

**MINUTES OF MEETING  
DAGSBORO TOWN COUNCIL  
BETHEL CENTER  
MONDAY, NOVEMBER 16, 2009**

The meeting was called to order by Mayor Baker on November 16, 2009, at 7:00 P.M.

Council members present were: Mayor Wayne Baker, Vice Mayor Patti Adams, Councilwoman Cathy Flowers, Councilmen Terry Hearn and Norwood Truitt; Stacey Long, Town Clerk; Rob Witsil, Town's Attorney; Kyle Gulbranson, Town Planner; Marge Eckerd, P & Z, and other interested parties as noted on the sign in sheet.

The first item on the agenda is the Public Hearing and Vote on the following:

An ordinance to amend Chapter 275 of the Municipal Code, entitled "Zoning" by adding a new section 275-15 to provide for a Medium Density Residential District with a development density not to exceed four dwelling units per acre, to rescind and delete the existing HR-High Density Residential District regulations presently permitting a maximum of 10 units per acre, and to amend the Table of Districts Regulations, the Table of Contents for Chapter 275 and Sections 275-19, 20, 27 and 42 to make reference to the MR-Medium Density District Regulations. At this time Attorney Witsil presided over the meeting and stated that now is the time and place for a public hearing and possibly a subsequent vote on the above mentioned ordinance. Throughout the body of this ordinance, Attorney Witsil stated to the Council and attending public that the intent of this ordinance is to rescind the 10 unit per acre density of the High Density Residential District, and to create the MR, medium density residential district in its place with a maximum density of four units per acre. Attorney Witsil stated that of particular interest and relatively new to the draft is Section 10....It is not only the savings clause, but also a sunset clause...which reads as follows: Section 275-22 is hereby enacted as follows .... Previous HR-High Density Residential Zoned Lands by ordinance enacted whenever you choose to enact this ordinance, be it tonight or a subsequent date, the Town Council rescinded HR Zoning classifications from Chapter 275. The lawful use of HR zoned lands that was the subject of a valid application for a preliminary site plan at the effective date of the ordinance may continue and be developed in accordance with the restrictions and requirements of Section 275-15 entitled HR-High Density Residential district as said section existed prior to the revision and deletion of said section, provided that the preliminary site plans or final site plan is validly approved and not subject to the sun setting limitations of 275-40b subsection 4 or 275-40f. The lawful use of HR zoned land that was the subject of a valid approval for a preliminary site plan, final site plan or building permits at the effective date of said ordinance may be continued and developed in accordance with

the restrictions and requirements of 275-15 entitled HR High Density Residential district as said section existed prior to the revision and deletion of subsection, provided that the plans or permits are not subject to the sun setting limitations of 275-40b4 or 275-40f. HR zoned land that was not the subject of a valid application of a preliminary site plan at the effective date of said ordinance or which shall become the subject of a sun setting provision pursuant to sections 275-40b4 or 275-40f shall be determined to be MR Medium Density Residential zoned land and may only be developed in accordance with the restrictions and requirements of Section 275-15 entitled MR Medium Density Residential District. Attorney Witsil hoped that this explanation is clear to everyone that is basically the grandfathering clause...if you are not the subject of an application for preliminary site plan which you approved the threshold would be, then your lands will be zoned if you approve this ordinance MR Medium Density Residential. If you are the subject of a valid application for a site plan, a preliminary approved site plan, a final approved site plan, which has not subject to sun setting then you may continue to develop your land in accordance with the HR High Density Residential development district at 10 units per acre. Attorney Witsil continued the Public Hearing asking the Council if they had any questions from him or Kyle or Stacey. Mayor Baker questioned that in the event of a total loss of a dwelling that was HR density that the property owners would be able to rebuild that unit back to original replacement. Attorney Witsil asked if that was one unit out of the entire development.....Mayor Baker stated one building out of several buildings that would have been the subject of a final site plan, and Attorney Witsil said "Yes, they could redevelop that parcel. Kyle Gulbranson, Town Planner stated that the changes to Section 10 covered all of his concerns. Attorney Witsil and Kyle agreed that they could not imagine a lower threshold of a down zoning of this. Kyle mentioned that every property that is currently zoned HR now has either an application in or project on the books at this point. Attorney Witsil asked Stacey if there were any applications submitted on any projects this week. Stacey reported that the Dagsboro Church of God submitted their application today. That covers all of the HR zoned properties in town. Attorney Witsil asked if the public has a question for him or the Council, otherwise we will hear from those in favor of the ordinance. Attorney Witsil stated the record should reflect that no one is raising their hand to speak. Council will hear from anyone opposed to the ordinance, and wanted the record to reflect that there are no persons present in opposition. Attorney Witsil read a couple of whereas clause, which he feels represents the Council's consideration of this ordinance. Whereas, the Town of Dagsboro finds the proposed amendment complies with the purpose and intent of the zoning regulations of the municipal code of the Town of Dagsboro, the goals of the Dagsboro Comprehensive Development plan and the zoning regulations of 22 Delaware Code Section 303, and Whereas the provisions of the MR Medium Density residential district are specifically intended to preserve the historic, important, small town character of residential housing in the community and to provide reasonable opportunities of residential development at densities in excess of the R Residential District Regulations and Whereas, the Town Council of Dagsboro finds that the extraordinarily high density of development provided in the HR High Density Residential district has resulted in the development of

unreasonably large and obsessively crowded sub-divisions or condo developments that are not in character with the scheme of development of the town and which places unreasonable burden upon the sanitary sewer and water services, the police department and fire protection services and the street and traffic patterns of the town. If you agree with any of those whereas clauses, I would appreciate your stating so on the record. If you have your own reasons for adopting this ordinance, I request that you express those on the record as well, because it will be rationale for your vote on matters like this.

Mayor Baker said this ordinance is not new .... It has been before Council for about 90 days. It has been to P & Z. They have made a recommendation. Marj Eckerd, P & Z Chairwoman, said the P & Z voted unanimously to recommend the change in zoning from HR to MR and we also received a letter from the Police Department stating that the crime would be less, traffic would be less, etc. We found that it did not go against the Comp Plan of 2008. Are there any comments from the Council? Vice Mayor Adams followed up stating she had looked at the Comp Plan of 2008 and agreed with Marj and the P & Z and their reasoning, as to units per acre and the density projections were set at 4 units per acre and the studies and strategies for growth are based for being able to provide infrastructure which we are going to need. We know we do not have that. The traffic on U.S. 113 is less than on Route 26, so we need to bear that in mind. It is the Council's responsibility to look out for the safety and welfare of our residents, both current and ones who will come in the future. Vice Mayor Adams felt it is in the Town's best interest to reduce from high density to medium density to take care of traffic, sewer capacities....all of that. Councilwoman Flowers is also in favor of the ordinance as she has heard from residents that they like the small town atmosphere and high density just does not maintain that atmosphere. She did not want us to be another Clarksville, another Bethany, where you can't walk across the street safely...we think we have problems now and we just can't handle any more traffic. Councilman Hearn noted that Dagsboro is one of the smallest towns in the State of Delaware (population wise) and yet in the summertime, it is one of the hardest places to get through in the State. The congestion is ridiculous....if we keep developing high density areas, it is going to get more ridiculous. Councilman Hearn feels this is a step in the right direction. Mayor Baker agreed with all of the things everyone has mentioned tonight. At this time he would like to take a roll call vote (when he said their name, just say yea (in favor of reducing it) or nay (not being in favor of reducing it). Attorney Witsil mentioned to Stacey that the blank in the second whereas clause would be October 26, 2009, that is the date of the recommendation from P & Z. Mayor Baker proceeded with the roll call.....Norwood Truitt voted Yea, Patti Adams voted Yea, Cathy Flowers voted Yea, Terry Hearn voted Yea, Wayne Baker voted Yea. The motion was unanimously passed.

**Presentation of Building Permits Issued:** Stacey Long, Town Clerk, stated that when she prepared the packets there had not been any building permits issued; however, on Thursday of last week, there was a permit pulled for Chapel Crossing (a four unit building) Units 1-4, Building #1.

**Correspondence:** We have a letter from Jeff Niezgoda from the Delaware Department from Transportation – Project Phase II of the Streetscape(copy attached letter in Council’s packets) explaining the Transportation is going through a process with the State Department and the project for Federal Funding and there will be a delay in the project as soon as Federal Funding is available. Mayor Baker was glad the project is going through; we are on the list and are waiting funding.

**P & Z Report and Vote on Following Items:**

**Highlands of Pepper’s Creek Project....Mrs. Eckerd, Chairwoman of the P & Z, reported that Doug Warner had presented an updated preliminary plan as per specification from the P & Z to include sidewalks on both sides of the street, sidewalks on the property fronting Clayton Street, architecturally interesting building designs which we requested, and Mr. Warner is present to show Council what they are talking about. There will be a 50 ft. buffer between the storm water pond and the buildings. The height and pitch of the buildings do meet the town code and the installation of a three foot picket fence will be around the storm water pond. Mrs. Eckerd said there was a question on the designated construction entrance and it will be at the northeast corner of the property. P & Z voted unanimously to recommend to you a preliminary plan approval of the Highlands of Pepper’s Creek. Mayor Baker asked Kyle Gulbranson if in looking at the reviews that he was satisfied that everything has been met and done....he said the issues which the P & Z had were addressed and incorporated in the plan. Mayor Baker asked if the Council had any questions. He asked Mr. Warner if he would come up and show the Council what is going on at this time. Mr. Warner pointed out information as he spoke....showing entrance coming off Rt. 26, 333 units in a condominium type of ownership, on approximately 36 acres. 7 unit town homes sporadically placed around the pond, with some condo apartments (for sale – not rentals). He showed character revisions incorporating changes suggested by P & Z. They do not have garages shown, but his client has indicated they may want to alter that and incorporate some one car garage in the units as well. There are not any particular driveways shown in front of the 7 units, but you will see driveways provided for off street and parking lots throughout the community that would service those facilities. There is a central amenity area with circular parking backing up to the pond, a walking trail and double sidewalks throughout the community. Mayor Baker asked what the central amenity area would offer..... Mr. Warner said there is a proposal now for a pool in that area and some active recreation as well as passive recreation, but it is something we would like to continue working through if we get preliminary approval, before final approval to keep the cost structure down. Some communities do not like pools, because the upkeep falls on homeowners associations and a pool drives up HOA fees which drive up cost structure for people trying to buy into the community. We are committed to passive and active recreation and would like to work through that with P & Z and Council as we go through toward final approval. If there were some particular amenities which the Town was looking for we could get together and see what you**

folks have to say about that. The time implementation of those on the other hand some developments say a certain number of certificate of occupancies so that the cost could be shared more equally. Those are things they would like to discuss as the project would progress. Mr. Warner asked if there are any other questions he could answer. Mayor Baker said obviously they will not be voting on this tonight. He is concerned about the 333 units (this is talking about putting almost 1,000 people in this development); presently we do not have any way to get pedestrian traffic from the north side of Route 26 to the south side of Route 26 where the sidewalk is. Mayor Baker would like for two or three of our commissioners, some of your representatives and Kyle Gulbranson to sit down and see what can be done to work out something for pedestrian safety to get these people across the street. If we are talking about a mid-block light or something, he is not comfortable at this point in offering preliminary approval until we have some type of input to look at that safety issue. Within the development if 600 feet would be considered a city block then there should be some type of crosswalk every so many feet....ADA accessible to be able to get pedestrians across even if it is no more than cross markers and speed bump...something that would designate pedestrian crossing within it. That is actually a long street in the scheme of things. Mr. Warner said that is part of the road standards and typically specified in the final site plan and explained how that would be done. The developer wants the people of the community to be safe also and said the cross walk and pedestrian crossings is something they have to work through with DelDot. As you know sometimes they are peculiar in asking you to do certain things and some times are particular in terms of restricting you from doing things. They are definitely amiable in having a crosswalk across Route 26 and would like to have that, but it is going to be a process as to what DelDot will permit. Mayor Baker feels it is important to have a group to sit down and discuss this. There is limited vision from either side. He would like to have 2 more Council members in addition to himself with Kyle and the developer to sit down and the sooner the better. Kyle mentioned that he felt DelDot should be notified as to what our expectations are as to what you want there. Mayor Baker said he has spoken to some DelDot people and it is just a matter of getting a meeting set up and letting them know what we want to do. Safety is of first concern for everyone. Where is the northeast corner (by the railroad tracks)? P & Z questioned if this was a public road or private road. Councilman Hearn questioned if what if the landowner did not wish to have that access. If Coastal Supply had not used that entrance before he would have been more concerned about it, but felt it would be alright. Mr. Warner showed the amenity and the pond and the water's edge. Mayor Baker would like to see down the line for two age groups...tennis courts and basketball courts.....Mr. Warner said tennis courts do not seem to be utilized enough to put them in. They would be willing to entertain your thoughts on that. That development will house more people than the Town of Dagsboro currently has now, Mayor Baker wanted to make sure there are activities for different age groups to do. Attorney Witsil mentioned if you have physical amenities which are not open fields they need to be on the preliminary site plan, is that correct, Kyle. If there was to be a basketball court it would have been on there already Marj Eckerd mentioned. Mr. Warner said the developer would be glad to sit down with the P & Z and/or Council and see

if there is something that would better serve the Town and the people in this community. Vice Mayor Adams asked about the pond.... Mr. Warner said there will be an aeration process in the pond...some developers like to have fountains, some don't ...there are sub-aqua aeration processes to keep the water moving. There will be a definitive maintenance plan for the pond with vegetative buffer to coincide with the fencing as well. That will be incorporated in the homeowner's association fees. Council had no further questions. Mayor Baker asked if it was necessary to do more talking about this, did Council feel it was necessary to pursue it further. Mayor Baker asked if anyone felt there was any need for any additional recreational activities for the amount of people inhabiting the area. Councilwoman Flowers did not personally like the idea of tennis courts as they tend to look pretty rough after a couple of years (hard to maintain...not used), etc. Vice Mayor Adams said you are going to need something because they are going to be pretty much contained...with nothing to do. Mr. Warner said there is the walking path and dual sided sidewalks for pedestrian traffic. The Tot Lot is 40' x 40'. There are certain persons in their organization with more expertise as to what type of amenities get used more. The exact scope would be using their expertise. Some swings, jungle gyms, some things that would range for elementary school ages. Kyle stated that playground equipment is for children up to 8 years old. Usually tot is considered 3 to 8 years of age. Kyle said he was previously certified in playground equipment. If you can come with something else for older children to do, that would be good. Mayor Baker asked if anyone would like to sit in on some meetings between himself and DelDot. Vice Mayor Adams volunteered and Councilman Hearn (if he could have the dates to see if he was available) and he would be willing to serve. Attorney Witsil said he preferred that 3 members not meet .... Vice Mayor Adams and Councilman Hearn agreed to either one or the other of them attending the meeting. Mayor Baker was going to give some dates for the meeting....he did not wish to try to go to Public Hearing and vote next month if they had not completed discussions with DelDot, but he would leave that up to you. Mr. Warner is looking for what is the path for what do you all need to be done for this to come to Public Hearing for you to make a vote. Mayor Baker personally felt the safety issue needed to be addressed....pedestrian safety and ingress and egress from the development and maybe the fine tuning on some of the amenities. Mr. Warner stated that the safety of the entrance is typically handled through the final submissions to DelDot and meeting all of the requirements. The crosswalk issue he understands...would that require them to set up a meeting and come to a concrete conclusion on what the crosswalk will be or not be. Mr. Warner wanted to know what he needs to orchestrate to bring this to a vote from this body. Mayor Baker stated that in order for him to vote in favor of any site plan approval, he would like to know that pedestrian safety is covered. If we can come to an agreement on that with DelDot in a matter of 15 minutes, he is all for it...if they can't then there must be a resolution to the problem. He does not want to approve a development that leaves that many people at risk in trying to cross in a non-cross area. Mr. Warner asked about some type of letter of intent stating that we will work with the developer in providing a means of safely crossing this road....that is different than designing that and saying there will be a traffic light or something to that effect. Mr. Warner felt a letter of

intent is something that we could possibly get from DelDot. You have worked with us on the Helm Street area and know what we can or cannot get from DelDot. Mayor Baker said then what we need is a letter of intent stating that this is what will happen and it may not be day one of the project...but when there are 50 units in there or 30% built up....without that we are not doing justice to the residents. The objective of the mission is to get people across the street in a safe manner. Attorney Witsil said he felt it was going to be very difficult to have DelDot give any definitive statement, but certainly the developer is benefiting from this give and take far more than I have seen in processes in other towns and counties. Attorney Witsil told Mr. Warner, he felt you can take away from this meeting is that my clients have certain desires for your plan that are not definitive, but giving you a good idea of what it might take to have them finally approve the plan. It might not require DelDot to sign off on those at this stage...he felt that if there is a meeting with DelDot, if you get one, they are going to be rather ambivalent about what the specific improvement might be. They may have some suggestions that you can put on the plan to bring back to the Council in a month or two for a preliminary that they can approve and you will have something to take to DelDot for final. DelDot might have a different or better idea by that time. Councilman Hearn stated that the pedestrian traffic has been mentioned several times and briefly someone touched on bicycles (in a development of this size, you may want to plan something for bicycles...there may be a lot of kids riding bikes and wanting to cross Route 26). He said that riding around the circle in the development is going to get old after a while. His suggestion is that they would be included as pedestrians. Mayor Baker felt the State of Delaware owned 10 or 12 feet on either side of the highway presently....that could be used as a multi-lane type thing if that were something the State of Delaware. If it is for the safety of the people then we should have it. Mr. Warner told Council that at the entrance which they have designed there is road widening, turn lanes, bike lanes implemented in this area. It is just that is usually part of process which goes forward after a preliminary approval. We can have the meeting with DelDot and see what comes out of it...Mr. Warner said they are not there to dodge safety issues. Mr. Warner stated he had gathered comments and he guessed it is up to the developer to incorporate or not incorporate those comments, but he would still like to make sure what the official path forward with the Town of Dagsboro is. Attorney Witsil stated it is up for Council to decide when to put this on the Agenda. I think you have heard what they are looking for. They could vote tonight to have it placed on the next council meeting.

Attorney Witsil asked to impose upon Council and asked that they skip to #2 and address the resolution so that Attorney Smith may be able to briefly address the group and then go home.

This is a resolution proposing a public hearing to be held on Monday, December 14, 2009 at 7:00 p.m. at the Bethel Center, located at 28307 Clayton Street, Dagsboro, Delaware to consider the request of the Dagsboro Volunteer Fire Department, Inc. to approve private issue bond financing in an amount not to exceed \$500,000.00 for purchase of a 2009 Sutphen Engine/Tanker pumper fire truck, 2,500 gallon

capacity, with pre-connected Hale 2000 GPM foam concentrate pump and continuation of provision for services to the Town by the Fire Company. Attorney Smith thanked Rob and Stacey; he said they had been working on this through e-mail for about 2 or 2 ½ weeks. This is an anomaly of the Internal Revenue Code and unless you think I am a land use attorney, he informed the Council that he was a tax attorney. IRS Code stated that if a lender (a bank in this case) wants to make a loan and have the interest income on that loan be partially tax free, the Town and Fire Department in question must enter into a service agreement and the Town must approve (after a public hearing) the bond, although it is not using your full faith and credit of the Town. It is a private bond or special activity bond; it doesn't affect your borrowing limits that are set in your charter through the general assembly. We actually have to have the Town Council have a Public Hearing as that is part of the Internal Revenue Code and regulations consider this, approve it and simultaneously although the fire department in the Town have to enter into a service agreement where the fire department agrees to provide firefighting services to the Town. That is why we come and ask for this...the fire department has a commitment from Delaware National for \$500,000 loan, which they will not let loose until this process goes through. The pumper is going to be more (in the neighborhood of about \$600,000 or more by the time it is fully outfitted. Attorney Smith stated that Gary Cox and Tom Glenn are present tonight representing the fire department if anyone has any technical questions (he would not know a Hale pumper from anything else, but they would). Attorney Witsil asked Attorney Smith what is the worse case scenario bond wise for the town, presuming we execute the agreement, go forward tanker is purchased, bond money is funded by the Bank and for some reason, the financing goes sour ... that the principal and interest can't be paid. Please explain to the Council, what is the worse thing that could happen to the town. The worse thing that could happen is the Bank might repossess the piece of equipment...there is no financial impact on the Town. It is a private activity bond. Like the tax free bonds which you used to see in the 1980's where they were also private activity bonds. There is no full faith and credit of the Town involved here. Zero. Would that affect the Town's bond rating in the future for any subsequent bond. Mayor Baker said he had talked to our accountants today and government accounting is very strict on towns. Their concern was the fact that if it did go bad, would the Town be liable, if not their suggestion was that the document which will be the "good faith and demand" of the fire department be part of our document stating that the Town of Dagsboro would not be liable. It would just become an addendum to this, showing that the town had no liability. There are a couple of other things which we plan to do...there will be an agreement further providing of fire services (that is not in front of you today). It is something which happens between today and when you have your public hearing where Attorney Witsil would work out the specific language in there. Secondly, I am going to be giving an opinion letter a counsel for the fire department to the Town and to the Bank which makes it clear that there is no financial obligation. It will make it clear that there is no such liability. Attorney Smith would be happy to speak with your accountants...he is also a CPA as well as a lawyer....he speaks their lingo from time to time. Naturally, accountants are very conservative and they are worried about

you. Once he shows them chapter and verse in the IRS Code where this is not something that affects the credit of the town, he is convinced they will agree. It is an excellent question. He did not realize how limited the borrowing ability of the Town's are. Mayor Baker said we would not have due diligence if we didn't ask for his opinion. He feels that we do need to have our accountant get in touch with you so that they feel that they have a handle on what's going on. If you will leave me name, phone number and some way we can get in touch with you...Mayor Baker said it is PKS in Salisbury. As you know, it all has to be in steps. We can't get anywhere until you agree to put it on the Agenda for a Public Hearing...he believes this will be 4 weeks from today. In the interim, Attorney Witsil and Attorney Smith will be working on making sure all of these matters get resolved to the satisfaction of the Town; otherwise, the Council won't vote for it. Attorney Witsil answered the question of the third whereas clause of the resolution states that not only will the fire company hold us harmless, but you are talking about claims, losses or damages including Town's attorney's fees and costs relating to this private bond. Attorney Witsil said he does bill the Town for time he spends on this and he anticipates that if he had worked at your request to review any agreement whatsoever.... .3 telephone conversation with Buck Smith or .6 review agreements and bond issue for Dagsboro Volunteer Fire Dept. Is it the fire company's intent that Stacey may send them an invoice on time spent on the project? Attorney Smith said "yes" you may send it and they will pay it. Councilman Hearn asked for an explanation on the bond/bonds which will be issued...In whose name is it issued? Attorney Smith stated that it is a private activity bond, which by IRS code and State law does not obligate the Town to pay it back. Example: In the 1980's when people had tax free, revenue bonds, closings – they were wonderful for attorney's because you had about 4 or 5 different attorney's working on it. Congress shut that off in 1986, but Sussex County issued hundreds of millions of dollars of private activity bonds (industrial revenue bonds) none of which impaired the credit ability of Sussex County and Town's did that also. He did several in Wilmington and down here also. It is a name, by calling it a private activity bond instead of a general obligation bond, and you all do issue a general obligation bond, it is letting everybody know that it doesn't in any way impair the town's borrowing or lending. It is a fancy way of saying that the Town stamps this and then the bank can issue the loan with the lower interest rate. Councilman Hearn asked who purchases the bond....Attorney Smith stated it is a bond of the Town of Dagsboro (by name) we are the issuer and Delaware National purchases the bond. They are the only owner of that bond. It is not a public offering. The Town of Millsboro has done this when they purchased something. If the borrowing limit for the Town of Dagsboro was a Million Dollars would this subtract from that. Attorney Smith stated that the fire department would love to have you issue a general obligation bond that is cheaper than Delaware National, but I do not feel you are inclined to do that. It does not affect your borrowing ability....it is something required by the IRS code. Mayor Baker asked the Council if they had any further questions. Would anyone like to propose a resolution for a Public Hearing to be held on Monday, December 14<sup>th</sup> to review and vote on this bond? Councilwoman Flowers proposed a resolution for a Public Hearing be held on Monday, December 14<sup>th</sup> for voting on the bond for the fire truck, seconded by

Councilman Truitt and unanimously approved. Attorney Smith thanked the Council for their time.

**New Business:**

**Item 1.** Qualifications of candidates of Town Council for election on Saturday, December 5, 2009. There will be no election this year. The three incumbents were the only ones to file.

Attorney Witsil said we would still need to publish that non event. Stacey said she would publish. Mayor Baker stated that there were 3 seats available and 3 reapplied for the positions. Attorney Witsil said that Council just needed to vote that you accepted their qualifications of those three which had re-applied. Upon motion by Councilman Truitt that Council accepts qualifications of the 3 candidates which have applied for the positions on the Town Council, seconded by Councilman Hearn and unanimously approved.

**Item #3.** Consideration of possible Christmas bonuses for employees. Would we like to give anyone anything this year? Councilwoman Flowers stated that she would not be voting. Vice Mayor Adams stated that last year we gave everyone Christmas bonuses across the board of \$100 and that would be her same suggestion, due to the economy. Vice Mayor Adams made a motion that the town employees be given a \$100 bonus for Christmas, seconded by Councilman Truitt and unanimously approved. Councilwoman Flowers abstained from voting.

**Appointment of Board of Elections:** Not necessary.

**Old Business:**

**Fire Department Water Usage & Reporting Process.**

Mayor Baker introduced Tom Glenn who stated the Fire Department wanted to give this report from ISO (you had worked with them on insurance services organization) for the fire protection class for the town. Mr. Glenn stated he had been working with them for about a year now. You will see that your previous rating was Class 6 and reduced to Class 4 (a much better rating). This is in the report. He wanted to report that our rating for outside of town was a Class 9 and we reduced it to Class 8-T). Mr. Glenn stated that he is here tonight as there had been some questions concerning the water usage a few meetings ago. He is here to try to see what questions Council had and see if he can answer their questions. Mayor Baker stated his concern is the fact that every month the Town does reconciliation on its water usage. We get billed by Millsboro on a monthly basis. It is very important for us to be able to go through our water billings and determine where our water was used. We have gone many months at a time in getting nothing from the fire department or ending up with zero. It is hard to reconcile our books if we are not getting water usage reports. Mr. Glenn said one of the reasons you will

see a zero is that we are a fire department when actually we do more rescues, more miscellaneous calls)...we only had a couple of fires and many of our calls are to assist to other companies (stand by to another company....where we do not use any water). If we assist another company in another town, 99% of the time we use their water and it is filled up before we come back. That is not using town water. To say it is 100% accurate, it probably is not, it may be guesstimated. It is not possible to check gallons we throw on a fire sometimes. These reports you are getting are pretty close to what we can get them. The only thing that is not included is the two times when you were with ISO and they flowed water, he was not aware of how much that would have been; however, the town should have a guesstimate on that. Mayor Baker said he did guesstimate that. We estimate it as best we can...he pulled reports for a year of fires..... 10 or 12 fires at the most and some don't require water as many of these are already out when we get there, so to speak. Mayor Baker said he can appreciate all of that....if you could just let us know. There are reports filed from 2008 and 2009 up to October....but there are just not received in a timely manner. I think we have a letter of agreement on that. If we could get them within a certain time span, we can go back and do reconciliations. If they are a month or two late, it is hard to reconcile. Timeliness is more important. He realizes you can't know how many gallons you pump, but I think you have a reasonable guess....that is what we try to do to the best of our ability. Mayor Baker told Mr. Glenn that is all anyone can ask. If you are at a fire and using 500 gallons a minute off of 3 pumpers, you know after 15 minutes, how much water you pumped. That is all we are after...we are not asking the fire department to pay for any water or anything like that, we just want to know where it was used so we can reconcile our usage in town. Mr. Glenn asked if there were any other questions on the water usage. Mr. Cox stated that the report is done before the 2<sup>nd</sup> Monday of the month before the monthly meeting obviously as volunteers if Brandon gets delayed in finalizing the book or has a question, it slows down the process, but we turn them in as soon as we get them. Councilman Hearn stated in the September meeting he had asked the question about the water usage. He had been led to believe, but then told outright on a couple of occasions by persons with the fire company, they could not estimate the water usage. He had trouble thinking that was accurate and he took the liberty of searching and finding it is a requirement to assess the amount of water you will use for a control burn, which means to me that you have to have some idea of how much it will take. If you have an idea of how much it is going to take, then you must have an idea of how much you have used. That is why he asked the question of Mr. DeHaven. Mr. DeHaven told him he would have to get an answer for him. Dagsboro Fire Company does not do any control burning any more...the last was in 2005-2006 in that time frame, the company voted not to do any control burnings as there are so many restrictions on them any more. On the fire scene you can estimate the amount of water used and we do that. I don't know who gave you that information; he is only speaking for himself. Vice Mayor Adams thinks all of us want a good repore....we did not get reports at one time when I was Mayor; I requested them all of the time. We are now getting them. Vice Mayor Adams appreciates they might be behind, but she must tell the fire department that it would seem a little odd that they had pool fillings in October or November when the pools

were being utilized in June, July and August. I just wanted to share with you that finally we are getting the reports...they are slow sometimes, but we are getting them now. There was a time when we could not get them at all. She does not feel there should be any animosity between the fire department and the town and just wanted you to understand where we were on it. Mayor Baker mentioned to Mr. Glenn that the relationship between the Town and the Fire Department is strained....this body is willing to sit down with the fire department, their executive committee, president, whoever they come up with that they would like to have meetings with. It has to be done by Public Notice (anytime Council gets together it must be by Public Notice). Can be a closed workshop....in the public would not have a right to speak, just members of the Council and the fire department. He would like to see this come to an amicable agreement and move on with life....some of this stuff is about having a breakdown in communication. Any time, any where, any place. Mr. Glenn asked if when the water system was installed was there a flow test. Mayor Baker said yes. Mr. Glenn has never seen a flow test and none of the fire department members have ever seen a flow test. He has been told they should have a copy of it. Kyle reported that Davis, Bowen and Friedel had estimates of the flow through town.....Mr. Glenn asked if they were estimates or accurate flow tests. Kyle believed they are estimates. Mr. Glenn stated that is what he has a little bit of a problem with, they weren't actually tested. He felt that after the main system was put in, did you run into a problem with one of the new hydrants at Clayton Crossing. He questioned what is the project testing of the hydrants. There were only two hydrants in town that tested low...1500 .... (green top). These were out by Church of God. The Chapel Crossing hydrant was flow tested when it was put in. He is not sure if URS representative was there or not. Kyle stated that when developments are proposed, the hydrants in the vicinity are tested so that engineering can be done on the project. All of the hydrants tested were equal or exceeded what Davis, Bowen and Friedel estimated. Mr. Glenn asked for a copy of the report. Kyle will get it to Stacey and she can forward it to you. Mayor Baker thought it went to the fire department with the as builts. It was in one package. The fire department has a copy of the as builts, it is probably in that packet as well as the flow tests. Stacey said they were forwarded as well as a plan of all the hydrants located in town, and depicted the flow test. This was probably more than 2 or 3 years ago. Mayor Baker expressed that Council does not want to misrepresent any hydrant not being what it is. Mr. Glenn asked if there are annual provisions for annual testing. Mayor Baker stated there was (not for pressure testing, but going around and see if every hydrant is operational). Mr. Glenn asked how are we proceeding on 911 addresses as far as enforcement as to whether people are displaying their proper numbers. Mayor Baker said we have put it in the newsletter and have asked for it. There are still several people that have 5 digits up, but do not reflect as they should. Chief Toomey has asked they update their 911 addressing. They do not want anyone to get fined, but when they are looking for someone without the numbers they want to be able to find them. Mayor Baker said with the new structures going up, it is not even an issue....they are properly numbered. The ones who have been here for a while are lax in getting the numbers up. As part of our reconciliation we checked every water meter against a 5 digit 911 number. Most of these people were spoken to about

having the 911 numbers on the house. They are aware of it. Does anyone have any other questions of the fire department. Mayor Baker said the fire company and town have a lot of negotiations coming up the next several months and he did not want any miscommunications or animosities that we cannot talk about. Mr. Glenn stated he would pass the information on to the members and department heads. Mayor Baker thanked Mr. Glenn and Mr. Cox for being present this evening.

**Presentation of the Treasurer's Report:**

Stacey Long, Town Clerk, made the Treasurer's Report (copy which was distributed to the Council and posted in the Minute Book for the November 16, 2009 meeting). Mayor Baker asked if there were there any questions concerning the Treasurer's Report. Vice Mayor Adams made a motion to accept the Treasurer's Report as read, seconded by Councilwoman Flowers, and unanimously approved.

**Consideration of Billing Water Usage on a monthly basis for all accounts:**

We sent out a survey and received 25 responses back. There were two more in favor of monthly billing than there were in favor of quarterly billing. Mayor Baker has put some numbers together as to what it will cost monthly billing vs. quarterly billing. Basically it will cost us fifty cents per billing without labor to send a post card if we use our own billing...our return on this project, considering what Artesian wants to do the interfaces, change over the billing system, etc. their estimates came up to \$8,900 to change to monthly. When we looked into purchasing our own billing system, we can buy our own system; put it in place for \$2,068.00. The return for us is immediate. We could save \$2,400.00. We could save enough money to hire someone to do the inputting of the billing on this and come out \$2,400 ahead. As we have possible revenue regain in efficiency of about \$25,000, it seems to be a no brainer to move forward to doing our own billing. He feels if we have our system in place, we can do a few trial runs and be up and running by the time we have to negotiate with Artesian to renew or not renew a contract with them. It is certainly a savings. Mayor Baker is totally in favor of monthly billing. The people who were largely in favor were people who had some previous water leaks. When we use our new system it shows up immediately as a water leak, we can inform them immediately of the leak. Last month someone used 120,000 gallons of water...he had a water leak and was not aware of it. He had someone use his property and they left the toilet running....3 months later the reading on the property shows a leak on the property. He was able to have that taken care of immediately. There are things that can be looked at every thirty (30) days as opposed to every ninety (90) days. If there is an issue we can address it, we can address it immediately. We would not change anything until our system is in place --- bugs worked out --- etc. Those who opposed monthly billing were not thoroughly opposed to it; it was more like whatever is best for the town. Councilwoman Flowers is in favor of getting the billing under our control. Attorney Witsil said you can certainly vote on it -- this would be for consideration of billing water usage on a monthly basis for all accounts. That is fine. He did not know if you were going into purchasing

equipment or not, that would take a separate vote. Councilman Truitt stated that we are not really ready and would we have to vote on any of it tonight. Mayor Baker asked Attorney Witsil if we could vote on the equipment tonight. Mayor Baker was advised that you do not have to put it out for public bid if it is under \$10,000. Please put on next month's agenda that we discuss and vote on purchase billing equipment for the water billing. Councilwoman Flowers made a motion to place on next month's agenda that we discuss and vote on purchasing new billing software for the water billing system and bill on a monthly basis, Councilman Hearn seconded the motion and it was unanimously approved.

Approval of Minutes of October 26, 2009: A motion was made by Vice Mayor Adams to approve the Minutes of October 26, 2009, as presented, seconded by Councilwoman Flowers, and unanimously approved.

### Standing Committee Reports:

#### Police Department:

Chief Toomey said that he had presented each of the Council Members with a copy of the Statistical Report for the Month of October. There were 3,199 miles patrolled, 79 traffic arrests, 22 traffic warnings, 2 criminal arrests, 5 local ordinances were investigated, a total of 334 hours – 214 hours were patrol hours – 62 were investigative hours and 58 were administrative hours. There were 569 business checks and a total of 45 complaints, not counting the local ordinance complaints. Sgt. Litten returned from vacation which he took in October. Chief Toomey investigated 4 traffic collisions last month. We have not had that many collisions since this summer. What were the locations, Mayor Baker asked....Chief Toomey said he would have to check his reports. One at the high school, one at Royal Farms – both were private property. The other two are somewhere in town. The funding for bicycle patrol has basically ended and was enormously successful. We put in numerous hours. In October we recertified in AED, CPR and first aid. This makes us qualified for the next two years – we are up to date and are fully certified now.

Hazard Inspection Committee: Nothing to report.

#### Town Property/Town Improvement:

Councilman Hearn has been going through the International Maintenance Code requirements regarding condemnations and unsafe buildings and looking at the steps required in each of those instances. If he recalls Chapter 83 correctly (and he will review that again), it appears there will need to be some alterations in the process we are using now as far as logistics. Presently, without going into detail, the logistics of taking action on International Maintenance Code or Chapter 83 have not been done exactly as those items require. Councilman Hearn will get some things

listed and give Mayor Baker a synopsis. It deals with structural integrity...the Mayor wants Chief Toomey to go in and do what needs to be done.

We are working on putting Christmas lights up. All of the old bells and lanterns were re-done and we will begin hanging them tomorrow. They look good...they have been painted red and put a bell inside. One fixture is on every light pole that we have (illuminated by the street light)...there is no electrical outlets on those poles. We should be able to finish hanging the large Christmas pole lights tomorrow if the weather holds out. We have two large trees in poor shape....by the fruit stand on Main Street the interior is rotted out. He is surprised that they held up in the last wind. There are two trees south of those two, and we may have to move it up on the agenda to have them trimmed or cut down.

#### Prince George's Chapel Cemetery:

There is a Prince George's Cemetery Meeting on Saturday, November 21, 2009 at 2:00 p.m. at Town Hall. All are welcome.

Mrs. Eckerd mentioned that the P & Z are going to have a workshop every other month. She is using it mainly to familiarize themselves with the new site plans coming in front of us....T's corner property and would like to go over it more thoroughly as a group rather than by themselves. We would declare it as a workshop....the public could come but we would not be asking for input from the public. They could attend and we could ask questions, but no decisions will be made at that time. Mayor Baker said in essence what you are saying is that you are not going to be giving Council recommendations until every other month. Mrs. Eckerd said yes...if there is nothing in front of us. We would like to have at least one session before we make a recommendation. Councilman Hearn asked if there would be an Agenda for these workshops. It was stated that anytime they meet there must be an Agenda posted seven days in advance. Attorney Witsil asked what would be the difference between their regular meeting and the workshop. What do you plan on discussing...Mrs. Eckerd said only discussing T's corner in depth. Attorney Witsil said they do not have to make a recommendation every month. He said his concern was not about her leadership but from devolving from P & Z's regular meeting into meetings which could be criticized as not open to the public or not regular meetings. It is his inclination to suggest that you keep your regular meeting Agenda and do with it as you like...you do not have to have a recommendation at every Council meeting. Mrs. Eckerd asked, "Could I just have one item on the Agenda Meeting and discuss that to death if we wanted to". Mayor Baker stated his concern is the fact that if someone comes before Council and it is a small matter....just someone wanting to put a sign up or a deck on his house, he will have to wait months before he can find out. He would rather see P & Z limit the stuff they are going to talk about, but be able to say clear the sign issue or some other small matter. People might feel it inappropriate that you have to wait, but

that is his own personal thoughts. Mrs. Eckerd said they would like to be able to sit together and discuss a project with their feelings....with no interruptions from the developer. Attorney Witsil said P & Z has the opportunity to say to the developer...now we are having our deliberations. You can establish a meeting as a workshop and announce at the beginning of the meeting that you are not taking public comments. Attorney Witsil would like to have P & Z Meetings continue in a regular fashion. He said they cannot tell a developer not to show up. Mrs. Eckerd said that what they are doing now is get the plans, take them home, make all of these notes on it and come to the meeting....everyone has different notes. Attorney Witsil stated that is fine. That is the way you are supposed to do it. He suggested scheduling a portion of that meeting for input from the developer – so he can make his presentation to you. Deliberation and workshop by the members of the P & Z....this is where you just sit and talk about how each of you feel, your reactions, your comments and you may say to the developer....(sorry, we are presently hashing this out among the members and you may make suggestions after this portion of the meeting). Mrs. Eckerd stated it will really mean that we will not be able to have an Agenda that is as full as it has been. Attorney Witsil stated that is entirely up to P & Z as to what they wish to schedule on their Agenda. Mayor Baker mentioned that if you have a meeting and want to discuss the Highlands of Pepper's Creek....you can inform persons at the meeting (developers included) that we are going to stop public comment at 8 o'clock (if the meeting starts at 7 that gives an hour for the developer to make its presentation). He feels that P & Z could limit the time by the number of items on the Agenda. Kyle stated that you have some applicant who would be fine with that....some applicants who want to be very involved in the conversation. He feels you will have to be very firm at the beginning. Attorney Witsil stated that usually New Business is when you will have public comment and input from the developer, if it is scheduled at another meeting, it will be scheduled as old business. You can inform the developer that this is not your opportunity to speak. We are deliberating and deciding the issue and discussing the merits of it. We may have some questions for you, so you are welcome to stay around until this portion is finished. It will still be P & Z meeting...you could call that portion "Workshop Deliberation Time". He feels there should be the formality of a Regular P & Z Meeting with Agendas noticed ahead of time and the public participation. Stacey asked Mrs. Eckerd to get up with her and they would set up the Agenda however she wants. It needs to be posted 7 days in advance of meeting. Presently there are three coming up. Kyle stated that P & Z had set a policy that next month's meeting would be the 15<sup>th</sup> of the previous month. Church of God's came in on Friday....before the 15<sup>th</sup> cut off. Councilwoman Flowers said if they get 30 things before the 15<sup>th</sup>....there has to be some way to limit. Attorney Witsil said he did not feel Church of God is in any rush from what he discussed with the minister.

Mayor Baker asked how much the Council has set up for their Agenda for December. Councilwoman mentioned the water billing software and the fire department. He said let's keep it short. He did not want December's to be a huge Agenda. The date of the next meeting is Monday, December 14<sup>th</sup>. Attorney Witsil will be able to be present.

**Vice Mayor Adams made a motion to adjourn Regular Session of the Council Meeting into the Executive Session, seconded by Councilman Hearn at 9:05 p.m.**

**Respectfully submitted,**

**Rae Long  
Administrative Assistant**

**RL/me**

**At 10:15 p.m. Councilman Hearn motioned to re-enter regular session, seconded by Vice Mayor Adams. All in favor.**

**No votes took place in Executive Session.**

**At 10:15 p.m. Councilwoman Flowers motioned to adjourn the meeting, seconded by Councilman Hearn. All in favor.**

**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 an in accordance with the Freedom of Information Act.**

