

MINUTES OF MEETING
DAGSBORO TOWN COUNCIL
BETHEL CENTER
MONDAY, MARCH 22, 2010

The meeting was called to order at 7:00 p.m. by Mayor Adams. Those present were: Mayor Adams, Vice Mayor Truitt, Councilwoman Flowers, Councilman Hearn; Town Clerk Stacey Long; Attorney Rob Witsil; Kyle Gulbronson, Town Planner; and other guests listed on the sign in sheet.

Public Hearing and Vote on an Application for a preliminary site plan for the Highlands of Pepper's Creek, Sussex County Tax Map Parcels 2-33-11.00-264.00, 265.01 and 270.00 located at Route 26 at Dagsworthy Boulevard, Dagsboro. At this time Doug Warner with Element Design Group, the architects and engineers, representing HKS LLC for the Highlands of Pepper's Creek, gave a presentation. He stated he knew that the P & Z and Council were very familiar with the project. To bring everyone up to date on where they are with it...as you had indicated the Parcels are 2-33-11.00-264, 265.01 and 270 (36.5 acres plus or minus and is zoned high density residential). We are proposing a condominium ownership type of facility with 33 units - a combination of what we call an 18 unit stacked condo building and a 7 unit townhouse type facility - all under condominium ownership. We have submitted some architecture, as well, that was showing its conformance to the height requirement. It includes some of the architectural guidelines and roof pitches and things of that nature. We have access from Route 26 coming into a rectangular/Dagsworthy Boulevard (surrounded on both sides with the different building facilities and a large storm water pond in the center). We have a central amenity that is being proposed with a clubhouse type feature with a pool that will also serve as a bus stop location and after some dialogue with you, we have added a tot lot facility, as well as another facility that was for ages 5-12. He apologized that this rendering has not been updated for that but the submission which you have does illustrate that. We have sidewalks proposed on both sides of the streets as well as an internal trail network that we are proposing that will be installed after the site is designed. The landscape plan was submitted and one of the other key issues which we talked about with the Council was a crosswalk. We have dialogued and gotten approval from DelDot that we will be permitted to have a crosswalk coming out of this community for further connection up and down Route 26 as well. In November we had gotten a positive recommendation from P & Z in concurrence with URS that we had met requirements as outlined

in your code. We came in front of Council a few times and gathered a few comments and believed they had incorporated those comments, primarily amenity based and the Route 26 question about the crosswalk. Tonight Mr. Warner is here to request an acceptable preliminary plan. He can elaborate in more detail or solicit some questions...however; you folks would like to proceed. Mayor Adams asked if Council had any questions. Vice Mayor Truitt had a question on the west side...does it meet the buffering requirements. Mr. Warner said, "Yes, it did". There is a 20' side building restriction line with a 10' landscape buffer on that side. On the right hand side they are close to about 80' and on the northern side there is 20' with 10' landscaping (30'). It is a 20' building restriction line total (10' is a landscape buffer). Attorney Witsil stated that the 20' building restriction line is just the restriction setback for the building. Mr. Warner stated that was correct. He also stated that there is a 30' buffer on the north side due to the wetlands there. In this location (pointing out something on the plan) there is a forested wetland area and there is the larger buffer there as well. Kyle stated the code requires a 30' wetland buffer. Mr. Warner mentioned that one thing which is not showing here that we are recommending a 3' high decorative fence (picket fence) around the perimeter of the storm water pond as well. In addition to the safety benches and buffers on the storm water pond itself. Mayor Adams asked if there were any comments or questions from the public. Al Townsend asked if the builders were keeping a circle on the entrance. Mr. Warner stated that it was. Also, he stated that after meeting with the firemen they will meet their requirements. We believe everything is in accordance with the Town code. Mr. Warner stated that if the fire department wanted something larger based on your particular piece of equipment we have plenty of room to put it there. There will not be any units in there until after the circle. So we have some adjustment if it is above and beyond what your standard might indicate. Mr. Townsend stated that they had run into this problem in another development in our district. They promised us this and that, and now we can't get into there with a tractor and trailer. We have met with the homeowners and it is a non-hydrant district. This will have hydrants...so this is fortunate. Mr. Warner said they would be glad to sit down with the fire department and go through everything. Attorney Witsil stated that the plan that he had been working from is dated February 12, 2009. You had mentioned the status. The status is that was the original date...the last number I have is per Town Council comments Revision #5, dated 12-08-2009. Attorney Witsil asked Mr. Warner if that was the last revision and is that the Plan you intend to be submitted

for approval. Mr. Warner answered yes. Attorney Witsil reiterated the 12-08-2009 Revision #5. That is correct Mr. Warner stated.

Mayor Adams recognized Mr. Ed Burton, town resident, who stated he had a couple of questions on the buffer. He stated that he had the adjacent property on the west side. He looked at the drawing and asked how far back the first building is. Mr. Warner did not have the dimensions of the building..Mr. Burton asked, "How far from Clayton Street is that one?" Mrs. Eckerd and Mr. Warner stated across the creek and Kyle said it probably goes at least 400 feet. That answered his question. Mr. Burton said the other item relates to the buffer...you are saying 10 feet high, a natural buffer. Mr. Warner stated the 10 foot landscape buffer would be in accordance with the code stipulations are in terms of the planning stage. Mr. Burton mentioned there already is a buffer there now. Mr. Warner said what can remain will be integrated into that (obviously they are not going to cut down what is there and replant, we will integrate that in). Mr. Burton questioned that as those Leland cypresses died off, one by one, are you going to replace them one by one, or wait for all of them to die? Mr. Warner said he felt they will assess the health of the Leland's. Mr. Burton said he felt there were several places in the buffer that were not healthy. In fact, it has been a few years since any of those Leland's were sprayed at all. So the answer is that you are going to look at what is there, appraise their health, and then if they need to be replaced, they will be replaced. Mr. Warner said right, they have to do an entire tree survey of this property in accordance with the latest tree ordinance. Vice Mayor Truitt said and when you replace the 2 or 3 Leland cypress trees, will you put something in 10 feet tall immediately or wait for something to grow to 10 feet. Mr. Warner did not have in front of him what the landscape requirement is, but we will be in accordance with that requirement at their maturity rates...they are specifying certain mixture of trees and shrubbery in that area. We will meet that code. Vice Mayor Truitt asked where the construction entrance would be. We are proposing the construction entrance to be in the northeast corner where the old Coastal Supply Dock was located. (He pointed it out on the plans). Kyle stated the buffer requirement calls for ten trees per one hundred feet. That is a fairly dense buffer. Vice Mayor Truitt said his question was to the height as you are determining the health of the ones that are there. Are you going to put small ones in and wait for them to grow? Kyle stated the buffer standards called for a certain diameter of tree. It doesn't specify height, but the purpose is to block

any views from adjoining properties. Whatever is proposed there would have to be approved by Town Code. Should they get approval tonight, they will still have to come back with a final plan and all those engineering and buffer details would be on the final plan package and would need approval by the Town Council. If Town Council did not feel it was appropriate, they can make a modification to that. Mrs. Eckerd stated that the upkeep of such buffers would be a part of the homeowners association's covenant and that would be in the final stage. That will come in front of P & Z and then go to Council. Those are two places where it will be covered. Kyle mentioned that Leland cypresses are not the best species for a buffer. They grow fast and are beautiful for ten years and then...they are prone to insect infestation. Attorney Witsil reminded his clients that this is a possible condition that you can write into your approval or whatever your decision might be tonight for the preliminary site plan. It would be relevant to the determination. Mayor Adams wanted a clarification (but she thought she knew the answer). Vice Mayor Truitt asked the question ...where is the construction entrance? You don't have to secure the o.k. on that until you are ready for final. In other words—do you have permission to use that as a construction entrance? Mr. Warner said there had been a question as to whether there was an easement there or was it a right of way. Mr. Warner said it had not been resolved. It could be made a condition of that by final approval. Mr. Warner stated that seemed to be the only logical place to do this ...coming off Route 26. The linguistics of it makes this the obvious place. Without question we could make that a condition. Mr. Disharoon asked if they had discussed this entrance with Southern States. Mr. Warner stated that they had not. He said had asked the developers to look into it as to how they would process it from a legal point; however, he has not received any feedback yet. He will research that a little harder on getting their answer this time around. Attorney Witsil asked if Mr. Warner could be a little more specific as to the location of the construction entrance. It was pointed out that there was a note on the plat indicating that the construction entrance would be there. Mr. Warner stated that #18 indicated that site construction entrance would be located in northeast corner adjacent to the industrial area. Vice Mayor Truitt mentioned that Council should make sure the buffer requirements are met both now and in the future and that the construction entrance, if at all possible, be in that northeast corner of the property. The town also requires a landscaping agreement as part of final plan approval which ties the developer to maintain and make sure they are planted to spec and maintained to a certain period of time...and then taken over

by the homeowner's association. Mr. Burton stated that answered his questions. Mayor Adams asked if there were any other questions. She recognized Mr. DeHaven. Mr. DeHaven asked for clarification on a matter. Included in the Comprehensive plan update there were 9 properties that were slated for Town Center zoning that abut the development. Mr. Burton's is one, his property is one and there are 7 other properties. Your proposal does not reference Town Center zoning relative to these 7 in the residential zone. The Comprehensive plan was approved in April of 2009. It has 18 months to implement the zoning after the approval of the Comprehensive plan. For clarification purposes I wonder if you should revise your plan to include the future zoning as Town Center relative to those properties that abut your development, just for clarification purposes. There may be some need for minor alterations which may be needed. Mr. Warner said maybe Kyle or Attorney Witsil or Council may want to chime in this, he stated that until the zoning, he believed, was changed when the application goes in...it is going in under the zoning that is currently taking place. If that application was not approved, then we were to come back in after the zoning change, we would be in accordance with the zoning at that point in time. Mr. Warner believed that all they can go by now is to submit it under the current zoning that it is under. Kyle felt what Mr. DeHaven was saying is that the property adjacent to you was rezoned to Town Center as opposed to Residential. Mr. DeHaven was referring to when you go from residential to high density. Mr. Warner asked Kyle if they met the buffer requirement against that and the zoning changes does that force to retroactive for buffering. He would not think so. Mayor Adams said Mr. DeHaven was just after clarification. Mayor Adams asked if there were any other questions. There were none. Councilwoman Flowers made the motion to close the Public Hearing on the Highlands of Pepper's Creek, seconded by Vice Mayor Truitt. Upon unanimous vote the Public Hearing was closed. Mayor Adams asked Council if they were ready to move forward or if there were any questions. Councilwoman Flowers addressed question to Al Townsend's statement concerning fire company concerns. I want the community to be safe and fire company issues on the development to be o.k. Mr. Warner stated that it was his opinion that as long as the State Fire Marshal was the reviewing agency in terms of obtaining final approval for the community, as well as URS, DelDot and a number of different agencies, that is a routine portion of going from preliminary to final and certainly if you want to put an extra stipulation in there to double check with the fire department. Councilwoman Flowers would like to do that because Al stated that other sites had been approved. Attorney Witsil stated this might address

the construction entrance but he was not sure about her concerns of the fire marshal's office. A second condition might be that the developer shall acquire all necessary easements and/or documents for access through the construction entrance per note #18 approximate to the northeast section of the proposed development prior to final site plan approval. Attorney had one other suggested condition, based upon what I heard this evening if you would like to hear that. The first suggested condition would be the developer shall comply with landscape buffer requirements of the Town code and maintain all vegetation within the landscape buffer area in a proper manner restrictive covenants and condominium documents shall require proper maintenance and/or replacement of the landscape buffer by the developer or the condo association. Councilwoman Flowers would like to add the fire department's input..make a recommendation that we make it a condition that the radius of the circle (she was not sure of how the word it). Attorney Witsil asked Kyle for his assistance. Kyle, is this a condition that would be superior or in excess of the fire marshal's review of this plan. He stated that most likely it would be. Attorney Witsil asked Kyle if he comprehended what the issue is and how we could draft this as he is not quite sure of what is needed. Kyle said he felt that you want to make sure that the design of the traffic circle has sufficient access for fire vehicles during an emergency. The applicant shall work with Fire Company to determine appropriate radius of the traffic circle. It was pointed out on the plat and Mr. Warner stated that they would have no objection to this being subject to approval of the fire department as to the radius, curbing, etc...that is fine. Vice Mayor Truitt stated so there will be 3 conditions: construction entrance, the buffer and the fire department's suggestions. Attorney Witsil said usually it is just the fire marshal's office that approves.....Councilwoman Flowers wanted to insure the fire department's input as it has been an issue previously and we need to learn from the past. Kyle said the fire marshal's standard is a minimum standard. Council can always exceed that. Al Townsend mentioned that they had gone through this with some of their dead end cul-de-sac's. He had given them the turn radius' of all of the trucks and it was all put in and he should be able to give it to the developer and attorney quickly. Gary Cox said they had done it for the Woodlands. Attorney Witsil asked Council how this suits you... Final design of the traffic circle shall facilitate proper access by emergency equipment in accordance with review and approval by the Dagsboro Volunteer Fire Department. Council and fire department's representatives agreed this was good. Councilwoman Flowers said safety of our residents has to be important. Mayor Adams asked if there were

any more questions or concerns. Attorney Witsil (for the record had a quick question for Kyle) that Kyle has reviewed the plans and he can review the plans as submitted tonight plus the revisions are all in accordance with the Town code. Kyle reported that they meet all of your standards, all of your requirements both sub-division and zoning and they have also appealed P & Z with any requests that they have had. He feels they are meeting the requirements at this point. Motion was made by Vice Mayor Truitt to approve the preliminary site plan for the Highlands of Pepper's Creek with the conditions stated, three in number (which Attorney Witsil has dictated and that you have seemed to have approved), seconded by Councilman Hearn, unanimously approved. Mr. Warner thanked the Council for their time and thanked Kyle for his help. Attorney Witsil stated that he will get a copy of this approval for preliminary site plan to the Mayor for her signature.

Presentation of Building Permits Issued:

Stacey reported that on February 25, 2010 addition (16' x 16') to a house on Church Street reviewed by URS for zoning and the county for construction. On March 1, 2010 the sign relocation for Hot Tubs Plus sign moved from their front yard to in front of their business entrance.

Correspondence:

Stacey mentioned two pieces of correspondence in the Council's packet. One is regarding the Energy Grant (Town is eligible for \$25,000). Council asked to get back to Stacey on this matter after reading the correspondence. Kyle mentioned there is a \$25,000 guaranteed if you apply for it and the second Energy is a competitive grant and there is 4 million dollars available for that grant program for lots of different things - upgrades to Town Hall, solar panels, lighting upgrades to existing heating and air conditioning system. The second piece of correspondence was from Bob Maxwell, which was a legislative report. Each town got a certain amount based on their population. Details of the 4 million are still being finalized. Stacey said if any Council member is available SCAT meets once a month the first Wednesday each month. Stacey said that is on a night she has school and is unable to attend. It is dinner and a speaker. It is informative and other towns attend. SCAT has an Executive Meeting the Friday after the regular meeting. It is usually the Mayors and Town Managers who attend. It is on Friday mornings. Mayor Adams said it is open to any Council member and if any

Council member is interested she will give them information. She will make a reservation for you.

Planning & Zoning Report & Town Council Vote on the following:

Mrs. Eckerd reported that they had a good meeting. Mr. Steve Fuller, represented Vines Creek Village, project begun in 2005. The P & Z was not formed at that time. Vines Creek Village has their preliminary site plan. They don't have a time frame for this development. They need to submit a landscaping site plan, a signage site plan, a signage plan, lighting, architectural design, or HOA documents and any other items needed for the final site plan. The major problem with this property is Stone Lane. Stone Lane is owned not by the Town, or County, but by the developer.....(2026 Venture LLC). The roads in Sussex County as well as all the homes, except for 4 within the Town of Dagsboro. The question they have is (since they are going to be a sewer and water connected community) what are we doing with Stone Lane. The issue is being sent to the Town for resolution. Mayor Adams said we are discussing it. There is also a shed and landscaping of a home owner that intrudes upon the development which is to be resolved in the future. They have no time frame, but there is a major problem with Stone Lane. Attorney Witsil stated they might have a significant issue. Did you say that it was preliminarily approved in 2005? Section 275-C if you want to pass this on to them. 275-40B-4b states any preliminary site plan or preliminary sub-division plan approved prior to October 27, 2008, shall be rendered null and void within 2 years from October 28, 2008 if the applicant has not acquired a final site plan or sub-division final plan from the Council. Council may upon showing of substantial efforts toward acquisition of permits grant a one year extension. Kyle mentioned that this project has been moving forward... They have had issues with DelDot and the Conservation District and that is what has held them up this whole time. Attorney Witsil stated they would have to come in and apply for an extension before October 27, 2010. Kyle mentioned he felt they hoped they would have Final Plan approval before then. Marj took note of the date. Marj asked if she should mention anything about Stone Lane to them or you would take care of that. Mayor Adams wanted Marj to elaborate as she would like them to know what we know about Stone Lane. Kyle stated that this was a really unique situation which had come about over years and years. That property was donated to the Catholic Diocese of Wilmington. He did not know the original families name was. The property is sort of a trapezoid with the houses on Stone Lane fronting on the northeast side of the property. They were divided off of a lane (Stone Lane).

The actual area within the roadway is part of that larger parcel being developed. Four of those houses on Stone Lane (adjacent to the property being developed) have been annexed into the Town of Dagsboro. The rest are not---they are in Sussex County. The actual lane itself (the area where the lane is...is in the Town of Dagsboro). The developer has offered to sub-divide off that parcel so that those residences on Stone Lane have access to the property or the roadway. The homeowners association would ultimately own the property. Several years ago when this project was going through the preliminary planning stage, the plan was that the developer of the property would give that Stone Lane to the Town as a public road (right of way). Kyle felt that the Town had contacted Mr. Hocker and Mr. Bunting to find street funds to pave the street. When the Town realized that not all of the parcels of the street were in Town, the Town did not want to move forward with that. That kind of just went away. The ownership issue and also who rightfully should own the property and who is the best owner for the property still has not been resolved. I don't think it is fair for the homeowners association of this new development to have to maintain a road for the residences outside of the development. Some decision needs to be made on some level. It was discussed by Council and Kyle stated only 4 homes were in Town Limits on one side of the lane. Mr. and Mrs. Sparpaglione own two lots (on the end) and are not in Town Limits. It was questioned about the lots being in Town...the whole street is in Town but the lots being discussed are not incorporated within the Town. Kyle stated the entire street is part of the parcel being developed and the parcel in its entirety is in the Town of Dagsboro. Mayor Adams felt the only part of that road that is in Town is in front of the 4 homes which were annexed into the town. Kyle said that was incorrect...the whole parcel is in Dagsboro and it is a very strange parcel...it is a square basically and there is an arm which encompasses that street and goes out to 26. The west side is in Town because they annexed themselves. Why would they bother to annex if they are in Town. They are not in Town. Mayor Adams asked about the 4 people who went to the trouble to annex if they were already in the Town? Kyle explained the road itself is in Town...everything else is outside of the Town of Dagsboro. Mrs. Eckerd felt the property owners were asked if they wished to be part of the Town they did not want to be part of the Town, they wanted to stay with the County. The others wanted to stay in the Town. Yes, the road is in the Town. Kyle thought that at one time this was an annex road to that farm. Vice Mayor Truitt stated that the issue will be ... Do we want to take over that road? Kyle said what he intends to do is to sub-divide that road off and give it to the Town of Dagsboro. Mayor

Adams asked what if it was given to the County. Kyle did not feel they would want it, but it is worth him asking. Attorney Witsil stated that County does not take title to roadways. You can build to County specifications, and you can dedicate to the State. Your choice would be to dedicate the roads for public use or you could keep them in the sub-division. The County does not receive title to roads. Kyle reported that the area that the road is in is in Dagsboro. Vice Mayor Truitt asked that if it were deeded to the Town, then the Town would be responsible to maintain it. Mayor Adams said that the question had been put before them years ago and they said no, but a lot of people who are living there presently are different people. Mayor Adams and Council agreed that they should invite all of the property owners in and have a friendly discussion to see if they are interested in incorporating in the Town. If so, then we could work on annexing. Then they would be able to help us maintain that road. Otherwise there are 4 people paying taxes. Kyle said water could be extended to serve those properties and the developer is putting sewer in, so they would have sewer from the County. It just makes good sense. It was stated that the 4 were paying taxes to the Town. Kyle asked if the legislators might be able to get some funding to pave the streets. This would be after sewer and water have been put in. Wouldn't it make sense economically to lay the sewer lines and water lines at the same time? The consensus answer was Yes. Mr. Disheroon asked if the lot on the east side were individually owned. They are not in any other plot or anything? Kyle stated they had been there for 50 or 60 years. Attorney Witsil asked if there were restrictive covenants for this sub-division. Attorney Witsil had not seen a plat or anything. The Mayor just asked him this afternoon so he can't advise you at all on this. It was Kyle's feeling that the lots were just sold off. Attorney Witsil said if it is a sub-division created pursuant to a plat, which I am sure was the case, there would have had to be a sub-division with the County. If the County approved the sub-division then they are not in compliance with County code requirements to bond and pave the roadway. If it is an approved sub-division there may be notes on the plat or restrictive covenants that say that the developer is required to turn the streets over to the sub-division association or property owners at some time in the future. Mrs. Eckerd asked if she searched the title in Georgetown of those people could she find out there is some cohesion. There may be restrictions in the deeds which say they are to maintain the street. It was asked if P & Z was to have done research on this matter. Mrs. Eckerd had volunteered to do it. Mayor Adams felt it should have been the responsibility of the developer to make the road nice...someone has to pick the ball up. Kyle mentioned

that the developer had agreed to put a cul-de-sac at the end (he has met with the people on Stone Lane several times). The County has requested that the developer provide sewer to all of those residents and a fence and buffering behind the houses. He has been in touch with the people. Kyle mentioned that as it is now the Town is not in charge of that street and you have no maintenance responsibilities.....as it is now it is a private road. Mr. Disharoon asked if the cul- de-sac at the end of the road.....does it meet the requirements for the fire department's equipment for turning, etc. Mrs. Eckerd said when they come to final that should be taken care of. The developer has depicted a cul-de-sac on the end. Al Townsend recalled the open area where the cul-de-sac will be located from when he was a kid. Mr. Disharoon stated when you get back that far then you would be coming back into the future development. Kyle said the area the developer depicted as being dedicated for the roadway into the Town shows a cul-de-sac on the end...so they are allowing enough space to put that in. Kyle told Mrs. Eckerd he could get the names of the persons on the street to her. Vice Mayor Truitt asked what action should be taken and Councilwoman Flowers said it was her feeling that a Workshop should be set up to work with the residents. Mayor Adams asked if the meeting should be set up regarding deeding within 2 weeks or so and everyone agreed. Would we need that information before we try to meet with the residents? Councilwoman Flowers stated that maybe at the next Council Meeting (April 26, 2010) we could set up a workshop date at that time. Mrs. Eckerd stated she wanted to get back with the developer in October. Attorney Witsil said they might want to check with the Recorder of Deeds also to see if there is a sub division plat of record. Mayor Adams said should she express to the resident who was asking about stones...if they want Stone Lane to have stones down before they can do anything, she feels it is the responsibility of the people living there. It is not ours, not now. Mr. Disharoon said you took care of snow removal Yes, Mayor Adams said she took care of the snow as she thought it was our road. Mayor Adams said do we want to put this matter on the April 26th Agenda. Vice Mayor Truitt made a motion to review and discuss the matter of Stone Lane as to what people have done and set a workshop date at that time, seconded by Councilwoman Flowers and unanimously approved.

Mrs. Eckerd stated that Gary Cox, representing Dagsboro Fire Department, came by and showed the P & Z their site plan. P & Z did not have to vote on anything...this was just for information purposes. Signage has not been decided upon. Lighting will be minimal, but to code. The storm water management pond is expected to be dry so we did not worry about a fence around the

storm water designated area. A fence buffer needed to be added from Swamp Road to the corner of Railroad Avenue. We requested sidewalks to be added along Lingo Road and Railroad Avenue up to the entrances of the building. The Clayton Street sidewalk needs to be connected to a sidewalk leading to the front entrance of the building. P & Z asked them for a nice sidewalk around the building. The Fire Department is going to be requesting a waiver for the need of a roof pitch of the building that will be deviant from our code. They will be using concrete instead of asphalt for paving because of the weight of the equipment. They will also need a use in the commercial zoning section of our code; we found there was no use for a fire station or fire department. There is a use for fire station in the Town Center use; however, the fire department's property lies primarily in the commercial. So that will need to be addressed. Mayor Adams asked that the roof pitch be explained further to Council. Mrs. Eckerd stated that the roof height we have is now 35 feet. The pitch we have will not accommodate the fire trucks that will go into the bays. The space required for the building which is 120 feet deep to get a 6/12 pitch the roof would be about 60 feet tall. To accommodate the 120 ft. engine bay depths the fire department went with the 3/12 pitch which is standard for that size building and are adding architectural dormers (gable above each bay). Kyle said from the street a 6/12 pitch roof. Mr. Cox stated that was correct the only place that you would see a 3/12 pitch roof would be from Swamp Road for the most part. Basically, the compromise was either a height waiver or a roof pitch waiver. The roof pitch is more economical for us because it reduces the amount of dead space and keeps the building lower. Kyle said the building is so wide, they have to go lower as opposed to higher to meet the 35 ft. requirement. Mr. Townsend felt that when the code was changed they were thinking about residential buildings not commercial buildings. Somehow it got thrown into commercial. It was mentioned that if someone came in and put in a 50,000 square foot building and don't want a flat roof, he is going to have to put a 60 foot tall pitch on it. Kyle stated that is the reason the design standards allows the P & Z to grant relief from the larger structures. Mrs. Eckerd felt the use in the commercial zoning had to do with the Council and the Public Hearing. Attorney Witsil had previously rendered an opinion orally, which he is prepared to discuss this evening. Stacey had informed him of this issue and at Kyle's suggestion the provisions of the zoning code in the commercial district provided as a permitted use for public utility offices and installations in sub-section 8 or sub-section 9 government buildings. Instead of trying to shoe horn that fire station use or a quasi-governmental facility

into that portion of the code, he had previously talked to Council about a uniform exemption in Section 275-7 which reads: the provisions of this chapter (meaning the zoning chapter) shall not apply to the installation, construction or erection of government buildings serving the public including but not limited to public educational institutions, fire stations, post offices or other public or semi public offices or buildings. Having read that language, I think it was the intent to not make a fire station subject to the zoning code requirements for setbacks and that sort of thing. Your architectural standards are part of the code. I think that Council needs to make a decision that this is a reasonable interpretation of the zoning code. Because that section which is an exemption specifically states fire stations in it and other semi public offices and buildings which I feel falls into that category instead of permitted uses, it will be in my opinion (Attorney Witsil asked Stacey if she had photocopied his e mail...she did and gave a copy to Council) exempt the fire company from architectural standards and set back standards. He did add that he did not think it exempts the fire company from those applications - which they need to submit a building permit; they will need to pay permit fees and impact fees which are usually required for this sort of structure. It does not exempt them from those. He noted that two of the impact fees - the fire protection fee and the ambulance service fee are collected from a property owner and given to the Dagsboro Fire Department. You might consider waiving those or charging them and returning them to the fire department. This might have an accounting problem associated with it. Attorney Witsil feels that an ordinance needs to be approved to state this exemption so that it is in their records or a resolution of that effect, instead of just his legal opinion (which he feels is solid), but should not be a decision upon which the fire company proceeds to build a multi-million dollar structure. Discussion took place regarding this matter as to how the best way to go about resolving this matter. Councilman Hearn questioned the difference between making the fire station a permitted use in commercial as opposed to using the exemption. Attorney Witsil felt it did not meet the goals...it allows them to build as a commercial structure in the commercial district, but they want an exemption from some of the requirements of the code such as roof pitch and some design standards...just identifying them as a permitted use in the commercial district does not help them that way. Kyle said if you grant this exemption from your zoning code, they do not have to follow your zoning code at all. P & Z and Council did not feel they wanted to do that. Mrs. Eckerd personally felt it should be a use rather than an exemption. An exemption just

opens up a lot of things. Mr. Townsend felt this was incorrect as everything has to come before P & Z and you have to approve the final site plan. Councilman Hearn is concerned about Attorney Witsil's answer...if you make a permitted use in a commercial zone, why is it not subject to the restrictions of the commercial zone. Attorney Witsil said it would be and that is the problem. The hang up appears to be the roof pitch. Kyle stated that the way the design standard is written the P & Z can give them the exemption that they need and they stated they can meet your 35 foot height limitation. Attorney Witsil said if you approve it, you will need to change the zoning code to allow fire stations to be a permitted use in the commercial district. You don't have to do it if it goes to the exemption. They are a grandfathered use where they are. Mrs. Eckerd asked Attorney Witsil if they need to go with the exemption. Mayor Adams stated she wanted to get the best for the fire department and the Town and have it all open and above board. She said when the fire department gives her something and expects Council to do it; she wants the entire Council to hear it. It is Attorney Witsil's opinion is the way the zoning code in the commercial district reads now is that a fire station is not a permitted use among those 15 identified permitted uses. He is very comfortable interpreting 275-7 to exempt educational institutions, fire stations, post offices, or other public or semi-public offices from the applications zoning code, with the exceptions noted. The permit fees and the building permits are not in the zoning code so it is not in 275; they have to comply with chapters of the code other than 275. Therefore, the only thing they would be exempt from is the zone classification for commercial districts and the off street parking requirements, as they will have plenty, from what he understands. Mrs. Eckerd questioned the architectural requirements. How many more fire stations are we expecting to have built, Councilwoman Flowers said. Mayor Adams has a problem with this as we did not do this for the school. Vice Mayor Truitt said we are talking about architectural requirement. Attorney Witsil stated the design standards have a waiver feature in them. Kyle noted that if they are exempt from zoning the only thing they would have to follow would be the design standards. Mayor Adams said but we don't want to do that. Mr. Cox stated that the fire department was told at that meeting that they were a private organization not a government entity. Attorney Witsil said a distinction to be drawn is that this is not the Dagsboro Municipal Fire Department. If it was the Dagsboro Municipal Fire Department you would not need to interpret 275-7...it would be absolutely clear. I am rendering you this interpretation because of the words governmental building serving the public including the

words "fire stations" and the words "or semi public offices or buildings". He felt an argument could be made that this is a semi public structure...it serves the public. That is also in my opinion why I said it is your decision (Council) and not his legal opinion. If Council would like him to take a look and more definitively advise you on what other specific portions of the code the fire department might be exempt, he would be happy to do that. He felt it just related to the zoning code section...Chapter 275. Are there risks associated with it? Could the fire company come back and say we do not need to meet the minimum parking off street requirement...the answer would probably be, yes. That is in the zoning code. Are they going to do that from a practical point of view...I doubt it, because they need as much parking as they can handle. Signs and signage are in the code...at 275-18b. Technically does this language exempt them from the zoning requirements...the answer might be yes. They might be exempt from the sign requirements from that zoning section. Vice Mayor Truitt questioned if we could just waiver the one thing such as roof pitch or do we have to affect the entire code in doing so. He felt you could. Vice Mayor Truitt said then we do not affect the code, other than changing the code to adopt the fire department building as a permitted use in the commercial section. Attorney Witsil said you either have to say they are exempt or change the code to allow them to be a permitted use in the commercial district. Vice Mayor Truitt said then Council would have the power to waiver within that commercial district if we felt it was appropriate to waiver. Attorney Witsil stated only subject to the code's language that you can waive it. They could come in and apply to the Board of Adjustment for a variance from that provision. Attorney Witsil felt there needs to be a preliminary review of the fire department's site plan and some level of confidence that they will maintain that site plan that they have submitted to you throughout the course. Kyle stated the review has been done and reviewed by the P & Z, and they all agreed that they have done a fantastic job. Vice Mayor Truitt said but legally they could come back with a final plan that is different. Councilwoman Flowers stated...but we would still have the option to deny that, is that correct? Kyle stated the question is appears to be if they are exempt from zoning requirements, do they have to go a site plan process at all. Discussion among Council and P & Z members as to what would happen if the preliminary was approved and something was added...what would happen. Everyone gave their opinion. Attorney Witsil stated that the requirements for a final site plan and a preliminary site plan are in the zoning code, under site plan review. Attorney Witsil stated he would insist that the fire department be subject to site plan review.

Gary Cox addressed the Mayor and Council and said he had researched the minutes and he felt the minutes of 1996 which created 275-7 needed to be legally reviewed before a decision is made. The fire company is all for the design at this point and making it a permitted use in a commercial district. We have designed the building around not getting away from 275. When we brought information to previous Council we were told that 275 was not applicable to us as a semi private organization. Having done the research, Mr. Cox feels 275-7 needs to be fully researched and the core of that section is defined and determined. Kyle mentioned there might be some issues in terms of the fire department financing if you are not a permitted use within that district. There has been discussion and the engineering firm is more comfortable with a set of legal guidelines than being told carte blanche...do what you want and somebody come back and say you did not have the right to do that as it is outside of the town or somebody's legal opinion. Kyle stated they had done a very good job and thinks they are probably 99% in compliance with the code. There is only a very short list from which we are looking for exemptions. Attorney Witsil stated it cannot be the permit fees. He felt Council needed to add this use to the commercial district. Mr. Cox mentioned reviewing 275-7. Council agreed on this. Kyle noted that with these steps in place you can be sure of what is going to happen next to you because you have this in front of you and offering an exemption would probably upset the neighbors. It takes 2 months to change the zoning code. That is too much time. Kyle asked the fire department--you are not going to be asking for permits tomorrow, are you? Mr. Townsend stated that as a taxpayer listening to these discussions...the bottom line seems to be that you are almost to the point that you do not trust the fire department. Mayor Adams said she was not afraid of the fire company but the Council agreed that they did not want to set precedents. Mr. Townsend said everyone seems to interpret everything differently. However, several other persons discussed the matters and Councilwoman Flowers wanted to be sure what Mr. Cox had requested regarding legal opinion on 275-7. Attorney Witsil stated that no matter how much research he did it did not matter what people talked about at that time. Mr. Cox stated what was the motion and paperwork was filed for 275-7. Vice Mayor Truitt made a motion to set a Public Hearing to add private fire stations as a permitted use in the commercial district, Councilwoman Flowers seconded the motion and it was unanimously approved. Attorney Witsil said to make that in the form of a resolution to have an ordinance prepared and to set a Public Hearing next month if Council approves. The motion was amended to set a resolution to have an ordinance

prepared and to set a Public Hearing for the April 26, 2010, Council Meeting on the issue making private fire stations a permitted use in the commercial district, seconded by Councilwoman Flowers, and unanimously approved.

New Business:

1. Review and award Grass Cutting Bid for 2010 season for Town and Prince George's Cemetery. The Council was presented with the bids for the above grass cuttings and Stacey explained the bids. (The Council has a copy in their packet) Bid #1 - was awarded to DOC for the Town of Dagsboro, upon motion made by Vice Mayor Truitt, seconded by Councilman Hearn and unanimously approved. Bid #2 - was awarded to DOC for the Prince George's Cemetery, upon motion by Vice Mayor Truitt, seconded by Councilman Hearn and unanimously approved.
2. Consideration of purchasing new phone system for the Town Hall/Police Department. Chief Floyd Toomey presented three bids which had been obtained and explained the information on the phones. The bid was awarded to StarTech Communications. It was also explained as to the need for caller I.D., the system also allows calls to be recorded. The Town will be required approximately \$600 beyond what the Grant Chief Toomey has obtained. This would make our phone bill approximately \$300...Phone bills have generally allotted $\frac{1}{4}$ of the amount budgeted (\$215.00) toward the police department. Chief Toomey said the Police Department uses the phone and we have our own fax on the system. It affords the Town Hall to be able to transfer phone calls directly to the Police Officer on duty on his cell. Vice Mayor Truitt made a motion that we accept the bid for the new phone system and installation, the line charges for two additional lines, the caller ID, and the third party calling, seconded by Councilwoman Flowers and unanimously approved.
3. Resolution amending the Water Rates and Charges to Reflect monthly billing. After explanation by Attorney Witsil about who needs to be forced to connect to the Water System as there are still delinquent people who have not tied to the system. The previous set of resolutions from February of 2005 and June of 2008, Attorney Witsil had questions as to who could be forced to connect to the water system. He also questioned the equality of people who have improved their property and not connected to the system and those who have not improved their

property and have been paying for water. He took a look at prior resolutions and performed a couple of revisions and the last amendment was not on. He asked Council to look at the resolution and make the corrections. He went over the resolution with the Council. He explained that the water rates will not increase or decrease; we are simply changing the rates to reflect the monthly billing versus the quarterly billing. Vice Mayor Truitt made a motion to amend the resolution to change the water rates to reflect monthly billing, seconded by Councilwoman Flowers and unanimously approved. An ordinance will be addressed next month due to advertising and posting requirement that addresses properties that are not connected to our system.

4. Consideration of extending operations/maintenance portion of Artesian contract for approximately 6 months. Mayor Adams made it clear that in talking with Artesian they were very nice about not dumping the Town in the middle of the road. This is a good thing as we need to get this up and rolling. Therefore, until we get a person in place that can do the testing of the water, operations and maintenance, Stacey will be doing the billing. They are willing for us to use them up to six (6) months. We will need them for a period of time as we are not ready to jump out and do it all. Vice Mayor Truitt said they were just recently informed that we need to upgrade our computers. The computer we are operating off of is very old and something as important as this needs a new computer. Councilwoman Flowers asked if we need to sign a contract on the extension. Stacey felt it would be good. Monthly operations fee is running \$682 a month...that is regular operation and maintenance, not including any service calls and other charges which they bill. We are ready for billing now but not the operation and maintenance portion of it. Mayor Adams said we will need to hire a water operator...but felt we need to get a good one and this will give us some time. There are plenty of them out there who need a job. That position will have to be advertised and interviews held. Councilwoman Flowers made a motion to extend the contract tentatively for three months with the option to extend on a monthly basis for six months, seconded by Councilman Hearn and unanimously approved. Attorney Witsil said to ask Artesian to prepare a proposal.
5. This discussion was addressed under item #4

6. Consideration of request of payment from Mr. Frank Murray.

Mayor Adams brought to the attention of the Council consideration of the request of payment for Mr. Frank Murray. Council has a letter in their packet. This was a very heartfelt, sad letter and someone we have known a long time. He is asking for payment on a bill for services that he did back in 2006. Upon going through...Stacey had prepared a statement of all of the checks cut to Mr. Murray the last one was dated March 23, 2006, which would have been for the previous season as March 23 we would not have begun any grass cutting for that year...it would have been for the previous year for 2005. He has not had any payments after that date. Councilwoman Flowers said...so we do owe him money...Mayor Adams said we had better wait. Stacey said that according to that we owe him money, (according to that he has not received anything) but he did cut our grass in 2006. He never submitted any bills and never got paid. Attorney Witsil said he had been asked for an opinion on this. Attorney Witsil took a look at the letter and the bills and he has received calls from other clients as to whether or not they are obligated to do or pay something from a service or a claimed service that has been very dated or accrued from the past. There are two issues at which you should look: One he can't really address - that is the creditability of the invoices. Obviously, they are retroactively made. They seemed to be created within the past month or so to reflect past services in 2006. He noticed that each of the services was on an exact weekly basis. They were all 7 days apart (whoever created this bill went back and looked at the calendar to see what day of the week they picked for detailing the invoice...it may not have been realistic that the grass was cut on that day every day of the week; Secondly, in terms of the creditability issue, Attorney Witsil could not comment as to whether the charge was reasonable, there seems to be a discrepancy for \$75 a week for some charges and \$220 reflected for other services. He suggested to the Mayor in their conversation that they look at the bills for the year before that was provided by the same gentlemen to see if similar charges were made. More importantly, the legal obligation for you to pay is questionable. There is a statute of limitations on a contract action. By Council agreeing to accept this gentleman's grass cutting services and him agreeing to do them and bill you and for you agreeing to pay. That was an express contract that the Town agreed for these services and the payments, it was implied that if he was told to cut the grass and he did and he sent a bill for it. In either event the statute of limitations for this is three years. That time has passed. Attorney Witsil said the very hard line he could take on Council's behalf is that he needed to bill you, bring an

action or claim against you for those services within three years from the time it happened. It hasn't. Stacey said he did the Town cuttings at \$40 each...that is the Town Park and the Town Hall. The Vines Creek property was \$35 a cutting...so there is the \$75. The second thing was to cut along streets and sidewalks from IRHS and back and all of the streets would be \$225. It appears he charged \$220 instead of \$225. Attorney Witsil asked if there was a service for the subsequent year. Stacey said yes; however, they are filed and packed in file boxes in storage. . Attorney Witsil questioned if the billing process is the same as the years before. They were looking for actual dates and an actual copy of the bill, not the check where they paid. The bill was hand written. It will be date after date after date, etc. Vice Mayor Truitt asked with the present contract if they don't cut on a certain day...Stacey said they cut another day. There is the same amount of cuttings. The number of cuttings is set. This year VOP is going to have to come out twice a week, they were doing it once a week, but with the additions they will come twice a week. He did not say.....doing 30 cuttings, but that is how he billed it. Councilwoman Flowers said he did this for many years, and she wanted to pay him. Stacey noted that he did do it once a week. Mayor Adams said if you look at Invoice #18, Christmas lights \$10 per hour for 92 hours ...there is nothing that tells her he was there on November 15 from 2 to 4. How does he know he spent 92 hours? That was about twelve 8 hour days. Councilwoman Flowers asked if he was doing it by himself at that time. Yes, he was. Mayor Adams said the part she has the biggest issue with is the Christmas lights. She has no idea what he bought. We could ask if he has a receipt. Councilwoman Flowers felt there are expenses for Christmas lights. \$78 seems cheap to her. Vice Mayor Truitt stated that in Mr. Murray's letter he says he is willing to discuss anything that is reasonable. He may not be demanding that amount. Councilwoman Flowers asked what they added up to. There is about \$5,000. Attorney Witsil's first impression was that he had no evidence of the amount of times he cut the grass. Councilman Hearn suggested that we communicate with him, either by letter or in person. Mayor Adams said she would be glad to sit down and talk with him and explain the situation. Our budget for that is long gone. She said that was a very rough year for him and not feeling well. He was supposed to have surgery, but she could call Frank, Jr. She asked Council for direction...should I call and see what they are willing to do. Vice Mayor Truitt said to throw something out there and see what they are willing to negotiate. While this got to me, I also have to look out for the Town. There might be other people coming back and where do we draw the

line with the statute of limitations has run out. We don't want to set a precedent. Councilwoman Flowers said if we did not pay him anything, we would have more unhappy people in Town. Mayor Adams was not interested in paying zero; she was interested in coming somewhere in the middle...a compromise with a reasonable fair amount. Since we have nothing to prove anything, it was agreed to discuss it with him...Mayor Adams stated she will call Frank, Jr. to find out how he is. If he is up to talking that will be good, it is not something that needs to happen tomorrow.

7. Consideration of purchasing a new computer. Stacey explained that the computer system, on which the water billing will be done, is very old and this is an important operation, and she feels that a new computer is needed. Vice Mayor Truitt said he did not feel a laptop would be good. He told Stacey that he would be available to help her select a new computer system. A motion was made by Vice Mayor Truitt, seconded by Councilman Hearn to purchase a computer system (including monitor) not to exceed \$1200, and unanimously approved.

Presentation of Treasurer's Report: The report was made by Stacey Long and a copy of the report given to each council member. A copy of which is attached. Vice Mayor Truitt made a motion to approve the Treasurer's Report, seconded by Councilman Hearn and unanimously approved.

Approval of Minutes February 3, 2010 Special Meeting and February 22, 2010 Regular Meeting: Mayor Adams stated there were two sets of minutes to be approved tonight. Minutes of Special Meeting of February 3, 2010 Council with the Fire Department. Page 11 correction by Councilman Hearn second paragraph 9th line right hand sign word is chief and should be cheap. Vice Mayor Truitt made a motion to accept the Minutes of Council and Dagsboro Fire Department with noted correction, seconded by Councilwoman Flowers and unanimously approved. Approval of the Minutes of the regular Town Council Meeting on February 22, 2010. Kyle was not in attendance at that meeting and Attorney Witsil was not in attendance, but was listed. A motion to accept the Minutes (with correction as listed) was made by Councilman Hearn, seconded by Vice Mayor Truitt and unanimously approved. Kyle Gulbranson and Attorney Witsil said they were not at the meeting as they were told they did not have to be in attendance.

Standing Committee Reports:

There was nothing to report this evening.

Police Department:

Chief Floyd Toomey gave his written report to the Mayor and Council and stated it orally for the Council. He gave a lengthy report about criminal activity in Town. He also stated he was going to be away the entire month of April with the Guard. A grant came through and the Police Department has installed state of art surveillance for the police department. The grants have been put to good use and anyone in the public is welcome to come in and observe.

Hazard Inspection Committee: Nothing to report.

Town Property/Town Improvement: Nothing to report.

Prince George's Chapel Cemetery: Nothing to report.

At this time a motion to recess into Executive Session at 10:10 p. m. was made by Vice Mayor Truitt, seconded by Councilman Hearn at and unanimously approved.

Upon motion by Councilwoman Flowers, seconded by Vice Mayor Truitt Council returned to regular session at 10:52 p.m.

There were no motions made during the Executive Session.

A motion was made to adjourn the meeting at 10:52 p.m. by Councilman Hearn, seconded by Vice Mayor Truitt and unanimously approved.

Respectfully submitted,

Rae Long
Administrative Assistant

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