

**MINUTES OF MEETING
DAGSBORO TOWN COUNCIL
BETHEL CENTER – 28307 CLAYTON STREET
MONDAY, OCTOBER 26, 2009**

The meeting was called to order at 7 P.M. by Mayor Wayne Baker. Those present were Vice Mayor Adams, Councilwoman Flowers, Councilmen Hearn and Truitt; Stacey Long, Town Clerk; Attorney Rob Witsil; Herb Disharoon, P & Z; and persons listed on the sign in sheet.

Presentation of Building Permits Issued: The first item on the agenda was the presentation of building permits issued. Stacey Long, Town Clerk, reported that there was a sign permit issued to Steen Developers for Prince George's Acres. A building permit was issued for renovations on a property on Swamp Road for siding and window replacement.

Correspondence: The regular Town Council Meeting will be on November 16, 2009. At this meeting we will determine the qualifications of candidates for the upcoming election, as well as conduct regular town business. Three Town Council seats are open and registration deadline is November 13th at 4:30 p.m. Friday, November 20th at 4:30 p.m. is the deadline for registering to vote. People may obtain filing forms online.

Planning & Zoning Report & Vote on the Following Items: Mayor Baker asked if Herb Disharoon would give the P & Z report. Mr. Disharoon stated that on the amendment to Chapter 275, P & Z voted in favor of it and passed it on to Council for approval. Marvin Steen requested a temporary sign for the Prince George's Development, sign would be 3' x 5' and the color would be designated from the Homeowner's Association (that is only a temporary sign). Mr. Bill Mills was there to make his presentation and we made no motion on this matter. We asked him to come back with a site plan of what he wants to do. The meeting was adjourned after that. Mayor Baker asked if there was anything on the Highland's of Pepper's Creek project at all. Mr. Disharoon said there was no representation from that developer. Mayor Baker had a question in regard to the 16 items which we turned in from the Council. All of those were addressed and given to him at some point....he is aware of all of these. He has gone through this and there are approximately 5 or 6 that he has not come through with. We received a letter from him this past week on putting the fence around the perimeter of the pond and they have agreed to that. Mayor Baker said one of his large concerns of their putting a 350 unit or a large development up, is that we need to have safe pedestrian crossing across the

street....there are a couple of issues which I would like to see them address as far as ingress and egress to Route 26 and pedestrian safety. Are there any questions from the Council for Mr. Disharoon? There were no questions from the Council.

New Business:

The first item was consideration of billing water usage on a monthly basis for all accounts. Councilwoman Flowers questioned the Quarterly vs. Monthly, if there had been a cost efficiency study done. It appears to her to do it monthly would be more costly. Mayor Baker stated that at the last Council meeting, representatives from Artesian were in attendance and explained it. Councilwoman Flowers was ill and not able to attend that meeting. Artesian gave us a printed report on how much it would cost for a one time fee. What the additional charges per month would be? A copy of that information will be sent to Councilwoman Flowers.

The second item was the discussion regarding Homeowner's Association being responsible for charges for Sprinkler Systems within the buildings. Mayor Baker stated that Kyle is already aware of this. It was the Mayor's intention to make sure that we were separately billing the HOA for the fire suppression systems as a separate billing than the regular water service to the properties.

The Mayor stated the first item under **Old Business** is the Fire Department Water Usage and Reporting Process. Mayor Baker said Mr. Gary Cox is present, representing the Fire Department. Mr. Cox said he had no information on this matter and did not feel he could report on that. The Fire Department had asked to be placed on the Agenda this month....but it could not be done. They had asked for a couple of workshops, but those were declined, so they asked to be on the Agenda for next month.

Presentation of the Treasurer's Report: Stacey Long, Town Clerk, gave the Treasurer's report. A copy of which is attached to the Minutes. Did any Council member have any questions? Councilman Hearn asked about the Bank of Delmarva CD and Stacey responded \$82,179.52. Since we are going through an audit of fiscal year 2009, she could not correct a general ledger error until the audit is completed...but it is \$82,179.52. Once that audit is finished, the journal entry may be put in and it will show up as \$82,179.52. Mayor Baker and Stacey attended a seminar in Rehoboth today. The seminar talked about possible budget reviews from the State of Delaware for next year. We are probably not going to get our municipal street aid again next year....this represents about \$25,000 to our Town. We need to be careful with the transfer tax, because there is a possibility that would be the next thing to go. Fortunately, we do not budget on the municipal street aid or put a lot of faith in the numbers for the transfer taxes. We need to continue to review our budget and be up front about it. We actually have some net increases

this year over what we projected as revenue. At this point we are about \$22,000 ahead on our net savings from last year (not in our budget, but in our overall expenses from June of 2008 to 2009). We are actually pretty good, but we need to continue to keep an eye on it. Don't spend money we don't have. We are not excellent, but we are good. Are there any questions on the Treasurer's Report? A motion was made for approval of the Treasurer's report approved by Councilman Truitt, seconded by Vice Mayor Adams and unanimously approved.

Approval of Minutes of September 28, 2009: Upon motion of Councilman Hearn to accept the Minutes of September 28, 2009 as presented, seconded by Vice Mayor Adams, and unanimously approved.

Standing Committee Reports:

Police Department: Councilman Hearn reported the following for the police department: Miles driven – 3,554; Traffic Arrests – 132; Traffic Warnings – 34; Criminal arrests – 4; Total Local Ordinances – 5; Business License Checks – 0; Total Hours – 409; Patrol Hours – 236 1/2; Investigative Hours – 39 1/2 ; Administrative Hours – 132 3/4; Business Checks – 404; Complaints – 39.

Monthly highlights included: Sgt. Litten concluding an investigation into felony forgery and theft with an adult arrest consisting of 4 charges. Del. State Police arrested a Dagsboro resident for impersonating a police officer and a couple of days later they did a search warrant on his house on New Street. Chief Toomey attended 4th Annual Gang Conference in Rehoboth; the Department was a partner in the OHS Child Passenger Safety Awareness campaign that ran from September 13-29th. Officers worked a total of 46 hours overtime enforcing passenger restraint laws. The program was a great success. Mayor Baker asked if there were any other questions on the police report. There were no questions.

Hazard Inspection Committee: Councilman Hearn said that ordinances which deal with the Hazard Committee were discussed last month. His impression was that the general consensus is that some changes need to be made. Attorney Witsil was to look at some of these things. Attorney Witsil spoke with the Mayor and he asked him to do it briefly, and he told him he would do so. The International Building Code gives you some authority --- the Laurel code also requires a court of competent jurisdiction (which I believe would be the Court of Chancery) to issue an order for demolition unless it is an emergency situation. The International Building Code provisions do provide for those imminent danger and emergency measures provisions for the building official to take action. There is always this provision in each one of the code section – ours, and Laurel's, and International Building Code. Legal counsel of the jurisdiction shall institute appropriate action against the owner of the premises where the unsafe structure is or was located for the recovery of the

costs and although the International Building Code seems to give authority to demolish an unsafe structure it remains my opinion that for the protection of the Town that we should not do that without Court order. That Court order may be difficult to acquire, it may be simple to acquire, depending on the circumstances. Attorney Witsil's experience is that the Court's pay close attention to it. If there is good justification for a demolition order they will grant it. The property owner will have sufficient notice from the Court and will have an opportunity to make corrections. The International Building Code does apply to Dagsboro; however, it has checks and balances also. International Building Code will not stand behind the Town if we have to go to Court. Mayor Baker confirmed with Attorney Witsil that we did not delete any of our codes. There is a suggestion in the provision that there could be demolition of a dangerous structure by order of the building official. Attorney Witsil would be reluctant to sign off on that. Both of the codes provide for immediate repair of dangerous portions of a structure and the code enforcement officer has the authority to declare the building condemned and to prohibit occupation of it. The Mayor had told Attorney Witsil we were not going to discuss this tonight, but he is happy he took a quick look at it. Discussion took place as to which section it is in the International Building Code. Attorney Witsil said the copy of the International Building Code was a 2003 and it may have been upgraded. Mayor Baker said that with Council's permission he had several things falling under the Town Property/Town Improvement, Town Property area to request Attorney Witsil to look at. One of the items of concern was Prince George's Acres as to who owned the entrance to PGA and where are the legal documents because they are not at Town Hall.....Attorney Witsil said PGA development was created with one of the most conundrum processes he had ever seen. Last July in regard to sewer installation issues with Sussex County, he received a letter from Tempe Steen in 2002 the Prince George's Homeowners Association Inc. executed an affidavit. He went on to describe some of the information concerning dedication of the roads in that development to the Town of Dagsboro. This was part of an agreement which led to both sewer and water to be provided as well as to include the roads into the town municipal street aid inventory. Sussex County is now following up about easements. I believe a review of the minutes in late 2002 and early 2003 should assist in identifying if action was actually taken on the deed and a review of the files may unearth the executed deed so that it may be recorded. In addition the Town may wish to check its municipal street aid inventory to see if the streets in PGA have been included into that inventory and from what date. This was Tempe's letter to Attorney Witsil. His research came up with a list from State of Delaware DOT municipal street aid fund that includes all of the streets in Dagsboro (but he thinks Blackfoot Town Street, Chapel of Ease Street, King George III Street, Queen Anne Street are all on the streets of Dagsboro not maintained by the State). This indicates to Attorney Witsil that they are town streets. They are not listed on the Dagsboro Street State maintained list. Further Attorney Witsil came across in the files which possibly Tempe sent to him or from Stacey....a resolution to accept the roads in PGA; he did not have the second page which was prepared by Tempe when she was the Town Solicitor. Basically, PGA is a development within the Town Limits ...at the time of annexation the Town expressed its willingness to accept the roads in

PGA once they were paved. The roads in PGA have been paved, and they named part of Prince George's Drive, Block and Lot Numbers, Chapel of Ease Street, Queen Anne Street and all of King George Street and resolved that Mayor and Council are hereby directed to execute any documents to accept the roads in the Town of Dagsboro. He does not have the signature page. He asked Stacey if she could find that cover sheet. Mayor Baker said he had that sheet somewhere in the package he had prepared for him. Attorney Witsil found at the Recorder of Deeds Office the notice of consent for public use of roads executed by the individual property owners acquired by PGA Property Owners Association, Inc. That notice of consent is that the property owners in PGA a community of the Town of Dagsboro desire to submit private road in the community to public use and that each lot owner has executed a consent for the submission as attached hereto. This may be the "deed" that Tempe's letter is making reference to. It is a notice of consent dated June 14, 2000, which was 6 years before the letter and recorded in Deed Book 2494 Page 325 through 369 and he has copies of those documents (which are consents by each of the property owners to have the street in front of his property and their ownership in the streets as owners in the PGA Property owners Association be transferred to the Town. That is the notice signed by each one of these that they do hereby convey, transfer and deliver unto the public and to the Town of Dagsboro having jurisdiction over the subject matter all the streets and ways known as PG Drive, Blackfoot Town Street, Queen Anne's Street, King George III Street and Chapel of Ease Street. They are executed – Attorney Witsil has not cross referenced to see if each and every property owner had signed. PGA Property Owners Association, Inc. in 1996 four years before these consents were signed by and through Mr. Steen executed an easement to Sussex County. At that point the property owners association executed the easement. Attorney Witsil said it appeared that it would have been much simpler (he could only surmise why the Property Owners Association which received the Deed from the developer did not execute the Deed). He seemed to feel that was because the developer let the Property Owners Association Corporation expire by failing to pay franchise tax on an annual basis....so the corporation was no longer in good standing. The complication which Attorney Witsil has is that in 2000 we have a notice of consent for the public use of roads that is recorded and the individual property owners signing off....I have a 2002 letter from Tempe Steen to the Town Council stating that enclosed please find the Deed from PGA Property Owners Association Inc. to the Town of Dagsboro for the roads in the development. The roads have been paved and all conditions, I believe, have been met for the transfer of the roads from the Association to the Town. Also, enclosed is a resolution for the Town to accept the roads and authorizing the Mayor to execute the certificate of acknowledgement and acceptance of the roads which will be attached to the Deed and recorded in the Office of the Recorder of Deeds in and for Sussex County. Attorney Witsil mentioned to Stacey that resolution if that had been approved would have been after October 2002. There is not a Deed recorded from the Property Owner's Association to the Town. He has checked the records and it is not in a list of conveyances under the index of Prince George's Acres Property Owner's Association. Tempe has told Attorney Witsil that the Deed was tendered, accepted

(he did not know what the minutes for that meeting say---whenever the resolution was accepted, if it was) but apparently someone intended for the Town to record the Deed and it never was, back in 2002. Minutes of that Town Council meeting have not been reviewed. Mayor Baker has reviewed the Town Minutes from 1994 forward, everything that was said in the Town meetings in reference to that up until 2002. There were a couple of references to an HOA. We do not have anything in our files as to having one recorded...nothing on record. If it failed to be on record earlier than 2002, is it valid. Obviously, the State and County would not put grant money up to repave the road without the proper documents being signed. Attorney Witsil felt that each property owners signing off is more authoritative than the HOA signing off. Attorney Witsil can only presume the HOA was attempted to be run by one of the Steen's and that the time lapsed that Tempe told Ron that she had a conflict, the HOA could no longer have the authority to execute the Deed and so it seems this is the only course of action they could have taken, except for the fact that it is executed in 2000 and this seems to be a late 2002 attempt to convey a Deed from the HOA. Attorney Witsil said he is perplexed by that. He thinks there are enough indicia of transfer of ownership on the record to state that the roads and easements within PGA are dedicated to the Town....even though this Deed was not either presented and approved by the Town or filed. Attorney Witsil questioned Mayor Baker as to whether the minutes indicated that they accepted a deed and that it was not recorded. Mayor Baker said it did not say that in the minutes. If you find that you just write us a note stating your findings so we can put it in PGA file, so that it will show it was reviewed and someone reviewing it 10 years from now will not have to go back through it. Attorney Witsil said there is a Certificate of Corporation that was filed for the Homeowners Association in 1996. We need to make sure legally that if something was supposedly conveyed from HOA that they were valid at the time or they weren't valid. Mayor Baker felt confident that the State and the County would not have gone in and spent any money without having proper documentation. We just need a copy of it for our records. Councilman Hearn asked if at that time a requirement for homeowners association for each development. Mayor Baker asked Attorney Witsil to research it and put a letter in the file as to what you have found to this point and attach any appropriate documentation so that we have covered our bases to this point. Attorney Witsil said that he felt that he needed to have his staff or him cross check. If we can't come up with a Deed there are certainly minute records and correspondence to indicate it was done, but he needs to be able to determine if these are all of the property owners in PGA who have executed the paperwork which he has. It appears to be 2 hours of work plus a title search...probably \$500 worth of work. Mayor Baker asked the feelings of the Council....Councilwoman Flowers and Adams agreed that if it is something the Town needs to get the work accurate. There is no need to do it if it is not accurate. Mayor Baker felt we need to pursue it; however, every time an issue comes up with Prince George's, we are not sure we do or don't have the documents we need. I feel this should be done as a part of our records. Discussion took place and each one of these individual property owners.....Attorney Witsil stated that if he could determine if what he has in hand, including the parcels that the Steen's signed off on, and the documents recorded, he feels this may be all of them. Then he may

make the legal determination that this group of documents sufficiently conveyed the roads. The reason for doing this is that the Steen's may not have gotten everybody's signature; therefore it is not complete. His concern is that if this was enough in June of 2000, why would they have bothered to try to convey a Deed from the property owner's association later. Attorney Witsil felt there was enough evidence here to believe that they conveyed it to the Town. Please find a Deed from PGA Property Owners Association Inc. to the Town of Dagsboro. He feels it was presented to the Town. The roads have been paid and the association has met the conditions for transfer to the Town. Also enclosed is a resolution for the Town accepting the roads and authorizing the Mayor to execute the certificate of acceptance, which would be attached to the Deed and recorded. Attorney Witsil said that between her representation of the Town and the development....something fell through the cracks. Mayor Baker asked Attorney Witsil to read the minutes and felt it would shed some light on it. According to Attorney Witsil after the October 21, 2002 was the most important part....the only reference was October 28, 2002 minutes where Mayor Connor needed to sign an authorization to accept the roads. It was motioned and seconded to accept the dedication of the roads and the vote was all in favor. The Town (at the Town meeting) voted to accept the roads....What happened to the Deed, Resolution and the acknowledgement is the problem here. Mayor Baker said we do not have it at the Town Hall and Attorney said it was not filed at the Courthouse.

That is one of two issues --- the other is at the end of Canal Street. This dates back prior to 1994. Canal Street was supposed to be 86 to 100 feet longer than what it is and there was supposed to be a turn-a-bout at the back of it. Apparently the road did not get finished for many years. Bud Harbaugh came forward and asked to have the road dedicated to him. The Town abandoned the road, dedicated it to him. He never took title to it or the title was never recorded. The cul-de-sac was recorded and transferred to him and put in his name. He came to the Town a few months ago and wanted the Town to start cutting the grass on that, stating the Town owned the property. In the interim, he has sold Lot #14 which is one of the back lots. Lot #14 is the one with the cul-de-sac on it. If, in fact, the Town accepts the front portion of the road back, we need the cul-de-sac to complete the road. If we take the street and cul-de-sac back does Lot #14 become a conforming or non-conforming lot....is it large enough to build on and how does it affect the other lots. Mayor Baker went through the old minutes from 1994 or so and if we take it back and find funds to pave the road and all of that is doable (I am not opposed to that). If we take it back, have we landlocked a piece of property or have we created a non-buildable lot (for which the town will have a financial liability against it). If we put it on the portion of our grass cutting for next year, does that admit liability on our part? He told Attorney Witsil if any questions came up, please call him or Stacey.

Prince George's Chapel or Cemetery: Vice Mayor Adams said she had nothing to report at this meeting.

Mayor Baker said they need to discuss Outside Contracts in Executive Session. Attorney Witsil asked about the upcoming ordinance meeting. It is a significant topic --- referring to the high density residential district. He would like to be doubly sure that there are two publications out at least fifteen (15) days in advance. Stacey reported that this has been done in two papers. He feels it appropriate to notify those persons (Stacey and Mayor Baker said they have a draft letter for Attorney Witsil to approve and then it will be sent to notify the necessary parties by Certified Mail). Mayor Baker read the copy of the letter to be sent to the land owners concerning the HD residential district, telling them that the Public Hearing will be Monday, November 16, 2009. Attorney Witsil stated that last month they talked about the threshold for grandfathering that HR classification and the Council directed him to make the threshold the application process rather than an approved site plan. Councilman Hearn stated and Councilman Truitt agreed that it might be well to prevent any applications being filed between now and the Public Hearing it would be wise to set a date....such as, any applications filed prior to a certain date. We did not send the letter previously until after the meeting tonight so that everyone could put their comments in. The only thing published was the Title (which would not change anyway). Attorney Witsil asked if anyone has requested a copy of the ordinance, which states it will not affect any property owner who has submitted an application for a preliminary or final site plan....Section 9 in the ordinance. There are 5 properties now....Councilman Truitt asked how far up the chain can you go legally that you cannot down zone...such as if they already have preliminary plan approval...technically Attorney Witsil said it depends on what you want it to be. Vice Mayor Adams stated if you were to say this ordinance changes all HD residential zoning to MR zoning, those people who have vested rights in Delaware law those property owners who have become entitled to develop that property....she doesn't know if a date would make it any clearer. Discussion took place between the Council members and felt there should be a date placed on it. Mayor Baker said in essence the way we had accepted the Highlands of Pepper's Creek application was as a change of prints. They came back as a new application. Attorney Witsil felt the problem in terms of notice and arguably fairness is that if you make the date of notification to those people (prior to the notification) then they have had no chance to know about it. Councilman Truitt stated we must come up with a reasonable date. We have discussed this at length previously. I don't think you can change the rules after they have applied and gone through as much process as they have, is the difference between ... (Councilman Truitt interjected if someone applies prior to the adoption of the ordinance then they are in)...Attorney Witsil said yes according to the Council's directions and this draft. Mayor Baker said it could be stated as anyone who currently has a project before P & Z.....it can be submitted at any time but it takes 15 days to get to P & Z. Attorney Witsil asked at what time....the drafting of the ordinance? He said he felt Council talked about it last month for quite a while, and he has given his opinion as the least to be challenged. If you are going to change your mind, now is the time to do it. He could prepare an ordinance and get it to Stacey tomorrow. She can release that one instead of this one. It will

not change the title....for a month now we have had that application language. He wanted to leave it as a filed application. He was advocating putting the date on the letter. What if it was stated "current application"? If it was filed one day before the date this ordinance was adopted, Attorney Witsil said he would have to determine that was a current application, does Council have another interpretation to that. Stacey said what she was thinking they were saying is that you can't notify everybody that you are changing that today is the last day....you can't notify them tomorrow that today is the last day. Councilman Truitt felt the ordinance had to be adopted before we can cut anyone off from an application. Stacey said this would be at the November 16th public hearing. She felt the developers need to be given a cut off date. Mayor Baker mentioned that he was a hypothetical developer who has a preliminary and/or final site plan....I receive this letter in the mail. The first thing I want to do is to protect my interest whether I do or do not have any. I might run to Town Hall and say..."I want an application to change my property from its current zoning to High Density Residential....it could be low density the minute they file the application they are in. If he were a developer and had questions, he would come in and file right away. He said he can demand it and file the application whether or not they are in high density or not. Attorney Witsil felt the answer lies in the 2nd sentence of Section 9 – the lawful use of HR zoned land that was the subject of a valid application for approval. It has to be HR zoned land. Mayor Baker asked if the Comp Plan defined where HR is. The present zoning map shows where zoning is. Attorney Witsil said the yellow is HR Residential. Councilman Hearn said the map must not be accurate because General's Green was High Density and Chapel Crossing and one portion of Church of God property. Stacey reported that HD properties are listed now - Church of God, Chapel Crossing, Cea Dag, Highland's of Pepper's Creek, Woodland's of Pepper's Creek, and General's Green. Mayor Baker said depending on a lot of factors, there is nothing to say the ordinance would pass anyway. Councilman Truitt asked if we need a specific cut off date. Councilman Hearn did not feel you could put a date prior to an ordinance being passed. They agreed that if they approved an ordinance on a date, then that could be the date of the next council meeting after the public hearing as far as an effective date. Councilman Hearn felt the letter looked good. Attorney Witsil read the information which would be on the letter hereby notifying (sent to all property owners currently on the Town's list of active developers or land owners as to a proposed change in our zoning code. This change will not affect any property owner who has submitted an application for a preliminary or final site plan for an HR zoned High Density zoned property or any property owner who has received approval of a preliminary or final site plan for an HR zoned parcel according to Section 9 of the attached ordinance prior to the date of approval of the ordinance). Council agreed. Mayor Baker said we would send the letter, copy of the ordinance and mail it Certified Mail to all active developers.

Councilwoman Flowers asked about the time for Trick or Treat, is it really 4 to 6 or is it a typo. The reason for the early time is the people to see the costumes when children go trick or treating. It will be from 4 to 6 p.m. for children ages 12 and

under in costumes only. Councilwoman Flowers asked if we were having a Tree Lighting Ceremony this year. Mayor Baker asked if anyone had an artificial tree to put out and put lights on it. Brackets have been made for some more decorations. He reported that the lanterns and bells are going to be put in front of the fire house...and explained other places where they will be located. There is no electricity on those poles and the expense of placing an outlet is prohibitive to the funds we have available presently. Possibly there will be funds in the future. Councilwoman Flowers said the Santa House is in really bad shape. It was mentioned that Santa will not be sitting inside the house anyway. Possibly we could have enough time for one to be built by next year. Mayor Baker said he needed volunteers to help with putting up the Christmas lights. Vice Mayor Adams will check with her husband to see if he is available. Norwood said if his schedule permitted, he would be available. We are thinking of the 20th and 21st on the Friday & Saturday before the program to check out the bulbs, etc. ...if not the guy with the bucket truck can check those out. The town staff is going to go up two weekends before and make any adjustments. Councilman Hearn said he would try to be available on the 21st. Councilwoman Flowers made a motion to adjourn from the Regular Session at 8:32 p.m. and enter into Executive Session, seconded by Councilman Hearn, all members were in favor.

At 9:15 p.m. Vice Mayor Adams made a motion to enter into Regular Session, seconded by Councilman Truitt, all members were in favor.

Vice Mayor Adams moved to accept Executive Session minutes from April 27, 2009, seconded by Councilman Hearn. All members were in favor.

Councilman Truitt moved to adjourn the meeting at 9:16 p.m., seconded by Councilwoman Flowers, and unanimously approved.

Respectfully submitted,

Rae Long
Administrative Assistant

RL/me

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.