

**MINUTES OF THE MEETING**  
**SMYRNA TOWN COUNCIL**  
**October 4, 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, and Robert Riddagh.

Also present were Town Manager David S. Hugg III, Interim Police Chief Captain Wilbert Bordley, 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.

Mayor Stombaugh said Councilman Anthony H. DeFeo was excused for tonight.

**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 was a motion to accept. Councilman Riddagh said so moved. Motion was seconded by Councilman Novotny and carried unanimously.

**MINUTES OF PREVIOUS MEETING**

Mayor Stombaugh asked if there were any additions or deletions to the minutes of July 19, 2010 and August 2, 2010. There were none.

Mayor Stombaugh asked if there was a motion to accept the minutes of July 19, 2010 and August 2, 2010. Councilman Riddagh made the motion to accept the minutes for July 19, 2010 and August 2, 2010. Motion was seconded by Councilman Raynor and carried unanimously.

**REPORTS**

**A. Presiding Officer** - Mayor Stombaugh said she received a letter from the Delaware Commission of Veteran's Affairs; she read "The Delaware Commission of Veteran Affairs and Military

Officers Association of America would like to take this opportunity to invite you to attend the annual Veteran's Day Service on Thursday, November 11, 2010. The program, scheduled to commence at 10:30 a.m., will be held at the Memorial Plaza, Delaware Memorial Bridge, New Castle, Delaware. The National Veteran's Day Committee in Washington D.C. has designated Veteran's Day in New Castle, Delaware as a National Veteran's Day Regional site for our nation's 57<sup>th</sup> annual Veteran's Day celebration. This is our 19<sup>th</sup> year of participating along with 53 similar recognized sites throughout the United States."

**B. Town Attorney** - Mr. Edwards said he had two things: 1) we put together a packet on the curfew ordinance, there were some questions at the last Council meeting, and gave it to Councilman Riddagh for him to look over; and 2) on the agenda tonight is an ordinance we put together regarding civil and criminal violations.

**C. Police Chief** - Captain Bordley said Council had his report in their packets. He said Council may or may not have been aware of the activity at one particular residence. Captain Bordley said we are also making preparations for the Smyrna High School homecoming parade this week.

**D. Town Manager** - Mr. Hugg said Council had his report in their packets and he did not have anything to add.

**E. Committees** - Mayor Stombaugh said the Business Development Committee held their second business mixer this past Tuesday night. She said it was sponsored by Delaware Homes and Dave Gilgenast who owns the Commodore Commons Shopping Center. Mayor Stombaugh said we were very pleased with the response. She said Bayhealth was there and as you know Bayhealth is going to build a freestanding emergency center here in Smyrna, and three of their representatives were there getting to know the town. Mayor Stombaugh said they were so impressed with the event that they asked afterwards if it was something that they could do once they get their new site farther along where they have drawings and things to present. Mayor Stombaugh thanked the Business Development Committee, Delaware Homes, and Mr. Gilgenast for all of the work that they did.

Councilman Novotny said the Long Range Planning Committee meeting scheduled for October 18<sup>th</sup> has been cancelled due to the public hearing that will be held before the Council meeting that night - we usually have the Long Range Planning Committee meeting at that time.

Councilman Raynor said the Personnel Committee meeting has been cancelled due to a lack of agenda items.

Mr. Hugg said there will be a Finance Committee meeting at 6:30 p.m. on October 12<sup>th</sup>.

Councilman Riddagh said there will be a Public Safety Committee meeting on the 14<sup>th</sup>.

Councilwoman Brown stated the Charter Review Committee meeting scheduled for October 19<sup>th</sup> has been cancelled due to a conflict with the meeting with the Library Guild.

Mr. Hugg said the Utility Committee will meet on October 13<sup>th</sup> at 5:00 p.m.

#### RECOGNITION OF VISITORS

Visitors present were Daryl Jester, Larry Koehler, Melaine Minear, Jim Wolfe, Cindy A. Cogar, George Bepalko, Seth Clevenger, Sam & Gerda Cibelli, Venessa Wiley, Frank & Debbie Cain, Audrey Green, Dawn Harris, William Wilson, Peter Donnelly, Beverly Hirt, Aaron Weisenberger, Bernard Williams Sr., Mary Williams, Tyrin Williams, and Rita Purisfog.

Mayor Stombaugh said at this time we open the meeting to visitors and tonight we are going to start with Mr. Weisenberger who had the Paddle Shack - the boats at the lake this past summer. She asked Mr. Weisenberger to come forward.

**A. Paddle Shack Update, Aaron Weisenberger** - Aaron Weisenberger, 33 Leena Lane, Smyrna, came forward to speak. Mr. Weisenberger said Mayor Stombaugh asked him to come and talk about how the season went - he opened the Paddle Shack at Lake Como and had boat rentals and concessions there all year. He said he is gracious that Council approved for him to be there; it was a good year - he had over 260 boat rentals (between kayaks, canoes, and paddle boats) - and roughly over 500 concession transactions (chips, sodas, whatever it be). Mr. Weisenberger said it was a trying time, hopefully the word got out; he appreciates all of Mr. Hugg's effort that he put into this in the beginning logistically. He said Mr. Jester and all of the maintenance people that came out and helped throughout the year were great. Mr. Weisenberger said the Smyrna Police Department - unfortunately some of you might not know, or may know, it did get broken into twice. He said he got robbed blind. Mr. Weisenberger said the police came and we are going

through the Department of Justice for all of that. He said we had some issues out there; the only recommendation is that there be a lot more police presence. Mr. Weisenberger said he watched all year as mothers and their young kids go to that playground to play and they couldn't because there was a pack of 10 to 20 teenagers sitting on the playground. He said of course a mother and two children aren't going to confront 15 teenagers and they would just turn around and walk away, so unfortunately there was a lot of loitering; we had some issues with security - again, after hours his place was broken into. Mr. Weisenberger said he knows the police department and even maintenance and grounds - we've talked about possibly in the future some more lighting out there, he doesn't know how much more security we can get.

Mr. Weisenberger said all in all it was a good year. He said a lot of people came out, it was a new venture, hopefully the word is going to get out, and hopefully we can do it next year - a lot of that is going to have to do with financing - the insurance is a very high cost. Mr. Weisenberger said he is hoping he can address that with Mr. Hugg to see if some other arrangements can be made because security costs are extremely high - we'll see.

Mr. Weisenberger said his only recommendation is for a little bit more controlling interest on his part, because being out there all year, not having the lifeguards any more, not having a constant presence of a 'town employee' - people ran rampant - profanity was unreal, kids being pushed aside by bigger kids. He said hopefully next year there will be more control that he will have to help with that instance - his hands were tied this year. Mr. Weisenberger thanked everyone.

Mayor Stombaugh said we have another guest this evening - we have a citizen who has made an effort to step forward - some of our returning service people - this has been a conversation for a while, but we wanted to do something for our service people returning from overseas, specifically from Afghanistan and that area, and we have a citizen that has stepped up to the plate on his own and he has put together a program and the first welcome home ceremony is going to take place on Monday, October 11<sup>th</sup>, the Smyrna Opera House has opened their doors to this event and she would like to ask Peter Donnelly to please step up to the microphone.

Peter Donnelly came forward to speak. Mr. Donnelly said he found out by accident that our returning service people weren't getting a welcome home like they were in New Jersey, New York,

and every place else. He said he asked around and we got a program going and it's going to take place next Monday night at 7:00 p.m. at the Smyrna Opera House - everybody is invited to welcome this young man home. Mr. Donnelly said this young man just survived a battle in Marjah in Afghanistan and he got a commendation from his commanding officer. He said he thinks it is time our returning service people got a welcome home and a pat on the back for a job well done.

Mayor Stombaugh presented Mr. Donnelly with a Certificate of Appreciation from the Town and the Council. She thanked him for stepping up to the plate and making this possible. Mayor Stombaugh said Mr. Donnelly would like to do this for all of our citizens that are returning home - it's been a big endeavor. She said Mr. Donnelly has asked that anyone that's interested, he would like to get a committee together and anyone that would be interested in serving on this committee - we're looking for people to serve on a committee so that this can be an ongoing welcome home ceremony.

Councilwoman White asked Mr. Donnelly if there was some contact information for people that would like to... Mr. Donnelly said anyone that's got kids serving overseas can contact him at 302-653-0920 and give him an idea when they would be coming home, along with your phone number, and he can arrange to get the ball rolling again - we hope to do this for everybody who is returning home - we have four or five that are returning home before Christmas.

Mayor Stombaugh said this is the portion of the meeting that we open up to visitors to address Council. She said you have three minutes. Mayor Stombaugh said Council may not be able to answer questions tonight; we may have to refer it to a staff member or to a committee.

Melaine Minear, 41 South Main Street, Smyrna, came forward to speak. Ms. Minear said she is the spokesperson for the Smyrna Citizens Coalition. She said we have several questions this evening, as usual we probably won't get any answers, but we'll try. Ms. Minear said first of all since Mr. Jaywork, our Town Solicitor, isn't here she had a couple of questions for Mr. Edwards. She said 1) you - Mr. Jaywork - previously stated that your firm has been retained - either 30 or 35 years - do you know how long he has been representing the Town? Mr. Edwards said 30 sounds about right. Ms. Minear said she thinks it's about 35; 2) could you please tell us whether anyone in your firm has any experience in constitutional law, especially the

first amendment rights? Mr. Edwards said he thinks that they deal with first amendment rights constantly, just last... Ms. Minear said does anyone have expertise actually in their degree in first constitutional law. Mr. Edwards said when you get a law degree you actually don't really specialize in something. Ms. Minear said actually some attorneys do - she has talk to two this past week. She said you don't know the answer, okay; 3) who handles the liability policy for the Town? Mr. Edwards stated he did not know. Ms. Minear then directed questions to Mayor Stombaugh: 1) we have noted that the typed versions of our Council meetings have not been posted on the website since 7/6 - she heard earlier from staff that there will be a couple of postings, so instead of three months behind in two days, we are two months behind. She said do you know when the other meetings will be posted, because some people can't - they have hearing impairments such as herself, and she does not have speakers on her computer. Ms. Minear said is it because you don't have time to post them? She said she would suggest that the Town consider hiring a temp to help transcribe the minutes - it's very important that our citizens be apprised of what happens at our Council meetings; 4) she said excuse me, I'm skipping around a bit - has the Council since the last meeting taken any action regarding Mr. Bucalo regarding code enforcement - as far as his work performance? Mayor Stombaugh said yes, we have been working on it. Ms. Minear said thank you. She said would we be able to get some answers at the next meeting, because we've checked the areas of concern with graffiti and they're still marked - since a year ago - over a year ago. Mayor Stombaugh said she was not aware of that. Ms. Minear said okay, we'll get that to you in an email. She asked if all of our Town employees are now unionized. Mayor Stombaugh said that's being worked on also. Ms. Minear said and which union will that be - what's the union called? Councilman Raynor said it is AFSCME. Ms. Minear said thank you. Ms. Minear then directed questions to Mr. Hugg: 1) is our town yet certified by the State as a certified local government? Mr. Hugg asked for what purpose. Ms. Minear said it's part of the plan that comes through the State Planner's Office. Mr. Hugg said our Comprehensive Plan is under review following the PLUS process; the certification has not yet been issued. Ms. Minear said but that is through the PLUS process and that is approved by the governor, correct? Mr. Hugg said that is correct. Ms. Minear said thank you. She said the SCC is now developing grading standards for our elected officials as well as those who hold management positions; the grades will be announced at the next Town Council meeting on Monday, October 18, 2010. Ms. Minear said thank you and asked that her letter

be included with the minutes (which encompassed what she just spoke/questioned).

Mayor Stombaugh asked if anyone else would like to address Council. Dawn Harris, 316 West Glenwood Avenue, Smyrna, came forward to speak. Ms. Harris said she is here tonight with a couple of her sisters and brother-in-law representing our mother who is 82 years old, who also lives in Smyrna on Lake Drive. She said our mother was notified by the Town in the form of a letter on the 27<sup>th</sup>; the letter came from the Town code Enforcement Officer John Bucalo. Ms. Harris said the letter stated that she had a tree on her property that needed to be taken down by October 11<sup>th</sup>. She said the tree does have four dead branches on it. Ms. Harris said she and her sisters went to Town Hall and talked to Mr. Bucalo - the minute they came to him and showed him the letter the first words out of his mouth were "this is not vindictive, I can assure you that", and they had not said that it was. Ms. Harris said Mr. Bucalo said that he knows Tommy and he knows that this was not vindictive, and he knows of the dealings that their mother has had with him for the past few years. She said Thomas Carbine, who lives on Main Street, is our mother's neighbor - the back of his house faces her house - the side of her house. Ms. Harris said for the past four years he has been harassing our mother; it all started four years ago when our father was in the VA Hospital with cancer. She said Thomas Carbine shot a firecracker through our mother's kitchen window. Ms. Harris said he had assumed that she had turned him in for growing marijuana plants in his house; the police raided his house and he was arrested; the police told him that she had nothing to do with it and he did not believe them. She said for four years he has harassed her; we have called the cops; they come out and they say well, he's a little this, he's the neighbor, and you have to get along. Ms. Harris said no we don't. Ms. Harris showed Council pictures of what he hangs on his clothesline that she sits at her kitchen table and looks out the window and sees every day. She said this last picture is a picture of our mother's house, this is Mr. Carbine's house, and this is the tree in question. Ms. Harris said there are four dead branches on the tree; he had been talking about taking those four branches down, we knew that it was a hazard and were in the process of getting it trimmed up. She said four days ago Thomas Carbine calls Mr. Bucalo, has him come to his house, they walk up in her mother's yard, lean against the tree, talk about the tree, and her mother is sitting there wondering who is that guy out there with the neighbor that's been harassing her for four years. Ms. Harris said Mr. Bucalo never had the common courtesy as a Town employee to knock on her mother's door and

inform her of what they were discussing or why they were even on her property, and that is why they are complaining. She said the minute they came and spoke with Mr. Bucalo - right away he already knew about the history between their mom and the neighbor. Ms. Harris said Mr. Bucalo had said that he knows Mr. Carbine and has been in his house on several occasions, and they told him that they understand the issue with the tree, but they don't appreciate the way that it came about. She said as a Town employee he should have gone to their mother, without Mr. Carbine being on her property and without discussing it with Mr. Carbine, and told her that the tree needs to come down.

Ms. Harris stated that Mr. Carbine rides up and down the street on his bicycle - on the sidewalk - and gives their mother "the finger". She said their mother went to get the mail one day and Mr. Carbine spat in her yard - making sure that she saw it. Ms. Harris said one day he said to their mother "you mean you're not dead yet old bitch?" She said no one in this town should have to put up with that. Ms. Harris said they have called the police numerous times and nothing is really done - they go down the street and talk to him - this has been going on for four years - what can we do; enough is enough.

Captain Bordley said obviously Mr. Carbine has some issues with your mother for whatever reason; he called and left a message for Mrs. Green (Ms. Harris' sister), and he said they could discuss it further later.

Steve Wright, 767 Dorchester Court, Smyrna, came forward to speak. Mr. Wright said he has a petition that they have started regarding the lowering of Lake Como, and subsequently the canal behind his home. He said he recognizes the convenience of lowering the lake in order to make repairs to docks, etc...; however, he was wondering how many people there are that really feel, and are really working on it every year, and could there be some consideration made for the folks that have to spend a winter every five years with no water in the canal and they've bought and paid taxes based on an increased property value for being on that canal - we're kind of selfish in that respect, not to mention the wildlife that goes away. Mr. Wright said if there is anything that can be done to either, if not stop it - lengthen the timeframe from five years to seven or ten years - something to give us a little more leeway to enjoy as much time as we can for buying on that little piece of water that they bought on.

Venessa Wiley, 845 Fayette Road, Smyrna, came forward to

speaking. Ms. Wiley said that a lot of them feel that these things can all be done without lowering the lake. She said she knows that somewhere in the documentation for the Town rules that if something were to happen you guys have that right to let that water out and draw it - if there was some kind of emergency, but for the sake of saving some people money to do some maintenance repairs - to have all of that wildlife moved just for us to do things that can be done with the water there. Ms. Wiley said we want to enjoy the water - they canoe, they kayak, they love it - and it can take until spring for the lake to fill back up. She said she also feels that it should not be entirely up to Council whether or not to lower the lake, the residents should also have a say.

Councilman Novotny said he has had people who do not live in the West Shore development that have come up to him and asked why we are lowering the lake - so it's not just the residents of West Shore that are questioning it.

Mr. Wright asked if they could request that this be discussed at the next Council meeting.

George Bespalko, 825 Fayette Road, Smyrna, came forward to speak. Mr. Bespalko said this year he saw four docks being built - three of them with machinery with an extended arm sitting in the people's yard, and they would hammer in the pilings; and the other one used a boat. He said he also spoke to a certified contractor that is on DNREC's approval list and he said there is not a dock that he could not repair or build that would require the lowering of the lake. Mr. Bespalko said he would like to see Council put a little more input to that.

Mayor Stombaugh asked if anyone else would like to address Council. Frank Cain, 120 West South Street, Smyrna, came forward to speak. Mr. Cain said they have just completed the road by his home and in doing so, when they tore up the curbs and the piece from the curb to the sidewalk, they said when they replaced it they would replace it as close to the original as possible. He said they did his and his neighbor's the best they could, they have the stones showing through - they are going to try to dye it to try to match the old stone, but he has a piece that is 11 feet by 2 feet 3 inches long and it is on a slope that is as white as this paper (he held up a piece of paper) and they were told that it would be put back as close as possible; there is no stone showing, all they did was pour the concrete and brush it and he does not think it should be left like that.

Mayor Stombaugh asked for Mr. Cain's address again. Mr. Cain said it is 120 West South Street.

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 reopen the regular Council meeting.

**OLD BUSINESS**

**A. Appointments to Tree Commission and Ethics Commission -** Mayor Stombaugh said she would have to ask for this to be tabled because she has not received the required bios from the individuals.

**NEW BUSINESS**

**A. Resolution Setting Date and Time for Trick-or-Treat -** Mayor Stombaugh read the resolution: "WHEREAS, it has been the custom for many years for children to celebrate the eve of All Saints Day by costuming, masquerading and funmaking; and

WHEREAS, in past years, the merrymaking extended four or five nights preceding Halloween, which is entirely too long a period for the celebration of Halloween and creates an extremely bothersome situation for residents and property owners.

NOW, THEREFORE, BE IT RESOLVED: That, in lieu of such special ordinance by the Council, I, Patricia A. Stombaugh, Mayor of the Town of Smyrna, do hereby request and urge the observance of this celebration as follows:

October 30<sup>th</sup> shall be the date for costuming and the only time for tricks and treats with all celebrating being conducted between the hours of 6:00 and 8:00 p.m. Maximum age for Trick-or-Treat is 12 years.

BE IT FURTHER RESOLVED: That all celebrants are urged not to commit acts of violence or destruction under penalty of the law.

Mr. Hugg said traditionally Halloween is celebrated on October 31<sup>st</sup>; in at least one other year that he is aware of where Halloween fell on a Sunday, Council opted to celebrate it on the Saturday preceding. He said we surveyed some of the

other municipalities a couple of days ago, a week ago, or whatever it was and it's kind of a mixed bag; there were three or four that were celebrating on Saturday, and another three or four that were staying with the traditional date and doing it on Sunday. Mr. Hugg said he thinks the majority was either 4-3 or 5-4; there seemed to be a slight preference on the part of other municipalities to hold the celebration on October 30<sup>th</sup>, which is why we drafted the resolution as it reads, but it is entirely up to Council to decide whether or not you want to go with the traditional date of the 31<sup>st</sup>.

Councilwoman White said she would like to see it on the 31<sup>st</sup> - that's Halloween. She said we wouldn't change it if it was a Wednesday, why are we going to change it because it's a Sunday. Councilwoman White said she likes to see it on the 31<sup>st</sup> when it's Halloween.

Mayor Stombaugh said she had also asked for the 31<sup>st</sup>.

Councilwoman White made the motion to set the resolution for trick-or-treating for October 31<sup>st</sup>. Motion was seconded by Councilman Novotny. Mayor Stombaugh asked if there was any discussion. There was none. Motion carried with Mayor Stombaugh, Councilwomen Brown and White, and Councilmen Novotny and Raynor voting for, and Councilman Riddagh voting against.

**B. Revised Library Computer Use Policy** - Mr. Hugg said Council has a relatively extensive package in their packets. He said basically the last item in the back reads "adopt a new 35.33 as follows: internet acceptable use policy" - this is the version of the internet policy that we are asking you to adopt to be compliant with House Bill No. 340 which the State passed this past year. Mr. Hugg said basically it changes words "Kent Net" with the Delaware Division of Libraries, and it brings the policy into compliance with the State law.

Councilwoman White made the motion to revise the library computer use policy. Motion was seconded by Councilman Riddagh and carried unanimously.

**C. Extension of Trash Contract** - Mr. Hugg said as you know our current contract with Waste Management expires the end of December and we are working with the Utility Committee and in discussions with DNREC and a number of the waste haulers to figure out what we need to do to comply with the new State law that takes effect next September, which is a mandatory recycling law. He said he approached Waste Management about an extension

to our current contract to basically give us an additional six months and they have agreed to extend the current contract at the same \$12.10 a unit that they are charging us now, for the next six months, but he needs Council's approval to be able to send them the contract.

Councilman Novotny made the motion to extend the contract as stated by Mr. Hugg. Motion was seconded by Councilman Riddagh and carried unanimously.

**D. FIRST READING: Ord. No. 014-10, Chapter 1, General Provisions, Section 1-11, General Penalty; Continuing Violations** - Councilwoman White asked if it was possible to table this because they just received the information tonight so they have not had a chance to review the information yet. Mr. Hugg said it was emailed to Council either Thursday or Friday. He said basically the change is simply to delete "civil" and insert "criminal" violations and make our penalties criminal penalties unless otherwise determined to be civil, as opposed to the other way around - which it is now. Mr. Hugg said this would give us the ability to go to the appropriate court and get enforcement action on both police matters and building & inspections kinds of matters. He said since this requires three readings he would suggest that Council go ahead and consider this the first reading - it will be back before Council two more times.

Councilman Riddagh made the motion to make this the first reading of Ord. No. 014-10, Chapter 1, General Provision, Section 1-11. Motion was seconded by Councilman Raynor. Motion carried with Mayor Stombaugh and Councilmen Novotny, Raynor, and Riddagh voting for, and Councilwomen Brown and White voting against.

#### **OTHER COUNCIL BUSINESS**

Mayor Stombaugh asked if there was any other Council business. Mr. Hugg said he would like to go back to the Lake Como issue for a moment. He said the timing of any action that we take on the lake is fairly critical - if you wish to consider this and have this on the agenda for October 18<sup>th</sup>, he wanted to remind Council that they need to make a decision that night in order for us to meet the DNREC requirements and have the lake lowered and restored back before the onslaught of winter. Mr. Hugg said otherwise we simply can't do it again until next October or November. He quickly read the ordinance so that everyone would be aware of the required procedure.

Mr. Hugg said if Council chose not to proceed with the lake lowering this year it does not restrict the ability of the Town to lower the lake if we feel we need to inspect the dam or for some other public purpose.

Councilman Novotny asked if there were any concerns about the dam or any construction. Mr. Hugg said he did not believe so.

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

**ADJOURNMENT**

Mayor Stombaugh adjourned the meeting at 8:25 p.m.

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Council Secretary

vlh