

MINUTES OF MEETING
DAGSBORO TOWN COUNCIL
BETHEL CENTER 28307 CLAYTON STREET
MONDAY, MARCH 28, 2011

The meeting was called to order at 7:00 P.M. on Monday, March 28, 2011 by Mayor Patti Adams. In addition to Mayor Adams the following were in attendance: Vice Mayor Truitt, Councilwoman Flowers, Councilman DeHaven; Stacey Long, Town Administrator; Attorney Rob Witsil; Town Planner Kyle Gulbranson and other interested parties listed on the sign in sheet.

The first order of business on the Agenda is the Public Hearing and Vote on the following: An ordinance to amend Chapter 270 of the Municipal code of the Town of Dagsboro entitled "Water" to add a new section 270-19 to provide equitable relief as an alternative action for the violation of the requirements of the chapter. At this time Mayor Adams turned the meeting over to Attorney Witsil to explain the ordinance. Attorney Witsil stated that now is the time and place for a public hearing on the ordinance listed above. This specifically deals with whether or not we can enforce provisions for connection to the municipal water system. In 270-18 it provides for criminal penalties, it provides for punishment in violation of not less than \$50 or more than \$500 plus the cost of prosecution, and for each day the offense occurs it is another violation. We also have in our section provisions which allow us to force a connection and we can go in, if we deem it is appropriate and charge the property owner for the hook-up and for the costs incurred. Attorney Witsil stated that he was a little uncomfortable with that and he has drafted an ordinance which provides for the Town to go to the Court of Chancery to file suit against a property owner and have the Court tell the property owner that they have to hook up to the system or they will be in contempt of court. The active provisions of this ordinance is toward the bottom of the page 270-19 equitable relief in bold print, what you would be enacting is the new section 19, which states notwithstanding the provisions of Section 270-18 which means the other penalties equitable relief may be sought to enforce the provisions of this chapter by the following of the civil action in the Court of Chancery of the State of Delaware to initiate an injunction,

mandamus, abatement or any other appropriate equitable action to require property owners to connect to the public water service. Any person violating any provisions of this chapter against whom equitable relief has been successfully ordered shall become liable to the Town for any expense, loss or damage incurred by the Town including, but not limited to the Town's attorney's fees, cost of connection and associated litigation filing fees. That gives you remedies against a property owner who doesn't connect. Attorney Witsil asked if there is anyone (other than himself) suggesting that this is an additional course of action which the Town should take. Does anyone else care to speak in favor of this ordinance. Does anyone have any questions for Attorney Witsil? There being none...is there anyone who cares to speak in opposition to this ordinance. Mayor Adams asked if Council had any questions. There were no questions. Upon motion by Councilwoman Flowers to close the Public Hearing, seconded by Councilman DeHaven, and unanimously approved, the Public Hearing was closed. Mayor Adams asked for a motion to accept the ordinance. Vice Mayor Truitt made the motion to accept an ordinance read by Attorney Witsil, seconded by Councilwoman Flowers, and unanimously approved.

Mayor Adams said that in absence of Mrs. Eckerd, she has asked Stacey to bring Council up to date on P & Z items. Planning and Zoning Report and Town Council's Consideration of the following:

1. Discussion and consideration of minor subdivision request for Lands of Myrtha Calhoun Trustee, located on Route 20 (Armory Road) and Route 26 (Vines Creek Road). Mark Browne represented the lands of Myrtha Calhoun Trustee, located on Armory Road and Vines Creek Road. They wish to sub-divide the property into two parcels - one consisting of .83 acres and the other is 2.89 acres. The .83 acres will have an existing house and garage. Parcel's A's entrance will be on Armory Road, the residual lands will exit onto Vines Creek Road. Both properties are zoned residential. P & Z recommended and unanimously approved to approve the minor sub-division. Mayor Adams noted that Mrs. Calhoun's daughter, Duane Lynch, and grandson, Mark Browne, were present this evening. Kyle mentioned that this is basically a simple partitioning of the property for estate

purposes. The property is being sub-divided with one parcel containing the house and creating the second parcel. Vice Mayor Truitt made the motion to accept the partitioning of a minor sub-division of said property, seconded by Councilman DeHaven, and unanimously approved.

2. Discussion and consideration of annexation request from the Delaware National Guard located on Armory Road. Consideration of annexing and rezoning to non-conforming use in the R-Residential District. Stacey reported that P & Z discussed the above consideration for annexation and a motion was made, seconded and all were in favor to recommend the annexation of the Delaware National Guard property. Mayor Adams asked if Council had any other questions... it was discussed to hold the Public Hearing in April, 2011. Attorney Witsil asked Stacey if that conformed with the detailed schedule which he had given her for Public Hearing. He understands that the P & Z did recommend this, after the Committee recommended it. His notes this evening are that Town Council receives P & Z approval and makes resolution to hold a Public Hearing on the annexation and re-zoning to a non-conforming use in a Residential District. A meeting allows 60 days to get notices out. Notices for the Town Council for the May 23 meeting must be sent by April 15, with notice of public comments that may be addressed to the Town. It must be noticed in one newspaper publication, certified letters to all properties within 100 feet to Sussex County. Attorney Witsil asked Kyle if he had already noticed Sussex County...to which Kyle responded "Yes, and we received a letter of no objection"....they are awaiting a reply from the State Office of Planning Coordination. He has suggested May 23, 2011, because of the notification issues. He would encourage the Town to follow that suggestion. A motion was made to set a Public Hearing for May 23 for the annexation request from the Delaware National Guard, seconded by Vice Mayor Truitt and unanimously approved.
3. Discussion and consideration of site plan approval submitted for Lost Tree Village, formerly known as the Estuary on Pepper's Creek. Stacey reported that Lost Tree Village represented by Doug Warner and Dave Kuklish of

Element Design, came before P & Z for review and possible acceptance of the final site plan. It was explained that they have met all of the Town's requirements, questions over building heights and landscaping plans were answered. It was asked why they had changed their name from Estuary to Lost Tree Village. It was explained that the old name (Estuary) was similar to other sub-division names and they were asked by DELdot to change it. A motion was made, seconded and unanimously approved to recommend approval of the final site plan. One member of P & Z abstained from the voting. Mayor Adams asked Mr. Warner if he had any questions. Attorney Witsil had a question also... he was unsure as to how the area of the sub-division had decreased from 12 plus acres to 11.29 from the two applications. Kyle stated DELdot requested some additional right-of-way on Route 26. That is one reason the acreage has been reduced slightly. Attorney Witsil asked if it was still with a cluster overlay and the answer was Yes. Attorney Witsil also noted his comment earlier that the Helm Street (area adjacent to Helm Street was suggested was to be constructed with a sub base for a roadway that this Town Council did not grant a waiver for. The plans call for and the preliminary sub-division approval provided for that sub structure of gravel or crush and run to be covered over with dirt and soil and made similar to the surrounding area. In the event that the Town or DELdot brings it up later and the Town agrees to the Helm Street area, Attorney Witsil presumes all three of the things laid out would have to happen for that to occur. This Town Council would have to approve the Helm Street access. Kyle stated that this project has been before the Town of Dagsboro for approximately six (6) years now. Three quarters of the way through the process, DELdot said they wanted an interconnection between Helm Street and the community for safety reasons. The original plan called for a connection. There have been numerous meetings with residents of Helm Street. They did not want the interconnection...the compromise being a crushed stone sub-base would be constructed, covered with top soil and seeded so that if in the future the interconnection needed to happen it could be easily done. What will happen with

the approval of planned right of way (once the streets are completed), they will be dedicated to the Town. The Town will call the shots as to whether that interconnection could be permitted. Vice Mayor Truitt asked about something being done to prevent people driving thru...Kyle stated that there would be landscaping. Mayor Adams felt her assumption was that it would be covered over with top soil, planted and landscaped. Attorney Witsil said subject to change that needs to take place --- the developer's representative may want to note that on Article 2 Section 3 on Page 2 of the restrictive covenants it says a Certificate of Incorporation shall be filed by the Developer no later than January 1, 2011 (that date has come and gone) and he would say they would want to say January 1, 2012 or 2013. It is standard restrictive covenants in a sub-division code. Kyle stated that they are in compliance with our sub-division code. They are meeting all Town requirements presently. It is just subject to a motion to approval of the final site plan, Attorney Witsil stated. Mayor Adams' question was answered by Mr. Warner. Attorney Witsil has prepared a resolution for Council, unless there are other conditions of which he was not aware. Councilman DeHaven made a motion to accept the resolution prepared by Attorney Witsil for site plan approval submitted for Lost Tree Village, seconded by Vice Mayor Truitt and unanimously approved. Mayor Adams thanked the representatives of Lost Tree Village for coming to answer their questions.

New Business:

1. Consideration of letter submitted by Hearn/Bireley regarding the connection to the water system for property at 28359 Dagsboro Road. Attorney Witsil read the letters sent to Mayor Adams and Council members in reference to Parcel 234-3 which is owned by Lucinda Hearn and Joanne Bireley, daughters and survivors of Alvin and Marjorie Campbell, and their spouses, Terry Hearn and Charles Bireley. The property consists of acreage and a vacant home located at 28359 Dagsboro Road, Dagsboro, Delaware. It is the owner's

understanding that there is an upcoming deadline of March 15, 2011 by which this vacant home must be connected to the Town's water system. Due to this approaching deadline prompt attention to the request is being sought by the current owners. A six month extension to the March 15 deadline is being requested to prevent undue financial hardship and duress on the current owners - not only is the homeowners' property vacant, there is no intent to renovate or rent the home. Therefore, it will remain vacant. In addition the home and acreage is For Sale. It is the belief of the owners that once the property does sell, the home will most likely be demolished. There is also no intent to subdivide the property or to sell the home separately from the remaining acreage. The owners request a six month extension until September 15, 2011 in order to explore other options, including demolition of the home. It has been the hope of the owners that the property would have been sold by now; however, because of the financial burden which continues because the property has not sold, the owners find it necessary to consider all options. It is respectfully requested that your attention be given in this matter in the next Town Council meeting considering the circumstances of the situation outlined above. Thank you for your attention in this matter. Respectfully, Charles and Joanne Bireley and Terry and Lucinda Hearn. Attorney Witsil said this could probably get lumped into the different types of requests Stacey had received last month. Mayor Adams asked if there were any questions regarding the property and the request. Vice Mayor Truitt asked if there were any legal problems in granting the waiver if we decide to do so. Attorney Witsil responded that the continuance of setting precedence that we began to establish last month when we granted the warehouse property exemption. There is also another vacant home on Clayton Street that is not being utilized. Stacey felt it would fall under this waiver as well. Vice Mayor Truitt asked -- We are not granting a permanent waiver, are we? Attorney Witsil said an extension for six months is what they are asking for. Councilwoman

Flowers asked what if they sold the property before the six months extension is up. Attorney Witsil stated he would probably counsel the Town that the extension would be a part of the property, rather than exclusive to the current property owners. Mayor Adams asked questions about what would happen if it was sold. Attorney Witsil said he would advise that when it was sold the new buyer would be given the six month extension as the previous owners would have been granted. Mayor Adams asked if there are any questions or thoughts on the matter. Councilman DeHaven said it is clearly a plus as to the way they have outlined the situation in their letter. Some of the others have not done that. Councilwoman Flowers asked if they have not sold the property at the end of six months, are they going to request another extension. Vice Mayor Truitt felt the extension of this six months would not set a precedence for the following six months. A motion was made by Councilwoman Flowers that we grant the six month extension to the Bireley/Hearn property, seconded by Councilman DeHaven and unanimously approved. Mayor Adams abstained from voting.

2. Consideration of engagement letter from PKS & Company to provide audit services for the next three years. A motion was made to keep PKS & Company to provide audit services for the next three years for the Town of Dagsboro at the price quoted in the engagement letter by Vice Mayor Truitt, seconded by Councilwoman Flowers and unanimously approved.
3. Discuss and vote on resolution for minor and major subdivision application fees in accordance with Section 238-8(B). Mayor Adams asked Attorney Witsil to discuss this matter. Attorney Witsil explained that since last month he has reviewed the Town's ability to charge certain application fees and to charge for professional for engineering and legal review fees. He has divided those between sub-division application fees for major, minor and partition actions and for a site plan review re-zoning and Board of Adjustment cases, which is

another ordinance which we will discuss shortly. At this time the document entitled the Resolution of the Town Council of the Town of Dagsboro to amend sub-division application fees and to establish developer/owner escrow accounts to be maintained by the Town for advance payments and sub-divisions and partitioning professional review expenditures. The code already suggests in Section 238-8(B) that the applicants shall pay all other charges related to review of the sub-division. That section talks about minor, major and partitioning actions. We do not need an ordinance to authorize to give the Town the authority and power to charge fees (we already have it). The question is how do we do it----do we want to amend the code every time we want to amend an application fee or a professional fee. Attorney Witsil stated that he felt this was quite simple...the answer is No, we wish to do it by resolution so that you do not have to have a Public Hearing, Advertise and so on. He asked Council to look at the bottom third of the page. He has not suggested fees, as he does not feel it is his job, it is more of an administrative job. The application fee for major sub-division application fees for minor sub-division, application fee for major sub-division, and application fee for partitioning. #4 covers the professional review fees for major and minor sub-division and are broken down into a, b and c. Attorney Witsil explained the form and stated he felt Council needs to discuss the comparisons which Kyle has made on other jurisdictions. Kyle told Council their packet should contain a list of sub-division fees from some of your neighboring towns. There is quite a range. Attorney Witsil noted that most of what he looked at just suggested that you can charge review fees. He said he knew that Stacey could be more articulate than he regarding problems which have been incurred...we have charged professional review fee for both engineering and legal and it gets to a point where that fee is depleted, it is very hard to get money out of that developer again to replenish the pot. This may take more thinking than just tonight...he is sure Kyle has suggestions concerning professional review, escrow

payment and how we keep the escrow account replenished so that there are fees that the Town does not end up being stuck with. Kyle stated that one of the recent problems is utility issues, and is a cut and dry situation...where most minor sub-divisions such as the Calhoun partitioning tonight was very simple. We have been charging an escrow fee and the actual minor sub-division fee (which is very low). Two plans recently have had some circumstances which have caused several reviews of the plan. We are not capturing the costs on those. Attorney Witsil stated that with an escrow is that we can always return it if it is not depleted. Kyle stated that he received an e mail from Stacey today regarding the Mills property sub-division. That will be the third review of that sub-division. Their application fee was \$250. If this is approved tonight, could we go back and collect anything that is in the works tonight at this point, to reimburse the Town. Attorney Witsil stated that 238-8B states that the applicant shall pay all other charges related to a review of the sub-division. That is the only authority that he sees that we have when the policy created by prior Town Council. Kyle mentioned that on the case of a sub-division or minor sub-division that the Town has additional costs above the \$250 application fee, you can bill them. Attorney Witsil said that their response might be, "how come you didn't tell us"? 238-8B states a non-refundable sub-division application fee set by resolution of the Town Council shall be paid at the time of the submission of the minor sub-division, partition, combining or major sub-division plan. The applicant shall pay all other charges related to a review of the sub-division. Attorney Witsil stated he interpreted that to mean "all other charges for the review". Vice Mayor Truitt stated that is what it has always been, even though it may not have been imposed in the past. Councilman DeHaven asked if this could be outlined on the current application. Stacey said it could be. Kyle felt Council still needed to evaluate the sub-division fees. It is easier to have the escrow monies as opposed to going back later and billing the

applicants. We know that as evidenced by the property behind the Perticari business. As the developer pulled out and left what had been applied for previously. It would be difficult getting money from someone like that. Councilwoman Flowers asked if Kyle felt Millville's plan with the lot price per unit and then 20% escrow. Millville's is probably the highest in the State of Delaware. They set up the escrow fee, but still have a payment plan for that fee --- 20% up front and the balance due at final plan approval. Attorney Witsil questioned what is the 20% of--Kyle stated it was 20% of the sub-division fee, the \$450 fee (per unit). Vice Mayor Truitt said that does not cover the additional review fees....Kyle stated that they also have the escrow fee on top of it. This is a double whammy for the developer, as he is paying an incredibly high sub-division fee which should cover any expenses that they should have, plus 20% of the fee and they are paying professional fees out of the escrow monies. Vice Mayor Truitt said if it is just one lot, it would be \$450 plus \$90 (20%). Kyle felt Georgetown has a fairly good system in place, Millville is good, but it seems very high, Ocean View, he did not feel collected escrow amounts. He thought OV did not collect escrow amounts they just direct bill and Millsboro does the same thing. When times were good Millsboro paid all the professional fees and billed the applicant for it; however, recently they have had a couple of developers who have been very slow in paying their fees. Attorney Witsil mentioned that Stacey had given him some figures and he would like her to discuss it with you as to the professional revue escrow account amount, which she feels are reasonable. Stacey told Council that they currently have \$2,500 in the legal and she said not one of the developers has exceeded that amount. There are certain occasions when a plan is having preliminary or final review if they left the \$2,500 sitting in the escrow account and bills come in and exceed the \$2,500, it would be her suggestion to ask for \$5,000 (not one invoice should exceed that amount) and we would have a little extra money for follow up which would not be that large. That

would be for site plan review, major sub-division, minor sub-division. Stacey said she mentioned that the \$5,000 may be a bit much for a sub-division. Attorney Witsil proceeded in terms of organization...there are two other sets of documents that relate to site plan applications. Attorney Witsil felt it was necessary to say that we make an ordinance to say that we are charging for site plan review and professional fees (there is no reference in the site plan approval section of the code which is 275-55). Attorney Witsil has prepared an ordinance to amend the code to provide for charging of application fees for site plan applications, change of zone applications and Board of Adjustment applications, and to provide for the establishment of the development/owner escrow account to be maintained by the Town for advance payments for professional review expenditures. There is an accompanying resolution that sets those fees. For the site plan, re-zoning and Board of Adjustment fees Attorney Witsil felt it was necessary to have both Kyle said another thing to consider is the base application fee...\$250 for a minor sub-division ...is that covering all the Town's costs in terms of advertising and meeting time, etc. Vice Mayor Truitt felt Council had discussed raising that last month possibly to \$350 or so. Attorney Witsil stated Council had discussed raising the fee to \$500 for a sub-division, major sub-division and a per lot charge with a minor of \$250. As partitions are always one lot divided into two I think you can charge a flat fee for the partition. It was mentioned by Kyle and Attorney Witsil that there had not been a Board of Adjustment application for years and years. Kyle felt it may be because the fee is high. Stacey asked about a change of use application, should that be included in establishing fees for that? Attorney Witsil stated that you could if that requires professional review. Stacey mentioned that it could. Kyle stated that if it comes in as a change of use, it depends whether or not it meets the requirements for the change of use, or it either stays as a change of use or it is bumped up to a site plan review. If it requires a site plan review you would

have those fees. Councilman DeHaven stated it requires a preliminary site plan review to get the process started anyway. Stacey reported that we would need at least an application fee for a change of use. Councilwoman Flowers noted that the next Council meeting would be in three weeks due to Easter...it would be on April 18th. Councilman DeHaven stated that since we had only had these documents a couple of days, it was a lot to digest and he was not comfortable in making any decisions tonight. He would like to see the analysis from Stacey on the numbers also. Mayor Adams asked if the Council would be comfortable to voting on the review fees in April? If we do not have the numbers, we can always delay it again, Councilman DeHaven stated. Stacey went over the schedule for the next few months. Are we asking for a Public Hearing next month, April 18th? Mayor Adams stated we would have two Public Hearings in May. Attorney Witsil stated it could include the change of use and he could make the corrections...he will leave the fees blank unless he is told something. At this time Stacey mentioned that it would be discussed in April's meeting and hold the Public Hearing and vote at the May's meeting. Discussion took place between Council and Kyle and since there is no development presently beating down our door, we can take time to review it. That will give us two Public Hearings for May. We can be thinking about the fee structure prior to the Public Hearing. Vice Mayor Truitt made the motion to hold a Public Hearing for an ordinance to amend Chapter 275-Section 275-55 with the changes discussed this evening for the May 23, 2011 Council Meeting, seconded by Councilman DeHaven and unanimously approved.

4. Discussion of 75-1 (A) and (B) and discrepancy between 75-12 and 210-6. Attorney Witsil deferred to Kyle Gulbranson as the expert on these engineering documents and let him lead Council through it. Stacey and Attorney Witsil in discussing the necessity of what will require a building permit looked at the various sections of our code which addresses building codes. There is a

discrepancy between 210-6 and 7 which makes reference to property maintenance and the BOCA code and 75-12 which is the building permit section and refers to the adoption of the building code and adopts the 2003 and all subsequent editions of the International Building Code. Attorney Witsil's question for Kyle is that just an oversight which is from the last couple of years. Kyle felt it was just an oversight. Attorney Witsil stated that the BOCA code is property maintenance and the International Code addresses.....Kyle stated the BOCA code does not exist any longer. He felt the last edition of the BOCA code was 1996. It needs to be modified to read International Building Code. Attorney Witsil asked if IBC covers international property maintenance code, which is part of ICC - International Building Code. Kyle felt what was intended to happen was that would be adopted and the Town would adopt updates to that as they are approved by the International Property Maintenance code, generally that is every three (3) years. Attorney Witsil asked Kyle if he would look at 210-6 and 7 and 75-12 and give him the correct language for a proposed ordinance so they may be revised. There should be a 2012 update coming up shortly. International Code Council's Building Code and Property Maintenance Code. Kyle will forward this to Attorney Witsil via e-mail. Stacey needs to know when a building permit is required. Presently, Attorney Witsil stated there are issues on certain properties where there are no structural changes being proposed. We are trying to figure out how we have authority to inspect other than the building officials just saying they have the right to inspect the building in Town. Usually inspection commences with the filing of a building permit. Change of use might not be enough to require any sort of permit. Now a building permit shall not be required for repairs to existing buildings or structures provided that no structural changes or modifications are involved. Attorney Witsil stated that in his review of other jurisdictions' building code, this is probably the most lenient and lax standard. Maybe it was intentional just to require people not to have to pay money to get a

building permit to do almost anything in the house except for structural modification. Kyle mentioned that was discussed and we came full circle on that issue. There was sort of two sides to this...one group felt there should be a permit for everything as a means for the town to track changes for structures for evaluation purposes for taxes and the other hand, the Town did not want to be too burdensome in terms of the financial aspects for the building permit for every little thing. This has been discussed quite a bit. Attorney Witsil said other jurisdictions that he has looked at require a building permit for everything. In Rehoboth Beach, Kyle said, anything that was valued at over \$250 you need a building permit for. There can be any threshold that the Council wishes to place on it. Attorney Witsil felt Dewey Beach may have said any structural item other than replacement of windows and screens. It was all inclusive. Attorney Witsil stated that there is a reason to require a building permit. There is oversight, making sure it is done properly and safely to some degree. It results in a follow up inspection so that we know it is done properly and completed. Councilman DeHaven stated he had a problem with attempting to take away a town taxpayer's legal right to perform repairs to their home or property. Any time we attempt to take this liberty away there needs to be an overriding and clear reason to do that; otherwise, we have the possibility of unintended consequences. To this point, he has not heard any overriding reasons to implement and do away with the ability of a local property owner to do repairs. In short of that, Councilman DeHaven is not in a position to doing away with that ability and that right that the property owner in the Town of Dagsboro has today. Unless I hear some overriding testimony otherwise, he is not inclined to move forward with making the change. Kyle stated we need to find the right balance. Mayor Adams said isn't that one of the big discussion nights where a storm door blew off...she is in agreement with Councilman DeHaven. If a homeowner is trying to upgrade and improve their home, who are we to tell them they have to come in and

get a building permit. The code currently states anything that changes the structural footprint ... If Council is happy with that, we can stick with it. An item came up and Mayor Adams did not mention any names and it is not a homeowner trying to improve their home, this is a person who is going to open a business in a building, that does not look structurally sound. She is not able to make that judgment, but the public is going to enter that building. She felt that was different than her roof fell in and she was living in the home than for someone entering a public place. The building is inand for him/her to be allowed to open a business and for us not to have any say. She feels the Town should cover things. Attorney Witsil asked Kyle for clarification for a structural repair. The way Kyle sees it is any change to the physical structure of the building...moving a wall, modifying a wall, adding internal plumbing.. (not replacement windows)...however, if they are changing the physical size or shape of that window...Attorney Witsil stated his concern is stripping electrical wiring and replacing it, is not a structural change. To him, that is some element of serious concern. They might put in different voltage, etc. and that is of a concern. Kyle mentioned another situation where there are no exterior renovations done. To go by the structure there would be no clue major interior renovations were going on or major interior plumbing renovations...no one in the Town knew it, none of the neighbors knew it, until the house was placed up for sale and it was found there had been no inspections whatsoever of the interior renovations, which required permits and they were years old and were done incorrectly. Councilman DeHaven said he knew how some other towns have dealt with this in the past. He feels the issue is it going to be used for public facility or sale of an existing property and transferred to the new owner...are there defects in that property. Other towns have created a mechanism so that when the property comes up for sale and there is a contract on it, it initiates a process whereby the Town then goes back and researches ... Has the right to enter the property and look at it.

They also research any previous building permits which have been issued for that property and then correspondingly reference that against whatever deficiencies they find in the property. Short of that the sale does not go through. When the prospective property owner finds out that things were not permitted then most people want to know when was it done, was it done properly, did you have a home inspector come in. Most people do that. Councilman DeHaven stated in that way the property owner is alerted at a point in time when making the contact for sale with the real estate agent (this is part of the agent's disclosure rights to disclose that to the property owner). Short of that the sale does not go through. They have to know you are going to have to go through the process with the Town. Attorney Witsil said he does real estate transactions all of the time, he is not aware of any Town that has that service and additionally, he would not want this Town to be responsible for that information. That is a tremendous liability. Councilman DeHaven said Ocean Pines has that mechanism set up. Attorney Witsil stated he did not mean to disagree with Councilman DeHaven, but he did not know of any town in Delaware that has that type of set up. Kyle stated that in a situation like that there are structural, internal renovations done to a house...no permits are applied for and no permits are granted. In a situation like that where a prospective buyer is interested in purchasing the property, what recourse is there? Attorney Witsil informed Kyle that the prospective owners can go to the Town or Sussex County to see if a building permit was issued. If it was not issued, then that is a red flag. The property owner says... when was the renovation done? Our lawyer who is doing the settlement checked with the County, and there was no building permit issued...who did it, who inspected it, etc. Kyle asked Attorney Witsil if there is any responsibility on the Town or the County in a situation like that. Attorney Witsil stated, "No". Some would say they did not need a building permit. He did not feel the Town would be liable, unless someone said that our standard is a very lenient standard in his

opinion. Could we add plumbing, repairs, etc. Stacey questioned? Attorney Witsil stated that there could be a number of things. Stacey explained it was not the intent to hinder or oversee every individual homeowner doing minor repairs to his/her property, a blown off shingle, etc. --- but not changing the footprint. Stacey reported that there are certain things that need to be inspected according to our code and they should not be applying for a permit for a code. Kyle and Vice Mayor Truitt said at a previous meeting, they had discussed a second layer of shingles being permitted and the third was not permitted. Council went around for over an hour and could not come up with any clear delineation as to how to state the intent. If you specifying everything it would be...in writing. How would a homeowner know that? Kyle felt the structural definition could be tightened up, so it would be clearer and easier for Stacey to decide. Councilman DeHaven said he had an additional question...he has reviewed his notes from the meeting in March 2009 where this issue was discussed in great detail. At that point in time one thing jumped out at him was ...is this an intent to raise revenue? There was discussion it was worded one way one time and it was changed the second time...is this an intent today to raise revenue? Mayor Adams and Stacey responded, "No". Councilman DeHaven wanted to draw Council's attention to an e-mail which was on my desk at the last Council meeting (placed here from Mr. Witsil to Stacey...dated February 28). At the end of the paragraph it says most town's have requirements for building permits that are much more inclusive than what Dagsboro now has in Section 275-1B Revisions to provide for more building permits for inclusive repairs would generate more town revenue. Councilman DeHaven has in his hand a document that refers to increasing revenue. Councilman DeHaven stated he just read what was in here--provision to provide for more building permits for inclusive repairs would generate more town revenue. Attorney Witsil stated, Bill, when I write a memo I cover all aspects...Councilman DeHaven said I know that words have meaning and he sees the linkage between this discussion

and revenue today and I have heard it before in the March 2009 meeting. We have an issue here where we are attempting to take away the liberty of town taxpayers for attempting to increase revenue and what is the justification for doing those two items. Number one is the most important one. If we are going to do that to increase revenue, I think we are going down the wrong route. I think there is probably a middle ground that we can reach on this, but to say this is not a revenue grabbing issue, I really have questions about that. Mayor Adams wanted to speak to that...she said her question she had brought up, had nothing to do with that. It had to do with total safety of these townspeople and anyone else coming through that when they stop at this person's place, that the roof didn't fall in on them. She would send Kyle or an inspector in there and say you have to do the filing...you can't serve people food in there. It has nothing to do with trying to generate revenue but with safety. Councilwoman Flowers mentioned it has to do with safety...that when they built their deck had a building inspector there a few times. However, people down the street did not have a building permit or building inspections. She feels there needs to be some detail or guidelines as to when a building permit is needed and when not needed -- not just for the safety of the town. What would happen if someone is hurt...because we did not...because we had two acts... Stacey questioned Mr. DeHaven if he had finished reading the sentence from the memo Attorney Witsil, which read "more importantly provide for inspections of repairs." Stacey felt that was the most important issue of this, and she did not hear that statement...that is what the reasoning for it was. Mayor Adams said what the last sentence says... "revisions to provide for more building permits for inclusive repairs which would generate more town revenue, and more importantly provide for more inspection and repairs. Discussion took place among Town Council members as to building repairs...Councilwoman Flowers wants to prevent our residents from going into a building that is unsafe. Mr.

Cox spoke and was informed by Mayor Adams that this is not a Public Hearing more than once. Vice Mayor Truitt said now we are back to the original issue as to what is a repair and what is an improvement? Councilman DeHaven stated that we had a somewhat limited list of items that require a building permit...such as a roof. He agrees there are certain items that responsibly need inspection that require a building permit. We have not presently identified those items...to some conclusion that there is an overriding reason to go ahead to include those in the list of required permitting items. Kyle felt that they just need clarification...what does and what does not require a permit. Councilman DeHaven said certainly we have the ability to come up with justification for that. If you do that and clearly identify that to the prospective person who is applying for that permit, I feel you have taken that additional step to clarify why you are moving from this issue to that issue. Kyle said to the safety and welfare issue. Mayor Adams said if she remembered correctly you (Councilman DeHaven) were the guru on International Building Code as well as maintenance code. Why can't we go in and inspect the property. Councilman DeHaven said he would have to read up on it as he has not looked at the International Building Code recently. Mayor Adams said it baffles her as to why if you see a serious problem sitting, why can't you touch it. Kyle felt that if there is an application for a change of use, you have the right to do a safety inspection of the structure. They are applying for a physical change of use of the building. Mayor Adams asked if Kyle felt we could go in and inspect. Kyle felt if there was an application for a change and there is a safety issue there, he felt Council had a right to inspect it. Vice Mayor Truitt asked if someone requests a change of use and is granted does it have to be in occupancy. If there is food service involved the State Department of Public Health has to inspect it. Councilman DeHaven said also the preliminary site plan would trigger it also...Attorney Witsil interjected that 275-8 and 75-8 presumes a building permit being issued...during the construction

period, the building permit office or other authorized official may inspect the premises to determine if the work is progressing in compliance with the information provided on the permit application and with all applicable municipal codes and ordinances. Attorney Witsil feels that the building permit triggers the authority to inspect. He did not know anywhere in the code where we address the words "change of use" on the form which we created. Attorney Witsil stated if they wished he could come up with language that says that an inspection shall be required for change of use --- change of zone, that sort of thing. To him the threshold should be the issuance of the building permit. That gives you the authority to issue the permit - that is when the owner tell you what they are going to do and that is what you respond to when you inspect---to see if that they are done properly. Every time there is a change of use you want an inspection, we can write that somewhere else in the code. Attorney Witsil mentioned he did not know where there was a list of requisite items...Councilman DeHaven said possibly he misspoke, but there is a list of items (a short list of items) that the code enforcement officer can issue a building permit directly from, without going through P & Z and others. It is not in the code. Stacey stated that is for a pool, a shed and a deck...possibly a couple of other things. Kyle asked if the Town has the authority to enforce the housing code, if we feel that there is a violation on the property. Attorney Witsil stated he referred to the International Building Code. The structure which Mayor Adams is speaking of is probably housing code violations as well. Vice Mayor Truitt asked what criteria do we need to know when to apply for a building permit. He said if he feels what he is doing is so minor, he might not even bother to call. Kyle said it appears that we need to define it. Vice Mayor Truitt said if he gets an estimate for \$1,200 for doing something and the law states there is a threshold of \$500, he definitely knows that he needs a permit. There needs to be some criteria that a citizen of the town knows that he needs a building permit. There needs to

be additions...Stacey said, of course, you can't think of everything but she feels it could be better than what it is now. Vice Mayor Truitt stated it may be something that Council will have to have a couple of meetings about. Mayor Adams said she was trying to help was the person that is going to do this... She hated for them to expend their money and run into a huge snag. If they have spent a lot of money and can't open because they can't get a certificate of occupancy,...if they went down there now, before they begin...the property needs this, this, and this before you can open, he/she is being saved money. They can either say I know what it is going to cost me or I can't afford it. Kyle asked if you could ask this person...the Town would like to go in and give you guidance as to how your building is code deficient. It is not a mandatory inspection, but you are offering that service to him. Mayor Adams said it sounds good, but she did not know if it is legal. Stacey felt if the owner is trying to get by without getting a building permit they are definitely going to refuse the service. We can't rely on someone's eyeball catching something, Vice Mayor Truitt responded. Stacey mentioned getting items together to talk about next month which gets more specific. Stacey said she completely agreed with Councilman DeHaven --- it was never her intention or Mayor Adams' or Attorney Witsil's for it to be revenue increasing...it was more so helping her doing the inspections and safety of the public going in and out of specific buildings...and there was no building permit required because it was merely hang up some dry wall, paint it and open a business. Vice Mayor Truitt made the motion to table the permitting process until the next Council meeting and continue the discussion at that time, seconded by Councilman DeHaven, and unanimously passed.

5. Consideration of purchasing a used truck for the purpose of using it for maintenance of the Town. Chief Toomey, Mr. Flowers and Stacey Long went and looked at a truck (which had been the company truck at one point). It is a 1995 Pick up 4 x 4, it has 100,000 miles on it. Chief

Toomey did some brief research at cost comparisons with other similar vehicles which were listed by some local used car dealerships. The owner is asking \$4,000 for this vehicle and he felt it was a comparative price. Some of the attributes were that the entire vehicle was well maintained, had an interior in great condition. It had one spot of rust on the right hand side behind the cab. That was the only rust spot on the vehicle. They agreed to rotate the tires, tune it up and change the oil. When we said we were interested in it, Mr. Bunting pulled it from his drive and put it in the shop to do these things. Stacey and Mr. Flowers would be using it predominately. The only time the Police Department would use it would be in heavy snow storms, inclement weather and in emergencies to get around town. They would be using it weekly and in some cases, Mr. Flowers would be using it 2 or 3 times a week. Chief Toomey felt they were both impressed with the condition of the vehicle. Chief Toomey looked at a couple of other vehicles (one is outside of town). Also, Mr. Bunting said that he would remove the name Bunting's Towing from the outside of the pickup. We have magnetic signs which can be placed on the truck. Mr. Flowers and Stacey both seemed agreeable to the purchase of the vehicle. They felt it would suit their immediate needs. Chief Toomey said he could go around and look at other vehicles, but this vehicle seemed to fit the bill for what we need and what we can afford. Councilwoman Flowers asked where the funds would come from to pay for it.....Stacey reported it would be Public Service Impact Fee Fund. Councilman DeHaven said he had one question. Since the money is coming out of town funds, there is always additional costs over the life cycle of that vehicle that we are not considering here. Councilman DeHaven took the liberty of running some numbers and he passed out an analysis where he looked at three options for the town. Backing up a little bit when the job was posted for the current maintenance man there was a requirement that the maintenance man have a pickup truck--this was actually published in the paper. In the normal course of business if someone uses their vehicle, they would be

reimbursed for some sort of mileage for the use of the vehicle. There are two codified dollar amounts for reimbursement that we could reference here...there is a State of Delaware state rate of forty cents per mile which is paid coming out of the workers compensation rate, and then there is a federal government rate which is nominally around fifty cents (it is probably more than that now), but that would be a good number to use. If you look at the bottom of this, I have come up with some assumptions in comparison --- based on some testimony from Stacey earlier she said there is typically about fourteen miles per week. Figuring the maintenance man used this plus a couple of miles more, 40 miles per week and we came up with 2,000 miles of annual use. That would apply whether you are using your own vehicle or the town vehicle. The purchase price, as I understand it, is \$4,000 with \$140 to register the vehicle, you have to figure in depreciation, which in this case we will figure a 5 year life there may be a minimal value of \$1,000 left, so you would depreciate \$3,000 over that 5 year period. Depreciation in essence that actually equates to is money you are setting aside to purchase a new vehicle at the end of the five years. By taking the money that we are losing, loss of interest on a cash asset and he used a very conservative number of 1%...so that is \$40, used a conservative number of \$350 for vehicle insurance and came up with about \$600 and a very low number of \$3 per gallon for gas (which is significantly lower than it would be). A nice figure to use, based on his experience from previous lives is 5% under the value per year should be set aside for maintenance...which is about \$200, and \$40 for annual vehicle tags. Those are the sums that I used. If you go to the top and look at Option 1 where we would elect to provide a mileage allowed of forty cents per mile for the use of any town or personal vehicle on town business, which would equate to \$4,000 per year. If you use the fifty cent federal rate that goes up to \$5,000. If you round the \$5,000 for the cost of ownership for this used pickup truck, it quickly escalates to \$13,290 over that five year period. Councilman DeHaven has put

together a little chart showing the differences in the monies that you have here. Do we make a decision to spend more than twice as much on a used vehicle or do we elect to simply reimburse for the use of personal vehicles. Since it is a relative small amount of mileage in dollars which we are talking about here, or do we assume the risk of a used vehicle and the known cost that will accrue to us over a five year period. I think that is the decision that we have in front of us. At this time Stacey Long said a couple of things that jump out at her ...we are exempt from registration fees, exempt from the tags, maintenance is a good figure...depreciation and interest is not considered an expense in any of the town's financial statements, I don't know why it would be in this vehicle. As you can see when they do our depreciation, it is not categorized as an expense. Also, from previous precedents we are not allowed to be reimbursed for any mileage we use...that has been in effect since 2005 because we were not to use our personal vehicles for any meeting or training or whatever we would be using it for. That was set in 2006. In turn we began using one of the police car. We now no longer have any police cars; therefore, we have to use our vehicles Mileage was never discussed, which I believe is unfair, that Mr. Flowers is utilizing his pickup truck, day in and day out and not being reimbursed for gas. I have to use my personal vehicle to attend meetings for the town and do meter readings whether I am getting reimbursed or not. I disagree with that. That is my response to utilizing my own personal vehicle. Mayor Adams had a question of Councilman DeHaven when you did this calculation here of forty cents a mile and then fifty cents a mile based on how many vehicles. Councilman DeHaven said it was just two vehicles total of mileage between the two vehicles of forty miles per week. If you use it more miles you are going to use the town vehicle more miles so it is an offset, if you use it less mileage, you use the town vehicle for less mileage. Councilwoman Flowers said for example said there was a lot of miles used in putting up the Christmas lights as much as there was gas used. It

was a lot of sitting and wear and tear. She stated if we did not buy this used truck, maybe we should think about purchasing a new one. She thinks all towns have a maintenance vehicle and the need is going to get more and more. With the tax ditches...it is a huge job. It is becoming overwhelming. If we do not get a used truck, she would be in favor of buying a new one. She feels that this used truck is cheaper and Bunting's take good care of their trucks. Even though it may only last five years...she feels it may last longer than that. You can't predict the future. She feels the Town needs a vehicle...used or new. Stacey did the calculation to see what she was going to get paid the first time she did the meter reading...\$7.00. Vice Mayor Truitt feels that if a personal vehicle to do the job is not required in the job description, they should not be required to use their own vehicle. They may choose to and be reimbursed by mileage. He does not feel they should be required to as a condition of work. Councilwoman Flowers asked what is the mileage rate now. It was unknown. Councilman DeHaven said so we have one person being required to use their personal vehicle and the other person would prefer not to---actually both of them would prefer not to ...but one is being required to use their vehicle now. Councilman DeHaven wanted to get something straight --- we have a town policy that says we can't pay mileage for the use of your own personal vehicle, (Stacey said she is not going to say it is written policy) Councilman DeHaven said he agreed with Stacey that it was a stated policy. On the other hand we have a situation that we have required the person who was selected for the position to provide his own pickup truck and he is not being compensated for the use of that vehicle whatsoever. Stacey told him that was correct. There is a quandary here. As Councilman DeHaven reported that the quandary must first be decided and then decide what resource we want to throw at it. Kyle said that since he has been involved with the town, when this position was first started the amount of duties has gone up dramatically. Several agreed. Vice Mayor Truitt said a sort of precedent was that a vehicle was provided for

you until that vehicle no longer became available. There was that precedent, even though it was not a dedicated vehicle, simply a spare police car. Councilman DeHaven liked Councilwoman Flowers idea of a new vehicle rather than assume the liability and the risk with the used vehicle. Councilwoman Flowers asked if she said that...she does not like what a new vehicle costs. When you purchase a new vehicle, how much does it depreciate as soon as you drive it off the car lot. What she mean't to say was maybe our options are a newer vehicle or a used vehicle. She did not feel we would ever get our money's worth out of a new vehicle either. Vice Mayor Truitt said all are you going to be doing here is adding to the top cost of the vehicle costs. All of the other costs are going to be the same. You are still be going to be spending that much money. Councilman Flowers stated the other possibility is that we would have a greater likely-hood of getting some grant monies or other funding for a new vehicle, rather than a used vehicle if you were inclined to purchase a vehicle for this use. Stacey said that is a good point and may be warranted in the future, but at this point would this be an interim fix (she stated she was just asking)...Chief Toomey said you are speaking to an immediate need. Vice Mayor Truitt said a grant could take six or eight months if it is even available. Mayor Adams asked how much money is in our Public Service Impact fee fund? Currently in our Public Service Impact Fee Money Market...it is her suggestion that it comes out of that account since it is a capital improvement. In that account we have \$91,590.15. Since it is a capital expenditure it could also be taken from realty transfer tax fund which is \$43,397 Stacey reported. Chief Toomey said any or all of the Municipal Street Aid can be used. Vice Mayor Truitt stated we would have money to buy it and enough money budgeted to pay for fuel, insurance and maintenance. Stacey said Yes out of various funds. Kyle mentioned so as not to hit any of those three accounts up any too dramatically, maybe divide it three ways. Mayor Adams recountedthere is no initial registration fee, we are exempt from tags. There would

be insurance, fuel and maintenance fees. Mayor Adams said her personal feeling is that the Town needs a vehicle now...she understands about the new vehicle and feels this vehicle will be almost as reliable as a new one might, because of the care it has received. She did not feel the owners would misguide us in any way. If it lasted five years, it would serve us well. Presently, she is in a dire need. You are correct, Bill, we request that the person hired have a vehicle. There was a reason the request was on there as the Town did not own a vehicle. We couldn't really hire someone to do maintenance and then tell them to rent a truck somewhere. Vice Mayor Truitt mentioned that with this truck, you could put two people in one truck. During inclement weather, Chief Toomey reported that he actually patrolled in his personal SUV with 4 wheel drive. Councilwoman Flowers will have to excuse herself from voting. Vice Mayor Truitt said he is inclined to give it a chance and try. Vice Mayor Truitt made the motion to purchase a town vehicle in the amount of \$4,000 (amount stated) from Bunting's Garage, Mayor Adams seconded the motion. Mayor Adams, Vice Mayor Truitt voted yea, Councilman DeHaven voted present, and Councilwoman Flowers abstained from voting.

Mayor Adams said maybe we all need to stand up, stretch for a moment before proceeding to Old Business on the Agenda.

Old Business:

1. Consideration of the letters received from Dagsboro Fire Company dated 8/13/10, 12/8/10, 2/4/11 and 3/14/11. If Council will turn to their letters. Stacey felt all of the other letters had been introduced into the Minutes, would Mayor Adams like for her to read the letter of March 14, 2011. The most recent letter received from the Dagsboro Volunteer Fire Department of March 14, 2011 regarding a compromise in water fees and water usage: Mayor Adams and Council Members this compromise is offered under duress and not as a complete resolve of the waivers requested since August of 2010. This compromise is to allow the DVFD,

Clayton Street Project to move forward. As of right now the project is on hold being that the building permit is being held contingent on a resolve of the water metering and fees, acceptance of this or a similar compromise will be grounds for the release of the building permit and condition for on-site plan approval. The offer compromise--since the Town Council considers banquet hall and kitchen as a non-fire protection area, DVFD is offering to pay for the five (5) EDU's associated with this area. This calculation was provided by DVFD's design team. The remaining eight (8) EDU's are directly supporting fire fighting, fire prevention and emergency medical services. As understood the Town's commercial water rate is based on usage and meter fee, since the DVFD is being required to purchase the meters for this project DVFD proposes to pay only the water usage fee of \$3.00 per one thousand gallons associated with the five (5) EDU's from the banquet hall and kitchen spaces. This usage is estimated at approximately 40% of the total DVFD metered usage. The DVFD is requesting monthly meter rental costs be waived for all thirteen (13) EDU's. This will help the DVFD to control costs associated with operating and maintaining the department. The structure of payment would be in place for a period of three (3) years from issue of Certificate of Occupancy allowing actual usage data to be collected allowing for comparison of facility activity of the kitchen and banquet hall to the water usage. This will allow for the actual five (5) EDU's associated with the banquet hall and kitchen be reviewed in discussion open between the DVFD and the Town Council to adjust the fees to compensate the Town appropriately, credit the fees to DVFD and/or set new fee structure. To discuss this, please contact the New Building Committee Chairman, Gary Cox or the Department President, Lin Hudson.

Mayor Adams asked Mr. Lin Hudson, Department President if he wrote this letter. He answered that he and Gary Cox did. Mayor Adams asked if he could clarify something in the last paragraph - this structure of payment would be in place for a period of three (3) years from issue of CO allowing actual...if he could explain in more detail their

thinking on that...Mr. Hudson said that to get an idea of what the water fee cost would be ... At the end of three (3) years, we wanted to revisit this and see just what we do have and how much water we are using and such...to relook at the uses of the water. Mr. Cox to see if this provides an accurate calculation or if that section is only used on weekends only...depending on your usage, Mayor Adams said. They are looking for some type of reality vs. what Council has concerns about. Councilwoman Flowers asked ...do you think that when the building is completed it will be a while before the kitchen is used, before you will be scheduling anything...will there be a period of time where there is absolutely nothing going on in the banquet/kitchen facilities? At this time Lin Hudson said the banquet room will not be cheap -with the cost of air conditioning/heat and water usage so every fire company has dining hall. We don't know how much it will be used. It will have a very good rental fee on it. Everybody is not going to rent the dining room...we can't rent it for free. Mr. Cox said we are building a fire hall and working toward the banquet hall and kitchen. We have a proposal so we will know when the estimated cost to fit the kitchen out will be, but when it comes down to final numbers that will be the first area of cuts. We do have some things in the current facility that we can take over there to make it usable; however, not up to the full catering capabilities the facility could have. If the three years doesn't prove it...that we have not had but four (4) functions in it...there was no usage, would there be a credit and then continue for another few years. We touched on a compromise so that we can move forward. Mr. Cox felt the best solution was to put it on paper and bring forward some type of compromise rather than one offered in discussion. Stacey had a question...Mr. Hudson by that statement are you referring to you have your normal fee that you would be using to rent the facility out and then on top of that fee you are allowing for electricity and water usage. Mr. Hudson stated the fee will be based on the utilities...we are going to have to study on how much we will need to charge to make sure we do not want to go in the hole. When we rented the fire hall (engine bays and the kitchen) it was \$350. You are getting

a formal, clean environment for a reception so you will have to pay for what you are getting. Mr. Hudson said another thing you would have to study would be getting a good rent on these facilities...we don't want it rented out to certain individuals who you are going to be policing half the night, breaking up fights, etc. You need to keep your rent up to be sure you have responsible people renting it to keep damages down. Stacey said when people rent out their facility they want to cover those costs... and you are saying you don't know what those costs will be? Is that what you are saying? Mr. Cox said they have not sat down and established a rental contract yet. Stacey recalled in previous conversations that it was stated that all of this money you get goes toward your account for purchasing fire equipment or upkeep of your facility, she wondered why you wouldn't want to tack on the coverage of utility bills. She knows that DP&L is not going to waive your electric bill because you are a public servant. We need to be thought of in that department as a utility company...we can't give away free utilities because we can't go in the hole either. She is not speaking on any other part of your request besides the free water. We must be looked at as a utility company. Mr. Cox said he had listened to all the conversations and that is where he talked with Mr. Hudson, proposed it to the membership, and came up with the proposal. It is not just him or Mr. Hudson presenting this...it has the support of the membership. It was brought before the membership and they are all aware of this letter. Mr. Hudson addressed Stacey and said this facility will also be used for a County Firemen's Association meeting once a month, and they will be using it for County meetings, for State Fire Police meetings, State Ambulance Meetings and if they have a big class, this facility will also be used for classrooms. It will not only be used as a Banquet facility, but for all of the functions mentioned in the previous sentence also. Vice Mayor Truitt said the usage is estimated at approximately 40% of the total meter usage...is that per month. Vice Mayor Truitt said to calculate how much water you would have used in a month, you are going to take what the meter reading is and multiply it by 40%? For payment to the Town, Mr. Cox said

that is correct. This would be over a three (3) year period so that they can establish a pattern. Vice Mayor Truitt said if you use 20,000 total that would be 8,000 paid to the Town at \$3.00 per thousand gallons. Unless we prove we had absolutely no functions. It would be just like our old fire hall. It will be a comparison of activities vs. usage for a three year period. Stacey asked would the first year be counted in your offer/compromise for three years...would the first year bear any weight on the calculation. Stacey mentioned the first year would have a lot less. That is why Mr. Cox stated three (3) years from the Certificate of Occupancy being issued. Kyle said that the fire department is willing to purchase 5 EDU's at \$3,000 per EDU for the impact fees. Mr. Cox reported that they are still open for waiving all fees, but at the same time to keep this we are willing to pay a portion vs. all thirteen (13). Mr. Hudson said this function is going to be used for fire company functions as he explained before and not just be rented out for wedding functions..... State and County functions come out of DVFD's pocket. They have fire school training. They may get members from all companies in the surrounding area to come to this same class. DVFD has to pay for the instructor. They have to pay for our people attending and where we have big enough for 20 or 30 people for fire school class. Mr. Hudson mentioned that if our firemen go to Millsboro Fire Company for training, Millsboro Fire Company foots the bill. He also mentioned that two months ago the National Guard from Georgetown came down after the last big blizzard they had so many miscommunications and addresses messed up that they used our facility to get the addresses straight. If we have another big blizzard, we might have the national guard in there, we will have FEMA in there. That is one of the reasons the building was designed as large as it is...Gary Cox stated so we can compensate for some of these things. Mayor Adams asked for more clarification...no matter who is in there (whether it be a fire meeting, National Guard or a banquet) and you are going to pay 40% of the amount of the meter reading cost. Mr. Cox said then bring it back to Council three years from Certificate of Occupancy to restart this...that way we can

calculate how many functions we have had, how much water was actually used, try to figure how much water each function used. If we only had 3 weddings in a year...then we know the rest of it was used for fire service. From that point forward you can set a precedence that each wedding uses that much water and to cover this we would set it at 10% instead of 40%. Mayor Adams said what if at the end of three years you say in 3 years you had 9 weddings, 60 fire related activities in that kitchen/banquet room, what are you going to say? At that point in time, Mr. Cox said they will bring it back to Council for discussion to see what the best compromise is. Mayor Adams questioned.....what would be a compromise for the water was used. The point is it is not separately metered, her point is that if you go in and run water, she does not care who is in there...it is what it is...water running through the meter in that part of the building. Mayor Adams said please don't come back in three (3) years and say Patti, we only had 9 functions that we can really say were chargeable...the rest was fire fighting causes. We don't want you to do this. Water has been utilized. We cannot give water away in a situation we are in paying for water to Millsboro. Kyle said it was his feeling that the 40% proposal is reasonable. I do not have a problem with 40%, Mayor Adams stated...she did have a problem with them coming back in 3 years. Mr. Hudson said what about coming back in three years and work out a compromise on the prices. Kyle said could they work out some kind of mechanism for reporting events there. Mayor Adams stated that they needed that anyway. It is not separately metered and if someone runs water, she did not care who it is...it was used. Mr. Cox said it was not included in the proposal, but that would be the implication all along. We will have a signed contract for every public event. Stacey mentioned possibly submitting something to the Town on a monthly basis. We need to put something in place. Mayor Adams said when you come back to us in three years and say here is the division...what are you going to ask of us. We are going to ask you for the support of the fire service. Vice Mayor Truitt understands it to be anytime the banquet/convention area is used it is for a separate use of water, whether it

is for a fire hall use or a wedding. Mayor Adams said water is still going through there. Mr. Cox said in order to save \$35,000 in re-engineering and additional costs. She can't see giving water away in the situation they are in with the cost of water to Millsboro. Councilman DeHaven asked Stacey if there is a way that the fire department can access the meter at the beginning of a function and at the termination of a function and take a beginning meter reading and at end meter reading. You can quantify exactly the volume of gallons associated for that function at that point in time. Then begin that record. Vice Mayor Truitt stated if it were metered separately that is how it would be. Yes, if it were metered separately whether a fire meeting is being held or a wedding is being held, it would be registered Stacey reported. Councilman DeHaven mentioned these ancillary meetings that tend to support fire activities, are you performing those same activities now at the current building. The answer was Yes. Mayor Adams said but there are only 3 EDU's sitting at that building. So there is no change in the activities in the old building and the new building, those functions will still continue. However, Kyle stated that based on the size of the building that because it is a new facility, the potential is there to use a lot more water than what has been used previously for those same types of events. Mr. Cox responded "No" because the same people that use the functions are the same ones that go to those functions. Kyle felt that possibly since you have a nice, big, beautiful building that possibly they may want to use your building. Mr. Cox stated that there is a schedule for the State and County events. They are scheduled a year in advance, so that if there are any problems they can be resolved. Vice Mayor Truitt said as he sees it, any usage has to be considered "metered water". Any usage, fire related or not. Those 5 EDU's that you are paying for have to be considered a separately metered water supply, even though physically they are not separately metered. For billing purposes, they have to be separately metered. Any usage is town water that has to be paid for. Mr. Cox stated he had put his compromise on the table as they seem to get to a point of looking for a compromise and stumbling in our past

communications. If that is what Council's recommendation is to close out this letter of August, 2010, then so be it and the Dagsboro Fire Company will vote on it. President of DVFD, Lin Hudson stated that he did not feel the company could create State and County meeting, fire school meetings, fire school training...that all comes through the State of Delaware. It is easy to pick up the phone and find out that the DVFD had a meeting, the number of people and everything. As Mr. Hudson had told Councilwoman Flowers, he could give you a schedule of every fire company, what month and when they hold the meetings. Stacey reiterated the question...would your building and facilities attract additional meetings there. Mayor Adams said if you go up to your first paragraph...it says, since the Town Council considers the Banquet Hall and Kitchen as a non fire protection area DVFD is offering to pay for the five (5) EDU's associated with that area. This calculation was provided by...the remaining eight (8) are directly supporting (and we do not disagree with this), fire fighting, fire prevention and emergency medical services and we are not going to discuss not charging for those, and we are not going to charge for the water in there. Therefore, your 40% is what we are going to have to go by because otherwise you would have to go back to your engineer and redo it and we don't want you to have to do that. Mr. Cox said it was never discussed...Mayor Adams said she is not an engineer and an engineer should have thought of that. She is saying that should have been a discussion point as an engineer (how you are going to meter the building). It should have been caught at P & Z possibly. Kyle noted that they never saw the interior plans of the building until late in the process. Once it was beginning to form, they should have picked it up. Vice Mayor Truitt is O.K. with the 5 EDU's, he is O.K. with the 40% per month. The last sticking point he sees is whether or not to pay for the monthly meter rental. Stacey said the 6" is for fire suppression...and it would be approximately \$33 or \$34. It doesn't specify the size of the meter for the suppression. It just states fire suppression is a flat fee. She does not feel that you will be charged that 6" meter fee, because you are going to be charged the monthly

sprinkler fee. The 4" is \$100 a month. It will be approximately \$134 per month. This will be paid to the Town of Dagsboro Water Department. Mayor Adams stated that any commercial entity around here is paying a monthly meter fee, because their meters are larger than residential...such as Savannah Square (depending on what type of business it is). Councilwoman Flowers asked where that money went. Stacey reported that we do not pay that out Mr. Hudson asked if something goes wrong with the meter, the Town fixes it, correct. Stacey said "No"...the owner purchases the meter and is responsible for it. Vice Mayor Truitt said so it would be \$133/\$134 monthly. If we can agree on those three points ---5 EDU's, 40% of monthly water usage and \$133/\$134 a month for rental and review it after the 3 year period. Vice Mayor Truitt mentioned that if the 40% comes to 8,000 gallons --- that is \$24. Mr. Cox stated that is his point of bringing this to the membership as a compromise --- Mayor Adams said that it is not huge. That is why we were asking for the meter waiving since it is income to you guys vs. Mayor Adams stated it is not income...it is insurance. We asked for the meter cost waiving since we are already paying for the meters vs. asking us to pay for the meters again. Stacey reported that we pay BelAire Road Supply and that is where we buy our meters from. The fire department will be paying us and we will be paying them. Kyle said there is the physical purchase of the meter and then the programming of the radio read. The Town's cost for those two meters --- the 4" is going to be \$2,248 and the 6" meter is going to be \$3,863. The Town does add on shipping/handling fees and will be approximately \$2,500 and the other one will be approximately \$4,000. That will cover the Town's purchasing, the programming..the administrative portion - getting it ordered, having it shipped to us (they bill us for that as well), setting it up in the system. Administrative cost is our mark up. Mr. Cox asked Stacey what the \$134 per month actually covered. Stacey said it is because you are not paying a minimum fee and you are not allotted a certain amount, you are paying per gallons. For example Vice Mayor Truitt is paying \$40 a month for 3,000 gallons, if you do the calculation on that, the per gallon

fee is more than \$3.00 per thousand gallons. Whereas, the commercial ones with more usage and the larger meters pay a monthly meter fee and whatever they use they pay for. If you use 3,000 gallons that month and then your meter charge, that is the difference. Kyle mentioned that is gallon for gallon. Stacey said they would paying exactly what we are paying to bring the water into our town. Mr. Cox said so the \$134 is basically an administrative fee.....Vice Mayor Truitt said it is a delivery fee...an availability fee. Kyle stated that money goes into a fund to repair the system. Stacey said everything that has to do with operating and maintaining that system and running a utility company. Councilman DeHaven asked if it also went to debt service. Stacey reported that it did. That is a major key point. Mayor Adams said if there is no more discussion or any questions to ask of the DVFD. We need to vote and summarize everything we have compromised on. Councilman DeHaven said he would suggest including in any motion the activity of meter reading before and after a paid function. Kyle agreed with Councilman DeHaven that is the only way you are going to have any basis of what is going on. Discussion took place as to how and when reading could be taken since sometimes they use water to wash off trucks. Councilman DeHaven asked if it is acceptable to take a closing meter reading. Do they have to come to Town Hall and get permission. Stacey stated to Mr. Cox that technically no one but water personnel are allowed in the pit. Mr. Cox and Mr. Hudson felt something could be worked out. Kyle mentioned that when DVFD was having an event, someone from the police department will probably be on duty. If there was a function on Saturday, Chief Toomey said, we would be more readily available than anyone else in town. It is a manual read. They would give Stacey the number and she would input it into the software. Chief Toomey stated that it would just be a matter of unlocking it and writing the number down. Stacey asked if she should summarize and someone make a motion on it. Mr. Cox then questioned the way the letter is written is the impact fees for the other area going to be the 5 EDU's on top of that too or are you going to adjust the other impact fees individually. Several Council member stated they would do-

Vice Mayor Truitt made a motion that 40% of the monthly water usage will be paid by the fire department at the current rate of water per 1,000 gallons. Special readings are to be done before and after functions whether they are fire related or paid events. The monthly water charges for the fire suppression system and the meter fee of the 4" meter is to be billed and paid by the DVFD and after a period of three years after the certificate of occupancy, the data will be discussed with the fire department and Council. The fire department will pay for 5 EDU's. seconded by Councilwoman Flowers and unanimously approved. Mayor Adams feels that what Mr. Cox would like to know now is what the Council has agreed to so far. From the August 13th letter, the DVFD will be paying for their costs associated with the inspections of the building by Town personne/professional fee and associated costs of inspection with building permit, fire protection and ambulance service impact fees are being waived, there was no waiver granted on the \$2,500 escrow legal review and waiver of all future fees of legal review. It is being paid and you will be refunded whatever is unused. Letter (e) the engineering fees, the site plan review escrow fees that you have paid currently and will currently and will continue to pay those are not to be waived. You will pay for actual costs incurred by the review of the plan or plans that are reviewed for URS. Mr. Cox asked do you have another set of reviews to do before construction or is that part of the building permit fees. Kyle said that if the County is doing the construction review, they will not. To date the department has paid out \$500 for fees for submissions and the waiver of that fee and any future fees for submissions was not waived. That \$500 was applicable. As far as the water --- Letter (c), Stacey believed that was just addressed with that compromise so she skipped that one. The December 8th letter was just a correction also. Stacey reported that the February letter was a request for the \$1,500 capital improvement...public service. The projected impact fees for capital improvement for governmental, police, administrative and code enforcement improvements (also known as public service impact fee) at \$1,500 per EDU is calculated at \$19,500, and the department

is requesting a waiver of this fee. Stacey asked for correction if she was wrong, but did not feel any decision was made on this. At this time, this is the only outstanding item. Mr. Cox stated that it was also tabled previously. Vice Mayor Truitt said and it will have to remain so. This is the public service impact fee that we put in our account for capital expenditures. They are asking for a waiver of that. Stacey has the original letters at the office, everything here is a copy. This the only outstanding issue.... the public service impact fee, the capital improvement for governmental, police, administrative and code enforcement improvements. Mayor Adams asked if they could table this until next month. That will be three weeks away. Mr. Cox stated that basically we know that we don't have to re-engineer the plots. Mayor Adams asked Stacey to be sure that was on the agenda for next month. The only letter left that we need to discuss is February 4, 2011. Stacey reported that it will be one formal, final report for the DVFD after the discussion on the Public Service Impact fees. At this time, Mr. Lin Hudson, President DVFD, thanked the town for discussion these matters with them and left. Council thanked him for attending

The second item under Old Business. Discussion on monies due to the town for water impact fees and delinquent water bills for those who have not connected to system. Status on connections to water system. We had 20 properties not connected to the Town of Dagsboro's water system. One being Joanne Bireley and Lucinda Hearn property, which we have just given an extension to. Now there are nineteen. Four of those nineteen have connected to the water system. We are now at fifteen. We have two which will be connected within the week. That leaves thirteen. There are three which are actively negotiating payment plans. There are now ten. One has been in and said they will be back. Another said they are going to work on it. Another said they did not own the property any longer, and it is in foreclosure, so here is the property preservation phone number and Stacey has been trying to contact them without success. One has been exempt. There are two who have not contacted the Town at all. One is the Verizon Delaware

building. Councilwoman asked if we did send Certified Letters and asked if the residents did not just pick them up. Stacey will contact Verizon Delaware ... She feels it may not be going to the correct department so she is going to try again. They have a private well. Someone was in the building and told Stacey to get in touch with the Real Estate Department. He did not have a number or contact. The other one is Richard Barazotto who has the small house by Chapel Crossing and is being used for storage, but they have not contacted us. Vice Mayor Truitt asked how many are still are not participating in any way. Stacey told Council there are three. How many have made an attempt to hook up. One has paid all of their fees, but can't connect until October. How does Council wish to pursue this? Vice Mayor Truitt said you should back bill if they are not going to connect until October. They are not in compliance with the Code, because they have not connected to the system. Stacey reported that there is another issue with the S & J Restaurant. He currently has no sewer in the facility, it is a vacant building, and everything is shut off. Vice Mayor Truitt feels we need to recoup the money from when he could have hooked up and used it. At least we can get that much. If it is an empty shell now, we will have to deal with that as a separate issue. From 2005 whenever the building would have been considered officially shut down, he owes that money. Mayor Adams said the building was officially shut down before the system was in place...no sewer or electricity in the building. That was about a month or two after he closed. He never contacted us, although he received twelve bills a month for six years. Attorney Witsil was asked what the legal issue is on the matter. Attorney Witsil reported that he was more deeply concerned about a possible amendment to the ordinance that requires connection and requires payment and Town's practice so far to grant waivers from that requirement. Thus far, he has heard of empty warehouse with no plumbing, a vacant house that has no intent of being occupied, vacant lots, vacant businesses, who have discontinued connection with the sewer system, the Barrazotto property, if that house is vacant, he could claim the same thing. The statute requires people to connect all dwelling units, houses or buildings, residential, commercial or industrial buildings or recreational structures situate in any area served by the public water system...they have to hook up.

Those same structures get a billing statement, whether or not they have a water connection. We have raised it from a vacant lot to a lot with a structure on it, Attorney Witsil stated. Now we are hearing there is a structure on it, but we don't have plumbing. I am not occupying it, and I am not connected to the sewer system. Of those people who have still not connected or paid, are there any other reasons. Vice Mayor Truitt said we are going to get some seasonal person saying we are only there 8 months of the year. The Verizon building has running water and a bathroom. Attorney Witsil asked if there were any more situations that we might be able to craft an ordinance for...are there any buildings that have no sewer connection. S & J had their sewer connection capped off and it has been verified. Attorney Witsil asked about the way the Bireley/Hearn property was taken care of...Mayor Adams said they did not have sewer either. Stacey mentioned that they were talking about Barrazotto's property. If they disconnect with the Sussex County Sewer system, we are not going to make them connect to the water system and we are not going to send them a bill? Kyle said the Bireley/Hearn property would be on septic. He also stated he is sure the Barrazotto property has Sussex County sewer. Stacey said it is just a warehouse/storage. Vice Mayor Truitt said he should be billed and pay. If he is not going to communicate, we must consider the best interests of the Town. Kyle stated that you need to be fair. Mayor Adams said we want to continue to pursue this. It would not be fair to the others for us not to pursue any more.

Correspondence: Mayor and Council, please allow discussions on the steps and actions needed to allow the DVFD to be eligible for a tax exempt rate for a loan on the new building. There are apparently two courses that can be taken. One is similar to the actions for the truck loan and the other is more legal than public. The public action that we would need support with at this time the DVFD has been researching the two courses of actions to identify the best overall path. As soon as the preferred course of action is identified and confirmed, the Town and their legal counsel would be contacted to start the process or advise that confirmation will not be needed. At this time, as the signed representative of the DVFD, I am asking for this to be accepted as correspondence from the DVFD. Buck Smith will

be involved in this process as he has with the truck loan. Thank you for acting upon this ...I can be reached at the below number for any questions. Mayor Adams has had this read into the correspondence tonight. Mr. Cox asked if he could be able to enter into open discussion with our lawyer. Stacey responded that there would be a fee paid from the legal escrow account. What we understand it would be the same as the truck deal...DVFD would be responsible for all legal fees. Mr. Cox is meeting with Mr. Smith tomorrow night, and he will know more tomorrow. Mayor Adams asked if Attorney Witsil would talk with their lawyers regarding this matter. He said he did not mind talking with Mr. Smith. Then report back to us after your conversation. Mr. Cox knew the resolution would have been written and he just wanted to get it started and find if we had permission to get Mr. Smith to speak with Attorney Witsil.

Stacey finished correspondence. We received the grant from the Division of Parks and Recreation - matching grant. The project was submitted for Phase III. The total project cost was \$67,820 with the Town and State splitting that cost. Which comes to \$33,910. Stacey has a copy of the letter and the project grant that needs to be signed. She asked Council if there were any questions. There were none.

The Town received a letter from Brooks Cahall to Representative John Atkins, stating that the construction estimate of fixing the ditch on Warrington Street...that we have been actively pursuing for some time. The Mayor has been in conversations with them and it is finally moving forward. Representative Atkins had put this money aside from the Community Transportation funds. This letter is requesting him to release those funds to begin this project. She has not received any further correspondence. The letter from Mr. Cahall was received on March 7, 2011. Mayor Adams asked what the status is on this...as the road is in terrible shape. They have been and looked it and see the need for repair and she does not know what is taking so long. This would be a good time to make the repair. Stacey will give Representative Atkins' office a call. Kyle mentioned that the money needs to be out by June 30, 2011.

We received information from the Census Bureau...our population is around 800 now, with 337 houses. These are estimated figures.

Council has a copy of the water and usage letter that we sent to the Town of Millsboro. The difference on the second page. Their page being the answer to our questions. There is some type of dilemma that we find ourselves in. Millsboro has to assume the readings are correct and we have to pay our bill. It is \$59,000 now. Can we pay off the water first and then the meter, Vice Mayor Truitt asked. Stacey said yes. They are aware that there are issues with the water meter, but they still have to bill us per our contract. Millsboro billed \$8,549 for the meter. Stacey wanted the Water Committee to know that there will be a meeting at 8:30 a.m. on April 7, 2011 at Town Hall. We will go from Town Hall to the inter-connection between Millsboro-Dagsboro. As long as Millsboro is available. The guy's name is Ray Horney from HIE Basically, in addition to meeting down there and telling him our problems, we are also looking for suggestions and estimates for the additional by-pass meter. Kyle stated it is to find out what solutions and suggestions that they have as a back up to be sure the meter is accurate.

Standing Committed Report:

Police Department: Chief Toomey said his report is self explanatory for the most part. Total arrests were almost 200, warnings were 81, criminal arrests were 25 (he will elaborate on that in a second). We had a total of 468 hours, 309 patrol hours, 72 ½ investigative hours, 86 ½ administrative hours. Since we have the third officer on, the business checks have jumped drastically as well as complaints. 805 business checks and 55 complaints. We had two collisions last month (February). If you look at Item 1 the highlights are that Officer Ober made several traffic stops that resulted in drug arrests. He arrested 3 individuals for a total of six charges, possession of marijuana and drug paraphernalia. He also had four arrests of locally wanted individuals that had 12 warrants from various agencies. The burglary that Chief Toomey had of jewelry from a private residence, he solved and made an arrest. That has gone

to court and there was about \$10,000 of jewelry taken from the residence and he has pled guilty and paid \$9,960 in restitution. The victim said there are personal items that can never be recovered. He pawned it at pawn shops and it was destroyed after a waiting period. Officer Ober last month interrupted a burglary in process at Heathman's Jewelry Store. The individual fled from him. He apprehended him and recovered 19 pieces of jewelry from the thief's pockets. There were 21 pieces taken in total and the other 2 were found in the path he took fleeing. All of the property was recovered there as well. Chief Toomey said that having the third officer has made a tremendous difference. Mayor Adams felt he was doing a great job. Chief Toomey mentioned that the 25 arrests that Officer Ober did and that there were 5 crimes in association with Heathman's Jewelry break in - criminal mischief, felon theft, burglary, resisting arrest. Mayor Adams told Chief Toomey if he wished he could go now that his report had been given.

Building Permits Issued:

There has been one building permit issued this month for a new house on Swamp Road. There were no certificate of occupancies, no certificate of compliances, no certificate of completions, no code violations, and 2 correspondence letters - One being Tim Elder for Change of Use process, and Craig Banks' exemption to the water connection to warehouse on Hazzard Street.

Approval of the Minutes of February 28, 2011:

Mayor Adams asked if anyone had any questions concerning the minutes or any corrections. A motion was made by Councilman DeHaven to approve the minutes as read, seconded by Councilwoman Flowers, and unanimously approved.

Approval of the Treasurer's Report:

The Treasurer's report was presented to the Council as they had not been included in their packet. The Treasurer's Report was read by Stacey and included in the Minutes of March 28, 2011. Vice Mayor Truitt made the motion to approve the Treasurer's

Report, seconded by Councilwoman Flowers, and unanimously approved.

Mayor Adams said she did not have anything to report from the Hazard Inspection Committee or Prince George's Chapel Cemetery Committee.

Town Property/Town Improvement (Consideration of purchasing additional banners): Mayor Adams reported the flags are in horrible condition...twisting in the wind, etc. and she had talked with Mr. Flowers and had him speak with Bethany Beach concerning their flags. They have different hardware on their poles. They had the same type as ours previously; however, they had to change to what they have now. We can do one of two things - We can buy the new hardware or we can keep the hardware that we have. The new flags are about \$88 per pole, the difference is that they have slits in them. That helps to keep them on the poles. Naturally, we would not replace all of them at once, but we would like to order a few more. She was hoping to have it all up...the Park Dedication is May 14th (Rain Date, if necessary is May 21st). Possibly they could be on the poles in front of the Park Area. Vice Mayor Truitt said that was a good idea.

Vice Mayor Truitt made a motion to exit the regular session at 10:35 p.m. and enter into Executive Session, seconded by Councilman DeHaven and unanimously approved.

Executive Session:

Vice Mayor Truitt made a motion to adjourn from Executive Session and re-enter Regular Session at 11:01, seconded by Councilman DeHaven and unanimously approved.

There were no items to be voted on.

At 1:02 a.m. Vice Mayor Truitt made a motion to adjourn the meeting, seconded by Councilman DeHaven, and unanimously approved.

Respectfully submitted,

Rae Long
Administrative Assistant

RL/rl

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.

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