

MINUTES OF THE MEETING

SMYRNA TOWN COUNCIL

MAY 7, 2007

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

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.

Chief Baldwin led the Pledge of Allegiance. Mayor Stombaugh asked for a moment of silent reflection.

Mayor Stombaugh said that the people of Smyrna now have the gavel.

ADDITIONS/DELETIONS TO PUBLISHED AGENDA

Mr. Hugg asked to defer Item 8B, Assessment for Smyrna Health & Wellness Center Property, until the next meeting. Our assessor is unable to be here tonight.

Councilman Chervenak said he has an item he will bring up under Other Council Business. He said he was asked to write a letter to DelDOT concerning the intersection of S. Carter Road Extended and Route 13.

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

MINUTES OF PREVIOUS MEETING

Councilman Chervenak commented on a section of the minutes of the meeting of April 16th. He said that, during a discussion about some electric things, a comment was made about a loud boom in his neighborhood being caused by an "elbow in a transformer". Councilman Chervenak said he learned that there is an elbow in a transformer and, even though it sounds really strange, that is what caused a problem that day.

Councilman Mullen made a motion to adopt the minutes of the April 16, 2007 meeting. Motion was seconded by Councilman Chervenak and carried unanimously.

REPORTS

TOWN ATTORNEY: Mr. Jaywork expressed his deepest sympathy and condolences to the newly elected members of Council!

POLICE CHIEF: Chief Baldwin said he had no written report. In reference to the item Councilman Chervenak added under Old Business, he said Council had also asked him to send a follow-up letter to DelDOT in addition to the one to be signed by the entire Council. He noted that Councilman Chervenak has the original copy of his letter.

TOWN MANAGER: Mr. Hugg said his written report was in packets. He noted that the Delaware League of Local Governments has its last regular meeting until the fall on May 24th. The Town pays for attendance at those meetings. If anyone is interested, please let him or Carol McKinney know as soon as possible. Otherwise, all is progressing well.

COMMITTEES: Councilman Mullen said the Finance Committee met on April 24th. The 2007 tax rate was discussed and the committee recommendation will come up later tonight. They also discussed the cap on School Impact Fees for non-residential development. Councilman Mullen said a copy of the Finance Committee notes is on the bulletin board in the lobby.

Mayor Stombaugh asked if there is a finance committee meeting tomorrow night. It was noted that there is and it starts at 5:00 p.m.

Councilwoman White said the Delaware League of Local Governments is having a lobby day tomorrow. They are asking all municipalities to be there if possible. Councilwoman White asked if the Finance Committee meeting could be changed.

It was noted that the DLLG meeting starts at 3:00 p.m.

Councilman Mullen said that some time ago we tried to get some kind of schedule going for all committee meetings. Each one picked a day of the month to meet, i.e. the second Tuesday, the first Wednesday. He suggested that, if any committee member wishes to attend the DLLG meeting they could be back here in

time for the Finance meeting. He said we could start the Finance Committee Meeting at 6:30 if that would work better.

Councilwoman White said we need to put up a united front, we should go as Council as a whole.

Councilman Chervenak said we should leave it as it is and those members of the Finance Committee who want to can come back in time for their meeting.

Councilman Mullen noted that he doesn't have a problem with changing the time. We have several things on the agenda that we need to get cleared up but he said he knows the other meeting is important.

Mayor Stombaugh said that, as a new Council, she would like to see us attend the DLLG meeting as a group.

Councilman Pressley said he cannot attend a meeting that night at 6:30.

Councilman Chervenak said the Charter Change Committee met. This is a very important committee. They are considering the issues coming forward to the Town and the Charter changes that are being proposed by himself, other council members and people in the community.

Councilman Chervenak said the Compensation Committee will meet again. By the Charter, it is important that it meets again before July.

Councilman Chervenak said the next meeting of both of these committees was held off pending the outcome of the election.

Councilman Pressley reported that the Business Development Committee met on May 3. Joe Richicci of Christiana Care came to us and gave us an update on their new facility. He also noted that the Personnel Committee will meet at 5:00 p.m. on Wednesday.

RECOGNITION OF VISITORS

Visitors present included Ken & Regina Brown, Marian Bower, James Harkins, Duane & Kathy Young, Lois & David Brown, Helen & Gordon Miller, Patricia Sakalauskas, Irene Caley, Dolores Loy, Conrad Hebert, Joseph Sheridan, Janet Vinc, Bonnie S. Lawrence,

Jim Strong, Joe Wilson, Grace Ennis, David Braun, Seth Clevenger, Wilbert Bordley, William Wilson, Larry Catalino, Daryl Jester.

Mayor Stombaugh noted that this is the only time in the meeting for members of the audience to come before Council. She asked anyone wishing to do so to come to the mike, give their name and address for the record and keep their comments to three minutes.

Grace Ennis of 522 Smyrna/Clayton Boulevard asked Council to consider setting up an ad hoc committee for elections and board of elections for the purpose of getting Smyrna on the State Elections System. She said this can be done by contacting the Kent County Department of Elections. Mrs. Ennis said the Town would have to sign a contract with them to take over our election. The benefit to the community would be a much smoother election process and a consistently updated voter registration list from their computers.

Councilman Chervenak said the State just passed an election law that goes into effect July 1. He added that it is his understanding that it gives us no option. We will follow that State law and the provisions of that law.

Mrs. Ennis said that is correct but she felt that the Town will still run its elections under that scenario. You don't have to be on the State system.

Councilman Chervenak said the law he read said that is the way it has to be except for Wilmington. He added that it is his understanding that the State law will now become our law.

Mrs. Ennis said it isn't exactly like the State law. This was passed especially for municipalities but they still run their own elections.

Mr. Jaywork said there are certain parameters and you have to do what the State law says.

Mrs. Ennis said it could be the same way as long as you follow the guidelines. She added that the voter list on CD is not updated.

Councilman Chervenak said he doesn't think there will be any problems with that. He suggested that the Town use Kent County for their voter registration and voter registration list.

People cannot vote in State elections if they register only with the Town. He added that it is his understanding that we are going to eliminate Town registration. Our voter roles will be in compliance with the State.

Mrs. Ennis said that she hopes Council will consider this. It needs to be done as soon as possible. The Department of Elections will work with the Town on this. They will be busy with the Presidential Primaries soon. In order to have this done by the next election, it needs to be started as soon as possible.

Mayor Stombaugh asked if they have the ability to update it. What about people who are not inside the Town limits?

Mrs. Ennis said the voters will be coded by their districts. Anyone can get a copy of District #1, #2, #3 registered voters.

Councilman Brown said Mrs. Ennis mentioned a time frame. He said we may have to adjust our Charter to comply.

Mrs. Ennis said she doesn't know how long it will take the Board of Elections to do this.

Councilman Brown asked how many days.

Mrs. Ennis replied it may take six months. If they start in the fall, there is no time because Kent County can't work with them.

Councilman Brown asked what the cost is to the Town if we do this. Mrs. Ennis replied she doesn't know of any cost. She added that she never asked about a cost and she doubts that there is any.

David Pleasanton of 35 W. Mt. Vernon Street said he asked at the last Council Meeting about language in the Charter vs. the audit of the town. Those who handle the money have to have their accounts audited. He said Council turned the question over to the Town attorney.

Mr. Jaywork said he has a two page e-mail responding to that issue. He said Mr. Pleasanton read that section to mean that the individual private accounts of people handling the Town money must be audited. Mr. Jaywork added that he disagrees with that. He said he feels you would be tremendously invading the

privacy of those people without any cause. Mr. Jaywork said the Town may be able to impose that as a condition of employment but he doubts whether anyone would ever work for the Town handling money if they could audit people's personal bank accounts.

Mr. Jaywork said he feels that language is a throwback to older days when people like the Alderman had their own set of books and their own account. Periodically, they would settle with the Town. The tax collector was the same. He said he thinks that language referred to those kinds of accounts. The people who handle money for the Town can only write checks out of Town accounts and only deposit money in Town accounts. Those accounts are audited every time every time an audit is done. He said he doesn't know if the auditor responded to this question.

Mr. Hugg said the auditor agreed with Mr. Jaywork's response.

Mr. Pleasanton said that, if counter signatures are required for transfers, there is no need to audit personal accounts. He asked if we have checks and balances to insure that Town money stays in Town accounts.

Mr. Hugg replied that each check written has a notation of what it is for and that is what the auditors look at. We have followed the recommendations of our auditors so that we meet general accounting principles as they apply to municipal governments. No single person has the authority to sign a check. At the earlier meeting, Council approved a list of required bank signatures for the various accounts. At least two signatures are required for expenditure of money. The audit process looks at all those accounts down to the smallest account of funds we have available to us.

Mr. Jaywork gave a copy of his e-mail to Mr. Pleasanton.

Duane Young of 107 Frazier Street noted that he is Chairman of the Board of Elections. He said that last week we conducted our election at the fire house and we know the results. One of the attorneys from Hudson, Jones, Jaywork and Fisher was present while the absentee ballots were being counted. He said the entire process was tape recorded. He thanked Mr. Barrows for his help.

Mr. Young said that, during the past week, it has come to the attention of those on the Election Board that everyone who testified during that process was put under oath. During that

time, Mr. Schaeffer and those testifying for him in defense of his son's made the statement that the son was domiciled on Lake Drive West only. Recently, the State of Florida sent him home with his mother in Dover. He asked if the testimony given was false or what.

Mr. Jaywork said it could have been false but, unless he is asked to do a full investigation, he said he will not respond to that question.

Councilman Chervenak said he thinks Mr. Young is saying there is a situation which we should ask the Attorney General to look at as to whether somebody committed election fraud. There is a possible cause to look at this to see if somebody committed election fraud. He said you can't state that you are a resident if you don't live in Town. If you do, you are violating the law. He thanked Mr. Young and the Election Board for a job well done.

Mayor Stombaugh commended the Town Staff and the Election Board for a wonderful job. She said it was a big election and a great turnout. She also thanked the citizens for coming out and voicing their opinions.

Mayor Stombaugh closed the public comment portion of the meeting.

OLD BUSINESS

FINAL RESOLUTION TO BORROW \$8 MILLION FROM PNC BANK

Mr. Hugg introduced Hal Sammons who is our Bond Counsel and asked him to explain to those present the process we are going through.

Mr. Sammons said he is an attorney with Potter, Anderson & Coroon in Wilmington. He added that he has been serving and representing the Town for five to six years as Bond Counsel. Mr. Sammons said he is not the Town attorney, but whenever the Town enters into debt and a purchaser is buying that debt, the purchaser requires bond counsel to become involved to render an independent opinion that the proceeding meets the Town Charter and is tax exempt under federal tax laws, etc. He said he looks at various bond issues. Before Council this evening is a resolution describing the terms of borrowing on a short term basis. Several years ago, PNC provided interim financing in anticipation of longer-term financing. Now before you is a

resolution with the final terms of the note for borrowing up to \$8 million. He added that, on March 19, a resolution was passed charging the Town Manager with going back to PNC and figuring out the final terms of that borrowing split into two pieces. Several years ago, you issued \$4.64 million debt on a very short term basis to finance some seriously needed work on your substation. Secondly, is money for a public works building and some work on the Main Street project and others. The new loan will be structured pursuant to a draw-down note. You pull out funds as needed. You don't incur interest until you draw down funds.

Councilman Brown said this doesn't state the actual cost of maintaining the account. What is the yearly maintenance fee if we don't draw down any money? Mr. Sammons replied that the \$4.644 million is already existing. That was scheduled to mature two weeks ago but we asked PNC to extend it. That piece of debt is being refunded. On the new \$3.356 million debt, there is no standing commitment fee paid to PNC. They extended this loan and fixed this rate. You will draw that money as necessary over the next year to pay those costs. At the end of that year, the ability to draw down extinguishes and it becomes an amortized loan that will replace your existing debt. The new loan will be principal and interest.

Mr. Jaywork said that it is his understanding that this will be a \$4.6 million loan amortized over twenty years but the debt will be due in five years. You will have a balloon to pay. You can then refinance or pay it off.

Mr. Hugg said as Mr. Sammons indicated, we have been working on this for some time. Council considered and passed a resolution on March 19 authorizing me to enter into an agreement with PNC to determine the terms and conditions of these loans. What is before you is the result of that action. This does provide funding for refinancing a short term loan for priority capital projects.

Councilman Mullen said this does come with the recommendation of the Finance Committee. It was presented to Council a month or so ago. This resolution is specifically for the projects as listed.

Councilman Mullen made a motion to approve the resolution prescribing the terms and the form and providing for the sale by the Town of Smyrna to PNC Bank of the Town's \$4,644,000 general obligation note to refinance outstanding short-term debt of the

Town and the Town's \$3,356,000 general obligation note to pay a portion of the costs of certain municipal improvements. Motion was seconded by Councilman Pressley.

Councilwoman White asked if, before the money is drawn down, will this Council be made aware of it.

Mr. Hugg replied that when we discussed this with the Finance Committee, all of these projects will come through the Finance Committee. Most of these will be awarded through contracts which Council will have to approve. Council will learn of these as they go through the construction process.

Councilman Mullen explained that the Finance Committee will review each of these projects before they are started. They will identify a funding source and make sure funding is available to complete them. He said that we don't want to start a project we can't afford to complete. This is a long-term plan, five to six years. We have identified some major funding sources. With this \$3,356,000 loan and the sources we have identified, we can get all of these projects completed.

Council members Brown, Chervenak, Mullen, Pressley, Thornton and Mayor Stombaugh voted yes, Councilwoman White voted no. Motion carried.

SUBDIVISION APPLICATION, GREENBRIER

Councilman Mullen said that he would recuse himself from this agenda item. He explained that Mr. Marcum is a principal in this project and he has been a close friend for thirty-five years. Councilman Mullen said that about a year ago, he gave Mr. Marcum a hand with some of the designs, particularly the storm water. He assured everyone that he does not have a financial or any other interest in the project. In the course of fairness, he said it is best that he recuse himself.

Mr. Hugg said that this project has been before the Planning & Zoning Commission and involves the subdivision of a parcel of land less than 1.2 acres. The applicant has been to Planning and Zoning, has been deferred at Planning & Zoning for questions about he layout. Mr. Hugg said he does want to commend Mr. Marcum and acknowledge for the benefit of Council that Mr. Marcum has at least four or five times sat in Town Hall with a number of people trying to come up with a design that has the least impact on the neighbors and come up with drawings that meet the current Subdivision and Zoning Ordinances. He has

worked hard with us on this project. Mr. Hugg said that, before you tonight is his subdivision request. There are still some issues he has to discuss with the Planning & Zoning Commission and Board of Adjustment. He asked that Mr. Marcum and his representatives be allowed to present their application and to discuss what it they are proposing to do.

Ben Snyder, an attorney with Prickett, Jones and Elliott, said he is representing the applicant. Steve Cahall Investments LLC is the owner and David Braun is the Engineer.

Mr. Snyder said that, as an attorney, he needs to make an objection for the record. Mr. Mullen should not have to recuse himself. He said he appreciates and respects his decision but does not believe anyone would have or has done anything inappropriately. These two men are good friends and Mr. Mullen made some comments on the project. As a matter of due process, the applicant is entitled to have the project considered by all Council members entitled to vote.

Mr. Snyder said that anyone who had some animosity towards Mr. Marcum should also have to recuse themselves. He asked that Mayor Stombaugh recuse herself from voting on this matter as a matter of procedure and form. There is a record of litigation between one of her clients and one of Mr. Marcum's clients that triggered animosity. If Mr. Mullen recuses himself, the same rule should apply to everyone here.

Councilman Chervenak said that Councilman Mullen voluntarily came forward and made a statement. He felt that, considering his history with Mr. Marcum, he could not in his own conscience address this matter. That is his decision. That is not a standard for this Council. We didn't make a statement like that. Councilman Mullen didn't talk to us about it. He made an individual decision. Mayor Stombaugh makes her own decisions based on the standard in her own conscience.

Councilman Pressley said he is not going to step down. He added that, as long as he is not making a decision on a project he is profiting from, he is fine. Councilman Pressley said he probably knows three-quarters of the people who come before this Council.

Councilman Mullen said he did not expect this. He said he can tell everyone, this is HIS standard and he can't do anything about it. Ron Marcum is a good friend of his for many years. He said he was involved in this project before he was even on

this Council. Mr. Marcum came to me for advice and I gave it to him. He said he has talked to the consultant. He said he has given them the names of people to contact to make the project work. Councilman Mullen said that his conscience will not allow him to vote on this project. He said he will not change his mind. It doesn't matter if he is making money or not.

Councilman Chervenak said he is sure disclosure allows Mr. Mullen to make his individual decision on that. Mr. Pressley also gave full disclosure. There is no money involved in this issue. According to Mr. Mullen's personal standard, he cannot make a decision. Councilman Chervenak said he doesn't think the attorney should demand that anyone else recuse themselves because of Mr. Mullen's personal standard.

Mayor Stombaugh asked if there is a set of rules to follow to recuse ones self. Mr. Jaywork said the State Ethics Standards which deals with monetary issues are the only one he knows of. He added that he agrees with everything he has heard including the attorney but he disagrees that Mr. Mullen has an obligation to vote. He said he agrees with Councilman Chervenak that Mr. Mullen can abstain from this issue if he chooses.

Mayor Stombaugh explained that she did represent a client that was looking to buy one of Mr. Marcum's properties. The deal didn't go through. She said that her client could not get the money and Mr. Marcum took her to court. Mayor Stombaugh said it was between Mr. Marcum and her client. It had nothing to do with me (Mayor Stombaugh) at all.

Mr. Jaywork asked Mayor Stombaugh if she feels that she could look at this in an unbiased manner. Mayor Stombaugh said yes. It wasn't anything between herself and Mr. Marcum. She said if they feel this could create any problems, she would rather step down.

Mr. Jaywork said Mr. Marcum could bring it up at a later date.

Mayor Stombaugh recused herself since there could be a chance that would happen. She added that she doesn't want any repercussions in the future, it isn't worth it.

Mayor Stombaugh passed the gavel to Vice-Mayor Chervenak.

Mr. Snyder said he was just being an attorney representing the applicant. He added that he appreciates and respects the decisions made by the Mayor and Mr. Mullen.

Mr. Snyder briefly reviewed the subdivision plan stating that it involves fifteen lots, thirteen townhomes and a twin home. He said the project has been designed and redesigned to accommodate the concerns of neighboring property owners.

He added that the property is already zoned Residential-2A which is medium density residential. The issue and consideration about whether this property should be developed or will adversely affect property owners is not before Council this evening. The sole consideration is whether the subdivision plan complies with the Town's subdivision ordinance. If it does, then Council must approve the subdivision application and does not have the discretion to deny it.

Councilman Chervenak asked if the ordinance doesn't state that lots have to be a certain length. He said at least two lots do not meet that requirement.

Councilwoman White said the minimum lot depth is 110 feet.

Mr. Hugg said that variances are a matter dealt with by the Board of Adjustment. They have the sole jurisdiction to do that. The matter before you is whether the layout of the subdivision is consistent with the subdivision ordinance. This is not an unusual situation. It happens for a variety of reasons, because of a unique characteristic of a lot for example. One is 92 feet at the narrowest point. It is what he has got. It is an irregular lot. We often deal with lots that don't meet the dimensional requirements. Variances are to adjust for those reasons where the hardship is not caused by the owner or applicant. This can also occur from this stage to the final record plan.

He added that we sometimes get into a property where the storm water, wetlands or other things occur where arrangements have to be made to reconfigure lots. Sometimes that results in this same kind of situation. A dimensional requirement cannot be met because the land or other circumstances are irregular. This project has to go back to the Board of Adjustment and they have to deal with rear or side setbacks of the properties. Mr. Hugg said that, short of accepting a much narrower roadway which the Town did on E. Mt. Vernon Street where we had the same kind of issues and where did over the objections of the Fire company,

there is little we can do to avoid these dimensional adjustments.

Councilman Chervenak noted that they want four variances. He asked how many homes would they have to eliminate to comply with the 110 foot lot depth.

Mr. Hugg said there are four properties that have dimensional problems, #1, #2, #3 and #4. They range from .4 feet to 9 feet short of the requirement. Mr. Hugg added that this project has gone through many changes to minimize the number of variances or other adjustments they did where it would be developed consistent with its zoning. It is properly zoned. It was originally zoned manufacturing.

Councilman Chervenak asked if we set a precedent by granting variances. Councilwoman White replied no.

Mr. Hugg said this is a problem in the older parts of Town.

Councilman Chervenak said if we grant variances for 96 feet, anyone who comes to Council and wants the same thing, where does that leave us?

Mr. Hugg said that if they meet a hardship, they meet the requirement for a variance. If they created the hardship themselves, it is different and they wouldn't be allowed to get a variance.

Mr. Jaywork said the Town Council is granting approval of a preliminary subdivision plan, they are not granting a variance. Council's approval is contingent upon going back to the Board of Adjustment. After the public notice and hearing, the Board of Adjustment must make a decision whether or not it meets the requirements to grant a variance and that there is sufficient record to stand up under an appeal.

Ron Marcum of 1409 Brenford Road said he has some good friends on the board here tonight. He said Mr. Mullen is one of his best friends. He congratulated Mayor Stombaugh and said he has no animosity towards her. Mr. Marcum gave a brief history of the property before and after he purchased it and his plans for it. He said it is not his intent to mess up this area but, at the same time, he said he did not know what he was getting into. He said the Town has been working with him on a weekly basis. Mr. Marcum said that the variances he needs are not as bad as they could have been. He said he is not here to make the

big buck. He said he is here to do a good job. Mr. Marcum said he rezoned the property R-2A at the request of the Town.

Councilman Pressley made a motion to approve the subdivision plan for Greenbrier. Motion was seconded by Councilman Brown. Council members Brown, Chervenak, Pressley and White voted yes. Mayor Stombaugh and Councilman Mullen recused themselves from the discussion and the vote.

Mr. Jaywork reminded Council that this approval is contingent upon the requested variances being granted by the Board of Adjustment.

Vice-Mayor Chervenak returned the gavel to Mayor Stombaugh.

Mayor Stombaugh noted that what went on was in the open before you. This is a new Council. It is a new start. There will be committees started. The Board of Adjustment is not going to be the same people as the Planning & Zoning Commission. If one of those groups says no, you will not have to go before the same people again.

Mayor Stombaugh described a situation she experienced with a property on Walnut Street some time ago where the lot size was less than the 110 foot depth.

RESOLUTION REF. TAX RATE

Mr. Hugg said this is the time of year Council is required to set the tax rate that will be used for billing for the tax statements for this calendar year. The Finance Committee has considered this matter and discussed it at length. This usually ends up on the agenda in April which is in the middle of elections and is the worst time of the year to talk about tax rates. It is out of sync with adoption of the budget and things that go into getting ready for the new calendar year. The ideal time for this would be the same time as Council adopts the budget for the upcoming year. That would be consistent with the way we do business. Mr. Hugg said the resolution prepared for Council action tonight sets the 2007 tax rate at \$.1726 of assessed value, the same as last year. It also changes the time for setting the tax rate to the same time the budget is adopted.

Councilman Mullen explained the Finance Committee's consideration of these items. They recommended adoption of the resolution presented tonight.

Councilman Mullen made a motion to adopt the resolution setting the tax rate for 2007 at \$.1726 per \$100 of assessed value. Motion was seconded by Councilman Thornton and carried unanimously.

Mr. Jaywork said that this may require a Charter change since it is addressed in Section 9.7.2. He added that he has no problem with it since it is actually part of the budget process.

Councilman Mullen made a motion to set the tax rate at the first meeting of each year. Motion was seconded by Councilman Thornton and carried unanimously.

**Resolutions to Set Legislative Fact Finding Hearing
On Annexation Requests (July 16, 2007 at 7:00 p.m.)**

- 1. Budd, 41 Howard Street**
- 2. Sedmont, 3201 Brenford Road**

Councilman Chervenak made a motion to adopt resolutions setting the legislative fact finding hearings for July 16, 2007 at 7:00 p.m. for the Budd property at 41 Howard Street and the Sedmont property at 3201 Brenford Road. Motion was seconded by Councilman Mullen. Council members Brown, Chervenak, Mullen, Pressley, Thornton and Mayor Stombaugh voted yes. Councilwoman White voted no. Motion carried.

ANONYMOUS COMPLAINTS

Councilman Mullen said this came up at the last meeting. He added that every police officer he knows hates anonymous complaints. Everyone receives them. One neighbor calls about another neighbor about all kinds of things. It is a big problem because a lot of times, these calls cause action to be taken against people who don't deserve those actions. Often, the responding officer doesn't find what the person was complaining about in the first place.

Councilman Mullen said if a person has a legitimate complaint, he should leave his name, address and phone number. He added that he feels the Town should accept complaints only from callers who are willing to identify themselves.

Councilman Chervenak concurred. He added that this policy should apply only to Town Hall, not to the Police Department. This would help insure that complaints are legitimate.

Councilman Brown said that the Town and the Police Department are two separate issues. He noted that case law upholds the right for someone to call 911 anonymously.

Councilman Mullen said it is and it isn't two separate issues. He said he would suggest that we think of it in terms of violation of Town ordinances and violation of State Law.

Mr. Hugg said that circumstances we encounter are primarily code enforcement issues about someone's grass, dog, whatever. Our practice has been to accept those calls and treat them as potential code enforcement matters, dispatch an employee, etc.

Councilman Chervenak said that anonymous calls have been used for political purposes. The Town gets complaints about minor issues that may or may not be true. We send Code Enforcement running around looking for these things. If someone makes a complaint, we need to know who they are. Then, we will know it is a complaint that has substance. Hopefully, that will not happen in the future.

Councilman Thornton said he feels we need to be careful about overreaching. He added that he would like to hear from the Chief on this matter.

Chief Baldwin said he has not seen any language on this. He added that he would support making it an administrative and a code enforcement issue. When it comes to calls received at the Police Department, he said he would be leery. We don't know what is going on until we get there to investigate.

Mayor Stombaugh said we need to look at this because of what happened with the Board of Elections. A member was harassed with anonymous calls from 8:45 a.m. until 10:45 at night. False calls, false address, false name. Mayor Stombaugh commended Mrs. McKinney on how she handled the caller by telling him he had to complete FOIA forms to get the information he was requesting. He never came forward. She handled that very well.

Mayor Stombaugh said it isn't just the Police Department. There is an ongoing thing with different commissions in the Town. We do need to have a policy on this.

Councilman Mullen said he was supposed to draft a resolution for this. He added that he will have it by the next meeting.

NEW BUSINESS

CONSIDERATION OF WAIVER OF LATE FEE CHARGES ON A BUSINESS ACCOUNT

Mr. Hugg gave a brief history on this issue. He said the customer is here tonight. In all fairness to her, he said he did not want to disclose the amounts we are talking about. We need Council's guidance on policy rather than specifics.

Mr. Hugg said the property includes the businesses known as the Lube Depot and the Laundromat on W. Glenwood Avenue. Our approach has been to work with a property owner who gets into financial difficulties on the theory that it is better to keep the business open and get some of our money rather than to shut it down and get nothing. Businesses often go through situations where they do fall behind and have financial difficulties. We have worked with businesses to give them some payment plans, partial forgiveness of finance charges, etc. One business comes in every day and makes a payment based on a percentage of their gross sales.

Mr. Hugg noted that this particular property is making a regular effort and we want to try to provide help. Mrs. Sakalauskas is the property owner whose business suffered a fire and went through a disruption by the rebuilding of Glenwood Avenue. Then, the Town decided to repair North Street. Certainly the three businesses in this property have had their share of trying events. We have been working through James Markow the Billing Office with the owner for sometime. Also, about a year ago, we changed the way we assess late charges from a set amount to a fee of one and one-half percent per month. It quickly reaches a point where it eats you alive. We did agree to waive the additional finance charges for December, January, February and March because this customer was working diligently to catch up on her account. Mrs. Sakalauskas asked permission to speak to Council tonight. He said he agreed that there was little else he could do without Council's blessing.

Mrs. Sakalauskas said it isn't comfortable for her to come here and talk about this. She added that Mr. Hugg already explained what got her to the point where she is now. The fire disabled one-third of her profit center. Before that, she said she was always on time with here payments. Mrs. Sakalauskas explained that, after the fire, it was about three weeks to one year when the WalMart road construction put her profit centers to pretty much a stand still. She said this is their only income. When the road construction occurred in September-November 2004, it was devastating. Mrs. Sakalauskas said she is coming before Council tonight because she has worked with James Markow and Mr. Hugg and then asked to have the finance charges removed. Until the difficulties began with the fire and the construction, she said her payment history was not bad.

Councilman Pressley said WalMart has been here several years. He asked why she allowed so much time to go by before coming to us.

Mrs. Sakalauskas said it was a circus between DelDOT, WalMart, the Town doing North Street. She said that everyone said it was someone else's fault.

Councilman Pressley said as a tax payer, a business owner and a Council person, he will work with any business. To forgive certain things, there is a lot more people who would like us to forgive their electric bills next month. We will work with you like we have done for other businesses. To forgive it would be hard for us to do.

Mrs. Sakalauskas said she is not asking for forgiveness of her bill, but for the accrued interest and penalties.

Mayor Stombaugh asked how much money we are talking about. Mrs. Sakalauskas said about \$7,000.

Councilman Chervenak said he was at a meeting when a property owner came in. That family stood before Council and said Hurricane Isabel is coming. Construction closed down all the sewers on Glenwood Avenue because we didn't want the storm water going into our sewer system and destroying it. For fifteen hours, this man couldn't get into his house. He had little kids. Smyrna was saved. This man came to us and asked us what we were going to do when his house was flooded and his kids couldn't get out of their house. We told him "sorry about your luck". Councilman Chervenak said this lady should not have paid for the down time of her business when this Council and DelDOT caused the problems with their construction and said "sorry about your luck". He told Councilman Pressley that, if you couldn't get your trucks out to do your business, you would go nuts. Nobody could get into this business. Council took responsibility for that road. They should take responsibility for the damage done to the people who live and own businesses on that road.

Councilman Pressley said it isn't that we don't care. It is a DelDOT road, not ours. This lady needs to go to DelDOT. She can go to her representative.

Councilwoman White asked about the fire Mrs. Sakalauskas mentioned and the construction. She asked if these happened about the same time. Mrs. Sakalauskas replied that the fire came first.

Councilwoman White asked if that is when she started falling behind. She asked how many years ago that was and why she is just now addressing it. Councilwoman White said she is still in business and still incurring bills. It should have been brought to our attention earlier.

Mrs. Sakalauskas said they bought the property in 1998. She added that her experience with the Town and Council has been less than positive. Because of those negative experiences, she said she was reluctant to come here sooner. Prior to the time the electric meters were changed, they were charged \$20.00 a month late fees. Then, about a year ago, it went to one and one half percent a month. About that time, James Markow and I started discussing what we could do about it.

Councilwoman White said if she had come sooner, we could have dealt with \$2,500 in late charges, now it is \$7,000.

Mayor Stombaugh asked if she had insurance for the fire. Mrs. Sakalauskas said they had insurance to cover the structural damage to the building, but not for the loss of wages.

Councilman Brown said Councilman Chervenak brought up some good points. If you do decide to sell your business, would you be able to make partial restitution back to the Town. Mrs. Sakalauskas said yes.

Mr. Hugg said that is part of what brought this issue to a head. These businesses are for sale. This matter became a significant matter when we started charging a one and a half percent penalty.

Councilman Brown asked if the project was done without doing an economic impact study or report at the time the WalMart site was constructed. Councilman Mullen replied that the Town wasn't informed that the project was going to take place.

Mayor Stombaugh said the downtown merchants want to know if they are going to be compensated when that project is started. She added that she has two properties on Route 13 and DelDOT won't compensate her for lost business due to construction.

Councilman Mullen said she could enter into an agreement with the Town to pay back this. We could agree to charge her the \$20.00 per month instead of the one and a half percent per month on the unpaid balance. Then, she could pay on that and that would be the end of it.

Councilwoman White said she will never get ahead if we continue to charge her so much.

Councilwoman White asked if she is paying any finance charges. Mr. Hugg said that we stopped the late charges retroactively.

Councilman Pressley asked if she will pay us back once the buildings are sold.

Mrs. Sakalauskas said the outstanding balances, yes.

Mr. Hugg said that is our agreement. The difficulty is on the finance charges. That is why we agreed to try to forgive part of them.

Councilman Pressley asked what we are going to do for the other 5000 people in town who need help.

Councilman Chervenak said he is not going to allow DelDOT to run over our community. That was a harrowing experience for the Town. On Main Street, we are going to have to consider the economic impact. He said Mr. Pressley is a businessman, does he want to ruin the businesses? We have to give them some concessions.

Councilman Pressley said we are benefiting them by cleaning it up. You take and you give.

Councilman Mullen made a motion to compute the late fee based on the late fees that the Town charged at the time of occurrence, at the time of the debt occurrence. That is what the rate should be. Motion was seconded by Councilman Chervenak.

Mayor Stombaugh asked when it will be paid. Councilman Mullen said the agreement continues. When the properties are sold, it will be paid in full. Prior to that, she will continue to make payments.

Council members Brown, Chervenak, Mullen, Thornton, White and Mayor Stombaugh voted yes. Councilman Pressley voted no. Motion carried.

OTHER COUNCIL BUSINESS

Councilman Chervenak said that at the last meeting, the Chief brought up about the intersection of Carter Road and Route 13. It is a crazy intersection where people are going every which way. He said we appealed to DelDOT to change the configuration and restrict U-turns. We said we would write a letter to DelDOT from Council. Chief Baldwin also wrote a letter recommending our suggestions. The idea is that we want to make it safe. We are waiting for the intersection to change at Mike's Famous Harley but we don't know when that will happen.

Councilman Chervenak made a motion to write a letter to DelDOT on behalf of Council and a letter from Chief Baldwin as well. Motion was seconded by Councilman Mullen and carried unanimously.

Mayor Stombaugh noted that the Charter calls for the Mayor to give recommendations for committee appointments at the Organizational Meeting of Council. She said that, in her campaign, she promised to try to smooth things down on Council. Mayor Stombaugh presented a list of her committee recommendations. She said she had so many people volunteer to serve on committees. Mayor Stombaugh said she has talked to most of these people and that the list was e-mailed to everyone on Council. She added that she worked very hard to put this list together. She said one stipulation she is putting on committee members, if you miss two meetings in a row without an excuse, you will be replaced. We have a lot of work to do. If you want to be on a committee, you must live up to your commitment.

Mayor Stombaugh said that a lot of our committees have been meeting at 5:00 p.m. and she got a lot of complaints about that. She asked as many as possible to change their meeting times to 6:30 to give people the opportunity to attend. She said there are going to be some new committees.

Mayor Stombaugh said when she won the election, Mr. Hugg called her and offered to do anything he could to orient her. She said she asked for an interview with the auditor and she did meet privately with them. Mayor Stombaugh said she was very pleased to be able to do that. She said she wanted to know what she was getting into. The auditors have agreed with Mr. Hugg and Council's approval to meet with us where we will lay out everything. Everyone will know where we stand, what we have, how we can go forward. She added that the auditors suggested an Audit Review Committee. They will work with the auditors who will come back to the Finance Committee. The auditors we have

are governmental auditors, that is all they do. They know what they are doing. The Audit Review Committee will work between the auditors and the Finance Committee. They should be CPAs, someone qualified who will understand what they are hearing.

Councilman Chervenak said that establishing new committees requires a vote of Council. He asked if we are doing this tonight.

Mayor Stombaugh said no. She noted that she wants the Planning & Zoning Commission and the Board of Adjustment split. Currently, they are the same people. If you go to the Planning & Zoning Commission and you dispute what they say, you will go before the same people on the Board of Adjustment. Now, there will be a Planning & Zoning Commission which is an appointed position for the required number of years and there will be a Board of Adjustment with one year terms. There will be an ad hoc Election Committee. The people are asking that the same people who serve on the Board of Elections serve on that committee. They will be the best people to go through and get ready to incorporate with the County if we decide to go that way.

Mayor Stombaugh said a lot of people on the committees wanted to stay. It was noted that Rick Downes is on the Business Development Committee and he does not live in Town.

Councilman Mullen said that is no problem. He is a business owner and owns a property in Town.

Mayor Stombaugh said that the Ethics Commission was appointed and now Mr. Thornton resigned to run for Council and was elected. He can no longer serve on that. She said there is no longer an Ethics Committee. They drafted the ordinance. The Commission has five members on it.

Mayor Stombaugh said we need to reach out to the people around us. She said that during her campaign there was a letter in the newspaper about people not in the Town limits but who live next to our limits. She said they have no voices. She said she wants a New Castle County Resident Committee and a Kent County Resident Committee. They can come together as a group when there is an issue about the area where they are and we will be able to hear from one person rather than a group of people talking about the same issues. These people do everything in our town. They shop here, buy gas here, their kids go to school

here. They won't have a vote, but they will have a voice. That is all these people want.

Mayor Stombaugh said she wants to appoint a Junior Council to work with the schools. It is very hard for Council members to gather information. She said she wanted to get youth involved where we could work with these kids in the schools and teach them what government is about. We need secretaries on our committees. Right now, someone is trying to take notes and interact with the committee at the same time. This will give experience to younger people and get them involved. Mayor Stombaugh said she went to the schools about this. They are not willing to do anything right now because of the conduct of past Councils. They do not want young people involved in what was going on here. She said when we prove ourselves, they will be happy to work with us.

Councilman Mullen made a motion that the standing committees and members be held over until the new committees are approved by Council. Motion was seconded by Councilman Pressley.

Councilman Chervenak said there are two issues here, the current committees and the membership of those and establishment of new committees and whether we need those new committees. He said he maybe we could look at folding some committees within other committees.

Mayor Stombaugh urged Council to carefully review these committee recommendations. She said it is very important to vote on this at the next meeting.

Council members Chervenak, Mullen, Pressley, Thornton, White and Mayor Stombaugh voted yes. Councilman Brown was recorded as abstaining because he felt the committees should not meet for two weeks until they can be approved. Motion carried.

ADJOURNMENT

Councilman Chervenak made a motion to adjourn, seconded by Councilman Mullen. Meeting adjourned at 9:55 p.m. by unanimous vote.

Council Secretary

ccm