

MINUTES OF THE MEETING
SMYRNA TOWN COUNCIL

JULY 21 , 2008

The meeting was called to order at 7:30 p.m. by Mayor Patricia A. Stombaugh. Council members present were Gene A. Mullen, William D. Pressley Sr., William C. Raynor, Lawrence O. Thornton Jr. and Valerie M. White.

Councilman Evans called earlier today to report that he has a work conflict and cannot be present.

Also present were Town Manager David S. Hugg III, Police Chief Richard H. Baldwin Jr., Attorney John Terence Jaywork and Recording Secretary Carol C. McKinney.

ADDITIONS/DELETIONS TO PUBLISHED AGENDA

Councilman Pressley made a motion to accept the revised agenda that was on Council Table tonight. Motion was seconded by Councilman Raynor and carried unanimously.

REPORTS

BILLS AND FINANCIAL STATEMENT: Mr. Hugg said he had nothing to add to what was in your packets.

POLICE CHIEF: Chief Baldwin said his written report was in packets detailing some fuel conservation efforts. He noted that the six-month statistics report was included in packets and briefly noted some of those numbers.

Chief Baldwin also noted that he was glad to announce a new member of the Smyrna Police Family. Officer McKinney had a baby girl recently.

Councilman Raynor commended the Chief for putting fuel conservation measures in place. Hopefully it will rub off in other areas.

TOWN MANAGER: Mr. Hugg said his written report was in packets and he had nothing to add to that information.

COMMITTEES:

Councilman Mullen reported that the Finance Committee met on July 8th. They discussed the Audit Report. There was a little delay in getting some minor changes to that report. Councilman Mullen said the Committee wants to see the final draft before it is presented to Council.

The committee also discussed on-line payments and frequently asked questions in conjunction with that program. It will be on the website and hopefully we can get that in Council packets for the first meeting in August.

Councilman Thornton reported that the Police Building Committee met on July 14th. A representative of ICS, LLC came in and gave a presentation. He added that they have done a lot of work with cost estimates for the addition to the existing Police building. The figures were surprisingly detailed for us. Councilman Thornton said we are looking at some other design and build firms for the same information. He added that we are making progress to refine the numbers which we hope to have ready for the budget for next year.

Councilman Pressley said the Business Development Committee met on July 10th. They are working on the Façade grants and the Parking Ordinance. They had a presentation and discussion with Rick Ferrell and will come back to Council with a recommendation. This is the contract we had offered to Chris Johansen some time ago.

Mayor Stombaugh said the Public Safety Committee met on July 2. They didn't have a quorum so they just discussed some items including signs at Smyrna Mart. One was down near the rental place and that is now back up. They are also working on an Emergency Operations Plan. Mayor Stombaugh said she has asked the Committee to work with her so that we can get a flyer out to our citizens.

Councilman Mullen said there was a brief Parks and Recreation Meeting on July 17. They discussed summer programs and came up with three or four more, one a week. Things are moving along very, very well.

Councilman Mullen said "Jammin' on the Beach" was held at Lake Como last Thursday and there was a good crowd. This Thursday is "Paint the Plaza" in front of Town Hall.

Other events include an Oldies Party and Volley Ball Games at Municipal Park.

Councilman Mullen suggested that the Town purchase a volley ball net to be used.

Mayor Stombaugh asked if there was a change from last year when they had to bring all their events to Council for approval a couple of months in advance.

Councilman Mullen said he thought that was done last year because of some confusion. The program budget was increased for 2008.

Councilman Pressley noted that there will be a Parks & Recreation meeting Wednesday evening to go over the next few weeks' programs.

RECOGNITION OF VISITORS

Visitors included Gordon & Helen Miller, Daryl Jester, Shirley Tibbett, Jen Sprague, Wilbert Bordley, Ron Marcum, Taylor Thornton, Kyle Gove.

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.

No one came forward.

OLD BUSINESS**ADDITIONS/DELETIONS/CHANGES TO COMMITTEE APPOINTMENTS**

Mayor Stombaugh said there was a list of the current committee appointments in packets showing what was approved at the last meeting.

Mayor Stombaugh noted that Robert Novotny resigned from the Audit Committee because he felt he could not give it the time it required. She said she believes Mr. Johnson is now the Chairman of that committee.

Mayor Stombaugh asked to have "member of the American Legion Ambulance" added to the Public Safety Committee. She said the Fire Company has a member assigned and the American Legion wants one as well.

Chief Baldwin said he approached them and asked if they would consider having a member on that committee. The committee has discussed that they would like to have someone represent the Ambulance Service. He noted that the Ambulance Service did not approach us about that.

Mayor Stombaugh said they are very interested in having someone on the committee.

Mayor Stombaugh said that some Council members want to have Dr. Chervenak appointed to the Library Long Range Committee. She said she will make that recommendation.

Council Mullen reported that the Utility Committee is having a difficult time getting a quorum together. He said two members now have work schedules that do not allow them to attend the meetings. He added that he has discussed this with Mr. Carson and will get up with Mr. Ashe.

Mayor Stombaugh said she wonders if the 5:00 meeting time is the problem.

Councilman Mullen said the meetings have been at 5:00 p.m. ever since he became chairman three years ago.

Councilman Pressley said we have to have a town employee here to let us in and out of the building if the meetings are later.

Councilman Pressley said he sent a letter to Mr. Rebar asking him to let us know one way or the other about the Personnel Committee. He said if members miss two or more meetings, he will ask them to be replaced. If that is necessary, he said he will come back to Council and ask for new appointments.

Councilman Mullen said he doesn't think the meeting time is the problem. If it is, that can be changed.

Mayor Stombaugh said she requested that the committees keep a roll call and, if people miss more than two meetings without being excused and without notifying the chair, then we should look for replacements.

Mayor Stombaugh said Skip Rebar is on the Personnel and the Ethics committees. We need to have Mr. Jaywork look at the Ethics Code. It was saying if you serve on the Ethics, you can't serve on another committee unless the Ethics Commission votes to permit it. Regina Brown would like to serve on the Compensation Committee.

Mr. Jaywork said he will check on that.

Mr. Jaywork said the resignation of Mr. Novotny is just informational. Since there is no recommendation to replace him, no action is necessary. The appointment of Dr. Chervenak to Library Long Range Planning and a member of the American Legion Ambulance Service to the Public Safety Committee need a vote.

Councilman Pressley made a motion to add Dr. Doug Chervenak to the Library Long Range Planning Committee and a member of the American Legion Ambulance Service to the Public Safety Committee. Motion was seconded by Councilman Raynor and carried unanimously.

PERSONNEL RESPONSIBILITIES AS OUTLINED IN CHARTER

Councilman Thornton said this is a continuation of his remarks from the last meeting. This is just his view of things. Councilman Thornton said we spend a lot of time discussion who does and who doesn't follow the Charter, Parliamentary procedures, etc.

He said that several members here have sat in committee meetings, finance and personnel, discussing priorities for positions within the Town and how many people we need to add. One priority was the Assistant to the Town Manager. Both committees voted to make that position a priority. It was discussed that is should be an "Assistant to the Town Manager". In the budget resolution last December, we voted to approve the budget and the budget that was approved included that position. The Town Manager was reluctant to add this position because he thought the priorities should be in other places.

Councilman Thornton said a few weeks ago, the position was discussed with a potential candidate who was willing to work for the money we were willing to pay which is not the average compensation for that position. There was a potential contract that was to be executed with that individual. There was money in the budget, the position was approved and it didn't come to pass.

Councilman Thornton read the duties of the Town Manager from the Charter: ". . .the Town Manager shall be responsible for the hiring, supervision, discipline, lay-off, and termination of all employees (other than those within the Police Department) necessary to fill those positions of municipal employment which have been authorized and funded by the Town Council."

Councilman Thornton said, in his view, the Town Manager is a CEO whether it is David S. Hugg or someone else. Their business is to make the Town run smoothly. Our business, as a Council, is to be a "Board of Directors" for that CEO, not to micro-manage. We hire professionals to do the job, let's let them do the job.

Councilman Raynor said he can read the Charter and it says "necessary". He said that Webster's Dictionary defines "necessary" as "absolutely necessary." He said all these jobs are not absolutely necessary.

Councilman Thornton said that Councilman Raynor wasn't present at all those meetings. If he had been, he may have a different perspective.

Councilman Pressley said we never discussed an "Assistant to the Town Manager". He said we have asked for an "Assistant Town Manager" and he remembers that in the Finance Committee. He added if anyone can bring him minutes that show "Assistant to the Town Manger", he may change his mind.

Mayor Stombaugh said when she was on Council before, we always did a mid-year review. She said she requested that this year we do have one. She said this year the budget was done in November or December. There are a lot of things that have to be looked at. Mayor Stombaugh said she questions a lot of those priorities. She added that she doesn't think that anyone is trying to micro-manage but rather that people are trying to look out for the Town and its citizens. The money can only go so far. We have to be conservative. She said she personally wasn't for the list to begin with. That was Council's choice.

Mayor Stombaugh said Mr. Hugg's job is to answer to Council. It is our responsibility to do what is in the best interest of the Town.

Councilman Raynor said he thinks the auditor, Les, in June made a suggestion that we have a mid-year review because he was concerned about expenditures not meeting revenues. He added that he thinks this mid-year review should be sent to the auditor to complete in August.

Mayor Stombaugh said we are growing. We are double the size we were five years ago. We have passed the 10,000 mark. There are a lot of things the Town will need. She said she has heard a lot out there. The Police Department is going to have to grow to protect the town. We need a Police building. We have to put some priorities on things. There are a lot of little things that add up.

Councilman Thornton said we go off in a direction and we expect certain things and we get upset when they are not done. We look to the Town Manager when they are not done. He said that he is sure that many times Mr. Hugg has put in forty hours by Wednesday. If we are going to have expectation of these things being accomplished, we better get the help to manage those expectations. Let's not say something and do something else.

Mayor Stombaugh said things change during the year. Things all have to be looked at.

Mr. Jaywork said it appears to him that the Town Council through the Personnel and Budget makes policy decisions such as We are going to have a certain position. They fund it in the budget. It is up to Mr. Hugg to fill that position. Mr. Hugg doesn't have the discretion to say we don't need it. Council says we need it and he has to fill it.

Councilman Thornton agreed.

Councilman Raynor disagreed.

Mr. Jaywork said things change. Council may say at the mid-year review you don't want it now. It was your direction at the budget time but not now.

Councilman Mullen said every member of Council gets monthly updates of revenue and expenditures from Gary Stulir. We do a quarterly review, we do a mid-year review. He said he doesn't know how much more information staff can present to Council. They would solve whatever problems there seem to be. Councilman Mullen said he gets the same information from Mr. Stulir that every other Council member gets. It is very concise. They clearly spell out expenditures and the percentage of the budget expended. Every month we get that information and at the end of three months, we go through it again. Councilman Mullen said he doesn't know what information Council thinks we are not getting or keeping track of. The finances are looked at every single meeting.

Councilman Raynor asked why the auditor is so concerned about expenditures not meeting revenues.

Councilman Mullen said Lester Guthorn is not an auditor. He is a Financial advisor. Our auditors give us a very high rating. There were some very small items that are being corrected. Lester is a financial advisor, not an auditor and not associated with the Town. He is a consultant to the Town.

Councilman Pressley asked why we even bring him here then. We don't follow his advice.

SENIOR CITIZEN TAX EXEMPTIONS

Councilman Pressley thanked Mrs. McKinney for a job well done. He said he asked Council to approve this a few months ago. Councilman Pressley said none of the people who approached him qualified but we ended up with three people.

Councilman Pressley made a motion to approve Senior Citizen Tax Exemptions for the three people listed in our memo. Motion was seconded by Councilwoman White and carried unanimously.

RESOLUTION FOR TRANSFER OF LAND TO PUTNAM GROUP

Mr. Hugg said this item came to you a month or so ago when Dominic Balascio made a proposal for properties owned by the Town of Smyrna (the Reiss Property) and properties that Putnam Group was interested in acquiring (Sun Times Property). Putnam Group is interested in moving forward. They have approached the Town about the donation of the Reiss Property to them in return for certain improvements to the Reiss Property as part of their overall conceptual plan.

Mr. Hugg noted that we obtained the Reiss Property in 2005. It was a two-part action to eliminate a badly deteriorated building and the back of the building was dangerous. It was our intention to make the property safe and to do certain improvements for parking downtown. The back building is leased temporarily to St. John's Lodge while they are rebuilding their property and then to dispose of that building as part of the downtown revitalization project.

Tonight, Mr. Hugg said you need to adopt this resolution instructing the Town Manager to enter into a contract to prepare a deed of transfer or to instruct the Town Manager to have Putnam Group go away.

Councilman Pressley asked what exactly the Town is going to get out of this.

Mr. Hugg said we get a park, additional sidewalks and connections through to PNC Bank's lot and demolition and disposal of the building that is now on the property. We will get development and tax income from that property.

Councilman Pressley asked if we are approving the conceptual drawings, right or wrong.

Mr. Hugg said what we are bringing to the table tonight is approval for the research and preparation of a deed between the Town of Smyrna and Putnam Group which will come back to Council.

Councilman Pressley asked what about changes we want.

Mr. Hugg said you are not approving building plans.

Councilman Pressley said this is just a deed for the land.

Mayor Stombaugh asked if there is any cost to the Town. Mr. Hugg said just for Mr. Jaywork's time. He will ask someone in his firm to review the deed and what have you. We are not paying Putnam. We already have a survey. Improvements have been made by the Town in the past. Future improvements will be an expense that Putnam Group will have as part of their development project.

Mr. Jaywork said you are giving the land to Putnam Group. You are getting certain conditions in the future, an enhancement to the Town.

Councilman Pressley asked if this is a project that they will move on right away so that we are not going to be sitting here year after year after year.

Mr. Balascio said they have already appeared before the Historic Board. They have appeared before Planning to get input on what they are looking for and before the Business Development Committee. They have also been to the Board of Adjustment to get a Special Exception for the residences on that parcel. They are ready to start a site plan.

Mr. Balascio said they thought it was prudent to have the other parcel approved tonight. It was agreed that one cohesive site plan would be better. We showed the other site on our conceptual drawings. The architectural features will match on both sites. We are ready to purchase the Sun Times Building now. We don't want there to be a change in thought from Council once we acquire that property. We want the deed prepared with

the conditions listed included. We may have the Sun times Building under contract soon.

Councilman Pressley made a motion to ask Mr. Hugg to contact Mr. Jaywork and come up with a deed with conditions as listed. Motion was seconded by Councilman Thornton. Council members Mullen, Pressley, Raynor, Thornton and Mayor Stombaugh voted yes. Councilwoman White voted no. Motion carried.

Mr. Balascio asked how many hours it is anticipated will be spent in preparation of the deed.

Mr. Jaywork replied one or two hours.

Mr. Hugg said we have a survey and related information from when we purchased the property in 2005. Mr. Jaywork was involved then.

Mr. Balascio said they will pay for the first two hours of Mr. Jaywork's time.

Mr. Thornton asked why "Other Council Business" is not on tonight's agenda.

Recording Secretary said that Mr. Jaywork has been advising us to not have it on there for several meetings, including the last meeting when he advised Council that Councilman Thornton's comments may be in violation of FOIA. She said for those reasons, she did not put it on this agenda.

Councilman Pressley said we should be able to make comments if we want to.

Mr. Jaywork said even those are a violation of FOIA.

Councilman Mullen said there is a violation only if you reach a consensus. Information only is not a violation of FOIA. He said Other Council Business could be sharing something with others.

Mr. Jaywork said if it is one person saying something, that is okay.

Mayor Stombaugh said that Mr. Raynor called and asked her a question about FOIA. Apparently there is a Delaware Freedom of Information Act that none of us knows about and have never seen. She said it would be helpful to get a copy of it. Mayor Stombaugh said she went to the web site and it says you can not download or make copies of it without prior permission.

Councilman Thornton said it is in the Delaware Code.

Mr. Jaywork said you can access the Delaware Code on line. He added that he has spoken on many occasions about FOIA.

ADJOURNMENT

Councilman Pressley made a motion to adjourn, seconded by Councilman Thornton. Meeting adjourned by unanimous vote at 8:20 p.m.

Council Secretary

ccm