

*Minutes*

**DAGSBORO TOWN COUNCIL**

**Bethel Center – 28307 Clayton Street**

**Monday, May 20, 2019**

I. CALL MEETING TO ORDER

6:00 p.m.

Meeting was called to order by Mayor Baull at 6:00 p.m. After calling the meeting to order, Mayor Baull asked for a moment of silence in honor of fallen Dagsboro Volunteer Firefighter Jalen Griffin, who answered his final alarm on May 12, 2019.

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

II. PUBLIC COMMENT

Jim Thompson of Shady Creek Lane asked if the streets in The Woodlands have been turned over to the town yet. Town Administrator replied they haven't been. Mr. Thompson asked why and Town Administrator Brought replied that construction is not finished in the development so heavy equipment is still traveling over the streets. Mr. Thompson feels they should not pay the same property taxes if the street lights and streets have not been turned over to the town. His other concern is that Fernmoor brought in roughly 400 truckloads of fill dirt and wants to know if that dirt is free of toxins and contaminants. He states that a municipality can be held liable if there are contaminants in the fill and they should get something in writing stating it is safe. He also wants the town to get something in writing from DNREC stating the retaining wall that was put up complies with regulations. He requested a review be made of the water bills because his bill has gone up. Town Administrator Brought replied he can come into Town Hall to look at his water bill.

III. PUBLIC HEARING

**COURT OF APPEALS – PROPERTY TAXES FISCAL YEAR 2019-2020**

Mayor Baull opened the public hearing. Town Administrator Brought replied that nobody had filled out the form requesting an appeal, but Eric Piner (who does the appraisals for the town) is present in case somebody showed up.

Having no appeals expressed, Vice-Mayor Miller made a motion to close the public hearing and Councilwoman Ulrich seconded the motion. All in favor.

#### IV. APPROVAL OF MINUTES

##### A. April 15, 2019 – Town Council Meeting

Councilman Truitt made a motion to approve the meeting minutes for the April 15, 2019 Town Council meeting. Councilwoman Ulrich seconded the motion. All in favor.

#### V. CONSENT AGENDA

##### A. Police Department Report

Chief Toomey informed Council that last month was a highly unusual month. Their numbers are down, mostly due to the construction that tied them up for a month and a half. He also stated he received a phone call today from Resort Patrol asking if the department had any vehicles for sale. The town has sold them vehicles in the past. He spoke with the staff in Town Hall, who stated it would not be a hardship to them if the Crown Victoria was sold. The only effect it would have is if another police vehicle had something catastrophic, then they wouldn't have the "back-up" vehicle. He is assuming, depending on what Council elects to do, that in September, someone new may want a new vehicle anyway and the money has already been set aside for that. Chief Toomey asked Council if they would like him to move forward with the sale of that vehicle. Councilman Chandler asked what year the vehicle is. Chief Toomey replied that he believes it is a 2009. Councilman Chandler agrees selling it would be the best use for it at this time. Councilwoman Ulrich asked how the meters are read. Town Administrator Brought stated that it is difficult to get the cars moved around to get the Crown Victoria out so Megan (Town Clerk) has been using her own vehicle and when asked, she said she is okay with continuing to use her own vehicle for it.

Councilman Chandler made a motion to release Chief Toomey to sell the Crown Victoria to Resort Patrol. Vice-Mayor Miller seconded the motion. All in favor.

Chief Toomey also informed Council they should expect his retirement as he has accepted a position with the Indian River School District, effective September 1<sup>st</sup>. Councilman Chandler asked if he will be using any vacation time prior to that date. Chief Toomey replied that he was probably going to use it after that date as terminal leave, if it is acceptable with Council.

##### B. Treasurer's Report

##### C. Administrative Report

Mayor Baull asked if there is an update on changing the banners. Town Administrator Brought replied there is not an update on the banners. Councilwoman Ulrich asked when the grass cutting occurs. Town Administrator Brought replied they cut every two weeks and they are due this Thursday.

Councilman Chandler stated a conversation should occur at some point regarding the banners. Town Administrator Brought thinks it is needed. Councilman Truitt stated they will need to start working on finding funding for the electrical wiring also. Councilwoman Ulrich asked if they have received a second proposal yet and Town Administrator Brought replied they do not have a second one yet.

- 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 Truitt made a motion to approve the consent agenda. Councilman Chandler seconded the motion. All in favor.

#### VI. PLANNING & ZONING COMMITTEE

##### A. Recommendation to approve Preliminary Site Plans for Artesian Water

Brad Connor, Chairman of the Planning and Zoning Committee was present and informed Council they recommend approval of the preliminary site plans for Artesian. He stated that Rob Duma from Davis, Bowen, and Friedel, is present for any questions.

John Thaeber from Artesian was also present, along with Kathy Thaeber, Rob Penman, and Karl Randall (their general counsel) for any questions. Mr. Thaeber explained that Artesian has had a long relationship with the town and Artesian has grown. They started down near South Bethany and Fenwick. They have just interconnected with Selbyville last year and are growing this direction. They are looking for a water supply that would do two things: help with their growing, but also provide high quality water. As they have been working with the town, they have seen the need for high quality water closer to the town. They purchased a piece of property on Route 20 and tested and found it would provide good quality water. They have the plan to show how they want to set up the facility to do this. He stressed that they want to blend in with the area, whether the façade be residential or agricultural, etc.

Mr. Duma passed around some renderings of options for how the facility could look. He stated their parcel is about fifteen and a half acres and they would be developing the central area for the water treatment facility, elevated storage tank, and temporary water building. The storm water management will be at the southern end. They will only be developing about three acres of their parcel. This would be an un-manned facility, with daily check-ins by the operator and then bi-monthly chemical deliveries and sludge hauling. There are three proposed wells on the site. They would have a basic entrance and asphalt pavement on the site and fencing around the site for security. They are looking at phasing the project and having a temporary, smaller water building at the northern end and that would be done first with the Del-dot access and a gravel road to the site and then the rest of the project would be phase two (probably started about a year after phase one). They are addressing Mr. Gulbranson's comments on their preliminary plans and are working with Del-dot and Sussex Conservation to get approvals.

Councilwoman Ulrich stated she thought it was just going to be the residential style building and didn't realize there would be a large water tank there also. Mr. Thaeber replied that it probably won't be built in with the initial treatment facility, but they have to put it on the plan. He stated it won't be right on top of someone's property so it will blend in a little more since it is a large site – it would be more of a

landmark. Councilwoman Ulrich mentioned the silo style storage. Mr. Thaeber stated that is good for some things, but if there is a hurricane or large storm that knocks out power, elevated storage is better because it can use gravity.

Mayor Baull asked what the three parcels are that were outlined in the plan. Mr. Thaeber replied that the previous owner of the property had it subdivided into three parcels. One of them she sold, but the other two were put into their agreement.

Councilwoman Ulrich asked if there were any issues with their other properties – any complaints from surrounding homeowners or neighborhoods. Mr. Thaeber replied not typically and especially not with such a large parcel of property. He also stated any motors or equipment will be inside a building or underground so it will not be a facility that makes a lot of noise. Once a week, during the day, they will test their generators, but they are quiet generators so he doesn't anticipate with the homes being further away that they would really notice. Mrs. Thaeber stated a lot of their facilities are actually in residential neighborhoods, with neighbors on either side and this parcel has a lot of space around it. Mr. Thaeber replied he has been to many homeowner association meetings and there haven't been issues in Sussex County – they work very hard to maintain the facilities. At an older facility, they may have gotten a complaint about mildew being on a ground tank and they took care of it right away, but they rarely get any complaints and he doesn't recall ever getting a complaint on a site this large.

Councilman Chandler stated the noise has been addressed and asked if there are any issues with odors since there is a building labeled "sludge de-watering building." Mr. Thaeber stated that has to do with iron and there is no odor – it has nothing to do with wastewater. There is iron in the water and they get it out of the water and put it in a tank, they press it down and take the water away. The iron would then be taken away, probably not even once a week, maybe once a month on a construction type truck, but there is no odor.

Councilman Chandler asked if there would be any effect on the air as a result of this. Mr. Thaeber replied they will probably aerate the water to oxidize it with the iron process. But it is not an air emission like in an industrial way. There would be zero impact and no health issue. They found no contaminants in the water that they would need to treat the water for.

In looking at the photos, Councilman Chandler noticed there was no fencing pictured, but it was mentioned. Mr. Thaeber replied that typically, they like to fence it in, but they don't always. If the town had a reason that they really did not want a fence, they would not put one in, but if there were any vandalism issues they would have to come back and asked for the fence to be considered. Typically, they like to have a fence as security has become much more of an issue in the last twenty years.

Mr. Thaeber stated the Planning & Zoning liked the barn style, but a lot smaller than one of the pictures. They just wanted to show they can do any façade that the town is comfortable with. Councilwoman Ulrich asked about the truck traffic. Mr. Thaeber stated one pick-up truck would come in once a day and twice a month a chemical delivery would occur, but not on a big tractor trailer. On occasion to make repairs, they may be a repair truck. There will be minimal traffic on the site, with the exception of construction in which case it would be the same construction traffic as if a big house were being built.

Councilwoman Ulrich stated with them being so far away, an emergency occurring would be a concern. Mr. Thaeuder replied they would have an emergency response plan and the town would have it, but they do not anticipate any chemical issues because they are not planning on using gas chlorine.

Councilman Chandler asked where they are in the permitting stage and what the timeline is. Mr. Thaeuder replied that they have done a test well and have applied and been granted permission to drill a production well, which they plan on doing this summer. Their goal is to bring in a small facility that is more like a shed that would handle a couple hundred thousand gallons a day that would be up and running by this time next year. He would expect the full facility to be online by the end of 2021.

Councilwoman Ulrich stated she is a little concerned. Mr. Thaeuder replied that he would love to take anyone that is interested up to their facility on Route 9 so that they can see it. There are houses even closer to that facility than there will be here.

Councilman Chandler made a motion to approve the preliminary site plan for Artesian's Dagsboro water treatment facility. Councilwoman Ulrich seconded the motion. All in favor.

## VII. NEW BUSINESS

### A. Artesian Water Agreement – John Thaeuder

Mr. Thaeuder stated the agreement was written with the understanding that Dagsboro already has a commitment to another town. It is not supposed to cancel that agreement; it is to give the town the ability to take water from this facility that they believe will provide a higher quality of water.

The water quality in this area is good. They paid extra attention to make sure there weren't extra organics that eat up the chlorine. It is common in this area to have organics that dissipate the chlorine and make bi-products that need to be removed. Artesian can deal with them, but to avoid them would be better. They did a lot of testing to make sure that wouldn't be an issue.

Mr. Thaeuder stated the town does have a contract with Millsboro, but he doesn't see that it requires a minimum for Dagsboro to take so it could be possible for the town to supplement the water. This agreement doesn't require Dagsboro take from Artesian, but it does allow the town to.

Mr. Randall stated they are happy to come back if there are any questions. He stated Mr. Thaeuder covered the highlights – they are aware of the contract with Millsboro and are not trying to pull anything over on anybody and they do not object to Dagsboro sharing Artesian's proposal with them. They did read the current contract and their view is that it is not exclusive and it does not require Dagsboro to take a minimum amount. Artesian's does not either, but does allow the option to use them and allows them to connect their infrastructure so the town wants to buy water from them, it can.

Councilman Chandler found section 2.1 that talks about the provision that Carl addressed and asked if there is any other section that addresses an obligation for the town to buy any certain quantity. Carl replied there is 1.3 article stating they could send water through each other's systems. Mr. Thaeuder

added that if the town wants to annex, that provision could allow for Artesian to get to those areas to provide water to those areas.

Councilman Chandler asked if a sentence could be added if there is any doubt that there is no minimum purchase required. Mr. Randall has no objection to that because that is their proposal.

As far as pricing, Councilman Chandler stated they are competitive with Millsboro. He confirmed that if Artesian wants to raise the rates, they would have to get Public Service Commission's approval. Mr. Thaeber confirmed that, but when asked about Millsboro he stated Millsboro does not need that approval because they are a municipality. He stated with Artesian, Council could state they think the rates should be x and the Public Service Commission could look at it, but when a municipality does it, it just goes by what their Council decides. Councilman Chandler asked Town Administrator Brought if she knows how many times Millsboro has increased the price on the contract. She replied she thinks it was twice. He confirmed that is for everybody – even their residents and she confirmed. Mr. Thaeber stated that is how it is typically done with municipalities, but they don't have to – they could charge one rate for those in town and another to those outside of town. Artesian would not be able to do that – they have to charge equally and fairly.

Councilman Chandler asked if they want this proposal signed now. Mr. Thaeber replied they do – they don't want to start building and getting ahead of themselves if they didn't think they would have the ability to provide water. However, they do realize there is a risk that Dagsboro could decide they do not want to buy the water, but it is an acceptable risk because they feel confident there could be a good partnership with the town.

Town Solicitor Morris agreed on the additional language that Councilman Chandler stated. He stated the town is concerned that they do not want to get caught in a legal battle with Millsboro stating a breach of agreement so they want it clear that this wouldn't take effect until after the Millsboro agreement expires.

Mr. Thaeber stated they can put that wording in, but neither contract is exclusive. Councilman Chandler added that then they can be completely transparent with Millsboro.

Councilwoman Ulrich asked if infrastructure is needed. Mr. Thaeber stated they can just connect on the line at their property and then put a meter in there and anywhere else needed. The town would not need to purchase any infrastructure. She asked if they plan to connect to Frankford. Mr. Thaeber stated there are no current plans to connect to Frankford, but if Frankford has a problem and asks for service and they are coming through town, they would work with the town and see if it is feasible or look at servicing them from another area in their system. Dagsboro is their primary focus, but they have talked to Frankford about their issues and currently Frankford wants to keep going with their own plant, but Artesian would never turn their back on someone that is in need of water.

Mr. Randall will make those changes and then circulate it back to Council. He can come back to another meeting if Council has more questions.

## B. Delaware Anti-Litter Alliance – Mayor Baull

There was a letter sent from the Governor's office for this anti-litter campaign. They ask the towns to organize at least one litter clean up a year. Mayor Baull asked the rest of Council if they are on board and he will contact them to let them know that Dagsboro will join.

Councilwoman Ulrich is in agreement – she and her grandson have cleaned up the trash recently around their neighborhood. Mayor Baull also clarified this would not be to clean up someone's house or business, but the general areas around town.

Councilman Chandler made a motion for Mayor Baull to contact the office for more information, organize a litter clean up and move forward. Vice-Mayor Miller seconded the motion. All in favor.

## C. Proposed New Ordinance Concerning Yard Condition – Councilman Chandler

Councilman Chandler shared the current ordinance that pertains to this problem that states rubbish, trash, etc. He stated he gets a lot of calls from people in town asking how some residents can have so much stuff in their yards, or why a property is allowed to just fall down and shingles are falling down, etc. He suggests revising the ordinance to make it more clear and specify the types of conditions they want to address. He recommends they spell those items out in Section 210-1 and then in Section 120 (the penalty section) increase the fines to make them an amount that gets people's attention.

Town Administrator Brought agrees. She typically sends a letter and usually gives them thirty days to clean it up, but she is limited in being able to impose fines. Chief Toomey agreed that Town Administrator Brought has not gone through the requirements to become a constable for the town in order to enforce those laws. Town Solicitor Morris asked who typically enforced it for the town. Chief Toomey replied that the previous Town Administrator did go through the process, but to his knowledge, it wasn't enforced. He did put it all through DELJIS so it is there, but they would have to go through a background investigation for DELJIS in order to enforce it. Town Solicitor Morris clarified that even if it is a civil penalty, it must go through DELJIS. Chief Toomey confirmed it does, unless the town comes up with their own mechanism and does something offline. If they want it to enter the court system, it must go through DELJIS. It is written that if a person doesn't pay, it goes through the JP court system. If the town does its own fines, it cannot move through the court system.

Councilman Chandler stated currently the code is written so the person has a choice – the violator can go to court and pay the fine or they can voluntarily pay the town directly. It also states that if the problem is not corrected, the Town Administrator can go on to your property, with whatever equipment or manpower needed and correct the problem and charge the landowner whatever it costs to do that and charge it as a lien against the property and it would get recorded, along with the costs of doing that (such as Town Solicitor Morris's costs). He believes it can be done. Chief Toomey agrees it can be done, but if someone comes before the Town Administrator Brought and states they want to go through the court system, she has to be a sworn constable. Councilman Chandler agrees.

Councilwoman Ulrich stated that the town can fine people, but cannot collect the fines. Town Solicitor Morris clarified that they can issue a fine and put a lien on the property since it is civil. He is going to look into this. He knows Bethany has a similar issue, but they have their own alderman's court so it is a little different. He thinks the easiest way is to try to prevent this from happening and agrees with Councilman Chandler that the way to do that is to get their attention from the beginning.

Councilman Truitt stated that the procedure is that a letter is sent first. Town Administrator Brought confirmed that. Vice-Mayor Miller stated the letter should state the new, increased amounts. Town Administrator Brought agreed. Councilman Chandler stated the amount is currently \$100 and he proposes making it \$250.

Chief Toomey suggests someone in the office move forward with the steps to be a constable so that in the event a person elects to go to the JP court, the town can still proceed. Councilman Chandler asked how hard that would be to do. Chief Toomey replied that to his knowledge, a background investigation would be done and the person would have to attend a class at DELJIS that is one or two days. They also have to connect through a DELJIS line, but the previous Town Administrator would just go use the police department.

Mayor Baull suggests they move forward working on the revision and Chief Toomey stated he will research what the Town Administrator would need to do to be a constable. Mayor Baull asked if it would have to be the Town Administrator or if another council member could elect to do that. Town Solicitor Morris stated the ordinance already designates the Town Administrator so it should be her, unless they change that. Mayor Baull is concerned because she already has so much on her plate. Councilman Chandler stated that technically the ordinance designates the Code Enforcement Officer, but it was agreed that is also the Town Administrator, unless they designated someone else.

D. PG Cemetery – Cindi Brought

i. Raise Price of Plots from \$600 to \$700

At the recent meeting, the committee would like to raise the plot price which is currently one of the cheapest around. Councilwoman Ulrich asked how many plots are left. Mayor Baull stated there are not many left, which is another reason for the suggested increase.

Vice-Mayor Miller made a motion to increase the price of the plots from \$600 to \$700. Councilman Truitt seconded the motion. All in favor.

ii. Appoint Liaison from Town Council to Cemetery Committee

The current liaison is Mayor Baull. He is okay with continuing.

Councilman Chandler made a motion that Mayor Baull continue as the liaison for the cemetery committee. Seconded by Vice-Mayor Miller. All in favor.

iii. Cemetery Maintenance (replace rotten post and remove old decorations to be done by maintenance)



Town Administrator Brought informed Council that there was discussion about the rotten post in the cemetery, but the maintenance person did not find anything. She will probably have a cemetery committee member meet them out there to see where it is. The maintenance person has already gone out and removed trash and Christmas decorations.

Mayor Baull also informed Council the American Legion will be going out to the cemetery for Memorial Day to put flags on service members' graves.

## VIII. OLD BUSINESS

### A. Potential Pay Raise for Town Administrator – Vote following Executive Session

After the Executive Session, discussion continued. Mayor Baull likes the second option out of the three. Councilman Chandler stated that he prefers to do one large amount at once instead of several smaller ones so he is in favor of proposal three, but would go with two if that's what everyone else feels. Vice-Mayor Miller stated that the person that does the budget knows what can or can't be done and he knows how hard she works so he is in favor of option three. Councilman Truitt stated the third isn't much different. Mayor Baull is in favor of switching to option three.

Councilwoman Ulrich asked how frequently this will occur. If this will happen frequently, she thinks they should go with a smaller amount. She is also concerned about hiring a new chief and the salary that would be needed there and next year there would probably be raises for the police department. Chief Toomey stated that he has talked with some retired chiefs and they don't see a problem with the salary because they have a retirement also. Chief Toomey also stated the budget already accounts for that.

### B. July 1, 2019 through June 30, 2020 Budget Review

Councilwoman Ulrich noted that the third column on the Excel spreadsheet dropped down so that will need to be fixed. She also asked about the payroll for Town Administration – why the proposed is staying \$67,000. Town Administrator Brought replied that she might be pulling money from another fund. She is probably going to be pulling more money for the water department salary from the water fund. She also moved some things around because of some police issues that might be coming up and a potential raise for herself.

As far as the water, it is hard to judge because there are still a couple more months left in the fiscal year and we don't collect the fees until the following month (i.e. December didn't get pulled until January).

Councilman Chandler noted the surplus projected for the 2020 fiscal year. Town Administrator Brought replied that it is because she pulled funds from the Real Estate Transfers and Water Department. She stated that it is probably a little fat at this point and she low-balled some of the income from new homes, but she would rather do that until they find out exactly what is happening with personnel.

Councilman Chandler noticed the raising interest rates on some of the loans for the water. He asked how much longer those will last. Town Administrator Brought stated some of them are still a long time.

IX. EXECUTIVE SESSION

Councilman Chandler made a motion to adjourn the meeting and enter into executive session. Councilman Truitt seconded the motion. All in favor. Meeting adjourned at 7:20 p.m.

X. PUBLIC COMMENT

No public comment was made.

XI. ADJOURNMENT

Councilman Chandler made a motion to go with option three (\$54,500) for Town Administrator Brought and Vice-Mayor Miller seconded the motion. Motion carried with four in favor, one opposed.

Councilwoman Ulrich explained she is opposed because they got resistance when they gave the previous town administrator a raise. Councilman Chandler was not on Council at that time, but the problem he had with that was that it was done in executive session. He agrees with Councilwoman Ulrich that it will require council members to be able to explain to the public why they allow the raise and this is what they need to pay to keep people that are qualified and good at the job and able to wear several different hats. If they complain, they can vote him out, but it was on the agenda for the meeting that they were discussing raising the administrator's salary; they were not hiding it. He understands Councilwoman's point, but that is how he would respond.

Councilman Chandler made a motion that the town grant Chief Toomey the terminal leave he has, on the weekly payroll, minus the health insurance. Councilwoman Ulrich seconded the motion. All in favor.

Councilman Chandler made a motion for Chief Toomey to begin advertising for the chief position. Vice-Mayor Miller seconded the motion. All in favor.

Councilman Chandler made a motion to adjourn. Vice-Mayor Miller seconded the motion. All in favor. Meeting adjourned at 8:23 p.m.

Respectfully Submitted,

Megan Thorp, Town Clerk