

**MINUTES OF THE MEETING**  
**SMYRNA TOWN COUNCIL**  
**September 7, 2010**

**REGULAR MEETING**

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

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

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

Mayor Stombaugh stated she would like to start tonight - this is something that she had wanted to do for some time, and we just dug up a copy of it - this is the oath that we all took when we were sworn-in to our office. She said she thinks it would be nice to just hear it at the beginning of each meeting, just as a little reminder. Mayor Stombaugh read the oath into the record.

**ADDITIONS/DELETIONS TO PUBLISHED AGENDA**

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

Mayor Stombaugh asked if there is a motion to accept. Councilman DeFeo said so moved. Motion was seconded by Councilman Riddagh and carried unanimously.

**MINUTES OF PREVIOUS MEETING**

Mayor Stombaugh asked if there were any additions or deletions to the minutes of July 6, 2010. There were none.

Mayor Stombaugh asked if there was a motion to accept the minutes of July 6, 2010. Councilman Novotny said so moved. Motion was seconded by Councilman Raynor and carried unanimously.

**REPORTS**

**A. Presiding Officer** - Mayor Stombaugh said she would just like to bring everyone up to date - she welcomed Captain

Bordley. She said Council's moving a little slowly at selecting a new Police Chief. Mayor Stombaugh said we realized that it wasn't so cut and dry; there are a lot of things to be considered. She said the old Police Chief was here for almost 27 years and we didn't want to take his contract and give it to the new Police Chief - that wouldn't be fair, so we have a contract to work on; Council will decide later on tonight how we're going to proceed with this, but we are going to take our time and do it right. Mayor Stombaugh said besides Council there will be people from the industry - professionals - involved and we just want to let the citizens of the Town of Smyrna know that this isn't going to be something that's jumped into; it's something that's going to be really thought about and we're going to do it the right way.

**B. Town Attorney** - Mr. Jaywork said he did not know that he had anything to report other than there was an inquiry about the status of our outstanding tax accounts. He said Mr. Rushe prepared a four or five page analysis of the number of accounts and to tell you the status of where they are.

Mr. Hugg said we'll be providing that to Council, actually giving it to you both at the Finance Committee meeting next week and at the next Council meeting. He said there are a handful of accounts that Mr. Rushe had asked for an update on - his recollection of the status of those accounts is different from our recollection of the status of those accounts. Mr. Hugg said we'll resolve those couple of things, but he thinks when Council gets it they will realize that we've been pretty aggressively going after tax delinquents from the years 2003 through 2008. He said we actually had pretty good success in collecting a great number, and getting payment plans from a large number of delinquent tax holders as well. Mr. Hugg said that information will be coming to you for your next meeting and at the Finance Committee meeting.

Councilman Novotny said he had a question about that. He said can we put the delinquent taxpayers' names and amounts in the newspaper? Mr. Jaywork said he thinks you can, but before you actually do that he would like to go back and check. He said he believes the City of Dover did that. Mr. Jaywork said he thinks that is public record. Councilman Novotny said it is public record so he really doesn't see why we can't. He said some of the good people here are paying their taxes, and others - you may have a neighbor that's not - that's not fair to you.

Mayor Stombaugh said after we did the budget we found out that the delinquent taxes - it was ironic that the delinquent

taxes were just about \$260,000.00 when we looked at it the last time, and when we did our budget - the budget that was presented to her before she cut it - was \$261,000.00, so if everybody had paid their taxes we wouldn't have had to go through all the things that we went through last year at budget time.

**C. Police Chief** - Captain Bordley said he just wanted to say thanks to everyone who came out to National Night Out last week; it was a well attended event. He said he wanted to say a special thanks to WSFS Bank for donating the hot dogs for the event. Captain Bordley said we gave out about 350 hot dogs; we had a lot of hungry people.

**D. Town Manager** - Mr. Hugg said Council has his report in their packets and he thinks it is self explanatory. He said he did want to remind Council - some of you have responded through the Utility Committee or whatever, but the annual meeting of the Delaware Municipal Electric Corporation is scheduled for Wednesday, September 29, 2010 - you all should have gotten a notice. Mr. Hugg said if you are interested in attending and have not let him know, please do so.

**E. Committees** - Councilman Riddagh said the Public Safety Committee will be meeting this Thursday night at 5:30 p.m. and it will be held in the Public Works building break room.

Councilwoman Brown said at their last meeting, the Charter Review Committee realized that meeting just once a month for an hour or an hour and a half really was not getting the job done. She said the Charter has been under review for the last couple of years and we seem to be hashing the same things over and over. Councilwoman Brown said Councilman DeFeo suggested that perhaps we should set aside a couple of Saturdays and spend all day and try to just walk through it as quickly as we can; she sent an email to Mr. Hugg and asked him what the timeline would be to try to get it through for this legislative session, and walking backwards he sort of gave us a goal of having a first draft finished by Thanksgiving to Mr. Jaywork. She said the path forward now is to sit down and make out a schedule of meetings where we will get together and try to get this thing done this year.

Mayor Stombaugh said the Business Development Committee met last Thursday morning; we had guest speakers from the Small Business Administration and from the USDA. She said it was a very, very good meeting. Mayor Stombaugh said there is some money out there and we're going to work on it a little bit more to see if we can help get some of that money into the Town of

Smyrna and get some of that money out to the business people. She said after the special meeting that we had where the Business Development Committee gave a presentation of what we've been working on, and we pay a consultant \$20,000.00 a year to help us bring businesses to the town and we had determined that if we had an in-house employee we would not be able to do what this gentleman does. Mayor Stombaugh said he flies all over the country, and goes to conventions and different places to meet with businesses - it would cost the town a lot more than what we are paying him. She said Mr. Prichard, Manger of Building & Inspections, told her that with the Bayhealth stand-alone emergency center that is going to be coming - that one business alone, with just impact fees - not all of the other fees that are going to be involved, but just the impact fees from that one business will amount to more than \$50,000.00. Mayor Stombaugh said if we bring one business to the town a year it will more than pay - just like this one will pay for our consultant for almost three years. She said the Business Development Committee has been really pushing forward and she thinks there are a lot of good things to come.

Councilman DeFeo said the Utility Committee met on September 1, 2010. He said they had a representative from Allied Waste and most of the discussion centered Senate Bill 234, which is the new recycling bill. Councilman DeFeo said they also discussed the yard waste ban - the yard waste ban takes effect on January 1, 2011 and the recycling bill takes effect on September 15, 2011. He said we realize we are putting ourselves up a wall that we had made ourselves; if you recall last year we had asked for a contract extension of our trash removal service to take us through 2010. Councilman DeFeo said we are going to ask for another extension for another six months or so, so we have enough time to really plan ahead and look at what the waste ban and the recycling bill are going to impact us and how we're going to manage both of those issues here in town. He said it would be ideal if we could find one hauler that would do all three - we don't know how lucky we are going to be doing that, but that's our goal as we proceed forward with this.

Councilman DeFeo said we also had a discussion around conservation based water rates. He said we had three separate plans and we wanted to make sure what we came up with was fair as far as the billing for the residents here, but we want it to be cognizant of revenue loss as well. Councilman DeFeo said staff is beginning to explore the history of water usage for commercial and industrial customers, so we want to make sure we fold them into this - in the past it seems like they sort of slipped through the cracks.

Councilman Novotny said he had a question about the water rates - it's been a couple months, but he believes there was going to be a study done as to what our actual cost is on a full costing basis, which includes depreciation as well as the direct cost - was that ever done? Councilman DeFeo said no, not completely. He said he has looked at the budget information - if you go in that, you can see how much that department or that service costs us, but to really get into it and do it the way he understands it needs to be done would be rather expensive and we didn't want to add more expense on top of it. Councilman Novotny asked if they were looking at direct costs or total costs. Councilman DeFeo said primarily direct costs. Mr. Hugg said Jeff Flairty, who is a member of the Committee and is an environmental engineer, has and he presumed is continuing to work on that issue. Mr. Hugg said Mr. Flairty volunteered to pull that information together and come up with something more than a back of an envelope - he knows Mr. Flairty has not completed his work. Councilman Novotny said the last time that they (he and Mr. Hugg) were talking about this Mr. Hugg had commented that in 20 minutes they could have a back of the envelope kind of answer. Mr. Hugg said we kind of have that - we don't really have a good sense of depreciation, although we do have a good sense of what the water system is; it's a little bit dated - it was assessed or appraised three or four years ago and we do have a record in the Town's financial reports of the value of the water system, and we can certainly value things like the treatment plants, water towers, and major pieces - the pipes in the ground get a little difficult, but Mr. Flairty had agreed to do something a little more analytical and we got a lot of information from our Water Department on flows... Councilman DeFeo continued - the usage, maintenance fees, and to be honest, when you are getting it done for free you're... Councilman Novotny said he was going to say - if he's (referring to Mr. Flairty) not, then he would go ahead and do it. Mr. Hugg said the last time that he spoke with Mr. Flairty he was working on it.

Councilman Raynor said the Personnel Committee will meet on Tuesday, September 14, 2010 - Mayor Stombaugh said followed by the Finance Committee.

Mr. Hugg said we may have a scheduling issue with the Utility Committee in October and he was going to ask the Chairpersons of the Personnel and Finance Committees if there was a possibility of doing the same thing in October - having your meetings back-to-back in order to reschedule the Utility Committee. He said we can talk about that at the meeting next week, and if that appears to be an option then that would help

in terms of Chairmen being away and trying to get our meetings scheduled. Mayor Stombaugh said as Chairperson of the Finance Committee she would just as soon do them both the same night; maybe we could just change the schedule. She said to let her talk to the Committee first. Mr. Hugg said yes, and we'll see how this next one goes and maybe that there are some nights or some times when you have a long agenda on one or the other, then you don't want to tie everybody up.

Councilman Novotny said the Long Range Planning Committee will have another meeting on the 20<sup>th</sup>, and Mr. Hugg is going to come in and answer some of their questions, and he hopes to have a general outline and a pro forma of what this would look like for the next meeting.

Mayor Stombaugh asked if there were any additional committee reports. There were none.

Mayor Stombaugh asked Mr. Hugg if we could have Mr. Markow look into the microphones that clip on. She said one of the biggest complaints that she has gotten is that these microphones don't pick up their voices. Mayor Stombaugh said the people in the back of the room always complain and she thinks we need to - she does not want to spend a lot of money or anything like that - but if we can just take a look into it and see; maybe they are not that expensive. She said maybe it's something we can do to improve.

Mr. Hugg said they also make a microphone that they use in legislative hall that is on a very long, sort of thin stem that can be brought close to you too. He said we will look into that as an option - so that way there will be a couple of options.

#### RECOGNITION OF VISITORS

Visitors present were Ed Lehman, Trisha Moses, Melaine Minear, Pete Vigneri, Jim Harkins, Larry Koehler, Al Kemp, Joyce Nabb, Sam Calloway, Sara Calloway, Ann Henning, Tom Burris, Seth Clevenger, Candace Dunning, Jerry Dunning, David & Bunny Pleasanton, Al & Tish Pickett, Joseph Sheridan, Daryl A. Jester, and Rita Purie Foy.

**A. Presentation by Trisha Moses, Boys and Girls Club - KaBOOM! Project** - Mayor Stombaugh said this portion of the meeting we usually open to visitors to come and speak to Council. She said we do have a special presentation tonight, and we will start with Trisha Moses - she is with the Boys & Girls Club and she is going to tell us about a special project they have going on.

Trisha Moses, 13 Katie Ann Court, Smyrna, came forward to speak. Ms. Moses said for those of you that do not know her, she is the Director of the Smyrna-Clayton Boys & Girls Club; she has been with the organization for a little over seven years now. She said with being pro Boys & Girls Club she is pro Smyrna children. Ms. Moses said she is happy to be here today - she being here today she is very proud to announce that they have been awarded a partnership grant that allows for a \$40,000.00 playground to be built at the Smyrna-Clayton Boys & Girls Club. She said the Smyrna-Clayton Boys & Girls Club has, like many other businesses and non-profits, seen a difficult year financially and with that some of you may know that we ended our last fiscal year with over a \$50,000.00 deficit and we're going into this fiscal year with a \$35,000.00 deficit. Ms. Moses said with that, they still strive to provide the best services possible for the children of the Smyrna community; they pride themselves on that - targeting children that are most at risk for a number of issues and providing the appropriate supports for them.

Ms. Moses said a short time ago we were approached by a funder from the Dover community that was looking to build a project - a playground project - partnering with KaBOOM! She said she didn't know how familiar Council is with KaBOOM!, but she has provided Council a brief summary - a summary about some information and playgrounds that have been completed across the nation. Ms. Moses said where KaBOOM! has come into play and came about, was a gentleman that heard a story in Washington, DC where two children were killed in a vehicle because they didn't have any play area to play in, so they decided to play in a vehicle and they actually died in that vehicle. She said so this gentleman had this idea to pull it together and to go about to different communities and help communities that would otherwise not be possible - build playgrounds. Ms. Moses said what this organization does is they partner with the different businesses, associations, community members to come together and consider these projects a community based project. She said with our funder, they've identified a donor that is going to work in collaboration with Kraft of Dover and with that donor they have committed to funding this \$40,000.00 playground equipment which includes a number of side projects - Ms. Moses reviewed the information that she had provided to Council. Ms. Moses said they're planning on funding this project - this donor was originally looking for someone or some business or non-profit that was closer to the Dover area, but they had worked with the Boys & Girls Club previously on two separate projects - one in the Wilmington area and one already in one of the Dover

clubs, so with the Boys & Girls Club having already completed two successful projects they asked whether or not there were any other clubs in close proximity to Dover that would qualify and where there would be a need for this particular playground. Ms. Moses said they asked her to submit an application and she did. She said she found out as recent as July 7<sup>th</sup> that they were awarded this playground. Ms. Moses said there are a number of requirements and the one that actually stood out was that the donor wanted to remain anonymous, but the donor also wants active community participation. She said they scrambled because being awarded July 7<sup>th</sup>, very quickly they knew they were happy but at the same time there was a lot of work to be done. Ms. Moses said the scheduled build is for October 9<sup>th</sup> which left a little bit over eight weeks to pull everything together. She said one of the requirements was to pull together at least 75 community members, 130 of the participants for build day will actually be coming from Kraft Foods in Dover. Ms. Moses said they've made a commitment, they're going to help us with our prep, they're going to help us with our build day, but they are also asking that we be able to pull volunteers from the Smyrna community to assist us. She said they have their Board of Directors that are pulling teams together and also we have a number of associations that have stated that they're willing to assist us. Ms. Moses said along with that requirement there's also a \$7,500.00 partner match for this playground equipment and she is here tonight to ask if the Town could assist them with that \$7,500.00. She said she is also asking that the Town consider assisting them with the \$1,700.00 for swings that had been removed from the project because we incorporated some of the things that the community surrounding the actual facility stated that they would like to see, so this is not just a Boys & Girls Club project, this is a community project. Ms. Moses said she knows that a number of the neighbors in the local neighborhood surrounding the club have often talked about having a place that the kids could actually walk to play without having to cross the highway. She said so we incorporated park benches, park tables, and shade structures so that the families have somewhere to walk their little ones in the evening without having to get in their car and drive to the Municipal Park - they could actually just walk down the street and have somewhere to push their child on the swing or on the slide. Ms. Moses said since they incorporated those ideas they did have to take the swings out. She said she is asking that any consideration and any help towards this project be considered, and any funding that you could help us with - it would be really appreciated. Ms. Moses said she would also like to recognize the Town of Smyrna's staff because they have been working very close - just for their communication and etiquette when talking to her staff

members, and us having a question about anything relating to the club needs, or whatever. She said they really take the time to try to understand and really take the time to really care about what the children and the staff need there at the club, so she really wanted to commend the Town employees for working with us. Ms. Moses asked if there were any questions.

Mayor Stombaugh said she would like to challenge each member of this Council to be there on October 9<sup>th</sup> to help with this project. She said when she went to New Orleans - it was the year after Katrina - and KaBOOM! took us out; there were mayors and council people, and they loaded us up at 5:00 a.m. and took us out to the site. Mayor Stombaugh said they worked from 5:00 a.m. until 9:00 p.m. to get the project done. She said there was a lot that was nothing but a dirt lot, and when we left there we had built a playground. Mayor Stombaugh said she has been involved with the company - they are a reputable company, they use quality equipment, and they had supervisors there to make sure we did it right - it was awesome.

Ms. Moses said they did not have a budget to be able to provide this match, but when you have someone that is willing to invest \$40,000.00 into your community it was very difficult for us to turn away, because she knows that we probably won't have this opportunity again to be able to build this playground. Mayor Stombaugh said they are selective - not just anybody gets it. Ms. Moses said they competed; it was a tedious process, but it was very short. She said they had in mind what they were looking for and Mr. Hugg was very essential in providing her the information, because they want to make sure there is a need for this particular area. Ms. Moses said when they were awarded, of course they were surprised, but we were extremely happy for the children of the community.

Mayor Stombaugh said she would like to say a little bit more about the Boys & Girls Club - if you haven't been over there you need to take a little day trip and go over and see what they've done in the past few years. She said that building was the armory at one time, it was the prison at one time, it was a number of things, and Ms. Moses got handed down a building that was pretty undesirable actually. Mayor Stombaugh said over the past two years it was threatened to be shut down at one point because of the plumbing in the bathrooms and that's been taken care of; she has to commend Mr. Hugg - he worked hours and hours to put a grant together - it's unbelievable what some of these grants require - and got a \$50,000.00 grant for the Boys & Girls Club so that they could move on with some of their renovations. Mayor Stombaugh said everything that they have in the building right now is not new; the furniture is used that

they've had donated to them; they're in need of computers if anybody has any old computers that they could put in there. She said the kids come there after school to do their homework, they have supervision, the people from the Boys & Girls Club help them, it takes them off the street and gives them a good environment, and it's very impressive. Mayor Stombaugh said the other thing that they need to get done is their floor in the gym portion - the main portion - it's made of a material that if children fall on it they can be injured, so there's a new type of flooring that they would like to have put down. She said when the parks & recreation was active, when we had money for that, we did an event over there one night where we took the DJ, and it was a lot of fun. Mayor Stombaugh said the Boys & Girls Club is a good organization for our town and if anybody is looking to donate anything please call Ms. Moses and see if it's something that they can use.

Mr. Hugg said he wanted to indicate that the Public Works staff will be assisting in advance of the prep day to get the site cleared and leveled, and to mark all of the utilities and what have you. Ms. Moses said that's what she meant when she said about the staff for the town - they didn't waste any time, Daryl and Jason - they were great in coming over and saying okay, what will you need to get this done and get this started.

Mayor Stombaugh said people from the community, when they were working - they selected one end of the Boys & Girls Club to start working on and while they were working - did the roof collapse? Ms. Moses said there was mold damage and we had a donor from Willis Chevrolet that stepped up. Mayor Stombaugh said Skip Willis stepped up - wasn't even asked - stepped up and footed the whole bill.

Mayor Stombaugh asked if there were any questions for Ms. Moses. There were none.

Mayor Stombaugh said this portion of the meeting is open to visitors to step to the microphone. She said you have three minutes to address Council. Mayor Stombaugh said Council may not answer any of the requests tonight; we may need to send it to a committee or to a staff member. She said it will be strictly kept to the three minutes; we ask you to be orderly. Mayor Stombaugh asked if anyone would like to step to the microphone.

Melaine Minear, 41 South Main Street, Smyrna, came forward to speak. Ms. Minear said she is the spokeswoman for the Smyrna Citizens Coalition, and she did not have enough copies to go around so what she would like to do is ask that the Mayor

receive a copy, the Town Attorney, and Captain Bordley please. She said she was sorry; she just didn't have enough copies. Ms. Minear said she is not going to have enough time to read the first part of what she would like to say this evening with the three minutes allocated so she would like to ask the Recording Secretary to add the first part that is in writing be added as public record. It stated: 'In January of 2010, we presented former SPD Chief Richard Baldwin with a "wish list" that we believed would assist with improving the quality of life for our citizens. The list included cameras strategically placed, a police beat column in our weekly Sun Times, foot patrol, and improvements in the incident reporting procedure. We have noted that there HAS been some improvement. There is now a weekly Police Brief, though brief in the Sun Times and there has been what appears to be an increase in the area of enforcement of our laws relating to drug enforcement. Not long after we presented the list, we noted an officer doing what appeared to be "foot patrol" on one occasion. Still, as documented by several residents who have contacted the police in the past few months, the topic of "reporting" is seriously lacking. We expect our elected officials and all individuals employed by our Town to follow our Codes, and their applicable Oaths of Office. That includes our Mayor, our Town Council, and our SPD officers. We expect nothing LESS.'

Ms. Minear said as you know, she is involved in a writ of mandamus suit which was filed in superior court earlier this year and partly because of that she has refrained from taking an active role in the community; however, she hopes that those of you that know her well know that her intentions and interest in the community are ethical, and she believes for ethical and moral reasons to help this community. She said what she would like to do this evening - and it's a very difficult time for some - she actually went out and talked to people in stores this weekend, she didn't get to do a barbecue with the family because she felt that some of the things that have happened in our community as well as some in close proximity were important enough that she should spend her time on the things that need to be addressed, and so she put her personal time aside. Ms. Minear said she has some questions to ask and they are difficult questions but she thinks they need to be asked and she hopes that we will receive some answers. She said 1) Was/is there an investigation by the State Attorney General's office regarding former Chief Richard Baldwin? If so, when were you aware of it? Mayor Stombaugh said we are not required to answer anything tonight, you can continue on with your questions. Ms. Minear continued: 2) if you don't know are you planning to contact that office and inquire - Ms. Minear asked if she could get an

answer, yes or no. She asked if Mayor Stombaugh had been advised that by legal staff or is there a reason why you can't communicate right now. Mayor Stombaugh said you have three minutes number one... Ms. Minear said okay, and continued: 3) What was the basis for Council's decision to approve a three week notice, versus the contract requirement of a three month notice; 4) Did you and the Council receive the link that was emailed to you this weekend regarding the *Council on Law Enforcement Accreditation*, otherwise known as CALEA - Ms. Minear asked if any members of Council received it, she sent it to a few, she couldn't get through on the governmental emails - okay; 5) Did our former Chief of Police or anyone within SPD ever apprise you of the CALEA standards which are national standards - we have a state CALEA association - she is assuming nobody can answer her right now, but it's extremely important that these answers be given at some point; 6) Have any of you read the SPD 2008 Annual Police Report - that report is where she first learned about these standards last year; 7) Was there a 2009 SPD report completed - again no answer - if so, it is not posted on the Town website; 8) Are you and the Council intending to solicit the assistance of experts in the field of law enforcement, management, in order to make a competent decision relative to the hiring of a new Chief of Police - you did mention you are going to bring in some experts; she hopes that the public might have some notice of perhaps of who those people are, if it isn't confidential. We request that the Council appoint an ad hoc committee comprised of respected individuals of our community, who can assist with the police chief's position selection process. We ask that no one who has ever served on our Town Council in the past 10 years, be considered for this committee. We have a list of individuals, who we believe, are worthy of your consideration. That list is available at your earliest convenience, thank you.

Mayor Stombaugh asked if anyone else would like to address Council. Dave Pleasanton, 35 West Mount Vernon Street, Smyrna, came forward to speak. Mr. Pleasanton said recently he requested that this Council investigate alleged misconduct by former Chief Baldwin. He said this Council expressed a reluctance to do so. Mr. Pleasanton said earlier this evening - approximately 7:00 p.m. - a person delivered to him what they said was evidence of that wrongdoing, and they requested that he be the conduit to the newspapers with that evidence; he said he is going to do that right now, thank you. Mr. Pleasanton handed a paper to Mr. Al Kemp.

Councilman Novotny said he would like to ask Mr. Pleasanton a question. He said what is your purpose for doing this - Chief

Baldwin is no longer an employee of the Town. Mr. Pleasanton said he is well aware of that. Councilman Novotny said so what's your purpose. Mr. Pleasanton said he believes this Council has a fiduciary responsibility to the citizens of this town to ensure that their police chief was not involved in any misconduct - simple as that. He said this Council seems to be unwilling to take that responsibility; he finds that reprehensible.

Mayor Stombaugh said Mr. Pleasanton, your time is just about over, but you are making a lot of accusations. Mr. Pleasanton said no, he is making no accusations. Mayor Stombaugh said yes you are. Mr. Pleasanton said he is simply asking that this Council perform the duty that this citizenry elected it to do. Mayor Stombaugh said how do you know we haven't? Mr. Pleasanton said you haven't answered that, and if you have he would be perfectly willing to back off until you are ready to put that information out to the populous - are you willing to do that? Mayor Stombaugh said first off, the only thing that has been given to this Council is what you have had to say and what a couple of other people have had to say. She said we have not been given any charges, we have not been given any formal complaint, we have not been given anything, so this Council does not - we're not obligated to do anything - yes she called it gossip in the last newspaper; if it's just talk around town, what is it, it's gossip. Mayor Stombaugh said there has been nothing given to this Council for this Council to be required to act on. Mr. Pleasanton said has this Council been contacted by the Attorney General's office? Mayor Stombaugh said the normal procedure is if something were done wrong there would be a formal complaint that would go to our attorney, our attorney would call us into executive session and give the information to us and would explain to us what charges are, what our responsibility is, what our options are - none of that has happened. Mr. Pleasanton said have you been contacted by a Delaware State Police investigative unit? Mayor Stombaugh said no, we have been contacted by no one. Mr. Pleasanton said so you have no knowledge whatsoever of any alleged misconduct. Mayor Stombaugh said only the allegations that have been made in the paper and she questions - is new being reported or is somebody trying to make the news. Mr. Pleasanton said he has no way of knowing that, he is simply asking the question of this Town Council and he thinks an investigation should be in order, just to put this to rest. Mayor Stombaugh said what are we supposed to investigate? Mr. Pleasanton said allegations of misconduct. Mayor Stombaugh said where are these supposed to have come from? Mr. Pleasanton said we're going to find out very shortly.

Mr. Jaywork said he would like to speak on this. He said he thinks the first thing is whether you like it or not the Chief is no longer an employee of this town, and under the Town Charter you have the authority to conduct an investigation of employees; under the Ethics Commission you have the authority to conduct an investigation of employees. Mr. Jaywork said he has some serious doubts whether you have the authority right now to conduct an investigation. Mr. Pleasanton said you do not. Mr. Jaywork said the second thing is that - and this is truly from reading the paper because that is all he knows - he heard the front page story about the extortion thing, that these people were arrested; that was undertaken by the Delaware State Police and the Attorney General's office. He said he would assume - and he has no inside information one way or the other - that if they thought there was some wrongdoing by the Chief that they would have picked up and conducted their own investigation. Mr. Pleasanton said he has no objection to that whatsoever and as a matter of fact he hopes it happens, but he would like to have an answer, one way or the other, from somebody saying he did absolutely nothing wrong. Mr. Jaywork said which brings him to his third point, and he thinks Councilman Novotny has already mentioned it, let's assume - and this is hypothetical - that he was stealing money or doing all kinds of trouble, what are we going to do - we're going to fire him; well he's already gone. He said what practical purpose would it serve this Council to spend time, money, and effort possibly - you know whenever you get into these employee things you have to worry about a counter suit for defamation of character or something else - put the Town through all that to terminate somebody who has already resigned? Mr. Jaywork said he just does not understand it.

Mr. Pleasanton said which brings the question why was a three month time table reduced to three weeks. Mayor Stombaugh said why don't you go to Chief Baldwin and ask him? Mr. Pleasanton said he can go to him, sure. Mayor Stombaugh said how do you expect us to answer that? Mr. Pleasanton said he does not expect you to answer that, he does not think you want to answer it. Mayor Stombaugh said this is ridiculous; we are not going to spend money - this... she has nothing else to say. Mr. Pleasanton said neither does he.

Mayor Stombaugh asked if anyone else would like to address Council. Larry Koehler, 1164 Wheatley's Pond Road, Smyrna, came forward to speak. Mr. Koehler said he is the program manager for the Smyrna Downtown Renaissance Association and he brought up a little letter of thanks for the Town employees and Captain Bordley and his staff. He read: "Madame Mayor, Vice Mayor Raynor, Council members, Acting Chief Bordley, On the evening of

August 31<sup>st</sup> the Smyrna Downtown Renaissance Association along with it's sponsors Christiana Care, WSFS and PNC Banks, our downtown merchants and the Town of Smyrna hosted it's 6<sup>th</sup> annual National Night Out Block Party which was intended to promote awareness in public safety and the efforts of our police and fire departments. This year's event was our most successful yet with an estimated attendance of more than 300 people - so he guesses Captain Bordley's estimate was about right. On behalf of our President Robin Williams Bruner and our members, I would like to take this time to thank all who assisted in coordinating this event. The personal efforts of Acting Chief Bordley, his staff, the civilian auxiliary patrols, Citizens' Hose, and all the Town employees who ensured the event was a success is greatly appreciated. Thank you all for a job well done." There was a round of applause.

Mayor Stombaugh said on behalf of Council we would like to thank you very much, for this is a very positive thing that you have brought to the town with our Police Department, the Downtown Renaissance Association - it's been totally successful - she has watched it grow every year. She said unfortunately she had to work this year, but Councilwoman Brown called her the next morning and told her it was so much fun. Mayor Stombaugh said she thinks everyone that was there really enjoyed themselves year after year, and it's a real positive thing for our town, and thank you very much for making it possible.

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 we'll go back into the Council meeting.

#### OLD BUSINESS

**A. Library Funds** - Mr. Hugg said there are really two items; neither one of them necessarily need your action tonight. He said first, he put on Council's desk this evening of a copy of a letter that we received from the trustee on behalf of Margarete Eley who made a donation of \$7,500.00 to the Smyrna Public Library for their the library collection acquisitions and collection maintenance. Mr. Hugg said he just wanted Council to be aware that we had received this gift and that it will be used as specified in the conditions of the bequeath.

Mr. Hugg said the other thing was, at Councilwoman Brown's request, he assembled some additional information on reciprocal borrowing. He said it is more to provide some background on how

the reciprocal borrowing program works and at the center is a current - which there really isn't one - but at the center is a current ordinance and agreement. Mr. Hugg said unless you have any questions he does not think there is any further action.

Mayor Stombaugh asked if there were any questions. Councilwoman Brown asked Mr. Hugg if he sent the letter that we talked about the last time. Mr. Hugg said no, we did not. He said he was waiting for some guidance back from Council, and he kind of got the sense that we weren't ready to do that. Mayor Stombaugh said you want that done now? Councilwoman Brown said if Council is satisfied with the answers they have received

Councilwoman White asked what the letter was for. Mr. Hugg said basically to invite Levy Court Commissioner President Banta to come and discuss the \$30,000.00 check and what have you. He said what he would like to suggest to Council, and he has actually made this suggestion to one of the members of the Guild Board, is that at an appropriate time it would probably be beneficial to everyone concerned if there was a little workshop or discussion session so we could all get on the same page. Mr. Hugg said he is not so sure that anybody is moving necessarily in opposing directions, but he is not sure we're communicating very well. He said he suspects you will get a request from the Library Guild that we schedule that kind of a workshop.

Councilman Novotny said this would come from the Library Guild? Mr. Hugg said he thinks it would come from the Library Guild; we could also reach out to them and invite them - he does not think it makes any difference who does it.

Ann Henning said there are two Board members here tonight - they accepted the invitation. Mr. Hugg said okay, why don't we set something up; he will work to get something scheduled and we can sit down and chat.

#### NEW BUSINESS

**A. Borrowing Resolution - Bond Sale Not to Exceed \$11,000,000.00** - Mr. Hugg said we were hoping tonight to actually bring you the resolution for the - this is the refinancing and expansion, the bond sale. He said in the course of our discussions with Les Guthorn and Mr. Jaywork there was some concern that a) we need a confirmation from Council to include the additional funding or not - the reason that becomes important is that a refinancing of the outstanding debt can proceed under Section 13.4 of the Town Charter which is a very straightforward process; the borrowing of additional money takes a different kind of set of resolutions, and so absent a

confirmation that we did or did not want to include the additional money for the police station - that will help Mr. Jaywork, Mr. Guthorn, and to some degree him, put the final draft of the resolution together.

Mr. Jaywork said he would like to add to that. He said as Mr. Hugg indicated under 13.4 a refunding bond is simply just like you refinance your house, so you are not borrowing any additional money, you are just getting a better interest rate, there are some costs associated with doing that, but under this provision if you can do that and if the total savings to the Town - you are actually saving money by doing this - then it just simply takes a majority vote of the Council, you don't have to hold a public hearing - it's just a much simpler thing, it can just be put on the agenda as a FOIA matter. He said the other, if you decide to borrow additional money for some other purpose then we're going to have to either do two different bond resolutions which Mr. Guthorn recommends against because it's not cost effective - if we're going to do one, let's do one - and we would be under the 13.2 provision which does require a super majority vote of Council and the holding of a public hearing. Mr. Jaywork said Mr. Guthorn indicated to him, and he does not know that he understood his reasoning, but he believes Mr. Guthorn was suggesting that even if it's just a refunding bond that we still might want to go under the 13.3 - there is some technical thing about some calculation he had to do. Mr. Jaywork said the bottom line for his purpose is that when he writes the bond resolution he has to know what you're proposing to borrow - the not to exceed number. He said if you are doing just a pure refinance we can find out how much that is - we're refunding that amount; if we're going to refund that plus some additional money for a possible police station then we have to know that number and we have to state that's one of the possible purposes. Mr. Jaywork said the last point is that Mr. Guthorn wanted him to emphasize to you that just because you go forward and pass the resolution to do both, doesn't mean you have to; you could just decide that we're not going to do the police, we're just going to do the refunding, and that's it. He said it's totally your prerogative - you make that decision at the time you draw the money down.

Councilman Novotny said when we were originally talking about this we wanted to lock in an interest rate because we don't know what interest rates are going to do in the future, so we wanted to lock that in - that was the initial 7.8 million. He said then with the additional funding for the police station, we put it in to 11 million with the idea that we do not have to use all of it, part of it, some of it - that's an option, but he

thinks the important thing is that when we talked about it in the Finance Committee was let's get it in there.

Mr. Jaywork said Mr. Guthorn also indicated that his read right now is that he does not expect interest rates to go down much lower - any lower; he also does not expect them to go up any time soon, so even though we need to get moving somewhat, it's not like we've got to make a decision tonight or tomorrow night, but the sooner the better probably.

Mr. Hugg said we have actually reviewed somewhat incomplete drafts of the offering statements and prospectus - the actual documents are being prepared, so that is moving forward. He said one of the key determinations is - is it the will of Council, the desire of Council to make this for not to exceed \$11,000,000.00. Mr. Hugg said the sooner that we can get that answer, the sooner we can proceed forward.

Mr. Jaywork said he doesn't want to talk out of both sides of his mouth because he said there was no immediate rush that you have to decide tonight - personally, if you could decide tonight or at least by the next Council meeting - again, you are not really crossing the bridge, all you are doing is giving us the ability to start drafting the papers to get the process started; you are not really going to have the hard decision until some time down the road when you actually make the decision.

Councilman Novotny said and we are only paying interest on what we draw down - he wanted to make sure that point was made.

Mayor Stombaugh said she is going to throw this out here - she talked about this at the Finance Committee meeting - she would like to know from the citizens of the town how they feel about it. She said for about every \$1,000,000.00 we borrow it's about \$80,000.00 debt service - that's how much we have to figure for what we will be paying that year. Mayor Stombaugh said one of the suggestions she gave was to ask the citizens how they would feel about if we did a one time assessment - we haven't decided on the right word yet - but we figured it out that if every citizen of the town would be willing to pay \$6.00 a month, in ten years we could have the police station paid for - \$3,500,000.00 police station, we could have it paid for with very little interest and it would be paid for in ten years. She said in other words if we go out and we borrow the money, the money would be borrowed for a minimum of 20 years and we would be paying interest on those 20 years. Mayor Stombaugh said Councilwoman Brown suggested - the total comes out to a little

over \$700.00 per household - if somebody wanted to step up and pay the \$700.00 at one time then of course they would be saving interest. She said the town would be putting that money back into the loan right away and then the town would be saving the interest, and that way we could pass that along to any of the citizens that would be willing to pay the larger sum at one time. Mayor Stombaugh said personally, she wanted to set up a money flow where we could see where we're going to get this money from, without constantly saying that we have to raise taxes or we have to raise electric rates. She said if a lot of people paid the \$700.00 it would take our years down to less than ten. Mayor Stombaugh said she would like as many citizens as possible, if they would either email her or call her, she would like to know how they would feel about something like that. She said she wanted to show that we would have a money flow coming back into the town to take care of it.

Councilwoman White said she had conversed with Mayor Stombaugh about that via email, and she let her know that she opposed that. She said everybody gets mad when our electric goes up - she knows she does - she does not want to give \$6.00 or \$3.00. Mayor Stombaugh said but the... Councilwoman White said she does not want to, she can't afford to, and her suggestion was a referendum - that's exactly what the school does - they do a referendum; let the people decide if they need a new police station. She said this town would not fund a lifeguard; we have a lot of other things that we need that we want, that we are borrowing money for, but we're going to go to the citizens and say 'this is what we're going to do' - make a referendum; let a referendum go through and let the people speak. Councilwoman White said this is what this is supposed to be about - about letting the people speak; you come out and you vote; let Mr. Jaywork find out about doing a referendum for our Police Department and let the people speak.

Mr. Jaywork said he could address that right now; he has two things: 1) your Charter doesn't provide for a referendum procedure - for example, the Town of Bethany Beach does have a procedure - that's not to say that you couldn't have a non-binding referendum; you could conduct a referendum and get the sense of what the citizens want, but ultimately it is Council's decision. He said the other point he wanted to make... Mayor Stombaugh said she was disappointed that Councilwoman White would make this announcement because at the special meeting that we had she is the one that said 'if you have to raise the taxes, raise the taxes, if you can't afford it, then move'. Councilwoman White said she did not say that for a police

station; you will never hear her say to raise the taxes of the people of this town, where she pays taxes, for a police station.

Mayor Stombaugh said you don't think the safety of our town is that important. Councilwoman White said she thinks the safety of the kids at the lake was that important, and this Council did not. She said we can have this argument day in and day out, but she will not agree to pay \$6.00 a month for a police station for 6 years or 20 years; we have borrowed millions of dollars for the road repairs - we didn't offer and go to the people and say can we take six more dollars from you for \$3,000,000.00 worth of road repair that we need, let's just go borrow the money. Councilwoman White said why wasn't this Council - herself included - thinking about that idea when we borrowed millions of dollars at a great interest rate, we didn't think about that.

Mr. Jaywork said first of all the Mayor has had this suggestion - he personally, he will confess Mr. Hugg mentioned this to him in passing conversation and he thinks he was supposed to check on it - this is just a talking point right now; he would need to check the legality of whether you could even do that, he is not sure that you could, so your plan might be dead on arrival just because we couldn't legally do it. He said the other thing he wanted to say is there is a referendum conducted every year when you get elected, so again you make the hard decisions and then if the people agree with your decisions you get re-elected, if you don't you're out. Mayor Stombaugh said that is why she is asking, she wants some input. She said she is not going to sit here and make the decision for them; she wants them to come to her and tell her like they have so many times in the last three-and-a-half years. Mayor Stombaugh said she wants to vote on the citizens' behalf, she does not want to vote the way that she wants to vote, so if the citizens' don't get ahold of her or the rest of the Council members and let us know what you want and how you feel then you are leaving it up to us to vote for what we think.

Councilwoman White said she would like to hear from the citizens directly rather than through another member of Council - even if it is done through a poll where the citizens would put their vote on a piece of paper and drop it in a box.

Mr. Jaywork said if you really want to take the pulse of the town you need to conduct that non-binding referendum; he thinks that people contacting individual Council members - he does not know what kind of response you are going to get; you could get a special interest group that wants the police station

that gets 100 people out and all of a sudden it looks like the whole town's in favor of it, you could get 100 people that are opposed to it, you are not going to get a real sense of what the entire community thinks unless you conduct a real referendum. He said if you have a clip-out coupon - you're not going to be able to trust that, you don't know how it's going to be played.

Mayor Stombaugh said the reason she came up with this idea is if we do the normal procedure - right now the town - the last three years, mostly because of the economy, you all know - especially the employees know how much we have had to cut our budget in the last three years. She said we have said in the last three years that we can't do this forever because we have cut the employees on things that eventually they're going to have to have - they're going to need to perform their jobs. Mayor Stombaugh said we have asked them to cut back the last three years to give us a chance to catch up and get ahead. She said we are at a point now, until the economy comes back where we are now is where we will be pretty much for the future of this town unless something changes. Mayor Stombaugh said we can't keep borrowing - that is what has gotten the country, the world, in the trouble that we are in because everyone just kept borrowing and borrowing, so we have to find another way.

Councilman DeFeo said he has to agree with some of what Councilwoman White said - he does not concur with Mayor Stombaugh's method of paying for it where everybody is taxed or assessed on an equal basis. He said we have a tax structure that's set up that supposedly takes into account the person's ability to pay, and that's based on the value of their home and their property, and we have people here who can afford more than others can. Councilman DeFeo said he thinks if we need to do this we should rely on the system that is already in place as opposed to coming up with something like a building fund where everybody is required to pay the same amount. He said like Councilwoman White said, there are some people in this town that just cannot afford that extra \$6.00 a week or a month - whatever the number that Mayor Stombaugh had come up with - some people just can't afford that. Councilman DeFeo said we already have people right now that are - he just had somebody call him two days ago because their electric was turned off; it was the first time this had ever occurred, but they have taken cut-backs at work, they've lost pay, and he does not think that its fair to go to these folks and say you are now going to pay more because we're going to build - whether it's a police station or whatever it is - he knows we need it, he took the tour, he understands what they are up against, but he thinks if we are going to do it then we need to do it right. He said maybe Mr. Jaywork will

come back as he said and find that that proposal is dead, that we just can't levy a tax - no matter what you call it, it is still a tax when you go to the citizens and ask them to pay - it's a tax and we can't levy a tax in that way.

Mayor Stombaugh said she thought about that too, but the reason she proposed the flat fee for everyone is because everyone would be getting the same service from this building. She said it is not like a property owner that has a tax because they have a larger home, bigger lot - they have more that they are paying taxes on - that's not the case with this; the case with this, in her view, is everybody is going to get the same amount of service or... Councilman DeFeo said he understands Mayor Stombaugh's point, but the point could be made for when the new water tower was built and everybody was going to benefit from that; it could be made for whenever there is an infrastructure improvement here in this town everybody benefits from that, and he does not think we should step outside the normal process we have, which is our property tax system. He said it sort of equalizes things - it lets those folks that are in a better position to pay for that bear the heavier cost, or the heavier brunt, and those folks that cannot, don't and that's what we need to keep in mind. Councilman DeFeo said there's a wide disparity here of incomes in this town; there are folks who are on both sides of the economic scale, and we can't forget them.

Councilman Raynor said the problem too is that people the people would end up paying more are usually the ones that use the less service. He said in other words how often do you see police cars in certain areas? Mayor Stombaugh said just because you live in a bigger home or live in... Councilman DeFeo said wow. Councilman Raynor said wow what? Councilman DeFeo said that's a heck of a remark to make. Councilman Raynor said like what. Councilwoman White said Mr. Jaywork will be looking into it - should we just hold off? Mayor Stombaugh agreed.

Councilwoman Brown said she had some questions. She said she understands that you said we would have to have a public hearing - right? Mr. Jaywork said if you want to go with the police station it has to involve a public hearing and a super majority, five votes of Council. Councilwoman Brown said so that means that it will be opened up to the public and anybody can come to a public hearing - either for it or against it. She said if we do go with the \$11,000,000.00 anything over and above the refinance - would that have to come back to Council? Mr. Jaywork said that would come back to Council, and that he thinks at that point it would be a simple majority vote as to whether

you are going to draw it down or not. Councilwoman Brown said the \$7,800,000.00 - we're going to have to do something with that because it has to be refinanced sometime next year, is that right? Mayor Stombaugh said 2012. Councilman Novotny said the problem is we've got a balloon payment coming and that was the whole issue to refinance, plus rates are historically low. Councilwoman Brown said so this is the best time to do this refinancing for the \$7,800,000.00. She said if we go for the \$11,000,000.00 we don't have to use all of it, but if at some point in time next year we decide the economy picks up and we want to build the police station we've missed our opportunity to lock in that low interest rate. Councilwoman Brown asked how long it would take to get this process finished before we come back for the public hearing - if it were voted on tonight. Mr. Jaywork said if it was voted on tonight, he would like to think he could get the resolution drafted - basically a notice of public hearing would have to be published, get the bond resolution which is proposing the borrowing setting the reasons and not to exceed amounts - he would like to think he could have it done for the next Council meeting, certainly within two Council meetings.

Councilwoman Brown said she has sat in meetings where the former Chief said it was \$3,500,000.00 for a new police station, so if we have the \$7,800,000.00 and \$3,500,000.00 that comes to \$11,300,000.00. Councilman Novotny said we are only saying \$3,200,000.00 and that's the upper end. Mayor Stombaugh said we feel now because the construction costs are lower, material is lower, we don't want to spend any more money... Councilwoman Brown said we are not spending any money. Mayor Stombaugh said to get these figures would cost money and the Finance Committee agreed that we did not want to spend any more money to get figures unless we knew that there was a possibility of this really happening.

Councilwoman Brown said in order to get this on the way she would like to make a motion that we ask Mr. Jaywork to prepare the first resolution under the Charter, and she would like to propose that we request \$11,500,000.00 so that we cover ourselves, because if the police station comes in at \$3,800,000.00 where are we going to get the extra money? Mayor Stombaugh said it's not going to come in at \$3,800,000.00 period. Councilman Raynor said besides you can reduce... Councilwoman Brown said but the point is we will lock in an interest rate now - we don't have to spend that money. Mayor Stombaugh asked if there was a second.

Mr. Jaywork said before Council votes on this he wants to read the applicable section of the Charter so that everyone is on the same page. He said it is under 13.2.2 of the Charter - the Town Council by resolution shall give notice to the residents and property owners of the town that the Town Council proposes to borrow a sum of money not to exceed a stated amount for a stated municipal purpose authorized under Section 13.2.3; the resolution shall state the amount of money desired to be borrowed which may be stated as a not to exceed amount, the purpose for which it is desired, the manner of securing same - which will be the full faith and credit of the town - and such other facts relating to the loan which are deemed pertinent by the Town Council and in their possession at the time of passage of the resolution, and shall fix a time, date, and place for a public hearing on said resolution. Notice of the date, time, and place of the hearing of the resolution shall be published in two newspapers of general circulation in the town not less than 14 days nor more than 60 days prior to the date set for the public hearing, notice shall be in bold print or bordered in black so as to call attention thereto, in addition to the time, date, and place the notice shall contain the same information as stated under 13.2.2 and in addition to publication the Council shall not less than 14 or 60 days cause notice containing the information to be posted in at least five public places in the town. If at any time following the public hearing - and this is the key part - if at any time following the public hearing the Council determines to proceed with the proposed borrowing it shall pass a second resolution by the affirmative vote of at least five members of the Council to proceed with the proposed borrowing. Mr. Jaywork said the first one is simply proposing it, scheduling the public hearing, you listen to the public input, the following that hearing that same night, or maybe two weeks later or a month later, then you vote what you are going to do and that's going to take five votes. He said once you issue the bond at that point that's all done, and then if you should - and here is the tricky part - he thinks that once the Council has voted with a super majority vote to borrow the \$11,000,000.00 or to set up that line of credit, he is really not sure, but probably a simple majority vote of Council 4-3 would be able to draw down the excess money.

Mr. Hugg said if Mr. Jaywork has the resolution ready by the next Council meeting we would be looking at sometime in October - probably the second meeting in October to have the hearings. He said also to emphasize that the longer you go before you give us direction, the longer it gets before we are able to have the hearing. Mr. Hugg said the risk becomes that interest rates may or may not move - he does not think they

will, but there is a process here - it will probably take 60 days to get the actual bond documents approved, rated, circulated, and whatever.

Mr. Jaywork said there is one thing that Mr. Guthorn had mentioned - we have a general election coming up and depending on how the politics play out on that, he does not know if that will have any impact at all on the bond market or not, but it is certainly something that has potential.

Councilman DeFeo said he understands we have a motion on the floor right now, but the question he wants to ask is: he thought he heard it said that this has to be two separate ones - one for the original \$7,800,000.00... Mr. Jaywork said it is an either or - if you want to do the refunding bond, that's hopefully one procedure, simple procedure - if you're going to put police money in it then you either have to separate the two different procedures or you put them together in one, which Mr. Guthorn is recommending in order to save bond issuing costs.

Councilwoman Brown repeated her motion. Councilwoman Brown made the motion that Mr. Jaywork prepare the paperwork to go forward with the refinancing of the \$7,800,000.00 and an additional \$3,200,000.00 for the police station not to exceed \$11,000,000.00. Motion was seconded by Councilman Novotny. Motion carried with Mayor Stombaugh, Councilwoman Brown, and Councilmen Novotny, Raynor Riddagh, and DeFeo voting for, and Councilwoman White voting against.

**B. Fence Adjustment for 118 West Commerce Street, 1<sup>st</sup> Presbyterian Church** - Mr. Hugg said Council conducted a hearing at the last Council meeting and there was a question about whether the buttresses of the church exceeded the property boundary. He said based on our field investigation by Mr. Prichard we are very comfortable that all of the work that the church did was on their property, and that really isn't an issue here - the question is to approve the fence adjustment based on the information that was actually presented at the meeting. Mr. Hugg said if you remember there was some confusion as to where the fence was actually going to go. He said it was determined at the meeting that it did not interfere with the property of the folks who had raised the objection. Mr. Hugg said you can proceed with the approval of the fence adjustment, or if you would prefer that there be somebody here to represent it that is also up to you. He said we feel comfortable that the issues that were raised that night are in fact addressed adequately.

Mayor Stombaugh said so this does not come back and bite us again, we had asked that a survey be done. Mr. Hugg said the difficulty is that unless the survey is done by the property owner - it really becomes two issues: 1) the normal process for any of our permits or approvals - we don't pay to have a survey done to confirm what the property owners is or is not their boundary; and if there is an issue it's a civil issue, not a town issue; the best that we can do is determine based on the field evidence that there is no encroachment and that this fence will not be - because the fence actually is behind the face of the buttresses the fence will clearly be inside the property line.

Mayor Stombaugh asked Mr. Jaywork where that would put us - if the town agrees to something.. Mr. Jaywork said you need to keep in mind that this is only a height variance or materials variance; they can put a fence up four feet tall down that line right now, and they could be off six feet from where the property line is, but they can do that tonight. He said they can do the four feet high as a matter of right - the only thing that is being considered here tonight is the height. Mr. Jaywork said he does not think there is going to be any liability.

Councilwoman White stated she is recusing herself. Councilman Riddagh made the motion to approve the fence adjustment for 118 West Commerce Street - The First Presbyterian Church. Motion was seconded by Councilman Raynor. Motion carried with Mayor Stombaugh, Councilwoman Brown, and Councilmen Novotny, Raynor, Riddagh, and DeFeo voting for, and Councilwoman White recused herself.

**C. Annexation Request - Resolution to Set Legislative Fact Finding Hearing and to Consider Zoning Designation, 900 West Glenwood Avenue, David C. Harrison Post No. 14, American Legion, Inc. (November 1, 2010 at 7:15 p.m.)** - Mr. Hugg said this is technically step two in the annexation process. He said we have been approached by the owners of the property, the American Legion; they have satisfied all of the requirements in terms of what they have to provide to use. Mr. Hugg said they have asked to be annexed into the Town of Smyrna. He described the location of this parcel to Council. Mr. Hugg said this step in the process sets a public hearing, basically a fact finding hearing for November 1, 2010 at which time you will consider any comments or any other information that you may receive, and setting the appropriate zoning. He said all you are doing tonight is making the step of holding the hearing.

Councilwoman White made the motion to approve the resolution to set the fact finding hearing and to consider zoning designation of 900 West Glenwood Avenue, David C. Harrison Post No. 14, American Legion for November 1, 2010 at 7:15 p.m. Motion was seconded by Councilman Raynor and carried unanimously.

**D. Authorization to Apply for ODW Water Facility Planning Grant** - Mr. Hugg said we have been approached by the Office of Drinking Water and invited to request a matching grant of up to \$10,000.00 for part of our ongoing water system modeling and system planning process. He said part of our budgeted water and sewer system engineering work with KCI Technologies is the regular modeling and planning process that we go through - hydraulically modeling the system which ensures that we have adequate pressures and looping of the system and what have you. Mr. Hugg said basically ODW is saying hey, we'll help you, we'll give you a \$10,000.00 grant to help offset some of your costs, but in order to get that grant we have to have Council's approval to apply for it.

Councilman Raynor said we don't have to match it? Mr. Hugg said we do, but we are already spending in excess of that for ongoing water system engineering and work anyhow.

Mayor Stombaugh asked if there was a motion. Councilman Riddagh said so moved. Motion was seconded by Councilman DeFeo and carried unanimously.

**E. Tree Commission, Historic District Review Board, and Other Committee Appointments** - Mayor Stombaugh said we have some openings on different committees. She said she wanted to get the word out to the citizens of the town - she has heard that a lot of people are interested in serving on different committees. Mayor Stombaugh said if you know of anybody that is interested in serving to please let her know.

Councilwoman Brown said regarding the Tree Commission - Ginger Flairty has resigned from the Tree Commission, and she would like to thank her very much; she knows Mrs. Flairty is not here tonight, but she would like to thank her for her service to the Town of Smyrna. Councilwoman Brown asked anyone that knows Mrs. Flairty to please pass that along.

Mayor Stombaugh said she would like to take this opportunity - Councilwoman Brown is chair of the Tree Commission at this point, but Councilwoman White was chair of the Commission. She said it was kind of a dead committee there for

a while and when Councilwoman White was elected she agreed to take the Tree Commission and kind of bring it back to life again. Mayor Stombaugh said she did a very good job, and thanked her for her work.

Councilwoman White said she actually could not have done it without Mr. Hugg and the staff - they were very supportive and very helpful along with the committee themselves.

**F. Request for "Fourth Annual Oyster Feast & Halfway to St. Patrick's Day Celebration" from Sheridan's** - Joe Sheridan, 44 West Commerce Street, Sheridan's Irish Pub, came forward to speak. Mr. Sheridan said he is here before Council again to get their approval to have a party; again, we'll keep it in order, keep it organized and won't keep the street closed down too long.

Councilwoman White made the motion to approve the Fourth Annual Oyster & Halfway to St. Patrick's Day Celebration, starting on September 17<sup>th</sup> and taking everything down on September 19<sup>th</sup>. Motion was seconded by Councilman Novotny and carried unanimously.

#### EXECUTIVE SESSION

**A. Executive Session to Discuss a Personnel Matter in Which the Name(s), Competency, and Ability of an Individual Employee(s) will be Discussed** - Councilwoman White made the motion to go into executive session. Motion was seconded by Councilman Novotny and carried unanimously. Council went into executive session at 9:08 p.m.

Councilwoman White had to leave at 9:59 p.m.

Council came out of executive session at 10:08 p.m.

#### POSSIBLE ACTION ON ITEM DISCUSSED IN EXECUTIVE SESSION

Mayor Stombaugh passed the gavel to Councilman Raynor. Mayor Stombaugh made the motion, on behalf of Council, that we advertise in the News Journal, the State News, and the Sun Times; the advertising date will be determined hopefully by the next Council meeting and advertising will be for 30 days - be open for 30 days - and then give the Negotiating Committee approximately 30 days to review applicants; there will be an outside professional - outside professionals will be brought in for assistance; salary is to be determined and all applicants are to be emailed to the Negotiating Committee Chairman Bill

Raynor. Motion was seconded by Councilman Novotny. Motion carried with Mayor Stombaugh, Councilwoman Brown, and Councilmen Novotny, Raynor, Riddagh, and DeFeo voting for, and Councilwoman White was absent.

**OTHER COUNCIL BUSINESS**

Mayor Stombaugh asked if there was any other Council business. Mr. Hugg said he would like some clarification - he asked if Councilman Raynor would be meeting with him to get the actual wording of the ad. Councilman Raynor agreed that he would.

Mayor Stombaugh said that is all going to be brought up again at the next Council meeting - you are not going to start advertising yet.

**ADJOURNMENT**

Meeting was adjourned at 10:10 p.m. by Mayor Stombaugh.

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Council Secretary

vlh