

**MINUTES OF THE MEETING - SMYRNA TOWN COUNCIL**

**APRIL 7, 2008**

Mayor Stombaugh opened the regular Council Meeting at 7:30 p.m. Council members present were A. Douglas Chervenak, Gene A. Mullen, William D. Pressley Sr., Lawrence O. Thornton Jr. and Valerie M. White.

Also present were Town Manager David S. Hugg III, Police Chief Richard H. Baldwin Jr., Attorney John Terence Jaywork and Recording Secretary Carol C. McKinney.

Chief Baldwin led the Pledge of Allegiance and Mayor Stombaugh asked for a moment of silence.

**ADDITIONS/DELETIONS TO PUBLISHED AGENDA**

Councilman Mullen asked to strike 8 E. 2 Resolution ref. Council Continuity.

Mayor Stombaugh asked to move tonight's scheduled Executive Session to the next meeting.

Councilman Mullen made a motion to approve the agenda as amended. Motion was seconded by Councilwoman White and carried unanimously.

**MINUTES OF THE PREVIOUS MEETING**

Councilman Thornton made a motion to accept the minutes of March 17, 2008. Motion was seconded by Councilman Mullen and carried unanimously.

**REPORTS**

PRESIDING OFFICER: Mayor Stombaugh noted that there are still two scheduled voter registration sessions, one on April 11 from 6:00 to 8:00 p.m. at the Fire House and one on April 12 from Noon to 2:00 p.m. at Town Hall. She said you can also register any business day at Town Hall until April 21<sup>st</sup>, at the Division of Motor Vehicles and at Kent County Board of Elections.

Mayor Stombaugh urged everyone to register and vote on April 28<sup>th</sup>.

TOWN ATTORNEY: Mr. Jaywork had no report.

POLICE CHIEF: Chief Baldwin had no report.

TOWN MANAGER: Mr. Hugg said his written report was in packets. He had nothing to add.

COMMITTEES:

Councilman Mullen said the Finance Committee met on March 11. Some items discussed are listed for action later on tonight's agenda. He added that Transworld Systems basically is a collection agency. We also discussed a purchasing policy and it should be drafted for Council to review by the next meeting. Councilman Mullen said they discussed increasing the Rainy Day Fund and the recommendation is on tonight's agenda.

Councilman Mullen said the Finance Committee will meet tomorrow night at 5:00 p.m. in the conference room. The public and Council are more than welcome to attend.

Councilman Chervenak said the Charter Review Committee hopes to clear up some of the charter things at their next meeting. He briefly listed some of the items they are considering.

Councilman Chervenak added that the committee feels that this group should be an on-going committee. Every two or three years they should review charter changes that are contemporary and important for the times.

Councilwoman White said the Tree Commission is working on an Arbor Day Program for 10:00 a.m. to 2:00 p.m. on April 26<sup>th</sup> in front of Town Hall. She said their next meeting is April 14 and encouraged anyone interested in volunteering to let her know.

Councilman Pressley said the Personnel Committee will meet downstairs at 5:00 p.m. on April 9<sup>th</sup>.

Councilman Pressley said that the Business Development Committee met on April 3. He added that the Home occupation ordinance is back in the works with some changes.

Councilman Pressley noted that Council approved hiring Chris Johansen but we have been informed that he took another position so that will come back to the committee.

#### **RECOGNITION OF VISITORS**

Mr. Hugg noted that we will have a brief Power Point presentation (copy attached to these minutes) by James Markow, our IT Manager, concerning our electric cut offs on March 26<sup>th</sup>.

It was noted that we cut off 256 customers for non-payment, 136 were renters, 120 were homeowners, none was in Frazier Place, none was in Peach Circle (both of which are senior citizen complexes). Seventy-nine customers were cut off at least two times in the past twelve months and are now required to either increase their deposit by \$200 or purchase a remote disconnect collar. Twenty-three signed promissory notes to have their electric turned back on.

Out of twenty-five random accounts, the average balance due was \$201.76. The largest outstanding balance was over \$680. If that renter were to leave without notice, the Town would have lost \$1,100 on that one account. Smyrna electric rates are now the third in the State with Lewes and Clayton higher than ours.

Councilman Thornton asked how we came up with the "random" accounts. Mr. Markow said we just took every tenth customer from the cut off list.

Mayor Stombaugh opened the floor to visitors. She asked anyone wishing to speak to come to the microphone, to give their name and address for the record and to limit their comments to three minutes. Mayor Stombaugh asked that, once someone has brought up a particular subject, please do not come forward

unless you have something new to bring to us. She said we are taking notes and the issues will be discussed later.

Mayor Stombaugh said she has a digital timer so each person will know when his/her time has expired.

Visitors included Gordon and Helen Miller, David M. Reyne, Bill Evens, Evelyn G. Fountain, Gwendolyn Benson, Charles Benson II, Lon M. Fluman III, Dean and Ann Laumbach, Al Kemp, Dave Bright, John Bucalo, Calvin Liles, Michael and Cathy Pearson, Shannon Pearson, Michael Pearson Jr., May and Tony DeFeo, Ron Marcum, Ali Cheeseman, Walter Ireland, Daryl Jester, Duane and Kathleen Young, Charles and Betty Hall, Rodney Slaughter, Winston Burns, Jeff and Cindy Montejo, Dorothy J. Robins, Bill Raynor, Regina Brown, JoAnn Oscar, Grant Prichard, Marian Bower, Seth Clevenger, Bob Wilson.

Calvin Liles of 203 S. Fisher Street said he has read the articles in the State News, News Journal and from the internet. He entreated the Council to reconsider the resolution which was passed that created the situation last month where 300 homes were disconnected by the Town of Smyrna. According to the Delaware State News and/or the Wilmington Journal, the Town needs to find a way to lower their property tax. Mr. Liles said he is a land owner and he applauds that effort; however, there are a few factors that we feel were not considered.

By turning off the electricity and at the least charging a \$50.00 reconnect fee for 300 people netted the Town \$15,000. If all of this went to decrease the taxes, that may good until you see who it was that was paying for the decrease in taxes - those who have trouble already paying their bills. If they cannot pay a \$300 electric bill, where will they get the \$350 to get it reconnected? Many churches quickly drained their benevolence funds. Some had relatives, some actually had to pawn or sell assets to get the power back on. They are single moms, elderly

on fixed income, handicapped, many who rent and do not have any property so they are made to suffer and pay other's taxes.

Mr. Liles said he believes in paying his bills and that he feels there are others who would have wanted to pay on time but, as our Mayor stated, these are hard times. Hard measures put on already hard hit people is not morally right. It is in hard times when people band together, after blizzards, storms like Katrina or just bad economics that will cause neighbor to help neighbor regardless of race, creed or religion. Hard times will rally people together and when caring elected officials realize that they can work it to the advantage of all. Hard times means taking measures to relieve the burden of the less fortunate.

Mr. Liles said there are two ways to keep money in your account, put more in or lower your spending. He asked what measures Smyrna has taken to cut spending. Are you still taking out-of-town trips?

Mr. Liles said in the 19977 zip code, there are more than 12 electrically-assisted chairs to help elderly and handicapped to live normal lives. There are over 60 electrically operated alarm devices to help a parent hear when their child stops breathing. There are more than five elevators in homes, at least 10 paraplegic or quadriplegics, some that are veterans who require special electrical device assistance. Mr. Liles asked if we pull their meter without notice and risk causing a death. He said he is not talking about an aquarium of fish belly up because their lost their air, these are real people.

Winston Burns of 37 Gardenside Drive said people are going through his development stuffing literature on mailboxes and front doors. He said he travels a lot and this just lets everyone know when he is not home. It also causes a lot of trash to blow around the neighborhood. Mr. Burns said he has stopped these people and asked them not to do it. He said he

has talked to folks at Town Hall and they told him there is nothing in the ordinance to prevent it. He asked for Council's help.

Mayor Stombaugh said we will refer this to the Business Development Committee.

Dorothy Robbin of 119 W. North Street said she always pays her bills on time except for March. She said there are a lot of changes when you move and she put the bill aside and forgot it. Ms. Robbin said she feels the Town of Smyrna owes her \$65. She asked who voted for this ordinance. She added that she doesn't know what you were thinking. This is extremely harsh. Ms. Robbin said she was trying to get the Town to take the money directly out of her bank. A lot of people like to do this on line. She said she was told the only way to pay her bill was to give a personal check or cash. She asked Council to rescind the ordinance and take another look because it is really unfair.

Ian Spradling of 717 W. Commerce Street said he returned home on March 31<sup>st</sup>, having left on March 26<sup>th</sup> for a business trip. He said they came home to a 51 degree house and no lights. Upon checking the fuses and making some phone calls, he said he found they had no electricity because it had been cut off. Mr. said they slept in sleeping bags on his sister's floor that night. After calling, he said people worked with him. He said he has lived here nine years and always paid on time. It was very frustrating that something like this would be done. Some of the money you have recouped you could use to work on a better invoicing system. He said he has spoken to friends and family who have put payments in the night drop box, and the payment gets lost.

Mike Wilke of 344 Lake Como Circle said he is in the ministry and is a business owner. He said he works with the elderly, the disabled and the handicapped. He asked Council to

reconsider the ordinance. Times are tough. He said he would like to see some grace period or leniency offered so that it doesn't seem so harsh.

Lon Fluman said he owns the business at the Wayside Inn but not the property. He said that a letter was written to the newspaper recently by a former employee about the electric cut offs and there was a quote from Dr. Chervenak that the Town bends over backwards to work with people. Mr. Fluman said the person who wrote the letter said the Town doesn't. Mr. Fluman said he is here to tell you that in the seven and a half years he has owned the Wayside Inn, he has run into difficult times. He said even his landlord has opened a new business that directly cut into his own clientele. During that time, he said he has approached the Town Council and management. He said he knows he has seventeen days from the day he gets his bill until late charges are applied and another five days grace period before he is cut off. Mr. Fluman said if he chooses to ignore this and does not pay the bill, that is his fault. It is nice to get a late notice, but we all know when that bill comes each month and when it has to be paid.

Mr. Fluman added that the Town has worked with him and given him agreements to pay so much at a time. He said he pays the Town 7 ½% of his income daily and they agreed to that. Mr. Fluman said he realizes that this agreement is not free. He added that he pays 18% interest a year on the unpaid balance.

Mr. Fluman said anyone who has a problem with their bill, the Town is very willing to work with you.

Christine Doyle, 21 N. Clement Street said she constantly pays the late fees. She noted that she works 80 hours a week and then works at home until 11:00 p.m. The reminder notice does help. Ms. Doyle said she gets paid monthly and has to budget her money and she is not good at it. She said she has a

mortgage and two car payments. She said she was cut off five times in the last year but she doesn't come in and scream at the people who work here. Ms. Doyle said she has asked to pay by debit because paying on line is easy when she is sitting at her computer. Ms. Doyle said she doesn't care about the late fee but paying by debit would help.

Cathy Pearson of 235 E. North Street said they were cut off last week. She asked why the water has to be cut off as well. People have children. They come home to a cold house, can't cook dinner. What do you do with kids? She asked if the Town of Smyrna has five days to pay its bill. She said she feels they have more than that. Children suffer more than anyone else. You should have mercy on the old people and the young people. Ms. Pearson said you should give us at least ten days.

Ron Marcum of 1409 Brenford Road said he is a landlord with properties in this Town. He added that he has been in this business for thirty-five years and a lot of people have "stiffed" him in that time. Many of them are out there working the system and some of them have had hard times. Mr. Marcum said it is very hard to get a judgment against someone in court. They skip the state and you can't get your money anyway. Mr. Marcum said that the Town of Smyrna has been more than lenient with the problems he has had and they have always been willing to work with all his people. The Town is not out there to get people and put it to them.

Mr. Marcum said if everyone works together it will make it a lot easier. The ones who can't pay their bills should come to the Town and work something out. If some don't pay their bills, it will get passed along to others through taxes, etc.

Mr. Marcum said business is business. If they just give electric to people for the heck of it, everyone would get it

free. It doesn't work that way. Mr. Marcum said he appreciates the Town of Smyrna for working with him and others.

David Rayne said he represents Transworld Systems who is on the agenda under Finance Committee Recommendations. Mr. Rayne said they offer a diplomatic way for businesses to resolve their differences. He added that he hesitates to use the words "collection agency". We do more in the way of collections than just getting our foot in the door. We offer condolences to citizens and Council for the problems you are encountering.

Mayor Stombaugh thanked everyone for coming. This is the opportunity you have to bring things to Council and she said we appreciate the way all of you handled yourselves. She noted that bills come out the beginning of each. You have until the 20<sup>th</sup> to pay before late charges are applied which gives you two and a half weeks. Then, you have a five-day grace period after that before you are cut off.

Councilman Mullen said that, as chairman of the Finance Committee and Utility Committee, we wrestled with this for several months before it was presented to Council. We are trying very hard to get a system in place so that you can pay your bills on line. It is very expensive. We have not found a system that will mesh into our system yet.

Councilman Chervenak said Smyrna has a budget plan available after you have been here a year. If you are going out of town, contact Town Hall and let them know and they will work with you.

**OLD BUSINESS**

**THIRD READING: ORD. NO. 005-08,**

**CHAPTER 18, DANGEROUS BUILDINGS**

Councilman Pressley made a motion to consider this the third and final reading of Ord. No. 005-08, Chapter 18,

dangerous buildings. Motion was seconded by Councilman Chervenak.

Mr. Jaywork said there is a minor typo on Page 4 under Section 18-138 c. A zero was dropped at the end of \$1,000.

Mr. Jaywork said the Town has long had an ordinance called the dangerous building ordinance allowing a building to be repaired or demolished if it fails to meet minimum standards. We rewrote the ordinance to have it flow better than the existing ordinance.

Motion carried unanimously.

**RECOMMENDATIONS FO FINANCE COMMITTEE (03/22/08 MEETING)**

**AUTHORIZE USING TRANSWORLD SYSTEMS FOR COLLECTIONS**

Councilman Mullen made a motion to authorize using Transworld systems on a limited basis. The committee recommends a test case of 100 accounts a month. Motion was seconded by Councilman Chervenak.

Councilman Chervenak asked what happens after 100 cases, what is the test?

Councilman Mullen said to see what amount of return we get. They have a couple of different options as far as the number of accounts. He said he believes the first one goes up to 150, the next up to 300.

Councilman Chervenak said then what? Councilman Mullen said we would like to verify the amount of return vs. the cost.

Councilman Pressley said in December he talked to Mr. Stulir and Mr. Hugg and he was told we don't have that many accounts that are past due. He said a gentleman across Town came to him and asked him to talk to Mr. Hugg which he did. Councilman Pressley said Mr. Stulir answered his question and said we really don't have that many accounts. Now, he said he wonders if we have that many delinquent accounts. He added that we usually put that kind of things out to bid.

Councilman Mullen said we looked at different companies that do this. Transworld has a different approach. They do mostly mailings, not telephone calls. Their return rate is 56%. We just thought that was a better way to go. Nobody on the committee really liked the heavy-handed approach.

Mr. Rayne said there are several options you can use. The program that the regional manager and he proposed is for older accounts for people who have moved away from the area and the state region. We are a regional company and that allows us to skip trace or find a variety of ways to track down people.

Mr. Rayne said they have been used on a short term basis for use in utilities similar to the situation on March 26<sup>th</sup>.

Councilman Pressley asked how they make any money. Mr. Rayne said it is a flat fee per account.

Councilman Pressley asked what it will cost the Town of Smyrna. Mr. Rayne replied \$12.00 per account.

Councilman Pressley asked how many accounts does the Town of Smyrna have. Mr. Hugg replied he thinks when we considered this at the Finance Committee, we felt that there were 100 or more accounts that would benefit from this kind of approach. We have a number of accounts that are cold accounts, people have left town without paying or have outstanding liens or something. They are not to the point where we would want to do the full collection process but they might benefit from a series of letters from a collection agency. We thought there were sufficient numbers of accounts to try this out.

Councilman Mullen said we have about \$300,000 in unpaid utility accounts. This is a fairly inexpensive way to reduce that.

Mr. Rayne called attention to several medical units in the state that use their services. He said the company is based in California and has been in business 38 years. We are looking to

assist the Town of Smyrna with its cash flow and to reduce expenditures in order to obtain that cash flow.

Councilwoman White asked their time frame. Mr. Rayne said they will have a twenty-four month period of time for all those accounts to be used.

Motion carried unanimously.

**INCREASE RAINY DAY FUND TO \$3,000,000 (ORD. NO. 007-08)**

Councilman Mullen said we now have \$2.3 million in the fund. The original ordinance was for \$2 million.

Mr. Hugg recommended that we waive the three-reading rule since this is an ordinance that would require three readings. We would like to put this into effect immediately.

Councilman Pressley asked where the money is coming from.

Councilman Mullen said it will accrue. We are not taking the other \$700,000 and throwing it in there.

Councilman Chervenak asked if the Rainy Day Fund has ever been used. What is the purpose of the Rainy Day Fund? That is a significant pile of the taxpayer's money sitting out there earning interest. It isn't used for bill paying. We were supposed to sweep that interest into an account to use for bill paying and we didn't do that. You said that we need \$3 million and, if it is never going to be used, he said he is concerned that we are going to accumulate \$3 million and not use it in a way that goes back to the community waiting for something to happen.

Mr. Hugg said it has never been used. It was set aside. The Rainy Day Fund is not the best name for it. It is an Operating Reserve Account set up with the intent that, if you have an emergency, you will have the money. Milford had a water tank fail, you might have a major storm or a major infrastructure failure.

Mr. Hugg said this is a requirement of generally accepted financial guidelines and requirements of major lenders. You are expected to have a reserve of one to two months cash equivalent to operating expenses or fifteen percent of you total operating budget. Our financial advisor told us that we are under the required limit at \$2 million. For it to be spent, Council would have to actually declare an emergency for those funds to be used, approved by a super majority. It is an insurance policy. It tells financial lending institutions that we have safeguards. Once thresholds are met, interest can be used for capital projects. Council did approve moving \$300,000 into the capital account. At the last Finance Committee, they felt that we should have \$3 million. The monies are invested by PNC Capital Markets. It is a very respectable return in several investments. It gives the community a safeguard against unexpected events that can happen.

Mayor Stombaugh said the Town just went through NIMS Homeland Security classes. It was stressed that, if a disaster did happen, the Town has to have money in reserve. When FEMA comes in, the Town has to have money up front for their expenses and then file paperwork for reimbursement.

Mr. Jaywork read from the ordinance what the funds can be used for: "This fund will be used for unexpected contingencies which are of an unusual and abnormal nature. For Example, The funds can be used for, but that use is not limited to, the Town's share of large property losses due to natural or man made disasters like hurricane, fires, flood damage, ice storm or any other extraordinary event.

Councilman Chervenak suggested that we strike any reference to a rainy day fund and consider it a financial reserve.

Councilman Pressley said he doesn't have a problem raising it to \$3 million but where will we get the \$700,000? Why not just leave the money and let it accumulate.

Mayor Stombaugh said with the Rainy Day Fund, you have very specific items you can use it for. If you put it into a financial reserve, it opens the opportunity and it can be used for other things.

Mr. Jaywork said you would need to change the ordinance if you want to change the name. How it says to use it makes a difference, not what it is called.

Councilman Chervenak said this is one of the assets of the Town.

Mr. Hugg said it is referred to as the reserve fund.

Mr. Jaywork said he doesn't have a problem with how it is stated in the ordinance.

Councilman Mullen made a motion to waive the three reading rule because there is no benefit to dragging this through three Council meetings. It is an administrative change. Motion was seconded by Councilwoman White and carried unanimously.

Councilman Mullen made a motion to adopt Ord. No. 007-08 to raise the Rainy Day Fund to \$3 million. Motion was seconded by Councilwoman White and carried unanimously.

**RESOLUTION TO RESCIND RESOLUTION SETTING ANNEXATION ELECTION  
FOR MYRTLE STREET**

Mr. Hugg said that Myrtle Street is owned by the State of Delaware. They have no objection to annexation of a street as long as it is done in conjunction with annexation of abutting parcels. It does not require an election, only the affirmation of the agency owning the property. Since it is a state agency, there technically no one to come and vote.

Councilman Chervenak made a motion to adopt the resolution to rescind resolution setting annexation election for Myrtle

Street. Motion was seconded by Councilman Mullen. Council members Chervenak, Mullen, Pressley, Thornton and Mayor Stombaugh voted yes. Councilwoman White voted no. Motion carried.

**SHOW CAUSE HEARINGS**

**119 S. DUPONT HIGHWAY, JOHNSON**

**27-29 E. NORTH STREET, THOMAS**

**218 MULBERRY STREET, GARDLEY**

Mr. Jaywork said these are dangerous building hearings under the Town existing dangerous building ordinance. There are three different properties. A record is being made and if anyone challenges them, the court will review the record. To keep things straight, we need to have separate hearings for each.

Mr. Jaywork said these properties have been under study and investigation for a long time. The Building Inspector has sent notices identifying the problems, and giving a period of time to respond. If they didn't, the building inspector notified Council that they did not respond and then comes the rule to show cause hearing. The property owner has the opportunity to appear before Council and show why their structure should not be demolished. We are now at the second leg of that operation, the rule to show cause hearing. The Town ordinance requires that notices be given by sending letters Certified Mail to the vested owners, by posting the property, by advertising three consecutive weeks in a local newspaper and by posting at Town Hall. Mr. Jaywork said it is his understanding that those things were done and the hearings scheduled.

At that time, the hearings were not held because the Building Inspector advised Council that owners of one property had been in touch with him and Council tabled action for thirty days to give them an opportunity to take action. If nothing was

done by the owners, where we are tonight is where we were thirty days ago.

Mr. Jaywork said the posting, advertising and mailings were done. The second part is for the building official to provide evidence, documentary photographs, etc. demonstrating that each of these properties is a dangerous building within the confines of the ordinance and what action needs to be taken. Council will vote and then the ordinance requires that there be a written decision and order which I will prepare based on the testimony. Council will approve and sign those findings at the next meeting and that will be it.

Mr. Prichard said he will speak to the properties collectively, give background. He said that the three properties were scheduled for hearings on February 19<sup>th</sup>. The properties identified as 27-29 E. North Street was first given notice in January 2007 so we have been dealing with that for fifteen months. The property known as 119 S. duPont Highway was given notification in September 2007 so it has been only six months. The property known as 218 Mulberry Street was also given notice in September 2007. At the February 19<sup>th</sup> meeting, one party indicated that they would prefer to fix up the properties. Council voted to give them thirty days. Letters were mailed Certified Mail on February 22 informing all parties of Council's decision. We then were put on the March 17<sup>th</sup> agenda. Council voted to remove the show cause hearings from table and schedule them for tonight. Subsequently, we went through the process as if it was the first hearing. All were posted, sent notices by Certified Mail to all vested parties and by regular mail since we can reasonably assume it was received by someone if it didn't come back to us. The properties were posted. The hearing notices were posted at Town Hall. We readvertised each hearing three consecutive weeks in the

newspaper. No return receipts came back from any of the Certified Letters.

Mr. Jaywork swore in John Bucalo, Building Inspector/Code Enforcement Officer for the Town of Smyrna.

**27-29 E. NORTH STREET**

Mr. Jaywork asked if this property is owned by a Mr. Thomas. Mr. Bucalo replied yes, Solomon Thomas. As of January 2007, there were transients living in one side of this property illegally and an investigation was requested. Upon entering the property, he said it was discovered that it was in unfit and unhealthy condition, unfit for human habitation, it was rotted through to the second floor. There was mold and mildew throughout the building. There was no water or electric service and people were living in 29 E. North Street. Mr. Bucalo said he immediately asked them to vacate and the property was posted as unfit for human occupancy.

The owner was supposed to be living in 27 E. North Street. Mr. Bucalo said the owner let him in and the same conditions were found. There was trash and mold and enough evidence to post this side as unfit for human occupancy. He added that his supervisor, Janet Vinc, and he agreed this property was indeed a dangerous building and should be condemned under the dangerous building. He said we sent a letter by Certified Mail and he did speak to him several times on the property and told him what the process was going to be. Mr. Bucalo said he assured me that he was going to take care of it. Finally, it came to the point as far as tonight. He added that the owner did show up in February and said he would renovate it. He came in and got an application for permit. Mr. Bucalo said he phoned him last week to tell him of tonight's meeting but he said he does not believe he is here tonight.

Mr. Bucalo said the engineer's report finds that the front porch may be salvageable but two-thirds of the structure should be demolished. It is not fit for human habitation. The outbuildings also should be demolished. Mr. Bucalo said he feels we should go forward with the demolition of this property. It is an attractive nuisance. People have been trespassing and going into the interior of the structure of the main house.

Mr. Jaywork asked if he has photographs of the property. Mr. Bucalo said he has only the exterior photos with him this evening showing the postings and the exterior. He added that he has copies of the interior pictures and he can forward to Mr. Jaywork.

Mr. Jaywork said these will be introduced into the record. He asked Mr. Bucalo to identify the pictures and asked how many there are and when they were taken. Mr. Bucalo replied that the photos are dated by the camera and his notes tell what each of them is.

Mr. Jaywork said there are eighteen photographs taken 03/26/08 and 02/11/08 which will be Exhibit A and the 19<sup>th</sup> is a copy of the exterior of the property showing the posting. He asked if Council has seen them.

Mr. Bucalo said these and the interior ones as well.

Mr. Jaywork asked if Mr. Bucalo has the engineer's report. Mr. Bucalo said it was in packets and he has a copy as well.

Mr. Jaywork said the two-page engineer's report will be Exhibit B.

Mr. Hugg gave Mr. Bucalo copies of the interior pictures. Mr. Jaywork asked if Council has seen those. Mr. Bucalo said they have. Mr. Jaywork said the interior color photographs #1 through #56 dated 03/26/08 will be Exhibit C.

Mr. Jaywork asked if Mr. Bucalo has a copy of the notice posted at the Town Hall. Mr. Bucalo replied yes.

Mr. Jaywork asked if he has a copy of the letter sent to the property owner. Mr. Bucalo said yes. Mr. Jaywork said that will be Exhibit D.

Mr. Jaywork said that the notice published in the Sun times on 03/26/08 and 04/9/08 will be Exhibit E.

Mr. Jaywork asked if Mr. Bucalo has the return receipts showing delivery on 03/30/07 to Solomon Thomas.

Mr. Jaywork asked if he called Mr. Thomas about a week ago. Mr. Bucalo said it was last Thursday. Mr. Jaywork asked if he told Mr. Thomas that the hearing was rescheduled for tonight. Mr. Bucalo said he left a message to that effect on the answering machine.

Mr. Jaywork asked if any other notices were sent to Mr. Thomas about tonight's hearing. Mr. Bucalo said yes there were. A letter was sent 03/25/08 by Certified mail and regular mail.

Mr. Jaywork said the letter sent to Mr. Thomas on March 25, 2008 by Certified Mail and regular mail advising of tonight's hearing will be Exhibit F.

Mr. Jaywork asked if Mr. Bucalo had anything to add. Mr. Bucalo replied no.

Mr. Jaywork asked if Mr. Prichard had anything to add. Mr. Prichard replied no.

Mr. Jaywork asked if the Council members or Mr. Hugg had any questions for Mr. Bucalo. No one came forward.

Mr. Jaywork asked if Mr. Thomas or anyone speaking for him is present. No one came forward.

Mayor Stombaugh declared the Show Cause Hearing for 27-29 E. North Street closed.

Councilman Pressley made a motion to start the process to demolish 27-29 N. East Street. Motion was seconded by Councilman Mullen.

Councilman Mullen asked if Mr. Bucalo and Mr. Prichard feel that this building structurally is not salvageable. Mr. Bucalo said it is definitely not salvageable. He said it will cost four times more to fix it than to demolish it.

Councilman Thornton asked if the property owner actually obtained a permit. Mr. Prichard said he picked up the application but we have not heard from him since.

Mr. Jaywork said that the fact that he picked up the application shows that he got notice.

Mayor Stombaugh pointed out that the Charter says if a building is 51% or more damaged.

Mr. Bucalo said this building is at least two-thirds.

Mr. Prichard said there is so much deterioration, damage to the drywall, mold.

Motion carried unanimously.

**218 MULBERRY STREET, GARDLEY**

Councilman Chervenak said this property and the 119 S. duPont Highway property are six months into the process. Does that impact on these proceedings? This is six months. The first property was a fifteen month process.

Mr. Jaywork said the critical thing is whether people have been given proper notice and that they had the opportunity to come tonight and give their side.

Mr. Bucalo said if he notices a building early in the month, he should be able to bring it to Council the first meeting of the next month. With Mr. Thomas, he said he would give him time and he would be cleaning the house out and then stop. Finally, Mr. Bucalo said he told him we have to enforce the rules.

Mr. Jaywork said the first step is when Mr. Bucalo first contacts the owner and says fix this thing. Council does not care how much time it takes. The time limit is that the

property has to be posted at least seven days, notice has to be posted at Town Hall seven days. Notice has to be published in a newspaper three consecutive weeks.

Councilman Mullen said we are doing 218 Mulberry Street. This was a bungalow and it seems pretty sound.

Mr. Bucalo says there has been some deterioration, but not a whole lot. It has problems. He added that some of the heirs are here tonight.

Councilman Mullen said if the Gardleys would offer anything to the Town or give Mr. Bucalo any assurances that the property would be fixed up, we won't have to go through this process. He added that would hate to see it demolished if it is fairly sound.

Mr. Jaywork reminded Mr. Bucalo that he is still under oath.

Mr. Bucalo said that the bungalow at 218 Mulberry Street is in fairly bad shape. The exterior needs extensive work, the roof and interior are in undue structural distress according to the engineer's report. He added that the basic structure is okay. Under the ordinance, he said he believes this is an abandoned property, an attractive nuisance and should probably be demolished in order to bring it back to a nice clean property that could be sold or used for other purposes of the owners. Mr. Bucalo added that it his recommendation that would cost more than 51% of the actual value of the house to fix it. He said if the owners of the property want to put forth the bond to renovate it, they have not applied for a permit and they have to come up with that bond money.

Mr. Jaywork asked if Mr. Bucalo has an engineer's report from KCI Technologies dated 1/18/08. Mr. Bucalo replied yes. Mr. Jaywork said the engineer's report will be Exhibit A.

Mr. Jaywork said the 32 color photographs showing the interior and exterior of the property #1 through #32 will be Exhibit B.

Mr. Jaywork asked if Mr. Bucalo sent out a letter telling the owners of the property that the hearing was this evening. Mr. Bucalo said it was sent on March 25<sup>th</sup>. Mr. Jaywork said that letter will be Exhibit C.

Mr. Jaywork asked if Evelyn Fountain is an heir to Charles Gardley, record owner of the property.

Charles Benson II said his Mother is one of the heirs. He said the property was left to seven children, Gwendolyn Benson, Charles Gardley, John Gardley, Raymond Gardley, Vivien Gardley and Evelyn Fountain and a brother's wife.

Mr. Jaywork asked who is going to speak. He swore in Evelyn Fountain, Gwendolyn Benson and Charles Benson II.

Mrs. Fountain said her concern is demolishing the property and asked how much that will cost.

Mr. Jaywork said he doesn't know if anyone can answer that question. In the past, it has cost several thousand dollars for such work. He said that the heirs can hire someone to do the work. If you don't and Council decides to demolish the house, Council would pay for it and put a lien against the property so that, at some point in the future, they could sell the property and satisfy the lien.

Mrs. Fountain said Mr. Jaywork said the family could have it taken down. How long will you give us to make up our minds?

Mr. Jaywork said the property is not occupied and has not been for more than a year. Mrs. Fountain said for many years.

Mr. Jaywork asked if the heirs have any intention of fixing up the property and using it.

Mrs. Fountain said they did but the town stepped in and they didn't know what to do. She said they should have gotten an attorney to iron out some problems.

Mr. Jaywork said it is difficult to get an agreement with so many heirs.

Mrs. Fountain said her brother's wife is the problem.

Councilman Chervenak asked if the sister-in-law is an heir. Mr. Benson said she is an heir from her husband being deceased.

Mrs. Gwendolyn Benson said that she agrees with the things her sister has said so far.

Councilman Chervenak asked if a majority of the heirs agree with taking down the property one way or another.

Mrs. Fountain said that she, Gwendolyn, Raymond and the sister-in-law do.

Mr. Jaywork said if you are consenting to the property being demolished, you can do it or the Town will do it.

Mrs. Fountain asked how long you will give them to do it.

Mr. Pressley said it has been six months now. He suggested ten days.

Mr. Benson said he understands if the property is demolished the cost will be a lien on the property itself.

Councilman Mullen said it will be if the Town does it.

Mr. Benson said is the lien based on the cost of demolition. The reply was yes.

Mr. Benson said the Town will have the right to sell the property so it will be lost to the family if the lien is defaulted.

Councilman Thornton asked how much time the family needs to resolve this.

Mr. Benson said if they could fifteen to thirty days, he could consider the different options that are available to resolve the issue.

Mr. Bucalo said they have the ten days to come in and file for a permit. Then, they have sixty days after filing for the permit to demolish the house. The only thing required at the time of permit is the bond so that the Town has the money to demolish the property if they don't.

Mr. Bucalo said if the Town decides to do it, they have the ten days to file for the permit, then tear it down and put the lien on the property.

Mr. Benson asked if a payment plan can be arranged for payment on the lien.

Mr. Jaywork said once the lien is established, the town is free to work out whatever they want.

Councilman Pressley said he will give them 10 business days to come to planning and file for the permit to demolish it. He said it has been a long time. We brought it to the table in February and brought it here again tonight.

Mrs. Fountain asked what is Mr. Pressley's position. Mr. Jaywork said he is a member of the Town Council.

Councilman Mullen suggested that they take the ten days to make up their minds. The permit will give you another ten days and the process starts with the bond.

Mrs. Fountain said if they get someone else to do it, will they need the bond.

Mr. Bucalo said you still have to have a bond in place in case the Town has to step in and do the actual demolition.

Councilman Pressley said that, based on the testimony tonight, the owners agree that the property should be demolished, he will make a motion to find the structure a dangerous building and to demolish the building unless the property owners have made arrangements to demolish it themselves within ten days. Motion was seconded by Councilman Chervenak and carried unanimously.

**119 S. DUPONT HIGHWAY, JOHNSON**

Mr. Jaywork reminded Mr. Bucalo that he is still under oath.

Mr. Jaywork asked Mr. Bucalo if he has a letter to the owner dated 03/25/08 with no Return Receipt received and if the letter sent regular mail has not been returned as undeliverable.

Mr. Bucalo replied yes.

Mr. Jaywork asked if it advised of tonight's hearing and was addressed to the same address used previously. Mr. Bucalo replied yes.

Mr. Bucalo said that, according to the engineer's report, it is structurally sound. A major part of the damage is to the exterior siding coming off and the porches are falling off. The property is in disrepair. The interior has problems but could be renovated. He said it is an attractive nuisance. It is on the main highway and doesn't put the Town in a good light. It is a blight on the Town. The owner has not responded to any letters. She did not come in for permits. She did not come for the show cause hearing. The property is for sale.

Mr. Bucalo said she has not done anything to show she has any concern for the property. The Town had to mow the grass. Under the ordinance, that could fix it up. Under the ordinance, it could be demolished. Mr. Bucalo said his recommendation is to demolish it to get rid of a blight. It is unsafe and unhealthy and not a good property.

Councilman Chervenak asked if Mr. Bucalo has written to the owner. Mr. Bucalo said several times.

Councilman Chervenak said if we demolish it, we will still have to mow it.

Mr. Bucalo said any code enforcement action is charged as a lien eventually with interest.

Councilman Chervenak said here is an unresponsive property owner. Somebody wants to build a nice development on the property. She doesn't respond. We tear it down. Now, she has a nice lawn that we mow. She still doesn't respond. He asked if it is going to take away our right for proper development.

Mayor Stombaugh said she has to know about it since she had the for sale sign put up on it.

Mr. Jaywork said Mr. Bucalo has a report from KCI and thirty-eight color photographs of the interior and exterior of the building. He asked if Council has seen these. Mr. Bucalo replied yes.

Mr. Jaywork said Mr. Bucalo's testimony is on the fence, it could be fixed up or demolished. He asked if Mrs. Johnson contacted the Town previously about repairing the property. Mr. Bucalo said in January she did.

Mr. Jaywork said Mr. Bucalo told her what she needed to know and notified her of tonight's hearing. Mr. Bucalo said that is correct.

Mayor Stombaugh said that if the Town were to demolish it and there is a lien on it, isn't there a period of time that the Town can move forward?

Mr. Jaywork said the Town can send him a letter a week after the lien goes on it and take it to sheriff's sale.

Mayor Stombaugh said we have avenues to take it without using eminent domain according to the Zoning Ordinance.

Mr. Jaywork said eminent domain has nothing to do with this type of demolition.

Mr. Jaywork asked if anyone had questions for Mr. Bucalo.

Councilman Pressley made a motion that we find 119 S. duPont Highway a dangerous building within the definition of the ordinance and that we demolish it. Motion was seconded by Councilwoman White.

Councilman Mullen said he has been around this building and he is very hesitant to say it is a dangerous building. He said he is speaking of the structural side. It is not that bad. It is an eyesore, but it could be cleaned up. Councilman Mullen said he is hesitant to order demolition on a sound building.

Council members Pressley, White, Thornton and Mayor Stombaugh voted yes. Councilman Mullen voted no. Councilman Chervenak was recorded as abstaining. Motion carried.

### RESOLUTIONS

#### PARKS & RECREATION

Councilman Mullen said he presented this at the last meeting and it was tabled so it is on the agenda again tonight. He said it is a resolution to establish a comprehensive parks & recreation plan for the Town of Smyrna. There is some criteria for a comprehensive parks plan from 2006 and Capital projects for 2008, 2009 and 2010. He added that there areas where we established a minimum amount of funds for recreation projects and he strongly urged the members to pass the resolution.

Councilman Mullen made a motion to adopt a comprehensive parks and recreation system in the Town of Smyrna. Motion was seconded by Councilman Chervenak.

Councilwoman White said there was nothing in her packet about this.

Councilman Mullen said it was given out at the last meeting.

Councilwoman White asked if this was reviewed by our solicitor. Councilman Mullen said he had no idea. Mr. Jaywork said no.

Councilman Mullen said at the last meeting, we put it off until the next meeting so that Mr. Jaywork could review it.

Councilman Pressley asked if the money is available. Councilman Mullen said yes it is.

Councilwoman White asked where is the Comprehensive Parks Plan of 2006.

Councilman Pressley asked if that is the parks that we have that we are going to fix up. Mr. Hugg replied yes.

Councilman Chervenak said we fixed up the basketball courts.

Councilman Mullen said this starts the process and keeps the comprehensive parks program alive and moving forward. It establishes a commitment of Council to keep our parks system moving forward and improving them so that our residents can have a healthy atmosphere to enjoy themselves.

Mr. Jaywork said he did see this before. It was part of his memo about super majority. He added that was the only thing he commented on was that he didn't feel the super majority commitment is binding.

Councilman Thornton said last year we went through gyrations to fund programs throughout the summer. This is a way to eliminate that constant approval process.

Councilman Mullen said the parks department would have \$10,000 in their programs line in their budget to spend for that year.

Councilman Pressley said for what?

Councilman Mullen said a beach party or any program they wanted to run.

Councilman Pressley said he liked approving it month by month like last year. We knew what was going on that way.

Councilman Mullen said this gives the committee authority to set up programs and the parks department, with approval of Council, would have the authority to spend the money. He said the programs are good. People enjoy them. We could do more.

Councilman Pressley said that last year they came to us a month at a time and told us what they wanted to do.

Councilwoman White asked where is the Comprehensive Parks Program of 2006. Councilman Mullen said he saw it in the Conference Room.

Mayor Stombaugh said she was very involved in the program last year and she knows how much people enjoyed it. It always seemed to be the same people and there was no way for us to know if they were Town citizens. She said in a time when we are struggling she feels that we should not have this program this year. There have been many years when we didn't have it. It was enjoyed by the same people all the time. If we weren't cutting off peoples electric like we are, it would be different. The first thing you know, you are up to \$100,000.

Councilman Pressley suggested that we table this until next month and we all see the comprehensive parks plan.

Mayor Stombaugh said we have been burned a few times by this Council being told about former Councils doing things. She said she wants to see it before she votes on it.

Councilman Mullen said the plan is downstairs. It was established in 2006 which cost us a lot of money to establish it along with some other things. Quite frankly, he said when times are tough and people don't have money to do things, it makes these things important. You will still have the need for recreation. This is an opportunity to give a family in Smyrna a fairly cheap or free night out to have some fun at the Park, the beach, whatever. What better way to relieve some damage and give somebody something they wouldn't be able to afford on their own.

Councilman Thornton said the issue is that some of the Council people haven't seen or are not familiar with the 2006 comprehensive Parks Plan. They have expressed some reservations about voting for this right now. He asked if Councilman Mullen

would consider amending his motion to let them have an opportunity to do that and revisit this at the next meeting.

Councilman Mullen said he will withdraw his motion. He said he doesn't want to see this shot down. Councilman Chervenak withdrew his second.

Councilman Thornton made a motion to table this until the next Council meeting and give the Council members an opportunity to look at the 2006 Comprehensive Parks Plan so they can make an informed decision. Motion was seconded by Councilman Mullen.

Councilman Chervenak said we need to establish an environment where people can enjoy living in this Town. Ten thousand dollars is small change compared to the rest of the budget of the Town. That is only \$1.00 per person.

Councilman Pressley said bring him something to look at like the 2006 plan.

Council members Mullen, Pressley, Thornton, White and Mayor Stombaugh voted yes. Councilman Chervenak voted no. Motion carried.

#### **NEW BUSINESS**

##### **REQUEST FROM SMYRNA OPERA HOUSE TO RENEW LEASE**

Councilman Chervenak made a motion to renew the lease for five years at the same amount of money. Motion was seconded by Councilwoman White and carried unanimously.

##### **TRANSFER FUNDS FROM ELECTRIC FUND TO GENERAL FUND**

Mr. Hugg said traditionally, this has been an administrative function done with the audit each year. The General Fund operates at a deficit during the course of the year. Various charges go back to the electric fund for billing, collections, etc. During the audit process, a transfer is made from the electric fund. The auditors suggested that Council should authorize the Town Manager to transfer such funds as may be needed to balance the general fund.

Councilman Chervenak made a motion to transfer funds from the Electric Fund to the General Fund as per the auditor's recommendation. Motion was seconded by Councilman Mullen.

Councilman Thornton asked if this will be done each year.

Mr. Hugg said every year there is a deficit in the General Fund.

Motion carried unanimously.

**OTHER COUNCIL BUSINESS**

Councilman Thornton said we have had a lot of comments about electric cut offs. The portrait of Smyrna is that we are money hungry ogres. That is not the case. However, there has been a fair amount of money generated with cut offs in this last round. Councilman Thornton suggested that it might be appropriate for us to consider giving a portion of that money, since we are not doing this to generate funds given the fact that some people have difficulty paying their bills, and contact some of the groups that deal with them such as the Ministerium Catholic Charities, etc. and donate a portion of those revenues to those groups so that they can disburse the funds to needy people. Maybe the Finance Committee could discuss that.

Councilman Chervenak asked if other towns have done that.

Councilman Thornton said he doesn't know but he feels that other towns have not made this much money.

Councilman Chervenak asked if the Police Departments donate money from tickets so that others can pay. He said he thinks we should do things because we think they are right or wrong.

Councilman Thornton said we are not in the business of generating revenue from cut offs. We would be quite happy if everyone paid their bills. This gives some credence to the fact that we are not in the business of generating funds by shutting off people's electricity.

Councilman Chervenak asked if we have ever done that. He said we have generated late fees all along. Now, since we are not generating late notices, people are upset. What is the difference now. He said he guesses you are still reacting to the publicity.

Councilman Pressley asked what are you going to do for the tax payers who do pay their bills on time. Are you going to give them a discount because they pay on time?

Councilman Mullen said that most of the hysteria was generated because of misinformation in the newspaper that caused people to go crazy. If you look at the numbers in 2006 and 2007, it doesn't change much. August and January are the highest. March was no different than any other year. Cut offs were 30 to 40 more than normal. That is it. The whole thing was because late notices were not sent out. Nothing else in the ordinance changed except minor wording changes. We still have 13 days from receipt of bill until late charges are applied. It has always been that way. It has been that way for 20 years. This was all because of a newspaper article.

Mayor Stombaugh said she and Mr. Hugg have been battling this around. She suggested opening a fund where people could donate to those in need. Mr. Hugg said he didn't want the Town to administer that because it would open another can of worms. Mayor Stombaugh said this has been one of the worst days of her life. She added that she took her cell phone off charge and one man talked so much the battery went dead. She said he called her every name in the book as if it was her fault. Others were calling her and saying don't you dare take one cent of my money and give it to someone else because I struggle to pay my bills on time.

Councilman Mullen said cut off and reconnect fees are part of the budget process. This month wasn't unusual. It runs about average for the year.

Mayor Stombaugh said she thinks we need to bill water and sewer separate from electric. Everything gets cut off when electric is not paid.

Mr. Hugg said we do not cut off water.

**ADJOURNMENT**

Councilwoman White made a motion to adjourn, seconded by Councilman Pressley. Meeting adjourned by unanimous vote at 10:05 p.m.

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Council Secretary

ccm