

Minutes

DAGSBORO TOWN COUNCIL

Bethel Center – 28307 Clayton Street

Monday, March 26, 2018

I. CALL MEETING TO ORDER

6:00 p.m.

Meeting was called to order by Mayor Brian Baull at 6:00 p.m.

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

II. PUBLIC COMMENT

No public comments were made.

III. APPROVAL OF MINUTES

A. February 26, 2018 – Town Council Meeting

Councilman Chandler made a motion to approve the meeting minutes for February 26, 2018. Vice-Mayor Ulrich seconded the motion. All in favor.

IV. CONSENT AGENDA

A. Police Department Report

Chief Toomey informed Council that there will be road work from the light at Clayton Street to the light at Vines Creek Road and Armory Road. His understanding is that most of the work will be at the Vines Creek Road and Main Street intersection. The project will consist of crosswalks, handicapped lighting, and some conduit/electrical work. They will also be doing some grinding and resurfacing of the roads. The timeline he has been given sounds as if the project will start around June and will run for about four weeks.

Vice-Mayor Ulrich asked if the Town Administrator had been notified. Town Administrator Brought replied that they had come into Town Hall to inform her. Councilman Chandler asked if there will be lane closures due to the grinding and resurfacing or if they will be re-routing the traffic. Chief Toomey replied that he has not been given that plan yet. He feels re-routing the traffic would be the most sensible.

Councilman Chandler asked if Chief Toomey knew what the project was out on the highway. Chief Toomey replied that it is a sewer expansion project for the county. Sussex County was supposed to notify the town, but they didn't. They are taking the sewer to the other side of the highway and they eventually want to put a pump station there, but that land deal has not been worked out yet. Currently,

the sewer is going across the street so it can go to the VFW and eventually they will work their way down the road to the hatchery. They are pumping water out of the ground so they can do the project, but the water table has been so high this year, it will slow down the work.

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

Town Administrator Brought updated the Council on Bob Flowers (maintenance person). She informed them that he is very sick right now due to pneumonia and high blood pressure so he will be out for some time. She also informed them that there has been no interest from the second round of advertising for the maintenance position.

- 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

Councilman Chandler asked about the letter from Fernmoor Homes in the packets. Town Administrator Brought replied that Attorney Witsil had stated to hold off on that discussion for another meeting, but she wasn't sure if community members would show up at the meeting anyway so she had the letter in the packets for the council members to be aware.

Councilman Chandler stated he would be in favor of accepting the streets when he sees the sidewalk that was promised two years ago.

Attorney Witsil stated that the town code is silent in regard to the process of street dedication. It just states that the dedication can be accepted by a project that has been approved. Attorney Witsil stated an argument can be made that by accepting a plat, the town then agrees to accept the streets when the conditions have been met. He referred to Section 29 of the Town Charter, which provides for a relatively onerous process. Without anything else in the code, he thinks this would be the process that is applied in this case. Five or more property owners need to petition the town to layout or accept the new street. The Town Council, through the Mayor, would then accept that petition and appoint three members to report back within ninety days whether or not it is appropriate. Thereafter, a resolution would be passed by the Town Council concurring that the proposed street goes to a public hearing and three-fourths of the Town Council approve the process. Finally, there would be an election. Attorney Witsil believes it is a problematic and onerous process. However, this is the only time this is addressed other than a simple sentence in subsection RR in Section 28 of the Town Charter. That sentence states that the Town Council has the power to acquire by gift, negotiation of purchase, or devise (which would be the situation in this case) any street, square, lands, or alley. Attorney Witsil is struggling with the determination that the latter, simple option is a choice that they can take in lieu of the process described in Section 29. He is leaning towards the simplistic process in Section 28, RR being appropriate in this case. He is prepared, if Town Council would like, to go forward with a public hearing and having a resolution adopted to accept the streets if the Council chooses to.

Councilman Chandler asked if it would make sense, since there is more than one street here, to accept them all at the same time, after the project is completed, rather than doing it piecemeal. Attorney Witsil and Mr. Gulbranson agreed that would make the most sense. Mr. Gulbranson also stated they've had similar discussions about accepting the roads when there is still active construction occurring there. Councilman Chandler agreed the simplistic way would remove that issue – he walked it recently and saw they are still bringing in fill dirt and heavy trucks are still going over the street. Mr. Gulbranson informed them that they are also still bringing in water and sewer. Attorney Witsil responded that if that is the case, the authority he looks to in forgoing the simple route is the approval of the subdivision plat, which states streets shall be dedicated and not a street-at-a-time.

He stated that the Town Administrator can also make this determination. Town Administrator Brought informed Council that Dena stepped down from the HOA president and it is now Carol Thompson. She stated that Mrs. Thompson has been in touch with other concerns and she can just get back to her if that is what Council has decided for the streets. Mr. Gulbranson believes they should be almost done with the heavy trucks and equipment in the next couple of months.

Councilman Truitt stated the letter mentions Phase I streets, but clarified that they can wait until all three phases are complete. Attorney Witsil affirmed that they can wait, but it would need to be the Town Administrator's decision or it can be added to the agenda for next month. Mr. Gulbranson is concerned that if they accept the Phase I street, damage could be done and then it would be the town's responsibility. Vice-Mayor Ulrich asked if they give a year warranty anyway. Mr. Gulbranson stated they do, but when they are this close to being finished, it makes more sense to just wait.

Attorney Witsil stated if they don't like that answer, they can petition the town through Section 29, if there are five or more property owners. Mr. Gulbranson stated that if their main concern was snow removal, the snow should be done for this year and the construction should be complete by that time next winter. Woods Court is completed, but they still have eight units to complete in Phase II.

Councilman Chandler asked if the town issues Certificates of Occupancy at some point or if it is just a building permit. Mr. Gulbranson and Town Administrator Brought replied that the town gives the Certificate of Occupancy once the county has issued one. Councilman Chandler requested that next month, the discussion of issuing building permits without the sidewalks that were promised, be added to the agenda.

Councilman Chandler also raised concern about a sandwich board sign advertising new homes that was placed at the Piney Neck Road and Main Street intersection over the weekend. This is the same community that has advertised with wooden signs on his property and they have been advised that it is not legal according to the town's ordinances. He described the sandwich board to be plastic and about four feet high and they are chaining it to the telephone pole with a cable that is about a quarter inch thick and a combination lock on it. Therefore, Councilman Chandler could not remove the sign; he could only lay it down.

Vice-Mayor Ulrich asked if an "in violation" sticker could be placed on the sign. Councilman Chandler stated they could or the marina (the community where the homes are located) could be called, which he has done four times in the past. Attorney Witsil stated they could be cited for a sign violation. Town Administrator Brought stated she would try calling them and see if they can just remove the sign.

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

V. PLANNING AND ZONING

A. Re-Zoning of former BZ Builders Parcel, tax map 2-33-11.00-224.02, from Cluster to Residential

Brad Connor, Planning and Zoning Chairman, shared that the commission recommends the re-zoning of the above property from Cluster to Residential.

B. Recommendation to have the Kerns go before the Board of Adjustment for a variance on the proposed restaurant/bar; side setback bordering lands of Bodenweiser (old Heathman Jewelers)

Mr. Connor also informed Council that they recommend the Kerns go before the Board of Adjustment for a variance for their side setback.

C. Recommendation to Reduce the fee from \$2,500 to \$1,000 for all future applications involving the Board of Adjustment

The Board of Adjustment has not met in at least fifteen years, so the Planning & Zoning Commission recommends the fee to be lowered to \$1,000.

VI. NEW BUSINESS

A. Discussion/vote to hold a public hearing and advertise the re-zoning request for parcel 2-33-11.00-224.02 from Cluster to Residential as recommended by Planning & Zoning

Vice-Mayor Ulrich asked Mr. Chandler (the property owner) if he is just going for residential and not agricultural. Mr. Chandler replied that it never was labeled agricultural on the town's zoning map – he is just requesting that it goes back to the lowest zoning allowed in the district. He stated that the other parcel, down the street, is agricultural because it has always been farmland. Mr. Chandler informed her that the reason he is requesting the zoning change is because he and his wife would like to preserve and maintain the integrity of the land as it originally existed. They are working with the Conservation District to preserve it forever. Their hope is to develop it as woodlands and farmland, connect it to another strip of farmland that it adjoins, and then to the other property they own.

Mr. Gulbranson showed the property on the map. Councilman Chandler questioned his other property still being shown as zoned Cluster. Town Administrator Brought stated the county has it zoned agricultural so that is why the taxes won't matter. Mr. Gulbranson stated that the county's provision for agricultural zoning, there must be at least ten acres. Councilman Chandler agreed that this property is only nine plus acres – that is why the intention is to join it with the other property.

Councilman Truitt asked if this will be designated AR-1. Attorney Witsil replied that R-1 is the lowest density residential zoning that Dagsboro has; AR-1 is only on the county level. Mr. Gulbranson replied that the property will just lose the cluster designation and revert back to residential. Attorney Witsil explained that it is an overlay of residential zoning – it is all still residential. Mr. Gulbranson further explained that the minimum lot size for residential zoning is 15,000 square feet, while the cluster residential designation allows for only 10,000 square feet, but requires more open space. There is a

smaller lot size, but more green space. The number of units allowed doesn't change much, there is just more open space required.

Vice-Mayor Ulrich made a motion to hold a public hearing next month for a resolution for the re-zoning. Councilman Truitt seconded the motion. All in favor. Councilman Chandler abstained from voting.

B. Discussion/vote on reducing the fee from \$2,500 to \$1,000 for all future applications involving the Board of Adjustment

Councilman Chandler asked Town Administrator Brought if she was able to research the approximate cost to the town for a Board of Adjustment meeting, as discussed at the Planning and Zoning meeting. She replied that she mentally was able to do estimated ideas of what the attorney and preparation would cost and believes that \$1,000 would cover the costs. Mr. Gulbranson also did some research on the fees charged by other towns. Georgetown is \$750, Millville is \$750 plus professional fees, Millsboro is \$1,000, and Frankford is \$1,500.

Town Administrator Brought stated the advertising and mailings should be \$50 or less, depending on the number of mailings and then it would mostly just be the attorney fees. Attorney Witsil stated that some applications will be simple and routine where he would just charge for attending and writing a brief approval. Other applications could be more significant and contentious – there is no way to know. Councilman Chandler asked if there would be a way to say the fee is \$1,000, unless the costs exceed that amount, in which case the property owner would be responsible for the difference. He explained his reasoning – if a property owner is requesting something to the town that costs something, he feels the property owner should be responsible for that cost, rather than the taxpayers subsidizing it. For example, he is paying the fees for the cost to re-zone his property, not the taxpayers. This won't be a problem for the Kerns because theirs will be easy, but he thinks it is something to consider in the future for others. Attorney Witsil stated that then the fee is based on the cost to the town, which could be less than \$1,000. He suggested they could consider an application fee of \$500, plus costs to the town paid. Vice-Mayor Ulrich stated that it could be difficult for people to not have an idea of what the cost will be and how much money they would need. Mayor Baull is in favor of the application fee and then the professional fees.

Attorney Witsil informed them that the flip side is that the town has a responsibility to provide the service. If the variance allowance is in the code and there is a Board of Adjustment, there is an argument that the town needs to provide that service. He informed Council that for the three towns he has worked for, there has always been a flat fee, but some applications are contentious and require his attendance to two meetings for the Board to deliberate and then come back for a decision.

Mr. Gulbranson asked Council to also consider other possibilities – there is another situation in town that will require at least three variances so that will be a little more complicated. Attorney Witsil stated that all can happen at one time to help. He advised Council to consider the possibility of an applicant appealing a decision if the request is denied. The applicant can't be charged for that. However, they also need to consider how to handle it if it was approved and an opponent appeals the approval – they certainly can't look to the applicant to cover the costs of that appeal either. Attorney Witsil is more comfortable with \$1,000 or \$1,250, not with the fees to the applicant.

Vice-Mayor Ulrich stated the purpose is to lower the fees and suggests taking it to \$1,000 and see how it goes. Mr. Gulbranson and Attorney Witsil stated it could always be changed again down the road, if needed. Mr. Gulbranson shared that Millsboro goes through this process quite often so it would seem if they were losing money on it, they would have raised their fee of \$1,000.

Vice-Mayor Ulrich made a motion to reduce the Board of Adjustment fee to \$1,000. Councilman Truitt seconded. All in favor.

VII. OLD BUSINESS

VIII. PUBLIC COMMENT

Chief Toomey asked Council if they are aware of a town code against open burning. He is aware of the state policy, but there were at least two open fires over the weekend. Nobody could think of a specific ordinance against it. Chief Toomey suggested the Council think about a possible ordinance that would require some type of fire ring around an open fire.

Councilman Chandler asked Chief Toomey about the fence by the police station because it is leaning. Chief Toomey replied he thinks it was the snow plow because he did not have brakes.

Councilman Truitt asked if the town had something for the fire department's 75th anniversary coming up. Mayor Baull replied that he is working on a proclamation.

Matthew and Karen Kern introduced themselves to the Council. Mr. Kern shared some of his background with the Council and his vision for the restaurant, including his work with local farmers.

IX. ADJOURNMENT

A motion to adjourn the meeting was made by Vice-Mayor Ulrich and seconded by Councilman Truitt. All in favor. Meeting was adjourned at 6:50 p.m.

Respectfully submitted by;

Megan Thorp
Town Clerk