

Minutes

DAGSBORO TOWN COUNCIL

Bethel Center – 28307 Clayton Street

Monday, January 28, 2019

- I. CALL MEETING TO ORDER 6:00 p.m.

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

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

- II. PRESENTATION – CHIEF TOOMEY (Officer Disciullo)

Officer Bare and Chief Toomey made the following presentation to Officer Disciullo:

“Dagsboro Police Expert Officer Cord is hereby awarded to: Patrolman First Class Nicholas Disciullo

For your meticulous and impartial enforcement of the law during the period February 2018 to January 2019. Your efforts lead to an overall performance exceeding 1,000 Criminal and Traffic Arrests with a conviction rate greater than 85%. These arrests resulted in the success of the Dagsboro Police Department and our mission of Public Safety. You have lead the way and set the standard for your peers. Your actions are in keeping with the finest of Law Enforcement traditions and reflect honorably upon yourself and the Dagsboro Police Department.

The Dagsboro Police Department Also Promotes PFC Nicholas Disciullo To
Lance Corporal Effective February 01, 2019”

- III. PUBLIC COMMENT

Jim Thompson of Shady Creek Lane asked for a public hearing because he claimed Town Council is unaware of issues with Fernmoor Homes.

- IV. APPROVAL OF MINUTES

- A. December 17, 2018 – Town Council Meeting
- B. December 17, 2018 – Town Council Executive Session

Councilman Chandler made a motion to approve the meeting minutes for the December 17, 2018 Town Council regular meeting and for the December 17, 2018 Executive Session. Councilwoman Ulrich seconded the motion. All in favor.

V. CONSENT AGENDA

A. Police Department Report

Chief Toomey informed Council that they have his December report, his annual report, and a statistical comparison from 2006 through 2018. Councilman Chandler asked if it would be good to post that information on the website. Chief Toomey replied that was done at one time. Town Administrator Brought stated that hasn't been done that she was aware of, but it could be. Chief Toomey stated that the annual report and the monthly reports were posted previously. Council determined posting all three would be a good idea.

Councilman Chandler also asked if there is an update about the red light camera. Chief Toomey replied that he has not heard back from anybody he has contacted so far.

B. Treasurer's Report

C. Administrative Report

Councilman Chandler asked for an update on the progress of condemning the uninhabitable homes in town. Town Administrator Brought replied the process has been started and she has a meeting scheduled for next week with the Town Solicitor to further discuss the properties.

Councilman Chandler also asked about the delinquent taxes as some responded to the Town Solicitor's letter, but some have not. Town Administrator Brought replied that is correct and those that did not respond she will be discussing in her meeting next week also.

Councilman Chandler asked, in regards to the building permits, if the home on Cannon Street was going to be a stick built home. Town Administrator Brought replied it is a modular home. Councilman Chandler clarified that modular homes are permitted. Mr. Gulbranson replied that modular homes are permitted, manufactured homes are not. He stated there was an issue that the roof pitch did not meet the town's standard, but the builder has corrected that.

Councilman Chandler asked if Town Administrator Brought has heard from the Kerns in respect to the restaurant going into the old Heathman Jeweler building. Town Administrator Brought replied that she has spoken to them. They had to change their construction group because of costs, but they are moving forward, it is just taking longer than anticipated. There was a rumor they had gone to Millsboro instead, but that is false.

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 made a motion to approve the consent agenda. Vice-Mayor Miller seconded the motion. All in favor.

VI. NEW BUSINESS

A. PKS – Audit Review July 2017 thru June 2018

Andrew Haynie was present to review the audit; he is one of the partners. Alyssa Revel was also present as she was one of the managers on the job and has been for the town for several years.

Once again, the auditors issued an unmodified opinion on the report. The unmodified opinion is the highest opinion they can issue as the town auditor. The auditors found the unrestricted amount of money the town has is pretty healthy for the size of the town. The largest portion of total revenue for the town is taxes. The taxes have increased this year and most of that is due to collections of old taxes and new development.

As far as expenditures, the general government expenditures decreased a little; this is the overhead and money needed to run the town.

The water fund saw a small decrease, but it was a smaller decrease than previous years. Most of that is due to the depreciation, which is not a cash expense, but still an expense. The charges for services increased about \$9,500, but the impact fees also greatly increased due to the amount of construction. The net position ended with a negative \$46,000, but that was much better than last year when there were large transfers to the general fund.

Overall, the auditors feel the town had a good financial year – a lot of expenditures went down and positive indicators (i.e. impact fees) went up.

Councilman Chandler asked Mr. Haynie and Mrs. Revel if they were aware of the water rate change. Mr. Haynie replied they were because they read the minutes as part of their procedures.

Town Administrator Brought informed Council that some of the items in the financial statements have been taken care of already – another PKS employee came in the fall and sat with Duane (finance clerk) and helped get some things straightened out in Quickbooks.

Councilman Chandler asked if the auditors found anything that would cause for concern about the management. Mr. Haynie replied there was not. Councilman Chandler also asked if their level of confidence in the town's fiscal health and level of standards and the management overseeing that, is better than eight years ago, the same, or worse. Mr. Haynie stated that his opinion on the team itself might not have changed much, but in looking at the numbers, when he first started there was a lot of concern, especially with the water department. Overall, the town has improved every year and any

comments the auditors have made have been taken seriously, looked into, and corrected when it's feasible that they could be corrected internally. Mr. Haynie stated Council can feel free to review the documents and ask questions at any time.

B. David Steele/Fernmoor – Bond Reduction - \$150,000

David Steele from Fernmoor Homes was present to ask for a recommendation for a bond reduction for Phase II of their project to the engineer's recommended amount of \$42,387.50. He understands this came up at the October Town Council meeting and the recommendation was raised to \$150,000. He is asking they reconsider reducing it the engineer's recommended amount. He read the meeting minutes and knows there was a lot of discussion about "what if's" and informed them that is why the bond is in place. The items in question at that meeting were unrelated to this phase. Mr. Steele informed Council when a bond is in place, it does take cash out of the developer's pockets to continue work on other items. He stated The Woodlands at Peppers Creek is not a fast moving community and Fernmoor is trying hard to complete the phases since they have taken it over. He is asking for a reduction in the bond. He stated that the original paperwork lists items that have been installed, are working, and have been inspected, but they are still on the bond to provide some extra money on the bond to prevent questions since the main road on Phase I is the only road in and out. Really, the bond should be reduced down to \$9,500 for the topcoat of that phase, but Mr. Steele and Eric (the engineer) knew there would be resistance so they left the extra in. They are asking for the bond reduction to \$42,387.50 to free up some of their funds so they can continue construction to finish the phase.

Councilman Chandler asked Mr. Gulbranson if he agrees that the \$42,000 would be more than sufficient. Mr. Gulbranson stated the town code requires they bond at 125% so there is a 25% contingency billed into that amount. Mr. Gulbranson also reminded them that the town only bonds what comes back to the town (i.e. the street, water system, storm water infrastructure in the right-of-way). The water system is complete, the streets have a base coat and curbing completed and the storm water is in place (it hasn't been opened completely yet, but that won't happen until the final coat is done and construction is finished). The conservation district will give Fernmoor the approval to open it, not the town. He stated that when this was approached the last time, he and his firm thought the number was accurate, but other issues were discussed. Councilman Chandler asked if Mr. Gulbranson's opinion changed as a result of those other issues. Mr. Gulbranson replied that his opinion to reduce the bond has not changed because the town does not carry bonds on everything else.

Councilman Chandler asked Mr. Steele if there was a purpose for the hole in the sidewalk that he noticed when he walked down there. Mr. Steele replied there is a curb stop there for the water meter to finish the irrigation. It just needs a cap placed on it. Councilman Chandler stated there is a retaining wall at Phase III and there is water standing that is up to his knees. Mr. Steele replied that is wetlands. It is designated as wetlands and will remain that way until summer when it will probably dry out. There has been a lot of rain this year and that water would not go away, regardless of what the drainage system would like look there. Mr. Gulbranson added that there has been thirty inches more than the normal rainfall amount this year. Councilman Chandler stated he has lived here for years and never saw that much water standing in that area and the trees in it will eventually fall on their buildings. Mr. Steele

replied that area is wetlands and is actually part of The Woodlands property so that would go to the homeowner's association, not the town. Mr. Steele also stated there is nothing they can do to change that area because they are not allowed to touch wetlands areas. Councilman Chandler asked if it is conceivable that Phase II has made that area worse. Mr. Steele replied that 2010 was just about as wet as this year and thinks there was just as much water in the wetland area at that time, but at that time, there was brush all around it and trees around it so it wasn't as easily seen. Mr. Gulbranson replied that there is more water coming off of the site because before this project was started, that area was heavily wooded and vegetation is good at soaking up water. The original developer went in and cleared it and now there is more water coming off of the property than before. Councilman Chandler replied that was his point – that there is some man-made effect.

There was discussion about the trucks going in and out to complete construction. Mr. Steele stated that typically, their trucks weigh less than trash trucks. Councilman Chandler asked if Mr. Gulbranson is in agreement with the bond recommendation. Mr. Gulbranson stated he is following the town's code, which states what is bonded and the process for reducing that bond and the percentage that the town holds. He stated that he knows a lot of people have a lot of issues with different things, but those are not things that were bonded. Mr. Gulbranson also agreed with what Mr. Steele – extra money is still included in the bond to cover any issues that may come up with the street or the infrastructure under the road. Mr. Gulbranson also stated there is still \$10,000 bonded for Phase III so if there continue to be water issues, they have that also.

Councilman Chandler posed the question to the rest of council if they should take action at this meeting since one person has already requested that they do not take action. Carol Thompson, President of the HOA in The Woodlands, asked Mr. Steele for clarification about a tree falling in the wetlands area is up to the HOA. Mr. Steele clarified that if any tree falls on the property, it is the homeowner's association's responsibility. Mrs. Thompson replied that if a tree in the park falls, it is not the homeowner's association. It was clarified that the park would be the town, but they were discussing the wetlands area which is property of The Woodlands. Mr. Gulbranson clarified that the water that is right in front of the retaining wall is Woodlands of Peppers Creek property. Mrs. Thompson asked how much of that is their property. Mr. Gulbranson the best way to describe it is to roughly follow the tree line from the cul-de-sac to the street and everything east of that belongs to The Woodlands. Mrs. Thompson stated the water has been sitting last summer and hasn't gone away. She claims DNREC stated that before the homes were built, the water passed through but now it does not and she wants to know what the town and the HOA can do.

She also expressed concern about the sidewalk and that part of the bond. Mr. Gulbranson clarified that the sidewalk was never part of the bond. She stated the drain is not level and the water has to flow uphill to the drain. Mr. Steele replied that is completely separate from the bond issue. That area is in Phase III and deals with the park and it is also wetlands, which they can't do anything with. They built according to the plans for Phase III, which were approved by the town and by the conservation district. This year is a hard year to judge because it has been so wet, plus it is wetlands. Mr. Gulbranson added that there have been two to three inches of rain every week this year.

Councilman Chandler asked how many truckloads of dirt were brought in to raise that area up. Mr. Steele replied they did bring in dirt to raise part of the land, but that area was not wetlands. Councilman Chandler acknowledged that Fernmoor and Mr. Steele did not start the project, but that is what everybody is dealing with. Mr. Steele agreed and stated the ground was raised to take the homes out of the flood zone so that the homeowner's didn't have to pay for flood insurance. Mr. Gulbranson suspects when the development was first starting and the wetlands delineations were done, they probably didn't look at the park and today, the whole area that is being discussed would possibly be considered wetlands.

Councilwoman Ulrich asked if they lower the bond and follow the code, if that opens the town up to anything else. Mr. Gulbranson replied that what the bond is for are not the issues being discussed currently. Councilman Chandler clarified that no matter what the bond amount is, it could not be used for any of the other issues since those are not what the bond is for. Mr. Gulbranson confirmed that the bond is only for the street, the storm water infrastructure in the street, and the water system.

Mrs. Thompson asked if the \$10,000 still bonded for Phase III would apply to the same items. Mr. Steele and Mr. Gulbranson confirmed. Mr. Gulbranson stated that those are the only items the town can bond for.

Mr. Thompson stated the water was not there until the retaining wall was put up. He again asked for a public hearing to discuss what Fernmoor has not done before the town gives them any concessions. Mayor Baull replied that those issues do not apply to the bond issue.

Vice-Mayor Miller made a motion to reduce the bond to \$42,387.50 to cover the streets, water system, and storm water infrastructure in the right-of-way. Councilwoman Ulrich seconded the motion. All in favor.

C. Miss Utility Tickets/Artesian (Cindi)

Town Administrator Brought realized that the town was getting bills for marking the water lines for Miss Utility. The town has a contract with Artesian to do this. She is concerned because Miss Utility services are free to the property owner, but this past year, the town has paid \$2,000 for this. She has found some items in the past that she feels are outside of our limits and when questioned, they tell her it is in the limits. The contract with Artesian expired in 2016 so they are redoing that and will also ensure they don't bill unless it is in the town's limits.

Councilwoman Ulrich asked if other towns are charged for services like this. Mr. Gulbranson replied that he would guess bigger towns have staff that can mark them on their own without contracting it out. Town Administrator Brought would just like to research it; maybe it can be done cheaper.

Councilwoman Ulrich asked if the amount was because there are more tickets or if they are charging more. Town Administrator Brought replied that there are just more tickets. She explained if Delmarva Power is going to put in a pole, the town pays for the water lines to be marked or if Mediacom is putting in cable somewhere, the town pays for the water to be marked.

Town Administrator Brought stated this service is free to the property owner, but then the town is paying for it. Councilwoman Ulrich understands both sides. Mr. Gulbranson replied that the utilities pay for it because they don't want their systems damaged. He did say that there are utility companies that do this and maybe they would be cheaper. Town Administrator Brought agrees and would like to research that before signing a new contract with Artesian.

Mr. Gulbranson stated the town's water system is relatively new so there should be metallic tape so it is basically just a matter of someone going out with a device to find the water line. Mayor Baul suggested Town Administrator Brought find out what other smaller towns without a public works staff do and then call and see if there is a better price to do it than the town is currently paying.

D. Discuss Water Supply to Frankford – Meeting with DHSS on January 18

Mr. Gulbranson summarized for Council the situation. Everyone is aware that Frankford has been having problems with their water system for some time and they are trying to find some solutions to providing quality water to its residents. The water lines from Frankford to Dagsboro to Millsboro are all interconnected. There is a shut off valve that is on the south side of town that would open to serve Frankford. A couple of years ago when there was a big fire in Frankford, that valve was opened for emergency purposes. Dagsboro receives all of its water from Millsboro and the town has a 500,000 gallon raised storage tank.

The office of drinking water asked for the meeting and wanted to know if Dagsboro would serve Frankford with water by opening the valve. Mr. Gulbranson initially thought it was going to be a temporary solution, but it turns out that they are looking for a permanent solution. The question among Mr. Gulbranson, Town Administrator Brought, and those present at the meeting, was that it is not Dagsboro's water to sell. Dagsboro has been told for years to never open that valve. Evidently, DNREC has been discussing this with Millsboro and Millsboro's response was that if Dagsboro is interested in serving Frankford, they can do it.

There have been issues with chlorine and initially the plan was to put an injector in to boost the chlorine levels. If Dagsboro chooses to serve Frankford, that would have to be done. The office of drinking water did state during the meeting that they would pay for improvements to Dagsboro's water system if any needed to be done to serve Frankford. There is a compound meter between Dagsboro and Millsboro that reads the amount of water coming to Dagsboro and deducts the water that is pulled back to Millsboro. A compound meter would need to be installed between Dagsboro and Frankford also.

Town Administrator Brought is concerned with how billing issues with Frankford would be dealt with. Mr. Gulbranson stated that Millsboro would really need to be involved because it is not Dagsboro's water to sell. Town Administrator Brought replied that Millsboro did not want to be involved in a meeting with them. Her concern is there is already a lack of communication with Millsboro – whenever there is an issue with the chlorine, they do not inform her. If Dagsboro were to serve Frankford, when there are problems like this they will not be going to Millsboro with the issues, but will come to Dagsboro. If Frankford doesn't pay the bill, who would that fall on? Plus, Dagsboro does not have the staffing to do extra billing. She thinks Millsboro should do a contract directly with Frankford, even

though Dagsboro's infrastructure would be used. Her other concern is that this is a permanent solution so Dagsboro would not ever be able to switch water companies.

Mr. Gulbranson did some research to find out how much water Frankford uses and found out they are a bigger consumer than Dagsboro. They have three schools so the water usage fluctuates, but they use anywhere from 55,000 gallons a day to 80,000 gallons a day and it goes up as high as 100,000 gallons a day. They use almost double what Dagsboro consumes. Councilman Chandler feels that is where the problem is because Millsboro was not present at the meeting, but they are the ones supplying the water and they should be having conversations with Frankford. He pointed out that Dagsboro's contract with Millsboro limits the usage to 90,000 gallons and if Dagsboro uses 55,000 to 70,000 currently, they can't add another 80,000 to 100,000 gallons to that. Mr. Gulbranson agreed the contracts would have to be adjusted. Councilman Chandler agreed, but added that would be difficult if Millsboro does not come to the table about the issue. He also notes that the contract requires the town to indemnify Millsboro for any loss or damage due to negligent acts or omissions – his concern is who would indemnify Millsboro if someone in Frankford did something negligent and caused damage, Millsboro would probably be looking to Dagsboro. Another concern is that there are only three years left on the contract with Millsboro and if they decide to serve Frankford, now the town is locked into Millsboro as the water supplier. For these reasons, Councilman Chandler stated that as much as he would like to be a good neighbor and help Frankford, it cannot work unless Millsboro is involved.

Mr. Gulbranson shared that there would be some benefits to serving Frankford. Pulling that much water through the system probably would help the chlorine levels. Mayor Baull replied that Millsboro has problems already with chlorine lines breaking with only Dagsboro as a customer and he is concerned adding Frankford could make that worse. Mr. Gulbranson replied that is a possibility and that Dagsboro would need improvements also and those would need to be paid for. He stated the compound meter at Millsboro was \$15,000 and that was several years ago so that could be up to \$25,000 now, plus the infrastructure and engineering to configure it.

Councilman Chandler asked where this needs to go next or if there needs to be a formal response. Town Administrator Brought replied they do need a formal answer. Mr. Gulbranson believes they are doing an engineering study in which they need to find at least three alternatives to provide Frankford water and this is one of them. If this alternative doesn't work, they can eliminate it. They have to go through this process to get federal funding for any improvements that they do.

Mayor Baull feels Dagsboro is being stuck in the middle. He agrees with Councilman Chandler in that he would like to help Frankford also, but there are a lot of questions. Councilman Chandler stated that it is not Dagsboro's water. Town Administrator Brought agreed and stated that is what it comes down to. Mr. Gulbranson agreed that he doesn't think Dagsboro has the authority to make that agreement. Councilman Chandler asked Mr. Gulbranson how he suggests they respond. Mr. Gulbranson replied that he thinks they should draft a letter stating that it was discussed at the January 28, 2019 Town Council meeting and the town is not interested and not legally able to provide water to Frankford.

Councilman Chandler asked if Selbyville could provide them water. Mr. Gulbranson stated when it came up at the meeting, it was discussed that Dagsboro could provide them with better water than Selbyville because Selbyville has issues of their own. Chief Toomey added that Selbyville does not have lines that run to Frankford either. Mr. Gulbranson agreed, they are close, but there would need to be construction done and Dagsboro providing water would be the easier solution. Councilman Chandler told Town Administrator Brought he could work with her on a formal letter.

VII. OLD BUSINESS

A. Signs in Median Rt. 113 (Cindi)

This had been discussed at a prior meeting and it was decided to put it aside for the time being. Since then, a lot of locals have reached out to representatives stating they want the sign to go back. Town Administrator Brought had been in touch with the Governor's office and spoke to Representative Collins. Rogers Signs (they also do the parade signs for the town) also contacted her and asked for a copy of the regulations. Representative Collins also talked to Rogers Signs. They agreed to do the whole permitting process for the town. The total cost for two signs comes to about \$4,035 and Representative Collins has made a commitment to pay for the whole thing.

Councilwoman Ulrich made a motion to approve the new median signs for \$4,035 with it being handled by Rogers Signs and Representative Collins. Councilman Chandler seconded the motion. All in favor.

Mayor Baull clarified that it wasn't necessarily the cost of the project, but more that the permitting process required a lot and it would have been taking a lot of time for Town Administrator Brought.

VIII. EXECUTIVE SESSION

(To discuss potential site acquisition for publicly funded capital improvement.)

IX. PUBLIC COMMENT

Carol Thompson thanked Council for taking care of the dead tree in the park that was near one of the homes.

Jim Thompson from Shady Creek Lane stated that there are six storm drains on Woods Court that he thinks is the cause of the standing water. He again asked for a public hearing for the issues he has with Fernmoor. Councilman Chandler stated they cannot call for a public hearing. They can just ask for it to be added to the agenda for it to be discussed, however, the grievances they have with the developer are issues they need to pursue with their own rights through a lawyer and the town cannot serve as their lawyer.

X. ADJOURNMENT

Councilman Chandler made a motion to adjourn the meeting. Councilwoman Ulrich seconded the motion. All in favor. Meeting adjourned at 7:37 p.m.