

**MINUTES OF THE MEETING**  
**SMYRNA TOWN COUNCIL**

**JUNE 4, 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 A. 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. and Recording Secretary Carol C. McKinney.

Chief Baldwin led the Pledge of Allegiance and Mayor Stombaugh asked for a moment of silence including thoughts for Kenneth P. Brown.

Mr. Hugg reported that Mr. Jaywork called this afternoon asking to be excused from tonight's meeting so we will have no solicitor present.

**ADDITIONS/DELETIONS TO PUBLISHED AGENDA**

Councilman Mullen made a motion to approve the revised agenda as presented. Motion was seconded by Councilwoman White and carried unanimously.

**MINUTES OF PREVIOUS MEETING**

Councilman Pressley made a motion to accept the minutes of the May 7, 2007 meeting as presented. Motion was seconded by Councilman Pressley and carried unanimously.

**REPORTS**

**PRESIDING OFFICER:** Mayor Stombaugh had no report

**POLICE CHIEF:** Chief Baldwin said his written report was in packets.

He said he is pleased to announce that we have hired a police officer away from the City of Baltimore. Garr Owens felt that Smyrna is a better place to raise a family than Baltimore. He comes to us with two years experience.

Chief Baldwin also reported that the 5K run was held in Smyrna on May 30, 2007. It went well with few interruptions. Chief Baldwin thanked PAL and the Smyrna Downtown Renaissance Committee for their assistance.

Councilman Chervenak asked if DelDOT responded to the Chief's letter about Route 13 and Carter Road.

Chief Baldwin said he has heard nothing so far. He added that he had hoped that the letter from Council would help. Chief Baldwin said they have been very busy with the race weekend in Dover so maybe something will come from them soon. He added that he will make a call or two to see what is going on.

TOWN MANANGER: Mr. Hugg said his written report was in packets. He added that everyone also received a letter he sent to Representative Ennis regarding the improvements to the Route 13 corridor. We have been working on this for some time with him and we are making him aware that preliminary plans are done for part of that project.

Mr. Hugg commented briefly on the fire on the highway Sunday afternoon. He commended the Electric, Public Works and Police Departments for their assistance. Mr. Hugg said that all three crews were on site and did an outstanding job.

#### RECOGNITION OF VISITORS

Mayor Stombaugh announced that a group of men did an outstanding job of cleaning up the cemetery by the old ACME store. She presented certificates to Cary Lawrence, Russell Heath, Aaron Butcher, Willard Richardson and Phillip Harris for the nice job they did.

Visitors present included John O'Grady, James Harkins, Daryl Jester, Gordon & Helen Miller, Marian Bower, Duane R. Young, Charles & Betty Hall, Seth Clevenger, Donald Neizer, Dee and Chris Watson, Regina Brown, James E. Veit, Timothy Pendracky, William Wilson, Wilbert Bordley, Ron Marcum, Cary Lawrence, Joseph Sheridan.

Mayor Stombaugh noted that this is the time for any citizen to address the Council. She asked that anyone wishing to speak give their name and address for the record.

Charles Hall of 900 Appleberry Drive said he lives in BonAyre which is a retirement community. He said that many of

the residents there go south for the winter and asked if there is any way they can have the trash fee removed from their bill during the time they are there.

Mr. Hugg replied that the policy has always been that trash collection charges continue whether you are at your residence or not. He added that it is the same as your water and electric will. This is an action that Council considered a number of years ago. We don't discontinue billing for service in these situations because it is difficult to track.

Mr. Hall said that people who come to pre-pay their utility bill would have to pay a trash fee while they are gone. Mr. Hugg said that is correct.

Cheryl Baker of 120 N. Union Street asked if there is anything that can be done about the tenant in Marcia Ross's property at 126 N. Union Street. She said there are ongoing problems with the tenants at that address.

After discussion, Chief Baldwin said there is a disorderly house ordinance which may govern some of the issues discussed here.

Ron Marcum of 1401 Brenford Road said that, as a landlord, there are certain things you can and can't do.

Mayor Stombaugh asked Mr. Hugg to talk to Mr. Jaywork about this.

Mr. Hugg noted that the Code Enforcement Officer has been to that address. He added that the provisions of the disorderly house ordinance are in the area of the Police Department's responsibilities.

Councilman Thornton said this is a quality of life issue. We need to see what we can do to strengthen the ordinance.

**OLD BUSINESS**

**ORD. NO. 003-07, APPENDIX A ZONING ORDINANCE REF. SIGNS**

**ORD. NO. 004-07, APPENDIX A. ZONING ORDINANCE REF.**

**HOTEL/CONFERENCE CENTER**

**ORD. NO.005-07, APPENDIX B. SUBDIVISION & LAND DEVELOPMENT**

**ORDINANCE REF. OPEN SPACES**

Mr. Hugg said these ordinances are back on the agenda from a previous meeting. A month or so ago, drafts were sent to Planning & Zoning and they recommended them to Council. Council held a public hearing. He noted that, at the last Council meeting, various members of Council had some questions so they were deferred.

Mr. Hugg said he was under the impression that he would be getting comments or questions from those members of Council but none were submitted so these are back on the agenda again. He noted that Councilman Pressley asked that the Sign Ordinance be reviewed by the Business Development Committee so we can be sure there are no questions there. These can be deferred until a subsequent meeting. We are still working under the old provisions until new ones are adopted.

Mr. Hugg noted that these drafts are part of a continuing package. These came from the ad hoc committee that is reviewing the Zoning and Subdivision ordinances. More will be provided as that group moves forward. He said these can simply be tabled until the next meeting and we can address them then.

Councilman Mullen said he spent a lot of time on the sign ordinance but he did not get his comments to Mr. Hugg. He said he just doesn't understand the ordinance. Councilman Mullen added that he doesn't have much problem with the hotel/conference center and he doesn't have a lot of problems with the open space ordinance.

Councilman Pressley said that he doesn't have problems with the open space one either. He said he does have issues with the other two and the Business Development Committee would like to review them.

Councilman Chervenak said if you read the sign ordinance, you have to refer back to the original ordinance to make sense of it. There is a lot of stuff in there. Councilman Chervenak said he doesn't understand how this compares to other towns. He added that this is needed because of the complexity of our town. This is why we are here discussing these things.

Mayor Stombaugh said that she tried to go through the old ordinance and find the designations and redesignations to find the differences. She said it does take a lot of time.

Councilman Pressley made a motion to table these three amendments. Motion was seconded by Councilman Brown and carried unanimously.

Councilman Mullen said if the sign and hotel/conference center ordinances are going to Business Development, where is the open space ordinance going?

Mr. Hugg said it wouldn't normally go to any specific committee but it can be reviewed by any committee.

Councilman Pressley said he will take all of them to Business Development.

Councilman Chervenak noted that they were developed by an ad hoc review committee. We could send these back to them.

Mr. Hugg noted that the review committee is made up of Sabina Watson from KCI, Town staff, representatives of Becker Morgan, Karins and Associates, Davis Bowen & Friedel and Erika Schrader of Hudson Jones. He added that this group has met every two weeks for six months or longer. It is a tremendous break for us to have these firms donate the time of their people to help us out here. What is coming before you is their best efforts. You have a combination of what other towns and counties work with and it is being developed by three major design firms who are dealing with ordinances and codes that are not always easy to interpret. Sending it back to them would be useless unless you propose major changes.

Councilman Mullen suggested that we all sit down as a Council and discuss them.

Mayor Stombaugh reminded Council that, at the last meeting, she suggested a workshop. If we have valid comments and suggestions, we need to work through them as a group. She added that no one should be expected to vote on something they don't understand. She said that, unless you all want to be here until 10:30 or 11:00 p.m. every Council meeting night, we need to work on these in workshop meetings.

Councilman Pressley asked that everyone e-mail their comments to Mr. Hugg.

Councilwoman White said she can't attend daytime committee meetings. Councilman Pressley said he will be her voice if she will e-mail her concerns to him.

Various dates were discussed for a workshop with June 27<sup>th</sup> at 6:00 p.m. being the one chosen. It was decided that the only thing on the agenda will be ordinance amendments. Mr. Hugg said he cannot be here but he will have someone from staff and Erika Schrader attend.

Councilman Mullen made a motion to schedule a workshop on June 27<sup>th</sup> at 6:00 p.m. to specifically discuss ordinance changes for Signs, Hotel/Conference Center, Open Spaces and Home Occupations. Motion was seconded by Councilwoman White.

Mr. Hugg asked Mr. Neizer if the one on Home Occupations will be discussed by Planning & Zoning by the 27<sup>th</sup>. Mr. Neizer said it will if it is in their packets for the 20<sup>th</sup>.

Councilman Chervenak asked if these are something we could discuss individually among ourselves with the presiding officer discussing the issues that may come up and not be in violation of FOIA. He said he feels there is a simpler way of taking care of these issues without having another meeting.

Councilman Mullen said you can share information but you cannot come to a consensus.

Mayor Stombaugh said we need to discuss this with Mr. Jaywork. We need to get legal advice on this.

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

#### **ALLEY BEHIND FRAZIER STREET**

Mr. Hugg said that this also was carried over from the last Council meeting. He said he believes we gave the individuals involved thirty days to see if they could come to a decision with the other property owner. He suggested that we table this until the next meeting.

Councilman Brown made a motion to table this until the next meeting. Motion was seconded by Councilman Mullen and carried unanimously.

**RESOLUTION TO ACCEPT GREENS BRANCH LANE**

Mr. Hugg said this was also on the agenda for the last meeting. It was deferred at the request of Councilman Mullen. Mr. Hugg said that he understands his concerns and his desire that we may need better inspections and geo-tech information to be sure we are getting adequately constructed streets.

Mr. Hugg said the issue here is that there is not much more we can do to document what we do or do not do. This street has been there three years without any problems. He added that he would like to get it accepted and get it over with.

Councilman Mullen said his concerns have not changed. He said he did receive a letter from the Public Works Department saying it meets all the requirements. There weren't any inspection reports with it so he said all he knows is what he observed when he was doing other inspections on the site. Councilman Mullen said it gives him cause for alarm that we are accepting these streets.

Councilman Mullen said he sees these things every single day. If you don't have someone on site and don't have the correct inspections, we are responsible as soon as we accept the streets and we don't know what we are getting.

Councilman Mullen added that some contractors know what they are doing and some don't. Quality of workmanship is better with some than with others. Councilman Mullen said he has reservations about the type of work that was done in this subdivision.

Councilman Chervenak asked Councilman Mullen is saying that we have minimum standards that are not being met by some contractors, that they are not following them? Councilman Mullen replied yes.

Councilman Chervenak asked if there is any way we can accept streets on a contingency basis say for five years. Councilman Mullen replied yes, but it requires an ordinance change.

Councilman Brown asked if you can put in the bidding process what materials they must use. Councilman Mullen replied that everyone has the same guidelines and the same requirements for fill dirt. There are requirements for pipe for sewer and water lines. It boils down to the quality of the people

installing those materials and what inspections are being done. If the inspector can't confirm that it was done right, he said that concerns him.

Councilman Pressley said that, at the time, we didn't have an inspector to go out and so we can't penalize the inspector. We need to make sure we have inspections and reports just like for a house. We need it in writing so that the Town can come back and say this is what we told you and you didn't do it. We have not done that in the past. We can't punish this guy because he got under the radar.

Councilman Chervenak said that, for the people who live on that street, what legal recourse do people have against him for doing a poor job? Councilman Pressley noted that we saw that on Kates Way. Now, we have inspection reports to verify this.

Councilman Chervenak asked if we can say we are not accepting this street for a reason it could be flawed. Mr. Hugg said there is a one-year maintenance bond once it is accepted. We will be into the fourth year by the time that expires.

Councilman Mullen said you can get compaction tests done with borings right down to the substrate but he added that he doesn't know the cost of that.

Councilman Chervenak asked if we don't accept the road this year, what happens then? He asked if we can keep on not accepting it until it collapses.

Councilman Pressley said yes. We need to make sure that the Public Works Department keeps written reports.

Mr. Hugg said there are things we can do to minimize the chance of these things happening. We have only one inspector. It is very easy for a developer, once the Town truck drives off his site, to put junk in the hole and cover it up. He added that we are much better at it that we used to be. We keep reports and photographs. Short of going out and doing some core samples or other action, all we can really do is rely on our Public Works Department and their staff to keep proper records and assure us that they are satisfied with the construction of the roadway. Mr. Hugg said he wouldn't have brought it to Council for acceptance unless Mr. Jester came to him and said it is ready. If it is flawed, it will be our responsibility.

Mr. Hugg said there are streets in Town that he wishes we had never accepted. We have to get better at this and he said he feels Staff recognizes that we need to be more watchful.

Councilman Mullen said he thinks the Town should immediately start requiring every job site, active or new, to have a geo-tech on site any time any compaction work is being done. He said he thinks you can do that even on site work where the plan is already approved.

Mr. Hugg said suggested that Council (1) go ahead with the acceptance of Greens Branch Lane; and (2) ask staff and Mr. Jaywork to review the ordinance and come up with an amendment to require a geo-tech.

Mayor Stombaugh asked if the builder has to pay for that. Mr. Hugg replied yes, those costs are billed back to the builder.

Councilman Pressley said it is very expensive. We need to be sure we are allowed to do that.

Councilman Mullen made a motion to explore the possibility of requiring a geo-tech on all construction sites. Any site that contains Town of Smyrna streets or streets that will, at some future time be accepted by the Town, will have a geo-tech. Motion was seconded by Councilman Chervenak.

Mayor Stombaugh asked if it will be sent to Terry Jaywork first. Mr. Hugg said we will have to develop an ordinance to require a geo-tech. He said Mr. Jaywork will have to come up with language for Council to review.

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

**RESOLUTION TO ACCEPT GREENS BRANCH LANE**

Councilman Chervenak made a motion to accept Greens Branch Lane from Providence Drive to the existing continuation of Greens branch Lane. Motion was seconded by Councilman Thornton.

Councilman Chervenak asked if this starts the one-year maintenance bond. Mr. Hugg replied yes.

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

Mayor Stombaugh asked if we have all of our critical positions filled now.

Mr. Hugg replied he doesn't believe so. There is a current vacancy in the Electric Department due to a resignation. We filled the accounting position, we hired a Manager of Buildings & Inspections. A carpenter position is open in Public Works. We need to bring the Plans Reviewer position to the Personnel Committee.

Councilman Chervenak asked why this came up at this point in the meeting. Mayor Stombaugh said we were talking about inspectors.

**CONFIRMATION OF DIRECTOR AND ALTERNATE DIRECTOR FOR DEMEC**

Councilman Chervenak made a motion to confirm the appointment of Mr. Hugg as director and Mr. Stulir as alternate director for DEMEC. They have done an excellent job so far as he knows and he said he endorses their continued appointment. Motion was seconded by Councilman Thornton.

Councilman Brown said he has reservations about DEMEC. It has been the practice of Smyrna and every other municipality to use their services. He said he has reservations about DEMEC and their intentions. Councilman Brown said he would feel more comfortable if DEMEC submitted a letter of intent. He added that, several meeting ago, one of their representatives put on a nice sales pitch and said DEMEC was against windmills. About two weeks ago, he said he heard on the radio that DEMEC is getting into the wind mill farm. Councilman Brown said he would like better communications if we do agree and he would like to see their plan of action. We need to ask them what they plan to do about the cost of electric in the Town of Smyrna. Councilman Brown said he made a commitment to do his best to bring down the cost of energy in this town.

Mayor Stombaugh said we have been looking at alternative means of electricity.

Councilman Brown cautioned Mayor Stombaugh to not ask him to do something because everyone else is doing it. He said he won't do that.

Mayor Stombaugh said these things take time. There is a lot of work going into it. We don't want to put it in writing until we have final information to give you.

Councilman Chervenak suggested that Councilman Brown just relax and sit back. He said he is a new person on Council. He doesn't know what has been going on for years. There is a learning curve that is very steep. Councilman Chervenak said our energy problem is Delaware's problem. We are looking at percentages of difference. It is still about transmission lines west of the Appalachians. We don't have the infrastructure to bring power into our lines east of the mountains. Everyone is suffering, not just Smyrna. We are trying to create a coalition of Towns. Volume purchasing usually results in lower rates than purchasing individually.

Councilman Chervenak said he understands and appreciates that DEMEC has a problem just like Philadelphia, New Jersey and others. He said that his understanding of DEMEC is that they are doing the best they can. Smyrna also has been like others who earn income from our electric rates. We are looking at ways to change that. As long as our Town is financed by our electric, we will have a problem with our rates.

Councilwoman White said she has been on Council for a year and she has learned a lot. She noted that Councilman Brown has a lot of good questions. He doesn't know so he is asking. She added that his concern is can we get updates on the discussions you say are going on. We want to be informed about many things that we still are not being informed about. Mr. Hugg put in packets information about what is going on. Maybe Mr. Brown can get more involved when it concerns that. He is trying to get information. He understands that they can't get the power here.

Mayor Stombaugh noted that the idea of windmill farms is not new. There are problems that have to be worked through. She said we talked about why Smyrna can't have its own windmill farm.

Councilman Brown said that man told him that we would not have a windmill farm and then two weeks ago the news said that DEMEC is buying into this windmill farm.

Councilman Mullen said he did not get that idea from Patrick McCullar's presentation at all. He said he took from it was that DEMEC was for windmill farms but the COOP and Delmarva

Power were going to fight it. Councilman Mullen said he thought Mr. McCullar was excited about it. The flip side of that is Smyrna does have high electric rates. We just got a comparison chart. Clayton is the highest of the DEMEC utilities group. Our rates are high because of the financial structure in the Town. We use utilities to finance this town. Councilman Mullen said he would be very curious to see what the property tax rate would be compared to the rest of these towns. He added that Smyrna has some of the lowest property tax rates in the whole state.

Mayor Stombaugh said if electric rates go down, taxes have to go up. What we are looking at now, if we bring businesses into the Town, businesses electric rates are high and we will have more revenue from businesses. That means that the property taxes will have to go up less to equal what the electric would cover. We have a town to run. The money has to come from somewhere. Nobody wants high electric rates.

Councilman Mullen said he is chairman of the Utility Committee and he has tried to learn all he can about the way the system works, not just our system. He added that the power grids in this country are the most confusing thing he has ever come across. Councilman Mullen said he did get a basic understanding of how it works.

Councilman Mullen said that DEMEC does a wonderful job for the group we have. If you knew what it was before they started, every town was paying a premium rate for every kilowatt they got. Then, DEMEC was formed and now they have fifty percent of our needs under contract for the next three years. We will only have to go on the open market for ten percent of our needs. We could not afford the time or the resources to do that on our own.

Councilman Brown said he wants to see something attached to this. Where are we going with DEMEC?

Councilman Chervenak replied that the organization is like Sam's Club. DEMEC is a shopper's organization that represents other towns and gets the best deal they can for energy on the open market. Unfortunately, our town elected to finance the town on top of the electric rates. Unless we change the tax rate and reduce our electric rates, the electric rates will remain high.

Councilman Pressley said we just want to know what is happening.

Mr. Hugg said we normally discuss these things in the DEMEC Meetings. They are held the third Wednesday of each month at 9:00 a.m. in the Conference Room downstairs. He said everyone is welcome and encouraged to come and observe.

Councilman Mullen said every member of Council should come and see how they work. They are very efficient and very good at what they do. He added that he would be more than happy to forward all the e-mails he has received over the last six to eight months to anyone who is interested.

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

**AMEND 2007 BUDGET**

- 1. \$4,000 FOR Library Air Conditioner**
- 2. \$2,500 for Repairs to Vehicle Lift at Public Works Shop**

Councilman Mullen said these items came up in the Finance Committee meeting. The Library air conditioner was an emergency because the old one gave up the ghost. The compressor was shot and everything needed to be replaced. He added that the vehicle lift at the Public Works shop needs repairs so the mechanic can continue to work on our vehicles and equipment.

Councilman Chervenak made a motion to accept the recommendation of the Finance Committee on the two amendments to the 2007 Budget. Motion was seconded by Councilman Thornton and carried unanimously.

**OTHER COUNCIL BUSINESS**

Councilman Mullen told Councilman Brown that he knows exactly what he is talking about. He said that when he came on Council last year he was so far out in the dark and he didn't know what he was going to do. For some ungodly reason, someone appointed him as chairman of the Finance and Utility Committees and as a member of other committees. He assured Councilman Brown that any member of this Council will do whatever they can to help if he will just ask them. He added that he doesn't always know the answers, but we can find out.

Mayor Stombaugh said we all have the right to agree to disagree.

Mayor Stombaugh reported that she has had questions from constituents about the issue with the Attorney General's office.

Mr. Hugg said that, at Council's direction, he sent a letter to the Attorney General's office and, to date, has not heard back from them.

Mayor Stombaugh said there was some confusion about who was going to write the letter. She added that Mr. Hugg said he would check with Tom Barrows.

Mr. Hugg said that, after talking to Mr. Barrows, he (Mr. Hugg) wrote a letter to the Attorney General asking him to conduct an investigation and he has not heard back from them.

Councilman Mullen said the Attorney General's office has received the case. It has been assigned to someone and he is looking into it.

**ADJOURNMENT**

Councilman Mullen made a motion to adjourn, seconded by Councilman Chervenak. Meeting adjourned at 9:00 p.m. by unanimous vote.

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Council Secretary

ccm