

**COUNCIL MEETING
TOWN OF DAGSBORO
BETHEL CENTER - 28311 CLAYTON STREET
MONDAY, MARCH 23, 2009**

The March meeting of the Dagsboro Town Council was brought to order at 7 P.M. on March 23, 2009. The following members were present: Mayor Wayne Baker, Vice Mayor Patti Adams, Councilwoman Flowers, Councilmen Hearn and Truitt; Attorney Witsil; Town Planner, Kyle Gulbranson; P & Z Representative, Marj Eckerd; and other interested parties and residents listed on the sign in sheet.

The first item on the Agenda tonight is the Public Hearing and vote on the Preliminary Site Plan for the Estuary on Pepper's Creek, Sussex County, Tax Map Parcels 2-33-11.00-114.00 and 126.01 located at Route 26 and Helm Street, Dagsboro, DE. The ordinance is to amend the zoning classification of the lands of the Kollock Family, LPA 11.29 acres more or less being Tax Parcels 2-33-11.00-114.00 – 2-33-11.00-126.01 located on the east side of Helms Street north of Vines Creek, Route 26 from Residential to Cluster Residential District. Mayor Baker said what needs to be done is for Council to do an ordinance and a resolution together because of the zoning changing from residential to the cluster residential. The hold up on this parcel is there had been no entrance to the property...the entrance was off of Helm Street and not off of Route 26. Through a lot of negotiation and deliberation, I feel we have come up with a reasonable solution for everyone. Council has a copy of the ordinances and a couple of letters that have been given by the State to Mayor Patti Adams at the time, another letter which I have written to Marc Cote and the Department of Transportation. We are here tonight to do the resolution first. The resolution is as follows: Resolution of the Town Council of Dagsboro, Delaware, WHEREAS the Estuary of Pepper's Creek owned by the Kollock Family, LPA, is located in a residential district with a CDR overlay is the subject of a preliminary site plan application for 17 single family cluster residential lots within 11.29 acres of development and whereas the project has been reviewed by URS, the Town's planning consultants, the P & Z Commission who have recommended approval of the plans subject to modifications and conditions as required by the Council, WHEREAS the Town Council held a Public Hearing on the Preliminary Site Plan and the CDR overlay district on March 23, 2009 (tonight) and the developer requests a waiver for the subdivision access to Helms Street from the provision of Section 238-7 a-10 which prohibits major subdivisions access and egress rights of ways and entrances upon or through streets within the Town of Dagsboro not designated as State Route 20 or 26 unless a waiver by the Town of Dagsboro is acquired, WHEREAS the Town Council has concluded that the street waiver requested is not appropriate at this present time, and that in order to insure that the safety of residents within the community and the safety and convenience of the residents on Helm Street and to provide access to Route 26 directly from the Estuary subdivision, certain terms and conditions are stated herein by law and --- these are the restrictions: the subdivision access onto Route 26 shall be the primary ingress and egress, the developer shall install a street subsurface base within the

181.64 foot designation as the westernmost portion of Chapel Lane (which base road shall be laid according to engineering standards)...shall be designated as a street, but which area shall not be paved and shall be surfaced with top soil and planted with grass. The area should be used as open space and shall not be subject to vehicular traffic. All other areas of Chapel Drive shall be surfaced with standard paving. In the future event that the Town determines it necessary to readdress the Chapel Drive's access to Helm Street, the Town shall have the exclusive authority pursuant to Charter Section 29-A to open and pave Chapel Lane connection to Helms Street. The cluster of residential overlay is what we will be discussing and any other conditions that Council members feel are appropriate in Section 3. Mayor Baker asked if there was anyone to speak in favor of the Estuary. Nathan Centers, 29521 on Vines Creek Road questioned the part about the waiver of decrease in the buffer zone by 25 feet. The road is being shifted 5 feet out of the buffer area. Kyle reported that there is a 30 foot buffer around the wetland area on the property. Town required a 30 foot buffer around wetlands...the right-of-way of encroachment area and the road was shifted 5 feet out of the buffer area. Therefore, no waiver is required. Does anyone else want to speak in favor? Stephanie Hansen, developer's representative, stated they were prepared to give a brief presentation if Council would like. This is proposal for 17 single family lots on 11.29 acres currently zoned for residential—located north of Route 26, east of Helm Street. There would need to be a re-zoning under the cluster ordinance to create the residential development overlay and the preliminary site plan approval. Mrs. Hansen asked if she was correct in what the Mayor stated that they would not need a waiver for entering and exiting onto Town Streets because there is a memorandum of understanding that has been reached between the Town and DelDOT that eliminates the need for the waiver, but still addressed the concerns of DelDOT for approval of the plan. This is correct. Mrs. Hansen said the P & Z looked at the preliminary plan – they had a number of revisions that they wanted to see, those revisions are incorporated in the plan which you see here this evening....it is also the plan that URS reviewed. We will be complying with all comments raised by URS in their letter as well. This has been a project which has been in front of the Town for over six (6) years at this point. We are not going into the history, but will just say that we will incorporate all of our prior testimony into our testimony tonight. That saves approximately 1 ½ hours. She also stated that that the Plan meets all requirements of Dagsboro's Comprehensive Plan and codes. It shows the property as a residential area (even though it is an open field area). As you can see, this is a plan that the Town contemplated this property being residential in the future. We do have a number of buffers planned for this development....a thirty (30) foot wetland buffer (shown on map)...a 150 foot tax ditch buffer and a 50 foot buffer from Pepper's Creek. This satisfies the requirement of a minimal use of wetlands, flood plains and preservation of natural features. For storm water management, we will be using a dry pond. Open space in the project will be 43% of the site area....within the definition of open space we are including landscaping, storm water management areas, park wetlands, buffers. Wastewater to be provided by the Dagsboro Frankford Sewer District, water supplied by the Town of Dagsboro, electric by Delmarva Power, telephone by Verizon, cable by Mediacom,

fire protection by Dagsboro Volunteer Fire Company, it is in the Indian River School District. There will be sidewalks on both sides of the streets with street lights as well. The elephant in the living room for the last 6 years has been DelDOT. DelDOT had maintained all along that they wanted an interconnection between the Estuary and Helm Street. Ms. Hansen said the Town had been very gracious to hold a Public Hearing last summer between DelDOT and residents of Helms Street and for DelDOT to explain why they wanted the interconnection and finally came to an agreement. The Estuary has stated all along that they will do whatever necessary to move things along. Mr. Kollock mentioned that he appreciated the Town working things out with DelDOT. Ms. Hansen said that we understand that the sub base, top soil and grass is to be put in and the street will be dedicated as a Town street to be opened or kept closed. Mr. Kollock has one question...if there comes a time when it would be paved is that something that the Town will do or will Mr. Kollock will do. Mayor Baker said that would be the Town's responsibility. It was asked by Joanne Junod she felt it was the Town's intent to open the road because the Attorney had mentioned when and if. Mayor Baker said that was not the intent at all. The intent was to allow Mr. Kollock to develop his property, protect the residential neighborhood that it has been for many years. If there are no accidents on Route 26 or Route 20, that would lead us to believe that the cause of the accident resulted from the development being put in, it permits the Town of Dagsboro at its discretion to either open or close that road without DelDOT's input whatsoever. Mayor Baker would personally say that if there are accidents happening because of this development, I would look at the health, safety and welfare of the citizens of Dagsboro to do something if I felt that was a part of a correction. If it wasn't, then nothing would ever be done. It allows the residents on Helm Street to remain a dead end neighborhood and allows the project to go forward on Route 26. Mayor Baker said Mr. Kollock put the road base in ...if we find there is lot of accidents and we deem it necessary the Town would not have the expense of putting the road base in. We could dig up the grass and put blacktop down. I know if you live in that area and there are a high percentage of accidents, you would want to protect yourself, your children and grandchildren, people coming to visit you and other residents on Helms Street. If it would be done, there would certainly be a chance for residents of Helms Street to voice their concerns at a Public Hearing. We have other options to look at...it could be one way, limited access, for emergency vehicles only, there are a lot of things we could do to preserve Helm Street, and that is what we are after. Councilman Hearn mentioned that one thing to keep in mind is that that street cannot be completed and opened without the agreement of Town Council and there will be Public Hearings on that. Personally, Councilman Hearn did not foresee that street ever being opened. Attorney Witsil said he thought the Council had been working to have this street installed, but not an open roadway. He did not feel there were any plans for signs on Helm Street indicating access to the Estuary. Even if it were open, people would not be aware of that entrance. There are many conditions (should it have to be opened), it could be limited to residential traffic only, one way ... in or out. Mr. Joe Kollock said if DelDOT had given the Estuary access on Route 26 when they first proposed the development, this would not be an issue today. They turned them down flat and we tried to get them to change their mind And

they wouldn't. That is the only reason the exit on Helm Street came up....the developer did not want it. Why have an entrance off Helm Street that no one can see? They always wanted Route 26. Councilwoman Flowers wanted to know if there would be something stopping people from driving thru regardless of the street being closed. It was mentioned that there would be grass planted there. She said they will still drive over grass. Attorney Witsil stated the Council has authority to place conditions on this area....posts or a wire across...ballards or landscaping and a No Outlet sign were suggested by Kyle and Councilman Truitt. Ms. Hansen said the developer had plans to place shrubbery there in the landscaping plan so there is something physically there to blocking driving thru. Mayor Baker said everyone has heard all the arguments and assured everyone that once the area is dedicated to the Town, the Town will have control of the road. The Town is the only entity that can open or close that road. Someone questioned the validity of the promise and Mayor Baker stated they have done all they could and that residents would just have to trust Council's decision. He did not know how else to reassure you. Mayor Baker recognized Mr. Jim Bunting who questioned the developer if machinery was going to be going in and out Helm Street? Mr. Kollock said they would be using the Route 26 entrance. Discussion occurred as to whether DeIDOT said the road should be there. Mayor Baker said No, DeIDOT did say that the interconnect road should be in there....it was his thought to see if they would negotiate having the road there and not open it. Here is what he has done by doing this....The State of Delaware (DeIDOT) is putting the Town of Dagsboro on notice (saying I have told you that you have a potential problem). If in fact we have a problem and you need to open it, The State of Delaware is not liable. The Town of Dagsboro and its residents are taking upon itself because of the Helm Street entrance, to say we don't want it....we think we are right and you are wrong...we think that no accidents are going to occur because of that. It is a safe measure by them to put the Town on notice that there are potential traffic hazards on Route 26, not only to the Estuary, but to Helms Street residents. We have to act responsibly, once they put us on notice. I think it is a decision that is a good compromise. If the residents of Helm Street don't want it, Mayor Baker said he did not want to go any further with it. Mayor Baker said in his letter to Marc Cote....his letter has no weight of law and has nothing other than it is an understanding between DeIDOT and Dagsboro that each one will do these things if they will use Route 26 to ingress and egress. Vice Mayor Adams asked Mayor Baker to explain to the residents and audience (since we do not have anything in writing from DeIDOT stating they are in agreement with this—we have their word to you), are we guaranteed that if we vote tonight to do this that they cannot in any way force the road thru there? We have nothing in writing. Attorney Witsil said DeIDOT can do what they wish. This evening we are incorporating conditions on this subdivision approval, if those conditions cannot be complied with by the developer there will be no final site plan approval....they would have to come back before us with some other plan. If DeIDOT does not comply, the developer is only getting from us what we are providing this evening...your job and my job is to be sure the specifics are in the resolution which you are going to Approve or Not Approve. DeIDOT can say to the developer....sorry, you have to have two entrances, or you can't have an entrance on

Route 26. Kyle mentioned that DelDOT would not issue an entrance permit if they are not happy with the conditions. Vice Mayor Adams said after we vote tonight, there is that outside chance that DelDOT could say NO. Councilman Hearn spoke stating that Helm Street is a Town Street; DelDOT has no ownership of Helm Street. Town of Dagsboro has an ordinance requiring that Town Council approval prior to any street being run into a town street...the Town Council controls, DelDOT cannot control the Town Street because it has no ownership. Attorney Witsil said that in his opinion and in addition to what the Mayor said about a Public Hearing and what Councilman Hearn said, that when the time comes there is a good argument by the Town that you would have to formally waive 238 – 7-a 10 at that time to allow the entrance off Route 26 that they cannot make us open an entrance off Helm Street.

Attorney Witsil said that was correct....unless they go to a higher court and they decide it is all part of the development of the Town and you cannot prevent it. My position is that you have the authority until someone tells you differently. Kyle mentioned the letter Mayor Baker sent to Marc Cote saying this is the route the Town plans to take and if Mr. Cote had opposition he was welcome to come to the meeting tonight.....and he is not present. Mayor Baker said that Mr. Cote had sent no correspondence --- nothing in writing saying he is opposed to the agreement, so as far as he is concerned once Council passes it, it is a done deal. Kyle said there is no entrance permit for the Estuary at this point...that comes after this plan is approved and final engineering takes place. Vice Mayor Adams did not realize this....she thought they had been granted an entrance on Route 26. Kyle said it came at the end of the actual development ...once final engineering is done, the developer then submits the plan to DelDOT with an entrance plan and it is approved by DelDOT at that time. Mayor Baker asked if anyone in the audience or Council had any questions. Councilman Hearn mentioned they might want to re-think the name Chapel Drive as 2 streets over is Chapel Lane. Mr. Kollock said he thinks they had already talked about that. Attorney Witsil suggested Mayor Baker asked for a motion. Mayor Baker one last time asked for questions or comments from the audience...or from the Council. There being no comments, Mayor Baker asked for a motion to close the Public Hearing. Motion made by Councilwoman Flowers, seconded by Councilman Hearn and unanimously approved to close the Public Hearing.

Mayor Baker asked Attorney Witsil to re-read the resolution and begin on Item 1 where it begins with the sub-division on Route 26. Attorney Witsil suggested addressing the resolution first and then the re-zoning second. The resolution would be: (1) the sub-division access on Route 26 shall be the primary ingress and egress, the developer shall install a street sub-surface base within the 181.64 foot area designated as the westernmost portion of Chapel Drive, which base road shall be laid according to Town engineering standards...shall be designated as a street, but which area shall not be paved and shall be surfaced with topsoil and planted with grass. The area shall be used as “open space” and shall not be subject to vehicular traffic. All other areas of Chapel Drive shall be surfaced with the standard paving. In the future, if the Town determines it necessary to re-address the Chapel Drive

access to Helm Street, the Town shall have the exclusive authority pursuant to Charter Section 29 a to open and pave Chapel Lane connection to Helms Street, (Attorney Witsil stated he had added and submit for determination to grant a waiver pursuant to Section 238 – 7 a-10, that would give the Council and the developer the opportunity to apply for a formal waiver and to grant that would be your determination process). (2) that the CRD Cluster Residential District overlay be approved by the Council, that is a condition which I assume you will address in a moment. (3) Attorney Witsil stated that he had taken the suggestion course - an additional condition that the developer shall install sufficient landscaping adjacent to Helm Street to prohibit the access of vehicular traffic to the sub-division. This next sentence may be redundant, but Attorney Witsil felt it is probably necessary in light of what has been of concern this evening, no construction or development traffic shall enter or exit Helm Street. Mayor Baker asked if there were any questions concerning the additions. Mr. Townsend asked about the sidewalks for the streets. Mayor Baker said it had already been approved by the P & Z. Kyle reported that based on the concerns of the residents of Helm Street, it was decided at that time by the P & Z that there not be sidewalks on that side of Chapel Drive, just grass. Mayor Baker said before we could move forward with the ordinance, we need to address the resolution....the resolution being before us, would anyone want to accept the resolution with the changes noted by Attorney Witsil. At this time Mayor Baker asked for the resolution for approving the preliminary site plan for the Estuary on Pepper's Creek. Councilman Truitt made a motion to accept the resolution as read and amended, seconded by Councilwoman Flowers. Baker, Truitt, Flowers, Hearn approved and voted Aye.... Vice Mayor Adams voted No in opposition. She is in favor of the Estuary project; however, her reason for voting in opposition is that she does not feel DelDOT should have that much leverage as to force the Council to do something they do not want to do and the residents don't want. Mayor Baker stated that the resolution is passed. The ordinance is to amend the zoning classification of the property from residential to CRD (cluster residential district). Mayor Baker asked for a motion from Council. Councilman Hearn made a motion that Council approved the rezoning to CRD, seconded by Councilwoman Flowers and unanimously approved. Mayor Baker congratulated Mr. Kollock and mentioned that it has only taken six (6) years to get this far. Attorney Witsil told Mr. Kollock on the face of the ordinance and the resolution you will see that we have adopted a two year initial period for sunseting on the preliminary site plan. Stephanie Hansen asked for a copy of the Resolution and Attorney Witsil said he would get it to her as soon as he revises them and he will e-mail it to her tomorrow. You can get a signed copy from Stacey Long.

The next item on the Agenda, is an ordinance to amend Chapter 75, Section 75-1(B) to provide that payment of building permit fees is not required in the event that inspection of repairs is not required. Mayor Baker said it is self-explanatory. We originally had this under item B under 75-1, and it addressing a fee as opposed to a building permit. It should be under 75-9 (which is fees). We are going to make the change to make it from 75-1(B) and it will become 75-1 (A) the last sentence just before (B). It will say a building permit fee shall not be required for repairs to

existing buildings or structures provided that no inspection service or plan review is required or performed by the Town or its agents. Vice Mayor Adams questioned the wording and it was explained by Mayor Baker and Attorney Witsil. The Section 75-1(B) is to be deleted in its entirety. Previously (B) was vague as when a building permit is not required. The purpose of this is to require a building permit for all sorts of repairs, but only a building permit “fee” when an inspection or a plan review is required. Is there anyone to speak in favor of the ordinance? Is there anyone to speak in opposition of the ordinance? Mayor Baker asked the person to state his name for the record, please... William DeHaven. Whenever a change to an existing ordinance is contemplated, it is always beneficial to consider the unintended consequences before making the change. It might be helpful to review the history of this proposed change. At the November 12, 2008 Town Council Meeting the Town Clerk, Stacey Long, first asked the question under New Business. She said “clarify what requires a building permit and what does not require a permit”. This same question appeared on the December, 2008 Agenda; the January 2009 Agenda; the February, 2009 Public Workshop on this issue; and the February, 2009 Town Council Agenda. However, when the Notice of tonight’s Public Hearing on this matter was published in the Coastal Point the wording had changed to provide that payment of building permit fees is not required in the event that the inspection of repair is not required. The same wording was placed in the March, 2009 Town Newsletter and the March, 2009 Town Council Agenda. With the revised wording of the proposed change to Section 75-1 A and B, it now appears that a building permit will be required for all repairs, but the fee will be waived for all repairs not requiring an inspection by the Town. This change opens up the possibility of unintended consequences. By requiring a building permit for all repairs, the repairs outlined on the permit are subject to all elements of 75-1. In the most important section of 75-1 it states: It shall be unlawful for any person, partnership, business or corporation to undertake or cause to be undertaken the construction, reconstruction, enlargement, alteration, relocation of any building or structure, unless an approved building permit has been obtained by the municipal building permit officer. The unintended consequences here are: 1. By requiring an approved building permit before starting any repair work, any persons, partnership, business or corporations, could be in violation of 75-1 a, if they made any repairs before getting a building permit. These individuals would be subject to section 75-11 violations and penalties of \$500 fines or 60 days imprisonment. Anyone that needed to do immediate emergency repairs would be unable to perform those repairs unless they first obtained a building permit. Consider this possible situation requiring immediate repairs: Bethel United Methodist Church notices on Saturday afternoon that the Church bathroom toilets are backed up, they would be prevented from having their plumber repair the stoppage until getting the building permit on Monday at the earliest. Assuming Monday was not a holiday and someone was actually in Town Hall to provide the permit, the same could apply to the building we are now sitting in discussing this issue. A restaurant in Town loses electrical power on Friday evening, the manager determines the problem is within the circuit panel or wiring and now related to a larger power outage...the restaurant and its electrician would be prevented from making repairs until they were able to obtain

the building permit from Town Hall on Monday at the earliest. Another example would be if a severe windstorm causes the shingles to be blown off the roofs on several adjacent town homes in Chapel Crossing, the homeowners association could not have any repairs started until they first obtained the building permit from town hall. They could not put tarps over the exposed area since this would be considered starting work without a building permit as outlined in 75-1. While the homeowners association or the contractor is attempting to obtain a building permit, rain water could be pouring into several town houses in the building. Another example, if a door is partially jammed open at the fire department on a Sunday morning, the manual override will not work since the whole mechanism has failed....there is a violent windstorm going on and the truck located in its bay may be needed during the storm, the fire department will be required to wait until they obtain the building permit on Monday before having the contractor repair the door mechanism. While the fire department would not wait until Monday before we started repairs, it would be subject to Section 75-11 Violation and Penalties should the town pursue the matter. The real issue here is Why put town residents in possible legal jeopardy when presently they have the ability to make repairs without possible legal consequences. Why change something that is working? I think Vice Mayor Adams put this whole process in perspective during the December, 2008 Town Council Meeting when she said: "There were several things which could be exempted. She did not feel everything should require a building permit. If a resident is upgrading their home without changing the footprint of the home, she does not feel they should jeopardize their doing that by requiring a building permit, such as replacing siding, window or roof repair". Rather than change the existing 75-1 a and b that has worked since 1975, I propose leaving the existing language intact creating a comprehensive list of repairs that will not require a building permit. This list of repairs could be published in the Town Newsletter each month to inform the public. In taking this course of action Vice Mayor Adams wise suggestion could become reality. When a long standing town ordinance is changed who stands to lose and who stands to gain....the old adage, if it is not broken, don't fix it, certainly applies in this situation. Existing Town Code Section 75-1 a and b, coupled with a little common sense can serve the town well for another 30 years. Since the question has been asked, what is the repair, the answer is in the existing Code Section 75-1 b, which said the building permit, shall not be required for repairs to existing buildings or structures providing that no structural changes or modifications are involved. It is pretty clear. Moreover, Section 75-1 (a) defines structural changes and modifications in easy to understand language. There can be little room for misinterpretation of what constitutes a repair vs. structural changes or modifications. If we follow the existing 75-1 a and 75-1 b. It is suggested Town Council focus on existing violators of the 2003 International Property Code rather than creating a potential for turning an ordinary law abiding citizen into criminals for making needed repairs to their property. One simple example would be to focus that have outbuildings that occupy more than 20% of the yard in which it is located for a minimum of 900 square feet, whichever is smaller, outlined in Section 275-26 d. Another example would be existing buildings with code violations where the owners have been officially notified by certified mail and a placard placed on the

property. I respectfully ask that you review this in its entirety and not accept the ordinance. Mayor Baker thanked Mr. DeHaven for his comments and asked if there were any other comments from the audience. Vice Mayor Adams asked a question of Mr. DeHaven....she stated that her memory is not good, were you at our workshop? He replied, “No, I was not Mrs. Adams”, and as you know, I have injured my knee. I had a doctor’s appointment on the other side of the Bay Bridge that evening and was unable to attend. Mrs. Adams stated that if Mr. DeHaven had attended that meeting, it would have been hashed out that night. Councilman Truitt asked Attorney Witsil (based on what Mr. DeHaven had said) what does he think the legal jeopardy is for the townspeople. Attorney Witsil felt that Mr. DeHaven raised an issue that merits some attention. In the event that you would like a minor amendment to sub-section (a), which has not been the subject in the advertisement tonight...Attorney Witsil suggested that the matter be continued....to continue the public hearing for next month and advertise the following change to section 75-1 (a), if you wish to perform the changes that we have already addressed. That would be an added phrase at the end of (a) and as you recall (a) states basically that you need a building permit for any type of construction whatsoever. If you were to delete (b) which is the exemption, I would say add this phrase.... “providing that repairs or immediate action are taken to remedy a proven emergency or exigent circumstance may be the subject of a permit required within ten (10) days after the emergency work has been performed.” It still requires every change – structural, non-structural, anything that is done on the property or to a building to have a building permit. Attorney Witsil stated that when he had discussed this matter with the Mayor that the Mayor felt there was a valid town interest in having a building permit for all types of construction. Attorney Witsil’s feeling is that, along with the change suggested by Mr. DeHaven, would remedy the situation, if as a Town Council you desire to have a building permit for all types of elements. Attorney Witsil further stated that he felt there would always be, because it is difficult to define the threshold. He could throw it at Kyle for his suggestion, but I know they both agreed the last time that it is difficult to state where to draw the line, if you don’t want to draw it at the very beginning. Councilman Truitt asked if that was the problem with the original ordinance. Attorney Witsil said he disagreed with Mr. DeHaven....it is as “clear as mud” to him. A building permit shall not be required for repairs to existing buildings or structures providing that no structural changes or modifications are involved. Then you fall back on the definition of structure. A combination of materials to form anything permanently affixed to or in the ground or to any other building or structure permanently fixed to or in the ground including such things as driveways, carports, porches, swimming pools, etc. He would be hard pressed to have Stacey or a building permit official ask him, “Where do we draw the line?” He goes back to ...if someone is repairing their roof and all the windows in the house....it seems to him to be a significant repair, and he would probably tell them reading the structural definition, that it is probably not subject to the building permit. Technically, if you were to take down a non-structural wall or an exterior wall...if it was not a weight bearing wall on the exterior of a building, technically to him it is not a structure...Kyle interjected and said that is an alteration though. Councilman Hearn mentioned that there are

weight-bearing walls within a building as well as inside. Attorney Witsil said we do need to address something and whether you take Mr. DeHaven's suggestion and throw it to Kyle....Kyle and the P & Z inquired about 5 or 6 different building permit codes from other towns, for examples. Mayor Baker stated that in the construction industry those things that are in that book, if you were a construction person, you would have knowledge of those things. Kyle said some town's do, when a building permit for repairs, if there is a dollar threshold and any repair in excess of \$100 or \$200 then a building permit would be required. Attorney Witsil said the trouble there is ---Who do you believe? \$499 for roof repair, factual or not....Kyle said that would alleviate someone from calling the plumber from down the street for a leaky faucet repair. Councilwoman Flowers asked about shingles blowing off in strong winds. Her husband has to replace shingles all of the time for this. Councilman Hearn said that is only when you are replacing enough shingles to constitute a full roof. He asked Attorney Witsil if the Council went with his suggestion about determining that a permit would not be required except under exigent circumstances, at which point it would be issued at a later date do we need to find exigent which needs to be defined. If you exceed the dollar fee (repair fee cost at more than \$200) it is still a repair and would require a building permit for that, but you would not pay the fee. Councilman Truitt said then you are back to defining a repair vs. a structural change. Mayor Baker stated the intent of this is to take a common sense approach, if we have a thunderstorm and it blows your roof off, please fix your roof...put a tarp on it, call the roofer, and take care of it. The intent is not to be less than diligent in doing repairs in an emergency. He would think this is common ordinary sense. Are we going to throw out the baby with the bathwater, because we can't define what bathwater is and which the baby is? Vice Mayor Adams mentioned that when the workshop was held, they were just trying to make it easier. Councilman Truitt said something like "Repairs necessary to maintain the integrity of the structure would not require an immediate permit". The 10 day deal seemed fine with most of the Council. Al Townsend mentioned that if this goes into effect, if he wanted to caulk or paint around his windows, he would have to get a permit. It was asked where it says that....Mr. Townsend said the way it would be changed...any kind of work to be done in this Town needs a permit. Mayor Baker said that the common sense thing that we have a hard time addressing or determining what is an alteration or something. Councilman Truitt suggested a combination of placing a dollar figure and emergency repairs that might get us further down the road. Mr. DeHaven said emergency repairs are already exempt. He also stated that he had not heard an overriding reason to change the existing code to now allow individuals and/or corporations to make emergency repairs to their buildings, restaurants, whatever. This code has served us well for 30 years, is there some reason that has not been put on the table yet that would trump anything we have heard so far. We talk about common sense...Mayor Baker stated that yes we have and the intent is not to charge people for maintenance of their home. If Al Townsend wanted to caulk his windows, he could without a charge. The cost of the building permit is "the straw man". When this started out, the cost of the building permit never entered into the picture, he said he has copies of all of these minutes back from November. Mr. DeHaven said the cost of the building permit for repairs

never entered into this until the March 9th publication of the Coastal Point. Councilman Hearn and Mayor Baker took objection and said the cost was mentioned at the last Council meeting. Councilman Hearn was not in attendance at the workshop, and he heard it mentioned. Councilman Hearn said he was talking about the February meeting. Mr. DeHaven said he had still not heard an overriding reason to change the existing code. People have been able to make repairs without the fear of government coming down upon them under 75-11 and issuing fines or imprisonment for making repairs without a building permit. As soon as Council require a building permit it becomes a part of 75-1, which means you can't start any work until you have that permit in your hands. Mayor Baker said that we are becoming redundant in this....he thanked Mr. DeHaven for his comments and appreciated what he has said. He did not want to get tied into this for the rest of the evening. Councilman Hearn said that everyone who has ever worked in law enforcement knows that there are a lot of laws and enforcers of the law and discretion given to the enforcers of the laws. If it is reasonable for someone to be charged with violating the law, it is up to the discretion of the officer to make that determination. If that officer is termed to be too lenient, he is told about it and knows about it. If he is termed to be too stringent, he knows about it. As an enforcement officer were I to arrest someone for violating an ordinance, when he is having to protect a \$300,000 home from a storm or access a \$300,000 fire truck to use in a storm. If I were to charge him with an ordinance of this magnitude for that offense, my supervisor should and would say...you went too far. In other words, what I am saying someone has to enforce an ordinance before it is being enforced improperly, incorrectly or over vigorously. If it is not being enforced under those circumstances, then who is to worry about it. The only people to worry about it are those officers' supervisors and superiors. We are making a very large half hour deal out of something not too large. Councilman Hearn said that is just his observation. The question in his mind was how this was advertised in the newspaper....was it improperly advertised in the newspaper, Councilman Hearn asked Mr. DeHaven about this. Attorney Witsil said that any changes suggested to (a) have not been advertised. The language that he had suggested....providing that repairs or immediate action to remedy a proven emergency may be subject to a permit within 10 days was not part of the original ordinance at all. Councilman Hearn felt it should be properly advertised and then we shall proceed. Attorney Witsil asked for guidance (if that is the case)...the theme of this present ordinance is that the prior exemption be deleted....to delete the language "that a building permit shall not be required for repairs to existing buildings or structures, provided that no inspections, service or plan review is required." Attorney Witsil said to delete that entirely so that every change to a structure would require a building permit, but that it will be changed to the fee section, and not require a building permit fee. That was his direction for this ordinance. Attorney Witsil questioned if that was the direction that the Council wished to go or is there a direction to him that we try to redefine the "exemption" more specifically or do you want to start over again. Councilman Hearn felt it had been mixed around so long and so much, they should start over again. He did not feel it should be that complicated. His understanding when he read this information was that there would be a building permit issued for

repairs to be made and that the only time there would be a charge was if an inspection was required. Mayor Baker said he was correct. Attorney Witsil said actually the proposed ordinance as it was on the table and advertised....we began to redefine the building permit Not fees. A building permit shall not be required for repairs to existing buildings or structures, providing that no structural changes or modifications are involved. That was the words no structural changes or modifications was taken out....and the language should be provided that no inspection service or plan review is required or performed by the Town or its agents. If no work was needed to be done by the Town, in terms of reviewing the plans or inspecting, then a building permit would not be required. Attorney Witsil said it defined the exception....the suggested amendment was to make that language relevant to the building permit fee section and to take out section (b), which was the exception. He felt if you keep the original language that was advertised in, that the building permit shall not be required. Repairs to existing buildings or structures provided that no inspection service or plan review is performed by the Town or its agents, then you are broadening that exception. There is a good business purpose to know what is going on out there. If the majority of you feel it is more appropriate only to have a building permit required when there is inspection service required or a plan review required. The old language as modified is pretty good if that is your intent. Gary Cox asked if there was something that would designate or separate between a contractor's activity and a homeowner's activity. In the event a contractor is hired, a permit is required for repairs, but a homeowner is exempt from it. Such as Mr. Townsend being able to paint his windows, as a homeowner he would be able to do whatever he wanted to....but if he hired a contractor to do it, they would need a building permit so the Town would be aware of who is working in Town and possibly a contractor's project will be larger than a homeowners. Attorney Witsil addressed this....the purpose of the ordinance is not to distinguish between the homeowner and contractor...the purpose is to be able to determine what is going on and be sure it is done safely and properly per inspections. Your proposed question would cause a lot of people to take on construction themselves when they might not be able to do it in order to avoid the building permit fee. Mayor Baker stated the purpose of the workshop and this was to not charge people money (fees) for maintenance of their home. The synopsis was that if a little old lady wanted to get a roof put on her house...she could come into town hall and get a roof put on her house without any charge for the permit. The Town wants to know who is going to make the repairs and who is going to be ultimately responsible in the event the roof leaks and she needs help, we need to know who put the roof on so we can talk to the contractor on her behalf to see if he could make proper adjustments. It is the town being able to help its citizens, by knowing who did the actual work. You always hear about elderly people getting ripped off. People getting money from them and take off. If there is a situation like that and the Town has a business license we know to whom we should go and something to fall back on telling us how to get up with them. Mr. Al Townsend stated that as a taxpayer in the Town, he has to disagree with that. It was his feeling it was not the Town's responsibility if something goes wrong with that roof or anything like that. Mr. Townsend felt the Town was getting too involved in people's business. He could see the Town getting

involved if the footprint of the structure was being changed, but to fix shingles, painting a house....it will get to the point where if I want to put in shrubs or trees, or I will have to call you before I cut the grass. Mayor Baker told Mr. Townsend that was not true and it was not the intent. The intent is to not be as much in control as it is. Mr. Townsend felt the Town is getting into more people's business than they need to. Mayor Baker said he had already helped one lady with a similar situation, and we were able to help her out. It was a matter of the town contacting this individual on her behalf....that was simply the intent of it. Mayor Baker stated that the way it is written you need a building permit to replace the roof on your house. That is what we want to get away from. We want people to be able to do their own maintenance and repairs at no additional costs. I do not think that if you put a roof on your house you should have a permit from the town if we are not going to inspect it. Councilman Truitt said maybe we need to have a list of what would be inspected, or some sort of general idea. Kyle said you would never be able to list every possible circumstance. Councilman Hearn said the closest you would get is what is in the International Building Code. Vice Mayor Adams said that at the workshop it was decided that you should go to Town Hall and get a building permit. You may not need to pay a fee unless it requires that there is a Town inspection. Vice Mayor Adams said to make improvements you don't need a permit. Do we want to have a building permit for everything, but only charge a fee for those things which need to be inspected? Councilman Truitt said do we want to keep it like it is with no building fee permits, if just a repair. We need to decide do we need a building permit for everything, but only charge a fee for those we need to have inspected. Councilwoman Flowers felt it might inhibit people from making repairs because they don't want to go through the hassle of coming into Town Hall and getting a permit. Vice Mayor felt the outcome of the Workshop as to protect people as Mayor Baker stated ...if you come in to get a building permit you may not have a fee, but what if I hired someone to do some work (contractor) and the roof caves in. I can't get any help from the Town if I have not gotten a permit. Councilman Hearn stated then the resident would have to seek other avenues such as the Better Business Bureau and things like that. Councilwoman Flowers mentioned that she did not think the Town would get into something like that. Councilman Hearn mentioned that in every newsletter it has stated if residents are having a problem with a contractor, let the Town know. Mayor Baker stated that part of the essence of this body is to help protect the health, safety and welfare of its citizens. It is basic stuff. Mr. Townsend did not think helping was a bad idea, but as Councilwoman Flowers had mentioned, he would not think the Town would get into something like that. It seems a good thing in some ways, but did not expect it would be something a Town would get into. Attorney Witsil told the Council what is before them is the original ordinance. Mayor Baker wishes the change to be in the Building Permit Fee section. We needed a clarification of what required a building permit and what did not require a building permit. The way the Town responded before, siding, roofing, and things of that nature needed to have a building permit. Attorney Witsil said that a clarification was needed. Councilman Truitt asked if under the present code...a roof would require a permit...but not a fee. If it requires a building permit and fee, why would it not require an inspection by the Town? Mr. Townsend asked

Attorney Witsil to read the existing code as is at this point. 75-1 is a statement of intent (a) It shall be unlawful for any person, partnership, business or corporation to undertake or cause to be undertaken the construction, reconstruction, enlargement, alteration or relocation of any building or structure unless an approved building permit has been obtained from the municipal building permit officer. Sub-section (b) the building permit shall not be required for repairs to existing buildings or structures provided that no structural changes or modifications are involved. 75-2 is the definitions: Definition of building is a combination of materials to form a permanent structure having walls and a roof. Included shall be all mobile homes and trailers to be used for human habitation. Definition of person is a person, persons, partnership, business or corporation. Definition of structure is a combination of materials to form anything permanently affixed to or in the ground or to any other building or structure permanently affixed to or in the ground included shall be such things as driveways, carports, porches, swimming pools, etc. Then it goes on to 75-3 thru 75-11. Mayor Baker asked Mr. Townsend if that answered his question. 75-b to repair a roof or put a new roof on....I would not need a permit to put a new roof on at this time, as I am not changing structural. Kyle said the way the Town has interpreted this over the past years an alteration – new roof, new windows, new siding would be considered an alteration. Mr. Townsend said that is not the way it is written. Kyle stated that is up to interpretation by the Town. Right or Wrong that is what has happened in the past. Kyle said we have charged people for permits for siding. Vice Mayor Adams said that is what the Council was trying to do, Al, fix it....trying to help John Q. Citizen. Mr. Townsend said Stacey's original question was for clarification and direction on the conflict between two statements. Are we going to charge for it, let's fix it here? If we are not, let us stop now and interpret it a different way. It has not been interpreted the way we all see it. Mr. Townsend said there needs to be a set point and a dollar figure on a project is the only set point that you can come up with. Attorney Witsil agreed that the dollar figure would be the simplest answer. Mayor Baker said we discussed that and the problem is that if you put doors, windows, siding and roof in and you have an aggregate amount to spend of \$3,000, why not to just do one thing at a time, rather than the whole project. The purpose is not to charge additional money...the purpose is to just to know who is doing business in town. We are just asking contractors to come in to get their business license....so we just want to say permit or business license. The business license is good for an entire year....they could do several jobs in the year. If the permit isn't required, Joe's Contracting could come in to Sussex Street, knock on the door and do a repair and be out of town and would not have a business license from Dagsboro. They would not be required to get one, and Mayor Baker stated we would not be able to help protect the citizens. You may think that is going above and beyond, but I really don't think so. It is part of our job to be a good neighbor to our citizens. Mr. Townsend said is there some type of compromise so that a repair request could be called in....as to what they are doing and get a permit and goes into a record, but a person does not have to try to get to town to get a certificate. Councilman Truitt said maybe there is too much bureaucracy in this. Councilwoman Flowers felt the matter should be tabled as we are not coming to an

agreement. Kyle mentioned that we were trying to simplify the process and help the citizen. Council agreed that it was no argument there. Mr. Townsend said maybe the process could be looked at and brings back a summary of how it is going to work. Possibly the whole process needs to be finalized and review it as a whole. Council it is 8:40, what is their pleasure. Attorney Witsil questioned what was done at the workshop in reviewing other town's procedures, since he was not at the workshop. Mayor Baker said we discussed not charging for repairs to existing homes and that was it. Attorney Witsil asked for guidance from Council....do you think the building permit should be issued, not necessarily fee. Do you want a building permit for everything? Councilman Hearn said it depends on what your intent is. Attorney Witsil answered for all intents and purposes that a building permit is a good thing so he knows what is going on, there is contact with the owner and we can help assist, we have the knowledge. Councilman Truitt asked if they were discussing the homeowner doing something or the homeowner hiring an individual contractor. Attorney Witsil felt the Mayor's intent was to have any construction or any repair be the subject of the building permit and then the fee is a different issue....whether or not it requires an inspection. Councilman Truitt said what if he wanted to paint his porch and only got one half of it done and had to wait two weeks to finish the other half. Mayor Baker did not feel the intent was ever for minor repairs, fixing a faucet, painting a porch ... minor repairs. The intent was more for putting a roof on a house, put in new windows or siding in....regular maintenance was a matter of a major project on the house. Mr. Townsend said it seems to be the wording the way it is stated now anything you do in this town will require a permit. Mayor Baker said then the problem becomes how major and minor repairs are defined. Mr. Townsend said just like everyone had been talking about for the last 45 minutes, you are probably going to have to place a dollar figure on it. Mr. DeHaven said that 75-1 (e) clearly gives you leniency when it says provided no structural changes or modifications are involved. It seems pretty clear. Attorney Witsil said it would not include roofs, siding, windows, new doors throughout the entire structure...Mayor Baker said if the window or door sizes were changed this would not be true. Kyle said it is replacing with like materials of like size. Mayor Baker said they did not look at any ordinances....they had a workshop...came up with some ideas and put this forth and hope to see what the people want. Attorney Witsil said he had received what the other town's ordinances were on these matters. Kyle asked if this is an ordinance question or a town policy question....Attorney Witsil said it is both ... it is policy first. Do we just come up with an interpretation that meets everyone's approval and establish that as the Town's new policy. Attorney Witsil said it is a legal question when you look at the interpretation of structure. He felt that the language that is presently in place has a very high threshold. Councilman Truitt said that we should table this and look at other town's ordinances and deal with it at a later time. Kyle said many of them are very similar situations. Councilman Truitt made a motion that Council should table the ordinance and look at other town's ordinances and the International Building Code in order to modify and improve this ordinance, seconded by Councilwoman Flowers, and unanimously approved.

Mayor Baker would like to have a couple of Council members to work on this...he made this suggestion as his plate is full and would like volunteers....Norwood, Terry....is there anyone else. Vice Mayor Adams said she felt every attempt was made to get this flushed out (once again there was a Workshop and in attendance were Council members and two people)...It makes it very difficult to get input and decide what we are doing if we cannot get people to come.....there is a saying “If you feed them, they will come”; however, she is not interested in cooking. Therefore, at that workshop she remembers stating everyone seemed to be on the same page at that time. Vice Mayor Adams said if she needs a new roof on her house or if anyone needs a new roof they should be able to do this without having a fee for a permit....you would still need to have a permit. If you needed to have an inspection for the roof, then you would have to pay the fee. Councilman Truitt stated the issue is...if the building permit is required anyway, is the homeowner being put in legal jeopardy if he does not get it. Mayor Baker said that a determination by this Committee is what we have is acceptable when reviewing Town policy as to when to charge a fee or not charge a fee. Mayor Baker would like the Committee, at their convenience, to report back to him on this matter. Councilwoman Flowers stated if the Council is confused...it is definitely going to be confusing for the residents as to when a building permit is required. She felt that there were gray areas.

Presentation of Building Permits Issued: None.

Planning and Zoning Report: Stacey Long reported that no P & Z members were present. On the Agenda it stated Planning & Zoning Report & Vote on the Following Items: 1. Delaware Wildlife Action Plan. Stacey reported for the P & Z that this item had been tabled. The Council was given a copy of the P & Z Minutes and there is an amendment.

New Business: Resolution to amend fees for annexation of property. Councilman Hearn abstained from this discussion. In basis, they are good. It is a resolution as opposed to an ordinance. The intent was to be able to allow an individual homeowner to be able to come in without having a large amount of money to pay up front. If you want to annex your property into town you could do so. At 4.99 acres or less...\$300; 5 acres to 10 acres...\$1,000; 10 to 24.99 acres...\$2,000 and all professional fees; and 25 acres or more is \$3,000 and all professional fees. Since this has come into play, Mayor Baker has had a couple of questions come up...one of the things was ...if an existing structure or commercial building that was already in place wanted to annex into town, would there be any need to alter any of these fees. Councilman Truitt asked if there was any cost to the town if there is any structure on the property. Attorney Witsil asked Mayor Baker if this was pertaining to commercially used property or a structure. Mayor Baker gave this scenario...presently County Council has approved the rezoning of a piece of property within Dagsboro’s Annexation and Growth Area. The developer could move forward with that....pay no town taxes, no impact fees and nothing for the support of the fire department, ambulance service. He gets his permission to build from Sussex County. He comes in; puts the pads up ... decided to flip the property.

The new owner comes in and says, I want to be in the Town Limits, because paying \$6,000 a month to maintain the water system and not getting discounted rates on fire insurance because I do not have a fire system available is not working. Now we have a structure sitting there that did not support fire department, ambulance service, water system, town taxes, police department as first response, etc. Plus the density is probably different than what the Town Code permits, the signage is different (not that this has a direct bearing on it, but he would be coming in to town as a non conforming property and he hasn't paid any fees). Mayor Baker said it is something we need to look at in respect to that. Kyle questioned if they are thinking of another fee for this. Is it fair that other businesses and commercial properties in Town had to be restricted and pay fees to maintain the character of the Town and this person would be exempt? Councilwoman Flowers did not feel it was fair. Kyle questioned if he is going to be annexing in after the fact, is then not conforming do you want to make any modifications to the property where he would have to conform to our code at that point. Attorney Witsil said the Town does not have to annex it. Mayor Baker said if you think about the health, safety and welfare of the people of Dagsboro, if there is an accident on the highway...we may have a beef with the property owner, but we are not going to deny them fire services, emergency situations, etc. They will be getting the benefit, even though they did not have to have any of the impact to support the Town. Councilman Truitt said but if they don't annex, basically they are going to get the benefit anyway. If you add another fee that would reduce their incentive to annex. Kyle stated that they would have to pay the water impact fees, and if they did any construction would have to pay the building permit fees once they have annexed in. Attorney Witsil said he felt what is being suggested is to have a separate fee classification for residential property and another fee classification for commercial zoned property, we would say what it is by County zone. The ordinance would address the property coming in that is zoned by the County as R-1....property coming into the Town being zoned by the County as C. Attorney Witsil said he is not sure whether or not there is any industrial. We could go through the County's zoning classifications and say if the property outside of Town is to be annexed into Town and it is zoned pursuant to those classifications then here is the graduated fee scale for those classifications that want to be annexed into Town. Attorney Witsil asked Mayor Baker if that was what you had in mind...Mayor Baker said, "No". Mr. Al Townsend submitted that they are trying to do away with their annexation fee...let them get into Town and take their property tax money and it will still be a commercial property, so it will be a higher tax and get the benefit of having control of what will or will not go there. Mayor Baker said that is what the Town would want anyway. You would not want an adult bookstore sitting on the highway next to the Church, which Sussex County allows. We don't want to go through all we have gone through to amend the code to end up having something detrimental to the character of the Town and did not want to be placed out there to begin with. Kyle said that the burden is on the Town whenever annexation takes place. There are responsibilities the Town has to do that cost the Town money. The question is ... do you absorb those costs to attract someone to annex into Town or do you set your fees so that your costs are covered. Developers are doing this to sidestep the fees that the Town has in place. Once he is

done and he flips the property, 2 or 3 years later. Councilman Truitt said his feeling was that you would probably have two fee scales. One for residential and one for commercial. This is good for residential and unimproved property. If we want to have a separate one for commercial and increase it by 50% or 100% that would be O.K. Attorney Witsil explained this would be for anything that is non residential. Unimproved property would be zoned based on whatever county zoning is. Under the new idea it would be for residential by the county is one fee and if you are non residential it is another. Kyle stated the assumption is that commercial properties have more impact on the Town than residential properties. You still have to go through the same procedure whether it is commercial or residential....you still have to do your plan of services and still have to advertise the public meetings. He said you still have to go through the same procedure whether it is commercial or residential. Attorney Witsil said that is the gist of whether you want to distinguish between the two. Are you charging a fee to have the process occurring or are you going beyond that fee to tax them as a surcharge. Mayor Baker just wanted to cover any loopholes so that this might not happen to the Town again. Mr. Gary Cox asked Kyle if there was any additional engineering or user fee. Kyle said it is based on EDU's...you could have a twenty (20) acre parcel of whatever it is commercial or residential potential for that site....you could build 100 houses ...is that going to be any less than a 50,000 square foot shopping center. Councilman Truitt asked what was the danger in having in just one fee scale. Mayor Baker said what if a commercial property comes into Town and they have done everything within their power to sidestep being a beneficiary to the Town...then the property is flipped and they want to come into Town. If the Town annexes the property, we still want care, custody and control over what goes into the shopping center. We want the character of the Town to remain the same. Councilman Truitt questioned how the fee would deal with that. We are just talking about the fee scale. Mayor Baker said if it is 10 to 25 acres that they are annexing, it would be \$2,000 in professional fees and the only thing we could do would be they would have to come in under a non-conforming use or conform to the code of Dagsboro to come in. They would still have to pay all EDU's that they would use. If you set your fee too high, there is no reason for them to come into Town. Al Townsend asked if the Town could place restrictions on a property to conform before annexation is approved. Mayor Baker said he felt we could but we have not had a test case yet. It is the same point that Norwood and Kyle have brought up. If we tell them the fee is too high, they could say Then I choose not to annex. Then they can do the adult book stores and bars, etc. Attorney Witsil said that in looking at the fee schedule the Town is entitled to some discretion here. The fees are not so high If these were to a residential schedule and you doubled them for anything other than residential zoned property...they are not so high that commercial zoned property, an industrial zoned property, a non-conforming use that a business in the county would balk at \$2,000, \$4,000, or \$6,000 for annexation. This is a resolution ...it is not an ordinance. Attorney Witsil said he would have no problem in suggesting this resolution tonight. The fee schedule is A as you have it and section B would be for all properties zoned other than residential. Twice the fee....it is the cost of doing business. Kyle mentioned that consider the cost of doing business in the county is zero. Attorney

Witsil said the benefits for an enterprise are significantly greater and you always want to be in the Town....why they did not want to, I do not know. It must have been zoning...it could not have been for an annexation fee. Mayor Baker stated that they come in under highway commercial and unless he has some reason that he is going to do something that has a higher density. Kyle reported that the whole issue with this particular is fees in general. When fees are non existent in the County vs. fees that the developer feels are substantial in the Town, which is the reason this project is moving forward in the County. Councilman Truitt made a motion to amend the fee schedule to reflect residential and non-residential zoning by the County, and double the fees for non-residential zoning for annexation, seconded by Vice Mayor Adams, and unanimously approved. Councilman Hearn abstained from the vote. Attorney Witsil said he would revise that ordinance.

Presentation of the Treasurer's Report: The Treasurer's Report was given by Stacey Long. Mayor Baker asked if anyone had any questions on the Treasurer's Report. Mayor Baker reported that we have a CD which has come due and we can use the money in the General Fund. He would like to remove the CD from Delaware National Bank and move to the General Fund for general expenses. Are there any questions? Upon motion by Councilwoman Flowers, seconded by Councilman Truitt, the Treasurer's Report was unanimously approved as read and permission to transfer the CD to General Fund. Mayor Baker stated income is down in every area. Hopefully, in two or three months things will turn around.

Correspondence: Mayor Baker had two things to report under correspondence. The preliminary site plans for the Highlands of Pepper's Creek have been brought back to P & Z and they will be addressing this at their next meeting. County Council Meeting on the property we were speaking about (Mayor Baker said Rob left too early and now he has a question) where we have an approved Comp Plan, did all the things we were supposed to do and a developer came in on the west side of Route 113 the south side of the 9 foot road where the fruit stand is now located. That developer is going to move forward and the County Council has allowed it to happen. Mayor Baker has talked to the State Planning Office, he has talked to Dell Tush the President of SCAT, and he is going to address the SCAT members on Friday morning and he wants to see if they will be on our side of the fence. We have gone to the expense of a Comp Plan, the hours Council have put into it, the hours that the P & Z have put into it, all the codes and ordinances we have changed to have the State accept our plan, and then not give us our sovereignty by not making that developer come to the Town to get a letter of No Objection or move forward in our annexation area. This is for the reason that we have already talked about, putting things on the property that is not in the character of the Town, so he is going to move forward to try to convince the other 24 Towns and Sussex County to ensure that Sussex County recognizes the Town's sovereignty and that when we have a growth area or annexation area, they give us the right of no objection before they move forward and not recognize us.

Approval of Minutes for January 26 and February 23, 2009: Vice Mayor Adams made a motion to accept the Council Minutes for January and February, seconded by Councilman Truitt, and unanimously approved.

Standing Committee Reports:

Police Department: Police Chief Toomey is on Military Leave.

Hazard Inspection Committee: Councilman Hearn said there was nothing to report to his knowledge.

Town Property/Town Improvement: Streetscape has begun. The State gave 68 days to complete the project. He thinks it will be 30 or 35 days if they get good weather.

Prince George's Chapel Cemetery: The Inmates keep a continual watch and pick up limbs and leaves to keep the property looking nice.

Mayor Baker asked for a motion to adjourn. Councilman Truitt made the motion to adjourn, seconded by Councilwoman Flowers and unanimously approved.

The meeting was adjourned at 9:23 p.m.

Respectfully submitted,

Rae M. Long
Administrative Assistant

RML/me

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

