

SMYRNA TOWN COUNCIL
July 5, 2006

CALL TO ORDER

The meeting was called to order at 7:30 p.m. by Mayor Mark G. Schaeffer. Members of Council present were A. Douglas Chervenak, Gene A. Mullen, Memphis P. Evans, William D. Pressley Sr., Valerie M. White, and Patrick J. Cahill.

Also present were Town Manager David S. Hugg III, Chief Richard H. Baldwin, Attorney Erika Schrader, and Recording Secretary Valerie L. Heritage.

Chief Baldwin led the Pledge of Allegiance followed by a moment of silence.

ADDITIONS/DELETIONS TO PUBLISHED AGENDA

Councilman Chervenak made the motion to accept the agenda as presented. Motion was seconded by Councilman Evans and carried unanimously.

MINUTES FROM PREVIOUS MEETINGS

Councilman Chervenak made the motion to accept the minutes of the June 19, 2006 Council meeting. Motion was seconded by Councilman Mullen and carried unanimously.

REPORTS

A. Presiding Officer's Statement. Mayor Schaeffer did not have a report.

B. Town Attorney. Ms. Schrader did not have a report.

C. Police Chief. Chief Baldwin stated that in his report to Council was notification that one of the dispatchers resigned, and that Lieutenant Wilbert Bordley will be attending the F.B.I. National Academy from July 9, 2006 through September 15, 2006. Chief Baldwin said that he also has sent a letter to DelDOT, at the request of the Public Safety Committee, requesting they review traffic patterns at Route 13 and South Carter Road, and also consider lengthening the 'green time' for Commerce Street traffic at Route 13.

Chief Baldwin stated that in regards to last night's storm, the town was very fortunate to have members of Public Works begin working on the clean-up immediately. He said most of the damage was located in the Town of Clayton.

Mayor Schaeffer asked if the town would be offering pick-up of storm debris for the residents. Mr. Hugg stated that we started picking up storm debris this morning. He said we will pick-up tree limbs, and anything that was blown or knocked down during the storm. Mr. Hugg requested that residents bring the storm debris to the curb. He said that he also wanted to advise Council that two town Electric Crews assisted the Town of Clayton with getting their power back on. Mr. Hugg stated that the Electric Crews and the Public Works Crews did an outstanding job during and after the storm.

D. Town Manager. Mr. Hugg stated he asked Councilman Pressley to call a Personnel Committee meeting to discuss making Daryl Jester the Director of Public Works. He said Mr. Jester has been performing this job since December 2005 and has done an outstanding job. Mr. Hugg stated he had a meeting this afternoon with representatives from the Putnam Group, and Christiana Care Health Systems, and the contractor working on the project. He said they would like to have a workshop with Council on July 24, 2006 at 7:00 p.m. at the facility on South Main Street to tour the facility, and update Council about what is going on. Mr. Hugg stated they would also like to have an open house on August 1, 2006 which is National Night Out. Mr. Hugg also wanted to publicly thank Ron and Ellen Sayers for their donation to light up the fisherman on Lake Como.

E. Committees. Councilman Mullen stated the Finance Committee held a meeting on June 21, 2006. He said one of the items they discussed was capital project financing. Councilman Mullen said Mr. Stulir made a finance sheet that outlines some of the accounts as well as the percentage of the budget that has been spent to date. Councilman Mullen stated Mr. Stulir did an excellent job compiling this information.

Councilman Mullen stated there is a resolution for Council's consideration tonight that comes with the recommendation of the Finance Committee.

Councilman Mullen stated there will be a Finance Committee meeting in July 6, 2006 at 5:00 p.m. and the public is welcome to attend.

Councilman Chervenak stated there was a Long Range Planning Committee meeting on June 30, 2006. He said the main topic of discussion was the proposed moratorium on development in the Town of Smyrna. Councilman Chervenak stated the Long Range Planning Committee, after a very spirited discussion,

recommended not to approve the proposed moratorium. He said they recommended holding a well publicized workshop to discuss the Comprehensive Plan, and what is planned for the town's growth. Councilman Chervenak stated they also recommended the annexations that are on the books at this point in time.

Mayor Schaeffer asked if the Ethics Committee would still be meeting on July 17, 2006. Mr. Hugg stated that he received a request to reschedule that meeting to August 7, 2006 at 6:30 p.m.

Mayor Schaeffer stated the Public Safety Committee met on June 27, 2006. He said they discussed numerous issues including the request to rename streets in town, which was tabled. Mayor Schaeffer stated there was no action taken on the Police Department building, and that the Public Safety Committee felt they should concentrate on the Public Works building first. Mayor Schaeffer stated that HB371 passed recently which deals with protests at funerals of fallen soldiers. Councilman Chervenak stated that he would still urge the town to consult with the Town of Seaford as they have had to deal with this type of incident and are very wise, legally, about this type of incident. Chief Baldwin stated that they have received some intelligence information on this group. Councilman Mullen stated that we may have to address this subject sooner rather than later judging by the news they received this week. Mayor Schaeffer stated that the Chief feels they can handle this type of situation should it arise.

RECOGNITION OF VISITORS

Visitors present were Joan MacKnight, Dottie Nulty, Laurie Bronstein, Marjie & Dave George, James E. Veit Sr., Marian Bower, Debbie Wicks, Don Neizer, Helen & Gordon Miller, Arthur Ashe, Lisa Ashe, Jackie Batts, Larry Thornton, Cheryl Thornton, Dee Watson, Susan E. Daily, Seth Clevenger, Don George, John Frazee, Jim Wolfe, Kay George, J. O'Grady, Michael Terry Berl, Duane R. Young, Joe Wilson, Betty Hall, Charles Hall, Tom Wuerzer, Grace Ennis, Bill Bowser, Pat Stombaugh, Art Ricker, Lori Conlon, Robert & Teri Pohlmeier, Chris Mullen, and Rick Downes.

Joan MacKnight, 735 Radnor Lane, Smyrna came forward to speak. Ms. Mac Knight wanted to ask Council if they would take into consideration putting a segment in the meeting that when someone speaks during the recognition of visitors and make a request or ask for information, that perhaps it be addressed at the following meeting. She said at the

last meeting Joe Wilson mentioned there was a \$5,000.00 grant given to a local establishment for steps but nothing was given to the youth center. She said that when you are sitting in the audience and hear this, you think there are dirty politics going on.

David George, 36 Oak Drive, Smyrna came forward to speak. Mr. George stated he noticed that someone is trying to rezone a property on Brick Store Landing Road from industrial to residential. He said he thinks this area is ideal for industrial use. Mr. George stated he would think we would want industrial use rather than residential because of the greater income potential.

Joseph Wilson, 27 Harkins Drive, Smyrna came forward to speak. Mr. Wilson stated he would like Council to please, please consider offering promissory notes to low income families.

Robert Pohlmeier, 418 Woodpecker Drive, Smyrna came forward to speak. Mr. Pohlmeier stated he is requesting consideration for putting up a fence on his property. He said when he inquired about placing a fence on his property line he was told he had to take into consideration any easements on his property. Mr. Pohlmeier stated that the easement is on the front of his parcel, and there are none in the rear of his property. Councilman Mullen stated that he check the record plan for this property today. He said there is an easement in the front for water, sewer, and electric. Councilman Mullen stated there are no easements in the rear or side yards. Mr. Hugg suggested taking the customers phone number so we could research it, and also forwarding this to the Utility Committee for review. Councilman Mullen made the motion to forward this to the Utility Committee for review. Motion was seconded by Councilman Evans and carried unanimously.

Laurie Bronstein, 8 Bay Drive, Lewes came forward to speak. Ms. Bronstein stated she is a realtor and also a partner in SBL LLC. She said on May 4, 2005 they requested annexation into the Town of Smyrna. Ms. Bronstein stated they received notification that the annexation was on hold, pending certification of the new Comprehensive Plan which did occur three months ago. She said they are still awaiting annexation of 1181 Duck Creek Road. Councilman Chervenak stated that the Long Range Planning Committee recommended that all annexations that are in the pipeline should be moved upon posthaste.

Rick Downes, representing the Smyrna Clayton Boys & Girls Club, 240 East Commerce Street came forward to speak. Mr. Downes stated he would like Council to strongly consider amending the budget, at the recommendation of the Finance Committee, which contains a \$10,000.00 grant for the Smyrna Clayton Boys & Girls Club. Mr. Downes stated that this is an excellent program for the children of the Smyrna-Clayton area. Mayor Schaeffer stated that he would like to thank all of the members of the Board for the Smyrna-Clayton Boys & Girls Club for the tremendous work they do for our youth. Mr. Downes also introduced Tamika Heath who is the Student of the Year. Mr. Downes also stated that this grant money would be matched.

Charles Hall, 900 Appleberry Drive, Smyrna came forward to speak. Mr. Hall stated he and his wife are strong supporters of having the Smyrna Police Department located on South Carter Road as has been discussed. He said they would like the town to reconsider and build the Police Department on South Carter Road. Mr. Hall stated he is concerned with monies the town has already put out for this project.

OLD BUSINESS

A. THIRD READING: Ord. No. 014-06, Chapter 70, Utilities ref. Procedure for Payment of Utility Bills after Two Returned Checks. Councilman Cahill made the motion to consider this the third and final reading of Ord. No. 014-06, Chapter 70, Utilities ref. Procedure for Payment of Utility Bills after Two Returned Checks. Motion was seconded by Councilman Evans and carried unanimously.

B. Resolution to Increase Bond Anticipation Note. Mr. Hugg explained that at the last Council meeting, Council authorized him to work with PNC Bank and Hal Sammons to draft this resolution. Mr. Hugg briefly reviewed the history behind this resolution. Councilman Mullen stated that this resolution has the recommendation of the Finance Committee. Councilman Cahill made the motion to approve the resolution to increase the bond anticipation note. Motion was seconded by Councilman Chervenak and carried unanimously.

C. Resignation of Town Attorney (tabled on 6/19/06). Councilwoman White made the motion to remove this item from the table. Motion was seconded by Councilman Pressley. Motion failed with Councilwoman White, Councilman Pressley and Mayor Schaeffer voting for, and Councilmen Cahill, Mullen, Evans, and Chervenak voting against. Mr. Hugg

asked for clarification that this would remain tabled until the next meeting. Mayor Schaeffer stated that is correct. Councilman Chervenak asked if any unfinished business which is not formally voted on is automatically tabled. Mayor Schaeffer stated that is not correct. He said there was a motion at the last meeting to specifically table this issue. Councilman Chervenak asked for clarification that if an item that is already tabled, and is not voted up or down will remain tabled. Mayor Schaeffer stated that is correct.

D. Conduct of Investigation into Release of Jaywork Letter.

Mr. Hugg stated that he would like Ms. Schrader to address this. Ms. Schrader stated that at the last meeting there was a motion to conduct an investigation into the release of the letter from Mr. Jaywork; however there was no direction as to how this was to proceed. She said the town could hire an independent counsel to conduct the investigation, or Council could appoint a citizen or committee to conduct the investigation. Councilman Mullen stated that he feels Council should appoint someone autonomous to Council. Councilman Cahill made the motion for Council to officially censure Mayor Schaeffer for having divulged private and confidential information that was the subject of an Executive Session. Motion was seconded by Councilman Chervenak. Councilman Mullen stated that rules are made to be followed and this should be taken very seriously. He said that when a member of Council does not follow the rules then that person does not need to be here. Councilman Chervenak stated that the letter was also very important to Mr. Jaywork. Councilman Cahill withdrew his motion. Councilman Cahill made the motion to conduct an investigation into the release of Mr. Jaywork's letter. Motion was seconded by Councilman Chervenak.

Mr. Hugg stated that we need direction as to how to proceed. Councilman Mullen made the motion to appoint Larry Thornton to conduct the investigation into the release of Mr. Jaywork's letter, if Mr. Thornton is willing. Motion was seconded by Councilwoman White. Mr. Thornton agreed to conduct the investigation. Motion carried unanimously.

E. Retraction of Resignation from Business Development Committee - William C. Wagner II. Councilman Cahill made the motion to reappoint Mr. Wagner to the Business Development Committee. Motion was seconded by Councilman Evans and carried unanimously.

NEW BUSINESS

A. FIRST READING: Ord. No. 015-06, Chapter 70, Water and Sewer Service, Art. II, Water & Water Meters, ref. Reinspection Fees. Mr. Hugg explained that he would like Council to waive the three reading rule and consider this tonight. He stated we are having a chronic problem with customers calling for inspections of water meters and find that they have not been properly installed. Mr. Hugg stated we charge a reinspection fee for building permits, footers, etc.. and he would like to add this section to cover water meter reinspections. Councilman Cahill made the motion to suspend the three reading rule for this ordinance amendment. Motion was seconded by Councilman Chervenak and carried unanimously. Councilman Mullen made the motion to accept Ord. No. 015-06, Chapter 70, Water and Sewer Service, Art. II, Water & Water Meters, ref. Reinspection Fees. Motion was seconded by Councilman Evans and carried unanimously.

B. Recommendation of Finance Committee (6/21/06). 1.) Amend 2006 Budget. Councilman Mullen stated that at the June 21, 2006 Finance Committee meeting, the committee made recommendations on approving some grants. Mr. Hugg read the list of items approved. Councilman Pressley made the motion to approve the recommendation of the Finance Committee to amend the 2006 budget. Motion was seconded by Councilman Evans. Motion passed with Councilwoman White, Councilmen Pressley, Chervenak, Mullen, and Evans voting for, and Councilman Cahill voting against.

C. Refer to Planning & Zoning Commission: Ord. No. 016-06, Appendix A, Subdivision and Land Development Ordinance ref. Extension to Begin Construction After Final Subdivision Approval. Mr. Hugg stated that he would like to have this referred to the Planning & Zoning Commission for consideration. Councilman Chervenak made the motion to refer Ord. No. 016-06, Appendix A, Subdivision and Land Development Ordinance ref. Extension to Begin Construction After Final Subdivision Approval to the Planning & Zoning Commission. Motion was seconded by Councilman Cahill and carried unanimously.

D. Appointment to Cultural/Parks/ADA Committee. Mayor Schaeffer stated he would like to appoint Joe Wilson and Al Kraph to the Parks and Rec. Committee. Councilman Evans made the motion to approve Mayor Schaeffer's recommendation. Motion was seconded by Councilman Pressley and carried unanimously.

E. Discussion ref. Promissory Notes and Reconnection Fees.

Mayor Schaeffer stated that he asked to have this added to the agenda. He said it is an administrative decision to allow citizens to have an opportunity to receive a promissory note if they do not have the funds to pay their monthly bill. Mr. Hugg explained the payment plan is based on what the customer can pay, as long as it is paid in full within 90 days. Mayor Schaeffer asked if customers are permitted to do this one time in a calendar year. Mr. Hugg stated that customers are permitted to enter into a promissory note once every nine months. Mayor Schaeffer asked if Mr. Hugg was recommending allowing customers to enter into a promissory note twice in a nine month period. Mr. Hugg stated that the town is a business and we expect to be paid the same as any other utility company. Mr. Hugg said that he does not have a problem with promissory notes if the customer makes an effort to deal with their bill. Mayor Schaeffer stated he is hoping Council will refer this to the Utility Committee for review. Councilman Mullen stated that everyone needs a hand every now and then. He said he agrees with promissory notes, but does not agree with issuing one every month, month after month to people who are chronically late and always have a hard time paying their bills. Councilman Mullen stated that he did not have a problem with customers who need to use a promissory note once or twice a year. Mr. Hugg stated that he does not want to penalize customers just because they are having a rough time, but on the other hand we have a responsibility to all 4,100 of our customers. Councilman Cahill made the motion to refer this to the Utility Committee for review. Motion was seconded by Councilman Mullen and carried unanimously.

ADJOURNMENT

Councilman Evans made the motion to adjourn, seconded by Councilman Pressley. Meeting was adjourned at 9:20 p.m. by unanimous vote.

Council Secretary