**MINUTES OF THE PUBLIC HEARING AND MEETING**

**SMYRNA TOWN COUNCIL**

**November 1, 2010**

**PUBLIC HEARING**

The public hearing was opened at 7:15 p.m. by Vice-Mayor William C. Raynor. Council members present were Robert Riddagh, and Anthony H. DeFeo, and Robert M. Novotny was present via teleconference.

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

Vice-Mayor Raynor said the legislative fact finding hearing ref. annexation and zoning designation for 900 West Glenwood Avenue for the David C. Harrison Post No. 14, American Legion is now open. He asked if there was anyone present who would like to speak about this.

Mr. Hugg said the engineer for this project is here; he suggested the engineer come forward to speak.

Ed Ide, i3a Consulting Engineers, came forward to speak. Mr. Ide handed out an aerial view of the site, as well as drawings for the project. He said they wish to annex this property and develop it for the American Legion. Mr. Ide stated they had already submitted the plan for review to many agencies for their comments and subsequent approvals.

Allan Post, Ambulance Service Director for the American Legion Ambulance, came forward to speak. Mr. Post said the Legion is possibly looking at the old VFW, but they are looking at 900 West Glenwood Avenue as a separate entity – they would be separating from the American Legion. He said they feel they will be able to provide better service to the Smyrna and Clayton areas from this location (900 West Glenwood Avenue).

Mr. Hugg said Council has the staff report from when the issue went before the Planning & Zoning Commission on October 20, 2010 in their packets, and there were no objections and staff had no objections to the annexation or the proposed zoning.

Mayor Patricia A. Stombaugh entered at 7:18 p.m.

There were no questions from the audience or the Council. Vice-Mayor Raynor closed the public hearing at 7:20 p.m.

**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, William C. Raynor, and Robert Riddagh, and Robert M. Novotny was present via teleconference.

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.

**ADDITIONS/DELETIONS TO PUBLISHED AGENDA**

Mayor Stombaugh said she would like to add under 8(c) Old Business, appointment to the Ethics Commission. She asked if there were any other additions or deletions to the published agenda.

Councilman Raynor said under Other Council Business he would like to update Council on the companies that would do the background checks for the Police Chief position.

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

**MINUTES OF PREVIOUS MEETING**

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

Mr. Hugg stated that there are minutes of Executive Sessions from 8/16/10, 8/19/10, and 9/7/10 – do they have to be approved by Council? Mr. Jaywork said they should at some point.

Mayor Stombaugh asked if there was a motion to accept the Executive Session minutes of August 16, August 19, and September 7, 2010. Councilman Raynor said so moved. Motion was seconded by Councilman DeFeo and carried unanimously.

**REPORTS**

1. **Presiding Officer –** Mayor Stombaugh said she did not have anything tonight.

1. **Town Attorney** – Mr. Jaywork said he had nothing tonight.

1. **Police Chief** – Captain Bordley said that they had a pretty uneventful mischief night and Halloween night – everything went pretty well.

1. **Town Manager** – Mr. Hugg said Council received his email and his staff report, and he did not have anything to add.

1. **Committees** – Councilman Riddagh said the Police Building Review Committee will meet this Thursday, November 4th in the Conference Room at 5:00 p.m. He said the Public Safety Committee meeting that was scheduled for November 11th has been moved up to November 10th in the Council Chamber at 4:30 p.m., due to the holiday on the 11th.

Councilman DeFeo said the Utility Committee will be meeting on Wednesday at 5:00 p.m. downstairs. He invited everyone to attend.

Mr. Hugg said the Business Development Committee meets on Thursday at 8:30 a.m.

Mayor Stombaugh said the Finance Committee met last Monday; they are trying to get the budget finished so they can present it in November before the holidays.

**RECOGNITION OF VISITORS**

Visitors present were Dennis Ballard, Michael A. Havel, Jeannette L. Havel, Russell Stinson, Ed Ide, Allan Post, Pete Vigneri, Joanne Masten, Daryl Jester, Mark Eskridge, Chris Manganelli, Kelley Mann, Seth Clevenger, Conrad Hebert, William Wilson, Jen Merrill, Arlette O. Jillin, Cheryl Thornton, Larry Thornton, Cindy A. Cogar, Joe Wilson, Rita Puriefog, James Harkins, Patrick Duff, Eddy Seger, and H. Lee Jillin.

Mayor Stombaugh said at this time we ask visitors that would like to address Council to step to the microphone. She said please give your name and address, and you have three minutes to address Council. Mayor Stombaugh said we may not have an answer questions tonight; we may need to refer it to a staff member or to a committee.

Jennifer Merrill, 115 North Main Street, Smyrna, came forward to speak. Ms. Merrill said she is president of the Smyrna Public Library Guild, and she wanted to thank the Council members for attending the workshop that was held on October 19th. She said they are looking forward to working with the Town to build a new regional library in the Smyrna area. Ms. Merrill said if you have questions please give them a call. She said they are updating their website: [www.smyrnalibrary.org](http://www.smyrnalibrary.org) and they are going to have a PowerPoint presentation available if anyone is curious about what they are up to. Ms. Merrill said thank you all.

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 go back to the regular Council meeting.

**OLD BUSINESS**

1. **SECOND READING: Ord. No. 014-10, Chapter 1, General Provisions, Section 1-11, General Penalty; Continuing Violations –** Mr. Jaywork said he spoke with Chief Magistrate of the Delaware Justice of the Peace Court System again, and he has assured Mr. Jaywork that in his view any town ordinance can be heard in any JP Court civil or criminal. He explained that any criminal violation is reported to DELJIS, so if someone is charged with a noise ordinance violation and it is criminal under our code, then that would be reported to DELJIS and become part of that person’s rap sheet; whereas, if it is civil then it would not. Mr. Jaywork stated that he did not feel there was a need to proceed with this ordinance; it can be withdrawn or tabled indefinitely.

Councilwoman White asked if Mr. Jaywork would like a motion to withdraw the ordinance. Mr. Jaywork said he would like a motion to table this indefinitely.

Councilwoman White made the motion to table Ord. No. 014-10 indefinitely. Motion was seconded by Councilman Raynor and carried unanimously.

1. **Letter of Support for the Smyrna Public Library Guild –** Mr. Hugg said following the workshop he had drafted a letter for the Mayor to sign, which he emailed to all members of Council. He said there were some additional corrections which he has incorporated. Mr. Hugg said it was requested that this be added to the Council agenda so it would be clear that it was an action of Council and not just the Mayor.

Mayor Stombaugh read the letter into the record.

Councilman Riddagh made the motion to send the letter to Annie Norman, Director of the Division of Libraries. Motion was seconded by Councilman DeFeo and carried unanimously.

1. **Appointment to the Ethics Commission –** Mayor Stombaugh stated she email a bio to the members of Council, and she would like to appoint Joanne Masten to the Ethics Commission. Mayor Stombaugh asked Ms. Masten to come forward.

Joanne Masten, 344 West South Street, Smyrna, came forward to speak. Ms. Masten said she will always do her best to represent the Town and to do the right thing. Mayor Stombaugh asked if there were any questions from Council. There were none.

Councilwoman White made the motion to accept the Mayor’s appointment of Ms. Joanne Masten to the Ethics Commission. Motion was seconded by Councilman Raynor. Motion carried with Councilwomen White and Brown, and Councilmen Novotny, Raynor, Riddagh and DeFeo voting for, and Mayor Stombaugh recused herself.

**NEW BUSINESS**

1. **Resolution to Set Annexation Election, 900 West Glenwood Avenue, David C. Harrison Post No. 14, American Legion, Inc. (11/29/10, 9:00 to 10:00 a.m.) –** Mr. Hugg said reviewed the results of the public hearing held this evening, and the recommendations of staff and the Planning & Zoning Commission.

Councilwoman White made the motion to set the date for the annexation election for November 29, 2010 from 9:00 a.m. to 10:00 a.m. Motion was seconded by Councilman Raynor and carried unanimously.

1. **Town Ordinance, Chapter 66 Traffic and Vehicles, Article III, Sec. 66-112 Penalty for Violations of Article –** Councilman Riddagh said the State has changed their statute – from criminal to civil and all we are doing is complying - making ours comply with the State by changing the one word from criminal to civil. He said this has to do with parking violations.

Councilman Riddagh made the motion regarding Article III, Section 66-112 Penalty for Violations, that the word criminal be struck and civil be inserted in that statute. Motion was seconded by Councilman Raynor.

Mr. Hugg asked Mr. Jaywork if this would require three readings or a waiver of the three reading rule. Mr. Jaywork explained that all ordinances generally require three readings, you could waive it. He said we have one minor problem here, not necessarily a big problem, we don’t have an ordinance in front of us - we just basically have a proposal. Mr. Jaywork said he thinks in this case it is a ministerial point because we are just changing one word. He asked if it was urgent to get this done tonight. Captain Bordley said no. Mr. Jaywork proposed that Council accept this as the first reading and he would have a written ordinance ready for the next Council meeting. Councilman Riddagh withdrew his motion and Councilman Raynor withdrew his second.

Councilman Riddagh made the motion that this be considered the first reading of Article III, Section 66-112 Penalty for Violations changing criminal to civil. Motion was seconded by Councilman Raynor. Mr. Hugg stated this would be Ord. No. 015-10. Motion carried unanimously.

1. **FY 2011 Budget –** Mr. Hugg said he put this on the agenda because at the last Finance Committee meeting it was discussed about calling a special Council meeting for November 22nd at 7:00 p.m. for purposes of considering the proposed budget for FY 2011, and rather than do that at the last minute he thought Council could schedule that tonight if everyone was agreeable. Council agreed.

**D. Appointments to Smyrna Public Library Advisory Board –** Mayor Stombaugh said she has not been in her office so she did not have the information she needed. She said she would have that at the next meeting.

**OTHER COUNCIL BUSINESS**

Councilman Raynor explained that he received two letters of quotes from two different firms that do background checks on police and public officials. He reviewed the two quotes, one from O’Rourke Associates, and one from Auld Associates. Councilman Raynor stated he wanted to make Council aware of what kind of costs would be involved with these background checks.

Mayor Stombaugh said the next step is to go into the background checks. Councilman Raynor said if this is what Council so chooses to do. He said keep in mind with just four people it is going to run close to $10,000.00. Mayor Stombaugh said so the Committee has narrowed it down to four and you want to do the background check on those four? Councilman Raynor said before they presented it to Council – yes.

Mr. Jaywork asked if Councilman Raynor had a recommendation as to what the Committee wanted to go with. Councilman Raynor said he would have to say O’Rourke Associates.

Councilman Novotny made the motion to use O’Rourke Associates to do the background checks on the prospective candidates for chief. Motion was seconded by Councilman Riddagh. Councilwoman Brown asked why they were doing the background checks on all four – is it to help with the process of elimination? Councilman Raynor said if it brings up something, as it did with hiring a police officer in the past year, that person evidently is going to be disqualified.

It was suggested to select a candidate first, and then just have a background check done on that one candidate - $2,400.00 versus $10,000.00.

Some members of Council thought that the Committee was going to choose however many applicants met all of the qualifications before Council, with their recommendation of a particular one perhaps, and then Council would go from there. Council discussed back and forth as to how they wanted to proceed.

Councilman Novotny pointed out that the Committee has not interviewed any of the candidates yet. Councilwoman White said she was under the impression that if they were going to do a background check, that an interview had already been done.

Mayor Stombaugh suggested the next step for the Committee would be to interview the four applicants.

Councilman Riddagh withdrew his second to the motion. Councilman Novotny withdrew his motion.

Councilman Riddagh made the motion to have the Committee contact the four individuals in question and do the interviews first. Mayor Stombaugh asked Councilman Riddagh if, after the interviews, they wanted to do background checks on the four or… Councilman Riddagh said it depends on how many are left. Councilman Novotny agreed that it would be on the ones that are left. Mayor Stombaugh asked for clarification – you don’t want Council to do anything on this tonight – you want to wait until the interviews are finished. Councilman Novotny said probably wait until the interviews are completed; they just wanted Council to get a feel for the possible cost.

It was agreed that this was informational only and that a motion was not needed.

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

**ADJOURNMENT**

Mayor Stombaugh adjourned the meeting at 8:14 p.m.

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Council Secretary

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