

**MINUTES OF THE PUBLIC HEARING AND MEETING**  
**SMYRNA TOWN COUNCIL**  
**May 4, 2009**

**PUBLIC HEARING**

The public hearing was opened at 7:16 p.m. by Mayor Patricia A. Stombaugh. Council members present were Memphis P. Evans, Valerie M. White, Lawrence O. Thornton, Robert Riddagh, and William C. Raynor.

Also present were Town Manager David S. Hugg III, Police Chief Richard H. Baldwin Jr., Attorney John Terrence Jaywork, and Recording Secretary Valerie L. Heritage.

Mayor Stombaugh stated this public hearing is to receive public comments on proposed low-interest loans in a total amount not to exceed \$6,340,000.00 from the Rural Utilities Service of the United States Department of Agriculture and the Delaware Water Pollution Control Revolving Fund for the purpose of financing a number of municipal projects to improve, upgrade, and expand the Town of Smyrna wastewater system.

Mr. Hugg gave a PowerPoint presentation. He said there were copies of the presentation available for those who wished one. Mr. Hugg gave a little bit of quick history - the Town's infrastructure of all types (water, sewer, electric, streets, etc...) dates from the 1940's and 1950's and in some cases a lot earlier than that. He said for a variety of reasons the previous Councils did not invest substantially in replacing this infrastructure at the end of its normal service life. Mr. Hugg said now we are faced with a tremendous backlog of old, and in some cases very antiquated infrastructure of all types that we

have been trying to catch up on, and in fact get ahead. He said this Council and previous Councils have supported significant investments in upgrading the electric system - most of those upgrades occurred in 2003-2004. Mr. Hugg said in about 2004 through 2006 we made a number of investments in our water system with the most significant being a new 750,000 gallon water tank which replaced one that had been built in the 1940's and was functionally obsolete and probably unsafe. He said we also kicked-off a major street repaving program in 2003 with the idea of trying to get ahead of the curve and repair, and in some cases rebuild entire neighborhoods as opposed to a street or segment of a street here and there throughout Town. Mr. Hugg said one system that has not had the upgrades although they have clearly been on the list for some time is the sewer system and that is the subject of the hearing tonight. He said as he indicated much of our infrastructure dates from the 1940's - the Town has made some investments in it's water and sewer systems and in fact in about the last decade has expanded substantial money on Mount Vernon Street and North Street, both of which have had major water and sewer system replacements. Mr. Hugg said South Street is the other east - west component of our water and sewer system that has not had any significant upgrade - much of it is at least 60 years old and perhaps older, except for the little bit that is being upgraded as part of the four corners Main Street project. He said we also have 13 lift stations or pump stations the Town operates dating from the late 1950's. He said the New Street lift station was built in 1958 - that is 51 years ago and these things do not last 51 years so the fact that it is still out there and still functioning is perhaps amazing in its own right, but it is clearly a station that services a major portion of the community; it services basically the area along Glenwood on both sides and west, and

that is a station that is in very bad shape and has the potential to fail at any time. Mr. Hugg said that the Kent Way station - also built in 1958 - and is pretty much an identical design failed 30 years ago so we are way beyond the life expectance with New Street. He said the Greens Branch lift station is the one that sits just north of the Municipal Park next to Greens Branch was built in 1971, and the Green Meadows station which is out next to Route 1 in the back of the Green Meadows development was built in 1974. Mr. Hugg said much of the other lift stations are more recent.

Mr. Hugg said in February 2009 President Obama signed the American Recovery and Reinvestment Act also known as the stimulus program and from the State of Delaware got about \$20,000,000.00 for water system improvements and about \$20,000,000.00 for wastewater projects to be administered by the Office of Drinking Water and the Department of Natural Resources. He said Council has already considered the Drinking Water proposals - the Office of Drinking Water chose to use principal forgiveness loans of approximately 50 percent of the cost on 20 year loans at a working rate of three percent, we will not know the final rate until we go to settlement in June but it will be in that ballpark. Mr. Hugg said DNREC was faced with a substantially larger demand for wastewater projects and their Clean Water Council decided to use the stimulus money to help buy down some affordability questions in Sussex County, but recognizing that there was a substantial backlog of wastewater projects state wide they created a special State stimulus program that uses 2 percent loans for 20 years. He said we began to get information about the potential stimulus funds late last year or early January as things were beginning to fall into place. Mr. Hugg said interestingly the State's wastewater

project notices of intent had to be filed about three weeks before the President signed the Federal legislation so we were flying a little bit blind , but we filed a list of projects by January 29 which was the deadline. He said the Clean Water Council announced its recommendations on March 18, 2009 and gave preliminary approval to potentially 11 projects in the Town of Smyrna. Mr. Hugg said the Clean Water Council, because of the amount of money involved and projects, offered 2 percent special funding and the option of loans from the USDA which also had a package of stimulus money that they could make available to municipalities. He said the final engineering and applications were due by April 30, 2009 and we met that deadline - we tentatively settle any loans we approve by late June and we have to begin construction of at least one project by the end of this year.

Mr. Hugg said the DNREC Water Pollution Control Revolving Loan Fund is a special rate of 2 percent to 20 years, and the USDA option is a loan of up to 40 years at a current rate of 2.75 percent, but the rate could range of 3.25 percent. He said under the State's special program opportunities you can combine either of the two programs essentially any way you want to, but there is no obligation to use USDA funding. Mr. Hugg said we are recommending to Council, and the resolution that Mr. Jaywork will give you for action tonight recommends that we take only the Water Pollution Control Revolving Loan Fund - the 2 percent at 20 years - and postpone or defer any consideration of the USDA funding. He said we have been advised that this special rate of 2 percent will not be offered again and we have also been advised that DNREC anticipates using all of the funds it has available to loan, which means there will not be a pot of other money from the Water Pollution Control Fund any time in

the near future. Mr. Hugg said the advantage of the special rate is shown at the bottom of the slide - for each million dollars borrowed the 2 percent rate saves about \$14,000.00 over the normal rate of 4.29 percent and over a 20 year period that is a savings of about \$286,000.00.

Mr. Hugg said there are three very old pump stations - the New Street pump station, the Green Meadows pump station, and the Greens Branch pump station - and there is the West Shore pump station that we believe we can have the developer take responsibility for - so we are focusing on three very old pump stations that are obsolete and in some cases parts are very hard to obtain if they are even available. He said any failure in any one of them would have catastrophic impact on the Town and on the Town sewer system. Mr. Hugg said the second project is the South Street sewer line which includes a small portion of Cummins Street - that sewer line running along Cummins Street and coming out to School Lane and then on South Street eastbound until you get to East Street. He said that project is again a very old sewer - we were able to get and Council approved using the Drinking Water money for the water project - it is clearly to our advantage to do water and sewer at the same time and not dig the street up twice. Mr. Hugg said the cost estimates that we are using were developed as if it were a stand alone project for funding purposes which means that project would come in substantially under that price. He said the South Street portion is about \$1,500,000.00 based on original estimates, the Cummins Street portion is another \$400,000.00 or \$500,000.00 and could be deferred at least initially if we were trying to stretch funds out. Mr. Hugg said the sewer north of Duck Creek is part of the Economic Initiative - in that area there is no water or sewer north of Duck Creek and very little in the way of

electric service north of Duck Creek - most of those areas are in Town limits. He said the area that is envisioned as being served by this sewer project includes everything east of Route 13 from the interchange down to Duck Creek, including the 200 acre proposed Business Park for which the sewer system is an essential and required component. Mr. Hugg said the downtown sewer project includes the four legs of the Four Corners project - east and west on Commerce, and north and south on Main Street - when we submitted that set of projects we included all four of them and we have subsequently been told that the South Main Street project is not eligible because it was actually initiated before the President signed the stimulus approval so we cannot get funding for the project that we already have underway. He said that brings the proposed total of all of those projects to just a little bit over \$6,000,000.00 - when we originally talked to you a couple of weeks ago it was for \$6,300,000.00, so that is the difference in those two.

Mr. Hugg said he wanted to give an idea of what the various debt service costs would be assuming that all projects have been completed and we were actually incurring the full debt service. He said pm \$6,000,000.00 at 2 percent for 20 years the annual debt service is \$367,000.00 - if we were to borrow the same amount of money to do these projects at 4.29 percent the annual debt service would be \$453,000.00. Mr. Hugg said there is a savings from the special borrowing rate of about \$86,000.00 and over the 20 years the savings of about \$1,700,000.00. He said clearly if we are going to do these projects there is a significant advantage to the Town to borrow the money at 2 percent and not 4.29 percent.

Mr. Hugg said the way these projects are scheduled and the

fact that we only have to start one at a time - much of the debt service on the wastewater side - we will not actually start paying until sometime in 2010 or maybe even 2011. He said unlike the water projects which all have to be under construction by the end of the year and for which the debt service starts in 2010 so he just wants everyone to realize that even if we were to accept every one of these projects and commit to start them in a logical sequence most of the debt does not start to come due until a year to two years or so from this date.

**REGULAR MEETING**

The regular meeting was called to order by Mayor Patricia A. Stombaugh at 7:31 p.m. Council members present were Memphis P. Evans, Valerie M. White, Lawrence O. Thornton, Robert Riddagh, and William C. Raynor.

Also present were Town Manager David S. Hugg III, Police Chief Richard H. Baldwin Jr., Attorney John Terrence 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 reconvened the Public Hearing at 7:32 p.m.

Mr. Hugg said staff and others are recommending to Council that we consider borrowing these funds now or committing to borrowing these funds at this point - first of all this is very old infrastructure we are dealing with, we have literally held

it together with parts that people have manufactured in the shop that we have sort of robbed from some other place, borrowed, used, etc... He said eventually we are going to have to do all of these projects - he does not know when they are going to fail, but they are going to fail sooner or later, most likely sooner. Mr. Hugg said we have already had fairly regular and rather costly repairs every year on some of these facilities. He said the opportunity to get ahead of these, rather than dealing with them as an unplanned emergency, is something that we need to be concerned about. Mr. Hugg said right now the economy is working in our favor - the latest construction indexes indicate that construction prices are anywhere from 10 to 30 percent below what they have historically been and they are expected to stay that way for another year or so, but then the likelihood is that they will go up, and perhaps go up more than where they had been a year or so ago. He said borrowing has the advantage of spreading the debt cost across both present and future users as opposed to putting that entire burden on the people who live in the community now. Mr. Hugg said these are long term investments and will benefit people who come far after us. He said the special 2 percent rate will not be available again. Mr. Hugg said this is basically a reimburse as you go program which means that as we do the projects we ask the lending agency to reimburse our cost.

Mr. Hugg said doing nothing - these things are going to fail - we know that, and we need to be ahead of the curve. He said we do not have a lot of excess operating funds and reserves in the event one of these systems fails and we are not ready for it. Mr. Hugg said one thing that we have learned as we have moved through this process is that EPA and DNREC are moving to what they call mandated asset maintenance. He said what that

means is that for years on the water side we have been under very strict controls from the Office of Drinking Water in terms of the maintenance and operation, and upgrading of our water systems - we have not had that same mandate on the sewer systems and the early guidance we are getting out of the EPA is that within the next year perhaps EPA will be mandating that these old systems have a definite replacement and upgrade schedule so we are going to get pushed into them in part by Federal regulations. Mr. Hugg said if we do the South Street sewer project right now we would have the benefit of combining that with the water project which has substantial cost savings and we have the opportunity to gain the economic benefits of extending the utilities to the north.

Mr. Hugg said in terms of other options the Town historically used to a pay as you go approach and the difficulty with that is the burden falls entirely on the current residents. He said we have also looked at short term borrowing from the bank and in most cases those rates are higher, the terms are shorter and there is often a balloon payment, and about four or five years ago we looked very seriously at the bond market and borrowing money on a bond - Council decided that was not a good thing to do for a couple of reasons - they are very costly, very time consuming process, does not necessarily give you any better rates, and you have a lot of up front costs - anywhere from 5 to 10 percent of the amount borrowed. Mr. Hugg said so some of the other options do not look as attractive as they might. He said in terms of opportunity for this borrowing - the way the State has approached this special program is they have allowed us to bundle projects and begin them one at a time which does spread the debt burden and allow for a lot of flexibility in timing. Mr. Hugg said we also have the 2 percent rate which applies to

all pre-approved projects whenever we do them. He said we do still have the opportunity to defer or, if we choose to at a later date, even drop a project that is on the list without penalty. Mr. Hugg said we do retain the USDA option if at some point Council felt they wanted to consider it but we are not recommending it at this point and we do have the opportunity to roll some of these costs into service fees and developer contributions as we move forward.

Mr. Hugg said what we are basically recommending to you, and what we have reviewed with our engineers, staff, Les Guthorn - who is our financial advisor - and significant conversations with the State is that Council approve the borrowing resolution with the revised amount which is the \$6,008,000.00 and the list of projects that are included from the Water Pollution Control Revolving Fund for 20 years at 2 percent; that we defer any consideration of the USDA loan; that we bundle the projects so that we initiate construction on those projects that have the most significant and pressing need; and that we regularly come to Council to review those projects as we go forward.

Mr. Hugg said the projects that need to move forward as a priority in 2009 and early 2010 are the South Street portion of the South Street and Cummins Street sewer so that we can take advantage of the water system construction - that is roughly \$1,500,000.00 - and then in sequential order the Green Meadows pump station, the New Street pump station, and the Greens Branch pump station. He said the initial approval would be South Street minus Cummins Street, and Green Meadows pump station - combined that is about \$1,700,000.00, and then early next year New Street and Greens Branch, and the two of those projects

together is about \$700,000.00, and then the rest of the projects would be deferred until subsequent years as we finish those projects.

Mr. Jaywork said he wanted to make two quick points: 1) the interest rate has been fixed at 2 percent for this loan, and 2) when he got the amount from Mr. Hugg earlier it was \$6,003,000.00 and it should have been \$6,008,000.00 and he has a corrected resolution showing the corrected amount with him tonight.

Mayor Stombaugh asked for the breakdown on those one more time. Mr. Hugg said the projects that, and these are in priority order of criticality, the South Street portion of the South Street and Cummins Street sewer which is also the area that is going to be doing a water project and is approximately \$1,500,000.00 at last years numbers - keep in mind that he expects construction costs to be significantly below the numbers we are using for budget purposes, but because they were the best numbers that we had available to us at the time those are the numbers that we used; the other priority project in 2009 and early 2010 would be the Green Meadows pump station which is approximately \$200,000.00; the next two projects in terms of priority which we would initiate - we would do the engineering and designing and would probably be ready to go to construction but defer construction until probably early next year would be the New Street pump station which is approximately \$195,000.00, \$200,000.00 if you want, and the Greens Branch pump station which is a much more expensive project - approximately \$520,000.00. Mr. Hugg said the rest of the projects would be done sequentially and what he is suggesting to Council is that

when we are ready to do those projects we would come back to Council for specific approvals so that Council is fully involved with where we are in the projects and what the costs are. He said they would be more likely in 2010 or 2011 or even later.

Mayor Stombaugh asked if Council had any questions. Councilman Raynor said since some of the projects were determined to be ineligible then it may not be necessary to borrow all those funds. Mr. Hugg said that may be - the way this works is you have to commit to the list of projects in order to secure the 2 percent funding if you choose later to them so we will not actually be borrowing - the way this will work, and let us assume Council says go ahead and proceed with these projects - we will go back to DNREC and identify in the order he just stated that projects that we are going to start on. He said as we begin construction on those projects on a monthly basis or bi-monthly basis we will submit a reimbursement to DNREC to be reimbursed the amount of money that we have expended and that money then becomes available to continue construction. Mr. Hugg said the amount of costs we incur will only be on the amount of funds we have actually drawn down from DNREC. He said at the end of each project we will settle up as it will and then that will actually be turned into a loan. Mr. Hugg said so it may be - he is going to guess 2012 or even after - before we have the entire amount of money committed and borrowed.

Councilman Raynor said this House Bill 116 - this could basically be withdrawn since we are not looking at 40 years. Mr. Hugg said it could and that is a separate issue that Council may want to touch base on but House Bill 116 would have amended

our Charter to allow the Council to borrow up to a 40 year term. He said at the moment we have no plans, intentions, etc... to borrow from the USDA so it is kind of a mute point. Mr. Hugg said if the Town had any thoughts or desires to use USDA funding - the USDA funding is available for police stations, libraries, town hall, and a whole variety of other purposes then at the moment our Charter would not permit us to accept a 40 year loan from USDA.

Councilman Riddagh asked if we approve any or all of these projects that money can only be used for those specific projects. Mr. Hugg said that is correct.

Councilman Raynor asked if we had a letter of commitment from KRM - do they have the funds and are they going to proceed. Mr. Hugg said we do not have a letter of commitment signed by them - about two years ago we entered into negotiations with the two large property owners on either side of US 13 for a cross share agreement for the water and sewer systems for both sides of that road north of Duck Creek. He said we have a signed water agreement by the developer only for the west side of Route 13 - that project at the moment is not going anywhere - it is simply on hold. Mr. Hugg said on the KRM side we have been negotiating with them at length on that project that they submitted - it has been through a number of reviews - it is held up in DelDOT. He said there are ongoing discussions with KRM and DelDOT about the level of road improvements and at the moment KRM has said that they are going to step back and see if they can't work out some of the DelDOT requirements, and when the Town is ready to proceed with water and sewer then they are ready to renegotiate or reenter those negotiations for their

share of the project.

Councilman Thornton clarified that we are telling DNREC the amount of money that we are going to get at 2 percent, we are not telling them that we are going to do all of these projects - we are committing to the projects, but if our economy is such that we cannot finish those projects then we simply will not borrow that amount of money. Mr. Hugg said that is correct. Councilman Thornton said his point is that this resolution commits us to \$6,008,000.00 roughly at 2 percent - this is a good deal and because we would be voting on a resolution to go to \$6,008,000.00 does not mean we are going to spend \$6,008,000.00. Mr. Hugg said that is correct. Mr. Hugg said what we are basically saying to DNREC is here is a list of projects that the Town of Smyrna would like to do using their 2 percent money under the guidelines that they have set forth for this special stimulus package. He said in terms of actually doing the projects the timing, the order, etc... are at the Town's choice including at some point saying to DNREC we have changed our mind. Mr. Hugg said the only real obligation is we have to start a project by December 31, 2009 and we have to commit to a reasonable stream of projects, and there is no penalty if we do not do a project. He said the only penalty is we lose that portion of the 2 percent money.

Councilman Riddagh said if we pass some or all of this who has the say - does it come back to Council to approve the projects - how does that work.

Mr. Hugg said what he is asking Council specifically to do tonight is agree to the list of projects and the potential

borrowing of up to \$6,008,000.00 with a priority to do the South Street portion of the South and Cummins Street project, the Green Meadows pump station, the New Street pump station, and the Greens Branch pump station - in that order - over the next 12 to 18 months. He said with the rest of the projects being on the list and subject to further Council consideration and approval. Mr. Hugg said in doing that - recognizing that at any time Council can say whoa, slow down, do not proceed, etc...

Mr. Jaywork said each of these projects will have to go through the bidding process as well, and if Council does not award that bid then the project does not get done.

Mayor Stombaugh asked what the payment would be on \$2,500,000.00. Mr. Hugg said he believes it is roughly \$60,000.00 per million.

Councilman Riddagh asked if any of these projects could be budgeted into our budget. He asked if we are going to be able to make the payments on the \$6,008,000.00.

Mayor Stombaugh asked what the payment is on the \$8,000,000.00 loan that we already have and what is the payment going to be on the other loan that was just approved. Mr. Hugg said he could answer part of that - the Drinking Water loan when fully borrowed and after the 50 percent forgiveness is about \$127,000.00 a year. He said that is assuming that the rate stays at 3 percent and that they forgive roughly 52 percent of the principal. Mayor Stombaugh said haven't we been paying around \$600,000.00 on the \$8,000,000.00 loan? Mr. Hugg said the prior outstanding loan amount is already in the budget. He said

our current budget certainly is not adequate to pick up another couple hundred thousand dollars of capital project out of current revenues. Mr. Hugg said good years in 2003, 2004, 2005 when we were seeing the kind of building permits and commercial permits that we were seeing in that time period - he would have probably suggested that we do some of these projects out of current revenue. He said at least in the next year or two he does not think we are going to have this kind of additional money available to us. Mr. Hugg said he does not think there will be a problem paying the debt service, but there will not be enough to buy a project outright.

Councilman Riddagh said he is sure that the Finance Committee is aware of this - are they backing this? Mr. Hugg said all of these come with the recommendation of the Finance Committee and the Utility Committee.

Gene Mullen, 48 Oak Drive, Smyrna came forward to speak. Mr. Mullen said these projects have been discussed in the Finance Committee and he is the former chair of the Finance Committee and the Utility Committee. He said they come with the recommendation of both committees. Mr. Mullen said the estimated cost of these projects - from what they are seeing in the construction field = is anywhere from 25 to 35 percent savings in any kind of infrastructure construction. He said this is based upon the economy, contractors are hungry, they are trying to keep their men working, and the prices are falling. Mr. Mullen said the prices that are before Council now - you are probably looking at 25 to 35 percent savings. He said do not look at it like a \$6,008,000.00 loan - he knows it is a lot of money, it is a lot of commitment - those prices are going to

fall. Mr. Mullen said also Council has control of these projects. He said he just has one thing to say about another related subject - Councilman Raynor posted an opinion in the Sun Times this week and he will commend his timing - it was perfect because nobody could respond to it. Mr. Mullen said he is very concerned because Councilman Raynor attacked some... Mayor Stombaugh said she is sorry but this is a public hearing on wastewater. Mr. Mullen said this is a public hearing and this relates directly to wastewater. Mayor Stombaugh said she is sorry but this is for the public hearing. Mr. Mullen said he has gone after a citizen that has voiced his opinion. Mayor Stombaugh stated Mr. Mullen was out of order and to either stop or she would have him removed from the meeting.

Councilman Thornton said Mr. Mullen will have an opportunity when the regular meeting resumes to voice comments - is that acceptable? Mr. Mullen said he has no problem with someone having an opinion but to attack someone. Mayor Stombaugh said this just is not the time. Councilman Thornton said let us finish this portion.

Doug Chervenak, 560 Kates Way, Smyrna came forward to speak. Dr. Chervenak said procedurally he sat here for 45 minutes listening to Council adjudicate something that should have been done at the regular meeting. He said this is a public hearing, this is for the public. Dr. Chervenak said now he is going to voice his opinion. He said when he became a Councilman in 2005 Mr. Hugg gave him a tour of our infrastructure. Dr. Chervenak said he said then that he felt like he walked into a third world country when he walked into the Public Works building. He said he saw a public health hazard, he saw mold,

he saw wires hanging, and he said what is this Town doing? Dr. Chervenak said then Mr. Hugg showed him the electric system and he said wow this is a historic monument to Edison. He said if we had not taken the steps back in 2005 our electricity would have been blown easily and he knew that. Dr. Chervenak said he is saying please do this, as a homeowner in this community, knowing that our community requires infrastructure. He said we have to do things prospectively, proactively. Dr. Chervenak said please think in the future and approve this.

Gary Stulir, Town of Smyrna Manager of Accounting and Business Services, came forward to speak. Mr. Stulir said he has been asked many times what our current debt is. He said we have two Drinking Water loans. Mr. Stulir said on the current loan of \$1,600,000.00 that we took out - as of 5/1/09 the current loan balance is \$1,351,000.00 and we pay \$55,000.00 every six months. He said it matures in 2024 so we took it out in 2004 - that is the Gardenside one. Mr. Stulir said the one to \$1,700,000.00 is for the water tower and it matures in 2027 - the current balance as of 5/15/09 is \$1,619,000.00 and the payment on that is again \$55,000.00 every six months. He said we have a loan from DEDO which is no interest - it was \$75,000.00, we took that out in 2004 and is a 10 year loan to extend a water line to the Business Park from Gardenside, and the current balance on that is \$30,000.00 and it will mature in 2013. Mr. Stulir said the \$8,000,000.00 loan from PNC will have a balloon payment in 2012 so at that time we are going to have to refinance it which was the anticipation. He said the one part of it was \$4,600,000.00 which we used to pay off the BAN which paid for the electric sub-station - the current balance on that as of 5/14/09 is \$4,350,000.00 and the payment per month is

\$29,000.00 and for the year it is \$352,000.00. Mr. Stulir said the other portion of the loan - the \$3,300,000.00 we used for the Four Corners, the Public Works building, the municipal parking lot, and a whole host of other projects and the balance as of 5/14/09 is going to be \$3,269,000.00 and the monthly payment is \$21,000.00 and the yearly payment is \$254,000.00.

Mayor Stombaugh said the total she is coming up with, if we just do the four projects Mr. Hugg spoke of, it would be \$1,082,000.00 that we would have to pay and if we do the whole thing it would be \$1,448,942.00.

Mayor Stombaugh asked if anyone else from the public would like to speak. Ryan Flickinger, KCI Technologies, came forward to speak. Mr. Flickinger said he wanted to report some things that he thinks are most important. He said the new EPA mandated asset management program that DNREC is expecting very shortly - within the next year or so - this is much more active in Maryland right now, and basically what it entails is an asset management plan that forces whoever owns the infrastructure to act on certain events. Mr. Flickinger said the combination of that along with - he knows about the pump stations, he knows about the sewer lines which are terra cotta pipe which inherently leaks at the joints. He said if the work is going to have to be done anyway and if DNREC does not have a time restriction for these projects - these could be done four or five years from now - we just need to work with DNREC and that they agree with our schedule. Mr. Flickinger said if you have the opportunity to get the \$6,000,000.00 at 2 percent - he is having a hard time figuring out a reason not to do it based on the information we have received from the State. He said the

pump stations are in desperate need of repair. He said these projects have been presented by the Town as a necessity and he feels this is a good opportunity for the Town to tackle some or hopefully all of these projects.

Larry Graf, 849 Fayette Road, Smyrna came forward to speak. Mr. Graf said he is not in agreement. He said when he read the notice for the hearing it referred to a long range plan. Mr. Graf said tonight he heard a lot of things but he did not hear an overall plan. He said the difficulty that he has is that we have loans from the past that we have not paid off, we have a balloon payment coming down the road and we are looking at \$10,000,000.00 - and he did a little calculation on this thing. Mr. Graf said he projects there will be a 20 percent increase in real estate taxes. Mr. Graf said he is not against all of the projects but he is against just having a list of things just put up and no plan. He said he is not against borrowing money, just target it.

Jeff Flairty, 131 West South Street, Smyrna came forward to speak. Mr. Flairty said one of the reasons he speaks up is because he is concerned about the community. He said he is an environmental engineer and it is a challenge that they have in their industry that when you flush the toilet - it is gone; when you turn the tap - it is there. Mr. Flairty said people do not see the quality of the piping underground and you do not know what it looks like or when it is going to break. He said we have some old infrastructure in this town and the savings of doing the work on South Street in conjunction with the water - it is a no brainer. Mr. Flairty said there were 70 to 80 projects approved to be done and no community in Delaware has

decided not to take that money for those projects. He said the reality is that it is a great deal and we have to have a real reason not to do this, and that he has not heard one yet.

Gary Stulir, 320 South Delaware Street, Smyrna came forward to speak. Mr. Stulir said we have been talking about many of these projects as part of our five year capital plan. He said we have been talking about this and we do have a plan and it has been fully disclosed in our Finance Committee meetings and he would be happy to get Mr. Graf a copy of our five year plan. Mr. Stulir said we have been approaching this in a methodical manner.

Mayor Stombaugh asked if there was anyone else present to speak. No one came forward.

Mayor Stombaugh said she has been weighing why and why not and it is difficult. She said it concerns her that we already have \$15,000,000.00 in loans; why have a five year plan if you are not going to follow it; she would like to see the fixed income and the fixed expenses of the Town - she wants to know where we stand. Mayor Stombaugh said she is afraid that this is exactly what happened to the Country and the World - exactly what got us into this situation today. She said we need to be a little cautious.

Mr. Jaywork asked if he is correct in thinking that even if Council passes this tonight that they still could choose to not do these projects. Mr. Hugg said that is correct. Mr. Jaywork said isn't there a time constraint - the Council cannot put this off for another month? Mr. Hugg said if Council votes not to

include a project it can never be added; if Council votes to approve the list and decides at any time that it does not want to proceed with a project - it is totally at the Town's discretion. He said we have to go to settlement in June so if Council wants a couple more weeks to think about this that is fine, but there are time constraints. Mr. Hugg said one thing is for sure - these projects will fail and we will have raw sewage running down the street. He said if we don't do anything one or more, or all of these projects will fail within the next five years.

Councilwoman White said she has been on the Finance Committee for three years and there is a plan and we have gone over the plan. She said she does not like borrowing money either. Councilwoman White said is she concerned it we will have the money to pay for the loan, but is she also concerned that there won't be running water - yes she is. She said our financial advisor has told us that we should be running on taxes not electric, and he has also advised us to take the money.

Councilman Thornton read an excerpt from a letter from Mr. Guthorn, the Town's financial advisor. It said "...this financing opportunity addresses these concerns more affirmatively than previous options we have been talking about. The 2 percent loan rate costs the Town less than half of what is available in today's market and with no real cost at issuance. I cannot predict the future but two things will happen: cost of products will rise and so will interest rates. In short, rates can rise to meet minimum commitments now and some growth may help. Take the loan rate!" Councilman Thornton said to him that carries a lot of weight.

The public hearing was closed at 9:03 p.m.

**ADDITIONS/DELETIONS TO PUBLISHED AGENDA**

Mayor Stombaugh said under Old Business she would like to add consideration of the Vice Mayor and Council Secretary appointments - item (a). Councilman Raynor made the motion to accept the agenda as amended. Motion was seconded by Councilwoman White. Motion passed with Council members Evans, White, Thornton, Raynor, Riddagh, and Mayor Stombaugh voting for.

**MINUTES OF PREVIOUS MEETING**

Councilman Thornton made the motion to accept the minutes of April 2, 2009, and April 20, 2009. Motion was seconded by Councilwoman White. Motion passed with Mayor Stombaugh, Councilwoman White, Councilmen Evans, Thornton, Raynor, and Riddagh voting for.

**REPORTS**

**A. Presiding Officer** - Mayor Stombaugh said she thought it was a good election and she wanted to thank the Election Board for doing an excellent job, and the Town employees, all the Town staff, the Police Department, and everybody that helped out.

**B. Town Attorney** - Mr. Jaywork said we were finally successful in taking the Taggart Property to monitions sale - the Town did the property in, the property owner has 60 days in which to

redeem the property, and if he does he has to pay the Town's bid price plus 15 percent so we are hopeful that we wind up with the property, and it will only cost the Town about \$3,000.00 total to acquire the property.

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

D. **Town Manager** - Mr. Hugg said when he first came to the Town one of the members of staff who went out of their way to explain to a not terribly intelligent new Town Manager how water and sewer systems work was Nelson Rinker. He said Mr. Rinker has announced to all of us that he is retiring at the end of the month after 23 years with the Town of Smyrna. Mr. Hugg said he deeply respects Mr. Rinker and calls him a friend. He said Mr. Rinker was, among other things, Water Operator of the Year in 2004 or 2004 for the State of Delaware. Mr. Hugg said he is by far one of the most conscientious Town employees that he has ever know to the point of on his days off he goes and makes sure his pump stations are running properly, and if they are not he somehow manages to keep them going. He said he wished Mr. Rinker success and happiness in his retirement.

E. **Committees** - Councilman Councilwoman White said the Town of Smyrna had their Arbor Day celebration on May 2, 2009 out in front of Town Hall. She said it was a nasty day so they only had a handful of people come out. Councilwoman White said she would like to thank the Tree Commission, and Bill Proud came out and helped that day as did Janet Vinc, Rebecca Yetter, and a couple of volunteers from Bon Ayre. She said hopefully it will be better weather next year.

RECOGNITION OF VISITORS

Visitors present were Daryl Jester, Janet Vinc, Anthony DeFeo, Mary DeFeo, Seth Clevenger, Doug Chervenak, Duane R. Young, Kathy Young, Jim Strong, Jeff Flairty, Gary Stulir, James Harkins, Marian Bower, Nelson Rinker, Gene Mullen, Art Ricker, Jaci Hugg, Nancy Jones, Bob Wilson, Wilbert Bordley, J.C. Francis, and Joe Wilson.

Mayor Stombaugh stated this portion of the meeting is open to the public. She said we invite you to step up to the microphone; it is being recorded so you need to give your name and address, and you have three minutes to address Council. Mayor Stombaugh said Council is not obligated to give an answer tonight; we may have to refer your subject to a staff member or to a committee. Mayor Stombaugh asked if anyone would like to step forward and address Council.

Gene Mullen, 48 Oak Drive, Smyrna came forward to speak. Mr. Mullen said he remembered the very important words by Judge Vaughn as he administered the oath. He said that oath is very important and should be very important to everyone up here. Mr. Mullen said honor, respect, and integrity. He said he hopes in Council's terms they do their best job they know how to do.

Mayor Stombaugh asked if anyone else would like to step forward. 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. Results of Public Hearing ref. Resolution Proposing the Borrowing of up to the Total Sum of \$6,008,000.00 from The Rural Utilities Service of the United States Department of Agriculture and The Delaware Water Pollution Control Revolving Fund to Finance a Number of Municipal Projects to Improve, Upgrade, and Expand the Town of Smyrna Wastewater System - Mr. Hugg said the resolution is specifically for borrowing from the Delaware Water Pollution Control Revolving Fund.

Councilman Raynor made the motion to table this for one meeting so the new members of Council have an opportunity to discuss it with the whole Council and set a deadline to resolve this. Motion was seconded by Councilman Riddagh. Motion passed with Mayor Stombaugh, Councilwoman White, Councilmen Evans, Thornton, Riddagh, and Raynor voting for.

B. FIRST READING: Ord. No. 001-09, Chapter 19, Historic Preservation, Section 19-4. Expansion and Extension of Historic District - Mr. Hugg explained this was on the agenda at the last meeting and we determined after the meeting that there was some confusion about whether or not this was to go to the Planning and Zoning Commission or whether it was to be dealt with as an Ordinance amendment. He said Mr. Jaywork made a revision to the proposal.

Mr. Jaywork said it appeared to him that this was a Zoning Ordinance amendment and he said that it needed to go to the Planning and Zoning Commission. He said after that meeting he

did some research and this is not in the Zoning Ordinance - it is part of the regular Ordinance. Mr. Jaywork said it is required to go through the three reading process; however, while he was looking at it he noticed that what this does in one section is if you do change the Historic District you have to change the Zoning map, so you will see in the packet that there is a highlighted provision here that says that there has to be a public hearing just like any other Zoning map amendment.

Councilwoman White made the motion to make this the first reading of Ordinance #001-09, Chapter 19, Historic Preservation, Section 19-4, Expansion and Extension of the Historic District. Motion was seconded by Councilman Evans. Motion passed with Mayor Stombaugh, Councilwoman White, and Councilmen Evans, Thornton, Riddagh, and Raynor voting for.

#### NEW BUSINESS

**A. Appointment to Fill Council Seat Left Vacant by the Resignation of William D. Pressley Sr.** - Mayor Stombaugh said she would like to make a motion to appoint Anthony DeFeo. Motion was seconded by Councilman Raynor.

Councilman Thornton said he is not prepared to vote on this tonight and would ask that it be tabled until the next meeting.

Mayor Stombaugh said there is already a motion on the floor so he cannot do it.

Motion failed with Mayor Stombaugh, Councilmen Riddagh, and Raynor voting for, and Councilwoman White, Councilmen Evans, and Thornton voting against.

**OTHER COUNCIL BUSINESS**

**A. Council Appointments - Vice Mayor, and Council Secretary -**  
Mayor Stombaugh stated for Vice Mayor her appointment is William Raynor.

Appointment failed with Mayor Stombaugh, and Councilman Raynor voting for, and Councilwoman White, Councilmen Evans, Thornton, and Riddagh voting against.

Mayor Stombaugh stated for Council Secretary she would like to recommend Robert Riddagh.

Appointment passed with Mayor Stombaugh, Councilmen Evans, Thornton, Riddagh, and Raynor voting for, and Councilwoman White voting against.

Councilwoman White said she would also like to thank Daryl Jester as he came out and helped with the Arbor Day celebration. She said they were approached by DelDOT to adopt a highway and the members of the Tree Commission though it would be a great idea to do this. Councilwoman White said it would be Joe Goldsborough Road to Duck Creek Road and Paddock Road which is just that strip before the highway. She said she did ask Mr. Hugg about it and she would like to do it as Town of Smyrna employees rather than just the Tree Commission.

Mayor Stombaugh said does that mean the Town employees have to go out there and clean it up. Councilwoman White said yes - three times a year. Mayor Stombaugh asked if we would have to pay them. Councilwoman White said she would think that we would let them do it in three different groups three times a year on Town time. She said if not then the Tree Commission would go ahead and adopt a highway. Mr. Hugg said the Town staff would be fine with that.

**ADJOURNMENT**

Councilman Thornton made the motion to adjourn. Motion was seconded by Councilwoman White. Meeting was adjourned at 9:25 p.m. by unanimous vote.

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Council Secretary

vlh