

MINUTES
MEETING OF APRIL 27, 2009
TOWN OF DAGSBORO
Bethel Center – 28311 Clayton Street

The meeting was called to order by Mayor Wayne Baker at 7:00 p.m.. The following were in attendance: Vice Mayor Patti Adams, Councilwoman Cathy Flowers, Councilman Terry Hearn and Councilman Norwood Truitt; Kyle Gulbranson, Town Planner; Rob Witsil, Town Attorney; Marj Eckerd, Chairperson P & Z, and other interested parties as shown on the sign in sheet.

Public Hearing and Vote on an ordinance adopting the Town of Dagsboro Comprehensive Plan Updates is the first item on the Agenda this evening. Kyle stated that this is a final ordinance to adopt the plan so that it can be sent to the State to be certified. There were two minor revisions that were asked by the State to take place: the total maximum of daily load and pollution control strategies that DNREC has adopted...that was added to the plan; the other was giving more detailed information about the numbers of people who attended the public workshops and the survey we had. These revisions have been made and Kyle said you had received copies of those two months ago at your meeting. This is just a final adoption of the plan after tonight, it will be sent to the State, get the Governor's signature and you will be finished with that whole process. A question was asked if the new annexation with the Hearn/Bireley property be shown on our map. Kyle stated the new annexation area will be shown. The actual annexation itself will not be. Technically, your Comprehensive Plan has to be approved by the Town Council before the annexation can take place. It is just a matter of linguistics. Mayor Baker asked if Council had any questions....there were no questions. Mayor Baker asked if there were any questions from the audience....there were no questions. Mayor Baker requested a motion to accept or deny this ordinance adopting the Town of Dagsboro Comprehensive Plan. Upon motion by Vice Mayor Adams adopting this Comprehensive Plan, seconded by Councilwoman Flowers, and unanimously approved, the motion was passed. Additional note...Mayor Baker said he had contacted DNREC about giving us a baseline on the condition of the ditches in town and has received no response after contacting them about 6 times.

The second item on the Agenda is a resolution approving the annexation into the Town of Dagsboro of 18.82 acres of land identified as Sussex County Tax Parcel # 2-3-11.00-3.00, being the lands of Lucinda C. Hearn and Joanne C. Bireley, co-executrices of the estate of Alvin A. Campbell, pursuant to testamentary letters issued May 24, 2007 and Charles Bireley and Joanne Bireley, husband and wife, as tenants by entirety, as to 50% interest and Terry Hearn and Lucinda C. Hearn, husband and wife as tenants by the entirety, as to 50% interest and as tenants in common, as to the whole. At this time, Councilman Hearn excused himself from the discussion. Mayor Baker said the resolution portion must be done first and the ordinance second. Each one must be done individually. Attorney Witsil said that the Council had accepted an application for the annexation and pursuant to your

charter, you have gone thru each step of the phase of accepting, investigating, having the committee return a recommendation in favor of the annexation. This is the final step to have a public hearing...to hear comments either in favor of or in opposition to the proposed annexation. If you do so, I would ask that you find that it is in accordance with the guidelines and recommendations that Comprehensive Development Plan and update that were just approved and you find that it is a reasonable resolution and promotes the health safety and welfare of the residents of the town. Mayor Baker asked if anyone had any questions or comments they would like to make in favor of the application. Attorney Witsil asked that may we presume that you are in favor of this application and you wish to be part of the Town to share in the benefits the Town has to offer to become taxpayers of the Town as well as residents...that you have certain advantages as well as the Town's annexation. Attorney Witsil reported to Mayor Baker that in support of the application there would be the obvious advantage to the Town of having increased tax basis, having a contiguous property being added to the Town boundaries (those are the usual reasons for towns to accept properties into their jurisdiction). Mayor Baker asked if someone would like to close the Public Hearing. Vice Mayor Adams made the motion to close the Public Hearing, Councilwoman Flowers seconded the motion and unanimously approved. Councilwoman Flowers made a motion to accept the resolution approving the annexation into the Town of Dagsboro for Sussex County Tax Parcel 2-33-11.00-3.00, seconded by Councilman Truitt. The motion was approved with 4 members in favor and 0 opposed. Councilman Hearn abstained from voting.

Attorney Witsil said the next step was to amend the zoning map of the Town of Dagsboro to R-Residential District from Sussex County Designated Zoning of A-r Agricultural Residential for a certain 18.82 acre parcel of land identified as Sussex County Tax Parcel 2-33-11.00-3.00, the lowest and similar denomination of zoning classification (this is the classification the applicants have indicated they wish to seek)...accordingly, I have prepared an ordinance for you to entertain and approve after taking comments from the Public as to the zoning classification R-1 for the annexed property. I would also presume, if I can speak for the Bireley/Hearn's that they would like to have this as an R- Residential district. No other classification is sought by them. They are satisfied with that and that they would promote the argument that the Comprehensive Development Plan is satisfied not only by the annexation but also by the rezoning of this property to a similar classification of R-Residential. Attorney Witsil asked Mrs. Hearn and Mrs. Bireley if this was a correct assumption. He asked if he spoke properly on their behalf. The answer was Yes, for the record. Attorney Witsil asked if there was anyone else who cared to speak in favor or opposition of the annexation. Mayor Baker asked for a motion to close the Public Hearing for the ordinance amending the zoning map. Motion was made by Vice Mayor Adams, seconded by Councilwoman Flowers, and unanimously approved. Mayor Baker asked for a motion to either accept or deny the ordinance amending the zoning map. Councilman Truitt made a motion to accept the ordinance amending the zoning map to R-Residential from Sussex County Designated Zoning of A-R Agricultural Residential on the parcel in

question, seconded by Vice Mayor Adams. The vote carried 4 in favor, 0 opposed. Councilman Hearn abstained from voting. Mayor Baker said Welcome to Dagsboro.... and can we place a Welcome to Dagsboro sign on your property. The owners said it would be okay with them. Mayor Baker thanked them for that and said we will be getting up with some member of the family to designate a location.

Mayor Baker permitted Attorney Witsil to continue with the ordinance to amend the municipal code of the Town of Dagsboro, Delaware, Section 34-8 entitled "Powers of the Planning & Zoning Commission" to delete the power to review conditional uses, to amend Sections 275-8, 275-14I, 275-15 K, 275-16 I, 275-17 H, 275 18G, 275-19O, 275-20F, 275-40, 275-47, 275-63, 276-1(B) (1), 277-2, 277-5, 277-16 to delete conditional uses and all references thereto and to amend sections 275-14C, 275-15B, 275-16B, 275-17B, 275-18A, 275-19A and 275-20B to provide for the placement of temporary structures for shelters for conducting construction business for a period not to exceed eighteen (18) months in all zoning districts. This is an ordinance which has culminated over the past year, after many discussions as to whether conditional uses should be amended, restricted, enlarged to specific conditional uses or as in this draft to be deleted in its entirety. For those of you in the public audience who may not be familiar with this...conditional uses are those uses which a government body can grant generally even though the zoning code does not specifically provide for them. Our code provided historically for a one year use for conditional uses if the applicant can prove that the conditional use was reasonable and necessary to benefit the health and welfare of the town and the applicant. There are some reasons to eliminate that. Those reasons as voiced in previous hearings are that they give too broad a discretion to the Town Council to grant applications; that once an application was granted it is difficult to rescind it; and the category of uses is not enumerated and could be too broad. For the reasons set forth in the wherefore clauses of this ordinance, the Town Council has proposed that all conditional uses be eliminated. The one conditional use that the Planning and Zoning Commission felt was appropriate to continue was that conditional use for temporary structures or shelters for the construction business for a period not to exceed eighteen (18) months in duration. The location of the structure has been reorganized and addressed in both sections identified in the ordinances 275-14C, 15 B, 16B, 17B, 18A, 19A and 20B to allow those structures in the various districts in the Town's Zoning Code. It is a lengthy ordinance, but the main phrases are repeated throughout, first that conditional uses are deleted and then the language related to temporary structures for a period not to exceed 18 months. The reason for the length of the ordinance is that they are inserted in each one of the various zoning classifications of the code. Attorney Witsil stated that was his summary, did the Mayor or the Council have any questions. Mayor Baker asked if anyone had anything to say in favor or against this ordinance. Nothing reported, Mayor Baker asked for a motion to close the Public Hearing. Councilman Hearn said this is temporary structures or shelters for a period not to exceed 18 months while construction on the premises is in process for the purpose of conducting construction business and the primary permitted use of the premises. In the past we have had a construction trailer on site of Highlands of Pepper's Creek...it was

there by conditional use. We now have a sales office in the Woodland's of Pepper's Creek realizing that is now Town Center then a Commercial Business is O.K. there. We have a pending development out beside the old high school (Village of Pepper's Creek)...if they want to put a sales office out there as the Woodland's has done, it is a residential area. A residential area does not permit a Commercial enterprise, such as a sales office. How would we deal with that? Attorney Witsil answered Councilman Hearn's question stating that the ordinance before us grants as an accessory use which is a permitted use, an applicant would not have to come before us for that temporary structure for the purpose of conducting construction business. This does not address sales. This shelter and the shelter that was the subject of the prior ordinance which was a conditional use, doesn't relate to sales. If your question is what zoning vehicle does an owner use now to have a sales office (as other construction companies have done....Councilman Hearn asked). Admittedly they are in a different zone, but that would arise because we also have the Estuary of Pepper's Creek (which is in residential zoning) and the development which will be next to the Armory (Vine's Creek Village). Attorney Witsil said the easy answer would be to say that we could amend this provision....if you wanted that to be a permitted accessory use to say for construction business and/or sales office. Councilman Hearn said and then we would affect the limit of 18 months because any development of any size will take more than 18 months to sell all of the lots. Councilman Truitt asked how this was handled now... "a conditional use" was the answer. Vice Mayor Adams asked, "where is the sales office at the Woodlands located now?" It is the first unit you would come to. Vice Mayor Adams said she recalled going over this at another meeting. She thought it was agreed that the developer would place a sales office in a unit. Councilwoman Flowers and Councilman Truitt said it seems to be a common practice to use a unit as a sales office. They agreed that everyone would like to look at a model, rather than go into a trailer. However, they are not required to presently. Councilman Hearn said that was still a business in a residential zoning. The continuation depends on the approval of Council after a period of another year stated Councilman Truitt. That was for conditional uses...but you are doing away with them. Councilman Hearn said it is included in this proposed (18 months....but for good causes, approved by Town Council may extend the time of placement not to exceed one year)....that gives them a total of 28 months. The development near the old high school is for 87 lots....Councilman Hearn does not foresee that development being done in 2 years. Kyle mentioned that he felt the developer anticipated selling lots and people could build their own houses. Considerable discussion occurred on this matter. Attorney Witsil said in the process of doing this draft, he was directed to include one word in the language of what is primarily before you now. That is before the word *business* for the purposes of conducting construction business, I inserted for the purpose of the construction business (the old code section which was subject to the conditional use when temporary commercial structures or shelters while construction on the premises is in progress for the purpose of conducting business related to the primary permitted use on the premises, which could be obviously either the construction business itself or sales of units. Attorney Witsil said his suggestion or a possibility for you might be that Council goes back to the original

language and delete the word construction and provide the opportunity (if you think it is appropriate) for that entity to come back and apply for an extension. Councilman Hearn said ...they can apply for an extension for a year now, correct? Attorney Witsil stated No.....however, Councilman Hearn corrected himself and was speaking as under this draft they could come back and apply for another year. Take the word construction out, you are still limited to 28 months to do business. Kyle stated that is for a temporary structure and you would hope that after 28 months they would have some type of a permanent model in place. Councilman Hearn said that even if it is a permanent model...it is a business. Kyle mentioned that they are talking about a temporary structure....Councilman Hearn is saying that you will have a sales business operating in a residential neighborhood, which is not in our Code. Mayor Baker said the business itself would not be in compliance. The temporary structure takes care of the construction trailer itself. Vice Mayor Adams felt they would have a unit up where they could put the sales office in before 3 years is up. Kyle mentioned that most towns handle the residential sales office in a community as an accessory to the residential uses. You have to sell the homes to be able to be in them and that is treated as an accessory use. It is not generally treated as a commercial entity itself. Residential sales portion is considered an accessory use to the residential use of the property, if it is in a permanent structure. You need something to deal with the temporary trailer situation. It is an unwritten rule. Typically, if the sales office is going to be in a home it is treated as an accessory use, it is not really regulated. Attorney Witsil asked if this satisfied Council's concerns. The general language would be temporary structures or shelters or permanent units within a development.... (it is kind of a vague term, but provides flexibility) for a period not to exceed 18 months while construction on the premises. Progress for the purpose of conducting construction related business and/or sales to the primary permitted use on the premises. Mayor Baker felt we are talking of two different issues. He feels that for the 18 months, if the construction trailer was allowed, and if it were a construction trailer/sales office, that within that 18 month period the developer would have to have a model up and available to use as a sales unit. I do not know if that still addresses the concern. You have a business sales unit in a residential zoning area. Vice Mayor Adams said there are a lot of businesses on Main Street....Councilman Hearn said, but that is Town Center and is permitted. She did not see where this is such an issue. If they built a place and put a sales office in it, we allow them to do it. They agreed that someone could start a business in a residential area...you need to be consistent. Attorney Witsil said if the last sentence were changed to say for good cause as approved by Town Council the time and placement may be extended for periods not to exceed one year. You would have annual control over it. That is the only area it would apply to. Attorney Witsil stated may be extended for a period approved by Town Council annually not to exceed one year. Councilman Hearn said wherever it seems to be the clearest. Mayor Baker was not even sure it should be put in...once you put it in, it is there. If you don't put it in it leaves it up to the Council the opportunity to make that exception should they choose to do it. They probably could, even if they chose to have some type of Public Hearing or Public Forum. Mayor Baker did not feel it would need to say extended at all...it is for 18 months. If that person comes back

and says here are the conditions...circumstances, would you please extend it? That would leave it up to the Council. Attorney Witsil felt you should have some authority to extend and it should be clarified as it might be misinterpreted. Councilwoman Flowers stated that Council's purpose is that they do not want a temporary building for years and years. We don't want that trailer sitting there forever. We want them to be in a model home. Kyle stated that a construction trailer may have to be on site for a long period of time. If General's Green moves forward that is going to be an 8 to 10 year build out. They would be under construction for a long period of time. They would have to come back to Council and be heard again, Vice Mayor Adams stated. General's Green and The Highlands are going to be phase projects. They might start out with construction at one location and come back to you and have to move it. Kyle stated that in a large development you may have several contractors working on a project with construction trailers. Attorney Witsil asked if the plural designation of the shelters or structures bother you. We have not specified the number. This is an accessory use and would not need to come before you at the outset for a permit. In the conditional use format, you had the authority to listen to the request and to fine tune it as to how you felt was appropriate. Now it will be an accessory use. It has been drafted in the plural, which means that you may not have control over how many. If you said a temporary structure (Attorney Witsil asked if Kyle would lend his assistance), do they require more than one. Kyle said on smaller projects there may only be one; however, larger projects may have a general contractor in one, a plumbing contractor in another. When Bear Trap Dunes was built ... it was about a 600 unit project there were multiple contractors on site and several had their own construction trailer. Councilman Hearn asked if the sales model could be taken care of under accessory use under residential zoning. Kyle was thinking another alternative might be to add some language under general provisions stating that residential sales may take place in permanent structures in all districts. Councilman Hearn said it might eliminate the sales problem, but not the time span per construction trailer on the larger projects. Kyle mentioned that the Town has additional requirements for Town Houses and Apartments and things of that nature in your general provisions. Councilman Hearn agreed with something which had been previously mentioned that coming back annually would give Council some degree of control if things were getting out of hand. The purpose here, Attorney Witsil said was to make this as much of a conditional use approval as is possible, but still have it be an accessory use. If we keep it in the singular on the first line, temporary structure or shelter for a permanent unit in a development for a period not to exceed 18 months while construction and/or sales on the premises is in progress for the purpose of conducting construction business and/or sales relating to the primary permitted use on the premises. The last sentence would be....for good cause as approved by the Town Council, the number of structures and the time of placement may be determined. If you are just getting one....it is automatic, it is an accessory use for 18 months....for a longer period of time you have to come back. If you want more than one you have to come to Council and ask for more than one. Councilman Hearn asked about the time period. Attorney Witsil said that is for you to determine. It might be appropriate to leave it blank – because if they say it will

be a 3 year project and you feel it is appropriate that they have a 3 year time period ...why make them come back every year. If it is a reasonable argument to begin with, it is going to be a long-term project. Mayor Baker asked Kyle...what if we did tie the use of the trailer to the construction agreement as far as addressing it at the pre-construction meeting. Kyle said that could be done as well. You could reiterate in the pre-construction meeting that there are stipulations on how long the structure can be there. This would put them on notice. Councilman Hearn felt the Highlands got 2 extensions. They were there for 3 ½ years. Attorney Witsil said the following changes would apply in each one of the sections inserted. A temporary structure or shelter or a permanent unit within a development for a period not to exceed 18 months while construction and/or sales on the premises is in progress for the purpose of conducting construction business and/or sales related to the primary permitted use on the premises. Change the last sentence to read – for good cause as approved by the Town Council the number of structures or units and the time of placement may be extended or possibly enlarged. Kyle questioned if it might just be simpler to list as an accessory use sales offices within permanent units. We could add temporary structures, shelters or permanent units within a development....construction or sales and/or model unit. Attorney Witsil said there is one other item which we need to address In reviewing this, Attorney Witsil took one last look at 275-46 - subsection D previously had a six (6) month maximum time period to it. D – temporary commercial structures or shelters while construction on the premises is in progress for the purpose of conducting business on the premises for a period not to exceed six (6) months. Attorney Witsil said if Council approves this ordinance, he asks that you also pass it with the direction to delete 275-46 D. Attorney Witsil asked if Council wished to hear it again....and they did. Inserted into each section would be a) temporary structure or shelter or a permanent unit within a development for a period not to exceed 18 months while construction and/or sales for model units on the premises is in progress for the purpose of conducting construction business and/or sales and/or model units related to the primary permitted use on the premises. The next sentence would remain the same. The last sentence would be for good cause as approved by the Town Council - the number of structures or permanent units and the time of placement may be enlarged. Delete from 275-46 D the reference to - for a period not to exceed six (6) months. Mayor Baker said ...what we have done is made the accessory use for sales part of the ordinance so that it is acceptable for any project to have a sales unit, or construction office or a model home (one not more)...commercial or residential for 18 months. If they want more than one for longer time period they have to come to the Council for approval. Mayor Baker said Council could approve what Attorney Witsil had written (since Council has not changed the intent of the ordinance). Attorney Witsil said he felt the Public has had enough notice that you are addressing this issue and reasonable amendments have been made and Council could vote on it tonight if you wish. Councilman Truitt made a motion to close the Public Hearing, seconded by Vice Mayor Adams, unanimously approved. There being no comment from the Public the motion to close the Public Hearing was unanimously approved. It was questioned if a plumber and an electrician wanted a trailer there to put their stuff in rather than pull it around. Mayor Baker said it

would up to the size of the project and the duration. That is normally what happens there could be 5 contractors on the job at one time – plumbers, carpenters, electricians, street guys, gas guys....etc. Technically the project gets one. If they want more, they would have to come to the Town. Mayor Baker said that most of these people would want to secure their own items so they would have to come to the Town to get more. Mayor Baker asked if anyone wanted to accept the ordinance with the amended language that Attorney Witsil has inserted through the discussion we have had tonight. Councilwoman Flowers made the motion to accept the ordinance with the amended language and delete 275-46D as Attorney Witsil read, seconded by Vice Mayor Adams. All members were in favor. Motion was carried.

Presentation of Building Permits Issued: Stacey Long, Town Clerk, reported that there were no building permits until this morning. Blossom's Flower shop pulled a demo permit for the existing barn behind the house and pulled a building permit for a 16 x 24 shed in its place.

Planning and Zoning Report and Vote on the Following Items:

Marj Eckerd, Chairperson of the P & Z reported that the Delaware Wildlife Action Plan has been tabled until further information is obtained.

We discussed Change of Use which is a very intricate part of the code, and the Dagsboro Code needs to be less ambiguous and have a definite different system of building permits and application and certificate of occupancy. The P & Z would like in Section 275-58 under certificate of occupancy to have deleted the section that says applied for at the time of application for a building permit. Mrs. Eckerd stated that the subject came up because of the change of use from residential (turning a private residence into a business). Kyle stated that if no building permit is needed they should apply for a certificate of occupancy for the new business. Attorney Witsil said what might be confusing or misinterpreting that does not say when a certificate of occupancy is issued at the time of the building permit....it says that the certificate of occupancy is applied for at the time the building permit is applied for. They could both be in the works...the building official would not issue a certificate of occupancy until all of the construction is done. Kyle said the concern is that if there is a change of use in a building—if this building was changed into a restaurant (hypothetically, they do not need a building permit to do that) but they need a Certificate of Occupancy. If you don't need a building permit, yet you are changing the use--- a Certificate of Occupancy is what you need. Kyle stated the concern that the way this is worded that unless a Building Permit is necessary that there isn't a need for the Certificate of Occupancy. Attorney Witsil said code states.... applied for at the time of application of building permit. Mrs. Eckerd stated that there needs to be an inspection when a change of use of a residential home is going to be used for a Church for example, where the public is involved. We need to make sure that building is up to code. If you think that a building permit wasn't needed, then the certificate of occupancy would not be needed. Attorney Witsil did not feel that there was any interpretation that could lead to that

confusion. Councilman Hearn had a different concern in reading it....that is this implies when you apply for a building permit, you are applying for a certificate of occupancy. Attorney Witsil said it is easy to correct if there is a perception that it is a problem. Kyle stated the concern is that if there is an existing building that is being converted for another use, if there are no external changes to the building (any of the renovations that would be done would be internal) and a building permit was not necessary or required, the Town needs some mechanism to assure that if the change of use doesn't require a site plan, the Town has no mechanism to make sure the use is meeting all the Town's regulations and requirements without a Certificate of Occupancy being issued. Attorney Witsil said that all you would want is to have the words "applied for at the time of application for building permit deleted". He felt this would take away anyone's possible misinterpretation.

Attorney Witsil asked if we could take this issue one at a time...does the Council want me to draft an ordinance to delete those words? Council was not sure....Attorney Witsil said it was a possible remedy. Mayor Baker felt it needed more time to be studied with and without that wording, as we do not want unintended circumstances from its deletion. Mrs. Eckerd said P & Z is concerned about change of use in Town Center with zoning coming into being. Also P & Z are also looking at a "change of use" document from a town in North Carolina. Marge did not feel that our Code said "change of use" ordinance that went into detail as to what it is and how to proceed with it. Possibly we should review this some more and work with Council on it. Mayor Baker said we need to look at it, get some things in writing and see what we end up with as far as language that would work. It may be a separate ordinance specifically for change of use. Kyle said you may wish to look at the site plan requirements as to when that kicks in and when it is needed. Mayor Baker said his original concern is the fact that he wants every building in Town to be safe. I think that the liabilities need to be taken care of by the property owner, so does the Town. I do not want to put such a financial burden on every property that needs a change of use if...we are looking for a site plan review and it will cost \$5,000 up front for a site plan review and then other regulations to be added in...you are looking at \$10,000 to \$15,000 to have a change of use on a house that they may want to put a business in, which may not generate that much revenue. Attorney Witsil questioned if the P & Z did not feel the sentence was not strict or regulatory enough. It shall be the duty of the Code Enforcement Officer to issue a Certificate of Occupancy only when he is satisfied the structure or part of the structure and the proposed use conform to this chapter and to all other applicable codes and ordinances of the Town. Attorney Witsil stated that was in the Code...Kyle said he felt the P & Z wanted a mechanism to trigger a Certificate of Occupancy if no building permit is being applied for. Mrs. Eckerd asked when do you get a Building Permit and when do you get a Certificate of Occupancy? Kyle stated the thinking was that the way the language was drafted in 275-58 that if the Building Permit was not necessary the Building Permit triggered the Certificate of Occupancy. Councilman Hearn said the Code Enforcement Officer shall receive written notification that the structure conforms to this Chapter and all other applicable codes or the ordinance. Councilman Hearn said it is saying that the person

occupying the building has to notify the Code Enforcement Officer in writing when it is finished and when he wishes to occupy it. Attorney Witsil hypothesized if he had a shop in Town in the Town Center zoned properly for antique sales and he sold the building to Kyle who wanted to use it for Tupperware sales (different type of business – using the same shelves, no changes were required – the only difference the Town would notice is that Kyle would apply for a Business License for General Retail Sales the same as his). Attorney Witsil said he wondered if that would trigger a code review. Mrs. Eckerd stated that it would not, but what if the building was to be used as a restaurant. Attorney Witsil said No, because the restaurant would have to conform to all other provisions in the ordinance concerning restaurants. Practically speaking the restaurant will still need a Building Permit to change from sales to a restaurant...installation of restaurant items would have to be installed, changes to make, bathrooms to install, EDU's, all sorts of regulatory light that flash there. Councilman Hearn said he thought the first example was to change to a restaurant....you could start a restaurant in this building (Bethel Center) (without any expense at all) just put in some tables, chairs, kitchen. You would still have to comply with all of the requirements as far as sanitation is concerned. There would have to be a license to do this. Bethel Center was mentioned as having dinners there on Wednesday. Mayor Baker said they should have a license if it went through to operate food services out of this building. The Town would have to offer a Certificate of Occupancy. Eventually getting back to enforcement, building official has the authority to require anybody to show proof that all of the code sections are met. Other than deleting that one clause, you have your zoning code that allows certain groups of uses within the district...a business license must be applied for, a building permit (Attorney Witsil asked if there was anything that had happened that he was not aware of that may have triggered this). Mrs. Eckerd said his concern was mainly a Church going into an existing building in Town Center, which P & Z feels more than just a building permit, is needed, because it going to have the public in it....the beams might collapse or the roof might fall in on them. Somehow that is how we got into this. Kyle said he did not think they were even issued a building permit ...were they? No....that is sort of the missing link. There needs to be a mechanism to catch things like that, that do not need a building permit Councilman Hearn stated there is also a part of the ordinance that deals with report to the tax assessors. Mrs. Eckerd said she thought the P & Z would look at the information on change of use from the North Carolina Town and how they implemented the building permit and the certificate of occupancy. We will try to put together something for the Council to look at. Kyle said his concern is making sure that they are meeting the building code and the fire marshal's standards. Those are the issues that the Town needs to be concerned with. Vice Mayor Adams did feel these were concerns we need to look at...a Church does not require the same thing a business does; therefore, we can have a Church with people sitting in it in jeopardy. Kyle mentioned that is the thing.....a Church is a place of public assembly which needs to be approved by the fire marshal. How do you make them have to do that? We need to gather more information and make sure we are addressing the right issue and not doing something that is incorrect. If the intent is to have Churches under review for places of public assembly and require a yearly

permit that is what we will have to do. He said we want to be careful, because if a Church is in existence the fire marshal said I will require you to put in sprinkler systems, fire exits, and other things that go with it...it will be placing a burden on that building of several thousand dollars; therefore, we really need to think this through to get the desired results. P & Z feels this is an important issue which needs to be addressed right away.

Mrs. Eckerd said that the P & Z had voted to deny the preliminary approval for the Highlands of Pepper Creek, based on height restrictions, no construction entrance on the site, and no plan for their tree surveys. It was an official denial. Mayor Baker asked if that triggered the height of the buildings...35'. Mayor Baker felt they could address the building heights now because we have a discrepancy between the ordinance and what the definition is. If we look at the definition of height, I think we will just change from median height to the maximum height of the roof...not to include vents or chimneys ...that should probably take care of it. Attorney Witsil said he took the liberty of making a copy of the Sussex County Code for height and it doesn't refer to the center line. It defines height as the vertical distance of a building measured from a point where the center line of the building to be erected intersects with the center line of the street. He felt that is terribly confusing. If something is higher than the center line of the building if you had a pelvic extending above the center line of the building that would not be caught by this. Therefore, I would be pleased to draft something that reflects the highest point of the building cannot be above 35', excluding chimney's and vent pipes. It should be measured at a distance 5 feet parallel to the footer. Councilman Hearn said the reason reference to the street center line and so on was to establish a grade from which to take this height Councilman Hearn mentioned that there is a 4 foot drop from the Street to his house. Does he get to make his house 39 feet. He stated that you need some type of alienation as to where you are going to take your height from. If you just say the grade of the lot that is not necessarily consistent. If we use the Mayor's suggestion...distance measured 5 feet parallel from the footer of a structure. Then we would have to have a mean determination of all the footers of the structure. Mayor Baker said the footer is going to be the same height. Kyle said what if you are on a slope, Attorney Witsil said that is not quite true. The footer would be level unless you have a stepped footer. The footer is going to be the same height in this area. What are going to step is the bricks or the blocks. Attorney Witsil said what we need to do is to determine what the base grade is. Kyle said he felt if they use the footer you should be O.K. as it will be a level surface. Attorney Witsil asked about the footer (it is the base of the foundation). The foundation should be level...but you can't go from the foundation because you could put in a 10 block foundationthe footer is going to be the same height. It will roughly be 18" below grade level because that is the frost line. It will be 35' to the highest point and this has to have some discretion to finished grade, but it must be measured from a point (if you put 5 feet from the footer that 12" has to be at the discretion of the building code officer). In Dagsboro there are very few dry basements. Councilman Hearn stated that if you take the height of the finished grade you are below the peak of the building, then you will have 35' from the finished grade, even if the finished

grade may vary from that point. Attorney Witsil said that is why some codes say from the center line of the street on which the building will face. Marge reported that this problem came up with the Highlands. Kyle reported that the Highlands were saying the definition of building height is the curb presently. It talks about 35' to the vertical mid-point of the roof. Kyle felt the structures are around 40'. Part of the problem is that we have 3 definitions for height in the code – building height definition, height definition and a restriction in the district. Mayor Baker stated that the most restrictive code at this point is the one that the developer's have to abide by. The only thing before us now is the changing of the language of the definition. Mrs. Eckerd asked Attorney Witsil....What do we say to the Highlands. It seems that the definition of height that was amended on 2-23-2004 is that older than the definition of building height which is Page 275. Height is the applicable definition which should be on everyone's Page 275-7 stated Attorney Witsil. Attorney Witsil felt it was the original definition, but he did not know, which was superseded by the Amendment to height on Page 275-7. Kyle interjected that he recalled it was raised forty-two feet, but this Council took it back down to 35 feet. Councilman Hearn asked Attorney Witsil -- when there is a conflict between the definition and an ordinance which is carried.....Attorney Witsil answered --- the more restrictive. 275-15 C (high density residential district). Kyle felt the definition was updated at that time also. Mrs. Eckerd stated that when (the Highlands) come before us in May, I hope to see the changes on their site plan for 35 feet. Councilman Hearn said the same notation under 275-14 D Attorney Witsil said it is in each of the zoning sections. Mayor Baker and Attorney Witsil agreed that the definition of height should have been changed at that time to reflect the height requirement in each section. Mrs. Eckerd asked what P & Z should say when they come before us in May....Mayor Baker answered 35 feet. Attorney Witsil stated that pursuant to their HR Density... 275-15 C. We need to have a motion for next month's Agenda to have a Public Hearing on the definition of height and an ordinance drafted for the same. Prior to doing this, we will check to see if it was just overlooked before Attorney Witsil drafts any paperwork. There could be a motion tonight, but not act upon it. It should be on June's Agenda due to the Memorial Holiday stated Councilwoman Flowers. Mayor Baker said he would not be in attendance, Vice Mayor Adams will be in charge at the May Meeting. Another council member will be on vacation. There will be three members present.....The May meeting will be May 18 at 7 p.m. Councilwoman Flowers made a motion to set a Public Hearing for the June Meeting to correct the definition of height, seconded by Councilman Truitt, and unanimously passed.

Mrs. Eckerd reported that if Savannah Square asked to change their Comprehensive Sign Plan to accommodate Dollar General coming in for six stores and they will be an anchor store. Savannah Square's Comprehensive Sign Plan states that the sign shall consist of individual channel letters with a maximum height of 32" and depth of 5 1/2". Dollar General came in with a plan for letters that are 4" higher ...which is 36". It was P & Z's contention that it would be a fairness issue as all of the other stores within Savannah Square had to met the Comprehensive Sign Plan that was designed by Savannah Square's owner. A motion was made and we

recommend that Savannah Square's Comprehensive Sign Plan is going to stay 32". We do not recommend any variance in the heights. Mayor Baker said he had informed the owner of Savannah Square of your decision and he came back with a plan at 30" which puts him in his guidelines....so it is a done deal. Mayor Baker said he signed for 30" so he could tell Dollar General that 30" was O.K.

Mrs. Eckerd reported that WBOC is very interested in what Dagsboro is going to do about the Delaware Wildlife Action Plan. As soon as we have one, they would like us to call them.

Mayor Baker mentioned that under New Business he would like to skip #1 and go to #2. The Highland's of Pepper's Creek – Discussion regarding Final Plan Approval that was given on 6/25/07 and validity of approval. When we approved the Final Site Plan for the Highland's of Pepper's Creek there were 2 conditions which they had to meet. One was the pile of rocks by the railroad tracks had to be reduced to a height not greater than 7 feet and they did that. The second condition was that they give us a number for the bonding of the storm water management system within a reasonable time frame. That has not yet been done....we have contacted them on numerous occasions approximately 4 or 5 times. Mayor Baker's question to Rob is do they in fact have a final site plan, because they are now wishing to change it and I want to make sure that they are changing something they already have or don't have. I would like Council's thoughts on this. Mrs. Eckerd said she was confused....they are coming in with a new site plan for approval....but if this doesn't go through can they go back to the old site plan, if it is still valid....as they have not met the conditions of the plan. That approval was conditionedthe question is do they meet the conditions of approval. The condition was a reasonable time. All they have to do is give us a number. Because we do not have a time frame for that, we can continue to determine that their approval is not complete....it is not denied, but it is still not complete....they do not have approval. Mrs. Eckerd said but now they have this second plan in motion and if they want to null and void this second plan, could they just pick up the old plan with a remedy for the condition. Attorney Witsil asked if they trying to amend the plan. This is an entirely new application. They want to know if they may fall back to the old one should they decide to scrap the new one. Attorney Witsil said as long as they meet the conditions that were set. Mayor Baker's question was the wording "a reasonable amount of time"....if we produce the four or five e mails that we have sent with no response....Stacey reported that it has been 2 years (June of 2007 – when it was approved...the plan was generated by the engineers in June 6, 2006). Attorney Witsil asked if Mayor Baker was asking him to make a legal determination. Mayor Baker is asking him for an opinion. Attorney Witsil said if you are going to determine that the final site plan approval or approval subject to the conditions are now null and void as an unreasonable period of time has lapsed, I feel we should write a letter to the applicant stating that such and such a time either next month or the month after meeting the Council will make a decision based upon their lack of response to Town's request for information regarding cost of the roads for bonding purposes. They should be advised that this may cause their application to become invalid.

Attorney Witsil did not think it appropriate to do it at this meeting; however, he felt you have the authority to state that the failure to comply with the condition is now being considered and will be a determination of the Town Council at the specific dates. They may either respond, apply or provide the information or whatever. Councilman Truitt felt the June meeting (which will be two years) will be the appropriate meeting to consider it. Attorney Witsil said to remember our sun setting provisions are five years for our final site plan. We don't have a time specific for a compliance with a condition like that. Mayor Baker said perhaps we should have placed a date on it, but we didn't. Attorney Witsil said he felt it would be appropriate to say ... we are revoking your final site plan approval for your failure to comply with the condition at such and such a time instead of doing it tonight. Mayor Baker was just bringing this to the Council to see what their thoughts were on it. Council agreed with Attorney Witsil's proposal. Councilmen Hearn and Truitt agreed that it should be placed on the June Agenda and a certified letter sent to developer ... this will give them adequate time to respond or have someone here to respond...if there is no response, that would be notification that they are not interested. Mayor Baker asked Attorney Witsil to write the letter. In the matter regarding the failure to comply with the Highlands of Pepper's Creek on the final site plan conditions, Councilman Truitt made a motion to place this matter on the June Agenda to discuss whether or not a reasonable amount of time has passed for those conditions to have been met and whether or not if the final site plan is valid at that time. We also make a motion to have Attorney Witsil, Town Solicitor, write a certified letter stating that they have until the June meeting to respond to our request for information regarding their condition of the final site plan. The motions were made and seconded by Councilmen Truitt and Hearn, and unanimously approved.

#1. Stimulus Business. Mayor Baker placed this on the Agenda. He wanted to ask the Council if they would like to do anything to try to stimulate business within the Town. A couple of things which he has come up with would be....a first time home buyer's credit...one half of the value of the real estate tax, we would give 50% of that back to a first time home buyer. He had thought about deferring the impact fees until the certificate of occupancy on the building had been issued, as opposed to upfront. He had thought about offering a business tax credit of a number (\$500 or so) to any new business which comes into town which employed anyone within the corporate limits of the Town of Dagsboro. (\$250 for anyone employed in a 19939 zip code which would be part of Dagsboro). Obviously the reasoning behind this is to generate money within the Town. We could probably place a time limit on it...such as until the end of this year. Those are Mayor Baker's thoughts and he did not know if anyone had any ideas on it. Councilman Truitt asked if these stimulus proposals are coming from the Town's budget. Mayor Baker said yes, you would be deferring payment on impact fees until such time as the Certificate of Occupancy was given and a time frame would be placed on that There would not be a net loss....it is just a deferring a payment. As far as a new business coming into town and offering tax credits, there is some loss but you are putting people to work. The loss would be from Business Licenses and/or Tax Revenues...that would probably

be off set if they employed people from Dagsboro by the amount of money that would be spent within the town. That would encourage business to come to Dagsboro. It would establish businesses....there are some businesses here presently that could use the monies that new establishments would generate to help them survive. Which tax would you be crediting against.....Mayor Baker said we may want to look at it over a two year period. Councilman Truitt asked if it would be tax on retail space???? Mayor Baker stated it would probably be all of it. The total tax bill. Seaford actually does a pay back of up to \$10,000. They will write a check to the business to come into their Town...if they employ people within their Town....they need to employ at least 4 or more people. Councilwoman Flowers said that her concern is that if they are given credit and the business goes “out of business” ... We have had businesses come into Dagsboro and if you give them that credit and you never get anything back. Mayor Baker stated that is why they base their stimulus on two years instead of one year. If a business needs help, it is normally within the first year. Councilwoman Flowers stated her other concern being is that economically can we afford to do that. Her feeling that we do not have businesses coming to town on Main Street is the traffic. Lack of parking....she did not feel it is not that they don't want to come here, but how many businesses come here and do not succeed and they move out. Councilwoman Flowers said businesses have a hard time flourishing on Main Street, that is for sure. In the summer everyone coming through town is in a rush to get to the beach. Mrs. Eckerd felt the town should be business friendly. Councilwoman Flowers felt the problem would have to be solved in a different manner. Mayor Baker said the new Streetscape Project is a visual barrier...it is supposed to take your train of thought away and cause you to slow down due to the change of scenery and change of color. Councilman Truitt felt it would not hurting us that badly...if we find it is hurting us, we can just stop it. Kyle mentioned that if it brings new businesses in...presently we have vacant stores that are not bringing any revenue at all. Kyle felt a reduction in transfer tax would be a definite plus for people buying homes in town. Every first time home buyer is a potential taxpayer. We have projects sitting and not finished, like everyone else does. If we could turn those empty nests into a tax basis and we have the business needed to support that, it blends into one big picture. You can't have one without the other. If you do not have the infrastructure and the housing, no business is going to make it as they work on a percentage of the population. We can either talk about it, act upon it, put thought on paper, talk about it at next month's meeting. Councilman Truitt thought it would be good to have something on paper to read. Councilman Hearn asked if it would require a resolution. Attorney Witsil stated that it would require an amendment to Code Section 243 - Taxation Code - An amendment to the realty transfer tax. Section 143-1 you would add a Section D that provided for 1/2 of the transfer tax payable to the Town. It would be a refund once the Town received it...it would go back to the first time home buyer. Attorney Witsil noted that the County just exempts it. The County doesn't collect it. The owner signs an affidavit that they have never owned property before and there is an automatic deduction from the transfer tax that is normally paid. Attorney Witsil would recommend that if you do that, you make the Buyer's one half....it should be truly an incentive to the Buyer to buy into the Town.

Item #3. Definition of building heights. Mayor Baker said we have discussed this item previously tonight.

**Old Business: Consideration of High Efficiency Vehicles on Town Streets.
That is still under review.**

Correspondence:

Prince George's Chapel Cemetery Meeting will be held on May 2, 2009 at the Town Hall at 2:00 p.m. Vice Mayor Adams noted that the PG Chapel Cemetery meeting is open to anyone who has someone buried at the Cemetery. Councilman Hearn mentioned that he took a walk out in the older portion of the cemetery and one of the old limestone stones was broken off. Based on the dirt around the stone it appeared to have been done very recently. The cemetery grass was cut yesterday. He did not know if the zero turns had done it or not. Mayor Baker said Lloyd Memorials did some work for us previously on the grave stones. They are very fragile...it was mentioned that some of these stones date back to the 1860's. Lloyd's have been drilling them and putting steel rods in them. When we get 3 or 4 down, we will contact Lord's to come back and do some work.

Presentation of Treasurer's Report: Stacey Long, Town Clerk, read the Treasurer's Report. Copies of the report were distributed to the Council. Mayor Baker asked if there were any questions concerning the Treasurer's Report. Councilman Hearn made a motion to accept the Treasurer's Report as presented, seconded by Councilman Truitt and unanimously approved.

Approval of Minutes of March 23, 2009: Vice Mayor Adams made a motion to accept the Minutes of the March 23, 2009 meeting of the Council, seconded by Councilman Hearn and unanimously approved.

Standing Committee Reports:

Police Department: Police Chief Floyd Toomey stated that the Council had a copy of the Statistical Report for the Police Department. We had 110 traffic arrests last month, considering he was gone from the 10th of March until the 13th of April on military duty. Officer Litten did that himself. Mayor Baker commended Officer Litten on doing a good job in the absence of Chief Toomey. Traffic Warnings were 19, 5 Criminal arrests, 1 business license check, a total of 311 hours of work, 147 ½ patrol hours, 32 ¾ investigative hours and 51 ¾ administrative hours. There were 274 business checks and 37 complaints. That is a pretty heavy complaint load considering....Officer Litten handled all of that. On the Statistical Report you will note that Officer Litten is Officer of the Month. Also, he investigated a theft which

is active and ongoing now. There were 2 jet skis and a trailer stolen. We have not gotten any leads on that. There was a major felony last month that occurred at Savannah Square (theft of purse)—solved and arrest made in the case by Officer Litten and restitution has been made. Chief Toomey announced for informational purposes – We have just received funding for the Click It or Ticket Program - May 10 to May 25. We will be out there writing Seat Belt Tickets. It is not just us....it is Statewide....zero tolerance. There will be a \$45.50 fine. We have been funded thru SALLE and EIDE for the Bike Patrol. There had been questions as to whether we would get the money as the State shortfalls. He received notification today and Stacey received the check the same day. As soon as Click it or Ticket is over, we will resume the Bike Patrol. The last thing is the stencil project --- I have put it in 3 months of the Town Newsletters....and we have only had one response on that project. It does not cost us anything. He stated his next step would be to go to the individual businesses and see if they are just not paying attention and want to participate. He would like to get a big media event going of at least 5 or 6 businesses. Chief Toomey asked if anyone had any questions. Gary Cox asked if Prince George's Acres required the 5 digit addressing system. Stacey said that development did not require it. Al Townsend wanted to know if a notice about Smoke Detectors could be put in the Newsletter...free to everyone. Check at the Fire Hall. They are available anytime. They give them out all of the time. Mayor Baker asked if safety briefings could be done with businesses once again.

Hazard Inspection Committee: Nothing to report.

Town Property/Town Improvement: Everyone is aware of the Streetscape Project. There is approximately 30 days left on it. They have gotten the sidewalk; pavers will be put in next week in a sand base. The sidewalks will be 4 feet wide. Probably they will be changing and starting on the opposite side to do the same thing. We are still looking at 30 to 45 days. **Prince George's Chapel Cemetery:** Vice Mayor Adams wanted everyone to notice the new sign at the front of the Cemetery. It was at no cost to the town.

Mayor Baker said he has one thing on outside contracts. He asked members of the Council including Kyle and Stacey to stay for a moment and asked for a motion to move into Executive Session. Councilwoman Flowers to exit the Regular Session and move into the Executive Session, seconded by Councilman Hearn and unanimously approved at 9:21 p.m.

The Council entered into Regular session at 10:04. Upon motion by Councilman Hearn, seconded by Councilman Truitt and unanimously approved, the Council

voted to have a representative from BelAir Road Supply, Hoang Tran, read the water meters once a week at \$100 each reading for reconciliation purposes.

Upon motion by Councilman Hearn, seconded by Councilman Truitt and unanimously approved, the meeting was adjourned at 10:06.

Respectfully submitted,

**Rae M. Long
Administrative Assistant**

RML/me

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