

**SMYRNA TOWN COUNCIL**  
**August 7, 2006**

**COUNCIL WORKSHOP WITH ETHICS DRAFTING COMMITTEE REF.**  
**PROPOSED ETHICS CODE**

Councilman Chervenak made the motion that Councilman Cahill be the presiding officer for the workshop and the regular meeting. Motion was seconded by Councilman Mullen. Motion passed with Councilwoman White, Councilmen Chervenak, Cahill, and Mullen voting for, and Councilman Pressley voting against. The workshop was called to order at 6:30 p.m. by Vice Mayor Patrick J. Cahill.

Roger Kelsey, Chairman of the Ethics Drafting Committee came forward to speak. Mr. Kelsey stated that they began by looking at various codes from other municipalities throughout the State. He said they looked at the codes from Wilmington, Newark, South Bethany, Millsboro, and Dover. Mr. Kelsey stated that they had unanimous votes from all of the committee members on everything they discussed. He said they all wanted the Ethics Commission that would be formed to have the power to take disciplinary action; however the Town of Smyrna's Charter prevents this.

Mr. Kelsey stated that there are four housekeeping changes that they would like to make to the Ethics Code before Council tonight. He said the first change is on page 3, the bracketed phrase 'where does the Town Manager fall in this' needs to be removed. Mr. Kelsey said the second change is on page 6, D, second line, the word official needs to be changed to employee. He said the third one is on page 7, the code sections sited need to be changed from the City of Dover's code to the Town of Smyrna's code numbers: change 30-34D to 2-203D; change 30-35B to 2-204B; and change 30-73 to 2-207. Mr. Kelsey stated the fourth change is on page 12, in the third paragraph, the bracketed phrase 'the town solicitor cannot both advise the deciding body and prosecute the complaints, see section 207A' needs to be removed.

Councilman Chervenak stated that he did not like the wording of section 2A on page 11 where it says 'the Ethics Commission shall consist of five members appointed by the Mayor'. He said he would like that section changed to read 'appointed by the Town Council'.

Councilman Mullen stated that he would like to thank the members of the Ethics Drafting Committee for doing an excellent job. He said he would like the Ethics Commission for the Town of Smyrna to have more 'teeth' and have more power. Councilman Mullen stated that once this is approved by the State, the Council should come back and change the Charter to allow this.

Councilman Chervenak stated that the Council should send each and every member of the Ethics Drafting Committee a grateful thank you note.

Councilman Cahill stated he felt the Ethics Drafting Committee did an outstanding job.

Councilman Chervenak made the motion to adjourn, seconded by Councilman Mullen. The workshop was adjourned at 7:05 p.m. by unanimous vote.

**CALL TO ORDER**

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

Also present were Town Manager David S. Hugg III, Captain Darold Webber, Town Solicitor John Terence Jaywork, Police Chief Richard H. Baldwin Jr., Ethics Drafting Committee members Roger Kelsey, Skip Rebar, and Larry Thornton, Attorney Erika Schrader, and Recording Secretary Valerie L. Heritage.

Councilman Cahill led the Pledge of Allegiance followed by a moment of silence. Councilman Cahill asked that we all remember Carl Jerome Ware who was killed in Iraq several weeks ago.

Councilman Cahill stated that Mayor Schaeffer would not be attending the meeting tonight and was excused.

**ADDITIONS/DELETIONS TO PUBLISHED AGENDA**

Councilman Chervenak asked to have item 8F moved to 9H on the agenda, and table item 9C. Mr. Hugg stated that the correct address for item 8C is 32 S. Clements Street. Councilman Chervenak made the motion to approve the agenda as amended. Motion was seconded by Councilman Mullen and carried unanimously.

**MINUTES FROM PREVIOUS MEETINGS**

Councilman Pressley made the motion to accept the minutes of the July 17, 2006 Council meeting. Motion was seconded by Councilman Evans and carried unanimously.

**REPORTS**

**A. Presiding Officer's Statement.** Mayor Schaeffer was not present, and Councilman Cahill did not have any statements to make.

**B. Town Attorney.** Mr. Jaywork stated he wanted to thank everyone on Council and the staff for all of the cards and flowers he received. He said he wanted to thank the Police Department for the plant that they had sent. Mr. Jaywork stated he also wanted to say thank you for all of the nice comments that came back to him about people keeping him in their thoughts and prayers.

**C. Police Chief.** Chief Baldwin stated they held their first Junior Police Academy which ended on July 25, 2006. He said they held the graduation ceremonies at the Municipal Park and there were nineteen cadets that graduated. Chief Baldwin stated National Night Out was celebrated on August 1, 2006. He said he thought the heat probably cut down on the attendance, and he appreciated Mr. Hugg keeping Town Hall open so people had a chance to use the restrooms and cool down a little.

**D. Town Manager.** Mr. Hugg stated he wanted to publicly thank Gary Stulir and his staff for all of the work they did compiling the information for the Personnel Committee, and the numerous filings that have been done. He said he also wanted to thank Council, staff, and our engineers in getting the substation completed. Mr. Hugg said on Tuesday

of last week the town peaked out at 22 megawatts of energy delivered through the substation. He said the old substation was rated at 18, was straining at 20, and we would have been in the dark had the new substation not been online.

**E. Committees.** Councilman Chervenak stated the Long Range Library Planning Committee held two meetings, one on July 7, 2006 and one on July 28, 2006. He said the first meeting focused primarily on the creation of a new library. Councilman Chervenak stated Mr. Hugg created a template as to what our library should be. Councilman Chervenak asked Mr. Hugg if he could recap the second meeting. Mr. Hugg stated they had invited a member of the State Library Department to meet with them. He said they reviewed some of their ideas. Mr. Hugg stated they discussed whether the library should be a regional library or remain a community library. He said the consensus was that if a new library were to be built in this area it should be a regional library. He said that they felt it should be built in Smyrna, with the assistance of Kent County and the State.

Councilman Mullen stated there was a Utility Committee meeting on July 20, 2006. He said they discussed the promissory notes and the reconnection charges. Councilman Mullen stated that after reviewing some of the payment programs that the town already has, they decided that no further action was needed. Councilman Mullen stated they were briefed on planning in the stages for the new Public Works/Electric building. Councilman Mullen said they also got an update from Mr. Hugg on DNREC's prohibition of the disposal of yard waste. Councilman Mullen stated they also discussed a landlord's responsibility for unpaid utility bills for rental properties. He said staff is drafting an ordinance for Council's consideration to basically make the landlord secondarily responsible for any unpaid utility bills.

Councilman Pressley stated there was a Personnel Committee meeting on July 31, 2006 and the recommendations from that meeting are in Council's packets tonight.

RECOGNITION OF VISITORS

Visitors present were Pat Stombaugh, Seth Clevenger, Dean Laumbach, Ann Laumbach, Dot McClain, Robert Cuncic, Suzanne Cuncic, John O'Grady, James E. Veit Sr., Leticia Pickett, Al Pickett, Keith Rudy, Don Grower, John Murphy, John Frazee, Gordon & Helen Miller, Ann Henning, Bill Evans, Jennifer Brook, James Hakins, Terri Watts, Cris Watson, Dee Watson, Laurie Bronstein, Howard Fortner, Charles Hall, Kay George, Jason Sapp, Julia Cahill, Larry Thornton, Chris Mullen, and Terry Berl.

Ann Laumbach, 963 Boxwood Drive, Smyrna came forward to speak. Ms. Laumbach stated that she has a petition that she would like to hand out to the members of Council. She said she also has pictures which she passed around to the members of Council. Ms. Laumbach stated this is concerning the residence at 965 Boxwood Drive. She said when they moved into the development they were told they had deed restrictions. Ms. Laumbach stated that a little over a year ago the resident at 965 Boxwood Drive put up a Quonset hut which does not match the neighborhood. She said since then he has done other projects where he has dug up his driveway and haphazardly patched it up. Ms. Laumbach stated he has also dug up his back yard and put in stone. She said it looks like there is a business located at that address instead of a residence. Ms. Laumbach stated she would like to ask Council to help them maintain some sort of integrity in their neighborhood. Councilman Pressley asked if they have called the town about this. She said the Code Enforcement Office has been there and told them that everything is to code. Mr. Hugg stated that Mr. Bucalo has been there numerous times. Mr. Hugg stated that one of the problems is that some of these issues are deed restrictions, and for whatever reason the Gardenside community never formed a homeowners association which would be the ones to enforce deed restrictions. Mr. Jaywork suggested that their group should consult with an attorney. Councilman Pressley asked Mr. Hugg to have Mr. Bucalo go to this address and enforce any code violations that may exist. Mr. Hugg stated he would.

Al and Leticia Pickett, 24 North Main Street, Smyrna came forward to speak. Mr. Pickett stated they wanted Council to be aware that they feel there is a conflict of interest with one of the members of Council. He said they have tried to negotiate a service agreement with Delaware House LLC. Mr. Pickett stated Mr. Yerger of Delaware House LLC has employed Councilman Pressley to do work at the Delaware House. Mr. Pickett stated that last Monday morning about 8:30 a.m. they tried to trespass on the Pickett's property with a big man-lift that would cause damage to their trees. Mr. Pickett stated that Councilman Pressley waived papers in front of Mrs. Pickett stating that he had permission from the town to proceed with the work. Mr. Pickett stated that Councilman Pressley insulted his family and friends, and Mr. Pickett was at work in New Jersey so he was not there to defend them. Mrs. Pickett stated she feels very embarrassed that we have a Council member that is so pushy. She said there were eight men against her on Monday morning. Councilman Pressley stated that he was not there Monday morning as a member of Council but as a contractor, and that he never touched Mrs. Pickett. Mrs. Pickett stated that Councilman Pressley was pushing and threatening to have her arrested. Councilman Pressley stated that he did tell Mrs. Pickett not to touch him, but that it did not have anything to do with him as a Council member. Councilman Pressley stated that Mr. Yerger has a letter from the town that gives him permission to work from the sidewalk to work on the side of Delaware House. Mr. Pickett stated Councilman Pressley was going to trespass without having that agreement of liability that he has had sitting out there for eight months, and that he wanted an apology from Councilman Pressley. Councilman Pressley stated that Mr. Pickett was not there and that he will not get an apology from him. Councilman Mullen stated that he did not think the letter from the town was intended to provide an area on the front of Delaware House to have access to the side wall. Mrs. Pickett stated that she believed that is correct; however the letter was folded up and waived at her with them saying that they have their job to do, get out of my way or I will have you arrested.

Charles Hall, 900 Appleberry Drive, Smyrna came forward to speak. Mr. Hall stated that with the visitors having the time to speak before any actions by Council on agenda items, specifically the Charter amendments on tonight's agenda, will they be voted on tonight? He thought that something like this should have citizen input as well. Councilman Cahill stated that a Charter amendment is a very long procedure and that nothing will be passed tonight. Mr. Hall said he urged Council to refer this to a committee for further discussion.

Laurie Bronstein, 8 Bay Drive, Lewes came forward to speak. Ms. Bronstein stated that item 8A; number 3, the address was incorrect. She said it should be 1811 Duck Creek Road.

Helen Miller, 45 West South Street, Smyrna came forward to speak. Ms. Miller stated that there is a problem with speeding on South Street. She said there is no controlling the problem as there are no police present. Ms. Miller stated that people are going between 40 and 50 miles per hour. She said it also has become a thoroughfare for all kinds of construction vehicles.

**OLD BUSINESS**

**A. Resolutions Proposing Annexation of Properties and setting date for Legislative Fact Finding Hearings (October 2, 2006 at 6:30 p.m.).**

1. James Catts, 1273 Duck Creek Road
2. KRM Development Corp., 1511 Paddock Road
3. SBCL Properties LLC, 1811 Duck Creek Road
4. Roland J. Karbaum, 5573 S. DuPont Parkway
5. Stover Builders, 5745 DuPont Highway
6. Lee & Fran Biddle, 5408 DuPont Parkway
7. Wildcat LLC, 5495 S. DuPont Highway
8. Rick Horsey, 5511 DuPont Parkway
9. Antje & Christian Yaiser, 5816 S. DuPont Parkway

Mr. Hugg explained that these properties have all requested annexation and are located north of Duck Creek. He said all of these properties are consistent with the Comprehensive Plan, and are all contiguous with current properties already in the town limits. Mr. Hugg stated that there are provisions in the resolutions which ultimately state that the town expressly does not and expressly declines and renounces any obligation to undertake the provision of any

municipal service... until basically we are ready to do so, or the developer is prepared to do it on their own. Mr. Hugg stated that if Council approves these annexations they are not putting a premature burden on the town.

Councilwoman White stated that she thought there was something that stated the town could not annex property in New Castle County until the year 2012. Mr. Hugg clarified that we cannot annex properties which are outside of the certified growth zone until 2012. He said we can annex properties now which are in the certified growth zone. Councilwoman White stated that she does not have a problem with annexations, but she believes it should be done in a timely fashion. She said the annexations should not be done all at once.

Councilman Chervenak stated that he agreed; however this has been discussed in the Long Range Planning Committee. He said he wondered what the legal ramifications would be if we were to put a stop to these proposed annexations.

Councilman Cahill stated that since these properties are not I the town limits, the town has absolutely nothing to say about how these properties look to people driving into our town. He said bringing them into town would help us with this type of thing.

Pat Stombaugh came forward to speak. Ms. Stombaugh stated that she personally would benefit from these annexations; however she feels the town needs to get the infrastructure in place first. She said we need to just slow down.

Councilman Chervenak made the motion to approve the Resolutions Proposing Annexation of Properties and setting date for Legislative Fact Finding Hearings (October 2, 2006 at 6:30 p.m.) for the following properties:

1. James Catts, 1273 Duck Creek Road
2. KRM Development Corp., 1511 Paddock Road
3. SBCL Properties LLC, 1811 Duck Creek Road
4. Roland J. Karbaum, 5573 S. DuPont Parkway
5. Stover Builders, 5745 DuPont Highway
6. Lee & Fran Biddle, 5408 DuPont Parkway
7. Wildcat LLC, 5495 S. DuPont Highway
8. Rick Horsey, 5511 DuPont Parkway
9. Antje & Christian Yaiser, 5816 S. DuPont Parkway

Motion was seconded by Councilman Pressley. Motion passed with Councilmen Cahill, Pressley, Evans, Mullen, and Chervenak voting for, and Councilwoman White voting against.

**B. Results of Workshop ref. Proposed Ethics Code.**

Councilman Chervenak stated that he would like to thank the Ethics Drafting Committee again for the work they have done. Councilman Chervenak made the motion to adopt the Code of Conduct and Ethics as proposed by the Ethics Drafting Committee with the following change: on page 11, item 2A, sentence number 2 to read 'the Ethics Commission shall consist of five members appointed and approved by the Mayor and Council'. Motion was seconded by Councilwoman White. Councilman Cahill stated that he was not comfortable voting on this tonight and would like another two weeks prior to voting. Motion passed with Councilwoman White, Councilmen Pressley, Evans, Mullen, and Chervenak voting for, and Councilman Cahill abstaining.

**C. Subdivision Application - Jason Sapp, 32 S. Clement Street.** Mr. Hugg stated that this is a major subdivision at the corner of Lexington Avenue and Clement Street. He said this has the recommendation of the Planning and Zoning Commission. Don Grower, McCrone Inc. came forward to speak. Mr. Grower stated that they are here tonight asking for the approval from Council to proceed with this subdivision, contingent upon the approval of the town engineer.

Councilman Mullen stated that this is exactly what he has been talking about. He said this area is made up of single family homes, and this is a half acre lot and we are going to squeeze four homes in there. Councilman Mullen stated that this will not do anything for this area.

Jason Sapp, 32 South Clement Street, Smyrna came forward to speak. Mr. Sapp stated that the same type of subdivision was approved right next to his lot.

Mr. Hugg stated that this Council approved R-3 zoning for this property which gives this property owner certain rights in terms of developing this property. He said Councilwoman White has talked a lot about the need for affordable housing or housing for moderate income people.

Mr. Hugg stated that much of the cost of a new house is tied up in the land improvements. He said he wanted to remind Council that the historic character of the Town of Smyrna is not 100 foot wide lots; it is 50 and 60 foot wide lots.

Councilman Chervenak made the motion to table this application. Motion was seconded by Councilman Mullen. Motion passed with Councilwoman White, Councilmen Cahill, Evans, Mullen, and Chervenak voting for, and Councilman Pressley voting against.

**D. Disbursement of Façade Improvement Matching Grant Funds.**

**1. 116 N. Main Street, Brown**

**2. 36 E. Commerce Street, Gilbert**

Mr. Hugg stated that these disbursements are for work that has been completed at these addresses. He said they are applications that were approved by Council on June 5, 2006. Mr. Hugg stated that these were the last on the list of Façade Improvement Matching Grants. Councilman Chervenak made the motion to approve the disbursement of the façade improvement matching grant funds for 116 North Main Street, Brown, and 36 East Commerce Street, Gilbert. Motion was seconded by Councilman Mullen. Motion passed with Councilwoman White, Councilmen Cahill, Evans, Mullen, and Chervenak voting for, and Councilman Pressley voting against.

Councilman Mullen stated that he would like Council to meet with the Historic District Review Board at their next meeting on August 24, 2006.

**E. FOIA Complaint - Retention of Outside Counsel.** Mr. Hugg stated that this matter was presented at the last Council meeting. He said he believes that Mr. Jaywork's firm is suited to present the facts to the Attorney General and that we should not seek outside counsel. Councilman Mullen stated that he had a problem with this. He said that Council has not been notified of anything they are in violation of. After further discussion, Mr. Hugg volunteered to write a response to the Attorney General. Councilman Mullen made the motion to have Mr. Hugg write a response to the FOIA complaint to Deputy Attorney General Tupman with any needed assistance he deems. Motion was seconded by Councilwoman White and carried unanimously.

**NEW BUSINESS**

**A. Municipal Election Bill.** Mr. Hugg stated that many of the provisions of the Town Charter are as strict as or stricter than the bill passed by the State. He stated he would like Council to authorize town staff and town solicitor to draft an ordinance adding the particular provisions to our current election requirements which then we could adopt in advance of the April election. Councilman Chervenak made the motion to table this until staff has had time to review this. Motion was seconded by Councilman Mullen and carried unanimously.

**B. Award Bid for 2006 Street Improvement Project.** Councilwoman White stated she visited all of these streets and that South Street is used more, and why would we not do South Street instead. Mr. Hugg stated that the difficulty of doing South Street is that there is a significant amount of water and sewer work that needs to be done in conjunction with the street. Councilman Chervenak made the motion to accept the award bid for 2006 street improvement project. Motion was seconded by Councilman Evans and carried unanimously.

**C. Appointment of Assessor.** Councilman Chervenak made the motion to table this item. Motion was seconded by Councilman Mullen and carried unanimously.

**D. Recommendation of Personnel Committee - Salary Comparability Study.** Mr. Hugg explained that when we did the 2006 budget, one of the issues that we were face with is that many of the town's positions were underpaid. He said as a result Council approved a salary pay scale adjustment for most of the town employees. Mr. Hugg stated that in doing so the resolution that passed committed the town to do a salary comparability study. He said staff has completed that study. Mr. Hugg stated that this has been done for two purposes, the first being that we are in the middle of negotiations with the Electric Department workers, and one of the provisions of the town's offer to their union was the adjustment of salaries to make them market comparable. He said they then proceeded to do a similar study with the balance of town employees, excluding uniformed police officers. Mr. Hugg stated that the Personnel Committee is recommending to: a) adopt a

comparability based salary scale and move towards full comparability; b) make any adjustments to salaries that as a result of that consideration retroactive to July 6, 2006; c) set the minimum level of compensation for a town employee at \$24,645.00; increase by 10% the compensation of employees whose difference between their current compensation and the market value is 10% or more; and increase the compensation of employees whose difference between current compensation and market value is less than 10%, by up to 5%. Mr. Hugg stated that this is a straight forward comparability. Councilwoman White made the motion to recommend the salaries as outlined by Mr. Hugg. Motion was seconded by Councilman Chervenak and carried unanimously. Councilman Pressley stated that he would like to thank Mr. Hugg and staff for all of their help.

**E. Charter Amendments.**

**1. Supervision/Reporting of Police Chief.** Councilman Evans made the motion to refer this to the Public Safety Committee. Motion was seconded by Councilman Pressley and carried unanimously.

**2. Recall Provision for Mayor & Council Members.** Councilman Chervenak made the motion to include this in any Charter changes that may occur with the Ethics Committee. Motion was seconded by Councilman Mullen and carried unanimously.

**F. Public Relations/Educational Campaign.** Councilman Mullen stated that he had this added to the agenda because he wants to keep the citizens of Smyrna informed. Councilman Mullen made the motion to adopt this campaign. Motion was seconded by Councilwoman White and carried unanimously.

**G. Dedication of Van Buren Court.** Mr. Hugg explained that this is the street in Mount Vernon Proper, and the developer has met all of the requirements. Councilman Chervenak made the motion to accept Van Buren Court. Motion was seconded by Councilwoman White and carried unanimously.

**H. Resignation of Town Attorney.** Councilman Chervenak made the motion to table this item until the first meeting in September. Motion was seconded by Councilman Mullen and carried unanimously.

OTHER COUNCIL BUSINESS

Councilman Evans asked that he and Councilman Mullen be authorized to speak with the trash company tomorrow morning at 10:00 a.m. All members of Council agreed to have Councilmen Evans and Mullen meet with the trash company.

Councilman Evans stated that there is a serious problem with homeless people in Smyrna. He said they are all along Lincoln Street and North Street. Councilman Evans stated that he has had complaints that residents are waking up in the middle of the night to find four or five people sleeping on their porch.

Councilman Evans stated that he also had a complaint about the delivery drivers from Pat's using town streets as a drag strip.

ADJOURNMENT

Councilman Evans made the motion to adjourn, seconded by Councilman Chervenak. Meeting was adjourned at 10:13 p.m. by unanimous vote.

---

Council Secretary

vlh