

*Minutes*

**DAGSBORO TOWN COUNCIL**

**Bethel Center – 28307 Clayton Street**

**Monday, October 23, 2017**

I. CALL MEETING TO ORDER

6:00 p.m.

Meeting was called to order by Mayor Brian Baull at 6:02 p.m.

In attendance were: Mayor Brian Baull, Vice-Mayor Norwood Truitt, Councilman William Chandler, Councilwoman Theresa Ulrich, Town Administrator Cynthia Brought, Engineer Kyle Gulbranson, Police Chief Floyd Toomey, and Attorney Rob Witsil. Councilman Patrick Miller was absent. See attached sign-in sheet for other members of the audience.

II. PUBLIC COMMENT

No public comment was made.

III. PUBLIC HEARING

- A. A RESOLUTION TO CONSIDER THE REQUEST OF THE DAGSBORO VOLUNTEER FIRE DEPARTMENT, INC. TO APPROVE A PRIVATE ACTIVITY BOND ISSUED IN AN AMOUNT NOT TO EXCEED \$600,000.00 FOR PURCHASE OF A 2018 SUTPHEN ENGINE PUMPER FIRE TRUCK, 1,000 GALLON CAPACITY WITH PRE-CONNECTED HALE 2,000 GPM PUMP AND PRE-CONNECTED FOAM CONCENTRATE PUMP AND CONFIRMATION OF CONTINUATION OF PROVISION FOR FIRE PROTECTION SERVICES TO THE TOWN BY THE FIRE DEPARTMENT.

Attorney Witsil informed those present of the rules for a Public Hearing and that the Public Hearing will be for both the resolution and the ordinance with the same caption. He also informed those in attendance that the Fire Department, through their attorneys and Fulton Bank, have submitted correspondence to the Town and himself stating that the Town will not issue any full faith or credit on this bond. The charter does not address this specific issue, however, this is not the first time this has been done. Attorney Witsil has spoken with the Fire Department attorneys and has reviewed documentation from Fulton Bank

At the conclusion of informing those present of the rules and procedures, Attorney Witsil gave a summary of the application. For the past several months there has been discussion on the application to rescind an annexation. The history of this annexation is that on, or about, April 27, 2009, the Town Council approved a resolution annexing the subject parcel into town with a residential zoning designation. The approval was in accordance with the property owner's request to annex into town, which proceeded all of those proceedings. The resolution was recorded with the Sussex County office and has been recorded in D book 37-74, page 59, together with an ordinance amending the zoning ordinance and zoning map of the town, which was required. Attorney Witsil also reminded those present that he has informed them that the Town Charter does not have a "de-

annexation process.” The resolution before the council tonight has been drafted by Attorney Witsil, by the council’s direction, attempting to match the process by which the property was annexed. The state code in the Municipal Title (Title 22) of the Delaware code does not specifically address a situation where a town or a property owner is desirous of de-annexing a property back to the county. The legislation that Attorney Witsil has drafted in resolution and ordinance forms is his best attempt to rescind the annexation that was approved several years ago. This process started on November 11, 2016, when the Hearn and Bireley families signed a letter to the Town Council. Attorney Witsil read the letter which stated they requested to annex into town for water and sewer, but then learned that sewer would not be available or if it would be, would cost \$750,000, which is a financial hardship to the property owners. For this reason, they request that the property be removed from the town’s jurisdiction.

In pursuant to follow the reverse process to the annexation, the Town Council then formed a committee to investigate the propriety of de-annexation consisting of Norwood Truitt, Pat Miller, and Theresa Ulrich. On February 6, 2017, the committee reported through its chairman, Norwood Truitt, that the de-annexation request is due to the cost of sewer making the property economically unviable, there were no other future annexations tacked on to the property, and the committee finds there would be no adverse effect on fire, law enforcement, or the health, safety, and welfare of the townspeople of Dagsboro. The committee also stated that de-annexation would require a change to the land-use map, however, it should not affect future comprehensive plan approvals and that while it will make a small decrease in the town’s revenue, they found no significant negative impacts to the proposed de-annexation. The committee recommends de-annexation approval for this request.

Attorney Witsil read the first paragraph of the resolution aloud, giving the history of the annexation of the property and then described the approval process. He noted that this approval process that has been laid out is not provided for in the Town Charter and he has followed, in reverse, the process for annexation, which would include a requisite super-majority, two-thirds of the Town Council, as in the annexation.

Attorney Witsil then asked Town Administrator Brought if any other information has been received by the town regarding this matter. Town Administrator Brought replied that she has not received anything. Attorney Witsil also recommended that the resolution decision be held open for any further comment until the next Town Council meeting, at which the ordinance for amending the zoning map. He then opened the meeting up to any questions from the Town Council and having none, gave the property owners a chance to comment. Mrs. Bireley, one of the property owners stated it was pretty much covered, but explained they inherited the property after their father’s passing in 2007 and they were planning to sell the property. At that time, it was suggested to them that anyone wanting to buy it would want water and sewer. After the annexation took place, they proceeded to try to sell the property and met with the county on several occasions and were told it was impossible to run the sewer or if it were a possibility, it would cost three-quarters of a million dollars. Consequently, they have been unable to sell the property. They also know that if someone would want to put farm animals on the property, it would be against the town code. Therefore, they feel in order to sell the property, it would need to go back under the county.

At this time, Brad Connor, Chairman from the Planning and Zoning Commission, was given the opportunity to share the Planning and Zoning recommendation regarding the property. The purpose of annexing into a town is for water and sewer and to increase the tax base for a town. In a property like this, a developer could place twenty houses on it and they would pay for the infrastructure by backing that into the cost of the houses. He also expressed concern over the cost to the town to make appropriate changes to the charter and anything else. For those reasons, the Planning and Zoning Commission recommends that the town does not proceed. This would be an expense to the town and it would set a precedent - Chairman Connor does know of others that are interested in de-annexing, if this does go through. Chairman Connor did express he is friendly with the property owners, but he feels he has to do what is best for the town. The state has never had another case like this and Chairman Connor is concerned that this is closing the door to future revenue. Attorney Witsil clarified that this decision is not just Chairman Connor's, but of the Planning and Zoning Commission and Chairman Connor confirmed that it was a unanimous decision with the commission. Cathy Flowers, another Planning and Zoning Commission member, stated that she was at the meeting and confirmed it was the decision of the commission. She stated a lot of their reasoning was that the town is always concerned about setting a precedent and this would be setting one. The commission feels bad for the property owners, but are very concerned that if this decision is made to de-annex, there will be others requesting the same thing. Mayor Baull asked the commission members if as far as they know, this process has never happened in another town in the state. Chairman Connor responded that it hasn't. Mrs. Flowers asked if Mr. Gulbranson or Attorney Witsil knew of any. Mr. Gulbranson stated that he spoke with the state planning office and they are not aware of any de-annexation that has ever taken place. Vice-Mayor Truitt stated that Millville did, but that was a different circumstance. Mrs. Flowers confirmed it was due to an issue with boundary lines. Mr. Gulbranson also confirmed stating that was a boundary clean-up where Lord Baltimore Elementary was in three different jurisdictions: Millville, Ocean View, and Sussex County. Knowing who would respond in an emergency was a challenge and that is why their boundaries were corrected. It was not a true de-annexation.

Mrs. Bireley responded to the Planning and Zoning Commission recommendation by stating that they are not receiving the services in town that the other properties in town are receiving. She stated that they have talked to developers that said they would never put out that kind of money for just eighteen acres of property. She doesn't see how the town would receive any benefit for keeping the property other than a few hundred dollars in taxes.

Attorney Witsil then opened the meeting up to any other public comments for those in favor of the de-annexation. Sandy Gherkin, who lives on the property adjacent to the Hearn and Bireley property, but is in town, spoke in favor. She stated that at the time of the annexation request, everybody thought it would be possible for them to hook up to water and sewer. There were no comments made by anyone in attendance opposed to the de-annexation.

Vice-Mayor Truitt responded that in regards to setting a precedent, anyone seeking a de-annexation in the future would have to be subject to the committee making a report so the Town Council would have a say and the application they would submit does not mean they will be approved. Attorney Witsil confirmed that is correct. Councilwoman Ulrich stated it wouldn't set a precedent because there are not any other situations like this. Councilman Miller agreed that it doesn't set a precedent because the owners are not receiving any benefits from the town.

Vice-Mayor Truitt made a motion to close the public hearing portion of the meeting and Councilman Miller seconded. All in favor.

Attorney Witsil recommended that Town Council does not vote at this time as there is an unrelated section, but not totally unrelated, in the Delaware code that suggests public comments to be submitted in written form for up to thirty days. However, the decision to vote at this meeting or next month is up to the council. Vice-Mayor Truitt asked if that thirty days is in relation to annexation. Attorney Witsil replied that it is. Councilwoman Ulrich made a motion to allow the thirty days for public comment. Vice-Mayor Truitt seconded the motion. All in favor.

For clarification, Councilman Chandler informed Mayor Baull that he abstained from this motion and the motion to close the public hearing for the reasons he has stated in the past.

- B. AN ORDINANCE TO APPROVE PRIVATE ACTIVITY BOND FINANCING FOR THE DAGSBORO VOLUNTEER FIRE DEPARTMENT, INC. IN AN AMOUNT NOT TO EXCEED \$600,000.00 FOR PURCHASE OF A 2018 SUTPHEN ENGINE PUMPER FIRE TRUCK, 1,000 GALLON CAPACITY WITH PRE-CONNECTED HALE 2,000 GPM PUMP AND PRE-CONNECTED FOAM CONCENTRATE PUMP AND CONFIRMATION OF CONTINUATION OF PROVISION FOR FIRE PROTECTION SERVICES TO THE TOWN BY THE FIRE COMPANY.

#### IV. APPROVAL OF MINUTES

- A. July 17, 2017 – Town Council Minutes

Chief Toomey noted that on page three in the minutes state “retired state trooper” and the word “retired” should not be there.

Councilman Chandler made a motion to approve the minutes with that change. Councilwoman Ulrich seconded the motion. All in favor.

#### V. CONSENT AGENDA

- A. Police Department Report

Chief Toomey informed those that were not able to be at the police unification meetings that the community seems largely in favor of the unification, but the main hold up appears to be the financial part for the Town of Frankford. Mayor Baull was able to be at the meetings and agrees with that statement.

- B. Treasurer’s Report
- C. Administrative Report

Town Administrator Brought pointed out some of her questions in her report, including how they would like her to handle the rental license for Fernmoor. Attorney Witsil stated that he has not done extensive research into this, but that the code does not prohibit the rental of residential real estate by anyone, except by someone who does not have a rental license. There is no prohibition in the code against a developer desiring to not sell units and either create a new entity within the corporate entity or to rent

the units out under the builder's corporate entity as it is now, as a purchaser would buy a unit and lease it out. He has not looked at the site plan or the restrictions to see if there are any restrictive covenants. The only possible prohibition against rentals that would make sense to him would be in the builder's own restrictive covenants that they have prepared and filed. He has not reviewed those and thinks that would have been mentioned, but cannot make any decisions on his assumptions. He would like time to review the facts.

- D. Economic Development Committee
- E. Building Official Report
- F. Code Enforcement Report
- G. Meeting Reports
- H. Water Department Report
- I. Prince George's Chapel Cemetery Report
- J. Correspondence

Motion to approve the consent agenda was made by Councilman Chandler and seconded by Councilman Miller. All in favor.

#### VI. NEW BUSINESS

- A. Dina Mach – Timing/Procedure for Dedication of Roads and Streetlights in the Woodlands to the Town (Phase I roads now complete)

Mr. Gulbranson informed the Council that Pat and Dana Miller came forward with an application for a Change of Use for the old Healthy Habits building. They would like to convert it into a coffee shop and café and have gone through all of the agencies that need to approve the conditional use. When the Planning and Zoning Commission met last Thursday, they unanimously voted to recommend approval of the Change of Use. The Millers have the majority of their approvals and are just awaiting the letter of no objection from Del-Dot. According to the town's requirements, they have met all of the things they need to do and are just awaiting a motion to approve from the Town Council.

Councilman Chandler made a motion to approve the Change of Use application for Pat and Dana Miller for the coffee shop and café. Councilwoman Ulrich seconded the motion. All in favor. (Councilman Miller abstained from the vote.)

- B. Mayor Baull – Discussion/suggestions regarding incentives to bring more business to the Town

Attorney Witsil stated that a preliminary sub-division plan requires a Public Hearing pursuant to Section 384 of the Town Code.

#### VII. OLD BUSINESS

- A. Dina Mach – Fernmoor Rentals vs. Home Sales
- B. Cannon Street Pipe Replacement and Ditch Cleanout Project Changes/Revised Quote – Kyle Gulbranson/Matthew Messina with Sussex Conservation District
- C. Cindi – Correspondence regarding the Village on Pepper Creek

Mr. Gulbranson informed the Town Council that he and Bob Flowers have been walking the problem areas in the north side of town. He knew what the issues were and walking the sites confirmed that

there are a lot of compromised pipes, pipes that are too small, and several areas where it is not conclusive where the pipe actually is. One of the largest problems is that a lot of the drainage ditches in the northern part of the town have been filled over the years due to natural sedimentation and people putting yard waste in them. They pointed out all of the problem areas and Mr. Gulbranson tentatively has the survey work for that part of town scheduled for the second week in October.

#### VIII. PUBLIC COMMENT

Rick Betlejewski, from The Woodlands, asked if the town has any plans for the traffic on Main Street when the Botanical Gardens open. Mayor Baull replied that is a Del-Dot issue. Mr. Gulbranson doesn't know any details, but that he does know they are doing a study about putting in a light at Iron Branch Road. Visitors to the gardens would have to go down Hudson and come out to Iron Branch Road.

#### IX. ADJOURNMENT

A motion to adjourn the meeting was made by Councilman Chandler and seconded by Councilwoman Ulrich. All in favor. Meeting was adjourned at 7:01 p.m.

Respectfully submitted by;

Megan Thorp  
Town Clerk