

**MINUTES OF THE MEETING**  
**SMYRNA TOWN COUNCIL**  
**August 16, 2010**

**PUBLIC HEARING**

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

Mayor Stombaugh said we're going to begin tonight with a public hearing; we usually start the Council meeting at 7:30 p.m., but tonight we have a public hearing that was due to start at 7:30 p.m.

Mr. Hugg said we have a request for a fence adjustment from the First Presbyterian Church and Council has a copy of the packet. He said in front of you is a copy of the posted notice and it was also sent to adjacent property owners. Mr. Hugg said because we did not put this on the Council agenda for tonight, we request that Council not actually take action on it, but go ahead and hold the public hearing since it was properly noticed and posted, and there are people here with interest in the particular matter. He said the church has asked to put a five foot high black aluminum fence down the side of their property. Mr. Hugg said we do have a written objection, which means we do at least have a hearing and offer others the opportunity to comment. He asked if there was anyone from the church who would like to speak.

Gerhard WillemsendeBock came forward to speak on behalf of the church. Mr. WillemsendeBock said for ease of notation and use Gerry deBock will suffice for unofficial communications. He said our church has gone through the renovation with a lot of help from the Smyrna folks - Mr. Hugg, and all the inspectors and code enforcement and so forth, and licensing. Mr. WillemsendeBock said we are at the home run and part of that was missed with the original contract in that where the new stone buttresses are - in between those buttresses we would like to install fencing. He said it will be almost unobtrusive from the street; however, the neighbors will be able to see it. Mr. WillemsendeBock said this is for protection of the windows that we just repaired and the new ones we installed in the back on that side - this is all facing west. He said we're asking for a variance to come up from four, which is what they were before, where animals had come across - dogs specifically - and eaten the windows. Mr. WillemsendeBock said so we're asking for five feet so that we may protect that investment. He asked if Council had any questions.

Councilwoman White said the fence is not going on the Slaughter side - at the parking lot. Mr. WillemsendeBock said no ma'am. Councilwoman White said it's going on the other side. Mr. WillemsendeBock said yes ma'am.

Councilman Riddagh said these are going up against the wall? Mr. WillemsendeBock said virtually, if you can imagine the buttresses being this... Councilman Riddagh asked how thick the buttresses were. Mr. WillemsendeBock said the buttresses are approximately two-and-a-half to three feet as far as width coming out - they'll (the fence) be in between them, so there's approximately eight feet between the buttresses; the fence will be within that eight feet all the way to the back end where the

other fence exists now. Councilman Riddagh said so you're just putting a section of fence to each buttress and then moving to the next section; not just one continuous fence. Mr. WillemsendeBock said that is correct - at his request it will be bolted so it can be undone to do maintenance to the side of the building.

Mr. Hugg said this is inside the church property. Mr. WillemsendeBock said yes. Councilman Raynor asked if there were stained glass windows on that side. Mr. WillemsendeBock said yes - they are stained and painted glass.

Mayor Stombaugh asked if there were any questions from Council. Councilwoman Brown said this is replacing a four foot fence that you had? Mr. WillemsendeBock said no, there was a fence that the neighboring property has, but it was four foot and the dogs jumped over it.

Mr. Hugg said the reason for a fence adjustment is the code permits a four foot fence without an additional approval; to erect a fence taller than four foot requires a fence adjustment, so that's triggers this process. He said the Historic District Review Board reviewed the design of the fence and approved it, but fence adjustments have to be granted by the Town Council; the adjustment here is the extra foot of height above a four foot fence which would have been permitted as a regular use, since there was an objection.

Mayor Stombaugh asked if the party that wrote the letter of objection was present. Beth Siemanowski, 128 West Commerce Street, Smyrna, came forward to speak. Mrs. Siemanowski said her property is adjacent to the First Presbyterian Church to the rear of that property. She said we're receiving new information tonight; we did not realize - the information we received from the Town office was that a fence would be built essentially eight inches within the property line for the First Presbyterian Church and that would of course be effected by the buttresses. Mrs. Siemanowski said what she would like Council to please consider for them is that current they share about 60 feet of space adjacent to the First Presbyterian Church. She said we have a two story block garage at the back of this first 30 feet, and then the next 30 feet, moving toward Commerce Street, has a stockade fence marking the property. Mrs. Siemanowski said so if we want to believe that fences are designed to mark a property boundary and either keeps people or pets in or out, our position is that those boundaries and markers already exist. She said she brought a visual aid to help Council visualize what she is talking about, which she showed to Council. Mrs. Siemanowski said our block garage is literally four feet from the block addition to the First Presbyterian Church that she thinks is used as an educational space - it's a small space. She said First Presbyterian wishes to put a fence essentially down the middle of that; for a two story block garage - she is not sure how they would ever get a ladder up to clean their gutters or to do anything to maintain their garage. Mrs. Siemanowski said in the case of the stockade fence - it's on the property line, so the proposal that this fence be erected eight inches within First Presbyterian's property is a space of about this (she visually showed Council what eight inches would be); as much as she would like to tell Council she could squeeze in there - she doesn't know how they would maintain their fence. She said their fence was pulled down twice this winter by snows coming off the new two story addition to first Presbyterian -

she would like to be able to maintain their fence, and she doesn't know how they would fit in the space that they're given with this proposal.

Councilwoman White asked for Mrs. Siemanowski's address again. Mrs. Siemanowski said it is 128 West Commerce Street.

Mayor Stombaugh asked Mrs. Siemanowski how much space she feels she would need. Mrs. Siemanowski said there are two feet between our fence and the church - approximately. She said the fence is installed with the smooth side facing First Presbyterian and the reason that was done - her mother installed the fence before they purchased the property; the reason that was done was at the time there were some vandals and she didn't want a toehold for the crossbars on the other side, so the pretty side of the fence, although it's a very old fence it is facing the church. Mrs. Siemanowski said there would be no danger from pets or anybody else with the stockade fence and a block building maintaining those boundaries, and she really does not think they could take care of their property if they needed to by stepping outside it to address any needs.

Mr. WillemsendeBock came forward to speak again. Mr. WillemsendeBock said he thinks he can help alleviate any fears; the fence is not going back that far, it's only going back to meet Mrs. Siemanowski's fence. He said the existing fence that is in the far back is going to remain.

Mrs. Siemanowski said that's great; that's not at all what they were led to believe by correspondence from the town.

Councilman Novotny said so what you are saying is you don't have two parallel fences - your existing fence and a new fence. He said yours is just going straight back on the west side of the property... Mr. WillemsendeBock said the two fences are going to meet. Councilman Novotny said and that's where it's going to end. Mr. WillemsendeBock said yes.

Mayor Stombaugh called Mrs. Siemanowski to the front and showed her a diagram that Council was given this evening.

Mayor Stombaugh said there was another person who wished to speak, and asked them to come forward to the microphone. Ben Walters, 124 West Commerce Street, Smyrna, came forward to speak. Mr. Walters said he lives directly next to the church and they just found out this proposal and they are finding out more stuff, but they're still on their property - right on their line. He said and they want to put it eight inches off - from the outside of the street it comes in as a wedge and you can see straight on down from the sidewalk the buttresses off to the side on our property. Mr. Walters said so plans are a little bit different than what he guesses the builder had put up - Ballard - he didn't consider any of this stuff and then pulled out. He said and it'll be like a privacy fence, because if the dogs saw him before, they'll see him again and they barked. Mr. Walters said we did have a four foot fence connected from our house across their property to keep the dogs from coming over. He said apparently somebody approached our fence from the road and our dogs have jumped over, and an extra foot wouldn't matter; my dogs cleared the Siemanowski's fence - roughly six foot, so that extra foot might have to go up higher if their concerned about their windows.

Councilwoman White said so your objection is because you are saying it would be on your property, not on the church's property? Mr. Walters said no, we haven't got any kind of meeting with the church; we asked for a meeting even when Ballard Builders was there, and they haven't even come to our house - he thinks Anthony came today and asked, wanted to know why and where the property line was and we showed him, it's just that the church hasn't come up to us, asked us, knocked on our door, we always approach them and find out that the fence went from a four foot picket to a five foot aluminum fence. He said this is the first when we got the notice in the mail, the Siemanowski's asked us to come out so we're out here listening - that's nice - but still they could have come talked to us earlier - just pushing the fence back a little more and being done.

Mayor Stombaugh asked if Mr. Walters was under the same perception that the Siemanowski's were, and if he had seen the drawing that Council was given tonight which shows that the fence will be between the buttresses and not on the property line. She said that's their property, right? Mr. Walters went up front and showed on the diagram what he was talking about. Mayor Stombaugh said so you are saying the buttresses come out on your property? Mr. Walters said yes. Mayor Stombaugh asked if a survey had been done. Mr. WillemsendeBock said yes.

Councilman Novotny asked what the survey showed - he said he did not see how the buttresses could be built if it's on someone else's property. Mr. WillemsendeBock said he can't answer that; he got involved in the finishing of the project in February as Property Chair and we had no contractor at that point; we assumed that the original surveys that were done, both through the original plans and then following that from code inspection, that they met the proper criteria.

Councilman Novotny said well obviously there's some point of contention on this and he thinks the property line needs to be established, because then if those buttresses are on their property then it's a bigger problem than just a fence.

Mayor Stombaugh asked staff if this would have come up through the town - the town does inspections and everything, right? She said wouldn't somebody have inspected that and wouldn't we know if that went past their property line. Staff stated Mr. Prichard would have been the one who did those inspections.

Mr. WillemsendeBock said we passed all of that so it would be a surprise to him.

Mayor Stombaugh said she had heard there were a lot of problems, and that some of them haven't been resolved yet with the contractor, so if there's any doubt she thinks Council needs to get a clear picture here. She said we're not going to be able to vote tonight anyway, but she would suggest that you find out if there was a survey done, get a copy of it, and come talk with Mr. Prichard who is the Manager of Building and Inspections, and find out if the inspection did pass - we've got to clear that matter up first before we can do anything. Mr. WillemsendeBock said okay; he does not think they've gotten the CofO yet, but everything passed inspections.

Mrs. Siemanowski asked, from the audience, that when the

church has the final plans they allow them (the Siemanowski's) to see them. Mayor Stombaugh said absolutely. Mrs. Siemanowski came forward and said the point that Mr. Walters made and that she wanted to reiterate is that to this day, after two years of construction, we have never been contacted by anyone from the church - ever. She said she wants to assure Council they have always given access to the property for them to do their work; we never knew ahead, we have had no communication whatsoever; so the process has been very fraught for all concerned, and she would just respectfully ask that as you deliberate and make your judgment, is that you please remember that homeowners are at their houses 24/7; commercial interests, churches, and businesses operate during a limited day and they come and go. Mrs. Siemanowski said so the decisions that are made affect homeowners all the time, and commercial owners just part of the time - they come and go from that property.

Mayor Stombaugh said the next step is that the church is going to look for a survey and talk to Planning and Inspections, and then it'll be put back on the agenda.

Mayor Stombaugh said it is 7:54 p.m. and we will close the public hearing and open the regular meeting.

#### REGULAR MEETING

The meeting was called to order by Mayor Patricia A. Stombaugh at 7:54 p.m. Council members present were Regina I. Brown, Valerie M. White, Robert M. Novotny, William C. Raynor, Robert Riddagh, and Anthony H. DeFeo.

Also present were Town Manager David S. Hugg III, Police Chief Richard H. Baldwin Jr., Attorney Barrett Edwards, 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 said he would suggest that we strike item 8(a), and rather than defer it to a future meeting we would bring it back if and when there is an active proposal.

Councilman Novotny asked to strike item 8(b) for now.

Mayor Stombaugh asked if there are any other additions or deletions. There were none. Mayor Stombaugh asked if there is a motion to accept. Councilman Riddagh said so moved. Motion was seconded by Councilman Raynor and carried unanimously.

#### MINUTES OF PREVIOUS MEETING

There were none.

#### REPORTS

**A. Bills & Financial Statement** - Mr. Hugg said Council received via email the bank account statement, and Mr. Stulir had included in their packets a current account listing, and he

thinks it advised Council at the last meeting - he thinks it was sent electronically in advance of the Finance Committee meeting - the revenues and expenditures through the first half of the year. He said he did not have anything to add to that unless there were any questions.

**B. Presiding Officer** - Mayor Stombaugh said she had nothing tonight.

**C. Town Attorney** - Mr. Edwards said he did not have anything at this time.

**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 does not believe there is anything further to add.

**F. Committees** - Councilman Riddagh said the Public Safety Committee met on August 12, 2010. He said they went over a couple things: they reviewed KCI's visual inspection of the old public works building - the Public Safety Committee and the Building Committee had at the time recommended an inspection to see if we could use part of the building for storage. Councilman Riddagh said Mrs. Bayer made herself available through teleconference - we had a very good discussion about what would be required to be done. He said we are not ready to make a recommendation at this time; they are working on some estimates and she is supposed to get back to us. Councilman Riddagh said we also touched on false alarms that the police and Councilwoman White asked us to, but he sees it is on the agenda tonight so we'll wait until we get to that point. He said other than that Chairman Novotny of the Long Range Planning Committee had asked that we start looking into what we would like to see in 2020 so we all started thinking about jotting down our ideas on that, and actually tabled that until the next meeting.

Mayor Stombaugh asked if there were any other committee reports. Councilman Novotny said the Long Range Planning Committee just met tonight. He said we covered some things on the annexation process and reviewed some of that, what can be done and what we can't do; but the other thing is he just wants to encourage all Council members that are chairing committees, from what Councilman Riddagh just said, that we provide information for a long range plan for 2020, so that we can start putting this together shortly. Councilman Novotny said he just wants to remind them to get that information to him as soon as they can.

Mayor Stombaugh said the Finance Committee met; we're working on the 2011 budget. She said there was discussion about many things; the staff presented lists of items that they felt were extremely necessary, would like to have, and what they would like to have but could do without for a year. Mayor Stombaugh said we'll continue on with the budget process.

Mr. Hugg said just a reminder that there is a special Council meeting Thursday night at 7:00 p.m. for purposes of a presentation by the Business Development Committee, which he would urge Council to attend if at all possible, and we will teleconference Councilman Novotny in - as we've discussed.

**RECOGNITION OF VISITORS**

Visitors present were Ed Lehman, Ronald Grier, Mary Grier, Gerhard WillemsendeBock, Greg Schaubert, Daryl Jester, Larry Koehler, Roslyn Rieth, Walter Rieth, Jen Merrill, Bob and Beth Siemanowski, Beverly A. Hirt, William Wilson, Ben and Lola Walters, Carrisa Anderson, Vernell Anderson, Seth Clevenger, Tom Burris, Larry Thornton, Nola Mae Gray, Gary Rosenzweig, and Charlotte Middleton.

Mayor Stombaugh said this is the time that anyone that would like to address Council can come to the microphone. She said need to give your name and address; you have three minutes to address Council. Mayor Stombaugh said Council may not have an answer for you tonight; we may have to refer it to a staff member or to a committee. Mayor Stombaugh asked if anyone would like to address Council.

Charlotte Middleton came forward to speak. Ms. Middleton said she has been a resident for about five years now, some of you may know her, and some of you may not. She said her daughter Zoe Fleming is Miss Delaware Princess, so she thought she would bring her tonight to introduce her to the Council members and also contact Mayor Stombaugh. Ms. Middleton said she left pictures and things like that, and if the paper would like to do a presentation - like a photo shoot of Zoe - and there are two other girls that won Miss Delaware, so we can get together and arrange a photo shoot that would be great. She said this is something that's happy and good. Mayor Stombaugh and Council congratulated Zoe.

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 with Old Business.

#### OLD BUSINESS

**C. Library Hours** - Mr. Hugg said he put in Council's packets a document that is probably more intensive than just library hours, but after Council's last meeting he asked Mrs. Hirt to go back and not only put together a chart of who works when, and what hours they actually work so that you would have a better understanding of how our employees in the library are actually deployed, and also to give you some attendance information which gives you the actual daily attendance by month from July 2008 through June 2009, and some more recent statistics. He said this again is just a follow-up from our discussion at the last meeting. Mr. Hugg said we operate the library with two full-time and four part-time employees, a number of whom are limited in terms of number of hours they are able to work. He said so you can't just multiply by eight and say whatever - you have some folks who by virtue of other job requirements or income restrictions or other conditions cannot work the full amount of time. Mr. Hugg said we do try on most hours that we're able to have three people in the library during the peak hours, two people in the library in off-peak hours and usually that's the two hours or the hour that involves closing. He said the issue that brought this up was could we, or should we try and go to Saturday hours and he really does want to make two comments: 1) is that given our current staffing there would have to be an exchange of some other time period to make up for Saturday and if you look at the various hours - basically what we've determined in the years that we were open on Saturdays during

the school year is that Saturdays - even though they were convenient - were really the slowest periods of time that we had available. Mr. Hugg said our position or recommendation is that we retain and continue the current hours, including staying open on Thursday night for the benefit of the public, and that we just simple aren't adequately staffed or able to effectively shift around to have a Saturday morning without giving up some other hours that we have a lot of attendees.

Councilwoman Brown asked if they actually count the people. Mr. Hugg said we actually have a counter at the door, so we actually take a count, we do divide by two so when they go in and out that is one and not two, and we make sure everyone has gone out by the end of the day. He said we have counters at both doors actually and we take a daily count - that's also information that we report to the state so that they have an idea of how many visitors we have. Mr. Hugg said we also log computer hours and other kinds of statistics, but the body count is through the doorway.

Mayor Stombaugh asked if there were any questions. Councilman DeFeo said the last time we met you said that you found that the Saturday hours turned into babysitting - parents were dropping off their children at the library and going off - did you find that to be the same during the school year or was it just during the summer months? Mr. Hugg said we were never open on Saturdays in the summer months.

Mayor Stombaugh said it looks like Monday through Wednesday the library is open until 4:30 p.m. Mrs. Hirt, from the audience, said Monday, Tuesday, Wednesday, and Friday we are open until 6:00 p.m. - our two full time people get off at 4:30 p.m., then we have an afternoon crew that comes in. She said these are split shifts because they can only work so many hours and the full-time people work during the week because that's when the office hours are - most of our meetings - we couldn't have our full-time people come in at 11:00 a.m. to 8:30 p.m. because then they would be missing out on a lot of (inaudible) during the day.

Mr. Hugg said to recap - the hours that we are actually open to the public are Monday, Tuesday, Wednesday, and Friday 8:30 a.m. to 6:00 p.m., and Thursdays we're open 10:00 a.m. to 7:30 p.m.; but the staff is actually... Mrs. Hirt said and 7:30 is amazing - it slows off around after 6:30. She said the busiest time is from 4:00 to 6:00.

Councilwoman Brown asked Mrs. Hirt if she feels the current staffing is adequate. Mrs. Hirt said no. Councilwoman Brown asked what Mrs. Hirt would do to change it. Mayor Stombaugh asked Mrs. Hirt to come up to the microphone. Mrs. Hirt came forward and said we need a third person in the evenings. She said during the school year the evening part is busy because the kids come in after school, parents don't come and pick them up until either 5:00 or 6:00 p.m. - they're there doing their homework or we're doing after school programs with them and it's a busy time. Mrs. Hirt said now it does slow down, we do have some people come in and pick-up their books up until 7:30 p.m., but if one person is sick or down, we only have one person - we cannot run a library with one person. She said even with two people it's hard - we have two people at the desk and if you have a line and somebody is asking to be helped at the computer we don't have another person to help. Mrs. Hirt said we can't

pull a morning person - and that's what we've been doing - and filling them in the evening. She said the ones that go on vacation or the ones that have sick time and then we're short in the morning, and that's real busy.

Mayor Stombaugh asked if there were any other questions. Councilwoman Brown asked if she had any idea how much it would cost to fund an additional person. Mrs. Hirt said not at this time - Ms. Torres usually figures that out. Mr. Hugg said we have a vacant library technician position - one that has been vacant since last October or so. He said that was a 20 hour a week position, and he thinks it paid \$11.00 an hour or something in that range, if he remembers correctly, with no benefits. Mr. Hugg said that's roughly a couple hundred dollars a week for a part-time library tech; that's the lowest paid of the library positions. Mrs. Hirt said the lowest paid? She said the lowest paid are our clerks. Mr. Hugg asked what a library tech was paid. Mrs. Hirt said a library tech was one who helped her - that was her right hand person. She said they did the computers and hardware and software and cataloging; our clerks only make \$8.00 and something. Mr. Hugg said but you're basically - if you figure \$10.00 an hour even for 20 hours a week that gives you a general idea of what the cost is; and our part-time positions don't get benefits so essentially it's a salary cost.

**D. Private Space for Meeting with Customers** - Mr. Hugg pass around a drawing for Council to look at. He said we have taken another look at the space as you go in the workroom off of the lobby there is kind of an entry, if you will. Mr. Hugg said he has talked to Mike Yun - our house carpenter - he's estimating somewhere in the neighborhood of \$300.00 to \$500.00 or so in materials, basically a day or two of his labor, and what he would do is build a partition across there with an opening, a counter - trim it out, it would be drywalled and painted with some kind of either a safety glass or some kind of dividing material, but a place that somebody can sit on either side of a counter and have a discussion with the door shut. He said unless somebody has some major objection to doing that we're going to authorize Mr. Jester to have Mr. Yun start work on that when he's available to do so. Mr. Hugg said he thinks that will provide at least an opportunity for space for people who want some privacy to go and sit.

**E. Discussion of Allocation of Receipt from Levy Court Reciprocal Borrowing Fund** - Mr. Hugg said this is the issue that you and Councilwoman Brown asked him to put on the agenda. He said if you recall at a previous Council meeting he brought the announcement that Kent County Levy Court had allocated \$30,000.00 from the undistributed balance of the Reciprocal Borrowing Fund to the Kent County Libraries - Dover, Harrington, Milford, Smyrna, and the County's library which is now a circulating library, with the caveat for the Smyrna award that it be used for the capital library program. Mr. Hugg said he shared with Council a letter that came with that check. He said at your direction we put the funds in what we call the Friends Account - it's actually the funds that came to the Town in an endowment when the library was acquired or taken over by the Town. Mr. Hugg said that is a fund that is not a general operating fund; it's been used in the past for library improvements, major maintenance, and those kinds of things. He said the issue is - as he recalls - there was some concern that a couple of you had raised about the circumstances of that check and two things: 1) the use of the Reciprocal Borrowing Fund,

which really is an operating budget fund from the County that is intended for and has been used for library operations county wide; and 2) a concern about the actual condition that was associated with that check.

Councilwoman Brown asked if we had an existing agreement with Kent County - is it oral... Mr. Hugg said there is a reciprocal borrowing agreement; it's somewhat obsolete these days, but there is an actual agreement that each of the libraries has with the County that specifies how the reciprocal borrowing funds are to be distributed and what the amount is and the mechanism for setting the tax rate. He said just to give you a little bit of background - the Reciprocal Borrowing Fund is actually the result of or the product of a library tax that is imposed by Kent County on people who live outside of municipalities that own and operate a library. Mr. Hugg said the purpose of it is to reimburse those municipal libraries for the services that we provide to the county residents outside of our jurisdiction. He said there's a formula that allocates it based on the number of books that are circulated within our service area which is essentially the school district. Mr. Hugg said the County sets that tax rate every September or October and then that is used to calculate an expected amount of money and as with any kind of tax that has a sort of growth component some years it actually results in a surplus and some years if the County's growth rate is relatively slow in the economic conditions it may not quite reach the level of the estimate. He said we get a portion of the reciprocal borrowing money - we skip a quarter and get two quarters, with a quarter of the year delay so that the money that we are actually receiving is technically one quarter late. Mr. Hugg said this year in particular, because the County had seen some growth in it's revenues there was roughly \$190,000.00 in revenues from the library tax that were to be distributed through the reciprocal borrowing program. He said the four libraries in the county - town managers and directors met with the County and asked that those funds be distributed pursuant to the formula that would have been in effect for the balance of the funds. Mr. Hugg said the County chose to distribute them on an equal basis as opposed to formula basis, and also to put a caveat on, at least the Smyrna grant, that it be used for capital purposes.

Councilwoman Brown said she would like to support what the Library Guild is doing, but in this circumstance she thinks that \$30,000.00 should have come to Smyrna for their operating expenses. She said Mrs. Hirt said she needs other people to service the citizens and the non-citizens of Smyrna. Councilwoman Brown said they had \$190,000.00 and they distributed \$150,000.00 - what she would like to see happen is the \$30,000.00 go back to Kent County, they give it to the Library Guild, and then they reach into the rest of that \$190,000.00 and give us our reciprocal borrowing.

Mayor Stombaugh said Councilwoman Brown came to her and asked her about this, and brought it to her attention too, and she (Mayor Stombaugh) went and talked with Mr. Hugg and every year in the past it went into the account for library expenses. Mayor Stombaugh asked if there is a line item. Mr. Hugg said yes. Mrs. Hirt spoke from the audience, but was inaudible. Mayor Stombaugh said so you were counting on this money going into the operating budget. She said we were kind of surprised that this happened, and it didn't happen to any of the other towns that received the money - the other towns that received

the money was Dover, Milford, Harrington - all of them it went into their library operating fund, and she feels the same as Councilwoman Brown in that she has a little problem with this because we desperately need this money in the operating account for the library. Mayor Stombaugh said she has not had a chance to talk to Commissioner Banta yet, but she does plan on talking to him; she does not know if he understands how this usually works or - she doesn't know what happened here.

Councilman DeFeo asked if this was money we normally received - or this is money over and above the money that we received? Mrs. Hirt said over and above, but we always know - they had told us a while ago there was going to be a surplus, so we were counting on the surplus, we ordered our computers. She said we were going to use that money for our new computers.

Councilwoman White said we can't assume we're going to get money; we can't assume that money is just going to be there to count on that in that manner.

Mayor Stombaugh said maybe you can't assume it's going to be there, but when you get it and it's normally used in a certain way, she thinks that we should - she would like to see Council write a letter to Commissioner Banta and express our thoughts on it because she is not sure what happened and until she talks to him, or until we write a letter she is not going to speculate. Mayor Stombaugh said all she knows is we have a library in the town now; it's an operating library; she knows the Guild wants to build a new library and that's fine, but we've got to take care of what we already have and unless you want to just shut the library down and let the Guild take over everything, then that's the only alternative that she sees, but she can't see taking money out of our budget when we have a building there and an operating business, and giving it to - we've got to find another way. Mayor Stombaugh said she and Councilwoman Brown felt strong enough about it that they asked for it to be put on the agenda.

Jennifer Merrill, 115 North Main Street, Smyrna came forward to speak. Mrs. Merrill said she is the President of the Smyrna Public Library Guild. She said she received a call from Commissioner Banta saying he had some good news for her, and she found out after the Levy Court meeting where this money came down the pike at us, what was going on and that there was an effort by the Levy Court Commissioners to make sure that the money that was sitting - the tax money that had been collected - was redistributed rather than sitting in the account. Mrs. Merrill said the money that was redistributed was not redistributed according to the formula that was there for surplus; if that had been the case Smyrna would have gotten \$16,000.00. She said instead Commissioner Banta and the other Levy Court Commissioners decided to distribute it equally so Smyrna got \$30,000.00, Milford got \$30,000.00, Dover was reduce to \$30,000.00. Mrs. Merrill said when Commissioner Banta voted yes to distribute these funds, and to stick his neck on the line a little bit there for distributing them in a way that was not in the formula, he put the rider on that the money was to be used for capital construction for a new library. She said it doesn't impact the quarterly checks - this is money that was above and beyond. Mrs. Merrill said she was not aware that the money was budgeted or intended for computers or anything else - that's no information that she ever got. She said Commissioner Banta called her, said he wanted to take her picture of him

handing the check to her; the letter is made out to her because he wanted her to chase this down and make sure that when this \$30,000.00 came it went to the new library. Mrs. Merrill said the only other thing she really has to say is that this money is critically important for us right now; we are approaching next month working with the Division of Libraries approaching the State for \$2,000,000.00 in capital construction funds, and we are going to match that \$2,000,000.00. She said this \$30,000.00 is actually worth \$60,000.00 to us - to the organization who is trying to get this effort going for something that she thinks is going to be a huge asset for this community.

Mayor Stombaugh passed the gavel to Councilman Raynor. Mayor Stombaugh made the motion to return the check to the Levy Court, and if their wish is to give it to the Guild she thinks they should make it out to the Guild and give it to the Guild - there's no reason for the Town of Smyrna to have this into their account - the Guild is a totally separate entity from the Town of Smyrna and she does not think we should be involved with it if that's the intent for the check, she thinks it needs to be returned and it needs to be made out to the Guild. Motion was seconded by Councilwoman Brown.

Councilman Raynor said we have a motion and a second, are there any questions. Councilman Novotny said he would like to talk about this. He said these monies were distributed in the past based on a formula; everyone got this money because employees at the libraries through the various towns - through their efforts, and each municipality got this money. Councilman Novotny said now all of a sudden the Commissioners are telling the Town of Smyrna we're going to give to all these others but you can't have any money - that's what this has come down to, because Commissioner Banta decided it's more important to give it to the Guild. He said now don't get him wrong - he's in favor of the Guild, he applauds their efforts, but what he's doing is he's shortchanging the Town of Smyrna, and he (Councilman Novotny) does not think that's right. Councilman Novotny said he thinks that \$30,000.00 should be our money.

Councilwoman White said she doesn't really - she guesses we talked about this before, but maybe we ought to look into - she thinks the Mayor mentioned contacting Commissioner Banta about how this all came about, why the money has this caveat in there now where it's for the Guild, not however - how did this come about, is her question; why is there this change all of a sudden, and did it indeed go to Dover, Milford, or whomever to the same type of fund and the restriction is the same - is there something from Commissioner Banta that says that? Councilwoman White said that was from Mr. Hugg and she does not want to assume that this information is correct. She said if it was the same rule for all involved that's one thing, but if Smyrna was designated as the only one then that should be a concern. Councilwoman White said she is just not sure how this all came about that there is this big change, and nobody actually spoke to Commissioner Banta about this.

Councilman DeFeo said there's a motion on the floor, but he kind of goes with what Councilwoman White is saying - before we get harsh and the letter's written - he likes what Mayor Stombaugh said before, that she would speak with him and maybe open a dialogue.

Mayor Stombaugh said why don't we do this - she will withdraw her motion if Councilwoman Brown will withdraw her second, and she'll tell her why - so that we can invite Commissioner Banta to be here at the next meeting.

Councilwoman White said she does not want to take from either one if there was a logical reason. Mayor Stombaugh said then after we hear from him at the next meeting then if we still feel the same we can make a motion then. Councilwoman Brown said you can withdraw the motion, she doesn't have to withdraw. Mayor Stombaugh withdrew her motion, and requested that Commissioner Banta be at the next meeting so he can address Council.

Councilman DeFeo said for a matter of education, because some of us are new, this surplus - this has come down in the past. Mr. Hugg said correct. Councilman DeFeo asked how often it comes down. Mr. Hugg said when they set the tax rate they estimate what they believe the revenue will be. He said if the county's property values grow slightly more then they generate a surplus and that's also allocated, and the County has historically held that money and distributed it periodically.

Mayor Stombaugh said when these books are returned to the proper library, that's work that our library is doing - right - to get the books returned to the... Mr. Hugg said Mrs. Merrill is correct - it's ironic that we actually got more money than we would have gotten had the formula played out, but the difficulty is that - this is kind of interesting and he thinks having Commissioner Banta here is probably a good idea; we on behalf of the towns and the libraries, we being the four city managers, town managers, and library directors, have been asking the County repeatedly for quite a number of years to help us with our capital needs. Mr. Hugg said it's kind of ironic that they took this mechanism to help us with our capital by sort of ignoring a formula that provided for operating funds that actually benefitted us.

Mayor Stombaugh said this has been one of her concerns all along, that the library doesn't only service the citizens of our town it services citizens outside of our town, and this is the only money that we get. She said we don't get any money from Clayton, or any of the other towns. Mr. Hugg said nor do we get any money from New Castle County. Mayor Stombaugh said and we're right here - part in New Castle County and part in Kent County - this is the only money that we get that represents servicing some of the people outside of the town limits.

Councilman Riddagh asked how much money we spent - \$16,000.00 or \$30,000.00? He said Mrs. Hirt said we spent money on computers... Mrs. Hirt said we ordered the computers. Mr. Hugg said they're about \$9,000.00. He said we kind of based on our own assumptions what we were likely to get from reciprocal borrowing - he would be delighted to get \$30,000.00 from the County - additional money from the County.

Mayor Stombaugh said if the computers are around \$9,000.00, and if we have \$30,000.00 then that pays for that other person that she needs. Mr. Hugg said there is deferred maintenance and other things at the library that if we were to get significant additional funds that clearly we would address. He said there are things that we would use additional operating monies for.

Councilwoman Brown said her bottom line is if Mrs. Merrill is correct, she'd rather have \$16,000.00 that we can use than \$30,000.00 that we can't touch.

Mr. Hugg said he would invite Commissioner Banta to the next Council meeting. He said the next Council meeting is a Tuesday night and that may conflict with Kent County Levy Court because of the holiday. Mr. Hugg said he will invite him to the next meeting that does not conflict - it may not be the next one.

#### NEW BUSINESS

**A. Charge for Response to False Alarms** - Councilman Riddagh said Councilwoman White expressed concern about the number of false alarms that the police respond to, and whether we should charge or not, so we had quite a lively and very informative discussion. He said the Chief did bring up a lot of good points. Councilman Riddagh said it came down to whether we should have our own ordinance for false alarms or if we should adopt the state ordinance which already has one. He said for many reasons there will be no recommendation coming at this time from the Public Safety Committee - it doesn't mean the issue is dead, it just means we are going to monitor it.

Chief Baldwin said the problem is that there are a couple of areas that we see constant increases in, even though our overall complaint load is going down. He said one of those areas is the amount of alarms that we respond to. Chief Baldwin said just to give you an idea in 2006 we responded to 295 alarms of all types; in 2010 that number is up to 519, which is a 76 percent increase. He said we've gone from responding to about 1.4 alarms a day in 2006 to 2.4 alarms a day in 2010, and our experience and the experience for police agencies across the country is that 95 percent or higher of these alarms that we respond to are false alarms - there is some type of error somewhere within the system - usually with the user, but there is some type of an error somewhere. Chief Baldwin said probably about four or five years ago we changed our response procedure; we used to respond with two units, lights and sirens to an alarm; as the number of alarms that we were receiving were increasing - and a lot of it was just due to the growth in town - we realized that we were doing two things: 1) we were endangering our officers and the citizens more than necessary because we were making a lights and siren response that was unnecessary 95 percent of the time, and 2) also, we were tying up two police officers when most of the time we really needed one. He said now if the initial call that we get gives us additional information that would cause either the dispatcher or the officer in charge who is on duty that there might be more to it, then a second officer often times will respond also. Chief Baldwin said so it is a substantial effort on our part, it does tie up manpower and does take time, and it is a frustration for the police officers to have to respond. He said a number of years ago he believes New Castle County police were the first ones who adopted a false alarm ordinance and after a certain amount of alarms they started charging for false alarms; since then Dover, Milford, Newark, and a couple of local jurisdictions - municipalities have adopted similar types of ordinances. Chief Baldwin said last year the state adopted a state wide ordinance that we can use any time at all. He said we don't need to do anything other than for the Smyrna Police Department to begin to make use of the state law.

Councilman Novotny asked what that is. Chief Baldwin said the state one says that no security system user shall cause, allow, or permit the security system to give three false alarms at a security system site within a calendar year. He said the penalties are for the fourth false alarm it is a \$50.00 civil penalty, the fifth false alarm is \$75.00, sixth is \$100.00, the seventh and any false alarm thereafter within a calendar year is \$250.00. Chief Baldwin said one question we have, and before he gives an opinion on it he would have the solicitor's office look into it is - if we use the state ordinance who gets the revenue from those charges.

Chief Baldwin said his recommendation to the Public Safety Committee was that we continue to monitor this and hold off at this time. He said our software system that we are using for our dispatch software system - when we purchased it we purchased the basic software system with the idea that on an annual basis we would purchase the modules that we needed to bring our system up to where we wanted it so it would do all the things that we wanted it to do. Chief Baldwin said it does the things as far as officer safety, as far as giving us the information on the calls for service we are responding to, but it doesn't do a good job in records keeping. He said so what we're left with is we don't have the capability at this point to specify individual locations of alarms so that we can give that information immediately to an officer if they respond. Chief Baldwin said the jurisdictions that utilize these alarm ordinances - they'll dispatch an officer or when an officer clears they'll tell them this is the fifth alarm within a calendar year, this is the third alarm, whatever, so the officer knows whether or not he should bring charges against that individual alarm user. He said that usually is done with a written summons - that is a civil penalty. Chief Baldwin said so we don't have that capability; we would have to purchase the new world module that would enable us to do that, to do that recordkeeping.

Chief Baldwin said so at budget time, if Council felt that this was something they wanted to get involved in we could certainly do that - we could purchase that module.

Councilwoman White said she brought this up and asked that it be addressed because as the Chief just said the increase is enormous and we are sending our officers to a false alarm often 95 percent of the time, when there are a lot of other things that the citizens complain about that the officers should be looking into. She said so we're taking them away from what could potentially be another crime, for a false alarm. Councilwoman White said be it a resident or a business, she believes that they should start being charged at a certain point, and she agrees with Chief Baldwin that if we are able to adopt the state - because it's already set in place and it's very simple - let's do it, but if the state gets the money then she would prefer that we do an ordinance. She said and if Council agreed that it go into the new building fund - wherever - just that it would be the Chief's money for the police station, not into a general fund either. Councilwoman White asked Mr. Edwards to look into that, and she said she would like to see this again in a month, at the next meeting.

Chief Baldwin said he would just caution you - all the fine money that the police department collects goes into the Town's general fund - he thinks that's a healthy approach to things.

He said he appreciates what Councilwoman White is saying; his concern would be that if the fine money from alarms went into a special fund earmarked for the police department every time somebody got a fine for a false alarm they would say that the police department was doing it to benefit themselves, so he would prefer that as we go forward... Councilwoman White said but is it in the police station's general fund, rather than the Town of Smyrna's general fund - do you have your own general fund line? Chief Baldwin said no. Councilwoman White said okay, that's down the road, but those were her concerns.

**B. Recommendations from Attorney Dave Williams - "Notification to Unions to Start Contract Negotiations" Council Vote Required**

- Councilman Novotny said the Negotiating Committee met with David Williams. He said just a refresher - David Williams is our attorney for contract negotiations, and during that time - basically this is a housekeeping detail. Councilman Novotny said what this is all about is to notify the two unions and the individual contracts that we have, like with the Chief and other members of the police force, that these contracts that we currently have expire at the end of this year - December 31<sup>st</sup>; and what we are doing is a notification that we intend not to resume that contract and negotiate new contracts. He said with that being said, all salaries and benefits that are currently in effect now would remain through the contract negotiating period, and whatever is arrived at, at that point, then that would be put into effect. Councilman Novotny said so that's what he is saying is basically a housekeeping detail; the attorney needs to send out letters to start the negotiating process, that's all we're talking about here - just to start the process.

Chief Baldwin said just as a matter of housekeeping, for lack of a better word, haven't we already done that? He said he received notification from the town, and he realizes you've changed attorneys, but he doesn't know that that changes the legal process.

Mayor Stombaugh said she thinks the term here, from what she understands, is the notification was given that the contracts are going to be renegotiated, but notification was not given that as of the end of this year if terms haven't been met the present contract will expire - will not be renewed. Chief Baldwin said the individual contracts speak to that. He said he is not sure what action you would contemplate taking - it's already in the contracts as far as whether they continue or that they don't or not. Mayor Stombaugh said this is the recommendation from the attorney.

Councilman Novotny said this is the recommendation from the attorney just to notify everybody - all the parties concerned - that the Town wishes to exercise its right to negotiate a new contract and the existing contracts will end on December 31<sup>st</sup>.

Councilman Novotny said he is assuming he needs to make a motion. He said then he'll have to make two motions and we'll do one at a time. Councilman Novotny said the collective bargaining agreement between the Town and AFSCME covering the Town's electrical department employees provides that the amendment will automatically renewed for the period of January 1, 2011 through December 31, 2011, unless either party shall give the other party written notice of termination on or before November 30, 2010; the agreement provides that in the event the agreement is automatically renewed for 2011 there will be a 3%

salary increase; in order to preserve the Town's right to engage in collective bargaining negotiations with AFSCME on all issues, I (Councilman Novotny) move that the Town direct that written notice be provided to AFSCME of the Town's decision to terminate the agreement effective December 31, 2010. In making this motion I (Councilman Novotny) understand that the collective bargaining laws that the Town maintain the status quo, pending the negotiation of a successor settlement; in addition this motion does not address the termination of the agreement between the Town and the Smyrna Police Employees Association, because this agreement provides that it shall remain in force and effective until a new agreement is entered into between the parties; moreover, there is no provision in this police agreement for an automatic salary increase effective January 1, 2011. Motion was seconded by Councilman DeFeo.

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

Councilman Novotny said the second motion is the Town entered into employment agreements with Richard Baldwin, Wilbert Bordley, William Wilson, and Norman Wood, all of which expire on December 31, 2010; such agreements state that the agreements will be extended beyond December 31, 2010 on an at-will basis terminated by each party with 30 days written notice. He moved that the Town Council direct that notice of termination of the respected agreements be provided by messenger to Baldwin, Bordley, Wilson, and Wood effective January 31, 2011; in making this motion it is not the intent to terminate the employment of the selected employees, rather the purpose of such notices is to preserve the Town's ability to consider whether continuing the practice of entering into such individual agreements is necessary and in the best interest of the Town. Motion was seconded by Councilman Raynor.

Mayor Stombaugh asked if there was any discussion. Councilwoman Brown asked what does that January 31<sup>st</sup>... Councilman Novotny said it's just 30 days notice. Motion carried unanimously.

Mr. Hugg clarified with Councilman Novotny and Councilman Raynor that one of them would notify Mr. Williams of these two motions. Councilmen Novotny and Raynor said yes they would take care of that.

#### EXECUTIVE SESSION

**A. Executive Session to Discuss a Personnel Matter in Which the Name, Competency, and Ability of an Individual Employee(s) will be discussed** - Mayor Stombaugh said she needed a motion to go into executive session to discuss a personnel matter in which the name, competency, and ability of an individual employee(s) will be discussed. Councilwoman White said so moved. Motion was seconded by Councilman Raynor and carried unanimously.

Council went into executive session at 8:50 p.m.

#### POSSIBLE ACTION AS RESULT OF EXECUTIVE SESSION

Councilman Novotny made the motion to go back into regular session. Motion was seconded by Councilman Raynor and carried unanimously. Council came out of executive session at 9:14 p.m.

Councilwoman White made the motion to accept the Chief's request for retirement effective 9/6/10, and the accompanying request. Motion was seconded by Councilman Novotny and carried unanimously.

#### OTHER COUNCIL BUSINESS

Mayor Stombaugh asked if there was any further Council business. Councilwoman White said she had two requests. She said the Charter Review Committee - she would like to request that it be added to the agenda if it hasn't already that the Charter be changed and sent to the legislators as need be so that for the upcoming election should a Council member decide to run for Mayor that they would not loose their seat - Mr. Hugg has all the paperwork - and if they did not win the election then they would retain their seat, if they did with the election then there would be a special election just as our senate does now. She said it would mimic what the senate does now.

Mayor Stombaugh said we have actually received a letter from the Attorney General's office signed by Joe Biden III, and there are a lot of concerns about municipalities making changes to their charters in concern to elections. She said we have been advised to go through our attorney and get recommendations from the attorney's office because there are a lot of things that have either been illegally done, not properly done, and need to be clarified.

Councilwoman White asked Mayor Stombaugh if she could get a copy of that letter, and she would like to ask that Mr. Jaywork's office look into making these changes as simply as possible so that they can go through for the next election. She said if you recall she requested this to be done right after the last election.

Councilman Raynor said wasn't this voted on in the Charter Review Committee and... Councilwoman Brown said we've discussed it. Councilman Raynor said they voted on it.

Councilwoman White said then she will ask again that it be put on Charter Review, and if they don't wish to discuss it then she will bring it to Council every Council meeting until somebody addresses the issue.

Councilwoman White said she calls it a 'yard sale ordinance' and she's asked for it before, and she's asked that it be inquired about - as is the yard sale on the highway which is the outgoing doorway to Smyrna, there now is another 'sell your care here lot' in the corridor on Route 13 and her fear is that there is going to be many more if we don't implement something that says 'hey, if you are going to do this, there has to be some type of structure', because it's bad up the highway and we don't want it to get any worse. She said if you want to have something out there that's fine, but it should be kept to a minimum instead of it just continuing on to not look very nice.

Mayor Stombaugh said you can do something for the future, but the ones that already exist would be grandfathered. Councilwoman White said yes, she understands that; but again

there's already another one that's popped up 'sell all your stuff here', so she would like to see if we can't act on this.

Councilman DeFeo asked that the letter that Councilwoman White asked Mayor Stombaugh for is shared with the rest of Council. Mayor Stombaugh said it was going to go to Charter Review. Mr. Hugg said he will make sure that everybody gets a copy.

Mr. Hugg explained to Councilwoman White that the Planning and Zoning Department, and the Planning and Zoning Commission are working on a yard sale ordinance - that is in the works. Councilwoman White said that is great - thank you.

**ADJOURNMENT**

Councilman Novotny made the motion to adjourn. Motion was seconded by Councilman Raynor. Meeting was adjourned at 9:20 p.m. by unanimous vote.

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Council Secretary

vlh