

Minutes of Meeting
Bethel Center- 28307 Clayton Street
Monday, December 14, 2015

I. Call meeting to order:

Mayor Truitt called the December 14, 2015 meeting to order at 6:01 p.m. Those in attendance were Mayor Truitt, Vice Mayor Baull, Councilwoman Ulrich, Councilman Chandler, Councilman Miller, Town Administrator Stacey Long, Chief Toomey, Attorney Witsil and others listed on the sign in sheet.

II. Oath of Office:

Brian Baull, Theresa Ulrich and Patrick Miller recited the oath of office for the Dagsboro Town Council for the 2016 & 2017 terms.

III. Reorganization of Council:

a. Mayor

Brian Baull nominated Norwood Truitt to be Mayor. It was seconded by Theresa Ulrich. All were in favor. Motion carried.

b. Vice-Mayor:

William Chandler nominated Brian Baull for Vice Mayor. It was seconded by Theresa Ulrich. All were in favor. Motion carried.

c. Secretary/Treasurer:

William Chandler nominated Theresa Ulrich. It was seconded by Brian Baull. All were in favor. Motion carried.

d. Assistant Secretary:

William Chandler nominated Patrick Miller. It was seconded by Brian Baull. All were in favor. Motion carried.

IV. Public Comment:

Scott Crater informs the Council that he had a brick made with his information and he recommends that whomever contributes to the town should have a brick dedicated to them. The engraving and shipping costs approximately \$15.00. Chief Toomey asks Council if anyone has recognized the Indian River soccer team for winning the championship. He believes a resolution was done for the Indian River football team when they won a few years back. Stacey states that she will prepare a certificate for the January meeting.

V. Public Hearing & vote:

An ordinance to amend Chapter 275-21 (A) of the Municipal Code of the Town of Dagsboro, Delaware, Entitled, "TC-town Council Center District" by adding to the permitted uses of Subsection (A), Subsection (14): "Motorcycle Repair and Sales."

Public Hearing:

At this time Attorney Witsil read the public hearing rules of conduct to the audience and into the record. The public hearing is on the topic of an ordinance to amend Chapter 275-21(A) of the

Municipal Code of the Town of Dagsboro, Delaware, entitled, "TC – Town Center District" by adding to the permitted uses of Subsection (A), Subsection (14): "Motorcycle Repair and Sales." Town Administrator Stacey Long read the Planning Commission's recommendations into the record from the November 9, 2015 meeting. Their recommendation was to approve the ordinance as drafted with the condition of no outdoor, overnight storage be permitted. Attorney Witsil reiterated that this hearing was only to add a use to a list of permitted uses within the Town Center Zoning District. If this is approved, anyone seeking to open a Motorcycle Sales & Repair shop would then have to go through the process through the town which may include a change of use application and any other process as required. This is merely allowing a use to exist within the zoning district. At this time the hearing was opened to the public for anyone to speak in favor of the ordinance:

Steven Baker – he is the person who brought this request forward to the Council as he is seeking the purchase of a property on Piney Neck Road that is located within the Town Center Zoning District. He currently owns a motorcycle sales and repair shop in Selbyville since 2003. He has been renting a building for the last 12 years and he wants to purchase his own building and property to conduct his business. He asked if any of the Council had any questions of him. It was asked if he has ever received any noise complaints. Mr. Baker stated that he has never had any complaints of noise within the last 12 years he has been at that location. It was asked what his grounds around his present building looks like. Mr. Baker stated that he keeps his garage in good, clean condition and he keeps everything pertaining to his business inside.

Tom Wilhoit of 28338 Clayton Street - he doesn't understand why the Council would consider regulating the outdoor storage for this particular use when there are several business all throughout town that have outside storage overnight.

Jim Thompson – 29199 Shady Creek Lane & Member on Planning Commission - asked if the town had a noise ordinance since the noise seems to be a concern. Attorney Witsil said we have a nuisance ordinance such as disturbing the peace.

As there were no others in favor of the proposed ordinance, Attorney Witsil called for those who are in opposition.

Gayle Chandler – 33140 Main Street - she stated that the type of use, motorcycle sales & repair, is an inappropriate use for this district as it is intermingled with single family homes. A lot of the surrounding property owners are concerned with the noise and the decrease in property value by having a motorcycle shop next door to their property.

Patti Adams – 31843 New Street - she explained that she was on Council when the Town Center Zoning District was established. The residents did not feel this kind of business belonged in this district. The intention was to have a walkable community of shops and restaurants. She stated that the reason the residents are not in attendance tonight is because they are unaware that this addition is being proposed.

There were no others in opposition of the proposed ordinance.

The floor was turned back over to Mr. Steven Baker.

It was asked if there any houses within a ½ mile proximity of his business at its current location. He answered yes. He continued to say that he did a lot of research on this building. It was a ball bearing manufacturing facility, which is an automotive related use, for a long time. He reiterated that he would improve the building and grounds and his business would bring people to the town.

Robyn Wilhoit of 28338 Clayton Street - to speak in favor of the ordinance – There are 6 empty commercial buildings in Dagsboro and asks that Council think about that and to give businesses a chance.

Councilman Chandler made a motion to close the public hearing. Councilman Miller seconded the motion. All were in favor. Motion carried.

Councilman Miller asked if there was a possibility to allow this type of business on just one site as opposed to the entire TC District. Attorney Witsil stated that the town does not allow conditional uses which is what he is referring to. He explained that the code prohibits all uses that are not specifically listed within the permitted use section of each district. Town Planner Kyle Gulbranson explained that the TC district was drafted to incorporate businesses that could co-exist harmoniously with residential uses, which is why the planning commission and council did not include motorcycle repair & sales and automobile repair and sales in this district when it was drafted and adopted. Chapter 275-21 was read into the record which describes the purpose of the Town Center District. Town Administrator Stacey Long read the community survey from the Comprehensive Land Use Plan into the record which specifically lists that service stations were among those businesses that were not wanted in the downtown district. Councilman Chandler read further from the Comp Plan that addressed the need and want to continue the small town character throughout the downtown district. Councilman Chandler presented a petition to the Council that contains the property owners that reside within the immediate vicinity of this particular parcel on Piney Neck Road. Attorney Witsil advised that if we are adding evidence into the record the public hearing needs to be reopened. Councilman Chandler made a motion to reopen the public hearing to add the petition. Vice-Mayor Baull seconded the motion.

Councilman Miller was opposed. The motion carried 4 in favor and 1 opposed. The petition was read into the record. There were 21 signatures on the petition and he is unsure of the location of those that are identified on the petition. A section referencing petitions of the Delaware State Code was read into the record by Attorney Witsil. He stated that the proposed change is inclusive of the entire TC district and not site specific, therefore, 20% of those in the Town Center district would have to be on the petition and not 20% of those within the 100ft proximity of the actual site. He is inclined to recommend that there needs to be 20% of the property owners that are within the town to be opposed to this ordinance and not 20% of the owners within 100ft of the site. Attorney Witsil states that the change of zone doesn't just affect TC property owners. It affects residential property owners adjacent from the zoning district so this is not site specific property, it is the district as a whole. He feels the petition needs to encompass 20% of property owners of the entire town to require a super majority vote. Attorney Witsil recommends that the petition be accepted for what it states and defer the vote since there is a legal issue raised by the petition. The floor was opened for anyone who wants to comment on the submission of the petition. Mr. Baker stated that he does not feel it is right to defer this another month as there may be another petition submitted next month with more signatures and the vote would be deferred again to investigate where those people live. Attorney Witsil stated that the hearing will be closed and any additional petitions will not be permitted. Councilman Chandler stated that he does not agree with Attorney Witsil's interpretation. He feels it is a cramped interpretation and the intention was, when making changes for people who live in an area and those people in that area do not like it, they want the governing body to be held accountable to those people in an expression of a super majority vote. Councilman Chandler felt that was the legislator's goal when drafting the statute. Councilman Chandler in addition opposes the closing of the public hearing

since there will be legal and factual exploration. Jim Thompson, member of Planning Commission, states that he does not feel the petition presented tonight is relevant to the item being voted on since the petition is site specific and the public hearing item is not. Councilwoman Ulrich questions why a Planning Commission member voted to approve the motorcycle repair and sales in the TC District at the November 9th Planning Commission meeting, however, that same person appears on the petition presented this evening opposing this matter. Councilman Chandler sees no risk in allowing people to be heard and keeping the public hearing open. Councilman Miller feels that this item has been continued for too long and that is not fair to Mr. Baker. He also stated that most of the signatures on the petition are husband and wife. Councilman Chandler suggested that we consider bringing back the conditional use ordinance. This would take several months to get back in the code and hold the required hearings on the matter. Councilman Chandler made a motion to keep the public hearing open. There was no second to the motion and the motion died. Councilman Miller made a motion to close the public hearing. Councilman Baull seconded the motion. The motion passed with 3 in favor of closing the hearing and 2 opposed. The public hearing is now closed. Councilman Miller made a motion to vote on the proposed ordinance tonight. Councilman Ulrich seconded the motion. The motion passed with 3 in favor and 2 opposed. Town Administrator Stacey Long informed the Council that out of the 21 signatures on the petition, 16 are property owners and 5 are only residents or tenants. In addition out of the 21 signatures, 5 of those owners are within the Town Center Zoning District. Vice-Mayor Baull made a motion to consider the petition as invalid since it does not meet the 20% calculation of the entire town center district and the entire town. Councilman Miller seconded the motion. All were in favor. Motion carried. Councilman Chandler reminded the Council that if this ordinance is approved tonight, any promises that were made by Mr. Baker are only promises made by him. Anyone could come into the Town Center Zoning District and open a motorcycle sales and repairs and not be required to uphold the specific conditions that Mr. Baker has promised for his business such as opening and closing times, and no outside storage, etc. Councilman Chandler made a motion to table this proposed ordinance and to discuss at the next Council meeting the possibility of adding a conditional use ordinance to the town code. At which time if said conditional use ordinance is passed then Mr. Baker would apply for a conditional use. Councilman Miller stated that he is hesitant because he does not want to extend this on to another month. He does not want to make it seem that Dagsboro is turning a business away. Another option of the Council is to place restrictions/conditions on the motorcycle repair and sales use and approve it with the conditions discussed such as hours of operation, and outdoor storage, etc. Town Administrator Stacey Long and Town planner Kyle Gulbranson both agreed that if Council is to table this item that their recommendation is to consider adopting a conditional use ordinance as situations such as these continue to come up and instead of approving a use district wide, it could be done on a case by case basis. The only issue with taking this route is that it may take 2-3 months to get this approved. Chairperson of the Planning Commission suggests that if this is to be added to the district, then "any combustible type engines" should be added as well not just motorcycles. Councilman Chandler renewed his motion to table this proposed ordinance and to discuss at the next Council meeting the possibility of adding a conditional use ordinance to the town code.

Councilwoman Ulrich seconded the motion. All were in favor. Motion carried.

VI. Approval of minutes

- a. November 16, 2015- Regular Session:
Councilman Miller made a motion to accept the Regular Session minutes. It was seconded by Councilman Chandler. All were in favor. Motion carried.
- b. November 16, 2015- Executive Session:
Vice Mayor Baull made a motion to accept the Executive session minutes. It was seconded by Councilman Chandler. All were in favor. Motion carried.

VII. Consent agenda:

Chief Toomey states that there were 39 criminal arrests in November, 8 drug arrests and 2 possession of weapons while intoxicated. Three weapons were seized within the last two weeks. There were 2 felonies while intoxicated arrests, a possession of ammunition arrest, a possession of a deadly weapon by person prohibited, 2 felony theft arrests and carrying a concealed deadly weapon arrest. A felony arrest was made at Mr. Banana's two weeks ago. Shots were fired last weekend in a large crowd at Mr. Banana's and a week ago a disorderly conduct. Councilman Chandler thinks it is time to contact the Attorney General regarding this establishment.

Administrative Report:

Mayor Truitt informs the Council that the tree has been removed from the park. The Swamp Road project will begin on December 28, 2015 through December 30, 2015. The wall at the Prince George's Cemetery has been completed. Vice Mayor Baull made a motion to approve the consent agenda. It was seconded by Councilman Chandler. All were in favor. Motion carried.

VIII. Planning & Zoning Committee Report:

No meeting was held.

IX. New Business:

- a. Consideration of waiving annual automatic increase on impact fees pursuant to Section 130-8
Stacey informs the Council that all of the impact fees that are collected go into restricted accounts and therefore does not impact general fund revenue. The impact fees are for water, fire/ambulance and capital improvement. If the Council wants to allow the automatic increase to happen they just have to deny the proposed resolution. The rate of inflation is between 2 and 3 percent. Councilwoman Ulrich made a motion to waive the annual automatic increase on the impact fees. It was seconded by Vice Mayor Baull. 4 were in favor. 1 opposed. Motion carried.
- b. Consideration of appointing Earl Savage as a member on the Planning Commission for a term of 3 years.
Councilman Chandler made a motion to appoint Earl Savage as a Planning Commission member. It was seconded by Vice Mayor Baull. All were in favor. Motion carried.
- c. Consideration of continuing the membership with Greater Millsboro Chamber of Commerce:
Stacey informs Council that she has attended some of the meetings and she didn't think that they pertained to Dagsboro. It costs approximately \$150 for membership and it was placed as an expense in the FY 2016 budget. The meetings are geared mostly towards businesses. Councilman Chandler made a motion to deny the membership. It was seconded by Vice Mayor Baull. All were in favor. Motion carried.

X. Public Comment:

Mr. Thompson is confused about the process of someone making a proposal to the Planning Commission. Mr. Witsil informs the Council and Mr. Thompson that when a process is started by an idea of the Council he will draft an ordinance. It then goes to the Planning Commission for recommendations. It then gets brought before Town Council for their consideration. Mr. Thompson states that businesses and residents can complete a survey that is available on the Town's website.

XI. Adjournment:

Councilman Chandler made a motion to adjourn the December 14, 2015 meeting at 9:00 p.m. It was seconded by Councilwoman Ulrich. All were in favor. Motion carried.

Respectfully Submitted,

Autumn Gardner, Town Clerk