

SMYRNA TOWN COUNCIL
MINUTES OF THE PUBLIC HEARING & MEETING
MAY 21, 2007

PUBLIC HEARING REF. ZONING AMENDMENTS

Mayor Stombaugh opened the public hearing at 7:00 p.m. Council members present were Bernard R. Brown, Gene A. Mullen, William D. Pressley Sr., Lawrence O. Thornton Jr. and Valerie M. White. Also present were Town Manager David S. Hugg III, Attorney Erika Schrader and Recording Secretary Carol C. McKinney.

Visitors present included Danrae and Curtis Heath, Ernest T. Davis, Daryl Jester, Joe Gaynor, Don Neizer, Bill Evans, Dee and Chris Watson, Seth Clevenger, Duane Young, Marian Bower, Gordon and Helen Miller, James Harkins, Ann Henning, Dawn Boyce, Kay George, Ron Marcum, Cary Lawrence, Phyllis Harris. Deloris Loy, Howard Fortner, Joseph Sheridan, Irene Caley, Regina Brown, Timothy Pendracky, Bonnie Lawrence.

1. 003-07, APPENDIX A, ZONING, REF. SIGNS

Mr. Hugg noted that, about six months ago, Council asked staff to see if we could get some assistance from some of the leading engineering firms who work in Smyrna on projects involving our zoning and subdivision ordinances. We put together an ad hoc committee to make updates. The group includes Erika Schrader from Hudson, Jones, Jaywork & Fisher, Sabine Watson from KCI, our planning staff and representatives from Karins & Associates, Becker Morgan Group and Davis, Bowen & Friedel. Karins, Becker Morgan and DFB volunteered to work with us on this project. This was a tremendous commitment on their part to give us the time of some of their key people to go through the ordinances page by page. We reviewed a number of issues and changes. The committee agreed that it would be best to start sending these to Council and the Planning Commission a few at a time as they worked on others since we still had some tough work to do. Shortly before the election, the committee suggested I bring forth signs, hotel/conference centers and open spaces in developments.

Mr. Hugg added that they were sent to Planning & Zoning who reviewed them at their last meeting. The chairman of that group and one of the members is here if they wish to speak or if you have any questions of them.

Mr. Hugg said these are text amendments to the ordinances. They are sent to Planning & Zoning for review, they send them back to Council with a recommendation. Then, Council holds a public hearing and can adopt them after that. These amendments do not require three readings of Council.

Mr. Hugg said that, in June, you will be getting a fairly comprehensive set of definitions and procedural guidelines. Probably every month for the next several months, you will see more changes to these ordinances coming before you to go to Planning & Zoning. It breaks them into small pieces but they are pretty extensive. In order to not overwhelm the Planning & Zoning Commission and to get certain changes adopted, we will bring them to you in this way. Mr. Hugg asked if Ms. Schrader or Mr. Neizer wished to comment.

Ms. Schrader said the committee has been working for several months going through the zoning and land use ordinances page by page to try to make them more user-friendly. Ms. Schrader said she really appreciates the efforts of the volunteer members who came forward to assist Smyrna in revamping these complex ordinances to streamline the process for developers and citizens who are moving through the process and to help staff. Ms. Schrader said she would be happy to answer any questions.

Councilman Brown said that a grandfather clause to cover anything that is currently in place is covered. He asked if the ordinances will be retroactive.

Ms. Schrader said anything existing now is a legal non-conforming use. Any changes in the future will have to conform to the new ordinance.

Councilman Thornton asked if the concept of banners fall under a temporary sign. Ms. Schrader said it is her recollection that they do.

Mr. Hugg said that it was the committee's intention to create a category for temporary signs.

Councilwoman White asked if the flag/banners at Pembertons fall under that type of sign.

Mr. Hugg said there is an exception for sidewalk type signs. This issue has come up several times in the last year or

two. The intention was that those signs, so long as they don't block sidewalks, are allowed.

Councilman Thornton said it is important to clarify that. There are several places that use menu boards and banners.

Councilman Mullen noted that there have been issues about temporary signs. There isn't anything in here relating to that. Councilman Mullen said that this ordinance specifically addresses commercial areas and commercial signage. He said that, in reading through this, there isn't anything in there giving a homeowner the right to place a sign on his property for political purposes or for a home business.

Mr. Hugg said that the draft of the home occupation ordinance will include what signage is allowed. The problem is that we are looking at parts of the ordinance independently. This section deals primarily with commercial signs.

Councilwoman White said that temporary signs will be permitted for only 14 days.

Mayor Stombaugh asked if signs advertising property for sale by owner will fall under real estate signs.

Mr. Hugg said that real estate signs would be by the owner or by a realtor.

Mayor Stombaugh said it allows no signs in residential areas to be illuminated. A lot of real estate signs are coming out now with lights on them.

Mr. Hugg said if Council wishes to change that, this is the time to say so. This ordinance won't allow that.

Mayor Stombaugh asked if Christmas displays are included in flags, banners, yard signs. Mr. Hugg said the committee tried to identify as many things as possible that should be exempted.

Councilman Pressley asked if we can hold off on adopting this.

Mr. Hugg replied that this hearing is designed to get concern and comments from the public and the Planning & Zoning Commission's recommendation. Councilman Mullen said his biggest concern is with restricting a home owner from putting a sign in his window, not just "house for sale". He said he doesn't want

to restrict a homeowner's right to express his feelings on any subject. The right to free speech is very important. Councilman Mullen said the way he reads this, it has a 14 day limit. You don't put up any sign inside or outside except what is specifically mentioned.

Ms. Schrader asked him for an example of what he means.

Councilman Mullen said in prior elections, emotions ran high and feelings ran high. People expressed those feelings with banners and signs. He said he thinks they need to be able to do that.

Ms. Schrader said she doesn't see a restriction in her about a sign or poster in a window. That is different from posting a sign in a yard.

Councilman Mullen said it should be spelled out in the ordinance.

Ms. Schrader said she feels Councilman Mullen's interpretation is very strict.

Mr. Hugg asked Mr. Neizer if the Planning & Zoning Commission had any comments or concerns about this issue that Council should be aware of?

Mr. Neizer replied that this had been in the works for six or eight months. It looked so beautiful that the Commissioners were knocked off their feet. These things have come up over the past several years and it left the developers and business people hanging.

Mr. Neizer said the Commissioners were very impressed with all three of these ordinances. He offered their congratulations to the folks who worked for so many months and invested so much time to develop them. Mr. Neizer said the Planning Commission was very satisfied.

2. 004-07, APPENDIX A, ZONING ORDINANCE REF. HOTEL/CONFERENCE CENTER

Mr. Hugg said the provisions of this ordinance relate to hotel and conference centers. Given some of the interest in Smyrna by developers, we need to make a distinction between standard hotel/motel buildings and something like the Sheraton Inn or Dover Downs. We are talking about Hotels which have

large meeting facilities and related things in them. A hotel/conference center could have two to three times the vehicles for conferences as a regular hotel/motel.

3. 005-07, APPENDIX B, SUBDIVISION AND LAND DEVELOPMENT ORDINANCE REF. OPEN SPACES

Mr. Hugg said we really don't have a very clear set of provisions dealing with open spaces. This ordinance was drafted to deal with that.

Mr. Hugg suggested that Mayor Stombaugh may want to ask for comments from the public.

Councilman Brown asked if Mr. Hugg sees a hotel/conference center on the horizon. Mr. Hugg replied that he has been approached by two groups of individuals who have asked about this kind of facility. It is better to be prepared than not.

Councilman Brown asked if it fits into the Comprehensive Plan. Mr. Hugg said it is a permitted use in the Highway Commercial or Industrial/Office/Research Park districts. This is designed to protect ourselves if something does come up.

Mayor Stombaugh asked how this compares to other towns. Mr. Hugg replied that Ms. Schrader did a lot of this work.

Ms. Schrader said we didn't find many local ordinances dealing with this. We did research other states and how they dealt with these things. New Jersey and one from Florida were used as models.

Mr. Thornton asked how many parking spaces the hotel being built now has. Mr. Hugg replied 72. Mr. Thornton asked the size of their lot. Mr. Hugg said between an acre and an acre and a half. That facility does not have a conference room or meeting room with facilities. We looked at the Sheraton Inn which is on three acres. You could get a pretty substantial hotel on a relatively small site.

Councilman Mullen said the parking requirements concern him. He said it looks like this is pretty much standard fare. The five acre requirement is a little larger than other municipalities require. As far as parking, we are pretty conservative in that regard.

Councilwoman White said her concern is that the restrictions we are putting on this would discourage something like the Sheraton Inn or Hampton Inn where they have conference centers when we already have a hotel coming up smaller and on less acreage.

Mr. Hugg said you can end up with 100 rooms with guests and two to three hundred people for a trade show in a very small area. This sets a pretty high standard. If you want to call yourselves a conference center, you have to make an investment. There are several locations where this could be built very effectively. He added that the committee wrestled with the forty-five foot height. One reason for keeping the building at that level, it is a fire fighting issue. Also, we have always had an unwritten rule in Smyrna that 45 feet/three stories is the maximum size of a building we permitted. It doesn't necessarily mean that we shouldn't think about five or six stories, but we are trying to keep some sense of scale. The Sheraton is six or seven stories.

Ms. Schrader said this ordinance is written for sixty feet. The committee didn't feel that this height is inappropriate.

Councilman Mullen said he thinks the fire company's ladder truck goes to 75 feet and the bucket is 80 feet. Curtis Heath said the ladder truck and the bucket truck can reach 100 feet.

Councilman Mullen noted that we need to stay within the fire company's ability to protect Smyrna.

Mr. Neizer said anything the Planning Commission reviews has to go through the Fire Company for approval.

***7:30 p.m. Councilman Chervenak entered the meeting at this point.

Mayor Stombaugh adjourned the public hearing briefly to open the regular meeting.

Capt. Bordley led the Pledge of Allegiance and Mayor Stombaugh asked for a moment of silence.

At 7:32 p.m., the public hearing resumed. Mayor Stombaugh reminded everyone that the proposed ordinances being reviewed tonight are for a Hotel/Conference Center ordinance, an open space ordinance and a sign ordinance.

Councilman Mullen said that, in reading through the open space amendment, he can't get a sense of how many units would be required when the percentage of open space comes into play. He said if a subdivision is 45 lots, where will it fall if it is Residential-2A? There is an exemption for small developments. The jury is still out on developments paying cash to get out of providing open spaces. Councilman Mullen said he can't come up with a good idea of how to prevent it. He said he feels every development needs some open space, community space. It isn't clear on next to the last page about money in lieu of parkland.

Councilman Mullen asked when they are required. He said it really doesn't spell out when the Town would require park equipment, playground equipment, ball fields/courts which he feels the developer should be required to put in before the town accepts it.

Councilman Chervenak said we have a number of LLCs so a person could create a smaller development, then another smaller development, etc. We could have fifteen small developments rather than one large one. What tells us what a small development is? How do we make sure a developer doesn't create five LLCs and build five small developments rather than one larger one.

Mr. Hugg replied that a small development is three lots or so. You do have parcels of property where that is about all you can get. It is really inconvenient for a developer and for the Town. We don't want a lot of postage-stamp parks. A cash contribution is probably a better way to deal with it there. Once the open spaces are dedicated to the Town, we have to mow and maintain them. Mr. Hugg noted that the ordinance requires that all residential subdivision of twenty units or more have to provide active open spaces. It eliminates some things that should not be part of the active open spaces and defines guidelines such as they can't be wet areas, etc.

Councilman Brown asked how we handle multiple builders in an area.

Mr. Hugg replied there is probably no way we can protect ourselves against a developer who wants to stay under 20 lots. If they are separate parcels of land under separate ownership, there is little you can do about it.

Councilman Brown asked about the new developments on Brenford Road. Mr. Hugg said the subdivision requirements have already been met there.

Ms. Schrader said the committee discussed the landscape plan and open space management plan. This will go through the Planning Commission so you will have input from them at that next level and guidance from staff on what should be acceptable to the Town as the plan goes through the process. Regarding the comment about exemptions for smaller developments, she said that, as part of writing that provision, the committee looked at the Town and there are many small pockets throughout the Town that are close to Town recreation areas. It seemed sensible for the Town to get funding from smaller developments so that the municipal parks could be developed and provide better open space opportunities for residents in those new homes.

Mr. Hugg noted that a minor subdivision is three to four lots. You are dealing with 6000 square foot lots. Ten percent of that doesn't give you much open space. You would end up with very little open space that would be usable.

Councilman Mullen said if a town park is within so many blocks, then that could be considered.

Councilman Chervenak said that a condominium association has parks. Most of these developments could do a condominium association for a pocket park if they wanted one. That would be desirable with small nooks and crannies that create an ambiance that we don't have.

Mr. Hugg said we have an existing fee in lieu of parkland. This is a fund limited to expenditures for park development. We require that to be paid before they get building permits.

Mayor Stombaugh said she would like to see all of these tabled. She said we need more work on them. Mayor Stombaugh suggested a workshop for Council and Planning and Zoning.

Mayor Stombaugh said she went through the Charter over the weekend and feels that we need to spend more time on these. We are moving too fast. All of these questions need to be taken into consideration and addressed. Variances are continually being asked for. If they cut down on the number of units they would have more open spaces and more parking.

Councilman Pressley noted that this would increase the cost of the houses.

Councilman Chervenak said we are talking about what we want this town to become. If you want a vibrant downtown section, there are towns like Chesapeake City that have a vibrant downtown section. It is regulated, parking is a problem, but it is a nice historic place to go to. Density is very dense. He said they had to park a quarter mile away to get to a restaurant. The question is, what do we want Smyrna to become?

Mayor Stombaugh advised the public that they need to come to these hearings. Call your council members. You do have a voice. Contact us and let us know how you feel about it and what you want. She asked if anyone in the audience had comments on any of the three proposed amendments.

Councilman Mullen said copies are on the bulletin board and are posted on the Town's website. If you have any questions, let us know.

Mayor Stombaugh asked if Council wants to schedule a workshop. Mr. Hugg said we can proceed with the agenda and you can decide how to handle that later in the meeting.

Dawn Boyce of 1221 Duck Creek Road said that Smyrna is no longer just downtown. When you are writing these ordinances, you might have to think about one for downtown and another for areas north or south of downtown.

Mayor Stombaugh said we need to increase the size of lots in the zoning code. The maximum lot is now 11,000 square feet.

Ms. Boyce said she and her neighbors have discussed that.

Councilman Pressley asked if Ms. Boyce lives within the Town limits. She said no, but it is across the street from her.

Councilman Pressley asked why she is interested if she is not in town.

Councilman Chervenak said because someone does not live in town it does not negate her opinion.

Proposed Abandonment of Alley Off E. Frazier Street

Mr. Hugg said the next item before you is the public hearing involving an unopened alley. It runs parallel to Locust

Street beginning at Frazier. Many months ago, some of the property owners came before Council and asked that it be abandoned. The procedure is that it is to be offered to the adjacent property owners on both sides, shared by them in an equitable manner with Council deciding the level of value, from nothing to appraised value. Mr. Hugg said the next step in the process is to hold a public hearing.

Curtis Heath of 104 S. Locust Street said he bought his lot before the Frazier Place property was purchased for retirement homes when Mike Jacobs was town manager. The property owners spent thousands of dollars in 1991 to clean up that alley and have kept it clean and mowed since. Mr. Heath said he asked Mr. Jacobs and nothing ever came of it. Two years ago, Mr. Heath said he came back to Council. It is time to put this to rest. There are residents on the south side of Locust Street who have been taking care of that alley for more than forty years. He added that he has lived in Smyrna since 1980 and has a lot of pride. Mr. Heath said the reason he asked for the whole ten feet is because he has put a lot of time and money into that ten feet. The gentleman behind is a business man and we are all residents. He is making money, he lives in Baltimore, he never has anyone here to represent him. We have representation.

Councilman Pressley asked if we have heard from him. Mr. Hugg replied that the Charter says adjacent property owners are to have their proportionate share. That is what we must do.

Councilman Pressley asked about the other side of the alley. Mr. Heath said that was split five feet/five feet.

Mr. Hugg said that is what is spelled out in the Charter, each property owner gets their fair share. Mr. Schuster has indicated in writing and verbally that he wishes to be considered along with the other residents who abut the alley. You have in your packet a list and a map.

Mr. Heath asked how it can benefit Mr. Schuster. Councilman Mullen said we have to do this fairly. If he expressed an interest in it, unless the rest of the owners go through a deed fight through the courts, the only thing to do is give everyone equal portions.

Mr. Hugg said this is an issue in much of the historic part of Smyrna. There are unopened alleys in other areas, such as behind Bill Hill's house. It has been part of someone's yard

forever. The charter sets the process. If Mr. Schuster were to say he doesn't want it, you could split it among the other property owners.

Councilman Pressley asked if we have to do it. Mr. Hugg said we must follow the process in the Charter.

Councilwoman White asked if it is possible to say if the Town can go to bat for these residents facing Locust Street and write to Mr. Schuster explaining that they have mentioned it. Councilman Mullen said he would recommend against doing that. If Council wants to encourage the other residents to reach out to Mr. Schuster, they may be successful. Council has a procedure. If they chose to abandon it, it must be offered equally to the abutting property owners.

Mr. Heath said he has maintained that land for sixteen years. He gets a free five feet when he only maintains it to his property line.

Mayor Stombaugh asked who takes care of the other side. Mr. Heath replied that he takes care of the whole ten feet.

Councilman Mullen said there is a process that you can go through to claim that area. It is expensive and long and lengthy.

Councilman Pressley asked Mr. Heath if he has talked to Mr. Schuster. Mr. Heath replied no.

Mr. Heath asked if he can put up a fence all the way to East Street. Councilman Mullen suggested that, if we do this and split the property equally which we have to do, Mr. Schuster be forced to maintain his property. If he doesn't maintain, it, then the Town can maintain it and charge him for it.

Councilman Pressley asked if we can contact him and make sure he will take care of it. Mr. Hugg replied that he would have to maintain it or we can fine him.

Councilwoman White asked if all these folks could contact this gentleman and tell him your history and tell him why you want all of it. Either he will answer you or he won't.

Councilman Chervenak said to tell him it is the recommendation of Council.

Councilman Pressley said we should hold off until the next meeting to give these folks a chance to contact Mr. Schuster and get his reply.

Councilman Mullen said the Town cannot act in an unfair manner. We could be held liable if we give the ten feet to the other abutting property owners and Mr. Schuster wanted to get his share of the land.

Mayor Stombaugh asked if there were further questions or comments. No one came forward.

Councilman Thornton made a motion at 8:15 p.m. to close the public hearings. Motion was seconded by Councilman Chervenak and carried unanimously.

RESUME REGULAR COUNCIL MEETING

ADDITIONS/DELETIONS TO PUBLISHED AGENDA

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

REPORTS

BILLS AND FINANCIAL STATEMENT:

Mr. Hugg noted that in packet was the detailed financial documents and current finance account which we give you every month.

Councilman Chervenak asked if we recycle this paper. Mr. Hugg replied yes.

Councilman Mullen said some of this will be discussed at the next Finance Committee Meeting.

Mayor Stombaugh said that we are going to start a new process of recording votes on motions. We will now do a roll call on each vote. She added that we are looking at an electronic system that will record the votes automatically.

Councilman Chervenak asked what will happen to the old "hands up" vote. Mayor Stombaugh said we are going to go to electronic.

Councilman Chervenak asked how expensive this system will be. Mr. Hugg said those are the questions we are addressing. The system we had information on for Council members will record yes, no and abstaining but we would not have to call the role.

TOWN ATTORNEY:

Ms. Schrader had no report.

POLICE CHIEF:

Capt. Bordley had no report.

Councilman Mullen said he was at the Rotary Club Car Show Saturday. He commended the Police Department employees who were there. He said they were doing a good job. There were no complaints about anything.

TOWN MANAGER:

Mr. Hugg said his written report was in packets. There is various information throughout your packet as well.

COMMITTEES:

Councilman Pressley reported that the Personnel Committee met and minutes are in packets. The next Personnel Committee Meeting will be at 5:00 p.m. on June 13.

Councilman Pressley said the next Business Development Committee meeting will be at 8:30 a.m. on June 7.

Councilman Mullen reported that the Finance Committee met on May 8. He said they discussed several things including Impact Fees for commercial properties and grants. It was a long meeting. He thanked the committee members and public for their attendance and their patience.

Mr. Hugg said the Public Safety Committee minutes were in the Chief's report.

Councilman Thornton said the Public Safety Committee met and went over an engineers report concerning a speeding problem on Greens Branch Lane. The bottom line was that we are going to try installation of small strips rather than to reconfigure the intersections. We got good input from the engineer and from residents who live in the area. It was a very productive

meeting. The problem with that roadway is that it is a through-way between the western part of Town and the eastern portion. It allows drivers to avoid a part of Glenwood Avenue. With younger children involved, it is a safety concern for the residents there.

Councilman Thornton reported that there was a lady at a council meeting recently, Mrs. Weyant. Her concerns were addressed by the Chief and his staff. That was taken care of. The committee also went through the monthly statistics. We continue to look into cost of service and whether or not we need to do some things or adjust some things.

RECOGNITION OF VISITORS

Helen Miller said she and her husband, Gordon, live at 45 W. South Street. She added that, with the permission of Mr. Young, she is speaking for the Election Board. She said that the Election Board worked diligently from the middle of February until April 30, Election Day. Wednesday night before the election was their last meeting. Attorney Tom Barrows was there and taped every word spoken. Attorney Barrows was in attendance for the entire election day and taped every word spoken during the absentee ballot proceedings. Four people committed perjury under oath and every word is on that tape. It was also witnessed by the entire Election Board. This in itself should be sufficient proof of election fraud and we believe Council must hear those tapes and take further action.

Councilman Chervenak asked if it is really necessary to listen to the tapes. Mrs. Miller said yes it is because they prove what happened.

Councilman Chervenak asked if we can read a transcript instead. Mrs. Miller replied that it would be Mr. Barrows' decision. He was there all day at the request of Council and taped every word.

Councilman Chervenak said he trusts Mrs. Miller and he trusts the Election Board. Therefore, he asked Mrs. Miller if she feels it is necessary for all of us to listen to the tapes. Mrs. Miller said something must be done about this. That is the law.

Councilman Brown said there were a couple of other issues brought up. He asked if she is requesting that those issues be investigated also.

Mrs. Miller asked what those issues are.

Councilman Brown said he believes there were two of the challengers who represented themselves as being for one electoral candidate. By law, he said that they can have only one per candidate. If you want to do one, he said he wants to do it all. Councilman Brown said he has no problem investigating violations of the law. He added that he believes in the justice system. If you are going to ask us to do justice, it has to be justice across the board. You can have only one representative per candidate. You will see in the transcripts that Mayor Stombaugh had two different people identify themselves as challengers for her.

Councilman Thornton asked if they were present at the same time.

Councilman Brown said yes but he is not trying to get the Mayor in trouble. He said his question to Mrs. Miller is if she is going to investigate these other issues.

Councilman Chervenak said that Mr. Brown is talking about two different issues. One is an issue of fraud. The other is a civic matter. It doesn't involve a criminal matter.

Councilman Brown asked if Councilman Chervenak is sure it isn't a criminal matter. Councilman Chervenak said yes because having two challengers doesn't constitute a crime. Someone lying constitutes a crime. He added that he is not a policeman, but he is using common sense here. Councilman Chervenak said on the other hand, he doesn't know if there were two challengers. That is a civic matter. We are talking about a crime here, lying under oath.

Councilman Chervenak said that the matter Mrs. Miller is bringing us has nothing to do with what Councilman Brown just said. That is another matter entirely. Councilman Chervenak said we appreciate Mrs. Miller coming before us.

Mayor Stombaugh said she has a question for Council. She said she read through the Charter and she couldn't find the procedure to follow when election fraud has happened. She asked

what is the procedure to follow? Who is the responsible party to file a formal complaint?

Councilman Mullen said this comes up later in the agenda. He suggested that we wait until it comes up then to continue this discussion.

Ernest Davis of Nugent Loop asked what you want the Town of Smyrna to become. He said that with expansion come problems. Mr. Davis said he sees different things he has seen in other cities. There are times of late when there are problems with illegal activity. He said he would like to see something changed there. Utilities have been a problem that has escalated. Will that be revisited as well? He said there are other things he will be bringing to the Business Development Committee.

Mayor Stombaugh said Council is not required to answer questions brought to us under recognition of visitors. She said we need to research before we offer answers.

Councilman Mullen asked Captain Bordley to check with Mr. Davis and follow up on his concerns.

Capt. Bordley said he is already on that. He noted that Mr. Davis has not spoken to him about some of the concerns. Mr. Davis said he tried to avoid those things.

OLD BUSINESS

A. Results of Public Hearing

1. Ord. No. 003-07, App. A. ref. Signs
2. Ord. No. 004-07, App. A. ref. Hotel/Conf Center
3. Ord. No. 005-07, App. B. ref. Open Space
4. Alley off E. Frazier Street

Mr. Hugg suggested tabling these until the next Council Meeting for additional information. He asked anyone with concerns to get them to us.

Councilman Mullen made a motion to table Ord. NO. 003-07, 004-07 and 005-07. Motion was seconded by Councilman Thornton.

Councilman Chervenak asked what is going to happen between now and then. Mr. Hugg said if anyone has comments and/or questions, you send them to him. The Ad Hoc committee is meeting the second week of June. We can go back to the

committee and spend some additional time clarifying your concerns.

Mayor Stombaugh asked if all can attend. Mr. Hugg said they met at 10:00 a.m., usually for about three hours. It is staff meeting with volunteers from various engineering firms. Everyone is welcome to attend.

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

Councilman Chervenak made a motion to table the abandonment of the alley off E. Frazier Street pending further communication by the property owners. Motion was seconded by Councilman Brown and carried unanimously.

Mr. Neizer asked the date of the Ad Hoc committee meeting. Ms. Schrader said they will meet the second Tuesday in June.

FIRST READING

ORD. NO. 006-07, CHAPTER 32, IMPACT FEES **REF. SCHOOL IMPACT FEES FOR NON-RESIDENTIAL PERMITS**

Councilman Pressley said he will address this since he is the one who brought up again to have no fees for commercial properties for the Smyrna School District impact fee to try to bring businesses to Town. He added that this gives us something to offer them where the schools are not impacted by the business. Councilman Pressley said we took it to the Finance Committee and the Business Development Committee and it was approved by both.

Mayor Stombaugh said she thought we were to get figures from other towns around us.

Councilman Mullen said that motion was made and failed.

Councilman Pressley said if you read the minutes, the residential was what failed. Councilman Mullen agreed.

Mr. Hugg said we what we took to Finance and Business Development was eliminating the fee for commercial properties.

Councilman Pressley noted that Councilman Mullen and Councilwoman White both voted to bring this to Council. We

asked to remove the cap for residential and that failed at Finance.

Councilman Chervenak said this is a very interesting situation from the point of the fact that you are asking a business to forego or at least not have an impact fee for schools. If you look at a community like BonAyre, how do they impact on our school system? They don't. A nursing home doesn't impact on our school system. There are a lot of businesses that don't but they bring residences into our community. Councilman Chervenak said he feels we are opening a can of worms when we start distinguishing between businesses that cause an impact and those that don't. When you start that argument, what if I have a gas station or whatever? They all bring people into the town if it is a new business. If someone buys an old building downtown and fixes it up, would they get an impact fee?

Councilman Pressley said they will if they have to get a building permit. He added that this came up because Kent County is changing their impact fee. He said new businesses hire students so they are benefiting us. BonAyre does not hire anyone.

Councilman Chervenak said they might to cut grass, etc. He added that, whenever you start deciding who pays and who doesn't you are going to have a problem. He said the other issue is that businesses bring people. People have to live somewhere. The more businesses you bring into Town, the more people you could bring into our area. There is an impact. This new hotel will bring in people. There is an impact on our school system. Some people will live in Town. Councilman Chervenak said 70 percent of our school system is out-of-town. It is likely these people are going to live within the school district. They wouldn't be here if it wasn't for the business.

Councilman Pressley asked what else the town is going to offer these businesses that we want in town. What is there to bring them to Smyrna?

Councilman Chervenak said businesses usually come to an area where they can make money. They look for roof tops and we certainly have roof tops. He added that he thinks they do impact on our school system and any business would understand there is an impact. Otherwise, people from BonAyre will come in here and say they don't want to pay school impact fees because they don't have children in the system. A community is businesses and houses and a number of different things.

Traditionally, all of these things have supported a public school system. Councilman Chervenak asked if we say to these people you don't have to support this public school system but say to others you do? It is going to be difficult.

Councilwoman White asked if we are the only municipality that has this fee at this time.

Mayor Stombaugh said there was something in this week's paper about Clayton considering it.

Mr. Hugg said that we were the only one beside Kent County unless Clayton has approved it.

Councilwoman White asked if this is to impose no school impact fee.

Mr. Hugg replied only on new, non-residential construction.

Mayor Stombaugh said she has had a lot of constituents come to her. A lot were seniors with no children. They felt it is very unfair to charge impact fees on people who cause no impact. We are a community. No one wants their taxes to go up. Everyone wants their electric rate to go down. Mayor Stombaugh said we keep giving out all of these discounts to new businesses that come in. If businesses want to come, they expect these kinds of things.

Councilman Pressley said at the last meeting, we gave a business \$3,000.

Mayor Stombaugh said this has been happening but that doesn't mean we have to keep on doing it.

Councilman Pressley said that businesses aren't interested without incentives. He noted that the new State Service Center impact fee is \$65,000.

Mayor Stombaugh said you started out in the Finance Meeting with a cap and she was very shocked when she got this because there is no impact fee at all now.

Councilman Pressley said because, if you were at the Finance Committee Meeting and were listening, that is what they decided.

Mayor Stombaugh said she must have missed part of the Finance Committee Meeting.

Councilman Chervenak said there has to be some impact fee.

Councilman Pressley said he first came up with a \$3,750 cap.

Councilman Mullen said this is certainly a two-edged sword. He added that he understands Business Development. We wrestled with this in Finance. What we need to do is find out what we can live with. Obviously, this Council is split.

Councilman Mullen said that he will offer the percentage with a cap we can live with because, frankly, he agrees with Councilman Pressley. Businesses are going to come to Smyrna and not just for roof tops. They are going to come here to make money. That is what they are going to do. The more incentives they can get, the better our chance to get them. We cannot ignore the long term profits of a business coming in town for the single one time incentive. We have to look at the whole package. If we fight and hammer everyone with large impact fees and all that, they are not going to come here and we will lose in the long term. Sooner or later, we have to deal with it. Councilman Mullen said he is suggesting a compromise.

Mayor Stombaugh noted that, if they don't solve the problem, the State doesn't know if they are going to have the 80 percent for the school referendum. The schools are already overflowing. They don't know what they are going to do with the sixth grade this year. We have more developments coming, more kids coming. Mayor Stombaugh said she met with Mrs. Wicks last week and they are beside themselves. If it doesn't work out with businesses, you know where it will go. We will have to up taxes for citizens. It goes back to the citizens again.

Councilman Mullen stated emphatically that the Smyrna School District is not the responsibility of the Town of Smyrna. It is a very big part of our town and our residents, but the Smyrna School District isn't the responsibility of the Town. It is the responsibility of the State of Delaware. We keep forgetting that. If we had the money, he said he would give them as much as they want. Councilman Mullen said he wants our schools to be the best in the State without a doubt. He noted that he doesn't have any kids in school. His son has been out of school for 10 or 12 years. However, the bottom line is that the State of Delaware dropped the ball and allowed all these

developments to come in with no controls and no protections for the towns and now we are ending up paying for it and that isn't right.

Councilman Mullen said that, sooner or later, we have to come up with a compromise. That is where it is going to end up anyway. From both sides of the battle, we are going to end up in the middle.

Councilman Pressley made a motion to put a cap of \$5,000 on building permits for non-residential structures. Councilman Pressley explained that he intended this to be a 1.250% school impact fee with a \$5,000 cap on building permits for new non-residential structures. Motion was seconded by Councilman Brown.

It was noted that this is the first reading of this amendment.

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

ANONYMOUS COMPLAINTS

Councilman Mullen said he had this put on the agenda at the last meeting.

Councilman Mullen made a motion that the Town of Smyrna, with the exception of the Smyrna Police Department, not accept any anonymous complaints. Complainants must give their name, address and phone number. Motion was seconded by Councilwoman White.

Councilman Chervenak asked how the police department deals with this. Capt. Bordley said in the interest of public safety, they check out all complaints.

Councilman Chervenak said you may take the time and effort to check out a complaint and have a person who is not stable calling over and over again. Capt. Bordley said that is an ongoing problem.

Councilman Thornton explained that the problem with police work, you can't distinguish between an anonymous call that is genuine and one that is for spite. All have to be checked out. In most cases, the caller doesn't want to be identified, but it

has to be taken care of in the interest of public safety. That is why it needs to be spelled out between the Police Department and Town Hall.

Councilman Brown said if you want to file a complaint against an officer, the first thing you need to do is put it in writing and sign the complaint. It needs to be in writing. 911 is a separate issue. If a person wants to file a complaint against someone, it must be in writing and signed.

Councilman Mullen amended his motion that the Town take no complaint that has any immediate issue of the health, safety or welfare of the residents of the Town of Smyrna anonymously. The name, address and phone number will be confidential.

Councilman Pressley asked if we can leave this to the Town Manager.

Mr. Hugg replied no. He said the Code Enforcement Officer, by definition, is dealing with matters that are often health, safety, welfare related. He added that he doesn't disagree with the whole motion. We get phone calls when someone is mad at his neighbor about grass or vehicles or demolition waste. We spend time investigating those and sometimes they are purely harassment.

Councilman Mullen said that is what he wants to try to get rid of. He added that he knows that staff has spent many hours on complaints that don't exist. If the person complaining has to give their name, address and phone number, you have no way to call them back and give a report on what you find.

Mr. Hugg said he doesn't want to send a message that you can't call in a complaint about something. Some people live in fear of their neighbors. If you have sixteen people living in a house and a neighbor calls the Code Enforcement Officer to complain, they might not want their identity known.

After considerable discussion, Councilman Mullen withdrew his motion.

Councilman Brown made a motion to send it to the Personnel Committee. Motion was seconded by Councilwoman White and carried unanimously.

COMMITTEE APPOINTMENTS

Councilwoman White made a motion to accept the list of committee members in front of us. Motion was seconded by Councilman Brown.

Councilman Chervenak said that he found out that Kent County is significantly larger than Smyrna and we have five times as many committees, we have 22. He added that he hopes we are not trying to establish our importance by how many committees we have. Many of these committees could be combined. He said the Audit Committee should be part of the Finance Committee, for example.

Mayor Stombaugh noted that the Audit Committee was recommended by the Auditors who feel very strongly about this. Every person on this committee is an accountant or has done this kind of work. Mayor Stombaugh noted that she has done accounting for 42 years and knows what the auditors are talking about.

Councilman Chervenak said they recommended it because they don't want to spend the time explaining all this. That is their job, explaining to people who don't understand finances. We have a problem if you don't understand finances, then the people in this audience won't know what is going on. The auditors should be able to explain our budget and auditing techniques to the people of this town.

Mayor Stombaugh said she has been on the Finance Committee for two years. She added that, if you don't do accounting on a regular basis, you wouldn't understand it.

Councilman Chervenak said he wants to understand what they are saying. Mayor Stombaugh said these are volunteers. They don't get paid. We are very fortunate that we have had so many people come forward with qualifications to serve. Mayor Stombaugh added that she feels we should have as many citizens serve as possible. The auditors asked for this. She said she does accounting and understands what they are saying and feels that we do need this committee.

Councilman Pressley asked if they will meet at Town Hall. Are we are going to pay staff to be here to take minutes? Two Council members are on each committee and three residents. Anyone can come and talk, but when it comes to Council, you have five people making that decision. The more people you have in

there, the more aggravating it gets. On some of these committees, you have only one Council member. Councilman Pressley said he feels we should go down the line and do these one by one.

Mayor Stombaugh said every Council member can come to every committee meeting. Every Council person is on three committees.

Mayor Stombaugh said the next four are not town meetings. She agreed to eliminate the last four committees (ad hoc New Castle County Resident Committee, Ad Hoc Kent County Resident Committee, Ad Hoc Junior Council Committee and Ad Hoc Secretarial Committee).

Councilman Chervenak agreed that we need to delete all these ad hoc committees. He said we should put the audit committee into the finance committee and delete the ad hoc long range planning committees outside the town. He said we could blend the Tree and Library Committees into the Cultural/Parks/ADA committee.

Councilwoman White said a Tree Commission is required if we are to be a "Tree City USA".

Councilman Pressley suggested that we go through the committees we know we will pass.

Mayor Stombaugh said there are only two new committees on here. The Election Board we already have but, by putting them on here, they are an Election Committee. That leaves only one new committee on this list that affects Council members

Councilwoman White said the Charter Review Committee, Compensation Committee and Police Building Review Committee are temporary and will disappear at some point. She also noted that we decided that A. Temple Carter would chair the Compensation Committee.

Councilman Chervenak said he needs to be removed from the Compensation Committee. Mr. Hugg noted that the Charter says that an elected official cannot be on there.

Councilman Mullen noted that the finance committee is charged with reviewing the audit. If we are going to have another committee doing that, they need to be under finance. He said he has worked his butt off for the past two years to understand the finances of this Town. For the first time, we

have an easy audit. We have done a good job on the 2007 budget. We reduced it significantly in several areas. We have a Capital Improvement Plan moving in a good direction that hasn't bankrupted the town. Councilman Mullen said he takes offense when Mayor Stombaugh tells him that he doesn't understand finances. The entire committee doesn't necessarily understand, but those who don't understand help because they ask questions and then you get the answers. An audit committee is all well and good, but it needs to be under the finance committee.

Councilman Mullen said there is a name not on the Business Development Committee that definitely should be on there. He doesn't live in town but he has he has had a business in Town for fifteen years. Rick Downes should be named to that committee.

Councilman Mullen said he really doesn't care about the ad hoc committees for county residents. He said he isn't even sure what that is but it doesn't matter one way or the other to him.

Mayor Stombaugh said Mr. Downes has done a very good job. If you are going to have a non-resident on that committee, the New Castle County committee or the Kent County committee have no Council member on them. Those committees have people connected to the town but not in the town limits. This gives them a chance to have a voice. They don't have a vote. They will have a chairman for a group so that, if something comes up, they will be able to come before council organized. She said she thinks we should reach out to our neighbors who are connected to us.

Mayor Stombaugh said she wants them to know that we are here for them. Everything they do is in Smyrna. We get money from these people. Why would they want to be part of our town when they see the way our Council members act? We might have one person coming here instead of fifteen. She said she feels very strongly about this.

Councilwoman White withdrew her motion to accept the committee list before us.

Councilman Pressley said Rick Downes owns property and a business in Smyrna. Even though he does not live here, he pays town taxes as part of this town and that benefits the town.

Councilman Thornton said he feels the love in this room! He said the auditors work for the Town of Smyrna. We represent

the Town of Smyrna as this Council. He asked if it is a good idea to have the boss on the Audit Review Committee.

Mayor Stombaugh said it is a check and balance.

Councilman Thornton said he is not sure the boss should be on the committee of the people who work for you. He also agreed that it should be a subcommittee of Finance. Councilman Thornton noted that he sees a lot of committees and staff time. Tonight, we didn't have minutes of the last Council meeting because staff was busy with minutes and other duties. Councilman Thornton said we have a potential of over-burdening staff. He also noted that Ethics is a commission by ordinance, not a committee.

Mayor Stombaugh reported that Mr. Kelsey resigned because he is moving out of town. She said we have five members there.

Councilman Thornton asked about the non-town committees. He noted that he is not sure the New Castle County and Kent County residents need to have a Town of Smyrna committee.

He said those folks do deserve a voice. However, whenever they have a problem, they haven't been reluctant to bring things to Council before. You appoint committees with the concurrence of Council. He said he has concerns with staff time for meetings and locations for meetings. He asked where they New Castle County and Kent County Committees are going to meet.

Mayor Stombaugh said wherever they choose. They can bring issues to Council whenever they wish.

Councilman Chervenak said that, when they use our facilities, we will be responsible for the financial burden of the committee.

Councilman Brown asked if they will be responsible for their own minutes.

Councilman Pressley said they have a voice at any meeting. They can speak at every Council meeting.

Councilman Chervenak said let them form their own committee. If they want to meet, that is fine. Let's not appoint them as an official committee of the Town.

Mr. Hugg said you will be sanctioning that they are a legitimate function of the Town. It isn't a standing committee of the Town but you are recognizing it.

Ms. Schrader said the Town is responsible under FOIA to control posting meetings of committees, keeping minutes, tracking those minutes, etc.

Councilman Chervenak made a motion to start at the top of the list and vote individually for committees. Motion was seconded by Councilman Mullen. Council members Chervenak, Mullen, Pressley, Thornton and White voted yes. Mayor Stombaugh and Councilman Brown voted no. Motion carried.

AUDIT REVIEW COMMITTEE:

~~Mayor as Chairman~~, Ruth Bower, Robert Johnson, Robert Bamberger, Robert Novotny

Mayor Stombaugh asked if she should come off that committee.

Mr. Hugg said that, technically, the auditors work for the Council, they do not work for the Town Manager or Manager of Accounting of Business Services. You are an employee of the Council. He said he feels that no member of Council should be on that committee.

It was agreed to remove Mayor Stombaugh from the committee.

Councilman Chervenak made a motion to make the Audit Committee a subcommittee of the Finance Committee. Motion was seconded by Councilman Mullen. Council members Chervenak, Mullen, Pressley and Thornton voted yes. Council members Brown, White and Mayor Stombaugh voted no. Motion carried.

Council approved these appointments unanimously.

BOARD OF ADJUSTMENT:

Mayor Stombaugh said she wants to separate the Planning & Zoning Commission and Board of Adjustment because they are specific appointments but act under different rules.

No action was taken on these appointments.

ELECTION COMMITTEE:

Mr. Hugg said the Election and Registration Board serves Council from the time of their appointment until the next time they are appointed. If you are asking that they continue to serve their jobs relating to the election, they were appointed for the year.

Mayor Stombaugh asked if they get paid every time they meet. She was advised they do not.

No action was taken on this committee.

BUSINESS DEVELOPMENT COMMITTEE:

William D. Pressley, Sr. Chairman, Roderick H. Burritt, Quentin Schlieder, Joseph Sheridan, William C. Wagner and Richard W. Downes

Council approved these appointments unanimously.

CHARTER REVIEW COMMITTEE:

William Hill Chairman, Barbara Allsopp, David George, Brooks R. Keen and Mayor Stombaugh

Council members Brown, Chervenak, Pressley, Thornton and White voted yes. Council members Mullen and Mayor Stombaugh voted no. Council approved these appointments.

COMPENSATION COMMITTEE:

Robert Bamberger, A. Temple Carter, Kathy Melvin, Arthur Ricker, William C. Wagner II

Ms. Schrader noted that one member of this committee must be a member of the committee that has primary oversight of the Town budget. Mr. Ricker is on the Finance Committee so that fills the requirement.

Council approved these appointments unanimously.

CULTURAL/PARKS/ADA:

Mayor Stombaugh said we have eight people on this committee. They are working on some very important things. She asked that all eight be approved.

Bonnie Lawrence Chairperson, Bernard Brown, Michael (Terry Berl), Laura Czetli (Collins), Billy Davis, Charles Harris, Ashley Vodvarka, Joseph Wilson

Council members Brown, Chervenak, Mullen, Thornton, White and Mayor Stombaugh voted yes. Councilman Pressley voted no. These appointments were approved by Council.

ETHICS COMMISSION:

Nancy Charron, Charles (Skip) Rebar, Lisa Ashe, Christopher Mann, Vicenta Marquez).

Councilman Mullen asked how these appointments are designated.

Councilman Thornton said when they were originally appointed by Council, it was for five year staggered terms. Council decided that the Commission members could decide their terms.

Council members Brown, Chervenak, Mullen, Thornton, White and Mayor Stombaugh voted yes. Councilman Pressley voted no. These appointments were approved by Council.

FINANCE COMMITTEE:

Gene A. Mullen Chairman, Regina Brown, Lillian Ripa, Arthur Ricker, Lawrence Thornton, Valerie White

Mayor Stombaugh said sorry, there is a correction on there. It should be Len Ripa, not Lillian Ripa.

Councilman Mullen noted that, on these committees with an even number of members, you have the possibility of having a tie vote.

Mayor Stombaugh said since she was kicked off two committees already, she will go back on Finance. It was pointed out that this leaves six members on the committee.

Councilman Chervenak said that a tie vote doesn't matter. All decisions come from this Council anyway.

Councilman Brown asked if this vote includes Mayor Stombaugh on the committee. She replied yes.

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

Mayor Stombaugh asked what we do now. Mr. Hugg said you can make amendments to the committee list and try again.

Mayor Stombaugh said to take her name off the list. Councilman Pressley said you still have six members.

Councilman Mullen asked also to remove Len Rippa. Mayor Stombaugh said okay, take off her and take off Lenny Rippa.

Councilman Pressley asked if we are voting on the committee without the Mayor and without Mr. Rippa (Gene A. Mullen Chairman, Lawrence Thornton, Valerie White, Arthur Ricker, Regina Brown) Mayor Stombaugh said yes.

Motion carried unanimously.

LONG RANGE LIBRARY PLANNING COMMITTEE:

Robert P. Bamberger, Chairman, A. Douglas Chervenak, Ann Henning, Jen Merrell, John Phillos, Mary Ann Varanko.

These appointments were approved unanimously.

Councilman Chervenak made a motion to approve the nominees for the following committees as stated:

LONG RANGE PLANNING: A. Douglas Chervenak Chairman, Ann Henning, Michael McGrath, Robert Merrill, Donald Neizer, Deborah Wicks or her designee

PERSONNEL: William D. Pressley Sr. Chairman, Kathy Melvin, Charles (Skip) Rebar, Lawrence Thornton, Valerie M. White

PLANNING & ZONING COMMISSION: Donald Neizer Chairman, Keith Faulkner, Tina Smith, Joseph Gaynor, Temple Carter.

POLICE STATION REVIEW COMMITTEE: Lawrence O. Thornton Jr. Chairman, Keith Faulkner, Charles Hall, Gene A. Mullen, James Viet.

PUBLIC SAFETY COMMITTEE: Patricia Stombaugh Chairman, Bernard Brown, Lawrence O. Thornton Jr., William Raynor, Fire Company member.

TREE COMMISSION: Valerie M. White Chairman, Paul Kaercher, Larry Lowman, Dawn Morris.

UTILITY COMMITTEE: Gene A. Mullen Chairman, Bernard Brown, Jim Faulkner Jr., Conrad Hebert, Robert Carson.

Motion was seconded by Councilman Brown and carried unanimously.

Councilman Mullen said that Councilman Brown is an active police officer in the next town. He noted that you have appointed him to the Public Safety Committee. He cautioned Councilman Brown that this could have an effect on his position on Council and in the Clayton Police Department. Councilman Brown said an attorney advised him that there is no implication.

- AD HOC - NEW CASTLE COUNTY RESIDENT COMMITTEE
- AD HOC - KENT COUNTY RESIDENT COMMITTEE
- AD HOC - JUNIOR COUNCIL COMMITTEE
- AD HOC - SECRETARIAL COMMITTEE

Councilman Chervenak made a motion to vote on these in a block. Motion was seconded by Councilman Brown.

Mayor Stombaugh withdrew her nominations for these four committees.

Councilman Chervenak withdrew his motion, Councilman Brown withdrew his second.

No action was taken on these appointments.

BOARD OF ADJUSTMENT:

Donald Neizer Chairman, Robert P. Newnam (replaces A. Temple Carter whose term expired), Rodney Slaughter, Joseph Gaynor, Tina Smith.

These appointments were approved unanimously.

PLANNING & ZONING COMMISSION:

Donald Neizer Chairman, Keith Faulkner (replaces Rodney Slaughter whose term expired), Tina Smith, Joseph Gaynor, A. Temple Carter.

These appointments were approved unanimously.

GRANT AWARDS

Mr. Hugg said that the grant award recommendations were in the Finance Committee minutes of May 8.

Councilman Brown made a motion to award the 2007 grants as recommended in the Finance Committee minutes of May 8, 2007. Motion was seconded by Councilman Thornton.

Mayor Stombaugh noted that we received \$170,000 requested for grants. It was impossible to grant all of them. The committee did an excellent job on their recommendations.

Councilman Mullen said that some organizations were not clear on electric rates they are getting. We are going to look at some and find out the rate they are paying to see if it should be lowered.

Councilman Chervenak asked if we, as a council, decide where our taxpayer's money is going. The taxpayers don't have a role in deciding where the money goes. He said if we didn't have the grant program t all and wished every organization well, then we wouldn't have to deal with the issues of why we give to this or another.

Councilman Pressley said we have to give back to the community.

Councilman Mullen said there is a lot of history in these grants. We requested that everyone who came in submitted something on how they were functioning, their finances, their impact on the town.

Councilman Chervenak said maybe it would be better for us to hire a full time parks and recreation person instead of paying out grants. Then, we have accountability, we know where the money is going. This person could represent the taxpaying citizens of the Town. Not everyone has children participating in Little League or Pop Warner.

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

REFER TO PLANNING & ZONING-AMENDMENT TO ZONING ORDINANCE
ORD. NO. 007-07 REF. HOME OCCUPATIONS

Mr. Hugg said this is another part in the continuing review and rewriting of the Zoning and Subdivision Ordinances.

Councilman Chervenak made a motion to refer Ord. No. 007-07 ref. Home Occupations to the Planning & Zoning Commission. Motion was seconded by Councilman Mullen.

Councilman Brown said as it is, he can't in good faith sent this the way it is written. Two family members can't have their own family business.

Councilman Chervenak noted that this is a draft. We are sending it to Planning & Zoning for their review and comments.

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

RECOMMENDATION OF ELECTION BOARD REF. VOTER FRAUD

Councilman Chervenak said he is bringing this up because of statements made by the Chairman of the Election Commission. He added that he is recommending that Council look into certain circumstances of the last election because voter fraud was probably committed. Councilman Chervenak said he isn't making any judgment, it isn't his point right now. He said we have recommended other things at other times to the Attorney General and this is a very important matter that needs to be looked at.

Councilman Chervenak made a motion to send this to the Attorney General's office for investigation with our recommendation that the Attorney General look into this matter. Motion was seconded by Councilman Mullen.

Councilwoman White said she agrees with Mrs. Miller. She was there when the four of them got up and said what was said. But, she said, do we really want to go through with this? This Council is who we are now, not who we were before. Things are going to happen. Do we want to drag Smyrna into something all over again? Councilman White said she doesn't think we do. We

are going to start all over again with the staff that happened before - Oh Look, It is Smyrna in the papers again!

Councilman Mullen asked if Councilwoman White condones someone running a stop sign. If it is the law, it is the law. If somebody broke the law, then they broke the law. They need to be investigated. Councilman Mullen said that, quite frankly, he doesn't know if a state law has been broken but, given his experience, he said he can tell you the Attorney General might not even accept it. Until we present it to him, we will never know. If our Board of Election feels that voter fraud occurred and they feel strongly enough about it, we need to investigate it. The only one to investigate it is the Attorney General's Office.

Councilman Thornton suggested that we not get hung up on "voter fraud". He read a definition of "perjury". He said if the elements of perjury are there, it is clear that the Attorney General's office is the appropriate office to look into it.

Mayor Stombaugh asked if this is the responsibility of the Board of Elections or Council.

Councilman Thornton pointed out that the Board of Elections has recommended to Council to take action to have this investigated. He added that it is up to Council to take a vote. If we decide we want this thing investigated through official channels, send it to the Attorney General's Office. They can say that they aren't going to go near it.

Councilman Brown asked if there are legal repercussions to Council if we send it to the Attorney General's Office and it is unfounded and these four individuals come back. Can they sue this Council for slander, defamation or character or negligence?

Ms. Schrader said anyone can sue anyone for anything.

Councilman Brown said so our names will go before there and we can be sued collectively for those possible damages civilly. Mrs. Schrader said a suit can be filed by anyone for anything.

Councilman Mullen said he believes that an investigation is just that. Nobody is being accused of anything. Until that investigation is completed, there isn't any liability.

Councilman Brown said it is one thing having a law enforcement agency to open a criminal investigation. He added

that he would feel more comfortable if the Police Department requested it because we, as a Council, referring this to the Attorney General's Office, there is a back door opened to civil repercussions against this Council.

Mayor Stombaugh said we are protected as a Council.

Councilman Chervenak said this is not the first time we have referred something to the Attorney General. He added that all he is saying to you is that we have a history here that we have to make correct. We have to establish to the public that our voters have integrity. We are talking about whether the Town of Smyrna has an election and will continue to have an election with integrity.

Councilman Brown said if it is a criminal matter...

Councilman Chervenak said all we are doing is taking the recommendation of the Election Board and referring this on to the Attorney General. Guess What? The Attorney General may or may not find something. If they find nothing, what are we being sued for because they find nothing?

Councilman Brown said it is possible that these people will sue us.

Councilman Chervenak replied that it is possible that anyone can use anyone for anything, and you know that as well as I do. For us to back down from recommending this to the Attorney General because we feel and the Election Board feels that something went amiss here, some people commit perjury and we want to send a message to the voters because, you know what? Two years ago we had one of the most flawed elections I have ever seen in my life. This Town does not want to go through that again, EVER.

Councilman Brown said if there is "probably cause", the police department should be the agency that sends something.

Councilman Chervenak said in his first Council Meeting, we had a Mayor who clearly violated the Town ordinance without question. He said he asked the Town attorney what the penalty is for violating the ordinances of the Town. ZERO! He added that he asked the Police Chief the same question. Here is a man who violated our ordinances, the laws of this town. What will you do about it? NOTHING! Councilman Chervenak said he is

saying to you the only person who can do something about this without any political package is the Attorney General. Period.

Mayor Stombaugh said it is very sad that it has to come to this point. She added that what disturbs her is that someone would put themselves and their family and their friends in this position for one vote. What was exposed about the son most people would not even have known about if the parents hadn't put their child in that position. For one vote! She said this is a very, very sad situation.

Councilman Mullen said it isn't our place here to make any judgments on this. He strongly advised that the Council don't give any more opinions, that the vote is called and we either send this to the Attorney General or we don't.

Mr. Duane Young said the Election Board serves at the pleasure of Mayor and Council. We were elected by Mayor and Council. Our job was to see that an honest election was done properly. The lawyer's office still has the tapes from when we read the absentee ballots. Those would be the tapes that I recommend that Council along with the lawyer who was there with us review because these are the tapes that would be considered by the Attorney General's office. You are under oath to tell the truth, the whole truth, and nothing but the truth. The decision lies with Mayor and Council because they appointed us. We are bringing it to you for attention. The decision on what you should do from here lies with you completely. We have just done our job.

Mayor Stombaugh said she knows how hard you all worked and you worked in good faith. She added that she knows that most of the people on that board wouldn't bring it to us if they didn't feel that an injustice had been done.

Councilman Brown asked what is going to be your recommendation for the two people who identified themselves as the Mayor's challengers.

Mayor Stombaugh said let me correct something right now because one was my challenger and one wasn't.

Councilman Brown said when the tapes show that both of them identified themselves, then what?

Mr. Young said but they weren't.

Councilman Brown asked if the election board is going to recommend anything then.

Mr. Young said you have asked me a question. He asked Councilman Brown to please give him the opportunity to answer that question. Mr. Young said that all day long, we had four challengers on the floor of the election room, four challengers sitting at the table.

Councilman Brown said he recalls five at first. One had to be excused.

Mr. Young said that we had four. We had a fifth person that came in that wasn't supposed to be in there, Barbara Allsopp. Barbara went outside in the lobby on her cell phone which wasn't allowed and I had to put her out in the street because of that. Therefore, we only had four and four only the whole day long that were for anybody. We had two candidates running that did not have any. The four that were there were for different people.

Councilman Brown said if the transcript shows differently, then what? That is my question.

Mr. Young said nothing because...

Mayor Stombaugh said this doesn't have anything to do with the item on the agenda tonight. They all represented a different person that morning and they were recorded on the tape that morning for the people.

Councilman Brown said if he reviews those tapes and it is different, he is going to hold you (Mr. Young) accountable.

Mr. Young replied that he will be accountable. He added that his integrity at the age of 69 and his lifetime he has served the public and he has served his country well. He said he worked 21 years in the prison system as a Lieutenant. If you have a problem with me, he said that is okay.

Mayor Stombaugh said this is not what is on the agenda tonight. We need to address what is on the agenda. She said we need a motion.

Councilman Mullen said we have a motion.

Councilman Thornton said and a second.

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

Councilman Mullen said we need to decide whether we will have the attorney write it up and send it to the Attorney General or exactly who is going to do it.

Councilman Pressley said whoever brought it up should decide.

Mr. Hugg suggested that he and Erika discuss it with Mr. Barrows tomorrow to determine who the person should be. He said it may very well be Tom Barrows since he was there but, if not, he said he (Mr. Hugg) has acted on behalf of the Town to send things in the past so he can do it.

NEW BUSINESS

ARBOR DAY PROCLAMATION

Councilman Chervenak made a motion to accept the Arbor Day Proclamation. Motion was seconded by Councilman Mullen and carried unanimously.

**RESOLUTION TO ACCEPT GREEN BRANCH LANE FROM PROVIDENCE DRIVE
TO EXISTING CONTINUATION OF GREENS BRANCH LANE**

Councilman Chervenak made a motion to accept Greens Branch Lane from Providence Drive to Greens Branch Lane. Motion was seconded by Councilman Mullen.

Councilman Mullen asked if we have a geo-tech report on this street.

Mr. Hugg replied that we have the engineer's report and the Town staff's review, the as-builts, the bill of sale, deed and release of liens which is all we ask. We have not asked for a geo-tech report.

Councilman Mullen said about 100 feet of this roadway was undercut to thirty feet and back filled with snow, oil and dirt. He said he was there when this was done. It was Greenway Construction. Councilman Mullen said he saw them do it on several jobs that winter. The bottom line is we are not getting

the information we need. In five to ten years, the Town will have to spend \$100,000 repairing that street.

Councilman Pressley asked if the inspector does reports. Mr. Hugg replied that this street was built three years or so ago.

Councilman Pressley said he would like to see a report saying this was done. He said he doesn't want to say this contractor did something when he didn't. This town should be making reports. At least there is a paper trail somewhere.

Councilman Chervenak withdrew his motion and Councilman Mullen withdrew his second.

Councilman Pressley made a motion to table this item. Motion was seconded by Councilman Thornton and carried unanimously.

OTHER COUNCIL BUSINESS

Councilman Mullen noted that he recused himself from a vote on a subdivision at this Council some time ago. When a member of Council cannot act fairly and without prejudice, they must recuse themselves. He said a lot of people had a lot of questions and he took a lot of heat for it. He said that he could not make a fair and non-prejudiced decision. That is the reason he recused himself. Councilman Mullen said he hopes every member of this Council would do the same thing.

ADJOURNMENT

Councilman Chervenak made a motion to adjourn, seconded by Councilwoman White. Meeting adjourned at 10:20 p.m. by unanimous vote.

Council Secretary

ccm