

**SMYRNA TOWN COUNCIL**  
**August 21, 2006**

**PUBLIC HEARING**

The public hearing was called to order at 7:00 p.m. by Mayor Mark G. Schaeffer. Mr. Hugg explained this hearing is to discuss an amendment to the Subdivision and Land Development Code which would allow an owner/developer to ask for a one year extension to begin construction of their development project after the final approval of their plan. Mr. Hugg stated an owner/developer would be required to submit a written request for the extension and show 'good cause' for the Town's granting of the extension. 'Good cause' is defined as causes or events largely beyond the owner/developer's reasonable control, as well as showing they have made substantial efforts in good faith to attempt to begin construction. Mr. Hugg stated owners/developers are finding it is increasingly difficult to obtain all of the necessary approvals and have everything in place in order to begin construction within one year as the Code now states. He said this is largely due to the fact of the larger size of many of these subdivisions and projects.

Mayor Schaeffer asked if there was anyone present to speak regarding this proposed amendment. No one came forward.

Councilman Mullen asked for a clarification of the definition of the term 'good cause'. Mr. Hugg stated that there is no specific definition of 'good cause', only the description shown in the ordinance amendment. He said it is really a judgment call by the Town Manager.

Councilwoman White asked who initiated this amendment. Mr. Hugg stated that it was initiated by his office when it was brought to his attention that an amendment was made to allow a request for an extension for site plans, but not subdivisions. He said a developer had let him know they had a couple of projects that had gotten delayed and asked if the town would consider amending the ordinance for subdivisions as well.

Councilman Mullen asked that Council be made aware of any extensions that would be granted.

Mayor Schaeffer asked if there were any more questions. There were none. Mayor Schaeffer closed the public hearing at 7:06 p.m.

**PUBLIC HEARING**

The public hearing was called to order at 7:15 p.m. by Mayor Mark G. Schaeffer. Mr. Hugg explained this is an application to rezone 1779 and 1797 South DuPont Boulevard from AC in Kent County to Highway Commercial in the Town of Smyrna. He said the property owner, Gayle Mae Warren, has made an application to annex these parcels into town. Mr. Hugg stated that the Highway Commercial zoning designation is consistent with other properties in the area.

Mayor Schaeffer asked if there was anyone present to speak regarding this application. No one came forward.

Mayor Schaeffer asked if there were any questions. Councilwoman White questioned why there are three addresses at this location, but only two are listed on the application. Bruce Preston, 305 West Chesapeake Avenue, Suite 306, Towson, MD came forward to speak. Mr. Preston stated that he was not aware of this. Mr. Hugg explained that there are two parcels involved in this application, and that there are three addresses for these two parcels.

Mayor Schaeffer asked if there were any questions. There were none.

Mayor Schaeffer closed the public hearing at 7:22 p.m.

**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, William D. Pressley Sr., Valerie M. White, and Patrick J. Cahill.

Also present were Town Manager David S. Hugg III, Attorney Thomas I. Barrows, Police Chief Richard H. Baldwin Jr., and Recording Secretary Valerie L. Heritage.

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

Mr. Hugg stated that Councilman Memphis P. Evans is on vacation and will not be here tonight.

**ADDITIONS/DELETIONS TO PUBLISHED AGENDA**

Mr. Hugg stated that item 8F was withdrawn by the applicant. He said this applicant is changing their request from a major subdivision to a minor subdivision. Mr. Hugg said items 8D and 8E were removed at the request of the applicant to allow them more time to gather additional information. Councilman Chervenak made the motion to approve the agenda as amended. Motion was seconded by Councilman Mullen and carried unanimously.

**MINUTES FROM PREVIOUS MEETINGS**

Mr. Hugg stated that the date at the top of the first page should be August 7, 2006, not July 17, 2006. Councilman Cahill made the motion to approve the minutes of August 7, 2006 as amended. Motion was seconded by Councilman Chervenak and carried unanimously.

**REPORTS**

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

**B. Town Attorney.** Mr. Barrows stated that he was here tonight in place of Mr. Jaywork and Ms. Schrader.

**C. Police Chief.** Chief Baldwin stated that the monthly statistics are included in Council's packets. He also said the Citizens' Auxiliary Patrol is now up and running. Chief Baldwin stated that they have filled the vacant police dispatcher position with one of their summer interns, Brandon Dunning.

**D. Town Manager.** Mr. Hugg stated we have begun to fill the Glenwood Water Tank this afternoon and this would be the reason for any discolored water for any of our residents. Mr. Hugg stated there is a different financial report attached to his report tonight for Council's review.

Councilman Chervenak stated he would like to thank Mr. Hugg for his excellent response to the FOIA complaint filed by Mr. Schaeffer.

Councilman Cahill stated he would like to compliment and thank staff for the new financial report.

Mayor Schaeffer stated that he has received three phone calls complimenting Mr. Hugg on his presentation for Gardenside.

**E. Committees.** Councilman Mullen stated that the Finance Committee met on August 15, 2006. He said they did not have a quorum but they did discuss several things such as Capital Projects, and impact fees. Councilman Mullen stated that the Utility Committee met on August 17, 2006. He said a representative of DEMEC attended the meeting and gave them an overview of the operation. Councilman Mullen recommended that other members of Council contact DEMEC to see the presentation. Councilman Mullen stated that they also discussed winter preparations, and that Mr. Jester is confident that he and his crews are ready. Mayor Schaeffer asked if they discussed promissory notes and cut-offs. Councilman Mullen stated that they had discussed those items at a previous meeting and they came to the agreement that the current promissory note system is sufficient.

Mr. Hugg stated the Long Range Library Planning Committee met on August 11, 2006. He said they discussed library needs in this area. Mr. Hugg stated the Library Committee has recommended to the Long Range Planning Committee that when and if Smyrna builds a new library it be a regional library, and not a community library. He said they also requested that the State include the initial funding for a Smyrna regional library in their 2008 preliminary planning.

Mayor Schaeffer stated that the Public Safety Committee will have a meeting on August 24, 2006 at 5:00 p.m.

Councilman Mullen asked Mr. Hugg to briefly speak about Senate Bill #19 and how it will impact Smyrna. Mr. Hugg stated this bill will allow a municipality to only charge the school district a wastewater fee, and the actual cost of building inspections plus ten percent.

RECOGNITION OF VISITORS

Visitors present were Joan MacKnight, Bruce Preston, Marian Bower, Seth Clevenger, Julia Cahill, John O'Grady, James E. Veit Sr., Cris Watson, Dee Watson, Charles & Betty Hall, Ann Henning, Helen & Gordon Miller, Charlotte Middleton, Larry Thornton, Timothy Pendracky, B. Joanne Brown, Andrea V. Hinson, Kay George, Don George, Grace Ennis, William Wilson, Taylor Thornley, Vicki Thornley, John Foltz, Joan Brown, Chris Mullen, Jim Wolfe, Jeff Thornley, Chris Thornley, and Darryl C. Bowen.

John O'Grady, 516 West South Street, Smyrna came forward to speak. Mr. O'Grady showed Council his mutilated mailbox. He stated that there has been a considerable amount of vandalism in the area of his house. Chief Baldwin stated that there has been a problem with spray painting of residences.

Jeff Thornley, 512 West South Street, Smyrna came forward to speak. Mr. Thornley stated that this is not the first time vandalism has occurred in this area. He said he has lived at his residence since 1998. Mr. Thornley stated that his cars have been 'paintballed', as well as having a 'fist sized' dent in his car. He said this has been a definite problem for 8½ years. Mr. Thornley stated there needs to be some sort of patrol.

Joan Brown, 13 Wheeler Circle, Smyrna came forward to speak. Ms. Brown stated that the police have been hanging out in the rear of her development, and maybe they should visit South Street. Ms. Brown also stated that she has extremely high electric bills. She said they are outrageous! Ms. Brown stated she usually had \$200.00 to \$300.00 bills, and the last one was \$600.00. She asked how this could happen. Mayor Schaeffer stated that Mr. Hugg will look into her problem.

Darryl Bowen, 458 Sequoia Drive, Smyrna came forward to speak. Mr. Bowen stated that he has been charged for 10,000 gallons of water usage each month. He said there is no way they could use that much. Mr. Bowen stated that he would like someone to thoroughly check out his meter.

Tim Pendracky, 337 West Glenwood Avenue, Smyrna came forward to speak. Mr. Pendracky stated he had a question about annexation and de-annexation. He said he had a copy of the Council minutes from March 17, 2003. Mr. Pendracky stated there was to be a compromise between the town and Kent County where the town was allowed to annex in property on the south side of Rabbit Chase Lane, and in return the town would de-annex the Blendt Farm. He said he would like the town to follow up on this.

#### OLD BUSINESS

**A. Set Zoning designation (Highway Commercial) for Warren, 1779 and 1797 S. duPont Highway.** Mr. Hugg stated that this had been discussed at the public hearing earlier this evening. Councilman Cahill made the motion to set the zoning designation of Highway Commercial for the Warren property at 1779 and 1797 South DuPont Highway. Motion was seconded by Councilman Pressley and carried unanimously.

Councilmen Cahill and Chervenak stated they voted for the rezoning because it is consistent with the Comprehensive Plan, and has the recommendation of Planning and Zoning, and staff.

Councilwoman White stated she voted for the rezoning because it was recommended by staff.

Councilman Pressley stated he voted for the rezoning because it is consistent with the Comprehensive Plan, and has the recommendation of Planning and Zoning.

Councilman Mullen stated he voted for the rezoning because it is consistent with the Comprehensive Plan, and was recommended by staff.

**B. Resolution Approving Annexation - Warren, 1779 and 1797 S. duPont Highway.** Councilman Cahill made the motion to approve the resolution approving the annexation for the Warren property at 1779 and 1797 South DuPont Highway. Motion was seconded by Councilman Pressley and carried unanimously.

**C. Results of Public Hearing ref. Subdivision Amendment - Ord. No. 016-06 ref. Sunsetting of Approved Plans.** Councilman Cahill made the motion to approve Ordinance Amendment No. 016-06 ref. sunsetting of approved plans. Motion was seconded by Councilman Chervenak and carried unanimously.

**G. Resignation of Town Attorney.** Mr. Hugg stated that this item is to remain tabled until the next Council meeting.

#### **NEW BUSINESS**

##### **A. FIRST READINGS:**

1. **Ord. No. 017-06, Chapter 70, Electric Rules & Regulations ref. Delaware Green Energy Program.** Mr. Hugg explained that this is the first reading of this amendment. He said this was discussed at the Utility Committee meeting, and this is their recommendation. Councilman Cahill made the motion to make this the first reading of Ord. No. 017-06, Chapter 70, Electric Rules & Regulations ref. Delaware Green Energy Program. Motion was seconded by Councilman Mullen and carried unanimously.
2. **Ord. No. 018-06, Chapter 32, Impact Fees ref. School Construction Impact Fees.** Mr. Hugg stated this was discussed at the Finance Committee meeting, and this is their recommendation. He explained that this fee is a straight 1.25% of the value of new construction, with a maximum allowable charge of \$3,750.00. Councilman Cahill made the motion to make this the first reading of Ord. No. 018-06, Chapter 32, Impact Fees ref. School Construction Impact Fees. Motion was seconded by Councilman Pressley and carried unanimously.
3. **Ord. No. 019-06, Chapter 2, Administration ref. Recall Provision for Council Members.** Councilman Chervenak explained that he proposed that Council and/or the Town have the ability to recall any and all members of Council. Councilwoman White stated that she had some concerns and would like to have a workshop to discuss this. Councilman Pressley agreed stating that we should have input from the citizens. Mayor Schaeffer

asked Mr. Hugg to have Mrs. McKinney poll the members of Council to set up a workshop as soon as possible. Councilman Cahill made the motion to table Ord. No. 019-06, Chapter 2, Administration ref. Recall Provision for Council Members. Motion was seconded by Councilman Mullen and carried unanimously.

**B. Resolution ref. Department of Agriculture Grants for Delaware State University at Blendt Farm.** Mr. Hugg explained that Delaware State University is in the process of developing a research facility and an equestrian program at the Blendt Farm. He said this would require water and sewer services to this property. Mr. Hugg stated that Delaware State University is ineligible to apply for any grants for these services and has asked the town, who is eligible to apply, to do this for them. Councilman Cahill made the motion to approve resolution ref. Department of Agriculture Grants for Delaware State University at the Blendt Farm. Motion was seconded by Councilman Chervenak and carried unanimously.

**C. Set Date for Show-Cause Hearing, 149 S. East Street.** Mr. Hugg asked that the date for this hearing be set for October 2, 2006. Councilman Pressley made the motion to set the date for the show-cause hearing, 149 South East Street for October 2, 2006. Motion was seconded by Councilman Chervenak and carried unanimously.

**D. Request for Annexation, 5543 duPont Parkway, Flores.** Mr. Hugg explained that this is the first step in the annexation process. He said that staff does approve of this request. Councilman Cahill made the motion to approve the request for annexation, 5543 DuPont Parkway for Flores. Motion was seconded by Councilman Pressley. Motion passed with Councilmen Cahill, Mullen, Chervenak, and Mullen voting for, and Councilwoman White voting against.

#### **OTHER COUNCIL BUSINESS**

Councilman Mullen wanted to remind everyone that the town is holding 'Canoe Day at Lake Como' on September 2, 2006 and invited everyone to attend.

ADJOURNMENT

Councilman Mullen made the motion to adjourn, seconded by Councilman Chervenak. Meeting was adjourned at 8:52 p.m. by unanimous vote.

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Council Secretary

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