

**MINUTES
MEETING OF MAY 18, 2009
TOWN OF DAGSBORO
Bethel Center – 28311 Clayton Street**

The meeting was called to order at 7:00 P.M. on Monday, May 18, 2009 by Mayor Wayne Baker. Those present were: Mayor Baker, Vice Mayor Adams, Councilwoman Flowers, Councilman Hearn; Stacey Long, Town Clerk; Rob Witsil, Town Solicitor; Kyle Gulbranson, Town Planner; Curt Riley, Town Tax Assessor; and other interested parties as shown on the sign in sheet. Councilman Truitt was absent.

Open Court of Appeals:

Curt Riley, Town Tax Assessor, is present. We have an Open Court of Appeals for the 2009-2010 Tax Assessment. We will begin and leave it open for 20 minutes or so and see if anyone shows up. Mayor Baker asked if there is anyone here this evening who has any objection to the assessment of their property. No one came forward after the Mayor's question. This Court of Appeals will be left open for the next 20 minutes.

Presentation of Building Permits Issued:

Stacey Long issued a permit for a fence on Warrington Street and a sign for Blossom's Flowers on Vines Creek Road have been issued.

Planning & Zoning Report & Vote on the Following Items:

Chairperson Marge Eckerd was not in attendance in the meeting. The only member of the P & Z present was Mr. Herb Disharoon. Mr. Disharoon reported that the Discussion of change of Uses and Review, discussion and possible consideration of preliminary plan approval for Highlands of Pepper's Creek, were tabled for lack of information. They had wanted to take action; however, there were only three members present at the Council meeting so they wanted more members present to act upon these items. There was nothing to report.

New Business:

Stacey Long stated there was nothing to report.

Old Business:

#2. Highlands of Pepper's Creek – Discussion regarding Final Plan Approval that was given on June 25, 2007 and validity of approval. Mayor Baker felt this was discussed at last month's meeting. We have received a letter from the Highlands. The letter which we received gave a price on the storm water system and that is what we were looking for. Mr. Lincoln Davis representing the Highlands of Pepper's Creek is present tonight. He apologized if the Town's request for the information had slipped by them. We have given you a cost estimate and our proposal is when it is time to post that bond it will be in the amount of 10% or \$65,000 which is typical for either contract retention or warranty reserve. Mayor Baker stated that he would leave all the legal matters up to the Town's Attorney. The Town's concern at that time would be no different than it would be when the project goes through....that is if that system were to fail, that monies are available to make the necessary repairs to that system. The Town just wants to know that the repairs are going to be made. Mr. Davis addressed a question to Mr. Gulbranson and asked if he found that to be a typical amount....if it is adequate or do you plan for something different. Mr. Gulbranson looked at the number and felt within a 14 month period and stated typical maintenance that the figure Mr. Davis gave is probably fine. Assuming maintenance for something like that would be around \$35,000 per year. It is probably a good number. Mayor Baker wanted to bond the \$635,000 amount in the event that if there is a problem and the system doesn't work that the Town/HOA is not left with something that cannot be repaired. We want the monies available to make the repairs to make it viable. Mr. Davis wanted to mention that the plan which P & Z is looking at now omits the underground storm water facility. Should we be successful and Council approve that plan, the underground facility will be no more and we would like to request at that time that the second condition of our final site plan approval be stricken. Mayor Baker said that it would be if there is no need for it. Since it is there now and that plan is the one we are working under...that is one of the conditions stated. Attorney Witsil asked to confer with Mr. Gulbranson...he asked if the subdivision ordinance final approval is rather silent with regard to requirements, would you agree with me that the bond would need to be posted on or before the time that the building permit is issued. Kyle Gulbranson replied to Attorney Witsil....this is a sort of a unique situation...as the condition is written it states that the special bond for maintenance for failure after the facility is actually completed. Kyle would assume that would need to be in place before building permits or structures and certificate of occupancy is granted. I guess the Mayor is looking for bonding of the full cost of that facility at that time for a period of 14 months. Mayor Baker stated that was correct. Attorney Witsil...said for the cost of repairs. We have been given the cost for construction. He asked if he understood that Mayor Baker's comment of 10% of the cost of construction is a reasonable amount to cover repairs. Kyle stated it appears that the Mayor is talking about full costs. Mayor Baker was talking about full costs. He is talking about a bond or line of credit or something for \$62,500. Mr. Davis said it should also be noted that the full amounts of that system in addition to all the storm water components will also have to be bonded with the

Sussex Conservation District. That will, in fact, be a double bond, and Mr. Davis felt the Town and community would be more than secured. Mayor Baker said this would extend beyond the life of the project than the storm water and Sussex County would...Kyle said about the time we are dropping Sussex County this one will take effect. Attorney Witsil noted that the record of the final site plan approval be supplemented by the comments this evening so that the Minutes will reflect that the bond needs to be in place at the time of completion, prior to issuance of certificate of occupancies in the full amount of the amount stated for the construction costs....estimated presently at \$635,200. He asked for any other questions from Council. Vice Mayor Adams wanted to know if they could send five additional plans for Council. Mr. Davis said that would not be a problem. Mr. Davis said they would be happy to prepare whatever copies of the plans Council would need. Kyle reiterated that the Council would like to have 10 days in advance of the Council meeting copies of the Plan they are presenting at the Council meeting. Stacey does not get any additional copies until P & Z is ready to come to Council and say here is the Plan we are recommending. That final plan (once again) is delivered to Town Hall....one to P & Z so they all can look at it their last meeting and see if it is correct, the others go to Council. That is so we are not getting so many....you could get six different plans in 3 different months. It would be easy to look at the wrong plan....you would be inundated with paperwork. Mayor Baker said he felt that if we did not ask questions, we would be remiss in our duties. That is why P & Z should give us some leniency in asking some of the same questions they had asked. Stacey said that if they give us 13 copies that would be fine. Mayor Baker asked if there was anything else for the Highlands of Pepper's Creek. . Attorney Witsil said at the last meeting there was a question about the discrepancy and the height requirement sections of the code. There clearly is a section in each portion of the code which addressed the different districts that height shall not exceed 35 feet. There is also a height definition that was not addressed when the new portions of the code came into effect. The code does provide for an ambiguity and it says if there is a more specific or more restrictive regulation....the more restrictive regulation applies. Attorney Witsil said he felt the issue had been brought up at the P & Z meeting as to the height requirements....it is his legal opinion 35 ft. height requirement is in effect. The Mayor and Council have asked me to draft an ordinance for next month's meeting to reflect that....and a letter from him will accompany the draft explaining in case there is discrepancy or ambiguity the more restrictive regulation clause prevails. Attorney Witsil has also prepared a recommended clause ... would you wish for me to put that in ordinance form for the next meeting. Measuring the height restrictions....Mayor Baker asked if Kyle had seen it, measuring from the 4 corners taking the median height (Kyle felt it would be cumbersome to measure that). Attorney Witsil said he was open to suggestions, which are why he sent it out. Kyle did have a suggestion as to having an engineer physically go out there and determine the height. A surveyor could do that also. Kyle will send information to Attorney Witsil tomorrow. If you are building on the side of an embankment and it is a 10 foot drop off, you are going to be measuring from the lowest point to the highest point....not to exceed 35 feet. That would be the

most restrictive also. Rather than depending on the grade of the Attorney Witsil requested Kyle's assistance on this matter.

Old Business:

Is there anyone here who has any differences or discretion about their taxes? Since there was nothing heard, Mayor Baker asked for a motion to close the Court of Appeals. A motion to close the Court of Appeals was made by Councilman Hearn, seconded by Councilwoman Flowers, and unanimously approved. Mayor Baker thanked Mr. Curt Riley, Tax Assessor for the Town of Dagsboro, for coming this evening.

#1. Stimulus Business. Did anyone have any thoughts, ideas or suggestions which we may wish to consider. Councilman Hearn felt the idea of waiting on building permit fees for developer until such time as the home/business is bought, as it does not create a loss of income for the town...but still promotes building of residences, which would be a way of stimulating growth of the town in a good way. Mayor Baker said he was just throwing that out as an idea of helping...he wanted it to be a consensus of opinion. He felt it should be in conjunction with first time home buyers to help them get going. Probably geared more toward the individual or helping the community itself as opposed to any group organization. Councilman Hearn said he had not looked it as helping any organization, but as a way of deferring payment which would be advantageous to the builder/buyer and at the same time it may create a longer time span for the town to collect the money they would be collecting anyhow. The Town would not be losing money or losing its income....it would be deferring payment with the hope to stimulate the income. There should be a clause up to a dollar amount so that the seller couldn't sell that portion of the contract as a negotiating tool. Attorney Witsil said that the town receives 1 1/2 % of the transfer tax and the code says that in the event it is not specified it is determined that it is 1 1/2% and 1 1/2%. Sussex County has a first time home buyer's provision that if the buyer is exempt it qualifies per affidavit ... then the entire 1 1/2% transfer tax is waived. That is because most of the form contracts, particularly the Sussex County Board of Realtors' contracts, say buyer and seller shall split the transfer tax. Kyle suggested 1/2 of the town's percentage. Attorney Witsil asked if we had a cap to consider.....Kyle stated it would have to be a home to qualify, not acreage. It would have to be a principle place of residence or an individual that qualifies as a home buyer status. It could be restricted to residential. A first time home buyer is probably not going to be a LLC corporation. Mayor Baker said it would be not be able to be a secondary home and principle place of residence and they would have to sign an affidavit to that effect. Attorney Witsil asked Mayor Baker is that for family structure or for anything. Mayor Baker said even if for a shopping center, they would only pay the impact fee when they started using the service. The impact would be at the point when the certificate of occupancy is issued. It would go with the C.O. Attorney Witsil questioned if there would be a time frame for this economic incentive to expire, or would you take action at a later time to amend what we are doing. Mayor Baker said his thoughts

were for six months - to conclude December 31, 2009, it would not be a definite thing. Kyle said it would basically concur with the federal \$8,000 incentive for first time home buyers to the end of the calendar year. Attorney Witsil asked if it would be the same for the transfer tax waiver....Mayor Baker said yes, if Council is in agreement. Mayor Baker said they had also talked about some incentives for new businesses. That would be giving and (x) amount of credit if they employed people that lived within the corporate limits of Dagsboro. If they were in the 19939 zip code they would get a lesser amount. That would help employ within town or within the zip code. Councilwoman Flowers wanted to know how this could be tracked or monitored. She asked if they could hire a person for a day to get the incentive and fire them the next day. Mayor Baker said no. It would have to be monitored....they would have to be there for a period of time. Councilman Hearn asked Mayor Baker what type of credit it could be. Mayor Baker said it could be on business licenses or any type of fees that they have to pay. A business license fee, a square footage fee and a number even greater than that. Vice Mayor Adams felt the square footage is something they need to address. It does not seem fair to exclude that for a new business and not for our long established businesses. Mayor Baker said he agreed and that at some point there are inequities in it....yes. He said what we have to keep in mind is that this is just a "stimulus"; it is to help bring business in. Maybe we would go to all the businesses in town....if you hire anyone within this period of time whether it be Dagsboro Paint and Wallpaper, Royal Farms or whatever, he felt it could still work. If they were to hire someone....someone within our zip code, he would want them to get first crack to qualify. If they wish to apply for a credit and those are the conditions of the credit, they would have to comply with those conditions to get the credit. It is like us applying for a grant. If we do not want to follow the guidelines, then we can choose not to do those things. Employers are not supposed to reveal employees personal information. A lot of other towns do it....As mentioned in the previous month's minutes, Seaford gives a stimulus. This was explained how they did it in the minutes of April, 2009. It might be on an individual wage basis of that employee up until December of 2009; such as a gross pay of \$5,000, they would receive a percentage of the credit of some type (any type of incentive bonus, fees or real estate taxes, etc.). If successful, it may exceed the fees and go into property taxes. Councilman Hearn stated that if we are talking about new businesses only, we are not talking about a large amount of tracking to be done. Mayor Baker said if a letter was sent to each business saying the Town of Dagsboro is offering this program - any employee you hire that lives in the zip code 19939, we will give you a 10% (hypothetically) cut of the gross amount of their salary for whatever. If they live in the corporate limits it would be 10%....in the 19939 zip code you would get 5%. That would be an incentive to hire people in Dagsboro or to bring them into town. You could do the same thing with existing businesses. Vice Mayor Adams said what if an existing business gave you names of their employees hired 5 years ago, how would this be handled? Mayor Baker explained it has to be after a date that we would agree upon ... after May, 2009 ...this is a stimulus incentive. Vice Mayor Adams said....then you are talking about someone new. An established business with employees which are already there, they are not going to be hiring....they are not going to get anything. Mayor Baker stated that

most business are in normally retention in hiring and firing (done on a daily basis, weekly basis) and hopefully for a business already established and does not have any turnover, they would not be concerned any way. It would only be for a period of time that we would or would not offer the incentive until the end of this year. Kyle said this is to encourage new hires to expand business. Councilman Hearn asked how many companies have business licenses in town. Mayor Baker said they would have to have store fronts or a physical location in the Town of Dagsboro. It would have to be a store front business ---- not for non-resident businesses. He would like them to put some thought into it as next month is June and the year will soon be over with. He said it may not be possible to do it fairly with everyone, but to keep in mind that we can be as fair as we can be and try to stimulate growth within the town to the best of our ability. Vice Mayor Adams felt it had good merit and needed to be thought through and include established businesses in some way, shape or form. Attorney Witsil asked that they consider in their deliberations what the credit would be. Presently, your revenue base is property tax and business licenses. At this point Stacey said they are our two revenue sources. Vice Mayor Adams mentioned the square footage tax and felt it needed to be re-examined (.08 per square footage retail space). She stated that is something that we had put in place and wondered if we should continue it. Mayor Baker said that this matter should be added to next month's agenda for review. During that time frame please try to come up with any ideas which you may have. Would each council member please forward something to Stacey so she can gather information on your thoughts to insure that we do not have the same conversation next month? If over the next two weeks she gets information on what each council member thinks, we can correlate that information and bring it back to the June meeting. That will give us a basis to go on. Mayor Baker asked if we wished to make any recommendations on the first time home buyer for delaying the impact fees. Councilman Hearn asked Attorney Witsil what would be required to enact something such as that. He replied an ordinance change....requiring a Public Hearing. Mayor Baker asked if it just be done by resolution (since fees are set by resolution). Transfer taxes are set by ordinance, Attorney Witsil stated. The only way it could happen next month is if you set some sort of resolution this month to have the ordinance drafted and have the Agenda item posted and published. It was noted that there is at least one Public Hearing for June. Kyle asked if you wanted to get this done quickly, could you have a Special Meeting. Mayor Baker felt it could be done by resolution since it is a short-term duration of a specified time. I do not want to change the code and have to go back in January and re-advertise and change the code again. Attorney Witsil said that even with an economic incentive program the Legislature has to have a formal determination and to change the code and impact fees which you have now...change the transfer tax, particularly, to have an exemption you would need to change the code. Councilman Hearn asked if a time limitation could not be placed on it saying it would be in effect for six months at which time it reverts to the original. Attorney Witsil said that is what he had suggested. This would be sunshine law. Mayor Baker and other council members were not in favor of changing it twice. If we are going to do it, we need to do it quickly as it will be too far into the program to matter. Attorney Witsil said that your economic incentive program can have different time

periods than the federal incentive program. We are now looking at a waiver of impact fees of at best June or July until December 31, 2009.....that would foresee that there is construction ongoing that would normally require payment in June or July that would be deferred. Is it worth it for that period of time for the impact fees? Construction would have to begin before December 31, 2009. Mayor Baker also noted that if someone is teeter tottering and they are saying they want to move forward, but do not want to cover all of these fees...if they put the buildings up prior to December 31st of this year there also needs to be a point of this year that all fees would have to be paid by December 31st of the following year. They would never be able to use that unit as the certificate of occupancy would be tied to that. Kyle stated that realistically you are probably looking at the Woodlands, Chapel Crossing and any new lots in town. Kyle also said the Highlands, Estuary, Wayne Mitchell property...would probably not be selling units until after the first of the year. Mayor Baker said maybe if we do it for six months and the economy does not turn around....then we could extend it for another six months. He felt we should be opened minded and proactive. He did not want half built developments sitting around with no activity going on and people moving into newer developments down around the beach. . Kyle said the idea of extending it for six months after the initial time period is good.....because once this idea gets out it will put Dagsboro in a positive light in terms of a good place to live and to extend it Attorney Witsil asked about 2 things which he needs advisement on. A resolution would have to be made to get that started. With respect to the third proposal, I am not on the new employee --- credits --- etc. He did not have any idea as to how to prepare that. Mayor Baker said would be separate from this. Attorney Witsil stated that the 2 incentives, deferral of impact fees and first time home buyers transfer tax waiver of 1/2 of the town's 1 1/2% I have a grasp on. They could be called Incentive #1 and Incentive #2. Councilman Hearn made a motion to set a Public Hearing regarding economic stimulus regarding deferral of impact fees as discussed in this meeting and regarding a waiver of .75% of the transfer tax for first time home buyers. The Public Hearing is to be held at our June meeting. Mayor Baker asked Attorney Witsil if the .75% worked...Attorney Witsil would look into it and see the appropriate wording. Motion was seconded by Vice Mayor Adams, and unanimously approved.

Correspondence:

There was no correspondence to be reported.

Presentation of Treasurer's Report:

Stacey Long, Town Clerk, gave the Treasurer's Report ... (copy of which is with the Council's packet) and included in the Town Minute Book. Mayor Baker asked if there were any questions. A motion was made by Councilwoman Flowers to accept the Treasurer's Report as presented, seconded by Vice Mayor Adams and unanimously approved.

Approval of Minutes of April 27, 2009:

Mayor Baker asked if there were any corrections or additions to the Minutes. There were no corrections, the Mayor asked for a motion to approve. Vice Mayor Adams made a motion to accept the Minutes of April 27, 2009 as presented, seconded by Councilman Hearn and unanimously approved.

Standing Committee Reports:

Police Department: Chief Floyd Toomey stated that he had presented the Council Members with a monthly statistical report. The highlights of the meeting: 2,911 miles driven, 139 traffic arrests, 18 traffic warnings, 5 criminal arrests, and 3 business license checks. Total hours spent 296, 188 ³/₄ were patrol, 56 investigation, and 51 ¹/₄ administrative hours. We did 408 business checks and had 44 total complaints. Officer Litten was Officer of the Month for April. The Department is presently investigating a burglary occurring at Savannah Square. This is a minimal statewide and possibly even a regional investigation. We think there is a professional at work. We apprehended 4 local fugitives last month, which brought our criminal arrest rate up. Chief Toomey reported that he returned from military leave on April 13th back to full duty. He has been back a month now. As a reminder – Click It or Ticket is ongoing and the department has written about 40 seat belt citations. Mayor Baker asked in regard to Savannah Square burglaries – what was the time frame. Chief Toomey reported that they probably took place between 12:30 and 1:30 a.m. Mayor Baker asked if the Police Department has any thoughts or plans to do any type of surveillance during those hours. We have been checking when we can....the Delaware State Police are fully aware of it also. Chief Toomey reported with their limited manpower, there is little they can do. It is felt this guy is a professional. We are sure there is only one going in, but it may be a team involved. This is a regional problem --- could be all the way from Wilmington down into Maryland. They appear to be casing the places, no matter what we do as far as security. They are going in and defeating alarm systems. Mayor Baker wondered if they had thought about doing an 11 to 7 or 12 to 8. Chief Toomey said it is not out of the realm of doing that, but he did not want to put it on the schedule -- just unannounced. Chief Toomey reported that Ocean View had been getting hit really hard, but did not feel it was linked to our burglaries. We think they have a local actor who may be involved with this more professional individual. Chief Toomey asked if there were any questions. Mayor Baker asked if we had any takers on the painting on the parking lot. Chief Toomey said only one – the karate school.

Town Property/Town Improvement:

Mayor Baker reported that the Streetscape Project is going on. They are supposed to put the crosswalks in this week. The lights, however, will not be up where they are working off the sides of the street. There will be work continuing after the weekend; however, the brick pavers should be put down. It is actually a matting

which is a couple of inches thick. They have the milling machine on location and will be doing the pavers. Mayor Baker feels the Streetscape Project looks good and feels they have done a good job. He is impressed with it.

Prince George's Cemetery:

Vice Mayor Adams stated that the Friends of the Prince George's Cemetery had a meeting on May 2. She reported that Melody Chandler's information which she had been doing for her U. of D. report is now on the Town's website. You can go on the website and see what the tombstone transcription is done in the old part of the cemetery. Sandy Gerken and Jane McComrick are going to Delaware Gem Web Project going. Vice Mayor Adams reported under the burial permit fees discussion – I had a call from a funeral director and the fee we had discussed in our November, 2008 meeting went over the top for what they can handle. The funeral director handle the fee for the family.....and the family pays them. If it goes to the amount set in the November meeting which was \$500, half of which would to be returned back, but they would have to send the family in to Town Hall. At time of grieving, I do not feel we need to do that. Mr. Melson is willing and we will contact Watson in Millsboro to go out and find a place where the dirt may be placed after the burial. The reason they leave that dirt is because the grave will settle and they have to go back to put more dirt on top. Vice Mayor Adams explained where the dirt is being thrown is where there may be unmarked gravesites....he did not want to do this either. Mr. Melson said most places have a section where the dirt can be stored and then when they need to fill in, they will use the dirt from that pile. The original request from the Committee was that the original fee of \$200.....could it be put back to \$200 and leave it at that for a burial permit fee and come up with a place for the dirt. Councilman Hearn asked why the families would have to come to Town Hall. Doug Melson said that when the price went to \$500 that is a little over the top of what they wanted to expend. If we leave it like that, the funeral director would have to see that money was returned and there would be too much bookkeeping with all of it. She could see the point. Mayor Baker stated that the problem originated when the dirt was piled up and no one was responsible. He also stated he had seen them settle, but have never observed anyone in the graveyard topping off or filling in the dirt. The gravedigger is a subcontractor under the funeral home. Councilman Hearn asked if Prince George's Cemetery Committee is recommending that we leave it at \$200. Mayor Baker said if we permit a dirt pile....the next time they have a grave digging, we will give them 3 internments that need topping off. Councilwoman Flowers suggested putting it in the road instead of having a pile of dirt. Councilman Hearn asked if a member of the Committee could check on it once in a while. Councilman Hearn amended the motion to read the fee for the Burial Permit at Prince George's Cemetery be \$200 and have the funeral directors see that the dirt be spread in the driveway, seconded by Councilwoman Flowers and unanimously approved. The Prince George's Cemetery Committee was pleased to see the one way sign at the entrance at Dr. Atkins side of the Cemetery and around to exit at the light on Vines Creek Road; however, they are concerned people are not abiding by the sign. There are notes posted, Mayor Baker mentioned, in every room

in Dr. Atkins office stating the entrance and exits. Vice Mayor Adams said people are still slipping out the way they came in. They are afraid of a head on collision. Mayor Baker said he thinks we have covered the signage, notified the public and it is just a matter of enforcement. There only a few events at the Chapel, but some times people go out the way they came in. Councilman Hearn said that people going to Ward's Upholstery are also going in Chapel Lane. Vice Mayor Adams was going to mention it to Chief Toomey.

Mayor Baker asked if there were any further questions. Vice Mayor Adams made a motion to adjourn, seconded by Councilman Hearn and unanimously approved. The meeting was adjourned at 8:34 p.m.

Respectfully submitted,

**Rae Long
Administrative Assistant**

RL/rml

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.