

MINUTES OF THE PUBLIC HEARING AND MEETING - SMYRNA TOWN COUNCIL
MAY 19, 2008

Mayor Stombaugh opened the public hearing at 7:00 p.m. Council members present were Memphis P. Evans, Gene A. Mullen, William D. Pressley Sr., William C. Raynor, Lawrence O. Thornton Jr. and Valerie M. White.

Also present were Town Manager David S. Hugg III and Recording Secretary Carol C. McKinney.

Visitors present included Penny Mae Wood, James E. Veit Sr., Marian Bower, Daryl Jester, Gordon & Helen Miller, Dee & Chris Watson, Dwight Meyer, Grant S. Blank, Duane R. Young, Bill Lenihan, Don Wujrewicz, Anthony & Mary Defeo.

PUBLIC HEARINGS

LEGISLATIVE FACT FINDING HEARING & CONSIDERATION OF ZONING

DESIGNATION - LATTOMUS 5744 DUPONT HIGHWAY

Mr. Hugg said that a part of this property is one that the Town has requested setting aside for a utility easement and one condition we discussed with the owner is annexing the parcel into Town and making the property accessible to Town water/sewer/electric. This is the beginning of that process. The next step is to consider the appropriate zoning and set a date for an annexation election. The property is zoned highway commercial in New Castle County and will come into the Town of Smyrna as Highway Commercial which is consistent with the Comprehensive Plan. The purpose of this hearing tonight is to hold the hearing on that zoning designation.

Mayor Stombaugh asked if anyone present wished to speak in favor. No one came forward.

Mayor Stombaugh asked if anyone present wished to speak against. No one came forward.

Mayor Stombaugh closed the hearing on 5744 duPont Highway.

APPLICATIONS TO REZONE:

127 S. EAST STREET (Tax Map ID #DC17-010.18-02-15.00-000)

129 S. EAST STREET (TAX MAP ID #DC17-010.18-02-17.00-000)

FROM RESIDENTIAL-3 TO CENTRAL COMMERCIAL

Mr. Hugg reported that there was information in packets including the application for rezoning that was processed through Planning and Zoning. These properties are directly behind the Smyrna Health and Wellness Center. The applicant is in the process of acquiring both properties. The Comprehensive Plan shows Central Commercial rather than Residential 3 and they are asking that the property be rezoned to Central Commercial. Planning & Zoning recommends these rezonings.

Councilman Pressley asked if one of these houses has been demolished.

Mr. Hugg replied that one is done and settlement on the other should be completed in the next week or so after which it will be demolished.

Mayor Stombaugh asked if anyone present wished to speak in favor. No one came forward.

Mayor Stombaugh asked if anyone present wished to speak against. No one came forward.

Mayor Stombaugh closed the hearing on 127 and 129 S. East Street.

225 E. COMMERCE STREET (TAX MAP ID #DC17-010.14-03-10.00-000)

FROM RESIDENTIAL 2 TO INSTITUTIONAL & RECREATIONAL

Mr. Hugg said this property is owned by Bethel AME Church. It is shown on the Comprehensive Plan as Institutional & Recreational like other churches are zoned. Planning and Zoning recommends the change.

Mayor Stombaugh asked if anyone present wished to speak in favor. No one came forward.

Mayor Stombaugh asked if anyone present wished to speak against. No one came forward.

Mayor Stombaugh closed the hearing on 225 E. commerce Street.

116 N. DUPONT HIGHWAY (TAX MAP ID #DC17-010.13-04-11.00-000)

FROM RESIDENTIAL 2 TO HIGHWAY COMMERCIAL

Mr. Hugg said this is exactly the same form of request. The application went to Planning & Zoning and they recommend the change to be consistent with the Comprehensive Plan.

Mayor Stombaugh asked if anyone present wished to speak in favor. No one came forward.

Mayor Stombaugh asked if anyone present wished to speak against. No one came forward.

Mayor Stombaugh closed the hearing on 116 N. duPont Highway.

Mayor Stombaugh declared the public hearings closed at 7:22 p.m.

OPEN REGULAR COUNCIL MEETING

Mayor Stombaugh opened the regular Council Meeting at 7:30 p.m. Council members present were Memphis P. Evans, Gene A. Mullen, William D. Pressley Sr., William C. Raynor, Lawrence O. Thornton Jr. and Valerie M. White.

Also present were Town Manager David S. Hugg III, Police Lt. Norman Wood, Attorney John Terence Jaywork and Recording Secretary Carol C. McKinney.

Lt. Wood led the Pledge of Allegiance and Mayor Stombaugh asked for a moment of silence.

ADDITIONS/DELETIONS TO PUBLISHED AGENDA

Councilman Mullen asked to strike Item 8B. Recommendation of Finance Committee on On-line Service Payments.

Mayor Stombaugh asked to strike Items 8A 2 and 3, Results of Public Hearing for 127 & 129 S. East Street, and 9A

Recommendations of Ethics Commission. Mayor Stombaugh also asked to reverse Items 7A and B since Tevebaugh Associates has already set up their presentation.

Councilman Mullen made a motion to accept the agenda as amended. Motion was seconded by Councilman Raynor and carried unanimously.

MINUTES OF PREVIOUS MEETINGS

Councilman Thornton said that, on the regular minutes of May 5, Councilwoman White is shown as voting twice on the same issue. Secretary said she will check the recording and make the correction.

Councilman Thornton made a motion to accept the minutes of the regular meeting of May 5, 2008 with the noted correction. Motion was seconded by Councilman Mullen and carried unanimously.

Councilman Thornton made a motion to accept the minutes of the Organizational Meeting of May 5, 2008. Motion was seconded by Councilman Mullen and carried unanimously.

REPORTS

BILLS & FINANCIAL STATEMENTS:

Mr. Hugg said he has nothing to add. Bank balance information was in packets. For those who were at the Finance Committee Meeting, the draft final audit was presented and will be brought to Council at the first meeting in June.

PRESIDING OFFICER:

Mayor Stombaugh said we need to do some cleaning up from the last meeting. She said she is sure no one on Council wants to do anything against the Charter. It is difficult to sit in the Mayor's seat and know every word in the Charter, especially when you are working in less than ideal situations. Mayor Stombaugh said we did not follow the Charter at the Organizational Meeting and we need to make some corrections.

Mayor Stombaugh said we need to remove Regina Brown from the Compensation Committee since she is serving on the Ethics Commission. Those members are not to serve on any other committee.

Mayor Stombaugh said the Charter says that the Mayor makes recommendations for committees and Council is to accept or not accept. She added that there were recommendations made not by her. Mayor Stombaugh said she has talked to some people on the committees. We must be consistent and Mr. Mullen wants to serve on the Parks and Recreation Committee. She said she will make that recommendation.

Councilman Mullen said that came up for a vote previously. If there was a question, it should have been brought up at that time, but Mayor Stombaugh accepted the recommendations of Council.

Mayor Stombaugh said she voted no.

Councilman Mullen said it was voted on and the motion carried. If there was an objection, it should have been stated that night.

Mayor Stombaugh said she opposed it.

Councilwoman White made a motion to add Councilman Mullen to the Parks & Recreation Committee. Councilman Pressley seconded the motion which carried unanimously.

Mayor Stombaugh said she recommended Mr. Raynor to serve on the Finance Committee. He is a new Council member and has a Masters Degree in accounting. Mayor Stombaugh added that she feels it is important for new Council members to learn the ropes. She said she spoke with Mr. Raynor and he said that he was okay with withdrawing. Larry Thornton requested to be on the Finance Committee. Mayor Stombaugh said she will make that her recommendation.

Councilman Mullen made a motion to leave Councilman Thornton on the Finance Committee. Motion was seconded by Councilwoman White and carried unanimously.

Mayor Stombaugh said that Councilman Mullen made a motion to add Dr. Chervenak to the Library Long Range Planning Committee as well as to the Charter Review Committee. Mayor Stombaugh said she is not making that recommendation. The Doctor is not a Council person but he is moving out of Town and she said she does not recommend that appointment.

Mayor Stombaugh said she recommends that the Long Range Library Planning Committee be: Robert Bamberger, Councilman Evans, Ann Henning, Jennifer Merrill, John Phillos and Mary Ann Varanko.

Mayor Stombaugh said she recommends that the Charter Review Committee be: Councilman Raynor, Mayor Stombaugh, Councilman Pressley, Barbara Allsopp and John O'Grady.

Councilman Pressley made a motion to accept the Mayor's recommendations. Motion was seconded by Councilman Raynor. Council members Evans, Pressley, Raynor, White and Mayor Stombaugh voted yes, Council members Mullen and Thornton voted no. Motion carried.

Mayor Stombaugh said she is sorry this was necessary, but we have to be in compliance with the Charter.

Councilman Mullen said we already were.

TOWN ATTORNEY:

Mr. Jaywork had no report.

POLICE CHIEF:

Lt. Wood noted that the Chief is at the Police Chief's Conference.

TOWN MANAGER:

Mr. Hugg said he had nothing to add to his written report that was in packets.

COMMITTEES:

Councilman Pressley said the Personnel Committee met on May 14 and minutes were in packets. We didn't get a lot done that evening and there were a lot of items that will be on the June meeting agenda because we didn't get in touch with people. We did make some job classification changes.

Councilman Pressley said the next meeting will be on June 11. We will be talking about Workers Comp and other positions that we are bringing into the Town.

Councilman Pressley said the Business Development Committee will meet on June 5 at 8:30 a.m. Everyone is invited to attend.

Councilman Evans said the Parks & Recreation Committee will meet at 5:00 p.m. on May 27th.

Mayor Stombaugh announced that all the committees she chairs will meet at 6:00 p.m. instead of 5:00 p.m.

Councilman Thornton suggested that the committee members decide on that.

Mayor Stombaugh said she talked with Chief Baldwin and he told her that the meetings are at the call of the Chair. She said that, as the Chair, she has decided that her committees will meet at 6:00 p.m.

Councilman Mullen asked why the Chief is setting precedence.

Mayor Stombaugh said the Chief told her that the committees meet at the call of the Chair and she will hold her committee meetings at 6:00 p.m.

Councilman Thornton said there are several committee members involved in each committee. They have different work schedules and different issues. Why not ask them what they think instead of dictating that you are going to change the hours of the meetings.

Mayor Stombaugh said she is going by who has the authority to make the call. She added that her business is open until 5:00 p.m. and it is her call that the committees she chairs will be at 6:00 p.m.

Councilman Mullen noted that the Finance Committee met on May 15. The draft 2007 Audit was presented. Members are reviewing it at this time and will bring the draft copy of the audit to Council at the first meeting in June.

Councilman Mullen said on-line bill paying was discussed at length. Because of the amount of items on the agenda, they didn't reach a consensus on it. He announced that they will have a special meeting on June 2 at 5:00 p.m. and everyone is welcome to attend. There are going to be only two items on the agenda and one is on-line payments.

RECOGNITION OF VISITORS

Visitors present included Penny Mae Wood, James E. Veit Sr., Marian Bower, Daryl Jester, Gordon & Helen Miller, Dee & Chris Watson, Dwight Meyer, Grant S. Blank, Duane r. Young, Bill Lenihan, Don Wujrewicz, Anthony & Mary Defeo, Seth Clevenger, Al Kemp, Waclaw & Leno Ferus, Jeff Montejo, Richard Barezewski, George Mast.

Mayor Stombaugh opened the floor to visitors. She asked anyone wishing to speak to come to the microphone, to give their name and address for the record and to limit their comments to three minutes. She said we have a digital timer which we will set and you will know when your time is up.

Helen Miller of 45 W. South Street asked that the Council members speak into their microphones so that the audience can hear what is being said. She also expressed concern that the aisles are blocked tonight so that it is difficult to reach the microphone.

Mrs. Miller said she is here to represent the Board of Elections. They worked on the Election since February of this year and spent April 28th at the Fire House from 10:00 a.m. to 8:30 p.m. It is now past the middle of May and they still have not been paid for their hard work.

Mayor Stombaugh said we will talk to the accounting department about this.

Anthony DeFeo of 437 Sunnyside Road said he checked the Home Occupation Ordinance on the web site and it is the same as last time. He said in fact it is almost verbatim with what is already in Appendix A of the Town Code. Mr. DeFeo said he hopes what was in packets for Council is correct so that you know what you are doing.

Waclaw Ferus of 2 Ramunno Drive expressed concern that the tax rate was increased 50 percent. He said the value of homes is going down. People from other states are moving here because we have reasonable tax rates. Fifty percent is too much.

Hearing no further comments, Mayor Stombaugh closed the public portion of the meeting.

Bill Lenihan of Tevebaugh Associates made a Power Point presentation on the proposed addition and renovations to the Smyrna Police Department.

Representatives of Delaware State University, Dwight Walters, Rich Barcheski, Grant Blank and Don Wujrewicz were in attendance to give Council an update/overview on their plans for the "Blendt Farm" on Smyrna Leipsic Road.

OLD BUSINESS

RESULTS OF PUBLIC HEARINGS

RESOLUTION TO SET ANNEXATION ELECTION

LATTOMUS, 5744 DUPONT HIGHWAY

Mr. Hugg said the resolution is to set the annexation election for June 12 from 9:00 to 10:00 a.m. at Town Hall.

Councilman Mullen made a motion to set the annexation election for the Lattomus property at 5744 duPont Highway for June 12, 2008 from 9:00 to 10:00 a.m. at Town Hall. Motion was seconded by Councilman Raynor. Council members Evans, Mullen, Pressley, Raynor, Thornton and Mayor Stombaugh voted yes. Councilwoman White voted no. Motion carried.

225 E.COMMERCE STREET

Councilman Mullen made a motion to rezone 225 E. Commerce Street from Residential 2 to Institutional & Recreational. Motion was seconded by Councilman Thornton and carried unanimously.

116 N. DUPONT HIGHWAY

Councilman Mullen made a motion to rezone 116 N. duPont Highway from Residential 2 to Highway Commercial. Motion was seconded by Councilman Evans.

Councilwoman White said by changing it over, it is used for residential, if it is sold, it can continue to be residential as long as that use continues.

Council members Evans, Mullen, Raynor, Thornton, White and Mayor Stombaugh voted yes. Councilman Pressley was recorded as abstaining. Motion carried.

ORD. NO. 007-08 REF. HOME OCCUPATIONS

Councilman Mullen said this was tabled about a month ago.

Councilman Pressley made a motion to remove this item from Table. Motion was seconded by Councilman Raynor. Council members Evans, Pressley, Raynor, White and Mayor Stombaugh voted yes. Councilmen Mullen and Thornton voted no. Motion carried.

Councilman Pressley made a motion to adopt Ord. No. 007-08 ref. Home Occupations. Motion was seconded by Councilwoman White.

Councilman Mullen said that once again he must voice his strong objection to this ordinance. It is way too complex. It

does not address several issues. There is no need for an ordinance of this type. Councilman Mullen said that Mr. Jaywork has told us a couple of times in the past that he has never seen an ordinance so complex to deal with these issues. The only thing we need to do is have restrictions in the residential zones. Councilman Mullen said he doesn't see how this will benefit the Town or its residents.

Councilman Pressley said we just passed the 10,000 mark in population and we are still growing. The Business Development Committee has been working on this since June of last year. We brought this to Council many times. We asked for your input on changes and put those changes into the ordinance. This is to protect the people so they can go home at night and not see construction vehicles parked in front of their homes. We have no problem with Avon, Tupperware, etc. We do not want to see a mechanic working on someone else's vehicle in his driveway.

Councilman Pressley said they reviewed a number of other ordinances on this from across the state. Some are more restrictive than we are. He said we tried to make it simple for residents and inspectors.

Councilwoman White said the inspector's authority is no more in this ordinance than it was previously.

Mr. Hugg and Councilman Pressley said that is correct.

Councilman Mullen said the purpose of zoning is to separate residential and commercial. If you are going to allow commercial in residential, that means you have wiped out 150 years of zoning. There should be no outward or visible sign of a business in a residential neighborhood. Commercial establishments in residential neighborhoods should have no impact on the community it resides in. All you have to do is basically say that. That is the one paragraph you need and that is all you need. No Code Enforcement Officer has the right of

entry, no major/minor definition is needed. This does not address what we require commercial establishments in this Town to do. We don't have a business license but we require business establishments to have commercial utility accounts.

Councilman Pressley said it depends on what you do. With the Code Enforcement Officer, he has no right to enter property now and he won't under this. If you ask him to leave your property, he has to leave. Then, he then has to go through the legal system.

Councilman Pressley said this represents one year of work and now it is up to Council.

Council members Evans, White, Pressley, Raynor voted yes. Council members Mullen, Thornton and Mayor Stombaugh voted no. Motion carried.

RESOLUTION AND AMENDMENT REF. CHARTER CHANGES

Mr. Jaywork said that Del. Code Title 22, Chapters 17 and 18 deal with the Town's ability to utilize Municipal Tax Increment Financing and Special Development Districts. He explained in detail how this will benefit municipalities.

Mr. Jaywork also explained in detail the benefits and applicability of competitive bidding processes for contracts associated with Tax Incentive Districts or Special Development Districts and the assessment of collection of taxes in these types of districts.

After discussion, Council Mullen made a motion to send a letter to Senator Ennis and Representative Carson addressing Tax Increment Financing and Special Tax Districts and asking them to sponsor these as an addition to Smyrna's Charter. Motion was seconded by Councilman Pressley.

Councilman Raynor asked if this has been through the Charter Review committee. Mr. Hugg said he doesn't think so.

Mayor Stombaugh asked if it should be presented to the public.

Mr. Jaywork said it doesn't have to. There is no requirement to take it through the public. The Legislature will pass it nor not. If Council says they would like to have it in their charter, the Legislature will consider it.

Mr. Jaywork said he sends bills of interest to the towns he represents. The Charter Review Committee was going through the Charter as it currently exists. This came out of left field.

Councilman Raynor said he doesn't have any objections, but he has not had a chance to read it.

Mr. Jaywork said he would like to see it passed at least by the next meeting so the General Assembly can consider it at this session.

Councilman Pressley said it doesn't hurt us. We can choose to use it or not as we see fit. This just gives us that opportunity.

Councilman Mullen agreed. He said at least it would be there if you want to use it.

Chris Watson of 335 Ryan Road said they are familiar with this. There is a lot of information about it on the web.

Council members Evans, Mullen, Pressley, Thornton and Mayor Stombaugh voted yes. Council members Raynor and White voted no. Motion carried.

OTHER COUNCIL BUSINESS

Councilwoman White asked if the Lake is open. Mr. Hugg said it will be open with lifeguards from 10:00 a.m. to 6:00 p.m. on Tuesday through Sunday. If we have no problems, it will remain open all the time.

Mr. Jaywork said he has some reservations about "Other Council Business". He recommended that it would be a good idea

to remove it from future agendas because too often it is used for situations that are violations of FOIA.

Mr. Jaywork added that he has no problem with a question and answer or reminder of a meeting. He said that he has seen in the past several years where things are brought up when they were known about days before and votes are taken. It sets council up for being chastised if you are challenged by the Attorney General's office.

Mayor Stombaugh reminded everyone of the Memorial Day celebration and parade on May 26th. It will leave Town Hall at 9:30 a.m. and continue to Municipal Park for a service there.

ADJOURNMENT

Councilman Pressley made a motion to adjourn, seconded by Councilman Thornton. Meeting adjourned by unanimous vote at 9:15 p.m.

Council Secretary

ccm