

**COUNCIL MINUTES  
TOWN OF DAGSBORO  
BETHEL CENTER – 28311 CLAYTON STREET  
JANUARY 26, 2009**

Mayor Baker called the meeting to order at 7:00 p.m. on January 26, 2009. Those present were: Mayor Baker, Vice Mayor Adams, Councilwoman Flowers, Councilman Truitt; Attorney Witsil, Town's Attorney, Kyle Gulbranson, Town Planner, Gary Cox and Al Townsend representing the Dagsboro Fire Company representative and interested residents and guests listed on the sign in sheet. Councilman Hearn was absent due to illness.

**Public Hearing and Vote:**

**Public Hearing and Vote Ordinance to Amend Chapter 275, Sections 8, 13, 14, 15, 16, 17, 18 and 26:**

The Mayor announced that the first order of business was the Public Hearing and Vote on an ordinance to amend Chapter 275 Sections 275-8, 275-13, 275-14, 275-15, 275-16, 275-17, 275-18 and 275-26 to provide for additional regulations for the permitted and permitted accessory use of windmills or wind powered generators in the R-Residential, HR-High Density Residential, C-Commercial, HC-Commercial and LI-Light Industrial Districts. The ordinance appeared to be self explanatory on the surface; however, the more the Mayor examined it the more difficult it became, due to the fact that we get into matters concerning strobing, fall zones and effective height uses for the windmills. Mayor Baker asked if there was anyone present this evening to speak in favor of this ordinance....there was no response. He asked if there was anyone present who wished to speak in opposition to this ordinance...there was no response. Did anyone on the Council have any questions? Mayor Baker felt he was not ready to vote on it tonight due to the fact that he had several questions and would like to have a Public Workshop to get some input from the public before it is voted upon. Councilman Truitt said he had some questions on the roof mounted windmills....structural matters, etc. not too many questions concerning the tower mounted ones. Attorney Witsil stated that he had some suggestions in the draft Item #10 (Mr. Gulbranson has included in this draft 275 section 26 f) Items #3 through #9 and he would make reference to make those permitted uses being. Mayor Baker felt the workshop should be done prior, give Attorney Witsil a list, and let him rewrite it up to that point. Attorney Witsil had a question on subsection 7 and that is the process. Presently the ordinance states that prior to the review by the Town Council the Planning Commission shall review the proposal and determine whether the standards have been observed and comment. He suggested to just making reference to 275-40 instead of those two paragraphs. It would require a motion to continue the public hearing until the February meeting or the March meeting. Councilman Truitt made a motion to continue the public hearing until next month and set a workshop date in reference to the windmills for a

date sometime in February, seconded by Councilwoman Flower and unanimously approved.

**Ordinance to Amend Chapter 270, Section 270-F:**

The next item on the agenda is an ordinance to amend Chapter 270, Section 270-F to require that property owners must provide the purchase price of water meters and that the meters remain the property of the town. As the town's ordinance is written now....it says all meters shall be furnished and remain the property of the town. We would like to change it to say that the purchase price of the meters shall be paid by the property owners and shall remain the property of the town. Replacement meters shall be furnished by the Town. Property owners will buy the original meter and the Town will maintain and service it and replace it from that point forward. Is there anyone to speak in favor of this ordinance ...No comments...Is there anyone to speak in opposition to this ordinance...no comments. Attorney Witsil asked Mr. Gulbranson to provide some information for the record to support the rationale for the amendments. Mr. Gulbranson said that basically in the past the town has purchased the meters and kept them on hand, and the town has felt it would be more cost effective for meters to be purchased by the water user as opposed to the town having those costs. The town will be responsible for the replacement and maintenance. Mayor Baker clarified it as to anyone who comes into town and needs a certificate of occupancy has to have the meter in place and be connected to the town water. Kyle mentioned this would need to be done in order to get the certificate of occupancy. This is new construction. Are there any other questions from the Council. Does the public have any other questions? There being none, Mayor Baker asked for a motion to accept or reject this ordinance. Motion made by Vice Mayor Adams to accept this ordinance as stated above, seconded by Councilman Truitt, and unanimously approved.

**Presentation of Building Permits Issued:**

We had a tenant fit out for All Out Sports for December, the Woodlands of Pepper Creek for building #10, building permits issued for 12/1 to 12/22 we have a sign permit for Savannah Square Liquors, Tim Elders who purchased the property at the bottom of the hill for replacement of roof, siding and windows, and Richard Thomas had a fence permit.

**Planning and Zoning Report:** Mayor Baker asked Marj Eckerd, Chairman of the P & Z to give a report.

As far as Village on Pepper Creek, Mr. Mitchell did not show up at the P & Z meeting to review his sign permit application...we are continuing this at the February meeting if he shows up. Mrs. DeChurch came by and will be opening Blossom's Flower Shop on Route 26 (Vines Creek Road) and she did not need to come in front of us as everything has been approved for her to start her business. DelDot made one addition to her business and that was that she would close the

West entrance onto her property and just use the East entrance. She was agreeable to that request; therefore, she does not need to come back before P & Z.

The Highlands of Pepper Creek and Doug Warner of Element Design came before P & Z with an amended final site plan for the Highlands. The question before the Commission was to determine whether the change of their site plan was going to be a major or minor change. We voted unanimously that it would be a Major Change. I believe they are here in front of the Council to present the site plan.

Marj had another item on Personnel. She stated that her term had expired as of December, 2008. She stated that it is up to the Council as to whether she should continue. Mayor Baker asked if she would be willing to stay in the position which she is in now. She said she would agree to Chairmanship for a period of two more years to see these developments through. Vice Mayor Adams asked Marj and she agreed to serve as chairperson for another two years. Marj mentioned that the code stated that chairmanship should change every year just as the mayor's position does.

Mayor Baker asked Mrs. Eckerd....Your recommendation on the Highlands of Pepper's Creek was that it is a Major Change rather than a Minor. If you so deem it as a Major Change than they would have to come back in front of us with a whole new site plan.

We need someone to make a motion for Marj Eckerd to remain on the commission for the P & Z for the next four years (the amount set in the code book).

If you decide to resign at some point, that would be your option; however the term of office is for four years. Vice Mayor Adams made a motion that Mrs. Eckerd serve as on the P & Z Commission for the next four years. The Chairmanship should probably be decided at the next meeting, seconded by Councilwoman Flowers and unanimously approved.

Mayor Baker said that we have consideration of proposals for the Highlands of Pepper's Creek that the P & Z has deemed it a Major Change rather than a Minor Change. Would the Council like to hear Mr. Warner from Element Design speak at this time? Vice Mayor Adams said she had examined the site plan and it appears it is a Major Change, but if he would like to speak it is up to him.

Mr. Doug Warner from Element, representing the Highland's of Pepper's Creek was given the floor. He stated that it was his belief that if they were to pursue a revision to this plan we can do it through Council per your recommendations through P & Z and presented a revision to them in a conceptual manner and try to actually gather some comments from them and incorporate this into the plan which you have in front of you this evening (which is slightly revised from the plan that went to P & Z a couple of weeks ago). We tried to incorporate some of their comments to focus on this being a minor revision to the plan. In quick summary --- the plan on the left side of your package is the approved site plan and the plan on

the right side is a conceptual plan incorporating some of their comments. The highlights are that primarily kept the perimeter of the site relatively the same with the exception of a few buildings...noticeably the building at the entrance way. It was a concern for the planning commission and some of the council members. We are proposing that we eliminate any building in the front and would like to have discussion for reservation of that space for future community activity .... Whether it is open space or what have you, but to leave that space open without a specific designation now. The predominate change was to eliminate the underground storm water management system, which was previously located here (Mr. Warner pointed out on plan) which was a high maintenance item that was a big concern for the town. What we did in the process of trying to eliminate that was that we had to come up with a larger surface area of traditional ponds. In doing so, we eliminated some of the interior roadways and created a larger network of ponds here. One of the comments we received was to break that up and try to get some pathways through it and let it serve as an amenity as opposed to one big body of water. Conceptually, but we believe we can get this into two smaller ponds with amenities around those. The advantages to this plan and the reason we are proposing this revision is primarily for two reasons --- one is from a marketing standpoint....we have some real bad feedback on some of these initial 6 or 7 buildings that were in the first phase that really gave us concerns about more of a desolate look in the community as we started to develop it. We tried to get some of the more popular buildings that this developer had been seeing as opposed to this condominium building and people are not interested in this type of living at all. Secondly, the storm water management system is a huge cost saver, and it is a huge maintenance saver for the town in the future. We also tried to come in and reduce some of the basic infrastructure in the interior road network both from the roadway prospective and a utility prospective...sewer and water. There has been a reduction in the interior roadway which is a reduction of over 2,000 feet of roadway...it is a benefit to the developer, but also to the Town for future maintenance as well. That was our primary goal was to get rid of the high maintenance items ... keep some more of the more popular selling items so that the community can build out in a decent phasing or pattern going forward. As the market has decreased the last thing we want is to slow down the development with a bad selling product in here. We tried to maintain the perimeter roadway just as we had here....other things which Mr. Warner pointed out on the plan where the overall number of buildings proposed to decrease by 10 units on this site. Our request is to try to approach this as a minor revision to this plan. I believe this would be a judgment to come from this Council which would allow the developer to start to break ground. He is paying interest on the project. He has people interested in the project. We feel the minor revision is beneficial to both us and to the Town; to get this process started a little sooner than later. Mayor Baker thanked Mr. Warner. Marj Eckerd mentioned to the Council that the plan they are looking at now is not the plan P & Z had in front of them. P & Z said all the ideas given to Mr. Warner which the reason why we considered it a major plan, be implemented on this new site plan. He stated this was an information data gathering session with the P & Z to see what the Council would think was a minor plan. We tried to get this into the meeting as we felt the Council

was where the ruling actually came from. Mrs. Eckerd stated that their question is that is it a major change or a minor change from your original plan. Attorney Witsil said that is the question the P & Z was supposed to answer and the Council was supposed to answer as well. Attorney Witsil stated that the code is pretty specific this is from 275-40d amendments and additions to site plans. The procedure for amendment of the boundaries of an approved RPC or change the extent of land use for an approved conditional use or for amendments to a site plan are the same...if there are major changes (that is for your determination), it is the same process as the approval of the site plan to begin with. Your determination as to whether they are major or minor is determined by 7 factors, listed 275-40d. These factors should help you determine whether it is a major change which requires that the process to begin anew or a minor amendment that could be approved by you presumably this evening. Mayor Baker asked if there are any comments from the Council. Vice Mayor Adams asked Attorney Witsil to read #1 again. It does not alter a recorded plat. Kyle mentioned that this plat had not been recorded yet. Attorney Witsil felt the most important factors (whether or not you feel it has any appreciable affect on adjoining or surrounding property or does not change the general character or content of an approved development plan or use. Mr. Warner has already stated that it will not increase the number of dwellings or heights of buildings. It does not decrease the minimum specified yard and open space for minimum or maximum specified parking and loading spaces. You may want Mr. Culbertson's opinion as well. Kyle felt the one that could be discussed is if it changes the character or content of an approved development plan. Attorney Witsil added.... and the effect on the community. Councilman Truitt asked why underground storm management required in the first place. Kyle felt it was done at the request of the Sussex Conservation District. The water table on this site was considerably higher than initially thought. That was one option to deal with storm water on site and minimize where they would have open water in a storm water pond. Kyle said he felt that the Town thought that the underground storage area was very expensive, complicated and questioned what the impact would be on the future land owners once that was turned over to the homeowners ....what would the long term maintenance responsibilities and cost be for that facility. It was felt it would be costly to maintain or repair down the road. Doug would probably have to go back to the Sussex Conservation District. Councilwoman Flowers asked if it could go back to P & Z and have them review this plan. Mayor Baker said this is a major change. Now they have no approved plan, it has never been signed off on....they was going to get numbers with us on the storm water system. They are the ones that told us it would work. Our Council was skeptical of it and that is why we had requested an additional bond on it for one year after the installation to insure that it would work. I just know that what you had proposed and what you have is not the same development, in his opinion. Mr. William DeHaven, 28392 Clayton Street, said that as a resident of Clayton Street, he would prefer a clear airing in front of the public of these changes. The public has watched this development for a long time and been presented a conceptual understanding of how the project was to go forward....to me this seems to be a Major Change, and he is just one property owner. Councilman Truitt felt that the elimination of a storm water system

completely changed and elimination of other types of buildings represents a Major Change to him. Councilwoman Flowers said that they had heard from the public and considered it a Major Change. Vice Mayor Adams agreed with Councilwoman Flowers that it was a Major Change. Mayor Baker told Mr. Warner that he needed to bring this back before P & Z, if that is what you chose to do. Present your new plan and we will have public hearings on it and see if it can proceed. Mr. Warner said that as it is now this plan is ready to go. They need to put a couple of bonds up and they can start moving earth on it. That may be their decision and it may be the path of least resistance or they may find this is the better approach. Attorney Witsil said he would appreciate someone making a vote of this since it requires full site plan review. Councilman Truitt made a motion that this is considered a Major Change in the site plan review and must undergo review by the P & Z, seconded by Vice Mayor Adams....by voice vote Norwood Truitt voted aye, Cathy Flowers voted aye, Patti Adams voted aye, Mayor Baker voted aye. Councilman Hearn was not present to vote. The motion was passed unanimously. Gary Cox, representing the Fire Department asked if the decision you have made tonight, does not have any affect on the approved plan, correct? Attorney Witsil stated that was correct.

**Consideration of approval site plan for Blossom's Flower Shop on Vines Creek Road:**

Mayor Baker stated that they have followed all of the things in the code. Marj Eckerd, P & Z chairperson, stated that there was nothing to consider and the owner of Blossom's was told she could go home. Kyle stated that the last thing she needed to do was submit an entrance plan to DelDOT for approval which has been completed. Vice Mayor Adams asked when she did that. Mayor Baker said when she withdrew her building application there was no reason for her to come before Council as she had met all of the conditions of the code. Her zoning was correct; she had an approved use, and is making no changes to the building. Vice Mayor Adams questioned that the house was now being used as a rental home, and will be converted to a Flower Shop with no change. Kyle said there was no change to the exterior of the building.....they would be changing the interior. There are not going to be any structural changes. Kyle said she has everything she needs. She has a letter from DelDOT of no objection on her entrance. One of the items DelDOT required was that one side of her circular drive must be closed off from Route 26 and seeded. She will need to receive a permit from DelDOT before she can use the driveway entrance for a commercial entrance of 25 feet wide. It must be widened and conform to commercial entrances. Vice Mayor Adams questioned if the fire trucks need to go there, will there be room to turn around. Al Townsend stated that there are many places in town such as that....it is a state maintained route.

**New Business:**

1. **Presentation of letter generated by Helm Street residents to Town Council.** Mayor Baker had a letter presented to him by Mrs. Diane Bunting, January 23, 2009, to Dagsboro Town Council. This letter is about the meeting that

was held on July 22, 2008 at the Dagsboro Volunteer Fire Company concerning the exit and entrance to Helm Street in reference to the Estuary. We want to make clear our feelings concerning the exit on Helm Street and entrance to Helm Street. Some of us residents have lived on Helm Street for over 30 years and like the quiet development. It is our understanding that the Estuary is going to have their own entrance on Route 26, therefore we see no reason why the entrance and exit should be changed. Also, we understand DelDOT wants to put a road in connecting the Estuary to Helm Street. We do not see the need for this as they have their own entrance and exits as the residents of Helm Street do and this will allow traffic on Helm Street. It is our understanding that DelDOT is proposing this for emergency equipment as we feel it is not necessary for the residents of Helm Street or the Estuary. Our concern is not with the Estuary development. Our concern is with the DelDOT's proposal. Thank you for taking our feelings into consideration regarding this issue. Mayor Baker said the letter was signed by the residents of Helm Street. There were nine (9) signatures...there were 2 people's names missing from Helm Street. Attorney Witsil mentioned to Mayor Baker that this should be placed in the Estuary file and considered at the Public Hearing should you decide to set one for the preliminary site plan review (the next item on the agenda). Vice Mayor Adams questioned if we should have DelDOT again to explain that to the residents and have them voice their opinion. Attorney Witsil felt that we have a letter submitted by DelDOT to Town of Dagsboro (after a long time). We have a response from Helm Street residents. If the Estuary does not have further responses to DelDOT, at some point it is the Estuary's responsibility to straighten the road situation out. It is my advice that the responses be placed in the Estuary file and that you consider them carefully in determining whether the Estuary site plan should be approved or not. Vice Mayor Adams referred to the letter in Council's packet from DelDOT as stated in the letter from the residents...Mr. Cote indicated to all present at the Fire Hall that the reason the road should go through there was for emergency and service vehicles. This letter which we received states that DelDOT will require an interconnection from the Estuary on Pepper's Creek to Helm Street to provide residents of Helm Street choices on the way they want to access Vines Creek Road. During peak hours it will be desirable for the residents of Helm Street to use the Estuary on Pepper's Creek entrance to go east on Vines Creek Road and avoid the delay of the signal of Vines Creek Road and SR20. As stated at the meeting in July, if in the future modifications are done on Helm Street the interconnection from Helm Street to the Estuary on Pepper's Creek may be the only way in or out for some movements. Vice Mayor Adams said the letter does not mention service vehicles or emergency vehicles, it is now telling the people on Helm Street that they are now providing them another way to go in an out of their development as they have done for 35 or 40 years with no problem. Councilman Truitt said the letter insinuates that they are going to make changes to Helm Street over and above the objections at the meeting at the fire house. Vice Mayor Adams said that when that happens

we can talk about a road....that may be 2020. She has a problem as to why they want the road through there. In fairness to the Estuary, Vice Mayor Adams thinks it is asking them to build a road that is not necessary. The residents are being very clear ....they don't want the road. Vice Mayor Adams feels that the Council should stand by the residents....who are here....have been here and they do not give any real reason as to why this needs to be done. Attorney Witsil stated to Vice Mayor Adams that this is a decision totally relevant to your entire decision making process on the site plan. Tonight is not the appropriate time to say if you agree or disagree with DelDOT or whether you agree or disagree with the Helm Street residents. It is the application which has caused this controversy. If you consider both of these points of view during your consideration of the site plan review, then you will be doing your job. Either by turning the sub-division down for reasons you have the authority to determine whether the roads are appropriate, whether they detrimentally affect surrounding property owners. Even DelDOT is saying they will give an entrance permit; it is the developer's responsibility to provide that proper access. If you determine it not appropriate, regardless of what DelDOT said, you have the final determination to say whether it is approved or not approved. That is the time during the Public Hearing for that sub-division. You have no decision before you now. You have done your job in trying to get the information from DelDOT. If this is all they are going to give Council and all they are going to give the developer, then this is the information upon which you must make your decision. If it is insufficient (if you are not satisfied with it), then you vote one way. If you are satisfied, in some fashion, with the traffic pattern, you vote another way. Vice Mayor Adams asked if Council could hold the Public Hearing and have DelDOT there....Attorney Witsil stated that DelDOT does not attend Public Hearings. Attorney Witsil and Kyle Gulbranson said that if for the waiver of determination, you do not have enough information or if you are satisfied with it you can either grant or deny the waiver. Ultimately, it is the developer's responsibility from DelDOT to get this information to make you happy. Attorney Witsil stated that he is very reluctant to have Council make that decision outside of the format of the formal Public Hearing....so that the developer can have their expert people here, the Helm Street people can attend that Public Hearing and we go on the record and we have that formal process. The next item on the Agenda is whether we are going to set the Public Hearing and if you are unhappy with the information provided and Mr. Gulbranson can tell you the applicant has not submitted sufficient information for you to make a preliminary decision, you do not have to set a Public Hearing. You can simply say No, we are not ready to set the Public Hearing yet. Vice Mayor Adams does not have a problem with the developer, but does with DelDOT. She does not want to make a decision as it appears that she is going against the Estuary and feels the residents of Helm Street are being treated unfairly. Vice Mayor Adams feels they deserve the right to be heard by DelDOT and she thinks they should resolve it with DelDOT and the Estuary can move

forward. Councilman Truitt questioned that one of the waivers which the developers are asking is the waiver to build the road, correct. Kyle mentioned it is to have access on Helm Street, because Town Code states that new developments can only take access from Rt. 26 or Rt. 20 unless a waiver is granted. Councilman Truitt said if Council does not grant the waiver and they don't build the road then the only ball that DelDOT has to play with is that DelDOT will deny the entrance permit on Rt. 26 altogether. That is the developer's responsibility. Attorney Witsil said he understands that Vice Mayor Adams might be satisfied with the general scheme of the development (The Estuary), but the issue is the waiver. Attorney Witsil said in his opinion we are not treating people fairly if we keep putting it off to get something from DelDOT that we are not going to get. They are entitled at some point to have the Town make a decision on it. Vice Mayor Adams said to Attorney Witsil....I thought you told me the Town controls town roads. We do. The interconnection is the focus of the waiver issue, you have the choice whether to grant that waiver or not. Due process is some time factor. Even if it is a No, the developer is entitled to hear that No so that they may try to rectify it. Vice Mayor Adams said the Town received a fax from Doug Warner with no signature on it from DelDOT. We finally got a letter from DelDOT which was at the 11<sup>th</sup> hour. Mayor Baker said would the residents of Helm Street be agreeable to an interconnection. Without a waiver, Mayor Baker feels DelDOT will pull the permit and now allow entrance off of Route 26, which will put all of the traffic on Helm Street; however, if you permitted an interconnection and we made that a one way street going into the Estuary that would not allow Estuary people to come into your development. It is something for Helm Street residents to discuss. Attorney Witsil felt the residents and developers have some ideas to think about before the Public Hearing.

**Consideration of setting a Public Hearing for a preliminary site plan approval and rezoning for Estuary on Pepper's Creek and requested waivers:**

Mayor Baker said it is up to Council whether you wish to go to Public Hearing or not, because that is the only way we are going to get someone to make a commitment to some thing. Attorney Witsil would like a resolution vote to set a Public Hearing date. Mayor Baker would like to know if Mrs. Stephanie Hansen would like to make a statement tonight... Mrs. Hansen stated that the developer has maintained all along that they will do whatever the Town would like them to do....(Route 26 or Helm Street). It appears that the Council has the choice as to whether they will allow the interconnection to happen. It is clear from the tone of DelDOT's letter that it does not mention emergency vehicles, etc. but looks as though everything comes through Helm Street and goes through the Estuary. One of their purposes of DelDOT'S highway corridor capacity program is the consolidation of entranceways. This appears to be their way of pushing for the consolidation of The Estuary and Helm Street. Because it is part of the corridor capacity preservation program you are required to incorporate that into your comprehensive plan per the State Code.

There is some give and take that the State and DelDOT do through that process as well. Mrs. Hansen said she would only caution and raise it as a flag that if you give credence with respect to consolidated entrances, be sure not to put at risk State Funding in the future for other improvements along Route 26. The applicant does not care; we will do what you want us to do. Attorney Witsil asked if Ms. Hansen's client had any preference as to February or March. She replied that sooner would be better in order to get it done; however, if it is going to be a denial and they have to go back to DelDOT....if it will be an approval based based on your conditions, they will have to know that as well and they will need to know what DelDOT is requesting. DelDOT has already said this is what they want. It would be whatever Council would like them to do at this time Vice Mayor Adams spoke saying...she thinks she is absolute correct, but Marj. Eckerd, Kyle Gulbranson and myself went to Dover and spoke with Mr. Cote (at that time it was going to dump into Helm Street). She told DelDOT that that would not fly...the Council will not go for that...and she would never recommend that. Vice Mayor Adams would be willing to go back to Dover and talk with Mr. Cote. She does not think their reasoning is real good, but does not feel the Estuary, Ms. Hansen, and/or Mr. Warner can do any more. Kyle recommended that they make a decision one way or another. Mayor Baker said more time for the developer has nothing to do with it...the decision lies with the Council. He suggested setting a date for the public hearing and to encourage the residents of Helms Street to bring any information that would help us make our decision. If the letter presented is what you stand on....that is what Council will consider. A resident of Helm Street asked....Can you give us any other examples of what we could bring or do. Mayor Baker said he did not have any specific thing in mind, but be thinking of alternatives because if they close or take away the entrance on Rt. 26, you may have more traffic than what you want...if you leave the entrance on Rt. 26 and put a one way at the bottom, that maybe is an option. He asked if they would think about it and get back to Council before the Public Hearing date that we set. Attorney Witsil said he would tell anyone asking about preparing for a Public Hearing and that is that you are entitled to be here with counsel, entitled as a group to hire an engineer (if you wish that could provide information), any independent information that you may have. As he has told Ms. Hansen if her client would like to hire an independent engineer or other expert to come in that would like to give their point of view to the Council. We cannot tell you specifically what to do, but that is what a Public Hearing is for....to get input and evidence from the public and interested parties to provide information for the Council's decision. Attorney Witsil stated that this Public Hearing would require fifteen (15) days public notice and because it is an application for a change of zone we must notify all property owners within 100 feet of the application. For that reason it might be well to set the Hearing in March. Councilman Truitt made a motion for a consideration of a public Hearing for the preliminary site plan approval and rezoning for the Estuary on Pepper's Creek and requested waivers for the March meeting, seconded by Councilwoman Flowers. Upon vote, approval was given by Councilwoman Flowers, Councilman Truitt and Mayor Baker. Vice Mayor Adams voted No in opposition. Mayor Baker asked Vice Mayor Adams if there is anything that she feels could be done....she feels that we still need to talk to

DelDOT, but maybe that is just her. Mayor Baker said there is 60 days until the meeting. She wanted to know if she could talk to DelDOT and Wayne said certainly she could talk to them as much as she wanted to. Mayor Baker thanked the people from Helms Street for coming in and presenting their letter.

**3. Consideration of adopting a fee for applicants that ask to re-approach the Planning Commission and/or Town Council for exceptions to the code.**

Mayor Baker said that a lot of people come in and items in the code suggest that they do not agree with the decision and want to come back before the Council or go back to P & Z (whatever it may be). His only question is that since the Town has spent numerous funds and hours on it and should there be a fee associated with them coming back to re-hash what we have already done as opposed to moving forward with new business. Attorney Witsil asked if it is a gratuity rehearing fee. Example – I don't feel the sign code is applicable to me, I wish to go before Council and have them re-hash what we have to say when we have spent thousands of dollars and many man hours revamping the sign code, and because you do not agree with our decision, you come back in and take up our time because there is no financial incentive for you not to do it. They do not want to do another sign permit. It is not a formal application process that they are going through. They may say that they do not agree with the code - the sign is not large enough and not what I want....I want to go back before P & Z and/or Council. It could be anything in the code where it says you have the right to object to the Town Council. Mayor Baker stated he is not as concerned as some things about others (some will not involve a lot of time); however, it is the process of going through it again. Attorney Witsil stated the problem comes when there is a request for reconsideration requires Kyle's or my attention...then you have hard dollars spent. Advertising or re-advertising fee, the requestor should pay for it. Mayor Baker said that if Kyle or you become involved and we have to advertise it, we are speaking of a thousand dollar bill. Attorney Witsil said that if an applicant has already paid funds in escrow for a site plan review (Kyle interjected his knowledge of fee schedules) you are covered under funds paid in escrow. Kyle felt the small issues like the sign issue where someone is asking for a review of their circumstance. The signage situation should go through Board of Adjustments if they are asking for something other than what is allowed by code. Mayor Baker stated that in our code it says you can request to go back before P & Z and Council. We either need to strike that statement or impose a fee. Attorney Witsil felt that you could impose a fee if they are asking you to do it all over again. Mayor Baker said they haven't paid the fee at all yet.....Attorney Witsil said they would go to the Board of Adjustment and they pay the Board of Adjustment fee....that is what a variance is. Attorney Witsil said all people should have the right to petition the town. Kyle stated that many towns charge a fee; however, if there is something in your code you wish the town would change, there is a fee to approach Council about that suggestion. Mayor Baker said he is not sure but possibly Council should look at the wording and change the code. He suggested adding where it goes to Board of Adjustment. There has to be good reason why they would grant a request. Councilman Truitt mentioned that if someone brought it up

in a meeting that is the reason you could use....it could be a simple up and down vote on it during that meeting. Attorney Witsil said it would have to be scheduled for a Public Hearing and have an amendment to change the code. Councilman Truitt said if you did not want to change the code, you could say we have not received any other requests for that so we are not going to do it. Mayor Baker said he wanted to do a Public Workshop on a couple of items and put them together as a Public Workshop issue - (1) would be the consideration of what we are talking about right now and a couple of others are a little further down on the Agenda (2) Review and discuss annexation application fees for the town. I would like a motion to do that with a date to be determined by Stacey upon review of what dates Bethel Center will be available and also (3) Item 2 under Old Business Clarification of Chapter 75-1(A) and (B) as to what requires a building permit. We could discuss all three of these things in an open forum and get input from the town's residents at the Workshop. Councilwoman Flowers made a motion to hold a Public Workshop for the three items listed above in 1, 2 and 3, seconded by Vice Mayor Adams and unanimously passed.

Acceptance of Report and recommendation from annexation committee for Bireley/Hearn Request. Consideration of approval of request. Mayor Baker reported that a few weeks ago, Councilwoman Flowers, Councilman Truitt, and I met to discuss this. We talked about the pluses and minuses of annexing the Bireley/Hearn property. We came up with no negative reasons to do it. We were concerned about the fees when we looked at it because some of our fees were overlapping into the commercial aspect of it. That piece of property has several acres in it, which it probably would be as much as our original fees are now. In review of our other fees, if we were just annexing a single family residence, our fees may be excessive as it was intended for developmental purposes. Attorney Witsil said it also covered the possibility of having to conduct an election. There are two methods of annexation. We were dealing with the one application by itself as opposed to 5 or 6. That was the only formal application that we had. We were in favor of bringing it into town; saw no negative aspects of it. It grows our town. We can provide it with water, fire and police protection as it will be covered under the same umbrella. There were no negatives. Attorney Witsil said there is some finality to the annexation. If you are asking for a vote to approve the committee's recommendation this evening, it is my request that you schedule this for the February meeting and that we put a notice out that a resolution (which I will draft) that there be a formal resolution for your vote at the next meeting so that it can be published as a town meeting. Kyle said you will need to prepare a plan of services and submit to the State as well. The State will need to approve the annexation. Another thing that needs to be considered by us is how it will be brought into town...under what zoning clarification. These things need to be addressed before anything may be finalized. Attorney Witsil asked Kyle if he would handle the plan of services to the State ...he also asked how much time would be required. Kyle responded that it will probably need to be a March hearing. Attorney Witsil informed Mayor Baker that the State requires that the rezoning portion of this....the resolution is less formal a process. State code requires that the rezoning

of the property from AR County to whatever it is (I presume it is going to be residential). Kyle felt the Comprehensive Plan indicated it as Residential. That must be by ordinance. Attorney Witsil stated that at the same hearing we will have the resolution vote and the actual rezoning vote. He said the rezoning requires a recommendation from the P & Z. The P & Z should address it and give you a recommendation as to what the classification should be for this prior to their meeting. Mayor Baker said then it needs to be posted on the P & Z Agenda for February for their recommendation of zoning and they might as well chime in on the annexation as well. Attorney Witsil said we must have both posting and announcement of the resolution and 15 day advance notification and publication of the proposed rezoning and posting letter of mailing of the people within 100 feet of the property. Kyle said once you have the resolution to annex we will submit that with the final services to the State and they have to sign off on it and send it back to the Town of Dagsboro. There does not need to be a plus review in this case....just a plan of services saying you are capable of providing sewer and water. Kyle and Attorney Witsil said that the County would need to be notified also, since they provide sewer services. It will all be part of the same process. Attorney Witsil informed Mayor Baker that in calculating the fee, you should be aware of Kyle's involvement. Certainly \$1,200 might be excessive ....his fee might be half that. Mayor Baker asked Kyle to get with him and give him an estimated cost of doing this. It is basically just filling out a form Kyle said. Mayor Baker said that probably what he is mentioning probably could go under Correspondence...there was a publication in the paper that the property on the southwest corner of Rt. 20 and 26 was going before the P & Z Commission of Sussex County and they wanted to rezone that property from Agricultural to Commercial. Kyle stated that the front half of the property is already commercial and they are requesting that the back half be rezoned from Agricultural to Commercial. Mayor Baker was unable to attend that meeting and Kyle attended and addressed the County P & Z for us. That property is within our growth area....was in our last 5 year plan, and asked Kyle what he had to report. Kyle said it was disheartening actually. The P & Z asked questions of the applicant as how much money it was going to bring the County in transfer tax and building permit fees. The Planning Director for Sussex County read the Town's letter into the record, the applicant spoke in defense of his rezoning. He made reference to the fact that he had applied for annexation into the Town of Dagsboro (this is the old PGS property – which was to have been a shopping center and retirement community). He had applied 5 years ago for annexation into the town (property is the old Gray Farm across from Royal Farms where Parsons' Vegetable Stand is). The applicant stated the town took no action in 5 years on his application...Kyle reminded him that the statement was not true. The Town formed an annexation committee, and the annexation committee recommended to Town Council to move forward with the annexation. The Town did everything they were supposed to do in notifying the State and the County and putting forward a plan of services to the State Office of Planning Coordination. At that time the State Office of Planning Coordination denied the plan of services and told the Town not to act on this application until there is adequate sewer capacity to serve that site. The County has gone through a sewer study for the Dagsboro-

Frankford Sewer District which was to take a year and one-half, which is still not completed 5 years later. The applicant stated to the Planning Commission that he had already worked out the sewer details with the County, and they had assured him that there is adequate sewer capacity to serve that site. I spoke to the Planning Commission and told them of the Town's opinion of that as it is in their growth area and should be in the Town of Dagsboro. I explained the circumstances about the planning study, plan of services that was denied and that the Town did not take action as they were told not to by the State and also brought forth that the study of the sewer capacity for Dagsboro is still not completed. Bottom line was that the Town would like to see that land annexed into the Town of Dagsboro. Basically the Planning Commission told me that their job that evening was to determine whether the zoning was appropriate for that site and that the annexation issue was between the Town of Dagsboro and Mr. Dyer (the applicant). They recommended the approval of the rezoning. The next step is that it will go before County Council in February. Mayor Baker questioned that because the Town has spent numerous dollars and has gone through a lot of effort to make this happen, does the Town have any legal ramifications against the County? If they approve it...Attorney Witsil felt it was within the County's jurisdiction. Kyle said that at this time, Pret Dyer does not want to annex into Town. However, he did say in the meeting that at a later date he might consider annexing into Town for water services. Mayor Baker questioned why they would spend all this money and man hours if they do not want to adhere to it. Kyle mentioned the thing which bothers him is that the Town already has an approved comprehensive plan, the County just approved their comprehensive plan that clearly shows the Town's annexation area in it. When we went to the plus meeting to discuss the town's comprehensive plan the representative said we really want to work with Dagsboro and your growth area and we will be sending a notice that we want to draft a memorandum of understanding with the Town to discuss just these issues because we want to refer anyone who wants to develop in your growth and annexation area to the Town of Dagsboro. They are telling us all of these wonderful things, but when it comes down to an actual application, the process isn't working. Mayor Baker was in awe of this as County Council asks us to do all of this...then we do it and they say "tough luck". Kyle stated that he was disappointed that the representative from Sussex County Planning and Zoning who attended the plus meeting when we went through the comp. plan, stating how they wanted to work with us and that if any application comes forward in your growth area, we will refer them to the Town of Dagsboro. Attorney Witsil said he would bring the obvious to your attention that the Council is a different Council than they were last year, although they have not given any trends or indications as to what they will do. The hearing will be referred to Sussex County Council in February with a recommendation from the Planning Commission. The recommendation of the P & Z is not binding on the Sussex County Council. Mayor Baker stated we will be sending a letter to Vance Phillips (it may have already been done) concerning this matter. Kyle stated that he felt it was a disappointing meeting.

**Item 5. Consideration of a fee waiver request for 32054 Sussex Street. Esther Baker property.** Several Council members had read the letter and said she is being cared for by a niece and they would like the Town of Dagsboro to waive any unpaid penalties or fees caused by their aunt's ill health and inability to attend to her affairs. The taxes have been paid. Mayor Baker said that he thought the property might be in arrears in water bills. He said the water had not been tied into the water system. He does not think anyone has lived in the property and that is probably why it has not been tied in. Mayor Baker stated we had never yet granted a waiver to anyone to get this done. Mrs. Baker does have a statement from the Court that she does have a guardian....I don't know if she was capable of handling her own affairs at the time that this was going on. I don't know if it would be any reason to waive fees or not we should just not charge her fees until the property changes hands. Attorney Witsil said he did not have enough material to guide you; he thought the letter was requesting a waiver of penalties and interest. The request says penalties or fees caused by my aunt's ill health or her inability to tend to her affairs. The property is in need of plumbing, exterior repairs and water lines to the town. On the other hand, it is the result of this petition coming about was from a fall where she broke her hip and fractured her pelvis last fall. It does not mean she was in good mind, but on this request it is not saying she is not mentally incapacitated, she only had a broken hip. I do not know if that alleviates her from the responsibility, but in the affidavit from the Court, it does state a mental ability to manage her own affairs. Councilwoman Flowers said they have multiple properties in various states. She did not feel this is a real hardship other than her telling us. Vice Mayor Adams felt when she read it, she noticed on page 2 Bonnie Cunningham (Guardian) shall execute a bond to the State of Delaware in the amount of a million dollars (without surety). That says to me that there are assets somewhere. We have denied some people waivers, but offered them options to pay on a schedule. We have had people with financial difficulties and have not waived fees. No penalties will be charged at this time for the failure to connect to the Town's water system; however, at the time of connection the appropriate fees will be charged. Mayor Baker said he will check this out and said that is how we all feel. Motion to deny request was made by Councilman Truitt, seconded by Councilwoman Flowers, all members were in favor of denying the request.

7. **Discuss possible removal of Recycling Bins behind Masonic Lodge.** We have had several residents in the town that have called Town Hall regarding the sign posted saying they are going to be removed. The residents would like very much to keep them. I spoke with Delaware Waste Authority and they said there had been no official notification that the bins were to be removed. Mayor Baker called Dean Disheroon and he is in charge of the Masonic Lodge....the lodge's complaint was that the trucks were coming in and destroying the driveway and not keeping the yard in a good, clean matter. After discussing this matter with him, I told him the Town would be willing to work with the lodge in having the inmates pick up litter and raking the parking lot. Mayor Baker called Representative John Atkins and he called Delaware Solid Waste Authority. They came and put some stones down. I

think Dean is going back to the people in the lodge and see if they are willing to try it on a month to month basis to see if our involvement will keep the yard good enough that it is not tearing their yard up. Mayor Baker hopes it works out....if not, at least we tried.

**8. Review and discuss FY 2009 Budget and income and expenses year to date.**

Mayor Baker said there were a few things he wanted to bring up. One is, as you know, the Town' revenue is down ...simply for the fact that everybody else in the whole world's revenue is down. We are not immune from this financial strife that the country is in; however, on that note – I am putting together for the Town of Dagsboro should the God's rain money on the new President and he decides to give some, I want the Town of Dagsboro to have a list to spend money on. We have some infrastructure needs which should be addressed and we will be sending a letter requesting some funds should they become available.

Mayor Baker would also like for the Council to be sure that they give me the authority to work directly with Attorney Witsil and URS that any work they do comes specifically through me so we can generate a time line and a dollar amount. We want to be sure we have the money to keep the town afloat. I do not want to end up having to borrow money against other funds to keep the town afloat. The thing I am looking for is the fact that I don't want anything going through Attorney Witsil and URS without coming through me....we don't want someone going through them and having the Town be billed for services of which we were not aware. I am asking for a blessing of the Council. Mayor Baker explained to the Council that there are times when we need to ask questions and have them answered. Normally, in the course of day to day business, it is not an issue; however, we are at the point in our decision making process that we don't want to be over budget....where something might be put off for a couple of months or maybe it is not priority at this time. When development comes back, monies are flowing, and we have the ability to look at it and say O.K. now is the appropriate time. Mayor Baker reiterated that now we have to tighten our belts and be as economically cautious as we can. It is very important. Our review process for our accounting --- Jefferson, Urian, Doane and Sterner has been doing our work for the last 7 years. They sent a new form and requested my signature. In looking at it there was a quote for services performed. They wanted \$15,500 for this year, \$16,000 for next year and \$16,500 for the following year. In consideration of that being a lot of money, I asked for some other names of people who do this type of work. I received 3 or 4 requests for fees for this type of work. I received a proposal from McBride, Shopa and Co. in Wilmington and Rehoboth. They gave us a price of \$15,000 for the first year...they did not quote a price for beyond that. I also made a request of a company in Salisbury (large firm, 58 employees, recognized by the State of Delaware) and they came up with a price of \$14,000 for three years. I felt it was a pretty significant saving and should be

considered. My question would be --- does the Town feel we should go back to JUDS or go forward with the new company. Council members were in agreement that the Town should go with the new company. Mayor Baker wanted to have a face-to-face meeting with the people submitting the bid, make sure everything is on the same wave length, give them a copy of what the other accounting firm is doing for us and be sure they are going to do the same thing. At that point, Mayor Baker felt we should make the change. Councilman Truitt said he like the fact that they were locking themselves in for three years.

### **Old Business:**

1. Consideration of permitting High Efficiency Vehicles on Town Streets. We will by-pass that at this time as we are not willing to expend money on it.
2. Public Workshop – Clarification of Chapter 75-1(A) & (B) as to what requires a building permit. This matter has already been addressed and has been taken care of.
3. Consideration of eliminating conditional uses from Town Code as recommended by P & Z. Mayor Baker said we should put that in with the same workshop. He has read 2 or 3 items in reference to this....he said there are pros and cons to this....some are good and some are bad. Ocean View is experiencing some of the bad, as they are being sued by the developer that they denied having a gas station in.

Councilman Truitt requested to be excused at this time. Request granted.

Mayor Baker said that Attorney Witsil and Kyle could be excused if they wished at this time as we are down to standing committee reports. .

Attorney Witsil asked if he should consult with Stacey tomorrow as to what the necessities are for the public hearings. You need to make notes as Stacey will be out tomorrow also. Attorney Witsil will e-mail Stacey tomorrow.

### **Standing Committee Reports:**

**Police Department:** Chief Toomey said he had presented the Council with the monthly report and annual report. He is still driving the blue car because he likes it...he is conserving the new vehicle. He would like to make it known that we had a burglary in town in which we arrested a female perpetrator. As you recall the Church of God had their turkey shoot on Saturday the 17<sup>th</sup>. It was well planned and went very well. Very safe and they did a good job. Chief Toomey went out prior to the shoot and did an inspection and 3 or 4 times during the shoot checked in to see if everything was going well. He explained how they operated and they were very safety conscious. Chief Toomey said we need to dispose of the old 1994 police car, but after hearing the costs of bids, we would probably not get that much money from it. Mayor Baker said he would call the paper to put in a few lines in

the For Sale Section it won't be the same price as a Legal Ad. We spent \$80,600 on our two cars, we got in under the wire. USDA stated that the departments applying this year will not get nearly the funding we did. We have two \$40,000 vehicles. The Town has approximately \$2,600 in those two cars. Chief Toomey felt we did well In this case.

As stated, another annual highlight would be that the Bike Patrol was instituted. We got the uniforms, bikes, equipment and 202 man hours on the bikes on the road, and he felt that was a great highlight.

We also instituted the internship program. It seems to be working out and it is going really well. Chief Toomey asked if any of the Council members had any questions.

There were no questions. Mayor Baker thanked Chief Toomey and felt the police department was doing a great job.

#### Hazard Inspection Committee:

**Town Property/Town Improvement:** As the prisoners are coming we are trying to cut the ditch banks 10 or 12 feet for safety issues. We are trying to keep the streets safe so that cars can pass in a safe manner. We are probably going to have to order some more banner poles and come up with a different way of attaching or hanging them. For some reason, the wind on Armory Road just whips those flags all to pieces.

**Prince George's Chapel Cemetery:** Mayor Baker felt the Chapel is in good shape. A couple of light bulbs were out and were replaced.

In speaking of town property, Mr. Al Townsend asked what was decided about the ditch behind the water tower? He asked if the DOC people were able to do anything. Mayor Baker said he went back and looked at it with the Tax Ditch people (Wayne Mitchell). There is too much water running through there. We can do the edges, but we can't get back to trim those ditches. They seem to be flowing well. Mr. Townsend stated that the overgrowth might take over. Mr. Townsend asked if the Tax Ditch Committee would be having the ditch cleaned and cut this year? Mayor Baker said he did not know. They have a problem with funds, monies to do it. Environmentalists do not want them to trim or cut the trees. They are maintaining the lower level, but once they are rooted, environmentalist say they are destroying micro-organisms in the water and you are destroying the first link in the food chain. Al asked if he could bring his ditch bank cutter in and cut it down as he has done in the past? Mayor Baker replied that he would like to see it cut a he had mentioned above for the safety of the residents. If you want to do it, thank you very much. I don't know if Gerald (Mitchell) would reimburse you any monies or not (it might not be very much). Wayne mentioned that Gerald told him The tax ditch commission they only get 50 cents a mile to do the work.

**Mayor Baker said if there is nothing else, would anyone like to make a motion to adjourn. Motion made by Vice Mayor Adams, seconded by Councilwoman Flowers and unanimously approved to adjourn the meeting at 9:10 p.m.**

**Respectfully submitted,**

**Rae Long  
Administrative Assistant**

**These minutes summarize Agenda items and other issues discussed at this Council meeting. Votes are recorded accurately. The recording of this meeting will be available at Town Hall for a period of two years from the date these minutes are approved. The recording may be reviewed at Town Hall by appointment and in accordance with the Freedom of Information Act.**