

**COUNCIL MINUTES
TOWN OF DAGSBORO
BETHEL CENTER – 28311 CLAYTON STREET
MONDAY, FEBRUARY 23, 2009**

The meeting was called to order at 7 p.m. on Monday, February 23, 2009 by Mayor Wayne Baker. Council members present were: Vice Mayor Patti Adams, Councilwoman Cathy Flowers, Councilmen Terry Hearn and Norwood Truitt; Attorney Witsil; Town Planner, Kyle Gulbranson; Marj Eckerd, Chairman of P & Z; and others listed on the sign in sheet.

Public Hearing and Vote:

An ordinance to amend Chapter 275 Sections 275-8, 275-13, 275-14, 275-15, 275-16, 275-17, 275-18 and 275-26 to provide for additional regulations for the permitted use and permitted accessory use of windmills or wind powered generators in the R-Residential, HR-High Density Residential, C-Commercial, HC-Commercial and LI-Light Industrial Districts. Attorney Witsil stated that the ordinance provides for the permitted use of windmills in each district subject to the regulations in Item 10 (3rd page of your ordinance). Since our last meeting and when I first gave you the draft presented by Kyle -- as this is Kyle's original draft that I have revised, there have been some suggestions made at a workshop and those suggestions have been incorporated in the last item. You had made a request that the revised ordinance state that roof mounted windmills are prohibited in all zoning districts within the town that has been added to 2 sections (section f-1 and f-3...that language has been added). The next requested change was to section 4-f (page 3 of 5) and previous sections have been deleted sections c, d and f. The Council requested on Page 4 that you add another subsection (e), I presumed section 6, which stated mandatory public hearings. It was a public hearing requirement. Attorney Witsil has added that not in subsection 6, but to subsection 7. The language which I have added is as follows: A Public Hearing on the application shall be held by the Town Council at a regularly scheduled town meeting. All residents within 300 feet of the site shall be notified of the application and date and time of the Public Hearing by certified mail at least fifteen (15) days prior to the Public Hearing. The Town Council may approve, disapprove or approve with conditions the application. The decision and rationale of the Council's vote which may be expressed in the Minutes of the Meeting shall be forwarded to the applicant. No permits shall be issued by Code Enforcement Officer until the issuance of the Town Council's written approval. The rest of that paragraph has been left in. Attorney Witsil spoke to Kyle asking that he understood the rationale for the deletions. My only question is (to those of you who suggested the deletions) about the height ... are you comfortable with the deletions from the height requirement. Kyle was concerned with the fall zone (1.1 times the height of the tower was taken out). Stacey explained (g) which was supposed to stay ... it explained the fall zone. Stacey, Kyle, Attorney Witsil, Mayor Baker and Council members discussed what was to stay in and be deleted. Kyle said

he would assume that the height limitations that were taken out of the ordinance we were referring back to the overall height limitations. Mayor Baker said the height requirements is not in feet ... it is in the formula.... 1.1 not to exceed the fall zone. If the property is 50 feet, the windmill would have to be 24 feet give or take...that would be the maximum. You are comfortable that the set back radius controls the height. Either way the height controls the set back. Having looked at everything after holding the workshop...and not having any previous ordinances on the windmills, one of the things was the height requirement....that is how we ended up with the formula, which we just discussed. You cannot build a tower on a property adjacent to you and supply it to a different residence. We put in the 300 ft. notification of residents anywhere around that, hoping it would delete anyone from having a medical reason or some type of objection to a windmill. They could express their objections at the Public Hearing and tell us why they did not want it. Is there anyone in the audience who does not understand what we are talking about? At the public workshop we viewed many pictures and many things....many issues evolved around the roof mounted windmills more than the blade type – self standing type. Much of the legal issues evolved from roof mounted windmills. It was asked what was the purpose of removing the roof mounted windmill? Mr. Cox, from the Fire Department, said they are pursuing geo thermal wells and solar power energy. Marj Eckerd asked was Town Center left out for a specific purpose....? Attorney Witsil was going to check on this. In the text it is incorporated in the ordinance. (275-21 Item 8) as a permitted use. 275-21 needs to be added to the caption after HC and before LI Town Center. Kyle mentioned that there was discussion at one time of excluding Town Center District and we did add it back in. Attorney Witsil said it was not added in the caption. Mayor Baker asked if anyone from the Public who wishes to speak in favor of this ordinance? Is there anyone who wishes to speak in opposition to the ordinance? Are there any questions from the Council? Attorney Witsil asked if he might make one more suggestion. In Items 3 through 8, we say (c) Section 275-26, I would like to make that subject to 275-26....as those are requirements that need to be complied with. Upon motion by Councilman Truitt, seconded by Councilwoman Flowers to accept the ordinances with changes noted and added, and unanimously approved.

Presentation of Building Permits Issued: Stacey reported that there were none issued.

Planning & Zoning Report and Vote on the Following Items:

At this time Marge Eckerd, P & Z Chairperson, said that P & Z just went over the site plan review that is to be used with the upcoming new site plans for the Highlands and Pepper Creek. She wanted to be sure everyone was on the same plan so she handed out a site plan review had been voted upon back in 2006 (she believed). She wanted to note (and this was voted upon for recommendation) that the changes in height restrictions, design standards, buffering, woodlands preservations and signage will be included in the new site plan. All of the changes which have happened since 2007 and 2006 will be incorporated. This is for the site

plan review which will be coming before us next month, we are going to be incorporating all of the new ordinances (the items listed above)...into the check list which we use when we review the plan. They are just recommending it. P & Z also worked on our vocabulary so that we are familiar with terms. We went on to Office of State Planning of our Town's Comprehensive Plan. The only specific item that we feel needs to be implemented was the table that was found....she asked Kyle to explain it. It is a table for pollution and control standards that we failed to put in our comp plan. Everything else seemed to be okay. Kyle told the Council they should have a packet....basically, it shows the two changes that were recommended to be made to the Comp Plan. If you look at the letter you received from the State, there is basically one certification issue that needed to be modified in the plan for certification. The other 26 odd pages were recommendations from State Agencies. Kyle felt the frustration that the P & Z had was if the State had read the plan more thoroughly and gone through what the Town has already done in the past, they would realize that the issues have been resolved and you have implemented most of them. To meet State's requirements, we have changed the table – Table on Total Maximum Daily Load for the Inland Bays Watershed. It is in the Comp Plan....the only thing we did not have is that there is a reduction for bacteria in the water. We added that in..... (this can be seen on Page 28)....table with the Red Border. We had a percentage for nitrogen and phosphorous reduction; we did not have the bacterial reduction. It is 40% for fresh water and 17% for marine water. All of the Towns in the Water Shed have to have this in their plan and basically it says that Dagsboro will work with the State on pollution control strategy so that new development can meet these requirement basically through best management practice, storm water retention ponds and things of that nature. There is a paragraph from DNREC explaining what all of that is....(this is the requirement that they have for all Comp plans)....This is the paragraph in yellow. Those are the two changes that have been made to the document. If we are happy with those changes, the Town needs to recommend approval of the Comp plan with these changes Officially adopt it and send the reformatted document back to the State for certification, with a letter saying this is what we are willing to do, we have adopted this and asking that they please certify it. In order to get your plan adopted, we need to put this language in your plan. Vice Mayor Adams asked Kyle this question....On page 29...under preserving the history...currently it should say Prince George's Chapel ... not St. George's Chapel...the picture is of Prince George's Chapel. Apparently the people from the Historical Preservation Office did not catch that either. Marge thought the little house by the Antique Store was also on the historic site. Kyle said that the Chapel is the only place in the town of Dagsboro that is on the National Historic Register. There may be other sites eligible, but the Chapel is the only one listed. Mayor Baker asked Kyle he would request that DNREC come down and do a base line so we will know where we are starting from (on the bacteria counts). Kyle said that was a good idea. Mayor Baker asked if anyone had any questions concerning the Comp Plan? Councilwoman Flowers asked if we needed to have a Public Hearing? Mayor Baker stated that we do. Councilwoman Flowers made a motion that we set the Public Hearing to officially adopt the resolution to accept the Comp Plan as noted with the changes

which were presented tonight, seconded by Councilman Truitt, and unanimously approved. Attorney Witsil stated that tonight we are voting to resolve to have a Public Hearing in March.

Mayor Baker asked for approval of the Minutes of November and December, 2008. They were in the last month's packet, but they were never voted upon. Councilwoman Flowers made a motion to approved the Minutes of November and December, 2008, seconded by Vice Mayor Adams, and unanimously approved.

New Business:

1. Resolution to apply for grant funding for implementation of the Comprehensive Land Use Plan. The Town is eligible to get some of the monies back that we spent implementing the Comp Plan. We need a resolution from the Council to apply for it. Councilwoman Flowers made a motion that we apply for Grant Funding for the Comp Plan, seconded by Councilman Hearn and unanimously approved.
2. Consideration of maintenance agreement for copier. Stacey said that because we are doing the newsletter we are making a lot of copies. When it needs to be fixed and repaired, it is \$100 an hour plus the cost of the equipment needed to repair it, toner is \$89 each time we need to purchase it. The maintenance agreement includes someone coming to repair the copier, certain parts are covered (usually the ones which break), and the toner includes two toners per month. Mayor Baker asked what the length of the agreement was. It is one year. The cost is \$1,216 per year. What was the cost of the copier, Mayor Baker asked...\$5,500. Mayor Baker said he did not deem that a good value...at \$100 an hour plus parts. Normally, he has not had that many problems with copiers. It had only had someone come out once to repair. It was brought in and asked that Council consider it, so here it is. Mayor Baker said in 3 ½ years we could buy another copier. Kyle stated that URS does not have any service agreements. Mayor wanted input from the Council. Councilwoman Flowers made a motion that we not accept the maintenance agreement at this time; Councilman Truitt seconded the motion, and unanimously approved.

Old Business:

1. Consideration of permitting High Efficiency Vehicles on Town Streets. That is still on hold.
2. Clarification of Chapter 75-1(A) and (B) as to what requires a building permit. This matter was brought up in the workshop which we recently had. I think we came up with some reasonable resolutions on this. Stacey reported that we wanted to add section 75-1 (B) that a building permit fee shall not be required for repairs to existing buildings or structures, provided that no inspection service is required by the town. (That is what came out of

the Public Workshop). Presently, it states that a building permit shall not be required for those repairs. We do want to issue a building permit for everything (just the fee will not be necessary, as long as there are no inspection services). Mayor Baker reiterated that everything requires a building permit (roof, fence, any improvements to your property); however, there will not be a building permit fee if no inspection service is required by the Town. If there are structural changes of the property and or putting in a shed or fence, where guidelines are going to be have to be looked at, there would have to be a fee as to what is already existing in the code, which is 1¼% with a minimum of \$50. Regular maintenance to your house, you would need a permit so that we would know who is doing the work and that they are licensed and who is in town working, but no fee would be charged to the homeowner. A question was asked about a homeowner doing repairs on his own home. Mayor Baker said as long as the homeowner is not changing the footprint of the property that would require an inspection from the County, there would not be a fee. Putting on your own roof, siding or exchanging windows for a like size. Attorney Witsil requested clarification to the reference “providing no inspection service is required by the Town of Dagsboro”. He said that would be good if the code articulates the need for inspection. Attorney Witsil stated that in 75-8 of the code it says that during the construction period the building permit officer or other authorized official may inspect the premises to determine that the work is progressing in compliance with the information provided on the building permit. Mayor Baker said (a) and (b) denotes what requires a building permit. (a) states what the conditions are to obtain a building permit...I think if (a) and (b) are in line with one another the other sections behind it make more sense. Mayor Baker said the threshold for the building permit fee is if the Town has to do an inspection, then there would be a charge. Kyle was asked if the requirement for the inspection in the building code or..... Mayor Baker stated that it is in the Dagsboro Town Code....75-1 (a).....Kyle said it is in both. Attorney Witsil said that if you are going to say you need to pay a building permit fee when an inspection is required, I would like to be sure we have good specifications for when an inspection is required. Mayor Baker said that a building permit shall not be required for repairs to existing building or structures provided that no structural change or modifications are involved. 75-1 (b) a building permit fee shall not be required for repairs to existing buildings or structures, providing that no inspection service is required by the town. Attorney Witsil asked if we are comfortable, when we adopt this language, that there is sufficient language to tell us when an inspection is required or not required. Stacey asked Attorney WitsilShould the code state what requires an inspection or not...is that what you are asking? Attorney Witsil said yes, otherwise we are just putting it off to another ambiguous situation. Kyle stated that the International Building Code states when inspections are necessary....it is when a structural change to a building is being made (not cosmetic, but structural change). Attorney Witsil asked Kyle if he is comfortable when Stacey calls to ask when an

inspection is is required. Kyle reported that the International Building Code will cover it. Mayor Baker said as far as he is concerned, it is also covered in (a) when it says the construction, reconstruction, enlargement, alteration or relocation. Those are all structural changes Attorney Witsil asked is there any need to make a change at all? Mayor Baker, Stacey and Kyle all stated Yes. The issue is when the fee is charged. We want to delete the fee itself. Issuing the permit allows the Town to track what is happening in town in terms of licenses. We do not want to jeopardize what the homeowner does to improve their property....such as, Vice Mayor Adams putting a roof on ...we don't think we should charge as it is not a structural change to the house, it is regular maintenance. Attorney Witsil questioned ...is the change just to ask at the end of the existing sentence...a building permit fee shall not be required for repairs to existing buildings or structures, providing that no structural changes or modifications are involved....then do you wish to add that.....and that no inspection service is required by the Town. Mayor Baker said it could be said as....a building permit fee shall not be required for repairs to existing buildings or structures provided that no inspection service is required by the town. A permit will be required for all repairs....it is just the fee. Mayor Baker asked if there were any comments for or against.....any comments from the Council. Mayor Baker asked Attorney Witsil to prepare a draft ordinance on building permit fee to be voted upon at a Public Hearing to be set for the March meeting. Councilman Truitt made the motion to set the Public Hearing on changes to the building permit ordinance for the March meeting, Councilman Hearn seconded the meeting, and the motion was unanimously approved. Mayor Baker felt there was enough scheduled for the March meeting. This will be three public hearings in March.

3. Consideration of eliminating conditional uses from the Town Code as recommended by P & Z. Stacey reported that it was recommended at the Public Workshop to eliminate conditional uses from the entire code. The following sections will need to be deleted in its entirety: Conditional uses out of the definitions 275-8 and the following zoning districts 275-14, 15, 16, 17, 18, 19 and 20 and 275-63, which refers to the notice and hearings. Remove the reference to conditional uses. 275-40 removes the following phrase...or change of the extent of land use for an approved conditional use. We are taking the words "conditional use" out of the entire code. Mayor Baker asked if anyone had any questions. Councilman Hearn asked if there was any kind of report from that Public Workshop...it is in e mail form, just an update. That is just a synopsis of what happened on each item. Mayor Baker said that the next item on the agenda is to set a Public Hearing on the Bireley/Hearn Annexation. Vice Mayor Adams made a motion that a Public Hearing be held at the Regular Council Meeting in April, 2009 on conditional uses, seconded by Councilman Truitt, and was unanimously approved.

- 4. Recommendation to set a Public Hearing for the Bireley/Hearn Annexation Request and for the re-zoning of the annexed parcel to R-Residential. For March Public Hearings, we have the Estuary, Comp Plan and Building Permits. Now we are into the month of April for setting Public Hearings for the Bireley/Hearn request for annexation and re-zoning of the annexed parcel to R-Residential. Upon motion by Councilwoman Flowers, seconded by Councilman Truitt, and was unanimously approved. Councilman Hearn abstained from voting on this matter. The Mayor reported that the fees for the property have been paid in full.**
- 5. Review and discuss annexation application fees for town. This was discussed at a Public Workshop on February 18, 2009. The Council and P & Z discussed the annexation fees which are currently \$2,500 per application and \$5,000 for an annexation for a residential planned community. After reviewing different towns in the surrounding area the Council and P & Z at the Public Hearing wanted to recommend that the following fees are set: 4.99 acres and under for \$300, 5 acres to 9.99 acres would be \$1,000, 10 acres to 24.99 acres \$2,000 and 25 acres of more would be \$3,000. The 10 acres, the 24.99 and 25 acres and more would include the professional fees as well. The applicants are responsible for the professional fees and the base application fee. Mayor Baker reiterated that on the larger parcels the application fee would be separate from professional fees and the Town would have to set up an Escrow Account – those monies would be utilized as necessary to pay the attorney’s fees and/or the planning fees. It would be just about like before – we had one application fee of \$2,500, if a person had a residence and they wanted to come into town that fee was extremely exorbitant, or appeared to be for ½ or 1 acre of ground. In looking at it in that light and how it was written we felt it was basically written for developers....In reviewing it (even though \$300 does not cover 100% of our expenses to annex that parcel into Town...the Town of Dagsboro is going to be amicable to protecting our borders and it is a more reasonable fee). Kyle said it is basically a sliding scale based on size. Does any member of the audience have any input or questions at this time in regard to the annexation application fees. Vice Mayor Adams said on the book we had an annexation fee of \$2,500 per application. Did I hear someone say we had collected Bireley/Hearn application fee....if so, now we are proposing 10 to 24.99 acres to \$2,000 plus professional fees. Vice Mayor Adams said it would probably be \$2,500....Mayor Baker stated it would probably be more than that...closer to \$3,500 to \$4,000. When you get into that size of a parcel, it is usually going to be for developmental purposes. The fee was what the fee was when they applied....these fees we are recommending will not go to Public Hearing until April, 2009. Any other questions....it was asked if the professional fees are only on the last two parcels (which are the larger parcels)....the State wants to know more about how you will provide water, services, etc. on larger parcels. Vice Mayor Adams asked if on a 25 acre property are they going to be told at Town Hall what the professional fee will**

be above \$3,000. Stacey said approximately. It would be an estimate and say what the two fees would be together and if there is any additional costs for anything that might come up, they need to understand they are responsible to cover those. If an Escrow Account is set up, any unused funds will be refunded. Attorney Witsil asked about the 2 smaller acreage annexations, there are certain fees inherent to all of these applications--- the first being the drafting of the ordinance and resolution and the second is advertising. Are you sure you can cover your expenses for even the smallest annexation of \$300. Mayor Baker said we know that \$300 will not cover the expenses, but if we want to encourage people to annex, to move forward and protect our boundaries, we do not think the average home owner can come up with \$7,000 or \$8,000 to be annexed into Town, by the time they pay their annexation fee, impact fees, capital improvement fees, sewer fees...it will become to a point where they can't do it. Mayor Baker said they felt that any new annexation would not be a mandatory hook up to the water system until such time that they wanted to replace their well....they would have to pay the same \$120 per quarter that everyone has to pay. They could plan to pay the \$3,000 water hook up fee at the time they hooked up....this might give them an opportunity to save up knowing the hook up fee would be coming due. Mayor Baker said Attorney Witsil will have to draft a resolution to be presented at a Public Hearing to be set for April if Council wishes to move forward with these fees. Councilman Truitt made motion to set a Public Hearing for the annexation fees for the Town. This will be done by resolution so that the fees can be changed without going to public hearing. Attorney Witsil said they were last done by resolution so that you may do this without a Public Hearing if you wish....my suggestion is that Public Hearings are a good thing so that you can get response from the community. He feels that if it is put on the agenda for next month, it could be done as a voting matter as a resolution. Al Townsend said the comment about not holding them responsible for water connection that will affect different sections, won't it. Mayor Baker said it could be put in the resolution. Mr. Townsend said wouldn't that affect the USDA's agreement? Mayor Baker said as long as they are paying the \$120 a quarter, I do not know of any mandatory connection date. If it is just raw land, you would not be required to connect Attorney Witsil said. Attorney Witsil said I do not think you want to put it in the resolution for fees. We will pass over this for the moment.

Correspondence: We will wait on this until the next meeting.

Presentation of Treasurer's Report: Stacey gave the Treasurer's Report which will be attached to the Minutes. Upon motion to accept the Treasurer's Report as given, seconded by Vice Mayor Adams, and unanimously approved.

Mayor Baker wanted to say that the Town is holding its own. We are watching every dollar to save in any way we can. We may have to break one of our cd's, it is a last resort thing. It depends on what the economy does in the next four months or

so. Presently we are okay, but like everything else, I don't know how long we can stand the test of time.

Attorney Witsil left the meeting at this time.

Standing Committee Reports:

Police Department: Chief Toomey said he had presented the Council with a police report from January. 3,287 miles driven, 59 traffic arrests, 19 warnings, 3 criminal arrests, and 6 other violations were investigated, 2 business license checks. We had a total of 305 hours work, 172 were patrol hours, 37 ³/₄ investigative hours, 95 administrative hours. There were 384 business checks. Total number of complaints less the town ordinance complaints were 36. The traffic arrests were up over the same period last year. Sgt. Litten investigated two internal thefts at Bodie's Market and three arrests were made. Chief Toomey was involved in a situation at Phillip Showell Elementary School currently being housed in the JMC building. This is an Elementary School and they only have students up to the grade of 5 and we had a counterfeit drug situation. Kids were playing like they were drug dealers. They were 4th graders. Chief Toomey wanted to make every aware that he has been activated for a month from March 12 to April 9. He will be gone the entire month and will not be at the next meeting. There were no questions. Mayor Baker asked Chief Toomey if he could stay around for 5 minutes, it should be asked in Executive session.

Hazard Inspection Committee: Stacey asked if Councilman Hearn had a resident's file property file....he will check. If now, she will check with Al Townsend.

Town Property/Town Improvement: Rae Long called and got a new sign for the Prince George's Chapel Cemetery from the Historical Society--- free of charge. We also have some wording for as sign to be placed near the Recycle Bins. Rae called and talked with Mr. Mott-Lynn of the Art Department of the Indian River High School. We gave them some wording we would like on the sign. He and his class are going to work with the Industrial Arts Department instructor to get a sign printed. Their students are going to help us with the project. Cost will be for the materials. Mayor Baker thanked Rae Long for her efforts on these two projects. Mr. Townsend said the blue recycle bin has not been locked for several months and asked who is responsible for the bins. Mayor Baker said that the Delaware Solid Waste Authority. Mayor Baker said we had complaints when they said they were going to take them out. Several people in the audience said they like them being there. If anyone notices someone doing anything wrong, help us....report these infractions.

Marge Eckerd said that she has been worried about the displacement of the wild animals whenever there is a development coming in. She would like to put that on the agenda for the P & Z meeting next month. Possibly we could have a resolution for the Town that it would become part of the review that we go over on the plus

plan. The plus plan does cover a large area....when Woodlands of Pepper Creek went in a lot of animals were displaced and went all over town. Mayor Baker said that was before we had our tree ordinances in place and the buffering and zoning....however, it does not mention wildlife displacement. Mayor Baker said we fought for the set back requirements for the ditch and they went to Superior Court and had that changed and reduced it to twenty-five (25) feet. Mrs. Eckerd asked about the deer and antelope...Mayor Baker said most are in Montana. The Eagles' or Eagles' nests. Mayor Baker said if there are those things---such as endangered, he did not feel they were permitted to go forward with it. Marge said it is worth looking into....the small animals, like foxes, rabbits, snakes. A snake is a reptile belonging to the animal kingdom.

Mayor Baker asked for a motion to adjourn. Motion made by Councilman Truitt to adjourn, seconded by Vice Mayor Adams, and unanimously approved to adjourn at 8:40 p.m.

Motion to enter into Executive Session at 8:41 by Vice Mayor Adams, seconded by Councilman Hearn, and unanimously approved. There was discussion of matters in executive session. Motion made by Councilman Hearn, seconded by Councilman Truitt and unanimously approved to exit Executive Session at 9:25 and return to regular session.

Returned to regular session and announce that a motion to allow thirty-two (32) hours Comp time for Sgt. Litten for the Month's Military Leave Absence of Floyd Toomey was made by Councilman Hearn, seconded by Vice Mayor Adams, and unanimously approved.

Upon motion made by Councilman Truitt, seconded by Councilwoman Flowers, and unanimously approved, the meeting was adjourned at 9:26 p.m.

Respectfully submitted,

Rae Long
Administrative Assistant

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

