

Minutes
DAGSBORO TOWN COUNCIL
Virtual
Tuesday, February 23, 2021

I. CALL MEETING TO ORDER

Mayor Baull stated that this meeting is being conducted remotely consistent with Governor Carney's executive order due to the current State of Emergency in the State of Delaware given the outbreak of COVID-19. The Governor's order suspends the requirement of the open meeting law to have all meetings in a publicly accessible physical location, further all members of public bodies are allowed and encouraged to participate remotely. This order also allows public bodies to meet entirely remotely as long as reasonable public access is afforded so that the public may follow along with the deliberations of the meeting. All the votes as well as discussions will be taken individually so that all the Council members will have the time to speak if they so choose also so we can properly document it. Mayor Baull stated that this meeting is being recorded and Town Administrator Brought is taking notes as well.

Meeting was called to order by Mayor Baull at 6:32 p.m.

In attendance were: Mayor Brian Baull, Councilman Patrick Miller, Councilwoman Theresa Ulrich, Vice-Mayor William Chandler, Councilman Norwood Truitt, Town Administrator Cynthia Brought, P&Z Chairman Brad Connor, Chief Steven Flood, Engineering Consultant Kyle Gulbranson, and Town Solicitor Greg Morris. See attached sign in sheet for other members of the audience.

II. PUBLIC COMMENT

No public comment was made.

III. APPROVAL OF MINUTES

a. January 25, 2021 Town Council Meeting

Vice-Mayor Bill Chandler made a motion to approve the minutes. Councilman Truitt seconded the motion. All were in favor.

IV. CONSENT AGENDA

a. Police Department Report

Vice-Mayor Chandler stated that he attended a Tax Ditch Association Meeting and they reported to him that there had been a complaint filed about a resident of the town disposing animal parts into the tax ditches. That is a criminal matter and he is wondering if it was followed up on or not by Chief Flood. Chief Flood stated that he knows nothing about that and no one has contacted him about that, but he will follow-up on the issue.

Mayor Baull stated that he noticed that there is a new traffic signal at Main Street and Clayton Street and asked if it is helping to keep traffic moving a little better. Chief Flood stated that he thinks it is, but the true test will be when summer comes.

- b. Treasurer's Report
- c. Administrative Report
- d. Building Official Report
- e. Code Enforcement Report
- f. Meeting Reports
- g. Water Department Report
- h. Prince George's Chapel Cemetery Report
- i. Correspondence

Vice-Mayor Chandler asked Town Administrator Brought about the DeMarie mortgage as far as being paid off and being held in a separate account. Town Administrator Brought stated that yes it is paid off and is held in a separate account. She did ask PKS, the town certified accountant, and the town is allowed to use that toward any new construction.

Vice-Mayor Chandler inquired as to when PKS does the audit. Town Administrator Brought stated that they have done our audit and we should have it by April.

Vice-Mayor Chandler also inquired about the Water Revenue situation. Town Administrator Brought stated that it is coming along very well. She stated that we only had 30 registers that aren't reading right now, some of which are commercial, which is their responsibility to replace. She stated that the income is improving although we still have some customers that are getting well up over \$500 dollars for not paying their bills. She stated that she did speak to Town Solicitor Morris in regard to being able to shut the water off, and it was determined that we cannot if they claim it is because of COVID-19. She stated we have to give them a four month payment plan. Some of the customers are seeking help through Social Services.

Councilwoman Ulrich asked Town Administrator Brought if she was able to get up with the USDA grant people. Town Administrator Brought stated that yes but what they are offering is a low interest loan. She stated that she has also spoken to Brad Connor and he is going to converse with our representatives and some of the other towns that received money for new construction and see if we can get some contacts and possibly get grant money before we take on another loan.

Councilwoman Ulrich made a motion to approve the consent agenda as presented. Councilman Miller seconded the motion. All were in favor.

V. PLANNING & ZONING COMMITTEE

- a. Recommendation Snead Properties Proposed Vines Creek Centre (P&Z Meeting February 11, 2021) – Vines Creek Lot – Brad Connor, Kyle Gulbranson, Town Solicitor Morris

Brad Connor stated that the Planning & Zoning Commission reviewed the Preliminary Site Plan for the Vines Creek Centre and voted to recommend approval of the Preliminary Site Plan with the knowledge that Snead Properties must present agency approvals and architectural drawings prior to the final approval process.

Engineering Consultant Gulbranson stated that AECOM did a review of the Preliminary Site Plan and what they are proposing fits the permitted uses for the Town Center District in terms of bulk standards, setbacks, parking, and the lights. They are all compliant with the town's current regulations.

Town Solicitor Morris stated that he would add Engineering Consultant Gulbranson's report. He felt that it provided a lot of insight as to what would be required of the applicant during the entire process. Mr. Morris stated that he felt Council should review said letter. Town Administrator Brought stated that she would send that out to the Council.

VI. NEW BUSINESS

- a. Reappointment/Discussion in regard to P&Z Commissioners Cathy Flowers and Cindy Gallimore for another three year term (1-2021 thru 12-2023); both have agreed to extend their terms.

Vice-Mayor Chandler made a motion to approve both reappointments for their terms. Councilman Truitt seconded the motion. All were in favor.

- b. Discussion and possible vote in regard to the Preliminary Site Plan for Snead Properties, Vines Creek Centre – Carlton Savage Presenting for Snead Properties.

Carlton Savage with Scaled Engineering stated that he is presenting a new Preliminary Site Plan for tax map parcel 2-33-11.00-131.05 which is also known as address 29471 Vines Creek Road. This proposal is for a Preliminary Site Plan for three separate buildings on the property, which will be very similar to each other. They would be two-story buildings about 4800 square feet each. He stated they would have retail or office space on the first level and apartments in each building on the second level. Each level would be approximately 1200 square feet. The property is zoned Town Center and as Mr. Gulbranson mentioned it is an allowable use with commercial on the first level and the apartments on the second level. Mr. Savage stated that they are adhering to the setbacks for the property and plans will be presented as a two phase project. This will be based on financial funding as the project moves forward but they would like to put all parking in initially and then build the buildings as the finances allow.

Mr. Savage stated that they are showing storm water in the back of the property. They have had conversations with DeIDOT about the entrance. The entrance that is presented on this plan is what they anticipate the entrance to look like. DeIDOT requested a bike lane and a right turn lane but that discussion was for the original Preliminary Plan which was for the liquor store. DeIDOT mentioned that if our plans didn't change the traffic significantly they would be ok with them moving forward under a similar traffic condition. Mr. Savage stated that it is probably a concern of many residents as well as the town, but the traffic will depend on the types of uses that go in the buildings. Obviously, residential is measured as a standard unit. They measure that based on the number of units, however each commercial office space would dictate different traffic numbers. He stated that they are anticipating the types of uses to be medical or professional offices. They are fairly low traffic volume generators as they are appointment only type offices and therefore there won't be a big influx all at once. Right now they are anticipating that if everything is filled then somewhere between 300 and 350 ADT would be what they are looking at traffic wise total throughout the day. That is the number of trips that would access their entrance and their parking goes along with that. The plan is showing 36 parking spaces, which was calculated with the different uses and break down of the building. That does meet the Town Center District Code. The entrance, as shown, is where DeIDOT would like to see it. There are also concerns on peak hours, which these type offices are normally operated Monday thru Friday, and won't conflict with the seasonal traffic on the weekends. Mr. Savage stated that peak hour traffic would probably be below 50. Mr. Savage advised that there would be a separate entrance for the first level and they are still working on whether to have shared access or individual access to the apartments on the second level. They have provided the necessary handicap spaces for each building. He stated that he anticipates going through all of the processes with DeIDOT, Soil Conservation District, and the Fire Marshal. Once they receive all of those approvals they will talk with the County about the sewer and then the Town of Dagsboro in relation to the grading, drainage and water connections. He stated that the height will stay below the 35 foot maximum height restriction. They did receive Mr. Gulbranson's report and they have no issues with any of the comments and they will address those as they move forward.

Councilwoman Ulrich questioned the need to have handicap access to the apartments on the second level. Mr. Savage stated that it is his understanding, based on what he has seen with rental properties like this, with only one or two units per building, it is not required. It is required when you have large apartment complex scenarios and you are required to have a number of handicap accessible units.

Councilwoman Ulrich asked, as far as the rental spaces below for the offices, how many tenants are anticipated for each building. Mr. Savage stated that the goal is for just three tenants, but he believes the buildings are going to be designed so they can be split down the middle with a retaining wall in the event that a tenant does not need the full 2400 square feet. When that occurs a tenant outfit with architects would be submitted prior to going through a building process.

Vice-Mayor Chandler asked if there had been any discussion with P&Z Commission or with Mr. Gulbranson in regard to the screening or buffering on the surrounding edges of the property. Mr. Savage stated that there would be a plan submitted and the comments that Mr. Gulbranson gave were

in reference to the screening and buffering. They recognize that there is a whole section in the Code on how the design elements have to be incorporated. Mr. Savage stated that they will more than gladly comply with the Code and submit it to Mr. Gulbranson for his review. Engineering Consultant Gulbranson stated that along with the Final Site Plan presentation, the lighting and landscape plan has to be submitted to the town for approval.

Councilman Miller made a motion to approve the Preliminary Site Plan for Snead Properties Vines Creek Centre. Councilwoman Ulrich seconded the motion. All were in favor.

VII. OLD BUSINESS

- a. Artesian – Second Interconnection Agreement Discussion and Possible Vote on Amended Second Interconnection Agreement (John Thaeber, Rob Penman, Town Solicitor Morris, Vice-Mayor Chandler, Mayor and Council)

Town Solicitor Morris stated that Vice-Mayor Chandler had numerous questions for Artesian representatives in regard to the Agreement. Artesian was to either respond or get back to him via email. The Artesian representatives chose to address them at this meeting.

1. The indemnification clause (section 3.2, page 5) is asymmetrical. For example, it provides that the Town may have to reimburse Artesian for attorney fees if the Town breaches the agreement, but the reciprocal clause does not obligate Artesian to reimburse the Town's attorney fees if Artesian breaches. Why is that asymmetry a good idea?

Mr. Thaeber stated that, Karl, Artesian's in house attorney, stated that it is supposed to be and he believes that it is, because we capitalize the word losses and by using that as a capitalized term it should be reflected that we are doing the exact same items under the listing as was listed in the beginning part of that paragraph. Mr. Thaeber stated that Karl feels that if that is not clear enough then they just need to change it to make it more clear, but he believes the way he wrote it is a reciprocal clause.

Vice-Mayor Chandler stated that he would ask Karl to define it in the second clause as he defined it in the first clause. He would feel more comfortable if it was spelled out rather than just referring to some generic term like losses and hoping that then covers the issue. Mr. Chandler felt that it is a fairly easy fix. He stated that it doesn't seem to be symmetrical with respect to the description of the types of claims that a party can be held liable for. Vice-Mayor Chandler felt it would be better to spell it all out so there is no doubt. Mr. Thaeber stated that it can be considered done and if we get to the point of a vote tonight it can be subject to making that change.

2. The force majeure clause includes a "reasonable care" standard. That isn't typically present in force majeure clauses. Can you explain why it's necessary, or what its purpose/function is here?

Mr. Thaeber must speak with Karl but basically "reasonable care" is a term that is used in the Public Service Commission for these types of Agreements and they are under "reasonable care" standard. Mr.

Thaeder felt that Karl did provide him with a passage that he can forward to the Town. His analogy was that you do everything right and you have a main break and it stops the flow of water until you fix the main break. Even though you have done all the right things, you cannot predict a main break. Vice-Mayor Chandler stated that it would be great if he could send what the PSC requires or if there are any comparable contracts of this kind with other municipalities, that include that kind of verbiage, then send him one or two of those just as comparisons. Mr. Chandler stated that he is not trying to hold this up, but a force majeure is really just a clause that is designed to exempt a party from having to comply with a contract because of some extraordinary event or circumstance. Mr. Chandler stated that it is a little mystifying why, if that is what it is, for one of the counter parties to the contract to simply say "I did my best, I used ordinary care and I just couldn't get the pump to work". It just seems out of place in a force majeure clause.

3. Is the rate that Artesian is proposing in the first interconnect agreement (\$3.50/thousand) Artesian's tariff rate, or is it a special contract rate? What is Artesian's tariff rate for bulk sales? If it is a special contract rate and not your tariff rate, has it been approved by the PSC?

Mr. Thaeder stated that the \$3.50/thousand was based on two things, one being that it is a rate that has been approved on our interconnection that we have with Selbyville, which is very similar to Dagsboro's. It is a two way rate and it was approved by the PSC. It was also a rate that was satisfactory to the town for their own financial reasons. Therefore, yes it was based off a tariff rate and it was also a negotiated rate. Mr. Thaeder stated that they don't normally get a rate approved by the PSC until they actually build the interconnection and there is actually billing that is going to be done eminently. The PSC hasn't approved it at this point, but it has all of the necessary parts to it that it will be approved as it is a standard rate that we are using based on this system and the cost of service based on the negotiations between the parties. To answer Mr. Chandler's other question, there are other bulk sales rates throughout the company that are based on so many different factors, many of them based on the amount of water that is anticipated to be purchased, but it also has to reflect the kind of infrastructure that is required to produce the water.

Vice-Mayor Chandler stated that it answers his issue, but what causes him to wonder about this is that he knows there are ways that Artesian and or other water companies, in fact, can increase rates based on for example an environmental issue that they have to specially treat the water for. He felt it is not built into this contract so he would assume that if they ran into some special environmental issue or something else, Artesian would still have to go the PSC and propose a rate increase in order to raise the rate. He asked if his understanding of this was correct. Mr. Thaeder stated that yes he was 100% accurate, and Artesian cannot change the \$3.50 without going through a rate proceeding. It would be very unusual that they would saddle any particular single customer with a one-time fee to deal with a contamination. He felt that it would be spread across their entire customer base and not necessarily the residents of Dagsboro.

4. The contract does not require a minimum purchase by the Town, nor does it have a maximum. Correct? So what happens if Artesian cannot supply what the Town needs? I mean, what if, hypothetically, Artesian's well collapsed, or the pumps malfunctioned, or a valve ruptured and the repairs took longer than whatever reserves existed in our Tower, what would be the Town's recourse for providing water to residents? This is why I think the connection with Millsboro is still a pivotal issue, as that could be the "back up" in an emergency situation (for both them and us).

Mr. Thaeder stated that he does not feel that the emergency interconnection with Millsboro should ever go away. He does not care if it is a manually operated emergency interconnection or an automatic but it should stay in place for the reasons he has said many times to this whole group. Interconnections are important for supporting systems. Mr. Thaeder stated that they are not designing this facility at Dagsboro to be on an island. It is going to be connected and will be by the time this interconnection is turned on. It will be connected to two other plants that serve South Bethany, Fenwick Island, parts of Selbyville, and the County area in between. Therefore, if a well collapses, number one, we never build a facility that only has one well and will have two wells on line so there will be a backup right off the bat, as well as multiple pumps that we carry. This plant is also backed up by two other plants. Mr. Thaeder stated that it will take a very unusual incident that would cause them to have to turn to Dagsboro and say they need to restrict the amount of water coming to Dagsboro because it is an interconnected system.

Vice-Mayor Chandler asked if Artesian will have the ability to draw from these other wells if something were to happen to this one and vice versa. If something were to happen to one of the wells serving South Bethany or Fenwick Island would you then be drawing from this one? His only concern is if that will somehow deprive Dagsboro from its minimum requirements. Mr. Thaeder stated it would not and Dagsboro's requirement whether its 50, 000 gallons a day or 100,000 gallons a day, the well is built for the amount of water that Artesian is going to be providing out of this plant. The other two plants can do up to two million gallons a day. Mr. Thaeder stated that they are putting in all redundancies that you could reasonably expect to make sure Dagsboro does not have any shortages.

5. Will Artesian be able to pull water from your Dagsboro facility for other communities, and would that ever pose a problem for meeting the minimum needs of Dagsboro?

Vice- Mayor Chandler stated that Mr. Thaeder answered not only question four but also question five with that response. Mr. Thaeder had stated that yes, Dagsboro will definitely be interconnected and it will serve other communities.

6. I know you answered this before, but I am still wondering why there should not be at a minimum a "maintenance and repair" agreement in the contract, that obliges Artesian to repair/maintain the distribution system that Dagsboro owns, but which Artesian will be using to distribute water to Frankford (and perhaps beyond Frankford to other communities as described in the recitals to the second interconnection agreement)? There is a hold harmless provision for damage inflicted by either party, but I'm suggesting a repair/maintenance agreement as well.

Mr. Thaeber stated that the mains that are designed to carry water are not being eroded away because a certain amount of water is flowing through your pipes and going either to customers within Dagsboro or to a customer outside of Dagsboro. That is what they are designed for and Artesian has agreements with Sussex County where they move water through Artesian's mains and their mains and other than the amount residual compensation goes for bulk sale or bulk treatment of the wastewater there is no tie to anything to do with transmission because you can't measure the affect your doing on it and he doesn't feel you could ever figure out what is the wear and tear because it's so small. Mr. Thaeber stated that they have the same type of agreement with Middletown, where they are moving water back and forth each way and it's the cost of the water and it never evolves into looking at the pipes as far as the infrastructure. He stated he would not know where to start and he would never want to obligate Artesian to something that has never been out there and that he couldn't even quantify. He stated he felt that it's a reach when there is nothing really to reach for.

Vice-Mayor Chandler stated that he understood that, but there was a reason for asking that question. He stated that he recently had to repair a water heater in his home because of a sudden surge in water pressure per the plumber, which caused a leak in the water heater. He stated that his mind instantly goes to couldn't a sudden surge in water pressure through our distribution through the Artesian distribution system of using our pipes, our water mains, cause a leak to occur. He stated that Artesian is going to be sending water to Frankford and it might cause a leak and if it does why should Dagsboro have to repair that leak rather than Artesian.

Mr. Thaeber stated that he believed that the indemnification hold harmless clause was supposedly written that if Artesian had an overpressure situation, that they were boosting the pressure into the Dagsboro system, whether or not they were moving into Frankford or not, and they busted a main the way the agreement is supposed to have been written was that it would be Artesian's responsibility to repair. Exactly what you just said, is what Karl was trying to capture and if it wasn't captured, then we need to look at it.

Vice-Mayor Chandler stated that he sees that in Section 3.2 on page 6 where Karl wrote that in, his only concern is that verbiage or language which he uses implies some kind of affirmative action by Artesian. For example, you drive a truck or something over a water main and cause it to collapse as opposed to just a surge in water pressure through the main line causing a leak to occur. Mr. Chandler stated that he is just concerned about the more passive form of damage being inflicted as opposed to the affirmative form. Mr. Chandler stated that this language that Karl wrote would cover the former affirmative type of harm but his concern is the passive type of harm.

Mr. Thaeber stated that with the passive type of harm, the amount of electronics and the measuring is done at the Artesian plants. If their system and their pressure system were to go up above 100 PSI, they have a recording of that in their system. He stated it is not passive as everything Artesian has done has been recorded. He stated that if there was an overpressure and a main break they are able to go back and review the record.

7. Has Millsboro arranged a tour of the facility yet? Have there been discussions with Millsboro about the interconnection and the manual valve system as was discussed in early January at the joint meeting? Have there been any discussion (with Millsboro or with us) about the system for turning on the valve when needed and how that work?

Mr. Thaeber stated that Millsboro has not contacted Artesian. He stated that it is his intention that Artesian will reach out to Millsboro. He stated that he had not reached out yet as they didn't have a signed Interconnection Agreement. He stated that once the Agreement is signed, Rob Penman is to reach out to Millsboro and try to set up a meeting. He stated that they will reach out to Millsboro in concurrence with the Town of Dagsboro as it is Dagsboro's interconnection and Artesian is the operator. He stated that Artesian, as the operators, want the interconnection to be in service whether it's manual or automatic. They had not reached out as they felt it wasn't appropriate without the Agreement completed.

Vice-Mayor Chandler stated that in accordance with Town Solicitor Morris's request, Karl did mark up the Second Interconnection Agreement to reflect that the second interconnection will occur on September 1 or before by agreement of the parties and that is in contemplation of the completion of the water tower in Millsboro hopefully by July, but if not, soon thereafter. Vice-Mayor Chandler stated he just wanted to confirm that Artesian is comfortable with it not being turned on, so to speak, on or before September 1. Mr. Thaeber stated that was correct and just to be clear the plant will be operating before September 1. Artesian will not be providing water to Dagsboro until after that date because it has a separate line that will tie into Dagsboro's system. The plant will be operating for probably a couple of months before it ties into Dagsboro.

Vice-Mayor Chandler made a motion to approve the Second Interconnection Agreement as revised and submitted to Council this evening on the condition that the items regarding the indemnification clause provision and the force majeure clause provision will be followed up with himself in a satisfactory form and on that condition we approve the Second Interconnection Agreement. Councilman Truitt seconded the motion. All were in favor.

- b. Status Proposed New Police Station, meeting Room, Town Hall Improvements (Approve Conceptual Plan & Grant Update) – Kyle Gulbranson, Town Administrator Brought, Mayor and Town Council.

Town Administrator Brought stated that the funding that the town would need is around \$675,000 which would cover architectural drawings, engineering, and the building itself. Town Engineer Gulbranson stated that it would also cover construction management of the project.

Mayor Baull asked Chief Flood which he preferred of the two drawings and he stated that the two-story plan because of the additional parking and the flow seems better, but he stated he is at the mercy of the Council. Councilman Truitt, Councilwoman Ulrich and Councilman Miller agreed on the two-story plan as well due to the additional parking. Vice-Mayor Chandler asked if he was correct that the two-story plan includes the breezeway connecting to town hall. Town Engineer Gulbranson stated that this was correct. It's a two-story concept with a breezeway and the conference room is a separate facility. It is not part of the police building, which he felt was a plus. Vice-Mayor Chandler asked if the meeting room, the 450 square foot meeting room, would not actually be connected to the police building and would only be connected to the town hall. Town Engineer Gulbranson stated that it could be connected to town hall, but the concept was that the meeting room would be separate and would not be part of the police building for safety reasons. Vice-Mayor Chandler asked if it was built into the price and Mr. Gulbranson stated that it was. Vice-Mayor Chandler asked what the second floor was going to be used for, as he is wondering how to escape the elevator question. Mr. Gulbranson stated that it was proposed that the second story would be used for storage for the town and evidence storage for the police department. Vice-Mayor Chandler asked Chief Flood if there was enough room on the first floor for him and his officers and a holding cell. Chief Flood stated that yes, anything is better than the 750 square feet and the bench. Anything is a healthy improvement. The only thing he would like to add is, similar to the Town of Ocean View, a carport outside for when the officers are getting prisoners in and out. Mr. Gulbranson stated that in police terms that is called a Salle port. Chief Flood stated that it could be a smaller version of a Salle port. Mr. Gulbranson stated that the two-story building did allow for police parking. Mayor Baull and Vice-Mayor Chandler agreed on Exhibit A. Mayor Baull felt the dedicated parking spaces in front of the entrance to the police department versus being in the same parking lot as the town hall was a good idea.

Vice-Mayor Chandler stated that on Exhibit A and on Exhibit B there is a proposed easement on his property and he's wondering if that 15 feet is beyond the lot that he donated to the town and if the parking lot would be on top of it. He asked if Mr. Gulbranson could explain that. Mr. Gulbranson stated that one of the problems that they have is that the existing entrance to town hall is too close to the traffic signal. He stated that the wish list would be to move it as far south as possible. It was considered that if an access easement could be granted then it would allow more flexibility. Town Administrator Brought asked Mr. Gulbranson if the current entrances would be closed off. Kyle stated that they would and there would just be one in and out. Vice-Mayor Chandler stated that he was correct then in that you are planning to take 15 more feet of the vacant lot that he owns? Mr. Gulbranson, yes if you are amenable to that and if not, the plan can move it 15 feet further north.

Councilwoman Ulrich made a motion to approve Exhibit A as the choice for the proposed new police station, meeting room and town hall improvements and take the next step forward with getting architectural drawings drawn up contingent upon the easement issue. Councilman Miller seconded the

motion. The vote was 4-0 with Vice-Mayor Chandler abstaining due to potential interest with the way the property is configured.

VIII. PUBLIC COMMENT

No public comment was made.

XI. ADJOURNMENT

Councilman Truitt made a motion to adjourn. Councilman Miller seconded the motion.

Meeting adjourned at 7:31 p.m.

Respectfully Submitted,

Stacy West, Town Clerk