

**MEETING OF MINUTES  
DAGSBORO TOWN COUNCIL  
BETHEL CENTER – 28307 CLAYTON STREET  
MONDAY, DECEMBER 14, 2009**

The meeting was called to order by Mayor Wayne Baker. The following persons were also in attendance: Vice Mayor Patti Adams, Councilwoman Flowers, Councilmen Hearn and Truitt; Stacey Long, Town Clerk, Rob Witsil, Town Attorney. Other interested persons listed on the sign-in sheet.

First item on the Agenda is the swearing in of new Council members. Stacey Long, Town Clerk, went to get the paperwork needed. The Council went on to the Public Hearing.

**Public Hearing and Vote on the following:** Consideration 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 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 Witsil wished to inform the Council as to the nature....the Dagsboro Volunteer Fire Department is asking for our blessing basically and that is what it is, to acknowledge that they provide volunteer fire services to the Town so that financing may be acquired through Delaware National Bank via a private activity bond. Attorney Witsil stated that he had the opportunity to read and review documentation and correspondence and opinion letter from Buck Smith (he is present this evening). You had heard his presentation at the last meeting. He has in addition to writing a specific letter to Attorney Witsil guaranteeing that the good faith and credit of the Town is not being pledged for repayment of the bond....In addition to his professional opinion, for which he is liable, Attorney Witsil has also received from PKS and Co., a certified public accounting firm, in Salisbury, Md. Mr. Smith is correct and that they also concurred with his opinion. Accordingly, Attorney Witsil can give a legal opinion that this agreement that you are entertaining this evening is just that....an agreement to (1) enter into a private activity bond or agree to the private activity bond in an amount not to exceed \$500,000 for purposes of acquiring a 2009 Sutphen Engine/Tanker pumper fire truck; (2) the fire company agrees to furnish fire fighting services to the Town of Dagsboro; (3) the fire company agrees to pay all expenses including all the Town's expenses related to the issuance of private activity bond and associated financing. Attorney Witsil stated that for Council's information he has not billed for his review of these documents this past month...they have come across his desk and e mails...he had briefly read them, he

feels that he had an initial billing which Stacey received for last month for his initial review of this documentation. He did not expect he would have any other bills related to this issue. Finally, and most importantly in Attorney Witsil's opinion (4) that the fire company agrees that it shall save harmless the town, its officers, directors, employees, and agents, harmless and shall defend and indemnify the town for all expenses, costs, damages, losses, actions, claims or proceedings of any kind of nature, including workman's compensation claims by anyone in anyway arising out of the operations of the fire company relating to the funding provided for the purchase of the custom pumper or relating to this agreement. Accordingly, if you so decide to accept the agreement, Attorney Witsil gave Council his legal opinion that it is acceptable and a proper action, if you decide to do that. Vice Mayor Adams asked ...if you look at the agreement the first whereas, can you explain why it says....has requested that the Town of Dagsboro ...to issue a private activity bond. Her question was why was the Town the issuer? Attorney Witsil stated it was because we have to be. The IRS code states that in order for the Town to have this type of financing be tax exempt and Mr. Smith will answer your question specifically (as he is on the hook from his opinion to you that this has to be an issuance by the Town). That was my question to him. Mayor Adams stated that she was reading your e mail and had a couple more questions....reasons that the Town does not actually issue the bond and yet we do not have to hold a special election. Issuance of a private activity bond would fall outside of the perimeters of our Town Charter which requires such an election. Attorney Witsil asked Attorney Smith to summarize his written opinion: Attorney Smith stated that we all know that everything that government and the IRS do makes sense....that is the first thing we will start with. There is a written opinion and it has been handed out which centers around the verb issue, because the Town is not going to sign a piece of paper that says here is a bond and here is a note, but for tax purposes it is called the issuance of a private activity bond. A bank can't say this is O.K. with us, we are issuing the bond and it has the Town's blessing. The Town must take some action to prove it which is called "the issuance of a bond"....It is pretty clear in the Internal Revenue Code that this does not in any way encumber the Town's borrowing/lending authority....it is not backed by the full faith and credit. It is just a term of art that they had to come up with something; therefore they say the Town is issuing the bond. Attorney Witsil mentioned to Attorney Smith that the only action that the Town needs to take is to approve this agreement tonight and have the Mayor sign the agreement. Attorney Witsil asked if there would be a subsequent document that would in any way be construed to be a bond document that you will ask the Council to subsequently approve and sign. Attorney Smith stated, "No". The only thing we are going to ask is some proof on the Public Record that the Town had the Public Hearing (as required by IRS), that the Council then approved this and that Council enter into this agreement. That is all we have to do .... All you have to do. You do not have to sign anything for Delaware National Bank. Attorney Smith has to provide them with a written legal opinion, much as he did with Council, that the Town has properly jumped through all of the hoops. That is all that is needed. Are there any follow up questions. Mayor Adams said for example....if the fire company defaults, liquidates all of its assets, still owes....who

pays. Attorney Smith stated that it could be no one pays...if the liquidation of the assets do not pay off the loan, and then the bank has a loan which has not been paid. Attorney Smith stated the Town is not obligated on it. There is no recourse to the Town. Attorney Witsil mentioned that the Bank would obviously foreclose against the vehicle to begin with. Attorney Smith also stated they will have a security agreement on the vehicle with a lien on title. The Town has no obligation. The sole recourse is for the Delaware National Bank to repossess the assets...the fire company is probably going to spend over \$100,000 to fit out the truck. Attorney Smith stated his malpractice policy is in excess of \$500,000 plus....so if he screws up, please sue him. He asked if Council had any other questions. Councilman Hearn mentioned Section 33 in the Town Charter, and it does not cover this specific instance. By what means does the Council have the authority to issue this bond. It has the authority as part of its general powers granted by the Delaware Constitution to transact business for the good of the citizens. The Internal Revenue Code's statutes do not require the Town to be obligated on the Bond for it to be issued. This is almost like any other type of business that may come before you that affects the Town, but does not require the Town to spend any money and there are probably lots of those issues. Councilman Hearn asked if it was Attorney Smith's opinion and Attorney Witsil's opinion that we have the authority to issue this as far as the Town Charter is concerned. He would rely more on Attorney Witsil's knowledge of the Town Charter, but his reading of Section 33 tells him that this is not something that is covered by it. Councilman Hearn basically wanted that stated on the record.

Attorney Witsil stated since this is a public hearing he will ask the obvious question.....is there anyone here who is in favor of this ordinance and if so you have the floor. Is there a spokesperson for the fire company who can just state that he concurs with the representations of Attorney Smith? This is so that someone other than an attorney making the record this evening. Gary Cox, representing the Dagsboro Volunteer Fire Department, Inc., asked that the Council fully support this initiative to help us reduce our loan rate and approve all of the necessary paperwork as it has been presented to support the IRS requirements and the Bank's requirements to move forward on this. At this time Attorney Witsil stated to Councilman Hearn that it is his job to address the Town Charter and not Attorney Smith's. In rendering this opinion in terms of IRS status, I rely entirely upon Attorney Smith's opinion as he (himself) is not a tax attorney. However, under section BB, the Town has the authority to provide for the organization of the fire department, ambulance, rescue or paramedic services and to contribute, donate given amount or amounts not to exceed the percentage of total taxes levied on real estate. You have the power and duty to assist with those associations providing ambulance, rescue, fire and paramedic and maintaining and operating fire fighting, ambulance, rescue and paramedic equipment. Attorney Witsil asked if there was anyone else who cared to speak in favor of this agreement. There being none, is there anyone opposed? There was no opposition.

Before we take any action on this matter, Attorney Witsil would like to swear the Council in. This oath of office is much simpler than the oath of office he would have brought in, which as you have heard is 3 paragraphs and is the State Charter's Oath of Office. Would those three individuals who are being sworn in please stand and raise your right hand and state your name, please. Cathy Flowers, Wayne Baker, Patti Adams. Do you promise to uphold the Charter and the ordinances of the Town of Dagsboro? All three answered .... I do. Do you promise to uphold the ethics code of the State of Delaware and the Town of Dagsboro?....All three answered, I do. Do you promise to faithfully attend to the duties assigned to you...? All three answered...I do. Attorney Witsil congratulated Cathy Flowers, Wayne Baker and Patti Adams and stated that they are now members of the Town Council for a term of two years, 2010 and 2011. There were no more questions from Council. Mayor Baker asked if anyone would like to make a motion or recommendation. Vice Mayor Adams would like to make a motion that Council approve the private issue bond financing in an amount not to exceed \$500,000 for the purchase of a 2009 Sutphen Engine/Tanker pumper fire truck, 2,500 gallon capacity with pre-connected Hale 2000 GPM foam concentrate pump and continuance of provision for services to the Town by the Fire Company, seconded by Councilwoman Flowers, and unanimously approved.

Mayor Baker asked Attorney Smith if this constitutes the letter or agreement that you would need for firefighting services. This is the entire agreement. He had printed out five (5) copies of the Agreement. He would like to have one original for the Bank, one for the Fire Company and one for himself. He assumed Attorney Witsil would like one and the Town record would probably like one. Attorney Smith asked that Mayor Baker sign all five of these. They would like to have the Town Seal affixed also. Gary Cox stated he could take them to the fire company and have them signed this evening. Attorney Smith thanked the Council and said he and the fire company also appreciated it.

Mayor Baker stated that the next item of business should be the re-organization of Council. Councilwoman Flowers asked who should receive the executed papers besides her. Stacey said she would take them. Mayor Baker said we need to take nominations for Mayor, Vice Mayor, Secretary-Treasurer, Assistant Secretary on down the line.

Mayor Baker asked if the Council wished to wait on this or come back to it. At this time Councilwoman Flowers nominated Patti Adams for Mayor, seconded by Councilman Truitt, and unanimously approved.

Wayne Baker nominated Norwood Truitt as Vice Mayor. Mr. Truitt mentioned that he had a shift schedule at work and would devote as much time as he could

depending on his schedule and asked Council to be aware of that, seconded by Councilman Hearn, and unanimously approved.

Mayor Adams stated that they needed a motion for Secretary/Treasurer. Councilman Baker nominated Cathy Flowers, seconded by Councilman Truitt, and unanimously approved.

Mayor Adams asked for a motion for Assistant Secretary. Councilwoman Flowers nominated Stacey Long, seconded by Councilman Baker, and unanimously approved.

Councilman Baker nominated Councilman Hearn for Police Commissioner, seconded by Councilwoman Flowers, and unanimously approved.

Councilman Hearn nominated Floyd Toomey as Chief of Police, seconded by Councilwoman Flowers, and unanimously approved.

**Presentation of Building Permits issued:**

Stacey Long, Town Clerk, stated that Chapel Crossing has pulled a permit for a four unit building on the first week of December.

Mayor Adams asked if there was any correspondence. Stacey reported that there was no correspondence to be read into the record.

Councilwoman Flowers did not know if it counted as correspondence, but she had e mailed Stacey about putting on the Agenda about the Street Light on the corner of New and Warrington and she never got a response. We looked into this matter. Councilman Baker said if the Town wanted to do it ...it could do it, but the lighting recommendations which we get from Delmarva Power does not recommend a light on that pole...there is a transformer on that pole and he felt it would be quite expensive. Councilwoman Flowers felt it was worthwhile because it is very dark and she almost struck a child on a bike in the dark. There are gangs of kids walking on that street now. It is dark and dangerous in the area and residents would like to have one there. She wondered if they needed a petition or just give us some direction as to what needs to be done. Does it need to be put on an Agenda? Mr. John Hansken agreed it was very dark in that area. Councilwoman Flowers felt that a couple of hundred dollars was not too expensive, if it is a matter of saving a life or keeping safety on the street. Mayor Adams asked if we could put it on the Agenda and get an estimate.

Mayor Adams asked Mr. Disharoon if the P & Z had anything to report. Mr. Disharoon reported that the Church of God appeared in front of P & Z and stated they had a preliminary plan (he could not call it a preliminary plan really). He felt they were trying to get grandfathered in under the new medium density deal. We are in 100% in favor of it to pass it on to the Council. P & Z did vote in favor of it. He felt it was going to be a long, drawn out affair possibly 5, 6 or 7 years before they get enough to get to a preliminary plan. No construction time line. Stacey asked if the commission was in favor of the plan which Church of God had presented. Not a plan as they have not submitted a plan. Attorney Witsil asked if it was a viable application...Councilman Truitt asked if it had sun setted. Attorney Witsil said if they submitted a plan (even if it was an older plan) it is not a question of sun setting because they just applied. The question is ...is it a proper application that was submitted because of the nature of the site plan that was submitted. He suggested that Stacey, he or the P & Z review the plan to see if it is a proper application. He knew that we had tried to assist them in informing them that they could submit an application. Just by submitting an application does not grandfather them. They have to have an application with a serious, viable plan. Stacey reported that she had given Attorney Witsil a copy of URS review on the Church of God plan. Attorney Witsil said we should inform Kyle that he needs to make a decision as to whether it is a viable application (they are not going to be able to sit on this application for 6 or 7 years) without complying with the requirements of the submission of the plan. If they do not comply with what Kyle has listed as the deficiencies in their plan, they are subject to being "not grandfathered" by their application. Councilman Truitt asked if that liability should be determined by P & Z...Attorney Witsil answered that he felt Kyle should take the first look at it. Attorney Witsil stated he is not the one to say if this is a proper site plan or not. P & Z could make that determination as well, but I am sure they would like some professional assistance. Mr. Disharoon stated that when he was there with proposals of things to be done, we could not discuss it because the plan was not a current submission for a preliminary site. Attorney Witsil stated they could submit an old plan....if it was up to specifications for what the site plan is. Mr. Disharoon stated that the plan does not come up to the current code. Attorney Witsil said the P & Z needs to make this determination, along with Kyle's assistance as to whether or not it is an acceptable site plan. It should not sit there undetermined for too long a period of time. Mayor Adams asked Stacey to speak with Kyle about this matter.

#### New Business:

- #1. May be stricken as it has already been discussed.
- #2. Consideration of the billing software. Mayor Adams stated that this had been discussed in Council last month for Town's billing of the water, instead of Artesian doing it. Is there any discussion on this matter? Stacey proceeded to give Council some information: After quite a few months of researching different software programs, something which could interface with our current reading program,

which we purchased with our laptop thru Greentree....Stacey has found a program from Tri C Systems. This program will do everything and then some that the Town is looking for. The software is \$995.00 (which is very low cost in comparison to other programs which she had researched)...the interface was \$495.00...we do not need to purchase this interface as there is already one in place. This saved \$500. We will need a laser printer on which to do the billing....that cost is \$499. We will need to purchase post cards.....about \$100 a year. Everything together is around \$1,500. This software has the capabilities to give us the reports that we need in order to reconcile our billing system. Stacey has been in contact with this gentlemen on a weekly basis and we are ready to get the ball rolling and purchase the software as soon as Council gives the go ahead. Vice Mayor Truitt questioned if the price included installation? Stacey said they will ship a CD and we will install it on our computer. Technical support? Stacey reported that technical support is free for 6 months and after that it is \$500 per year. His recommendation was that if you do not have multiple users on this software, you will more than likely not need technical support. That comes into play if there are more people using it...one doing one part, and one doing another, etc. If we got comfortable and things went wrong after a year could we still purchase the technical support? Stacey said we could. Councilman Baker said it is cheaper to buy a new one than to purchase tech Support for the old one. It was asked what the laser printer would print out....the post cards and the reports. Stacey said yes....A laser printer capable of holding the thickness of the card stock. Currently none of our printers (Office jets) have the capabilities to do it. There is no "as needed basis for technical support" on an annual basis. The post card stock is 8 ½ x 11 and there are four post cards on it. They will be 3 ½ x 5. The stub on the edge is what the customer will tear off and send in with the bill. Mayor Adams asked if there was any discussion on this. Councilman Hearn asked how long would it take to get set up once it is received. They have looked at our file and determined that an interface is in place. All they will need to do is get customer information and convert. They have been sent this customer information and they will be able to put it in for us....names addresses and other information provided by Stacey. They will send the CD. If it is voted on tonight, we possibly could have it by Friday. That will give us 6 months --- playing with it and working out the bugs. Councilman Truitt asked if they could send a person to set it up. Stacey reported that it must be done over the phone. Councilman Hearn was told they could do things remotely on line. Software is connected to the internet. Stacey said she had received a free trial and she has looked at it. Stacey can back it up on an external hard drive at Town Hall. Each week everything is backed up to the external hard drive. We have enough external hard drive capacity and another is not required. Stacey got 3 references and she had spoken with 2. One of the other references had used it for 7 years and gave excellent opinion and does not plan on changing. Their base is in Georgia. Stacey did go to Laurel and looked at a program (not the same one, but we have the same meter reading system they do). Councilwoman Flowers is excited that we are going to be able to get reports...she is in favor of it. Other Council members are satisfied. Mr. Townsend asked Stacey when we planned to go online with this. Our contract ends June 13, 2010. His question concerning technical support and time frame was

answered by Stacey that we are going to be monitoring everything in this software, but we are not going to be printing bills. This is a check with the reconciliation. We need to reconcile immediately for our water usage. When we read meters around town, we will also be importing into our billing software as if we were billing....we are going to compare this with Artesian for water usage. Councilman Truitt stated that if we have to spend \$500 it is worth it. Mr. Townsend's idea is a good idea. Attorney Witsil suggested making a deal with them when you buy it for a date specific for the commencement of when you plan to start operating it. See if they will give a warranty from 6 months from that date. They are familiar with our situation and that we are not ready to go live. They do not recommend technical support if we are a one person user. You just get the first free with the software. Attorney Witsil said you could possibly initiate a starting date. It does not hurt to ask. Vice Mayor Truitt said we could vote to purchase software tonight, but not to purchase tech support until we need it. Councilwoman Flowers made the motion to purchase the billing software that Stacey has discussed for billing of our water system, Vice Mayor Truitt seconded the motion and it was unanimously approved.

#### Old Business:

Consideration of billing water usage on a monthly basis for all accounts. It was asked if we heard from any others on this question. Stacey reported that we had only received approximately 25 responses back. The reasoning for the consideration of billing the water on a monthly basis all ties back to we are billed monthly from the town of Millsboro. We are billed for a certain amount of water that the Town consumes as a whole and we are trying desperately to reconcile these figures with the amount the Town of Dagsboro residents are using and it has become very difficult to reconcile these figures when billing in arrears for a three (3) month period. We could bill our residents on the date Millsboro does the billing to us. The figures should be able to be reconciled more accurately. It is a win-win situation for everyone. Residents would get a \$40 bill vs. a 3 month \$120 bill. That could be beneficial to some residents. It is definitely a need for the Town in order to do this accurately. Granted there will be additional work involved and that will fall back on her; however, the additional work involved is definitely worth getting the numbers accurate. Councilwoman Flowers said it made sense to her now....at first she was not crazy about monthly billing, but she never thought about reconciling with Millsboro. We do need that, it should be our goal. She is in favor of it. Mayor Adams asked if there were any other questions. If the Council decides to begin billing on a monthly basis it would probably will not begin until the Town of Dagsboro takes over the billing. The letter Artesian gave us (additional monies it would cost to begin doing it monthly), it is not cost effective to change for two more quarters. That would be about \$1700 to reconcile from now until June, 2010. A motion was made to begin billing on a monthly basis for the water system

commencing on June 14, 2010, by Vice Mayor Truitt, seconded by Councilwoman Flowers, and unanimously approved.

**#2. Resolution proposing that a public hearing be held on the application for a preliminary site plan for the Highlands of Pepper's Creek TMP#'s 2-33-11.00-264.00, 265.01 and 270.00 located on Route 26 Clayton Street. Stacey reported that at the last Town Council meeting the Highlands of Pepper's Creek approached the Town of Dagsboro. The Council's biggest concern was the crosswalk issue. Stacey spoke with Kyle Gulbonson today and Doug Warner (representing the Highlands of Pepper's Creek) has met with DelDot. DelDot is in agreement to put a crosswalk there; however, whether there would be a light there or the way in which they construct this crosswalk will come once the plans go further into the final construction phase. We do not have a letter from DelDot. This was verbally stated by Mr. Warner. The Town of Dagsboro has asked that they come back to the Town when this issue has been agreed upon with DelDot. Stacey reported the last she had heard was that the Town of Dagsboro and the Highlands were going to meet with DelDot, but she is under the assumption this meeting has already taken place between the other two parties and we were not notified. We did get a letter from the Highlands of Pepper's Creek requesting that the Town of Dagsboro set a public hearing for their January meeting, because the issues that the Council had has been addressed and they will be presenting that at the January public meeting if you all wish to set it at that month. Stacey read the letter requesting that the Council set a Public Hearing date for the preliminary approval of the Highlands of Pepper's Creek for January 25, 2010. Element on behalf of HKS LLC would like to request the Council to set a Public Hearing date for the preliminary approval of the Highlands of Pepper's Creek for January 25, 2010. We have incorporated all of the Council comments from the November 16<sup>th</sup> hearing and will be submitting plans and support information to the Town on or before December 22, 2009. This includes updates to site amenities and documentation from DelDot relative to a pedestrian crosswalk at Route 26. They are stating that on or before December 22, 2009, they will have the plans with the updated amenities and the documentation from DelDot. They are requesting that tonight we set the Public Hearing for January because it must be set a month prior to holding it. Mayor Adams' thought they should bring that documentation on January 25, 2010 and if we are all satisfied with what they have presented to us, we could set a Public Hearing for February, 2010. Mayor Adams did not feel they should spend money to advertise and then what if they are not satisfied. We do not have anything to look at tonight and Councilwoman Flowers felt it unfair to be rushed into it. Councilman Hearn said Council's standard practice is to discuss with the developer what we require, in addition to what is on the preliminary plan and once we are satisfied with what is submitted ....then we will hold the Public Hearing. He did not want to vote on word of mouth that DelDot has said something...he would like to see it on paper. Stacey mentioned that they are stating they will have it to us prior to the hearing. Mayor Adams would rather they come forth with it. They could see the information in the packet and they are before us on January 25<sup>th</sup>...they could answers any questions, and then set the Public Hearing for February. Attorney Witsil said they should be**

informed that you need the plans. An alternative would be to require them to submit the plans by the 22<sup>nd</sup> and if they are not here, don't publish the meeting. Council definitely wants the letter from DelDot. Mayor Adams said they do not want to hold the Public Hearing in January. Attorney Witsil said that the developer is not entitled to your deliberation in January to have you say whether you like it or not. That is the purpose of the Public Hearing on the plan. If you are not happy with it at the time that they are requesting a Public Hearing, you can turn it down. Attorney Witsil said Council did not have to hold the Public Hearing in January, but if their concern is you want to have the opportunity to have them sit in front of you in January to look at the plan and review it so that you know whether it is something you want to vote for in February. Mayor Adams did not think that is what she meant. She did not want to grant them to hold a Public Hearing in January. Why can't they come in January, and if everything is in, then we can schedule the Public Hearing in February. Attorney Witsil said you do not plan to ask them questions, etc. in January....Mayor Adams said unless they want to. It is either that we are satisfied and want to go on or we are not. Attorney Witsil felt there comes a time when they get their hearing .... either in January or February. Vice Mayor Truitt asked Attorney Witsil if at the Public Hearing are they required to vote on the preliminary plan. Attorney Witsil stated you will hold the Public Hearing....close the Public Hearing and then you can put the vote off until another time. Councilwoman Flowers stated the Council did not want to be rushed, have a short amount of time to make a decision. Councilman Hearn stated Council told them in November what we expected to see and we have not seen it yet....Attorney Witsil stated the ball is in their court. He said they are getting far more consideration in terms of a pre-review opportunity than they are entitled to by Dagsboro's code. He stated Council had decided not to accept the resolution and you want to receive those plans before you set the Public Hearing. Mayor Adams asked if there were any other questions. There were no other questions concerning this matter and it did not require a vote.

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

Stacey Long gave the Treasurer's Report. A copy is filed in the Town's Minutes of Meeting for December 14<sup>th</sup>. Also, a copy was presented to each Council member in their packet. In January Stacey will present a six month year to date budget analysis and also give the Treasurer's report and show how our budget is coming along. Councilman Baker stated that the auditors would like to be on the January Agenda for presenting their report to the Council for FY 08 & 09. Mayor Adams asked if there were any questions on the Treasurer's Report. No questions. Motion to accept the Treasurer's Report as presented was made by Vice Mayor Truitt, seconded by Councilman Hearn, and unanimously approved.

### **Approval of Minutes of November 16, 2009:**

Councilman Hearn had a correction to the Minutes on Page 14.....last paragraph “loguistics” and “loguistics” instead of “linguists”. Correction will made to Master File Copy of Minutes and copy placed in Council member’s box to be inserted into their Minutes. A motion to accept the minutes was made by Councilwoman Flowers, seconded by Vice Mayor Truitt, and unanimously approved.

Before we go on to Standing Committee Reports, Councilman Baker stated that Stacey and he had met with PKS regarding 2008 and 2009 budget and we have to meet with them every year prior to them presenting it. They give us a list of things which they would like to see corrected. They are going to write an exception to their audit for '08 and '09 because they cannot get the water reports figured out....and they can't get the information from Artesian. We have a management letter that has to be written as to what they find wrong that we would take a look at. Most every year what they find wrong is that one person is in charge of the money and things of that nature. When you are a one horse town with one person in Town Hall, the best you can do is to have the processes we have in place. We have the purchasing and checks require two council member signatures....this will be what they will present to us. Artesian has received a copy of a letter from the Town of Dagsboro stating as of June, Dagsboro will be doing their own billing for water. Councilman Baker said Artesian is still interested in providing other services if we take billing back....if we want them to do the water testing, do the locates, and things of that nature. They are still willing to do that. They will give us a new rate sheet as to what the charges would be for those services. They are interested in partnering with the Town to do some type of pumping station or something along those lines. That will come out in next month's meeting.

### **Standing Committee Reports:**

#### **Police Department:**

Councilman Hearn gave the police report for the month of November. Total Miles Driven - 2,871; Traffic Arrests – 75; Traffic Warnings – 16; Criminal Arrests – 3; Local Ordinances – 8; Business License Checks – 2; Total Hours – 291; Patrol Hours – 161; Investigative Hours – 29 ¼ ; Administrative Hours – 100 ¾ ; Business Checks – 356; Complaints – 41. Sgt. Litten attended Delaware Homicide Conference from November 2-6. Chief Toomey apprehended three local fugitives; more serious crimes continue to be reported, than just your simple assaults. Commissioner Hearn felt that it was significant that there were three criminal arrests made in less than 30 Investigative Hours. That is a pretty good number. Traffic has dropped and he will be checking with Chief Toomey on this matter this week.

### Hazard Inspection Committee:

Councilman Hearn stated that there was nothing to report this month.

### Town Property/Town Improvement:

There is nothing to report this evening. Attorney Witsil stated that under this report he could give a brief report on the Harbaugh property. Councilman Baker had previously submitted to him significant information on Elsworth Harbaugh's on Canal Street Ext. He has now had the opportunity to look through all of the minutes of the meetings of Town Council from 1994 through 2006...thanks to Stacey and Wayne's documentation. The bottom line is that it is his opinion that the cul-de-sac at the end of Canal Street is private property that Mr. Harbaugh conveyed to his neighbor when he sold B. K. Adams the property in 2004. That is the cul-de-sac itself. For various reasons including non payment of taxes, probably extended time delays, etc., the Town Council did not approve the conveyance to Mr. Harbaugh of (he pointed out to the Council the property in question on a map) showing the portion of Canal that was paved, Mr. Harbaugh's parcel and the area conveyed to B. K. Adams. He indicated the portion which is not paved and which Mr. Harbaugh deems vacant and unclaimed. In fact the town has title to approximately 100 feet plus. The record is extensive in that in 1993 the Town preliminarily motioned to vacate Lot 9, 10, 11, 12, 13 and 14 to the area of the street in front of Lots 9, 10, 11, 12, 13 and 14. That was a resolution to have a Public Hearing on the road vacation. They received a report from the road vacation committee, the result was there was a suggestion and subsequent conveyance of just the cul-de-sac area. That was the action that was preliminarily taken as the result of Mr. Harbaugh's request to the Town. One rationale is that he had not paid his back property taxes. On April 10 a deed was signed by then Mayor Amanda Steen conveying the cul de sac. After that the issue lingered and Mr. Harbaugh talked with the Town Clerk at the time (Tammy Hooper). There is a note in March 1996 (2 years later) that Tammy reported that Mr. Harbaugh had stated to her that if he could not legally be granted the portion of the street he had requested, then he wanted the town to resume ownership of the property and complete the street as it was intended. Mr. Harbaugh vacillates between 1996 there are comments that Council member Conner inquired about Mr. Harbaugh's property at the end of Canal Street. Tammy reported that Mr. Harbaugh has not been in contact since his first complaint regarding the street. He has not placed his complaint in writing or complained to the Attorney General's office as he had stated he would about the lack of conveyance of the street or the paving. In 1998 pictures and letter were submitted by Mr. Ellsworth Harbaugh stating that he is giving the Town 30 days to respond to his letter of request. His letter concerns the land adjacent to his lots and the deeded cul-de-sac. He has stated that the land he is requesting to have deeded to

him is exactly what he wanted the town to do with the cul-de-sac earlier....that he didn't get because the Town did not convey the street back to him. The letter states that he has also taken care of the property for at least 15 years by cutting it and keeping the growth down. He enclosed pictures. Tammy spoke with Tempe Steen and Attorney Steen said Mr. Harbaugh should provide the survey and other information and that a proper proceeding to vacate the Town's strip between the paved portion and the cul-de-sac would then occur. To make a long story short, Mr. Harbaugh vacillates between wanting the property itself or wanting the town to pave it and in May of 2004, there was a Town Council request that there be a committee appointed to (1) discuss advantages and disadvantages and report back and to hold a public hearing on the vacation of that area and try to make a decision. There was, in fact, a meeting of the vacation committee. They heard all of the evidence....heard about the Sussex County hook up and decided to make a recommendation that the area requested by Mr. Harbaugh (that portion of Canal Street) not be vacated. Some rationale for it – the present circumstance is that Mr. Harbaugh (Mr. Baker informed him) has been maintaining this rectangular area at the end of the paved portion (Attorney Witsil show Council on the map) before the cul-de-sac. Attorney Witsil does not know what the end game is here as he feels that Mr. Harbaugh is vacillated over the years...Attorney Witsil cannot tell from reading all of this history and looking at the minutes, whether Mr. Harbaugh wants the Town to pave this portion and to reacquire the cul-de-sac and pave it or whether he wants the Town to deed this area to him. It is Attorney Witsil's opinion that we should follow the prior recommendation of the vacation committee that this will not be reconveyed back to Mr. Harbaugh. It is also his opinion that you not pave this portion without getting deed back from B. K. Adams. If B. K. Adams wants to convey the cul-de-sac area back to the Town only then should you consider paving of the street if you find it an appropriate expenditure. He does not feel it appropriate to pave a certain portion and not have an emergency turn around cul-de-sac as per the original plan. Councilman Baker stated that Buddy Harbaugh was looking for was the Town to cut or maintain that lot. Councilman Baker just wanted to be sure if the Town took that responsibility to maintain that, we would in no way be infringing upon or reducing anyone's lot size. Councilman Baker felt a letter should be generated by Attorney Witsil information B. K. Adams stating that the Town is willing to move forward with repaving that street only if the cul-de-sac is deeded back to the Town. His recommendation, if the Town decides to pave this, is the Town owns this portion .... No one can claim adverse possession against a municipality. There is clear Delaware law to that effect....even though Mr. Harbaugh has been maintaining this, he does not have any right, title or interest in this parcel unless you convey it to him. Option 1. Acknowledge the Town owns it...Mr. Harbaugh does not have any rights to it and for the Town to commence regular maintenance of this strip at the end of Canal Street. Option 2. Would be to propose to B. K. Adams that she convey it back. It would be advantageous to her to have a cul-de-sac and street leading to her parcel. As it is now she has to gain another entrance. The cul-de-sac is wooded and has not improved.

The length of the unpaved portion is 97.5 feet. The cul-de-sac has a radius of 40 feet. That would be 80 feet across. That concludes his report. Councilman Baker said he could not see how the Town could pave that and not do the cul-de-sac as that is against all of our Town codes. He said there are only two options as far as he is concerned.....Do nothing or get the cul-de-sac and pave the entire thing at some point when funding is available. Also paving of the cul-de-sac is dependent upon her conveying the cul-de-sac to the Town. Attorney Witsil has studied it as Councilman Baker requested, but he has no further recommendation other than the four listed above. He did not want the Town to get into a problem with cutting the grass and it became an issue with the title and someone was claiming there was no right of way to get to it. ABC Contractors conveyed it to the Town in 1975. The Town conveyed the cul-de-sac area to Mr. Harbaugh...when he conveyed the end lot to B. K. Adams he conveyed the cul-de-sac.

Councilman Baker said that the Council has a letter in their file concerning URS's bill. He has had the opportunity to talk with a business out of Berlin, which does similar work as URS. He did not know if anyone wished to form a committee, to see what they can do, to talk with them, get fees, etc. He will leave it to Council's discretion. The company's name is DMW. Also, Stacey has a rate sheet for them. Vice Mayor Truitt asked if there is a way we could compare to what URS is charging. Do they both base on flat rate or per hour? Councilman Hearn asked if they worked for any other Town. I am sure you could get references. The letter has not been mailed to URS as yet. This month's billing was charged 5 hrs. to change from high density to medium density and Attorney Witsil is the one who wrote and did leg work on that project. Attorney Witsil told Councilman Baker it was probably 15 minutes and no more than an hour. Attorney Witsil has been directed by Councilman Baker to be very careful with billing and he takes direction from him as he will from Mayor Adams concerning work that is not directed to him at this table when they are in council meeting. He took the liberty to ask Kyle to proof read the ordinance from an engineer's point of view. He did not put perimeters on the time....he did not say to call the Mayor....he just asked for a review of his work product in terms of how it would affect those presently zoned HR property owners. He possibly should have said maybe you should clear this with the Mayor (he wished he had); keep it less than (x) amount of time (he wished he had). He felt that he had the product made and done that it would be relatively less time. He believed he asked for the work. He did not want to be responsible for what you are going through.

Mayor Adams asked if there were any further questions....Attorney Witsil said that he presumed that you would like for him to prepare another Resolution for the Public Hearing so that you can have the resolution for the Highlands for January. Stacey said she could change the dates. There is no further direction on the Harbaugh property. He will be out of town from December 18 until the 27<sup>th</sup>.

**Prince George's Chapel Cemetery:**

Mayor Adams stated that the Cemetery meeting was held on November 21. The turn out was very good. Councilman Baker gave Mayor Adams a paper where there is a possibility of a grant, and she will ask Stacey to help her. We hope we can locate where people are buried. The State Historical Society is not happy that we are driving in there and parking. The Old Christmas at the Chapel is coming up and there are usually a lot of people parking all over that area. Mayor Adams was supposed to ask for permission to use the Town's vacant lot for parking. Can we put a sign that says "Parking" and they can park along the side and Dr. Atkins office? Councilwoman Flowers has to carry heavy things in there and hopes to use the door with steps. Councilman Hearn said people parking along the street in front of his house keep running over his lawn's sprinkler head. Mayor Adams said there are some posts down and one is split. Councilman Baker mentioned it is on Bob's list of things to do. You might want to check the list with Bob and rearrange priorities. Mayor Adams mentioned that one of the funeral homes thought there was someone from the Town to show them where to place the dirt. We have let them know there is no such person. They never really have to come back. Other than that there is nothing else to report.

Councilwoman Flowers felt Council needed to get something decided about URS and she is available some few evenings concerning meeting with DMW. One of the representatives does Council meetings for Greenwood and possibly we can get together and meet on this matter.

Vice Mayor Truitt made a motion to adjourn at 9 p.m., seconded by Councilwoman Flowers, and unanimously approved.

Respectfully submitted,

Rae Long  
Administrative Assistant

RML/me  
Attachments

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.

