

**TOWN COUNCIL MEETING
TOWN OF DAGSBORO
MONDAY – SEPTEMBER 28, 2009**

Mayor Baker called the meeting to order at 7:00 p.m. on September 28, 2009. The following members of the Council were present in addition to the Mayor: Vice Mayor Adams, Councilmen Hearn and Councilman Truitt. Councilwoman Flowers is unable to attend due to illness; Stacey Long, Town Clerk; Rob Witsil, Town Attorney; Kyle Gulbranson, Town Planner, Marj Eckerd, Chairwoman P & Z and other interested parties listed on the sign in sheet.

The first item on the Agenda is the Presentation of Building Permits issued: Stacey reported that two permits have been issued. #792 to Scott Crater for a 6' x 4' freestanding sign and #793 to East Coast Solar (which is the building on U.S. 13 beside Royal Farms and owned by Craig Banks) for a 4' x 6' wall sign.

The next item on the Agenda is the Planning & Zoning Report: Marj Eckerd, Chairwoman, reported that Doug Warner, who represents both the Estuary on Pepper's Creek and the Highlands on Pepper's Creek was present at their meeting. They did not vote on the preliminary approval for the Highlands of Pepper's Creek. P & Z wanted the Highlands to come back with four (4) changes on their plans. We would like to see sidewalks on both sides of the streets have them re-design (per design standards) the view of the building so that they are not all one level elevation...so that there is some creativity instead of just plain buildings. They would like to see on their site plan the scale of the buildings to reflect a 35' height. And most important of all, we would like to see a 50' buffer, fully surrounding the storm water management system. This is really per our code (276-27) which states that in the Town of Dagsboro there shall be a minimum 50' buffer area established between any existing water body, including ditches, creeks, ponds or flood control structures. P & Z told them we were not ready to vote on preliminary approval until these four items were met. That was it. Mayor Baker said he had submitted a list of concern to P & Z. Marj said she had passed them on to the committee. Mayor Baker's concern said his big concern is safety, with the amount of units going in there. It could be over a thousand pedestrians (which is greater than what the Town of Dagsboro's total population is presently). He feel there needs to be a thoroughfare not only across within the development....Marj said they are going to check on that—over across Clayton Street. Also, from Clayton Street and from Southern States on that side of the street. Also, for the eventuality of another community abutting them, they would have a shared walkway between the two areas. The Mayor said he was thinking of west to east, on the same side of the road to the development. He had talked to DelDot about it and they had suggested bicycle/pedestrian paths (like they have in front of Lowe's in Millsboro (where they

put in the 8' blacktop lane) in lieu of a sidewalk, supposed to be able to handle handicapped people in wheelchairs, bicycles. It is a wider pedestrian walkway. Kyle asked the Mayor if he had expressed that to DelDot and the Mayor said he had talked to them concerning that matter. The Mayor was concerned about putting 1,000 people in an area that small and they only have one way to cross the street. He asked Kyle if they had measured any of those buildings to see if they were back in scale. The height is 35' (maximum height). Kyle is having difficulty in seeing where the pitch of the roof is 6/12it is coming out 4.5/12 on the main roof. The Mayor said the building is way too long for the roof pitch. Kyle said it is not 6/12 as it is designed right now. Hopefully, DelDot will incorporate your comments when they review their entrance and put that as a requirement for the pathway. Marj asked if there was an eventual meeting between DelDot and the developer and the Town. Mayor Baker said the Town should require it and the developer should make it happen. Mayor Baker said he talked with DelDot about the turn around at the bottom of the hill and mentioned the pathway. He said at this point they are opposed to a mid-block pedestrian crossover. Mayor Baker stated that there is no light there. They would have to put one up to stop traffic to let pedestrians cross over. If we look at an aggregate of what is going to happen between General's Green and The Highlands, that is more than enough to compensate for a traffic light for a pedestrian crossing. Mr. Disharoon said that it appears that the Highlands development alone would be large enough to have a stop light. Kyle said DelDot's policy probably is that they won't put a cross walk in unless there is a light. A pedestrian bridge would not be probable due to bicycle traffic and handicap traffic. It is too hazardous it can be done, but it may not be DelDot's policy to do it that way. Marj wanted to know where the P & Z should take that. The Mayor said it was already in the sixteen items....crosswalk or sidewalk on Route 26. It was mentioned, Kyle stated, but it was not one of the four items which P & Z had concentrated upon. Mayor Baker said when it comes back to the Council; he would not be comfortable approving that without some consideration, so they might as well be aware of it now. That is all P & Z has to report. Mayor Baker asked if there were any questions. Councilman Hearn said he had a question as to how big the retention pond is....Kyle felt it was close to an acre. Mayor Baker is concerned about the consistency of the compaction of the ground also. They did talk about that. The Mayor felt it needed to be part of the preliminary site plan. Kyle said with their other plan, they did have geo-tech information for that property. It was felt by the Mayor that they were putting a lot of weight in a small area. If that soil will not carry the weight, then pilings may have to be put in place. Kyle said they will have to show that they can meet the compaction regulation when they put the foundation in. They will have to expand that foundation out. Discussion took place concerning the ditch in front (a tax ditch) and they plan to close the ditch in the back which is not a tax ditch. If they alter the drainage of that property any information we have now is going to be of no value. They will need to do studies (once they close that ditch in) and alter their drainage. Mr. Disharoon reported that when the sales trailer was there, they had dug a ditch beside the woods all the way to the other ditch. This was done behind the tree line. Councilman Hearn was concerned about the pond, especially something of that size. We require fencing

around pools. Marj stated P & Z had discussed that they went to several developments and she had driven past them, one in Swann Estates and some of them require 35 feet from the pond....and we are requesting 50 feet. Mayor Baker said this might be a question for the Town Solicitor, possibly requiring the developer to maintain an insurance policy or somehow hold the Town harmless....what would be appropriate Rob? Your site plan review and sub-division approval standards state that in sub-section 3 of 275-40 that the Town may establish additional requirements for preliminary site plans and Town Council may waive a particular requirement if, in its opinion, the inclusion of that requirement is not essential to a proper decision on the project. The operative words in this section are the Town Council may establish additional requirements for preliminary site plans and as long as you have a rational reason for establishing those additional requirements, you have a health, safety or welfare concern, I think you may go ahead and do that. However, that does not give you the leeway or the authority to come up with something entirely extravagant or unreasonable for a condition for a sub-division approval. As long as there is a rational nexus, relationship to your concern, you can go ahead and impose that requirement. Attorney Witsil asked, "Is that a satisfactory answer to your question, Mr. Mayor?" Mayor Baker said it did, and probably we would be better off to mandate that the HOA maintain an insurance policy against that pond (hazard and liability). Mayor Baker's other concern is that they are going to sell these floor by floor levels 1, 2, and 3 as opposed to up and down as condominium units. I think the roof on the building needs to be addressed under HOA requirements. Attorney Witsil stated that the person on the top floor will not be the only person stuck with the responsibility and the people below are getting the benefits of it. Attorney Witsil stated that the new unit property act requires that exterior roofs and walls be common elements. That person will not be stuck with the responsibility for upkeep. He also stated that this has been a long process. He did not recall reviewing the association proposed documents. Marj said that has not been done yet. Attorney Witsil stated it would need to be done before we have a final. Kyle mentioned that it has been included in their letter that is something which must be done before final can be issued. Mr. Disheroon addressed this to Kyle....on the last drawing which they sent along with the letter, it is shown where there would be a buffer around the pond (that was what they inquired about at the meeting)...Kyle stated that there is now 50 feet between every building the pond....however, Mr. Disheroon was inquiring and saying they wanted a buffer around the pond. The wanted a landscaping buffer. Mayor Baker said this was all stuff to consider.

New Business:

1. Consideration of billing water usage on a monthly basis for all accounts. We have two representatives from Artesian Water Company with us tonight. John Thaeder and Ken Branner, who is also the Mayor of Middletown.

There is information in your packets. Mayor Baker asked them to give a brief synopsis of how you came up with charges to convert to monthly billing. Currently Town of Dagsboro has some quarterly and monthly reads and certain commercial monthly reads...in the Cea Dag Community, it is both. It requires some manipulation of the data base every time you do a read. The genesis of the discussion was "how do you do this and not make manipulations every month or quarter". It is basically do one of two things...work toward a complete system that goes monthly (which would be changing all of the quarterly's in the system to a monthly read) and then on a monthly basis reading them and putting all of the bills and so forth. Taking the 47 Cea Dag customers and changing their data so that they would be read monthly in the software and just doing those billings along with the other commercial billings on a monthly basis. It is a relatively inexpensive approach because you just deal with the area that is creating problem and not for the entire town. The programming is approximately 4 to 6 hours for Cea Dag and 6 to 10 hours for the entire system and the amount of manipulation of the data being changed by customer service. The base charge in either case is not a lot of money. The rest is just the amount of time it takes to put out the billings, instead of a quarterly basis every month. Mayor Baker asked if they were taking into consideration the time for reading the radio read meters (which would be less than we now have), as they would be spending less time in Town doing the touch pad. Artesian said they basically took what it would take to keep them whole in the process. The information in the letter which Council was given was discussed. Mayor Baker said unless every thing is the same there will not be any way to correlate the monthly number for the total use. It has to be an all or nothing situation. Mayor Baker would like to see the \$5,600 charge converted back into a per customer charge as we add customers, I am sure you wish to increase the number. 307 customers would be about \$1.25 per month per customer (paid by the Town, not the Customer). Councilman Hearn read from the letter saying in the last paragraph either solution will resolve custom programming ...what does that custom programming cost now. It basically takes 7 hours every time we have to do a billing cycle to take the data and manipulate it so that we can go out and make the readings. It is just one of those things that makes everything match up properly. If we were going to bill you every month for our effort to do this, we would be looking at \$700 or \$800 every month just to do the programming. Councilman Hearn said the way it read is that either of the above solutions will resolve the need to do custom programming. It doesn't necessarily solve the Town's need of trying to determine where all this water is going with the meter situation that you have with Millsboro. Councilman Hearn said that right now, we are paying Artesian to do custom programming quarterly....Their reply was that Artesian had basically "sucked it up" until now trying to work through this issue (the 10 hours). Councilman Hearn was trying to figure out the savings to the Town. The Artesian representatives said the Mayor knows we have been doing this as a service, but they can't keep doing it. They want to get

the Town's records straightened out as far as the actual use of the water so that the meter situation can be resolved as to what is being pulled from Millsboro. We need an actual usage and we have been working to this point. In looking at savings if we billed \$800 x 12 months it could cost \$9,600 and this solution would cost \$5000 and whatever? If you wanted to equate it, that would be the difference. They have been trying to work with the Town to sort through this. Mayor Baker would like to see some feedback from the townspeople. If Artesian could work that out and send to the Town. Mayor Baker asked Artesian to give them a break-down on a cost per meter and send it to us; we would have more information to look at. Artesian said they could. Mayor Baker did not feel they had enough information yet. Mrs. Zsido said you are all talking about tracking water....as a citizen of the Town, I don't understand why you would be tracking water. Stacey explained that presently the bills which we are getting from Millsboro are saying we have used x amount of gallons...after Artesian reads our meters and gives us the consumption, those two are not panning out. Where is all this excess water going? The issue is that the meter itself between Dagsboro and Millsboro. We can get the numbers based on usage, but we do not have a monthly total usage, so that the Mayor can go back to Millsboro and dispute the total gallons used. Millsboro is sending bills based on the water flow through the meter. This does not correspond to what we are billing, actual usage. Their readings are accurate; however, it does not appear the flow is accurate going through the meter. It was asked if Artesian did not have history of other towns. Artesian reported that this is the only meter of this type and this size taking this kind of flow. It was reported that the meter is not even working now. They are billing based on past history. The Mayor was asked when was the last time that the meter you are talking about was certified. It was calibrated not too long ago. It is calibrated to work in the flow range that it is designed to do. The problem is that the flow rate of the meter is probably 20 times more than your flow going through the meter. It is running in a range that it was not designed for. The meter cannot be calibrated to read flows that it was never designed to read. Mayor Baker said it is the Town's meter; the agreement the Town had with Millsboro is that we can't touch it without their permission. The meter that is in there is a 12" meter...it has a plus or minus of 60 gallons a minute. Even though it is correct the meter is oversized for what it is, but because we ran 12" pipes from Millsboro ... hence a 12" meter. When you put a mag meter (electric meter) it senses the differences in pressure in the pipe and as it does that it registers electronically. As long as water is under pressure it is fine. Think of it as shutting a hose off and water seeping out until the hose is empty, when Dagsboro quits drawing (x) amount of water and the pumps in Millsboro shut off, some of the water in Dagsboro seeps back toward Millsboro. If it is less than 60 gallons a minute going back, we do not get credit for the return. When the pumps start back, and the water flows the water to us, we get charged for that. There are several issues that go with that...one is to replace that meter is approximately \$80,000 plus we would

have to have a new pit dug to put the meter in. There are a lot of opportunities available, but we need to find the most economical way to do it. We don't want to spend \$80,000 or \$100,000 to replace a meter at this time. That is an increased cost to the Town. Whatever we do, we need to know it is a payback. That is where we are with it. Councilman Truitt stated if we can prove that this backflow is occurring, we may be able to say to Millsboro, you cannot bill us. Mayor Baker said but it can't be proved that it is occurring. The Mayor said the reason for it not matching up is because the meter is too large. We cannot prove it to Millsboro. We have had various independent testers – Delaware Rural Water has tested. Councilman Truitt stated that if the Town is billing for a lesser amount of water usage than Millsboro is billing us for then that water is not being delivered to Dagsboro....Mayor Baker said, but it is. Whereby Councilman Truitt said but some of it is flowing back to Millsboro...that is correct. The Mayor said it is flowing back at less than 60 gallons a minute, so we do not get credit for it. The only thing we can do is to have really good billing, so that we can present the figures to Millsboro and say this is what we really used. I have written that letter six months ago to Millsboro stating we want to meet, attend a Council meeting and go over these figures with them. We need to make sure we have a good history of numbers before we can do that. I do not want to be numerically incorrect and have someone challenge us. Otherwise, they might say, you guys don't know what you are talking about and we choose to keep billing as we have been doing. The monthly billing will give a more frequent history. Mayor Baker said if there is a water leak in town, the new computerized meters will let us know if there is a water leak, the day it happens, the hour it happens. It could be a toilet hung up or something of that nature. If the meter runs water it for more than 23 hours, it will show up as a leak. There is a leak detector, has a high and low setting on it (if you had been using 10,000 a month and all of a sudden you use 40,000, it would show up – “out of range”). It would require someone to go out and make sure nothing is going on. The radio read meters are absolutely fantastic. It is the right thing to do. It saves labor. The computer can be put in a car; ride around town and in a couple of hours, every meter has been read. Previously, the top of the meter had to be tapped and if it did not show a reading, it would have to be re-read. Mayor Baker said we will have to wait until Artesian gives us a per meter figure (hopefully within the next few days). When we get that and have a few days of feed back from the people in town and we can run this by the Council. We will have to do it at the Town Council meeting. The Mayor thanked them for meeting with us and reporting on the billing from Artesian.

Resolution proposing that a public hearing be held on the subject amending Chapter 275 of the Municipal Code, entitled “Zoning” by adding a new section 275-15 to provide for a Medium Density Residential District with a development density not to exceed four dwelling units per acre to rescind and delete the existing HR-High Density Residential District regulations presently

permitting a maximum of 10 units per acre, and to amend the Table of Districts Regulation, the Table of Contents for Chapter 275 and Sections 275-19, 20, 27 and 42 to make reference to the MR-Medium Density District Regulations. This resolution is the next item of business. Attorney Witsil said he would be glad to answer any questions which anyone may have regarding it. For now he has found all of the HR references and they will be changed to MR depending on whether they are specific to the 10 acres or whether it just says HR. With that in mind, Attorney Witsil stated that what you will be doing when you entertain the Public Hearing would be to delete the HR District, to create the MR District of four units per acre, change the title of the section in the Table of Contents to MR, and wherever there is a reference to HR and those same regulations would apply to the MR, you would be considered in lieu of HR the words MR – Medium Density Residential. This will require public notification in two newspapers in general circulation fifteen (15) days prior to the meeting and Agenda notice as well. For a change in the zoning code your code requires a resolution. I thought it appropriate to have a written resolution because of the significance of this change of zoning. Attorney Witsil also have thought about that he did not include in this ordinance a “grandfathering clause”. He thinks he needs input from Council. He does not know presently how many subdivisions or pieces of land would be affected by this ordinance. If someone has applied for an HR district re-zoning obviously this would affect their application. Attorney Witsil feels that if someone has an HR development, you need to consider whether you want to take that HR classification away from them and ask them to downzone that land. Kyle asked if you were eliminating the district, you would have to do that, wouldn't you? Attorney Witsil stated not necessarily, as you would be eliminating the possibility of someone requesting a future change of zone to that district. Kyle questioned ...would you not have to re-zone the properties that already have that designation. Attorney Witsil said you do not have to. You could grandfather them in....that is my question to Council as to whether that is the ultimate goal to down-zone land that has already been classified. There are five (5) properties right now Kyle mentioned. Councilman Truitt asked how far up the chain ...isn't there a certain distance up the chain that your can't legally downzone...such as if they already have preliminary plan approval. Technically, Attorney Witsil, said it depends on what you want it to be. If you were to say this ordinance changes all HR zone to MR zoning. Those people who have vested rights (in Delaware law those property owners who have become entitled to develop that property and who have taken such a step toward development that a person in a black robe will say – you can't take that away from them. Typically, that fine line where vested rights occurred change almost with every case that comes before the Delaware Supreme Court. Ten years ago it was have you constructed a significant foundation. Seven years ago the law changed and it said significant expenditures toward engineering costs and development design expenses provided a vested right to a major developer in

the Wilmington area. Attorney Witsil said Federal law is all over the place as to where vested rights occur. Kyle stated that in our case we have Cea Dag (which is constructed). Attorney Witsil said you don't take any HR classification as they become non-conforming. They are entitled to continue. The Woodlands which is partially being constructed. Chapel Crossing which is partially constructed. General's Green which will probably sunset. The Highlands are really the point. Mayor Baker said anyone already on the books, already has preliminary approval or final approval. Unless they have preliminary site plan approval or final site plan approval it would not matter because nothing has come before P & Z or Council. If in fact a developer (such as General's Green) with part as high density, not all of it. If they sunsetted, they would lose that right. Attorney Witsil asked if they are going to determine grandfathering based upon preliminary sub-division approval. That would be his thought. If they have approval they get to go forward with it. The real issue is that if someone between now and the time of entertaining this ordinance files an application for a proposal for HR. Just filing an application does not give them the right to feel they are grandfathered. It has to go back to substantial construction, which is how we are grandfathering the sun setting clause. Attorney Witsil stated that your determination of sub-division approval is generous and would eliminate possible challenges. Mayor Baker said the only concern would be any building existing would be non-conforming, and any existing building (where an act of God, fire or something happened) would be able to rebuild. Attorney Witsil said pursuant to your non-conforming structure. They would be a legally non-conforming structure. The odds of a building being completely destroyed in a fire in today's world is close to not happening. Mayor Baker stated that every building we have in Town that is high density has a sprinkler system in it. Attorney Witsil will provide an amendment to this ordinance based upon what I believe is the direction to him by Council to add a grandfather clause which draws the line at preliminary site plan approval. Kyle asked if all of these developments become non-conforming if this takes place...how that will affect new construction within those developments. They are going to be considered non-conforming and he wondered if that would affect financing for construction of those units. Attorney Witsil said it may well. Kyle mentioned that you might stop all development which you have going on in town, if that is the case. Attorney Witsil did state that non-conforming status is something that the banks do not like to see. If they have to take over in the event....Kyle said that would be his fear with making that change, you might have half empty developments sitting. Mayor Baker said the only way it becomes non-conforming is ...Attorney Witsil said the grandfathering clause could specify that any land developments which is the subject of a preliminary site plan approval shall continue to remain vested with all of the rights and development density that had originally been contained in the HR District classification. In that way a developer can go to the bank and say, "yes, we are non-conforming but the town was wise enough to include a

grandfathering clause which allows us to complete development at this density". Mayor Baker said as long as the developer can be made to hold, the bank won't care. Kyle has some other issues....one being when you are going to 4 units per acre, basically you are eliminating town houses and condominiums (practically speaking you won't see those built here). What you would see is a town house building surrounded by lots of open space, which I don't think a developer will find marketable (he can't make any money doing that). Kyle said the density will be equal to the density in the county. I think what you will see is development happening all around you, but for all intents and purposes stop development in town. Mayor Baker stated that Sussex County is already stopped our development...they did not want us to have anything to do with the west and south side of U.S. 113, so I am not concerned about Sussex County and whether development happens around us or not. It is going to make the land within the Town of Dagsboro more valuable. Kyle said these are some valid concerns, but Wayne thinks it protects property values within the Town. Attorney Witsil said he would recommend that this be referred to the P & Z for a recommendation. The P & Z members present and those Council members who want to be considering their rationale for voting either in favor of this or opposed to it, I have taken the liberty to look at the Comprehensive Development Plan and there are a couple of references in there, I would like you to look at and come up with ideas to support your vote. I would like you to articulate carefully with good reasons to support it. In the Comp. Plan survey there is indication that a majority of townspeople favored lower density. On Page 4, it stated there are only 6.46 acres of land zoned HR (he is not sure about this and would have to refer to Kyle and Stacey). Page 5, section 1.4 (d) it states that the preferred type of housing is low density, single family that serves residents needs with minimum negative impact and enhances Dagsboro's small town character. Page 7, there is a statement that currently residents strongly agree that there is an adequate supply of housing of single family homes or the desired type of housing with neighborhoods of predominately single family homes on modest to large lots. Those were some of the recommendations written into the Comp Plan that could be presented at the time of the Public Hearing, but if you have other rationale for your decisions, I urge you to consider them and bring notes. Council mentioned strain on infrastructure and public services. Perhaps the police department could give you some factual basis for determining if HR development were to continue it might be an overwhelming density, perhaps your engineering people can direct you as to whether or not it would be unreasonable to continue with HR density in terms of providing infrastructure, all of those are good reasons that I like to have when an ordinance like this is adopted, so that I can defend the decision of the Council, if it is challenged. Kyle shared that the only market that seems to be moving at this time in the region is single family homes. The market for condominiums and townhouses has just dropped. Mayor Baker said the Highland's is the only development which exceeds the 4 units per acre. Everything else is under the 4 units per acre. General's

Green is generally under 4 units per acres even though they have a High Density in it. If there had to be some give and take, it would give P & Z and Council some room to negotiate as long as they stayed under the total 4 units per acre. Kyle stated that considering today's market, he is surprised that the Highlands are pushing so hard to get this plan approved. Mayor Baker did not see the Highlands being any more than a request for a change of buildings as they are already zoned. Attorney Witsil would be uncomfortable (he said there is always an issue of fairness when you adopt an ordinance like this as these people have gone through a lot of expense and effort to put a plan in front of you) if this HR deletion and MR adoption were to occur before the P & Z or Town Council for one reason or another entertained their plan, I would perceive that as being relatively unfair. Mayor Baker said he thinks they would have a legal base to stand on if we did not go back, because they could say we disapproved the plan to drag it out. Mayor Baker felt that was the only one that would have any consideration. I am still under the opinion that they still have an approved plan. They can go to that plan and build it. Attorney Witsil stated...the question is whether you take this application away from them by this ordinance, and whether you deem that to be a fair, appropriate, legitimate town decision. Attorney Witsil said he is not asking Council to do that now. Mrs. Eckerd said it was a good thing to take back to P & Z Committee. Attorney Witsil said he did not feel you could continue to not have a quorum or put them off ... (it could be perceived that you might be stalling the application in order to pass this ordinance) to shut them off on their second revised application. Mayor Baker stated it was felt the original plan was better than the proposed plan. He said they wanted to be fair, but wanted them to do what is asked of them in a reasonable manner as long as it is legal. Attorney Witsil said that at the time of the ordinance you can determine whether the grandfathering clause is approval of a preliminary site plan or the submission of an application for preliminary site plan at the time of the approval of the ordinance. After it is passed you would continue to entertain the HR Density application for the site plans. Kyle mentioned with the exception of General's Green should it sunset. Attorney Witsil said you would need a motion to adopt the resolution, put the timing in the resolution, if you do adopt the resolution you should refer to P & Z for their recommendation prior to whenever you schedule the Public Hearing. Mayor Baker felt we should give enough time for all people can respond should they have a rebuttal whether it is by developers or people who feel they have a vested interest in the property. He felt it should be sent to P & Z for recommendations...let them recommend it to Council next month either for or against and have the hearing in November. Mayor Baker stated that this going to be important to a lot of people. Kyle said this is a down zoning and gave his input on the matter that Council takes every step, dots every (i) and make sure everything is done appropriately. Attorney Witsil said there is one issue he has not researched yet, (he had discussed it with Mayor Baker and had been asked to hold off on it) whether technically we believe the land use plan which is our long-range

guide for development should be revised prior to an ordinance of this sort to say.....we the Planning Commission, who has passed a Comprehensive Development Plan and a recent up-date to it, recommend that the plan be revised to make the guideline and that the ordinance be adopted in concert with that change. That is much longer term ordinance amendment process. Attorney Witsil's only concern is that if there is other language in the Comprehensive Development Plan that suggests the appropriateness in the Town of High Density Development, this ordinance could be in contradiction to the Comp Plan which you have adopted. Since the Comp Plan is the long term guide for development in the Town. Councilman Truitt asked if there was anything legally problematic with changing the ordinance first and then changing the Comprehensive Plan. Attorney Witsil said only if the Comprehensive Plan is so strongly worded in its HR recommendation. Kyle interjected that he did not think the Comp Plan comes out and if there is other language which contradicts MR in lieu of the HR ordinance. Someone might say you have contradicted your own Comprehensive Development Plan. Council and P & Z were advised to know this by the next meeting. Attorney Witsil has a copy of the updated Comp plan. Mayor Baker felt a motion was needed to submit this matter to P & Z and schedule a Public Hearing for November. Mayor Baker did not want anyone to feel that we rushed through it and not give everyone a chance to respond. Attorney Witsil did not eliminate the residential planned community district in the cluster residential district. I amended in those two sections from HR development to MR development. Even though Kyle and I are giving you practical advice, at that level of density you might not see these RPC's and cluster residential districts being implemented or used as a vehicle by developers, I have not eliminated those classifications. I have only said that now the opportunity for an RPC is in an MR district at 4 units per acre and the CRD district you can cluster, but it will not be 10 it will be 4. Mayor Baker stated he would think that the cluster development to enhance use of that where you could use more open space. You will see cluster developments using land that was borderline usable you could use those spaces. Attorney Witsil stated that the only reference he found to encouraging "big developments" on Page 13 in the middle of the page it states that the RPC and the CRD districts were adopted to encourage large scale developments as a means of creating an enhanced living environment through unified development and to preserve desired open spaces, conservation areas, etc. He feels the large scale development can still occur, it doesn't say large scale, high density development. That was the only reference which concerned him. It can still be large scale, but just not high density. Mayor Baker asked if anyone had any questions or wanted to make any motions at this point. A motion was made by Councilman Truitt that the ordinance be submitted to P & Z for their consideration and recommendation to the Council and approve the resolution to schedule a Public Hearing at the November meeting, seconded by Councilman Hearn, and unanimously approved. The Public Hearing will be November 23rd.

Correspondence:

Mayor Baker said Jeff Niezgoda, Delaware Dept. of Transportation, who was in charge of the Streetscape Project, has a little bit of money left from the money appropriate by Senator Bunting and Representative Atkins and he spoke with Mr. Niezgoda and wanted to keep the project going (it is listed in four phases). They are probably going to start on Phase II and will be in the planning stage. We will have some pictures to put up, hold Public Hearings, and other things. The matching funds will not come out of this year's budget for the State, but will come out of next year's budget. If we have a good year, we may be doing a little more than anticipated.

I was glad everyone got to come out for the Clock Dedication Ceremony. I was happy that Ms. Margaret was recognized, and I want to thank NRG for their donation.

Stacey and I met with Dagsboro Volunteer Fire Department. It was a general meeting of the building committee between me, Stacey, 2 representatives from GMB engineering firm, Gary Cox, and J.B. Mitchell. They just wanted to go over general information about set backs, the building, the roof pitches, and the fees. We discussed the fees and told them it would be as in our code book. We talked about the building being possibly 125 feet wide. They were concerned about the roof pitch on that and expressed concern about the set backs. Even at 125 feet, I don't think the 35 foot set back from either street would be an issue and they will front on four streets. It was asked if they would be exempt from the making the payment for the fire department and ambulance. I truly believe from a legal standpoint, we should have a paper trail. They should in turn pay us for that and we can forward the check back to them. Council members asked, "What are we exempting?" Every time we do a building in the town, we collect a fee for the fire department and ambulance. It represents one-half a percent. I told them at this point they were asking about conditional uses, exemption to the rules and I told them at this point we had no conditional uses and that we had a policy not to exempt anything from any codes or building codes that we had. I explained that if they had any questions, they would need to present us with a drawing and site plan. This was just a general meeting and that is basically what they got. They will need a site plan review account. We can't submit information to Kyle and have him review it, without them having monies in the account to pay for it. We have already received a bill from Kyle and there is no money to pay for it. The Mayor cautioned Kyle not to review anything or do anything for the fire department as it is not official yet. The fire department is not exempt from anything at this point other than the land use....but we exempted them to commercial a few months ago. The meeting was only about one-half hour and I told them to contact us

if they had any questions. We want to work with them and do what we can for them.

At this time, Councilwoman Adams brought to Council's attention something in their packet from the Fire Department regarding the water usage. It listed water usage for August as being zero, July was zero. Councilwoman Adams said she hears alarms going off and fire trucks going out. Do they not spray water? Mayor Baker asked Mr. DeHaven if he could explain. Mr. DeHaven said Dagsboro is not the only location that water can be drawn from (most of the time he has been told that they draw water from the Millsboro location). Very seldom do they use Dagsboro's water. Councilwoman Adams finds this very disheartening. Every single water consumption shows zero gallons used. She would like the Council to be a workable community entity with the fire department. We could not get this information at all and now we get it and it is real easy and you put the month and a zero. Patti was not saying you Bill, she finds it hard to understand. Councilman Hearn asked Mr. DeHaven when the fire company is getting ready to do a control burn, is it not a requirement on their computer based reporting to the fire marshal that they give an estimate of the amount of water that will be used for that control burn. Mr. DeHaven said he did not have an answer to that question...but he will get an answer. Mr. John Haskin's asked if there could be a check valve on the water meter so that the water does not go back. Mayor Baker said that has been one consideration. We need to get Millsboro's permission to put that check valve in...(the Mayor has checked on the cost of a check valve and it is \$3,500). At this point, Millsboro has not given us permission to do that. Our contract with Millsboro states that their supplying us water was based on the fact that when they need our water, they get to use it. If they have a fire in Millsboro, because the water towers in Millsboro and Dagsboro are at the same height and water seeks its own level, as they draw down in Millsboro it draws our level down with it. If they had a major fire, we are sitting with a half a million gallons of water in the tank plus what is in the pipeline. It gives them to the access of 600,000 or 700,000 gallons of water. That is in our current contract with Millsboro, and we can't stop that from happening. The Mayor said that is a good thought and he appreciated him thinking of it, but it is not something at this point that we can legally do. However, if they refuse to negotiate with us (and we have good solid figures) then he will not have any qualms about saying...we are going to put it in no matter what you say. Mayor Baker asked if there any other questions. There were no questions.

Presentation of the Treasurer's Report: Stacey Long, Town Clerk read the Treasurer's report. The Council had written copies in their packets. A written copy may be obtained at the Town Office for any other interested persons. Mayor Baker asked if there were any corrections or additions to the Treasurer's report. Motion made by Vice Mayor Adams to accept the

Treasurer's report as read, seconded by Councilman Truitt, and unanimously approved.

Approval of the Minutes of the August 24th Meeting. Councilman Hearn made a motion to approve the Minutes of the August 24, 2009 Meeting as presented, seconded by Vice Mayor Adams, and unanimously approved.

Standing Committee Reports:

Police Department: Chief Toomey said he had presented the Council with a copy of the Monthly Statistical Report. Traffic Arrests – 183; Criminal Arrests – 12 - If you look down in the monthly highlights you will see that we still have a high number of criminal incidents being reported and arrests for shoplifting, thefts and trespassing and some other ones. The main ones were Sgt. Litten completed the investigation of a forgery and theft with the arrest of an adult female and it was completed this month. Last month, he arrested the male party in that forgery and theft. That closed that case. Chief Toomey said he arrested a third party in the burglary in Bodie's Market and for a burglary and associated charges and closed that case. Currently the robbery at the Clayton Theatre was solved, warrants were issued by the two perpetrators and they are currently in custody in North Carolina, in a County lockup for a strong armed robbery. It was robbery second, not robbery first, the statute of limitations of the extradition bounds are 250 miles. This lock up in North Carolina is 309 miles. They are in jail and we can't touch them. They do not have funds, with their cut-backs, and they can't exceed their jurisdiction to pick these people up even though we have the felony charges, the state police and Ocean View Police have warrants on these persons. They were running the Route 26 corridor. Their charges are misdemeanor theft charges. We have warrants that we don't know when we will ever get to execute. Chief Toomey stated he had not been able to attend due to military leave and illness, but he prepared this comparison as what has been going on. He would like you to note the increase of traffic arrests from last year to this year. Keep in mind that this figure is only for $\frac{3}{4}$ of the year ending in August. We still have a quarter of the year left. He would like you to look at the criminal arrests...we have already made 40 criminal arrests vs. last year of 43 for the entire year. That was the highest figure in four years. This year we are at 40 and as I indicated and Sgt. Litten arrested the female this month so it is at 44 in September. That means that we are solving these cases as they come in. They are not going unsolved. Chief Toomey asked the Council if there were any questions as to the monthly or comparison numbers. Other information on the statistical report for August was: Traffic warnings – 60; Local Ordinances – 7; Business Checks – 385; patrol Hours – 227; Investigative Hours – 65; Administrative Hours – 61; Complaints – 47.

Hazard Inspection Committee:

Mayor Baker mentioned to Attorney Witsil that they had talked briefly about the Town of Laurel and what they were doing and asked if he had a chance to look at this information. Attorney Witsil said with the ordinances which Laurel presently has are much more easily followed than the antiquated provisions which Dagsboro has for dangerous housing, and the process by which we need to notify persons. Attorney Witsil said he did not feel the Police Dept. should have the authority to go in and determine that something is safe. He felt that is the zoning official's duty. He would recommend that you advise me to prepare ordinances to track that township and to change our ordinances. I think it is advisable that you follow their lead. Mayor Baker had the opportunity to go back to 1994 and start reading some of the minutes of the meetings. Some of the same properties which we talk about right now are on there. They were talking about them, we have talked about them, and I feel it is time we need to do something with them. Attorney Witsil said you have the authority to do something with them but the difficulty is that the fire and hazard inspection committee provisions are antiquated. You could go after people using them, but you have to implement the steps properly...go through the proper procedures. To the best of his knowledge, the step-by-step procedure that is required in Article 2 of Chapter 83 has not been initiated. Mayor Baker asked when it was that last revised. Adopted in 1974 and never revised. The Mayor said he felt that there are two or three properties that are problem properties that need to be dealt with, and we either need to revise our ordinances or not worry about it. Now is a bad time to spend money revising ordinances, but we do have properties with windows broken out, etc. The ordinance says you shall have a fire/hazard inspection committee of the Town and it is that body that shall go out and investigate and make a recommendation to the Town Council and the Town Council shall put out notices to those persons. There shall be a public hearing directing that person to come to listen to the grievance of the fire/hazard inspection committee and after that public hearing there is a time and date set for the hazard to be corrected. Attorney Witsil stated that in our code, if then the order of the Town Council is not complied with, the Council shall authorize the Attorney for the Town to file suit in the proper Court against such owner and obtain the necessary orders to enforce the direction of the Council. All of that preliminary action by the fire/hazard inspection committee and the Town Council is simply preliminary to the filing of a law suit. The only step that can be taken is if in an emergency situation where it reasonably appears that there is eminent danger to the life or safety or any person unless a dangerous or dilapidated building or structure is immediately repaired, vacated or demolished. Then the code enforcement officer, Stacey Long, shall enforce the immediate repair, vacation or demolition of such dangerous building or structure. For this purpose, he/she may at once enter the structure or land on which it stands

and with such assistance and at such costs as may be necessary and will vacate the structures, protect the public by appropriate barricades or such other means and the cost of such emergency repair, vacation or demolition of such building or structure shall be collected from the property owner. We should really be correct and have a full analysis that is a hazard to public health, safety and welfare before you go and demolish a building without a court order. Attorney Witsil would suggest going to court first. Mayor Baker asked Attorney Witsil what if we say we are maintaining the International Building Code (which Council has passed). Attorney Witsil said that is correct, but I do not think the International Building Code (and he has not been asked to look at the International Building Code's eventual remedies), but I do not think those remedies would supersede your fire/hazard inspection committee's provisions. If they do and Kyle tells me after looking at them that they give the town the authority to go in with a bulldozer and at the Town Council's discretion take care of a problem that it perceives, then you could eliminate this article. Mayor Baker spoke with the Code Enforcement Officer of the Town of Laurel who goes onto the property and does an inspection of that property...if the fascia on the house needs repair, if a light bulb is out, if a step needs a railing on it; they require the homeowner to do it. Attorney Witsil said they may have taken that position, but the fire/hazard inspection committee has the authority to do that. Are you distinguishing the fire/hazard from maintenance? Mayor Baker said that was correct. A house he is speaking of may be habitable, but looks like crap and has done for many years. It needs to be brought up to standard to protect the property values of the neighbors. Attorney Witsil once again stated he had not researched the International Building Code. Kyle said when the Council adopted the International Building Code, they also adopted the International Maintenance Code, that is a sub-section of it. Send them a letter citing the code. He did not feel there was any reason, it could not be enforced. That is Mayor Baker's question to Attorney Witsil? Attorney Witsil said he has not had the opportunity to look at International Building Code, but will look at the provisions for enforcement there. Is that a burden you want to put on Stacey as the building official. Mayor Baker said they will share it equally. As long as we have to do it, it may be the code enforcement officer or any member of the Council. Kyle mentioned that you might wish to appoint more members to your fire/hazard committee. Mayor Baker felt the definition of fire/hazard committee needs to be restated. It should not be a fire/hazard committee. It should be a hazard committee. Attorney Witsil said that he had represented another town in a court action. The judge gave the person 2 months to clean up....when it was not cleaned up then....we went back to court and the judge said he told them he had given them 2 months to correct it, it has not been done...then gave them 2 additional months to clean up. It is not until the Court gets really upset with the property owner that you see the redness in the judge's face, where he says you can demolish it. Kyle said another Town he has worked with using that same code, their track record is about 75% where the

corrections are made to 25% where the people will not do anything. Mayor Baker feels that this is the 25% we will have to deal with. Kyle said normally when property owners receive a citation letter, if they have the means they will take care of the corrections. Vice Mayor Adams asked about people cutting their grass and we have to send them a letter every single time the grass needs to be cut, at what time are they expected to be an adult and remember to cut it. Mayor Baker just sent a letter to a property owner and said the Town will no longer send you letters for cutting your grass. Yes, we can go in and cut and charge the property owner. Stacey Long, Town Clerk, asked who has authority to go onto these properties to inspect the hazard, to write the letter and list the citations. Attorney Witsil stated that the code refers to the building official. It does not have to be the hazard committee, it can be the code official. There is also what the Town calls in Section 75 -12 Article II – the Town shall have the building code of appeals, made up of the Town Council and alternate members may be appointed by the Mayor. The purpose of that building code of appeals is to entertain any appeal by any property owner who has been told to do something by the building official, and they do not want to do it. There is a biparcated procedure here – meaning it is a two part procedure between the hazard inspection committee and the building code board of appeals. Mayor Baker knows it becomes a health, safety and welfare issue when there are broken windows in a building and you are inviting kids in That is how chicken houses caught on fire on the old Kollock Farm. I do not know why at that point we cannot have the police issue a summons and make repairs immediately. Section (e) of 75-12 states any person, firm or agent who shall violate a provision of this code (meaning the International Maintenance Code) or fail to comply therewith or with any requirement thereof, who shall erect, construct, alter, install, or demolish or move any building and maintain any structure in violation of a detained statement or drawing submitted shall be guilty of a misdemeanor, punished by a fine of not more than \$50 or by imprisonment not exceeding 30 days or both. They shall be considered guilty of a separate offense for each and every day or a portion of any day thereof during which such violation shall occur. If you are using the International Maintenance Code, there has to be a violation pursuant to it and the building official can issue (I presume the police can issue that summons – it does not say exactly who issues it). Mayor Baker said if it is a violation of the Code of the Town of Dagsboro, then the police department can issue the summons. Attorney Witsil stated he felt that was fair to say; although they talk about the building official as the qualified official for the code. Mayor Baker said maybe what we would do is to have the building official notify the police department and let them write the summons as a violation of town Code. Again it is 75-12, 13, and 14. Mayor Baker stated we do have something in there that we can go forward with. Attorney Witsil said that is correct. if you can cite a non-compliance with the maintenance code. I guess at the direction of the building official the police may write the code violation.

Town Property/Town Improvement: Mayor Baker felt some of the things above tied into this. We do have one thing, Christmas is coming. We have Christmas lights with brackets on the old poles to be taken down. I would like to have those brackets re-distributed toward Piney Neck, the new school, and the old school, and take the bells and boxes we have now to hang on the pole. We have them and we should use them. We need some money to take them down and put on other poles. Our flags are getting to be in poor condition. We have some missing. We need poles and brackets. I would like to come up with a dollar amount to spend to get the flags back in order and the move some of the brackets on the poles. Probably in a couple of days, we could have those bells and carriage lights completely re-painted, even though it is not what we want it is a start, toward the schools and down Piney Neck Road. Mayor Baker could not remember how much the flags costs. The inmates can paint the brackets when they are in town. Bob Flowers can work with them on this project. I guess Roger Miller, who puts the Christmas lights up, should be able to take the brackets down. Should we get estimates on this or is it going to be minor. Mayor Baker felt around \$2,000 to replace some of the flags, moving the brackets and do whatever is needed to repair or replace Christmas decorations from last year. They may need bulbs. Mayor Baker asked Council to come up with a figure and said we need to be watching our dollars and cents. Mayor Baker said he would try to negotiate the best price he could get to see if he could get a contract price on all of it. A motion was made by Councilman Truitt to authorize up to \$2,000 for repairs and upgrades of Christmas decorations and flags, seconded by Vice Mayor Adams, and unanimously approved.

Prince George's Chapel Cemetery:

Vice Mayor Adams said she met with Gayle Chandler, Calvin and Linda Ward, and Diane Crum, Div. of Historical Society Horticulture Division. Anyone who wants to do anything to a tree in Prince George's Chapel Cemetery has to get their permission. There are problems with the trees out there. She is going to get people to get estimates and we will see who we wish to use. Mayor Baker asked if it has to be a horticulturist to do the actual cutting. Vice Mayor Adams did not think so. Mayor Baker mentioned that Terrascapes in town had given the Town a good price on moving the trees on Main Street. He would rather spend his money in a business located in town, if possible. Council members agreed. Vice Mayor Adams also said people should not be driving through the cemetery and it should be blocked off. She would suggest bringing the fence in a little tighter and let there be a chain to let cars or hearses in. The problem is that there are people buried and we may be parking on them, when they pull in to the Chapel. Calvin Ward recalls there being old gravestones in the area people are parking in when he first moved into Dr. Adkins old house. Mayor Baker said the old vaults are made out of bricks. Vice Mayor Adams read in the newspaper recently where a man was going with equipment to check under the ground. The

committee would like to know so they can tell people who are having weddings to park to the side by Dr. Adkins on the Town's lot. Mayor Baker said brides and bridesmaids don't want to walk 200 yards to get to the Chapel. Mayor Baker felt there was enough room close to the Chapel for parking (he could not envision someone burying someone that close to it). Maybe we could get someone with an ultrasound to mark it. Vice Mayor Adams said a special equipment is needed and it is very expensive. She said the lady from the historical society was very nice, but if we are not careful, the State will take that away from us and they will control it. Mrs. Crum said that there was no parking in there. Mayor Baker said in reading the minutes from 1994 forward, she talked about taking it back from the State at one time. He was not sure that the State has all the control they think they have. The front gate can be opened and you can go back out on Route 26. Mayor Baker said maybe the next step should be that we could petition the State for a grant to look into finding grave sites. If you knew what you were doing, you could probably do it with a metal detector. It is a radar unit of sorts. Councilman Truitt mentioned that if the State is concerned, they should do it. Vice Mayor Adams said the State did not have any money. If the State could do it, then we could set up a parking area. Mayor Baker feels the drive through is correct and has been there hundreds of years. They do not want people parking next to the Church because of the fact that they know gravediggers were throwing dirt up there. Mayor Baker said they use steel rods to mark the graves. Vice Mayor Adams said Mayor Baker should talk to the historical society. Vice Mayor Adams stated once again – there may be room, but you don't know where the people are buried if there are no markers. Mayor Baker said if the building is being rented out, the buses should probably be parked in the Town lot. Vice Mayor Adams said she would talk with Mrs. Crum again. Mayor Baker said if the people wanted to put up a chain that would fine. It could not be locked, because of the inmates cutting the grass. There are one or two pieces of fence (broken) across the back. Kyle said the historical and cultural society used to have a grant program where they gave money to all three counties. Mrs. Crum had told Vice Mayor Adams that they used to be able to help fund getting tree limbs cut, but there is no money. Mayor Baker said presently we could find out where we should apply and we should get started on it.

At this time Chief Toomey asked Attorney Witsil in regard to the code enforcement, and you mentioned using criminal summons'...what if the property owners do not reside in the State...do we issue a warrant. Everything is centralized and we can't issue a criminal summons without issuing it under the DELJUS system. This means a crime report must be generated and not a town ordinance report. In order to issue a summons they must be a local resident with positive identification. If they are from Maryland, Virginia, or D.C. we could not issue a summons, it would have to be a warrant for their arrest. Attorney Witsil said the code does not recognize this. It states shall be guilty of a misdemeanor, punishable of a fine

of not more than \$50 or by imprisonment. Every summons would include a criminal incident report. If you arrest someone for lengthy grass, that goes on their criminal history....they now have a criminal record. Chief Toomey said once they engage that action, it is no longer a civil action. We do not have a Town Court and aldermen are no longer being appointed. Attorney Witsil said it would go to J. P. Court, if they want it heard in Court of Common Pleas. The Court of Common Pleas require the Town Attorney to prosecute these cases. Mayor Baker said we would have to include court costs. Attorney Witsil said court does not award prosecution fees against the defendant. What Attorney Witsil is telling the Council is that all of these are associated with fees that are incurred by his time and if he has to go to Court, he will be billing the Town for that time. Mayor Baker said he will try to get up with the Legislatures and find out what is going on. Mayor Baker stated that what Attorney Witsil is saying is that no town can any enforce an ordinance that it has got. What Attorney Witsil is telling us is that all of these ordinances are antiquated and we should probably be spending time on revising them. Mayor Baker said if what he is telling him is true, our officers cannot write a summons against a code violation for the town because it has to go through the DELJUS system. Chief Toomey said he can do it....but he is just making everyone aware of the difficulties and consequences. Chief Toomey said it is a simple report and everything is transferable now. Once he puts the report in all he does is warrant or criminal summons and it populates 90% of the fields for him. It must be done as a criminal matter. Mayor Baker stated if the person has placed himself in that situation, they have probably failed to respond to the Town to begin with. We are using last resort measures if they fall into that category. He feels we should go forward with it. Chief Toomey wanted Council to know the ramifications. Once he becomes involved, they will have a criminal record, and he has to do an arrest processing. If by the new DELJUS system, if they have never been arrested before, he does not do the 2 fingers on the criminal summons, it must be a full set of prints. Mayor Baker said when they put themselves in that position, it is on them. Can't stand the time, don't do the crime. We have asked people to do this stuff for years, they have refused to do it, we have done everything we can do....sent out certified letters. It may need to be addressed in the letter from now on, that it would be a misdemeanor violation of the law and they would be arrested. Laurel, Delmar, Dewey Beach, Rehoboth Beach has their own aldermen. Mayor Baker said there are so many towns that don't, that nobody can convince me that there is not a way to do this. Chief Toomey mentioned that a discussion took place earlier in the evening regarding people's responsibilities. Attorney Witsil said there about four sections of the code that try to do something and this is the section of the code that I am very reluctant to have you, as the police officer enforce. The Town Council of Dagsboro, either by their own inspection or inspection obtained by the Board of Health or Police Force, shall deem that such nuisance or unsanitary conditions ought to be removed or abated, shall upon the adoption of a resolution to this effect direct the

secretary to forward by registered mail addressed to his/her last known post office address, shall deliver personally to the person or persons continuing or causing such nuisance or unsanitary conditions, to the person responsible for its existence or continuance...a notice to remove or abate the same within fifteen (15) days. If such person or persons refused or neglect within the space of fifteen (15) days after such notice is mailed, or the space of fifteen (15) days if the notice is delivered in person to remove or abate the same, the Council shall issue a warrant in the name of the Town of Dagsboro, Delaware, under the hand of its President, who shall affix thereto the corporate seal, attested by the Secretary, directed to the Chief of Police commanding him to forthwith to remove or rebate such nuisance or unsanitary condition. The Chief of Police shall forthwith proceed at his direction to have such nuisance or unsanitary condition removed or abated (which means you go do it or direct your force to do it). To that end, he shall have the full power and authority to enter into and upon any lands and premises of the Town with such assistance, implements and vehicles necessary and proper to perform all manners in connection with the removal or abatement of such nuisance or unsanitary condition. Attorney Witsil said you have that removal or abatement of nuisance conditions. You have the dilapidated buildings conditions that the fire inspection committee commences and brings a recommendation to you. You warn them and if they do not do anything, then you have to take it to Court. Chief Toomey said these ordinances are in direct violation of some Supreme Court rulings which have come down since then. Mayor Baker said that you can't enforce the codes of the Town of Dagsboro without it becoming a criminal matter. Chief Toomey said yes, that is the case. Why change the ordinance if it is not going to be any different than what it is? Attorney Witsil said the code authorizes the police officers in Town to do the demolition. He would not advise that this is the proper procedure. Councilman Truitt stated ...we could be summoning and fining. He has not looked at that. He has not researched and he is frustrated at his lack of ability to research the International Maintenance Code and its provisions. Chief Toomey said it has provisions in the first five pages. Mayor Baker said it does not matter whether the code enforcement officer writes a ticket or if the police officer writes a ticket. If we have a police officer that can't enforce the codes of Dagsboro, why have the police officer. Attorney Witsil said Chief Toomey is telling you the ramifications of what can happen. Mayor Baker said if the code enforcement officer writes it, it has no validity at all.... he is not allowed into the DELJUS system. In order for it to be an enforceable criminal offense as required in the code, an officer has to write it. Stacey or I cannot write it, Chief Toomey is the only one who can write a summons. Attorney Witsil said you must designate a building official...it does not matter that Stacey is the code enforcement official. He was not sure, but did not think we had a designated building official at this time. Mayor Baker said however that plays out, whomever that individual is or is not, still does not have the authority to do anything other than go to the Chief of Police or a police

officer and say, I hereby direct you to write this summons. Attorney Witsil stated that in order for it to be a criminal violation of our code, the police department has to issue it. Mayor Baker said it does not have to be criminal...it just has to be enforceable. If he does not write the summons it cannot be enforced. We have no alderman's court to enforce it. Councilman Truitt stated the only thing we can do is write letters. Kyle said that would be the next step. Chief Toomey said example: Dewey Beach has probably 100 ordinances on the books pertaining to the beach....no drinking on the beach, no smoking on the beach, no sex on the beach, whatever the case may be. Each of these are civil violations because they have their own aldermen and, it never gets entered into the DELJUS system. South Bethany does not have the alderman, so it gets entered into state law. Mayor Baker stated they are a township and still have parking violations, the same considerations that we have. Attorney Witsil said that any civil proceedings that we have that he is aware of is the process which starts with the hazard inspection committee, and they make a report to the Town Council. Town Council issues a notice to the person to come before the Town Council, you issue an order after a Public Hearing, that that matter be corrected. If they do not correct it, then you have the authority to go to Court. Attorney Witsil stated that this is not a criminal procedure....that is the civil procedure. Attorney Witsil answered Councilman Hearn's question as to what if the property owner does not respond to the summons to come to the meeting; his response was he would have the hearing in abstention. Mayor Baker said the first steps have to be followed. In the new property maintenance code it is different. Attorney Witsil said he has not researched it for you. Chief Toomey mentioned that unfortunately under the system we are in now, whenever he becomes involved and when people say summons they think it is a simple matter...it is a criminal matter. Mayor Baker asked the Council members if they are O.K. with it, if we have written letters and followed up, do you see any reason why we should not proceed. Attorney Witsil said they have a tax authority for a lien against the property. If you went in and cut the grass and they did not pay you back, you could add that to the lien. Chief Toomey asked if it was a mechanics lien or what type of lien would it be. Attorney Witsil said it would be a tax lien. Chief Toomey asked if that is lawful, and Attorney Witsil said because we have a grass cutting provision. Councilman Truitt said before we do something like that we should send a letter listing the consequences....if they didn't show up....then send another letter saying you did not show up. If no further response, we will proceed with criminal matters. Mayor Baker said if Chief Toomey can't write the summons, we are spinning our wheels. Chief Toomey said he can write the summons, but wanted Council to know the ramifications of it. He just wanted us to know. He did not feel he should go to someone who had not cut his grass and lock him up, but someone else who does not mow their grass in compliance with the code, but it is Okay and we will let him go a little while longer. If I am going to lock this guy up, then I am going to lock up everyone that does not have their grass mowed property. I am not going to be impartial. I will

equally enforce the law. Vice Mayor Adams had a question....these people will have received letters prior to him getting to that point. It is only the chronic offenders that do not conform to the code, which would be affected. Council agreed it would be extreme circumstances. People that were notified week, after week, after week would fit this category. The Mayor announced that the meeting seemed to be over.

At this time, Vice Mayor Adams made a motion to adjourn the meeting at 9:53 P.M., seconded by Councilman Truitt and unanimously approved.

Respectfully submitted,

**Rae Long
Administrative Asst.**

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.