now has 11,500 and that is an increase of about 15 percent. Ms. Parkowski said field hockey - in 2002 had about 1,300 participants and 2008 had over 1,500. She said the biggest growth has been in lacrosse, and we are in a perfect location for lacrosse in the northeast corridor. Ms. Parkowski said from 2001 to 2008 it has increased 57 percent. She said high school lacrosse has increased 115 percent for participation. Ms. Parkowski said the big one is youth girl's lacrosse which has increased 500+ percent - it is really an up and coming growing sport that they are in a great location. She said she attended the National Association of Sports Commissions Trades Show last year and the US Lacrosse Association said that if we had this facility built we would have gotten the tournaments for 2011 and 2012 easily. Ms. Parkowski said there is definitely a need and there is demand. She said the closest competitor is in Downingtown, Pennsylvania - they book hotel rooms at least 15 miles away. Ms. Parkowski said they use a reservation system that is use through most sporting facilities where if you are going to book a tournament you book through the reservation system and then the facility actually gets a rebate or some type of fee. She said the other competitor is the Maryland SoccerPlex in Germantown, Maryland - that actually has like 22 fields.

Ms. Parkowski said the proposed location for their complex is in Frederica - if you know where the Meddings Market is, the big propeller, it is on the east side of that. She said the County had a 600 acre farm there that they are proposing to give or lease or whatever, at least 100 acres to this facility. Ms. Parkowski said there is a proposed intersection that DelDOT is working on and should be done in 2013 - Ms. Parkowski showed everyone a sample layout of what the facility would look like with the fields and a stadium. She right now they are in the process of doing a feasibility study, which Mr. Strickland will talk more about. Ms. Parkowski said they lost one of those lacrosse tournaments she spoke about earlier to the National Sports Center in Blaine, Minnesota. She said that facility started similar to this in 1990 with just a grant from the State and they are self-supporting and have added all kinds of other entities and facilities and amenities to their facility. Ms.

Parkowski said they could host state championships, Kevin Charles from DIAA has been involved with the project and would love to have a permanent home for all of the state championships in the long sports, and that would certainly help the visibility. She said she talked earlier about creating the Delaware Sports Commission which is actually bidding and recruiting tournaments and has been pretty successful so far, even though it has been in existence about two months. Ms. Parkowski said there are all types of sporting events this facility could host - multi day, single day, regional, national, and local. She said they propose that the facilities they have examined and looked at the most successful ones have been in a public/private partnership - the for profit ones don't succeed because the capital costs are definitely too high, but with the land at a low lease or given this facility can certainly succeed. Ms. Parkowski said they are working on putting together a feasibility study, and Mr. Strickland will talk about that, but that answers a lot questions on the public/private partnership and which way, and who should operate it, and how it should be operated to be the most functional and feasible. She said there has been a lot of stakeholder and partner support throughout the County and businesses, and she is hoping that Mayor and Council, and the Town of Smyrna would be supportive of it. Ms. Parkowski turned the microphone over to Mr. Strickland.

Mr. Strickland said as Ms. Parkowski mentioned they are in the process of receiving bids for a proposed feasibility study that will ultimately give them some more insight and guidance to the structure and to the operation of the proposed Kent County Sports Complex. He said it is the stated goal of the Greater Dover Committee to raise \$100,000.00 to basically pay for the feasibility study and to assist with some related start-up costs. Mr. Strickland said to date they are two-thirds of the way there - he is very please to say they have approximately \$75,000.00 raised, and he thinks that speaks to the merit that the public and private sector partners have seen in this project. He said so what they would respectfully ask of Council is consideration of making a financial contribution to the Greater Dover Committee to be used for the cost of the feasibility study and the related start-up costs. Mr. Strickland said that is what they are asking for consideration of - he will say they have received financial contributions from Kent County Levy Court - not just in their donation, but also a contribution that they have made to assist them with the costs - and they have presented this program to the City of Milford, Town of Harrington, and are scheduled for the City of Dover he

believes next Monday. He asked if there were any questions. There were none. Mr. Strickland thanked Mayor and Council for their time.

Councilman Thornton said the usual course of action with a request like this is to refer it to the Finance Committee for review. Councilman Thornton made the motion to refer this issue to the Finance Committee for review. Motion was seconded by Councilman Riddagh and carried unanimously.

Mayor Stombaugh said this portion of the meeting is open to visitors. She said you are welcome to step to the microphone; you have three minutes to address Council. Mayor Stombaugh said Council may not answer your question tonight; they may have to refer it to a committee or to a staff member. She said Council asks visitors to be orderly, and she has a digital timer so that you will know when you should be starting to wrap-up your speech. Mayor Stombaugh said please give your name and address.

Cindy Cogar, 123 West Hamilton Lane, Smyrna came forward to speak. Ms. Cogar said she wanted to make a comment about the snow removal - she thinks the Town did a fairly fine job of removing the snow. She said she had a couple concerns - her major concern that she would like to bring to Council's attention is the recovery of the fire hydrants. Ms. Cogar said she noticed on the street, her street particularly, and some other streets that the fire hydrants were not cleared away as much as she maybe thinks they should be. She said maybe some of the fire hydrants need to be cleaned - hand shoveled because she would like to know that if there is a fire in her house that the few minutes that it takes to shovel out to get to the fire hydrant might save a few things. Ms. Cogar said she thinks the fire hydrants need to be looked at a little bit better, but otherwise she thinks they did a fine job.

Mayor Stombaugh asked if anyone else would like to speak. Joe Sheridan, Sheridan's Irish Pub, 42 West Commerce Street, Smyrna came forward to speak. Mr. Sheridan said it is that time of the year again for Saint Patrick's Day and he passed a letter around to the members of Council to request - he is sorry he did not get it in before the due date for this meeting for a vote, but it has been a crazy week. He said he is just doing the same thing this year - a tent on Friday, with Council's permission and take it down Monday morning even though Saint Patrick's Day is on Wednesday. Mr. Sheridan said they will have their annual party on Saturday if that's okay with Council. He said he knows

last year Council discussed that Mr. Hugg and Chief Baldwin have the permission to give permission, but he spoke with Mr. Hugg and he asked him to come up and speak and run it by Council. Mr. Sheridan said thank you.

Mayor Stombaugh asked to have this put on the next agenda.

Pam Anderson, 242 East North Street, Smyrna came forward to speak. Ms. Anderson said she wanted to address the snow removal issue as well. She said people not shoveling their walkways - she is in Parkway Manor and she would say there is a good 50 percent of the people that have not shoveled their walkways. Ms. Anderson said she has called Code Enforcement and he has told her that it is not his responsibility - it belongs to the Police. She said the Police have told her it is not their responsibility. Ms. Anderson said she is not here to point fingers, she is not her to point blame, she is here to say the Town has a Code, it needs to be enforced whether it is the Police Department giving somebody a ticket, or whether it is the Code Enforcement Official writing up a work order, cleaning them and then fining the people - putting it on their bill. She said those who do clean it up - it is not fair to them, our streets of course are more narrow because of the piled-up snow and it is dangerous for pedestrians to walk on the streets with the traffic, and they have an increased amount of traffic due to the Royal Farms that was recently put in, and she can perceive someone getting hurt shortly. Ms. Anderson said she thinks it would be a reasonable expectation that someone address the issue, whether the homeowner removes it, or the Town removes it and bills the homeowner for it at least by the end of business on Friday. She said she addressed this issue with Code Enforcement and the Police Department last Tuesday - it has been five days since the last snowfall and the Ordinance clearly indicates that there is two 12 hour daylight periods that it should be removed. Ms. Anderson said all of these people signed the same agreement she did when she moved here and every one of them has the same responsibility that she does, and she is not asking for spotless removal, just remove it so someone can get by. She said these are the same people that have not removed - she has been here six years - it is the same houses every snowfall for the past six years and she is finally going to put her foot down and she really does feel like she got the runaround between the agencies that she has discussed - everybody pointing the finger at each other. Ms. Anderson said she would like to see our Police Department and our Town work together to accomplish things, and she is not saying go out and

fine the people, maybe just notify them - hey, did you know you have 24 hours to get it done or we are going to do it and you are going to get charged for it. She said it is creating an unsafe situation and she would appreciate it if someone would address the situation and correct it so it is safe for the neighborhood that she lives in, thank you.

Councilwoman White asked Mr. Hugg if he could clarify whose responsibility it is. Chief Baldwin said he could clarify it. He said it is the Police Department's responsibility to enforce that particular ordinance. Chief Baldwin said we have this issue whenever we get large snowfalls like this. He said it has been his policy from the very beginning that it is impossible for them to enforce this particular ordinance fairly. Chief Baldwin said he does not have enough people to go around to every home in Town where people haven't shoveled their snow and issue the summonses. He said there is no way that we can have the Town go in and shovel the walk for them - if they refuse to do, they refuse to do it. Chief Baldwin said the only thing they can do is to issue summonses; he does not have enough people to do that. He said early on in his career he did ask officers to go out and to address the issue, and what he found was that people would come to him and say why are you bothering me about it; if you go down the street three houses down they haven't plowed; if you go over in this neighborhood they haven't shoveled, not plowed, but shoveled; it just runs them in circles. Chief Baldwin said it is a no win situation for the Police Department. He said if at some point in time this Council ever directed him to do that, they would do that. Chief Baldwin said he thinks it is a tremendous waste of Police manpower to do that; he understands the safety issues that you are talking about - he agrees 100 percent, and he wishes people would comply and shovel their walks. Chief Baldwin said he hates to see the kids out in the streets, but that's what happens. He said that is a choice he has made, Council needs to understand that, the public needs to understand that. Chief Baldwin said he will change his policy if directed by the Council, but we just don't have sufficient manpower at this point in time. He said he can't do it fairly.

Councilwoman White asked if they could send this to the Public Safety Committee for review, and with a scheme of people maybe come up with another idea of how to handle it. Chief Baldwin said absolutely. Councilwoman White asked if there was a date for the next Public Safety meeting. Chief Baldwin said it is the third Thursday. Councilman Thornton said it will be

March 18, 2010. Councilwoman White said March 18th is the next Public Safety meeting; she said maybe Ms. Anderson could attend and share her ideas. Ms. Anderson asked where the meeting would be held. Councilwoman White said it will be downstairs in the Conference Room. Chief Baldwin said it will be at 5:00 p.m. and that issue will be on the agenda and it will be discussed.

Mayor Stombaugh said a lot of this is also on the Town website. She said the committee meetings, the committees are on there, the times, the locations, all those things, if there is a cancellation we are trying to post cancellations on the website, state of emergencies - the first snowstorm in December we had to declare a state of emergency to try to get the cars to move so we could get the streets done. She said we feel one of the best ways to get the information out to the public, and we are trying to let the public know the best place to go is to look at our website.

Mayor Stombaugh said she would just like to say along this line, she thinks we have had an extraordinary unusual situation with the weather condition this time. She said she has lived in this town since 1980 and the snowstorms that she has experienced she thinks most of the people - there are always some that just don't have the physical ability, or the money, or the equipment, so there are a lot of things that fall into play in a situation like this. Mayor Stombaugh said to her it is a different situation than a deteriorated abandoned house where a porch is falling off of it or something like that. She said she would be in violation right now because she has got one side of her property is done; the other side around the corner isn't because from the snowplows - they measured it and she has pictures, she has a three and a half foot wall of ice four feet high. Mayor Stombaugh said everybody does, and that is why she is saying these are unusual conditions, unusual situations, there's almost no place to put the snow. She said when she was doing her driveway it got to the point that she couldn't lift the snow any higher - she had piled it up so high that she could not get the shovel up any higher. Mayor Stombaugh said she thinks there are just some unusual circumstances like this and we're going to have to ask everybody to bear with us, bear with the citizens, you do have good points, we do need to let people know, but she thinks everybody needs to realize that maybe - she knows in her neighborhood they all got out and - she lives in Sunnyside Village, and she has to say she must live on one of the best streets in this town, because everybody came together, they were out there shoveling each other's driveways, shoveling out each

other's mailboxes, they had a good time doing it. She said sometimes maybe people can get together and do things like that - neighbors helping neighbors, and it was a very good experience. Mayor Stombaugh thanked Ms. Anderson for coming forward.

Mayor Stombaugh asked if anyone else would like to address Council. Melaine Minear, 41 South Main Street, Smyrna came forward to speak. Ms. Minear said she just wanted to thank the Smyrna Town Electric Department for coming to their rescue Friday evening. She said at about 5:00 her neighbor Ms. Allen called in, as well as Ms. Minear, regarding unusual power outages in their residences and the Electric Department showed up and they found that the new room electric box that is buried under the street was full of water, which ended up being about 1,000 gallons. Ms. Minear said they had to bring in a pump truck, and the electrical system was buried in the water and one of the conduits, which was probably two inches in diameter, had exploded. She said they don't know how the water got in there, but it was about five feet deep and they are concerned about why the water was in the box; she doesn't think it was supposed to be. Ms. Minear said there has also been a frozen fire hydrant at the north end of South Main Street that she thinks was repaired, but again they want to thank the Electric Department and would like to know if this is going to be an ongoing issue because it was certainly a concern that night.

Edward Lehman, 161 Belmont Avenue, Smyrna came forward to speak. Mr. Lehman said he knows it has been postponed for tonight, but the paddleboat proposal - his concern about that is it becomes another boondoggle like the last one that they had with the County, and what's it going to cost because that was never straightened out money wise, and said who ended up paying for it but the people of the County. He said if money is going to come up missing again, even though we are not going to be running it, what is it going to cost the people of Smyrna, because the other one was never financially good for the Town or anything. Mr. Lehman said the second thing is financial responsibility; we have to get it under control in this town somehow. He said one proposal he would make is to stop issuing building permits until we get the industry we need to help support the taxes in this town. Mr. Lehman said we can't just keep building and raising taxes because it's just not there, and he knows there was an article in the paper today about the Mayor and the Vice-Mayor - that they are holding up things - well he totally disagrees with that. He said it's the whole Council

that has to come together to keep taxes down, not one or two individuals. Mr. Lehman said all the blame can't be put on one; it all can't be put on the Town Manager - he agrees with that 100 percent, but somehow we have to find physical responsibility. He said we can't just keep hiring people and giving people promotions in these times. Mr. Lehman asked where the money is going to come from except for higher taxes next year. He said from what he understands we had that open forum meeting on the 8th, and the next day was scheduled for another meeting but it had to be cancelled and they were asking to hire two more people and also to give a promotion - in these times he does not see how it is physical responsibility to hire more people especially when all it's going to do is cost us to increase our taxes next year. Mr. Lehman said somehow we have to get this under control, and it is the Council's responsibility and the Manager's responsibility - it's everyone's responsibility, but we have to do something and we can't just say, well the committee okayed it - to him that is not an excuse. He said he does appreciate the Utility Commission and he was there at that meeting where they reduced that \$50.00 temporarily, but that is only until June 1, 2010. Mr. Lehman said personally he doesn't think recovery in people's income is going to be that fast of a turnaround. He said this is something he thinks personally should be - unless it's really affecting the Town budget and it's getting abused he doesn't think it should be changed. Mr. Lehman said he thinks it should stay the way it is, not just until June 1st, but indefinitely until the economy at least improves which to him it looks like it is going to be at least a few years away. He said the only other thing he has is we have to find a way to keep the taxes down - there are no ifs, ands, or buts and he does agree with the woman that the sidewalks should be clean, but at the same time we do have to realize how much snow we've gotten in the last few weeks. Mr. Lehman said he knows even out in front of his own house he does not have a sidewalk - he has cleaned out for the mailbox, he's cleaned out his driveway, and he spent the last few days out there just trying to dig so he can get near the curb so he could park on the curb once in a while so when either one of the vehicles wants to go out they don't have to move both of them, but he has five foot of snow there - not actually snow, it is ice now - but he'll get there. He said he can't ask the Town to clean it up once it has been sitting there for a period of time. Mr. Lehman said he was talking to one of the gentlemen here earlier - we don't have the equipment to do it and he wishes we did. He said everybody would be happier if we had the streets a little bit wider; he did see some of the

employees out there this afternoon - he thinks it was on South Street and Carter Road - they were clearing up that intersection so it would be easier because it was very narrow. Mr. Lehman said they are trying to do what they can and he does appreciate when things are being done. He said he doesn't want to be just complaining about every department every time he is here, but there are things that are being done, but his biggest thing right now is we have to get the industry in this town before we can build any more homes. Mr. Lehman said the only other question he would have for the Council and the Chief of Police is what are we doing about this drug problem that was brought up at the last meeting. He said something has to be done about it, and if the Chief wants to sit down and talk with him again and if he can be of any help he will be glad to do whatever he can. Mr. Lehman thanked Council for letting him share tonight.

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

B. SECOND READINGS: Chapter 18, Buildings & Building Regulations:

1. Ord. No. 001-10, Article 1, Definitions
2. Ord. No. 002-10, Article II, 2006 International Building Code w/Amendments
3. Ord. No. 003-10, Article IX, 2006 International Plumbing Code w/Amendments
4. Ord. No. 004-10, Article X, 2006 International Property Maintenance Code w/Amendments
5. Ord. No. 005-10, Article XIII, International Residential Code w/Amendments
6. Ord. No. 006-10, Article XIV, Existing Building Code
7. Ord. No. 007-10, Article, I, In General
8. Ord. No. 008-09, Chapter 1, General Provisions, Sec. 1.14, Good Standing Ordinance - Mr. Hugg said this was presented to Council at the last meeting a set of proposed Ordinance changes - actually numbers 1 through 7 - which are part of the adoption of the 2006 International Building Code, the periodic update that we do to our Building Codes. He said he would recommend that Council approve the second reading of the first seven items. Mr. Hugg said on item number 8 Grant Prichard and Barrett Edwards have been diligently trying to come up with a solution to the stalemate that we

kind of fell into at the last meeting. He said he thinks they have a couple of ideas to bring forward to Council. Mr. Hugg said he also would ask Council to approve the second reading of the Good Standing Ordinance in order to keep it in the queue for a revision that will be coming probably at the next Council meeting. He said so all eight of those are recommended for second reading approval.

Councilman DeFeo asked if they could do that. Mr. Hugg said yes you can do that. Councilman DeFeo said can Council approve a second reading for an ordinance that is not quite written yet. Mr. Hugg said you do have an existing Good Standing Ordinance and under our provisions any time between the introduction and the third reading you can introduce amendments or a substitute, but because of the timing requirements if you don't do the second reading tonight then basically we have to start back over, and there is a delay period so he would rather keep this process moving and bring you a proposal for your consideration at the next meeting or possibly the meeting thereafter.

Mayor Stombaugh asked if there was a motion. Councilman Evans said so moved. Motion was seconded by Councilman Thornton. Mayor Stombaugh asked if there was any discussion. Mayor Stombaugh said she would like to ask that the motion be amended to approve items 1 through 7 for a second reading, and for item 8 she will go along with the second reading with the stipulation that we are waiting for recommended changes. Mr. Hugg said a set of amendments trying to address the issues that were raised at the last meeting - as you know we had a discussion over how to treat certain classes of... Mayor Stombaugh said she just like that to be included in the Good Standing Ordinance because she does not want it to look like Council for two times agreed to accept the Ordinance as it was presented. She said that is why she would like that to have that stipulation. Mr. Hugg said just to clarify, with the understanding that revisions are coming.

Mayor Stombaugh asked Councilman Evans if he would agree to that amendment. Councilman Evans said yes. Councilman Thornton said it is fine with him also. Mayor Stombaugh said the maker of the motion and the second have

agreed to make that stipulation. Motion carried unanimously.

C. Appointment to Election & Registration Board - Mayor Stombaugh said Council has the résumé for Mr. Ruben in their packets. She said Mr. Ruben was at our last meeting but we ran out of time and she did not have the opportunity to introduce him and he could not make it tonight. Mayor Stombaugh said this would be for an alternate for the Election Board.

Mr. Hugg asked for clarification. He said unless our notes are incorrect he believes there are two alternates already, but there is a vacancy on a regular member. Mr. Hugg asked Mayor Stombaugh if it was her intention to name one of the alternates to be a regular member of the committee and Mr. Ruben to be an alternate in their place. Mayor Stombaugh said the way Mr. Markow explained it to her - she guesses he was moving everybody that was previously on the Election Board, he thought that they would automatically move up the chain. She said that should have left... Mr. Hugg said that is what we currently have - was one of those to move up to be a regular member? Mayor Stombaugh said both of those would move up to be - there were three people that resigned, so both of these people would - that were alternates before - would move up to be the regular Election Board, plus Beryl Cook was the first one that submitted her résumé - she would be on the regular, and Kathy Clough and Richard Ruben would be the two alternates. Mr. Hugg said okay, just so we are clear.

Mayor Stombaugh said that is her appointment - to make Richard Ruben an alternate on the Election Board. She asked if there is a motion. Councilman Thornton made the motion to accept Richard Ruben as an alternate on the Election Board. Motion was seconded by Councilman Raynor and carried unanimously.

D. Charter Amendment ref. Election Changes - Mr. Hugg said tonight he gave Council a copy of a memo that he had sent to Council back in October of 2009 at the request of Councilwoman White. He said at that time he does not believe Council actually acted on the recommendation... Councilwoman White said no, Mr. Jaywork asked her to wait. Mr. Hugg said Councilwoman White asked him to bring this forward again to Council.

Councilwoman White said the suggestion is on there - it is: an elected official may file to be a candidate for Mayor before

their current term ends without giving up their seat; if they are successful a special election will be called to fill the no vacant seat for the balance of that term; if unsuccessful they retain their seat until the end of their term. She said the Charter Review Committee did agree to it and also, if she is not mistaken, they also agreed to change the hours of election from 7:00 a.m. to 8:00 p.m. Councilwoman White said so this did come with the approval of the Charter Review Committee and she would like to see it move forward to the General Assembly for approval before the next election.

Mayor Stombaugh asked Councilwoman White where she got the information that the Charter Review Committee, because that is not true. Councilwoman White said it was in the minutes. Mayor Stombaugh said no, it is not, if it is the minutes are incorrect. Councilwoman White said we received notification that the Charter Review Committee back in October, or their last meeting, Council received something from, she does not have it with her. Mayor Stombaugh said there was another recommendation made, but all this goes into the Charter Review and it's all going to come up at one time. Councilwoman White said okay, well then she will make a motion today to move this forward to the General Assembly with the portion that she just read to change the seating and to change the hours from 7:00 a.m. to 8:00 p.m. Mayor Stombaugh said but that was not the recommendation of the Charter Review Committee. Councilwoman White said without that being the recommendation of the Charter Review Committee, it was discussed there.

Councilman Raynor said he thinks the Committee, they approved the hours, but they did not approve the...

Councilwoman White said she made a motion - she has a motion on the floor. Mayor Stombaugh said okay there is a motion, is there a second. Councilman Thornton seconded the motion for discussion.

Councilman DeFeo said the issue with the hours was discussed at the Charter Review Committee meeting and all the Charter says is the polls will be open for a minimum of six hours for the election; there is nothing in there about the time. He said it was agreed amongst the Committee that he would request that motion would be made here before the election for the hours to be from 7:00 a.m. until 8:00 p.m. giving the folks a longer time to vote. Mayor Stombaugh said and that doesn't take a Charter change, it says it is up to us to designate the

times. Councilman DeFeo said that is correct, the Council designates the times so we were going to try it for this election cycle to see how it went instead of starting the election at 1:00 p.m., realizing there are people that go to work in the morning, giving them an opportunity to vote on the way out as they do in the general election - so that is what they did with the times. He said then as far as the other issue he remembers they discussed this in quite some length and the Committee voted this down.

Mayor Stombaugh said the other thing is for it to go to the General Assembly, from what the information that she has been given is they don't like - unless it is extremely important - they don't like it to be piecemealed. She said they want the Charter to come to them in one packet and for them to review it one time. Mayor Stombaugh said the Mayor's position is not up in this election and there is no emergency to have this done, and within a year the Charter Review will have their recommendations together to go to the General Assembly without there being a special exception.

Councilwoman White said they may not be ready for the next election, and this is Mr. Jaywork's - Mr. Jaywork is not here today - but he had asked her to wait and she said that would be fine, she would wait until the new year and then move forward. She said she waited and now she is moving forward. Councilwoman White said this is no different than what the legislators now do; they have a special election so there won't be any incidents like there was previously with Councilman DeFeo's seat.

Mayor Stombaugh said a special election would cost the Town more money and there was a recommendation made in the Charter Review Committee that would avoid there being a special election and she believes that the recommendation that was made, and she doesn't want to say it right now because she does not have it in front of her right now, and she thinks it needs to be quoted exactly through the Charter Review Committee. She said it was not recommended, it was voted down by the Charter Review Committee, there was another recommendation made, and personally she would like to see that recommendation come forward before anything is done. Mayor Stombaugh said she does not think that we should go to the General Assembly with one thing when it doesn't pertain to the election this year.

Councilman Thornton asked if somebody could tell him what the alternate recommendation is for this. Mayor Stombaugh said

they don't have it in front of them. Councilman Thornton said he is curious what... Mayor Stombaugh said she knows one of the concerns was that if someone wanted to run for Mayor that is serving on Council, that as of the day that they file their intent to run for Mayor they have to give up their seat at that time, and she knows one of the recommendations was that they would not have to give up their seat until after the election. She said what had happened was before the election it cost them to have an empty seat even before the election came - about a month before the election, so there was a recommendation that if a Councilperson ran for Mayor that they did not have to give up their seat until after the election. Mayor Stombaugh said but if they are not elected they don't remain a Councilman, they do one or the other because one of the suggestions that was given - or examples that were given - is let's suppose everyone on Council decided they were going to run for the Mayor's position and there would be numerous problems, so one of the recommendations was - in fact Regina Brown is on the Committee and she - do you remember or would you prefer to have it in front of you? Regina Brown spoke from the audience and said she could go to her car to get it. Councilwoman White said no that won't be necessary. Mayor Stombaugh said let's get it on the table, and asked Mrs. Brown to go get it. She said while Mrs. Brown is doing that let's move on to the next item and then come back to that one.

NEW BUSINESS

A. Resolution Supporting Adoption of a Local Service Function by Kent County - Mr. Hugg said Council has in their packets a resolution that mirrors one that the Dover City Council passed last month. He said the fundamental issue here is that those of us who live in the Town of Smyrna also pay Kent County property taxes and we pay for services that Kent County provides such as planning and zoning, county engineering, the county assessment office, and what have you. Mr. Hugg said even though we provide those services to our own residents and in essence get no benefit from the share of our county taxes that supports those functions we also pay for services inside the city limits of Smyrna such as police protection, the street lightings, snow removal, and what have you that are not provided by Kent County to its residents. He said many years ago the General Assembly adopted what is called a Local Service Function Budget for New Castle County, which provides to the residents of municipalities in New Castle County, except for that portion of Smyrna that is in New Castle County, a discount or break on their County taxes

that reflects the computed value of the county services that are not required by virtue of being inside the municipality. Mr. Hugg said the City of Dover in particular has felt for many, many years that municipal residents in Kent County are unfairly taxed and in essence taxed twice, and that that matter ought to be resolved by the adoption for Kent County of the same budgeting and taxing provision that is in place for New Castle County. He said he thinks the last time this was brought up - it may have been as long as ten years ago, maybe five years ago - it is an issue that the county and the city debate periodically. Mr. Hugg said the City of Dover feels very strongly that given all of our financial concerns, our own needs in our own jurisdictions that being taxed for services we don't receive that we provide ourselves is inequitable and therefore they've asked the municipalities in Kent County to pass a resolution urging the General Assembly to introduce legislation to create a Local Service Function Budget for Kent County municipalities. He said he does not have any facts or figures as to what this might mean in terms of savings to our residents - he believes in some cases in New Castle County it can be 20 to 30 percent of the county tax bill - there is a formula that is actually applied to value the services.

Mayor Stombaugh asked if there was a motion to accept the resolution. Councilman DeFeo made the motion to accept the resolution for the adoption of a Local Services Function Budget for Kent County. Motion was seconded by Councilwoman White. Mayor Stombaugh asked if there was any discussion. There was none. Motion carried unanimously.

8(d) - continued - Mayor Stombaugh said we are going to go back to item 8(d) - Charter amendment reference election changes. Mrs. Brown gave Mayor Stombaugh the information she requested. Mayor Stombaugh said what is in here, and it's not - she hopes they recorded that meeting because it's not completed, but it says "...by motion of Regina Brown and second by Al Kraft it was passed unanimously to amend the section to require that a Councilperson who seeks other Council positions and other than the third year of his or her term must announce his or her intent to resign his or her position at least 21 days prior to the filing deadline so that the candidate may file in compliance with State law. The resignation is to become effective on the day the candidate is duly elected to fill that seat." Mayor Stombaugh said so the Councilperson would retain their seat until the election, and then if they would win the - she said that wasn't how that was worded, it was worded that, because

they were worried about nobody being able to file- it was worded so that someone else could file for that Council position. She said the person running - say you wanted to run for the Mayor's position, then you retain your Council seat until the election, but somebody else can file for your seat as a Councilperson, and then the day of the election if you win the Mayor's seat then fine you become the Mayor, but you can't run for Mayor and Councilman - you are one or the other is the way it was, right? Mrs. Brown said she did not recall they addressed that. Mayor Stombaugh said they did because that was one of the big parts of the discussion. She said that way it would avoid a special election - there wouldn't be any vacancies after the election - as of the day of the election all positions were filled. Mayor Stombaugh said she thinks it needs to go back to the Charter Review Committee for clarification.

Mayor Stombaugh said there was a motion. Councilman Thornton said there was a motion to send this forward for legislation and he seconded it for purposes of discussion. He said it sounds like it's just as confused as it ever was, and he does not mean that in a humorous way, but the Charter Review Committee has been working on this as well as other items for the Charter, and the point is we don't want to take something to our legislators to get it through that is a problem. Councilman Thornton said one town just had a problem - he thinks it was Felton - who took something through their legislator to the legislature, and it was voted on and the Governor axed it because he didn't feel it was fair to all of the constituents in the Town of Felton. He said it had to do with no two people of the same family could run for an election. Councilman Thornton said those are the small things that you don't think about when you are doing something like this that other people think about that can impact the end result of the action. He said his position at this point is he does not think it is ready to go our legislators for any action for two reasons: 1) we're not sure what we want, and 2) we don't want to do things in a piecemeal fashion. Councilman Thornton said he thinks it is premature to take it to our legislators at this point, but he does agree with Councilwoman White that this thing has been bouncing around for a period of time and we need to be doing something about it. He said he has not been to those meetings so he does not know what was done, what was said, what was voted on, but clearly one thing we need to do is move those things along. Councilman Thornton asked if we have any idea when we would be ready to present something.

Councilman Raynor said he will see that it gets on the agenda right away at the next Charter Review Committee meeting to clarify that and adjust any minutes of what takes place.

Mayor Stombaugh asked if Councilman Thornton was withdrawing. Councilman Thornton said he thinks they can just vote on the motion if you want. Mayor Stombaugh said to send it forward - you just said that you didn't think it was clear. Councilman Thornton said he can withdraw his second and see if it dies for a lack of a second, which he will do. Mayor Stombaugh asked Councilwoman White if she wanted to leave hers standing or did she want to withdraw. Councilwoman White said she wanted to let it stand. Mayor Stombaugh asked if there was another second. There was none. Mayor Stombaugh said motion dies without a second.

B. Resolution Adopting an All Hazard Mitigation Plan for the Town of Smyrna - Mr. Hugg said kind of parallel to the work that the Town was doing our Emergency Operations Plan, Kent County was updating the Disaster Mitigation Plan for the County. He said it is an All Hazards Mitigation Plan that the County has to prepare under the FEMA regulations form the Disaster Mitigation Act of 2000. Mr. Hugg said he represented the Town in the review and discussion and ultimate approval of the draft County Hazard Mitigation Plan which was then accepted by its Advisory Committee. He said FEMA would like to have each of the municipalities adopt a resolution, adopting if you will, the County's All Hazard Mitigation Plan. Mr. Hugg said he would recommend that we do so - that makes the County and us eligible for natural hazards financial assistance.

Mayor Stombaugh said she also went to one of the mitigation plans and a lot of that was about flooding, which we may hopefully not have to take a look at in the near future.

Councilman Thornton made the motion to adopt the All Hazards Mitigation Plan for the Town of Smyrna for the County's purposes. Motion was seconded by Councilman Riddagh and carried unanimously.

C. Green Energy Applications and Use of Green Energy Funds - Mr. Hugg said this issue is in Council's packets - there is a memo on the Green Energy Fund. He said this was discussed at some length at the last Utility Committee meeting including a presentation from Kimberly Schlichting who is the Administrative

Vice-President of DEMEC who manages the Green Energy Program on behalf of all of the nine members of DEMEC.

Mr. Hugg said a couple of years ago the State imposed a green energy charge of .000178 cents per kilowatt hour of electricity on all utility customers statewide. He said they actually imposed a higher fee on customers of the for-profit utility and a different fee for the Delaware Electric Coop. Mr. Hugg said the intent of the fee was to create a fund to be used in the respective utility's areas for renewable energy related kinds of improvements, particularly for grants to property owners for solar panels, geo-thermal heating, and what have you. He said that is the way the program has initially been operated by all of the jurisdictions. Mr. Hugg said what we have discovered as we have gotten into the program now for a number of years is really two things: 1) the amount of money being generated by this charge, or tax if you will, is a relatively small amount of money - it is about \$1,300.00 to \$1,400.00 a month that is collected from Smyrna customers, and the number of applications in most of the jurisdictions has substantially exceeded the amount of money that is available. He said this means there is a very long waiting period for people to even qualify for grants for renewable resource activities. Mr. Hugg said the other thing we've kind of discovered is that the primary beneficiaries - and he thinks he gave Council some attached material - of these grants has been property owners who have otherwise been able to afford the other share of the cost of these investments, and a very limited number of folks have benefited. He said most of the jurisdictions in the state now have moved, or are moving to reallocating the green energy revenues - the green energy fund - for projects that have a benefit that can be attributed to the entire community. Mr. Hugg said to give you some ideas the Town of New Castle used some of their funding to put in a geo-thermal heating system for their library, Dover purchased a thermal imager that they can use to help people do home energy audits, they also put solar panels on their Electric Department roof which reduced the amount of electricity that was being used for municipal purposes. He said the recommendation that we made to the Utility Committee is that we suspend the giving of individual grants to property owners and to use the funds as they are generated in the future for community benefit projects. Mr. Hugg said there is one applicant in the queue who is still eligible who if approved would use the funds that would be available from this program through 2010, so any funds that were generated after that period would be available to the community

for community based projects. He said in order to not continue to have other people apply expecting to eventually get funded we would need to basically change the ground rules. Mr. Hugg said that is the recommendation of the Utility Committee and the action that has been taken in about half of the DEMEC municipalities right now.

Mayor Stombaugh asked if there was a motion. Councilman Thornton made the motion to suspend green energy applications and use of green energy funds until further notice effective with this meeting. Motion was seconded by Councilman DeFeo and carried unanimously.

D. Request for Incentives - 215, 219, 223 S. duPont Boulevard, Wilkerson - Mr. Hugg said what he is bringing Council tonight is not a specific request to the amount, but your approval of this building as qualifying for incentives so that we can go back to this property owner and actually sit down and figure out what these amounts would be. He said two things: 1) this is the property that was the former Baker's Restaurant, and whatever it was in its earlier life that Mike Wilkinson is building a new building on that footprint to replace the old one. Mr. Hugg said according to the staff memo it does meet the qualifying project requirements in that it is commercially zoned, it has been vacant, and the rehabilitation will contribute to the benefit of the community. He said what he would like Council to basically do tonight is to say yes we agree that this building should qualify and then we will compute the discounts and bring them back for subsequent action. Mr. Hugg said the only reason he is doing this in this order is we have been criticized in the past for bringing these things forward after the building has been done and everything is all complete, and what have you and this one is much, much earlier in the process.

Mayor Stombaugh asked if there was a motion. Councilwoman White made the motion to agree that this request meets the intent of the incentives provided for in Chapter 70, Chapter 32, and Chapter 18 of the Town Code and then it will come back to Council with the actual amounts for Council to approve. Motion was seconded by Councilman Riddagh. Mayor Stombaugh asked if there was any discussion. Councilman Thornton said yes - this should now go to the Finance Committee per Council's previous discussions for their recommendation, and he thinks it's time that we looked at these projects because of budgetary constraints and determine what, if any - because we are not obligated to do anything as far as the taxes, electric, or the

other compensation. He said he does not have any problem with looking at it as a blighted building and reconstruction, but he thinks this issue is going to come up again and again as it has in the past, so we need to look at going forward - are we going to continue to give the tax breaks given the situation that we are in now.

Mayor Stombaugh said right now this motion is just to move it forward so he can get figures together. Councilman Thornton said right. Mayor Stombaugh asked if there was any further discussion. There was none. Motion carried with Mayor Stombaugh, Councilwoman White, and Councilmen Evans, DeFeo, Riddagh, and Thornton voting for, and Councilman Raynor voting against.

E. Curtailment Service Provider Regulation - Mr. Hugg said he put on Council's desk tonight a packet of materials, a memo, and draft Ordinance, and he apologized that he probably can't explain this any better than he has tried to in writing, but he'll do his best.

Councilwoman White asked if it would cost the Town money. Mr. Hugg said actually not doing it costs us money, doing it prevents us from potentially losing money. He said the urgency in asking this be done, and it can be done as late as March 1st, is that in October 2008 the Federal Energy Regulatory Commission issued an order complying with the Federal Energy Policy Act goal of encouraging time based pricing and what is called demand response opportunities for retail energy customers. Mr. Hugg said essentially that's a processed look at those very large users of energy who have the ability during high energy demand periods to shave or reduce their load. He said these may be industrialized operations that can shut down between 1:00 and 3:00 in the afternoon, or have various cooling provisions they can adjust, or what have you to help reduce their peak load. Mr. Hugg said there is an incentive for those users to do that anyhow because it obviously reduces the amount of energy that they are using. He said the actual result of the FERC regulation was to create a market where those large users could sell to third parties, who are called aggregators or curtailment service providers, who actually buy that saved power and resell it in the regional transmission market for a profit. Mr. Hugg said the difficulty is that the load generation utility, which is us, doesn't benefit from that savings because the savings is captured by the third party and resold to the marketplace, and in fact the value of saved usage actually results in the rest of

us potentially paying more for what's left - that's the disadvantage. He said the FERC order did provide that if a load using utility passed an ordinance or whatever form of document that they had the authority to pass they could restrict the ability of these third party aggregators to operate within their utility district, but absent that authority or absent passing that regulation, if an aggregator came to Smyrna and approached Wal-Mart for example and said we want to help you shave your energy use; we'll buy 20 percent of your load if you shut down your operations in the middle of the day then they could do so without us being able to stop them. Mr. Hugg said a couple of jurisdictions in Delaware have already adopted ordinances that deal with this issue - probably the most direct and straight forward has been Seaford who basically said the risk to the Seaford utility are such that we aren't going to allow anybody to operate as an aggregator unless they are operating as our agent or on our behalf. He said the American Public Power Association and DEMEC have a slightly different version of an ordinance that is a little bit more permissive. Mr. Hugg said the ordinance that is before Council, Ordinance No. 009-10, is modeled after Seaford's ordinance and has been reviewed by Mr. Jaywork and Mr. Edwards, and does achieve the reservation of rights to Smyrna to decide if we want anyone to be able to operate in this capacity in our community. He said what he is recommending to Council is, if you feel comfortable enough with his attempt to explain this tonight, he would like to ask that this Ordinance be introduced and that you waive the three reading rule and pass it. Mr. Hugg said if you are not comfortable in doing so he would ask that we do the first reading with the understanding that we will need to deal with the third reading at the next Council meeting in order to be ahead of the market for these aggregators, which is in late March of each year.

Mr. Barrows said he just wanted to confirm that Mr. Edwards and Mr. Jaywork have reviewed both the Seaford ordinance and have tailored this ordinance after that ordinance, and let him also confirm that it is his understanding that there is a time limit on this. Mr. Hugg said that is right. Mr. Barrows said basically this is an opt out ordinance from the FEMA regulation. Mr. Hugg said right - it basically opts us out of the automatic opportunity for an aggregator to participate. He said someone could come to Smyrna - absent this ordinance they could come directly to one of our large retail users; with this ordinance they would have to come to the Town and then the Town would have to make a decision whether we wanted them to be able to operate.

Mr. Barrows said not to put too fine a point on it, but could you articulate just a little more about the potential downside to Smyrna if someone was allowed to come in and purchase this excess. Mr. Hugg said how can he do that simply... Mr. Barrows said well let me ask you this, would you confirm that in your opinion and that of Mr. Jaywork and Mr. Edwards that there is in fact a down side. Mr. Hugg said he would definitely confirm that, and he guesses the down side is that a large user from whom we depend for electric revenues, absent this ordinance could enter into an agreement to cut their load, reducing the amount energy we have available to sell to our customers. Mr. Barrows said would it not also be accurate to say that if it chose to, the Town could in fact sell that excess at a benefit to the Town. Mr. Hugg said very definitely. Mr. Barrows said as opposed to a benefit of a third party. Mr. Hugg said yes, very definitely.

Mr. Hugg said if you are comfortable with what we have been able to try to explain tonight what he would ask is that you waive the three reading rule and then adopt Ordinance No. 009-10.

Mayor Stombaugh said she has some questions - do we have to have a motion and a second, and then use it as discussion with the questions. Mr. Barrows said he believes that would be the best practice, and he also wanted to say he does not think it is ever going to be explained any more clearly than it just has been.

Mayor Stombaugh said is there a motion to accept Curtailment Service Provider Regulation No. 009-10. Mr. Hugg said if you are interested in considering the waiver of the three reading rule he thinks Council has to do that first. Mr. Barrows said yes please.

Councilwoman White made the motion to waive the three reading rule for the Curtailment Service Provider Regulation Ordinance No. 009-10. Motion was seconded by Councilman Thornton. Mayor Stombaugh asked if there was any discussion. There was none. Motion carried with Councilwoman White, and Councilmen Evans, DeFeo, Raynor, Riddagh, and Thornton voting for, and Mayor Stombaugh voting against.

Mayor Stombaugh asked if there was a motion to accept Ordinance No. 009-10. Councilman Evans said so moved. Motion was seconded by Councilwoman White.

Mayor Stombaugh said okay - questions - where it has residence, would this also take it into consideration people that do windmills or solar with the extra. Mr. Barrows said he does not believe it does. He said he believes what this is based upon the premises that electricity costs more at certain times of the day than it does at others and the peak that Mr. Hugg is talking about is the worst case scenario where everybody turns on the washing machine at the same time, and that is what drives the need for a huge generating capacity because the electrical producers have to be able to meet that demand if everybody did turn on their washing machine at the same time. Mr. Barrows said there are certain practices, and it really lends itself to large users, there are practices that they can do to lower the amount of electricity they buy during the expensive time of the day and then buy the electricity at a less expensive time of the day when it costs them less and that reserve capacity - the difference between the peak and the non-peak is this hunk of electricity that this Ordinance addresses. He said from what he is hearing from members of his firm and Mr. Hugg is that hunk of electricity is worth money and you can sell that to a third party purchaser who will then turn around and sell it to somebody else for profit, and this Ordinance simply says that the Town can say you are not going to do that. Mr. Barrows said he thinks that the Ordinance also leaves to the Town the potential for saying hey maybe we want to do that and the Town get that profit, but the sensitivity of this thing, and he thinks the reason for the motion to waive the three reading rule is because there is an urgency to it, because these federal regulations always put time limitations in there that you have got to meet and if you don't you lose.

Mayor Stombaugh said these large entities - they still can reduce during those peak times which would reduce their electric costs, so you are not penalizing them. Mr. Hugg said right. He said any user and the whole sort of premise of energy efficiency conservation is that any user, if they choose to, can put time clock thermostats on their water heaters - there are all kinds of things that can be done to reduce their energy use. Mr. Hugg said by virtue of doing that, not buy so much energy, and get a break. He said probably if you have noticed on TV recently the Beat the Peak program that the Delaware Electric Coop - is really in response to this same kind of thing. Mr. Hugg said they are doing exactly what Mr. Barrows was suggesting - Delaware Electric Coop is actually operating in a way to reduce for their own customers and gain the benefit of this energy

saving off of peak as opposed to have a large aggregator sort of do it to them or for them. He said our customers are not directly affected - there is no penalty for a residential customer by virtue of us adopting this Ordinance.

Mr. Barrows said this is different also from green energy because if you for example, install solar panels on your home and generate your own electricity you are in turn then buying less energy from the electric provider, but that is a whole different animal.

Mayor Stombaugh said if we do this do we become - since we are with DEMEC - do we get the benefit of this or is it going to go back to DEMEC and go to all of the towns that are involved with DEMEC. Mr. Hugg said this is Town of Smyrna specific. He said what is probably going to happen - and he is speculating here - is that over time we may all ask DEMEC to become an aggregator on behalf of all of us, and use their buying and selling ability to collect all of the benefits which would bring our use down. Mayor Stombaugh said and then we can give lower rates to the people. Mr. Hugg said that is right, but we are nowhere near there yet, but that's probably what will happen.

Mayor Stombaugh asked if there was any other discussion. There was none. Motion carried unanimously.

OTHER COUNCIL BUSINESS

Councilman Thornton said he just had one item to bring up. He said there was a special Council meeting on February 8th that he was not able to attend - the reason he was not in attendance was he had a funeral to attend that day and he was sick that afternoon from being out in the cold. Councilman Thornton said he listened to the recording of the meeting and he did not hear a roll call taken, so he is not sure that he was officially named as absent from that meeting. He said he just wants to make sure that the minutes reflect that.

EXECUTIVE SESSION

A. To Consider a Personnel Matter in Which the Name, Competency and Abilities of an Individual Employee(s) will be discussed - Mayor Stombaugh asked if there is a motion to go into executive session to consider a personnel matter in which the name, competency and abilities of an individual employee will be discussed. Councilman Thornton made the motion to go

into executive session to consider a personnel matter. Motion was seconded by Councilman DeFeo and carried unanimously.

Council went into executive session at 9:12 p.m.

POSSIBLE ACTION AS A RESULT OF EXECUTIVE SESSIONS

Councilman Thornton made the motion that the action of the Town Manager be upheld and that all monies placed in trust pursuant to this action, as well as accrued interest, be returned to... Mayor Stombaugh said whoa - hold on. Councilman Thornton said recommendations - he is sorry.

Mr. Barrows suggested that the motion be that the recommendations of the Town Manger be approved or disapproved.

Councilman Thornton said the recommendations of the Town Manger be approved. Motion was seconded by Councilman Riddagh and carried unanimously.

ADJOURNMENT

Councilman Evans made the motion to adjourn. Motion was seconded by Councilman DeFeo. Meeting was adjourned at 10:00 p.m. by unanimous vote.

Council Secretary