

**MINUTES OF MEETING
DAGSBORO TOWN COUNCIL
Bethel Center – 28311 Clayton Street
Monday, June 22, 2009**

The meeting was called to order by Mayor Wayne Baker. The following council members were present: Vice Mayor Patti Adams, Councilwoman Cathy Flowers, Councilmen Terry Hearn has been delayed by a storm and Councilman Truitt is not present either. Also present were Rob Witsil, Town Solicitor; Kyle Gulbranson, Town Planner; Marj Eckerd, representing the Planning and Zoning; and several persons representing the Dagsboro Volunteer Fire Department. Other interested parties listed on the sign in sheet. We will be taking the Agenda out of sequence to allow Councilmen Hearn and Truitt to arrive before the Public Hearing and voting takes place.

We will begin with Correspondence. Mayor Baker asked Stacey Long, Town Clerk, if there was any correspondence to be brought before the Council. A letter was presented from the State of Delaware regarding the certification of the Comprehensive Plan stating that I am pleased to inform the Town of Dagsboro that as of April 27, 2009, further recommendation of the Office of State Planning Coordination the Comprehensive Plan for the Town of Dagsboro is hereby certified provided that no major changes to the plan are enacted. This certification signifies that the Comprehensive Plan complies with the requirements of Delaware Code Title 22, Section 702. I would like to thank the Town of Dagsboro for working with the State to incorporate our comments before adoption. We look forward to working with the Town of Dagsboro as you move into the implementation stage of your plan. Once again, congratulations on your certification. Jack Markell, Governor of the State of Delaware.

Presentation of the Treasurer's Report: Stacey Long, Town Clerk, gave the Treasurer's Report. General Checking Account \$71,483.70; Public Service Public Impact Fee Money Market \$78,644.49; Property Transfer Checking Account \$52,518.48; 2 CD's totaling \$106,447.58; Water Fund Checking Account \$11,464.57; Savings \$89,138.79; Reserve Account of \$35,276.51; Municipal Street Aid Checking and Savings totaling \$30,117.05; Prince George's Cemetery Checking \$1,979.23 – Savings \$2,160.63; and the following CC's of \$42,693.52, \$44,672.84 and \$30,365.23. SALLE & EID \$8,883.80. Mayor Baker asked if the Council had any questions. There were no questions. Vice Mayor Adams made a motion to accept the Treasurer's Report as read, seconded by Councilwoman Flowers and unanimously approved.

Approval of the Minutes of May 18, 2009. Mayor Baker asked if there were any corrections to the Minutes of May 18, 2009 as presented. There were no questions. Councilwoman Flowers made a motion to accept the Minutes of May 18, 2009 as presented, seconded by Vice Mayor Adams and unanimously approved.

Standing Committee Reports:

Police Department:

The monthly statistical report for the Police Department for May 2009 was read by Stacey Long, Town Clerk, in the absence of Chief Toomey.

Traffic Arrests – 232; Criminal Arrests – 0; Traffic Warnings – 47; Local Ordinances – 8; Business Checks – 428; Patrol Hours – 237; Investigative Hours – 48 ¼; Administrative Hours – 42 ¾; and Complaints – 35. The highlights are the department is investigating two burglaries – one in Savannah Square and one at Bodies Dairy Market. Click-It or Ticket was a success in that 76 seat belt citations were issued in addition to 8 other traffic violations. The last week of the campaign showed a marked increase in overall seatbelt usage.

Town Property/Town Improvement:

The Streetscape Project is drawing to a close. There is a new arm being installed on which the traffic signals are to be placed. Mayor Baker said he feels we will have to move a couple of the trees as one is near an illuminated pole and some are placed too close. Overall the Streetscape Project looks very nice and it will look nicer when completed.

Prince George's Chapel Cemetery:

Vice Mayor Adams said there is nothing further to report since the last Council meeting. Mayor Baker said it look nice at the cemetery.

Hazard Inspection Committee:

Councilman Hearn is still not present. Mayor Baker asked Al Townsend if he had anything to report. Al said there were a couple of things that were talked about, but they had not done anything further on it. Mayor Baker reported that there was a broken section of sidewalk in front of Ron Baker's property (former Senator Steen's house). The Town had made a temporary repair, although it will last a long time. We plan on it lasting until another Streetscape Project is begun and new sidewalks are put in on that side of the street.

Presentation of Building Permits Issued:

Bethel Church for Renovations....Permit 783

Indian River High School for Renovations.... Permit 784

NVR for a Sign at Clayton Crossing..... Permit 785

Dollar General for a Tenant Fit Out at Savannah Square....Permit 786

(2 signs for Dollar General – Permit 787 and 788 one for the wall and one for the sign on the highway)

There are three items on the Agenda this evening for Public Hearing and Vote. We will begin with the first:

An ordinance to amend Chapter 275-8, Article H, to amend the definition of “Building Height” and “Height” to track the existing height regulations of the specific zoning districts set forth in Chapter 275, Article IV. It currently reads “the vertical distance measured from the average elevation of the finished grade at a point 5 feet away from the foundation of the building along the sides of the building facing a street to the top of the roof surface or flat and mansard roofs and to the vertical mid-point between the base of the roof and its peak for gable, hip and gambrel ??? roofs.” We would like to delete that in its entirety and insert in lieu of “the vertical distance of a building or structure measured from the average elevation of the finished grade at a point five feet away from the foundation of the building or structure along its sides of the foundation facing a street to the highest point of the structure inclusive of roofing, towers, vents, heating and air conditioning units and any other structural element excluding chimneys”. Mayor Baker then opened the floor to the public for their comments in favor of or against the ordinance. Al Townsend asked “what is the height... 35 feet?” Attorney Witsil stated that the height is specified in each zoning district for the structures which are permitted therein. Mr. Townsend then asked, “do we not have a standard height of 35 feet”. Attorney Witsil answered that each district would have their own height...it happens to be they are all 35 feet. Instead of changing the definition to 35’, it was his recommendation (it provides flexibility in the districts) to provide just the definition of height and then the Council might in the future find there is a reason to change the height either lower or higher for each classification instead of uniformly throughout the town. Attorney Witsil also mentioned that there is a second section of this ordinance. It is on the back side of the page. We are changing the definition also of 275-8 to read a similar definition. This is the section that previously had a definition of height only.....not building height. If you will recall that is what caused the original confusion. This section of the definition of height included a maximum of 42 feet inclusive of chimneys, towers, vents, heating and air conditioning units and the like”. We are deleting that section and adding the definition of height ... the same as building height, so that it is uniform throughout the code. Chancellor Chandler said he was just reiterating a question previously asked concerning the maximum height for the town of Dagsboro as being 35 feet depending on the district; however, all districts at this point are 35 feet as the maximum height. Mayor Baker and Attorney Witsil stated that was correct. Our definition of height needed to be revised as it was overlooked when we put the height regulations in place for all zoning districts in Town. It was asked if we have a light industrial district in town. We do have a light industrial district. Mr. Cox said he did not know if his code book was up to date, but he said it was still referred to as 42 feet. Kyle said that had been modified. Mayor Baker said that is why we are changing the height and not each individual code and felt it had been left at 42 feet for some reason. Attorney Witsil stated that 275-18 subsection C-3 is 42 feet. Mayor Baker said having heard the revisions that Attorney Witsil has made does anyone in the audience wish to speak in favor of the ordinance. There were no comments

heard. Mayor Baker then asked if there is anyone in the audience that is opposed to it as amended. No comments were heard. Any questions from Council. Councilwoman Flowers had a question for Kyle....you had sent out an e mail and recommended #6 and there are some slight differences. Kyle said the reason that he had recommended the definition he had e mailed out was measuring the height was one foot from the foundation instead of five feet from the foundation. He felt that both were fine but there is more difficulty in physically measuring the height from five feet out. Attorney Witsil stated the only reason that five feet is in there is for the sake of using the distance in the old definition. It does not matter legally at all. Councilwoman Hearn said this will not pose a problem in the future...correct? Attorney Witsil said it would not. His draft was done prior to hearing from Kyle. He used the same distance from the foundation as in the old code instead of coming up with something. Kyle felt the one foot would be easier for the town to measure. Mayor Baker said that personally he would like to stay with the five foot as there may be excessive finish grade around the house; it gives the opportunity to level it out. #6 also allowed some unused floor space was the terminology. He is not satisfied with a widow's walk being used. Councilman Hearn arrived and was brought up to speed by Mayor Baker as to what had been done on Public Hearing #1. Attorney Witsil asked if there might be a need to state the chimney's which are exempt should not exceed the limit by x number of feet. Is there a reason to modify the exclusion for chimneys or are you all comfortable with that. Kyle stated that generally chimneys are supposed to be higher than the peak of the roofMayor Baker stated that in order to get a draft, you have to go higher than the peak, but that could be determined by location, trees surrounding the building and in an industrial setting it would not matter, you would likely be at EPA regulations. At this point Mayor Baker said he is comfortable not putting any height on the chimney. Mayor Baker asked for a motion to close the Public Hearing. Motion made by Vice Mayor Adams, seconded by Councilwoman Flowers and unanimously approved. Recommendation by Council to accept or reject the ordinance as it is written. Vice Mayor Adams made a motion that we adopt the ordinance as it is written to amend the definition of Chapter 275-8 Article II to amend the definition of "Building Height" and "Height" to track the existing height regulations of the specific zoning districts set forth in Chapter 275, Article IV, seconded by Councilwoman Flowers and unanimously approved.

The second item on the Agenda for Public Hearing and Vote is an ordinance to amend Chapter 243 entitled "taxation" by adding to Article I, Section 243-1, a new subsection D to provide for an exemption from the payment of realty transfer tax for first time home buyers. Attorney Witsil explained that the language in this ordinance is almost identical to the exception of the Sussex County Real Estate Transfer Tax first time home buyers exception. You requested that this be prepared as part of the economic incentive program that Council discussed last month. This would provide first time home buyers (there shall be no tax imposed on those transfers where all grantees qualify as first time home buyers—grantee being the buyer/buyers. A natural person who individually or as a co-tenant has at no time held any interest in residential real estate wherever located

and which has been occupied as their principle residence and who intends to occupy the property being conveyed as his/her principle residence within 90 days following recordation of the deed, which usually occurs immediately after settlement. If there is more than one person buying both would have to not have had a former interest in real estate as a residential holding. This, of course, would not include someone who was a tenant. The ordinance has been read and is being opened up to the public. Does anyone wish to speak in favor of this ordinance? Would you please stand and state your name for the record. My name is Pat Eggers, with Resort Quest Real Estate who handles Chapel Crossing Development. His question is definition of a first time buyer...is that someone who has not owned in the State of Delaware before or what.....Attorney Witsil stated it would be in any jurisdiction wherever located....it is the same language that the County uses. Mr. Eggers stated that with the federal tax credit they have a different definition. He just needed clarification on our ordinance. If they have not owned principal property within the last three years (they may have currently rented and now coming into the housing market), they would still be considered eligible. Mr. Eggers felt the ordinance was a wonderful idea. Anytime we can help young families today and assist them getting into a new home, it is a wonderful thing. The government presently has the \$8,000 tax credit offered. One of the questions which comes up with first time buyer is do you have any first time buyer incentives in buying here. Their second question is ...does the town we are locating in charge transfer tax for first time buyers. This will allow first time buyers to have several thousand dollars to do other things with including adding to their down payment or in some cases, it may be money they don't have and they can't buy here. They may be forced to buy somewhere else. Today FHA loans do allow low down payment mortgages still...the qualifications have gotten much stricter (the credit qualifications) things of that sort, but they still can qualify for a mortgage with as little as 3 ½ % down for their actual down payment plus their closing costs. The builder has already eliminated impact fees from their closing costs, they absorb it themselves. By the Town passing this ordinance it would get the closing fees down to about \$2,000 on a home, which is a great number. In the long run, you will see more young families wanting to come to Dagsboro. This is something we will be pitching in our advertising – Come to Dagsboro, first time buyers. The builder, RDM, they have agreed to pay the Sussex County 1 ½ % rather than split it with the buyer. That will have an impact on the transfer tax as new first time buyers will have no transfer tax to pay to the County or to the Town. I feel it will be a good thing all the way around. It will be hard to measure it initially. It will take some time for the market to get better. Money is still very tight in the credit markets and that is one thing we are fighting....plus the cost of clothing and having people qualify in the loan to value with everything else going on. I think this will be a great thing. There are very few towns in the area that have considered this. I do not understand why more haven't...it is an absolute no brainer to help young families. Mayor Baker asked if there was anyone else who wished to speak in favor of this ordinance. There were no comments heard. Mayor Baker asked if there was anyone opposed to the ordinance. Bill Chandler said he opposed this and his reasons were are practical, philosophical and equitable. First the practical one is that the reason other towns are not doing this is probably

because they are having to furlough their employees, cut their pay, delete them completely because of their budgetary constraints. The federal government has a tax incentive program. It is easy for the federal government. It can do that as it does not have a budget that it has to meet and not have to account for it to the taxpayers. This gentleman just referenced the \$8,000 tax credit...that is just one of the many of the president's first time home buyers program that is further designed to incentivized first time home buyers having to make down payments, etc. in having to buy their homes for the first time. Mr. Chandler's first point is that there already a lot of incentives all ready at work to accomplish what I think you are trying or hoping to accomplish. Second, are the practical problems which I see in this and the equitable problems? You are drawing a line today that says someone that comes to Dagsboro tomorrow gets this one time tax incentive. There are lots of people who are first time home buyers who just bought here recently. They did not get the advantage of this. They are struggling to make ends meet now paying their mortgages, but they paid for their transfer tax to the town so where do you draw the line. It is already to those who bought a month ago or two months ago and say to them...well, you are too late ...we are going to incentivize home buyers from here on forward. Why don't you go back to where the sub-prime prices first hit and the credit markets first froze up...go back at the Lehman Bros. failure? Start then and say that is when the credit market froze....that is when the entire sub-prime market problem created our fiscal crisis Go back and give rebates to all those who paid their transfer taxes from that point forward. I think, fundamentally, the third point is that I did not know that Dagsboro was fiscally in such a wonderful condition that it could afford to forego revenues. If it is then I feel there are better ways to do it more equitably. I do not think first time home buyers are the only ones being affected by the financial crisis and the credit market freeze up. That affects all home owners. Everyone who is paying a mortgage today is affected. One way the Town if it wishes to try to help the economy and stimulate the economy is to put more money into the pockets of the homeowners is to cut the property tax. You could start and give a property tax rebate to everyone in town as a stimulus to the townspeople to be able to make their mortgage payments including those who are struggling on a margin. You could cut other fees imposed by the Town now. License fees, building fees, gross receipt tax fees, apartment rental tax fees. You know how to impose the taxes and you want to show us how to reduce them, just start there. Fundamentally, it raises a deeper problem for me and that is what do you want to incentivize people who do not live here now to come live here (if you want to do that, it is fine), if you want to spend taxpayers dollars to do that, it is wonderful, but don't send out surveys like you have done in the past asking the people of Dagsboro what is most important to them. If you read those surveys, what they say (Kyle can correct me if I am wrong as he was instrumental in fashioning that survey) overwhelmingly the people of the Town said what they liked about Dagsboro is its small town atmosphere. They liked living in a small town. What is a small town? Maybe we need to think about what that is and what it means to people that they would say that is the most important value. Maybe that is the way we should rethink all of our issues in this state and this country. Small can be variable, depending on your perspective. Philadelphia is a small town if you compare it to

Beijing. I think what we have in mind is something different. If you are going to define small town character as something that people who live here have told you overwhelmingly in huge margins...that is what they like, that is what they want, that is why they moved here.....start defining the optimal number of people that should live in this community if that is your definition of a wonderful community to live in (a small town). What is the optimal number.... 500, 1,000, 6,000, 20,000. I think you should start from that perspective and work backward. If you can arrive at a consensus of what is a small town then you can decide where you need to incentivize, give stimulus for more people to come into the community. If you feel you are already close to that number based on the projected number of units which have already been approved for development, I don't think you need to stimulate anymore. You may stimulate too much...you may lose the very thing that everyone who is here has told you is the most important to them. For him, this proposal is problematic on a number of levels. I think you should think about it more than just one evening....study it, think about other alternatives....if you think a stimulus for is necessary and if you think the town can afford it. Those are questions which need to be thought about, discussed and debated, before you vote on enacting a tax cut. As it was described by Mr. Witsil, it sounds like a tax cut that is open ended in perpetuity for any first time home buyer. Putting aside the question that this gentlemen alluded to.... how do you define first time home buyer....how do you know they are first time home buyer, who does the investigation to determine that. Those are some of the practical questions that I hope the Council would think about seriously before they act upon this proposal. Mayor Baker thanked Mr. Chandler for his comments. Are there any other things to say in opposition to this ordinance? Are there any comments from the Council members? Vice Mayor Adams had a question....when she read the ordinance for impact fees which we are coming to, there is cut off date of December 31, 2009. On this ordinance it appears as being done forever. Attorney Witsil stated that was correct....until it might be rescinded by ordinance. It does not have the same end game as the other ordinance. It was not discussed at the last meeting. In the interim, the Mayor called and asked would it not be a good idea to have that end game. It was Attorney Witsil's recommendation that the transfer taxes comes at the culmination of a sales process – real estate sales contract. There is a time where the real estate will be marketed...a time when a sale occurs, the contract is approved and typically settlement happens 5 to 6 weeks after that, so the same time period for the other ordinance seemed to him a bit impractical. It was Attorney Witsil's intent that we just tracked the County Code specifically so there would not be a large difference between the County one time exemption and the town's. Finally, in terms of verification, the County and I presume the Town would have a First Time home buyer's Affidavit that is sworn under oath. The County requires the purchaser to list the residences that they have been occupant in or a tenant in without ownership for the past 10 years and it may be 20 years. At this time, Mr. Chandler asked to add another statement. He forgot to mention that in today's Wall Street Journal – June 22, 2009, on the front page it states that the new home sales market has bottomed out and now sales of new homes are already rising in response to the stimulus of the President and the Congress of the Tarp program and others, the

credit markets are now beginning to respond to that. I think the stimulus is already there and working...that is his evidence. Mayor Baker stated that since he had permitted Mr. Chandler to add is there any rebuttal from the public as far asMr. Eggers commented that he realized the discussion has been as to whether to Town can afford to do this. When you are talking about first time buyers, in a lot of cases in what we are aiming for here is to attract buyers that we would not otherwise attract. We are hoping to because of this first time buyer forgiveness that we will be able to attract more first time buyers into the community. Mayor Baker asked if there were any other comments from the public. Are there any comments or questions from the Council? Councilman Hearn had a question....either last month or the month before when we were discussing this and that we had talked about a six month or so time period for this and the other. Councilman Hearn stated he is more comfortable considering it if it does have an ending date. Vice Mayor Adams felt it was supposed to have an ending date. Mayor Baker said he would also like to make a couple of comments....he appreciated Mr. Eggers and Mr. Chandler's comments also. Mayor Baker said when we look at our responsibilities; we kind of have to wear two hats. There are in fact, 1562 units already pre-approved to be built in the Town of Dagsboro. The Town will present a balanced budget very shortly. It does not allow for a lot of frills. We are watching every dime we have and be frugal in the way we spend our money. I also think that because this is probably just going to affect the minimal amount of the market (the first time home buyers). I can't think of anyone I would rather see helped out than somebody just getting started in the game of life. There are probably many issues about how you draw the line and when do we start it....with any ordinance, you have to start it when it goes into effect. It has to be our responsibility to look at many issues; however, where we are at now and where we are going in the future. I feel that it is not going to be a real financial burden to the town, if we increase our tax rolls and tax base possibly some of the costs of operating the town.....Councilwoman Flowers and Vice Mayor Adams inadvertently took the statement as meaning their taxes would be increased to give them a break. Mayor Baker explained increase our "tax base" not taxes...if there were more people it could cut down on expenses. Mayor Baker said taxes have not been raised in the past four years and there have been a lot of improvements in the town. Vice Mayor Adams said that she heard on the television today that homes are selling better than previously. They were quoting that the \$8,000 stimulus package to first time home buyers was pushing it. Mayor Baker reported that we are not in a deficit. Councilman Hearn said he heard today that there is a bill in legislature to raise the state taxes (whether it will pass or not, he did not know). Attorney Witsil reported if he dropped the ball on a time allocation, he apologized. As he mention he had a discussion with the Mayor and it was his thought alone not to have a termination date for this due to the time period for settlement that I just mentioned. If you are inclined to have a termination date it is easy to state the exemption provided in sub-section shall automatically expire at a date specific determined in accordance with your wish. It can be written into the ordinance if you wish. Councilman Hearn mentioned that with the time specification you have some control over the numbers we are talking about to prevent things from getting out of hand. Councilman Hearn is personally in favor

of a time limit. Mrs. Eckerd asked Attorney Witsil if the expiration date was that if the person has a verified contract in June, but does not go to settlement until August, does it negate his exemption. The transfer tax is payable at the recordation of the deed; therefore, practically speaking the settlement would have to occur before the expiration date of the exemption. Mr. Chandler asked the Mayor concerning a question with a moral basis to it is the answer as to why you feel this is appropriate. What you have failed to address directly is how do you tell young families who have already purchased here in recent months and have paid the transfer tax that they are morally distinguishable from a young family that buys after you adopt this ordinance. What makes them less worthy or deserving of your compassion, than of a family that buys after the ordinance? They may be suffering worse than a family that buys after a family that buys after the ordinance. Their condition may be worse, but yet they paid the tax in good faith to the government. Now you say they aren't deserving of this special compensation...special favor and the person who buys over the dividing line does. Mr. Chandler said he been called concerning this....what does he tell them? Mayor Baker said the thing to tell them would be that they need to talk to the Mayor because the ball stops here. I am sorry I did not think of it two years ago or at the collapse of the economy, but I just don't see how you can't help the ones that are coming as opposed to the ones that are in the past. If you develop a vaccine for a disease and how do I tell those people behind me that I did not have that when they were sick. I can't change history and I really want to be as fair and honest to all people as we can. Mr. Chandler said ...but you can change history. Are you telling me that you cannot go back and look into your records and see who purchased within the last few years? Mayor Baker said he was not creating a favorite group. I am just trying to help first time home buyers get a start in life. If this would help, he is all for it. If it is not what this council wants then so be it. Vice Mayor Adams said that they are not all young home buyers, some of the ones who could afford it could be her age and many probably are, as they are ones that can afford it. If you are a first time home buyer...you are a first time home buyer, regardless of the age. I know who you are thinking about, and I agree with that. Mayor Baker said he is thinking of young people; however, if someone gets the benefit of it....do we want to put a cap on it (such as if you are 55, you can't get it). Most of the people who come in are retirees....Vice Mayor Adams answered in response to Mayor Baker's question that she is 64 years of age and every day they keep breathing is a good thing. It is generally not young families, which she agrees with helping. Vice Mayor Adams stated she felt this needed more discussion from the Council, than just putting something through tonight. Councilman Hearn also felt it certainly needs more thought, but he said they had been thinking about it for a couple of months. He did not feel there was any way we would be able to answer the question that Mr. Chandler posed because if that were the case there would not be anything done. If we were afraid of offending someone possibly in the future or past or present we would not get anything done. Vice Mayor Adams said...but we can pick a point. Councilman Hearn still felt it needed more thought. Vice Mayor Adams said the thing that came to her attention was that it did not have a "date end point". It was like we would never collect another transfer tax....it was like having no transfer tax forever. Councilwoman Flowers

said she was against. She said some townsperson had contacted her saying they were against it. She was not for just helping “first time home buyers” when there were other people struggling in town. She was glad she had heard Mr. Chandler voicing the same feeling...there are people struggling in this town. She feels sorry for the first time home buyers. Mr. Eggers commented that the whole reason he has been in support of this idea is that to attract first time home buyers to this town, I have not written a contract in over a year for a first time buyer, he is sure it is going to be past a year before you would find one. This is a different entity; a community in Millsboro has more first time buyers because they are a lower price point. A first time buyer to fit into a community that is a little bit higher priced and \$185,000 is not high in today’s terms, but for first time buyer it is a big number. That could be the tipping point as to whether they buy in your community or not. It is not a matter of losing the revenue in giving to these first time buyers, it is a matter of whether you get them to purchase in your community to start with. You say they can buy easier in Millsboro because of the price. RDM absorbs the 3% for this. Attorney Witsil stated the County has an exemption, the State does not. Vice Mayor Adams asked...when RDM absorbs the State portion, who will pick up the tab. It is money from the builder’s pocket, as they are absorbing it. She knows that no one is going to sell something saying they are going to pay this portion for you. Somehow RDM is recouping the money some way, correct? Mr. Eggers reported it is coming out of the builders that Millsboro were smaller town homes. He stated they had adjusted their pricing (it is common knowledge) from \$239,000 down to \$184,900. Vice Mayor Adams asked what were homes prices in Millsboro...She recalled it being much higher also and you came down. There are 3 price levels in those homes in Millsboro. There is no less money coming out of the builder’s pocket (1 1/2% no matter what). Councilman Hearn asked Mr. Egger if he had had any people if they might be able to swing the sale if they did not have to pay the transfer tax. Mr. Egger stated not specifically, it is just another piece of the puzzle in trying to put a sale together. It is just a question that comes up and we have to give them a good faith estimate of the closing costs, they go to the lender, and go through the numbers and see if it fits. This is another small way that would help them make the numbers fit for them. Mr. Eggers stated that he did not know if they would have even one first time buyer’s contract between now and the end of the year, it just a possible roadblock for the first time buyer. It is a possible way to bring a homeowner, taxpayer, someone purchase the home and save impact fees and real estate taxes coming in. It is just another dart thrown at the board to create sales here. Councilman Hearn said it could be an impediment to any buyer, not just a first time buyer. Mr. Egger stated that it could be. Mayor Baker asked for a motion concerning the topic. Councilman Hearn made the motion that we table this motion until the next meeting, seconded by Vice Mayor Adams and unanimously approved.

The next item is amend Chapter 130 of the Municipal Code of the Town of Dagsboro, Delaware, entitled “Impact Fees” by adding to Section 130-4 entitled “Time of Payment” a new subsection C to provide for payment of impact fees at the time of issuance of Certificates of Occupancy for a time period from the date of enactment until December 31, 2009, or until a date to subsequently determined by

the Dagsboro Town Council. Attorney Witsil said the title summarizes it. The specific language is in subsection C which would be added to Section 130-4 which is the impact fee section. It specifically states the time for payment of impact fees stated in subsections A & B above is hereby extended until the time of issuance of certificates of occupancy. The time allowance provided in this section shall automatically expire midnight on December 31, 2009 unless a later date is determined by a majority vote of the Town Council at a regularly scheduled Town Council Meeting. This was part of the economic incentive program that was addressed at the last Town Council meeting. Mayor Baker opened the meeting up to the public for their views. Is there any who wishes to speak in favor of the amendment? There was no answer. Is there anyone who wishes to speak in opposition to this? At this time, Al Townsend asked if the town had received the letter from the Fire Department. Mayor Baker stated they had and asked Stacey Long, Town Clerk, to read the letter into the minutes. Stacey read: This letter is to formally communicate position of the department's directors and representing members on the town's plan to amend Ordinance Chapter 130 section 130-4 time of payment....it is our position that the intentions of the change are good for the community, the town's residents and overall worth. We are, however, opposed to the across the board implementation on all impact fees. We wish to go on record requesting the impact fees for the fire protection chapter 130-5 (c) and ambulance service chapter 130-5 (d) continue to be assessed and collected at the issuance of the building permit being distributed quarterly. The principle and our mindset in this request is that the emergency services provided by the fire department are potentially in use long before the building permit is issued for the first unit. The department is in the position of providing services to all of the persons and equipment on site during the site work phase of construction as well as the life of the structures. Please consider this position and have it read into record of the Public Hearing currently scheduled for June 22, 2009. Please direct any questions or comments to Gary Cox or Al Townsend. Respectfully, Gary Cox, Dagsboro Fire Department. Mayor Baker asked if there was any opposition to anyone else in the public....members of the Council. Vice Mayor Adams asked if we could have this as stated adding a statement that says the impact fee would have to be paid that would cover the fire department and ambulance and the rest could be paid at the time of the certificate of occupancy. If I understand this correctly if anything happened on worksite, you are there to be called upon. Al Townsend also noted that if someone turns theirs in today we are 3 month getting it, as it is quarterly. Vice Mayor Adams asked if the ordinance could be amended to include that. Attorney Witsil said it would be more appropriate to amend the ordinance to state that the impact fees (is it just water now that we are talking about) and the public service impact fee. The water impact fee is 130-5 (a) and the public service impact fee You can fine tune specifically which impact fee you wish and if it is just water and your public service impact fee you can state that. It would read the time for payment of impact fees as stated in subsection 130-5 (a) water and service impact fee which I think is (e) can be stated ...in 130-5 in (a) and (e). Councilman Hearn had a question from the fire company representatives. Is someone normally billed when the ambulance is sent to pick them up and transport them to the hospital? Al

Townsend stated that it is called third party billing and that does not help in paying for the call. The fire department gets nothing for running out there. Mayor Baker asked if there were any other questions or comments. Mr. Eggers said he understood this is basically to help builders with their fees until they get a certificate of occupancy and they are ready to place someone in there at settlement. It is just to delay impact fees for the builder...not for non payment or forgiveness. Mayor Baker said that was correct...it is just a deferment. A motion was made by Vice Mayor Adams to close the Public Hearing, seconded by Councilwoman Flowers and unanimously approved. Vice Mayor Adams wanted to know if she made a motion to incorporate getting the impact fees in time for the fire and ambulance departments and in so doing (the way Attorney Witsil explained) it would not be too complicated to revise. Attorney Witsil stated that you would only be revising the schedule for that water impact fee and the public service impact fee. In subsections (a) and (b) above it would be in subsections – 5 (a) and (e) and strike the above, because it is actually below. Councilman Hearn asked Attorney Witsil ...at what point in the process are the impact fees not really paid right now. His answer was at the time of issuance of building permits. This sends it to the end of the process when certificates of occupancy are acquired. Councilman Hearn said then this does not specify as to what point in the process this would be enacted for the builder (for example it does not say at the point of application for a building permit). Attorney Witsil stated the code presently says at the time of issuance of the building permit. This says the time for payment of impact fees is hereby extended until the time of issuance of certificate of occupancy for those two provisions. What is currently in the code at the time of issuance of the building permit, those would cover this portion Council Hearn asked. Kyle stated Yes. Attorney Witsil said he would take Kyle's answer. This specifically extends those two impact fees with the amendment. The other impact fees would be payable at the time of issuance of the building permit. We commenced with the draft of last month and the comments made last month that they would all be continued until time of issuance of the certificate of occupancy. Attorney Witsil said that is not a date specific...for a major project that could be a relatively extensive period of time. Kyle noted that generally a building permit is applied for once a contract is in hand by a developer for a unit, unless they are speculating and the building comes as a model or spec. home that they plan to start at a later date. In that case it might be some time before it is sold and certificates of occupancy are issued. Generally, this not the case....a developer will build a house once he has that house sold. There are not too many developers speculating and building houses without having contracts right now. Vice Mayor Adams does this not still help them out by not having them pay at building permit time...so if they could wait until a certificate of occupancy is issued, it is less money out of their pocket up front. Just adding this additional provision is it still going to be helped if we hold out the water and public service. Kyle said these were the two largest impact fees you have...several thousand dollars in total. Vice Mayor Adams stated then the fire and ambulance wouldn't be that great. Kyle asked Stacey if it was just a couple of hundred dollars usually ... Stacey said between \$300 and \$500. There is a \$2,500 cap on each unit for residential and \$5,000 for commercial. Savannah Square would probably fall into the category and Stacey mentioned

Miken Builders are doing multiple units vs. one unit. The fit out permits at Savannah Square are minimal ...\$50 or \$100 or something like that. Vice Mayor Adams asked Council did they want her to make a motion with that in there, or do you want her to just be quiet. Attorney Witsil instructed her that if they like the amendment, they could approve with amendments Attorney Witsil proposed. This would permit fire and ambulance to get their money, correct, Vice Mayor Adams asked. Vice Mayor Adams made a motion that we adopt the ordinance to amend Chapter 130 of the Municipal Code of the Town of Dagsboro, Delaware entitled "Impact Fees" by adding new subsection C to provide for the payment of impact fees at the time of issuance of certificate of occupancy for subsections (a) and (e) of 130-5 for a time period of the date of enactment until December 31, 2009 or until a date is subsequently determined by the Dagsboro Town Council, seconded by Councilwoman Flowers and unanimously approved.

Planning & Zoning Report and Vote on the Following Items:

- 1. Consideration of change of use procedure. Mrs. Eckerd reported that P & Z voted in favor to recommend the use of the pamphlet developed by URS for administrative change of use procedure. Marge asked Kyle if Council Members had received a copy of the pamphlet. The Council has received their copy. Mrs. Eckerd wanted to know if property owners who intended to change the use of a property they have purchased.**

Mayor Baker said they would stop on #1 for a moment. Are there any comments from Council? Has everyone had a chance to look at it? Basically, it would be administered by Town Staff making sure that all the requirements in terms of State agency approval's are taken care of and emphasis placed on the applicant as opposed to the Town going through the process and making sure all of those things have been taken care of. Change of use would become before Town Council. You would determine if it is a minor change of use, administrative change of use or whether it needs to go through a site plan review process. It provides information for the applicant so that they know what is required of them and what the Town wants to see prior to issuing a building permit. Vice Mayor Adams said she personally like this because she felt Council needed something and Councilwoman Flowers agreed. They liked the pamphlet idea. Marge stated that way the Town would know the applicant needed a site plan and to come before P & Z. Attorney Witsil said he would like to mention that the requirements for a site plan review encompass new construction, expansion or intensification of existing use, unless otherwise subject to separate procedures except a single family dwelling on an existing plot plan. For any of those uses a site plan review is required. I am trying to figure out why this step is necessary. First of all, whatever use proposed has to meet the zoning requirement for the specific zoning classification. That is the first check. If it is a use that is permitted, the zoning code is satisfied. If then there is any new construction, expansion or intensification of an existing use, then a site plan is required and the words intensification of existing use to him seem identical to change of use procedures or replacement of existing use by a new use where there is

a physical change. If there is any physical change whatsoever, it requires a site plan review. Mrs. Eckerd interjected ..."if there is a change of a footprint of the existing...". Attorney Witsil said if it involved new construction, expansion or intensification of existing use that is what the site plan requirement states. That is where he is hung up. He did not wish Council to create a new process when the procedures which exist arguably cover it. Perhaps we have not been enforcing it, but the site plan is required where there is "intensification of existing use". Mrs. Eckerd mentioned that she felt the intensification of existing use is ambiguous. Kyle stated the problem is where there is an existing structure where there are no outside exterior renovations taking place, it is all interior renovation inside the building. It does not require a building permit....Attorney Witsil said it still fall within the zoning code. Kyle stated that there is no mechanism for enforcing whether or not they are meeting the zoning code, in terms of parking and things of that nature as things are interpreted now. Attorney Witsil said that no building permit is required. Vice Mayor Adams stated that we may now have places that fall between the cracks unless we stop the fall. Without any further comment, Attorney Witsil said that this needs to be enforceable, it needs to be an ordinance. The propagation of the pamphlet and to call it a process by whatever is being proposed this evening is not sufficient. It would have to be distilled into some sort of ordinance format and put it into the code. Mayor Baker said if it is put in ordinance form, would we have to go through every section of the zoning classification we have and compare this to it (like we did with the sign ordinances). It will require the same scrutiny. Attorney Witsil said that Kyle came up with the language for the pamphlet. This is the process that most town's follow for change of use. I have not seen the process specifically listed in code. These are requirements that the State requires, the County requires. Basically, it is a check list of requirements that an applicant needs to go through for any type of change. Mrs. Eckerd noted that P & Z feels that somebody needs a check list at the Town Hall. It gives an applicant directions to go forward with their project. He mentioned that he would be surprised at the end when they have their business up and running to find out they do not have the appropriate State agency approvals. They can get shut down later. Attorney Witsil asked Kyle if this pamphlet is just a distillation of the code requirements that we presently have, then we don't need any more code changes. Attorney Witsil said he agreed with Ms. Patti that there is something being added here to catch something falling between the cracks. I am not sure exactly what it is, but I know that you are adding something else. Kyle said the only thing that would be added would be the Town Council determining whether or not a site plan is required. Attorney Witsil agreed that they had that discretion now. Kyle said when does that take place Is the question. Attorney Witsil said if there is no building permit it would be his opinion that it took place when the license was applied for.... No physical change to the structure and the zoning classification is O.K. it is permissible. Kyle stated ...but would you want to find out when you have your business renovated and established, when you go to get your license that you are not meeting the code? It is the property owner's responsibility to know the code and to meet it. The pamphlet can inform people what needs to be done....check with zoning classification, check to see if you need a building permit, you have to have a license....those are things

that the Town has put out all along. Attorney Witsil asked Kyle if there is something in there that is an additional requirement that someone has to do. Kyle answered, "No". Everything in the pamphlet is what someone would have to do to convert a current building into a new use. Attorney Witsil stated that if that is the case and there are no new requirements then you are just approving the brochure information this evening...is that correct? Vice Mayor Adams said yes, so that everybody has something to go by....Councilwoman Flowers said they are trying to be proactive in confusion and delay. Stacey stated that presently we do not have a check list for a "change of use". Mayor Baker asked if she would find this to be helpful as a guideline. Stacey responded "Yes". Her only question is that they would have to receive a Certificate of Occupancy when there is a change of use. We have never issued that