

MAYOR and COUNCIL

TOWN OF MILLSBORO

REGULAR COUNCIL MEETING

February 2, 2009

7:00 P.M. meeting called to order in the Council Chambers, Mayor Larry Gum presiding. Present were Vice-Mayor Robert Bryan, Secretary Tim Hodges, Treasurer Michelle Truitt, Councilpersons John Thoroughgood, Irene Keenan, Town Manager Faye Lingo, Town Solicitor Tempe B. Steen, Administrative Assistant Brenda Morris, Development Coordinator Linda Johnson, Finance Director William Sauer. Guests see attached.

MINUTE OF SILENCE - Mayor Larry Gum asked those present to be part of a minute of silence in memory of Councilman John (Jack) Wilkins who passed away on January 15th. Mr. Wilkins was a councilman from 2002 -2009.

Public Hearing/Amend Comprehensive Plan - Mayor Gum opened a public hearing to discuss a resolution before Council that would amend the town's Comprehensive Plan, Future Land Use Map #7, "Future Land Uses" and Map #8, "Annexation Area" to expand the annexation area for the town and to designate proposed future land uses for certain properties to be included in the annexation area. Tax map parcel numbers included in this request are 1-33-11.00 parcels 3.00; 4.00; 5.00; 6.00 and 7.00; 1-33-15.00 parcels 30.00 and 30.01; and 1-33-16.00 parcels 75.00 and 75.03. Bryan Hall, Office of State Planning, was present to speak to Council concerning this request and the State's comments. The application is on file with the state and the State PLUS review meeting has been scheduled at the end of the month with this request on their agenda. The state would like to work with the town with this change request as an amendment before the town's Comprehensive Plan is renewed. There has been no response from the county. Tempe Steen, town solicitor, recommended to the Council that the effective date for this change to the Comprehensive Plan be set when the Office of State Planning has accepted and confirmed the request. Bryan motioned, Truitt second to approve amending the Comprehensive Plan for The Town of Millsboro dated May 17, 2004, amending Map #7, "Future Land Uses", and Map #8, "Annexation Area" to expand the annexation area for The Town of Millsboro and to designate proposed future land uses for certain properties be included in the annexation area: Tax map/parcel numbers 1-33-11.00 parcels 3.00, 4.00, 5.00, 6.00, 7.00; 1-33-15.00 parcels 30.00 and 30.01; 1-33-16.00 parcels 75.00 and 75.03, with the effective date set as the approval date from the Office of State Planning. Motion approved unanimously.

Public Hearing - Amend Zoning Ordinance/ PC District - Mayor Gum opened a public hearing to discuss a resolution before Council that would amend the zoning ordinance of the town changing the title of the

"Planned Commercial (PC) District" to "PCD" District. Town Solicitor, Tempe Steen, informed Council that this is a housekeeping item that would make the language in the ordinance match what the town is saying. Thoroughgood motioned, Hodges second to approve amending the zoning ordinance of The Town of Millsboro, Sussex County, Delaware, Chapter 210, Zoning, Article IV, District Regulations, subsection 210-21, "Planned Commercial (PC) District" to change the title to "PCD" District. Motion approved unanimously.

Public Hearing - Amend Zoning Ordinance/Add LSCOD District - Mayor Gum opened a public hearing to discuss a resolution before Council that would amend the zoning ordinance of the town by adding a new section to be designated "Large Scale Commercial Overlay (LSCOD) District. This would provide the town with greater regulated development and also more flexibility with guidelines. After some discussion Thoroughgood motioned, Bryan second to approve amending the zoning ordinance of The Town of Millsboro, chapter 210, Zoning, Article IV, District Regulations, by adding a new section to be designated, subsection 210-24, "Large Scale Commercial Overlay (LSCOD) District" and providing regulations therefore. Motion approved unanimously.

Public Hearing - Amend Zoning Ordinance/Zoning Districts Review Process - Mayor Gum opened a public hearing to discuss a resolution before Council that would amend the zoning ordinance of the town by adding the "PCD" and "LSCOD" Districts to the same review process as required in the zoning ordinance for the "RPC" District . After some discussion Thoroughgood motioned, Hodges second to approve amending the zoning ordinance of The Town of Millsboro, Chapter 210, Zoning, (1) Article IX, "Administration and Enforcement", subsection 210-66, "Building Permit and Site Plan Review Procedures", subsection D and subsection D(1) by adding "PCD" and "LSCOD" Districts; and (2) Article XI, District Changes and Amendments, subsection 210-70, Amendments, subsection H, "Procedure for RPC District" by adding to the end of the title, "PCD District and LSCOD District" and including the said districts in the review procedures. Motion approved unanimously.

Public Hearing - Amend Zoning Ordinance/Municipal Functions - Mayor Gum opened a public hearing to discuss a resolution before Council that would amend the zoning ordinance of the town by clarifying that municipal functions are exempt from the application of the Town's zoning regulations. After some discussion Bryan motioned, Truitt second to approve amending the Zoning Ordinance of The Town of Millsboro, Chapter 210, Zoning, Article I, Title and Purpose, subsection 210-5, "Uses Not Expressly Permitted", by clarifying that municipal functions are not subject to the provisions of this chapter. Motion approved unanimously.

Close Public Hearings - Thoroughgood motioned, Bryan second to close all public hearings. Motion approved unanimously.

SECRETARY'S REPORT - Secretary Tim Hodges presented the minutes from the January 5, 2009 council meeting for Council's approval. Bryan motioned, Truitt second to approve the minutes from the January 5, 2009 council meeting as written. Motion approved unanimously.

TREASURER'S REPORT - Treasurer Michelle Truitt presented the bills and bank balances to Council for approval. Bryan motioned, Keenan second to pay the bills from the designated accounts as presented. Motion approved unanimously.

MILLSBORO FIRE COMPANY - Ron O'Neal, President, gave the Millsboro Fire Company monthly report. Quotes for roof repairs are being accepted on the repair of the fire house roof, including the sealing of flashing and addition and repositioning of downspouts. Quotes received so far range from \$11,000 to \$14,000. A committee has been appointed to provide specifications on the purchase of a new ambulance. This unit will be basically identical to the ambulance purchased and put in service in May of 2008. Once the motion has been received from the Company membership to purchase the unit, turnaround time is 5 to 6 months for delivery with an estimated cost of \$165,000. Three laptop computers have been purchased for the purpose of installation into two ambulances and our first run engine. These laptops will be equipped with software developed by the County, tying us into the Sussex County Emergency Operations Center and allowing real time mapping and emergency dispatch capabilities. The first of these units should be installed sometime in February. Currently two of our full time EMS members are out on medical leave and their shifts are being covered by part time applicants, hired specifically for this coverage and for running "10-11's", or second emergencies in our district. With volunteerism being reported as being down across the state and the entire country, MFC has been fortunate to receive numerous membership applications in the past few months, for both Fire and EMS. Three new members were accepted in December and one in January. Three applicants will be presented to the Company for voting at the February meeting and four more applications are currently being reviewed by the Investigation Committee. The Fire Company's Annual Fellowship Evening will be held on Friday, February 20, 2009, beginning at 7 PM at the Fire Company Banquet Hall. The evening allows for an opportunity to meet the new Administration and Line Officers for 2009, as well as share in fellowship and good food with members of neighboring fire companies and friends and supporters of the Fire Company. All members of the Millsboro Town Council are invited.

CHAMBER OF COMMERCE - Director Fran Bruce reported Chamber coming events to Council and those present. Ms. Bruce informed Council and those present that Delmarva Power will be holding a community meeting, Wednesday, February 4, 2009 to make available information to the public concerning the proposed Mid-Atlantic Power Pathway (MAPP). This is a planned 500-kilovolt transmission line which will enhance electric reliability for the Mid-Atlantic region. Part of the proposed transmission line will go through Delaware and part of Sussex County. The Chamber will be having a reorganization of the board. Ms. Bruce informed Council that 2008 rentals of the civic center were down due to the economy. Ms. Bruce told council that as the middle of the week is now available due to the Senior Center moving into their new facility she would like to see some advertising done to promote middle of the week rentals such as business luncheons.

STREET REPORT - The town has received a complaint concerning the use of Godwin Street. Trucks are using this as a shortcut from Monroe to State St. and causing some damage to a resident's property. The problem with the town doing anything with this street is that only part of it is in town limits and the town is not sure how much of that street is under their jurisdiction. The first few feet from Monroe St. and that part of the road adjacent to the St. Helen's development is in town, but we are unsure who owns the rest. It was noted that part of this street is paved, part dirt and it does go across an unimproved railroad crossing. A suggestion was made to create an ordinance that would restrict truck traffic. It was noted that Town Solicitor, Tempe Steen, would need to do a full scale search to see who owns what on Godwin Street. Councilman Thoroughgood felt the town needs to find out if this road was created as a private driveway for those properties that are located along Godwin Street. Tempe Steen feels this is a private road but within town jurisdiction. Councilman Hodges felt that the town should spend the money to do a title search and find out who owns what of this street. Tempe Steen reported to Council that she has done research to some degree but will bring back to Council the cost of a title search. She suggested that the town place a temporary no truck traffic ban on this street. Hodges motioned, Thoroughgood second that a temporary no truck traffic ban be placed on Godwin Street, from Monroe St. to State St. and that Town Solicitor Tempe Steen do a title search and seek prices for a survey not to exceed a maximum amount of \$2500. Motion approved unanimously.

PARKS AND RECREATION - No report

POLICE REPORT - On 1-21-2009 Cpl. Wheatley and Pfc. Doughty attended Sex Offender Registry training at the Dover Police Department. Officers also participated in a recertification for CPR/AED at the Millsboro Volunteer Fire Company.

Recruit Evan Rogers is progressing well and the mid-term progress report received was good.

Lt. Calloway gave a CALEA update. He reported to Council the annual report which describes what the department does as a whole. He also informed Council that this report is on the police website. The CALEA onsite assessment is scheduled for April 18th. The actual onsite assessment will start the 19th. Millsboro will be a pilot program for a three day assessment. The normal onsite assessment is usually four days. Lt. Calloway will be sending assessment files to the CALEA office to be given to the assessment team members that are coming to do the assessment so they can review them and make suggestions for changes before they come. The assessment team is usually a two member team and they won't know who will be on that team beforehand.

Chief Murphy informed Council that the SALLE and EIDE grants are both on hold by the State. The town will probably not see any funds from these grants at this time. Chief Murphy asked Council if they would

approve him pulling funds, in the amount of \$9000.00, from the Sussex County Block Grant to help put the Police Tactical Team in place which would include one week of basic training. They would pick up the advanced training sometime in the fall most likely. The creation of a Police Tactical Team has been approved by Council previously. This money would be used for this purpose instead of the two in car cameras at this time. Thoroughgood motioned, Bryan second to allow Chief Murphy to reallocate \$9000.00 of Sussex County Block Grant monies to be used for the setting up of a Tactical Team with training. Motion approved unanimously.

Lt. Brian Calloway was presented with a proclamation from the House of Representatives congratulating him upon receiving the Municipal Police Officer of the Year award from the DE League of Local Governments.

Street Report - No report

WATER AND SEWER REPORT -

Change in impact fees - The town ordinance states that the impact fees set by the town will be increased automatically each January with the CPI, consumer price index, as established by the U. S. Department of Labor unless the Council takes action to waive the increase. This information was not available at the January Council meeting but is available to us tonight. The rate did not increase but actually dropped down. Tempe Steen, Town Solicitor, informed Council that the ordinance only states that the fees will increase if the CPI rate is raised by the government. Our ordinance doesn't instruct or address what to do if the rate actually decreases. Tempe advised that as the rate didn't increase to leave the rate as is for this year. Hodges motioned, Truitt second to leave the impact fee rates the same as in the previous year, 2008. Motion approved unanimously.

Sewer Adjustment - Sewer cost was adjusted at 17 Kyle Circle due to a water leak that did not go into the sewer per ordinance.

CABE Assoc. - Contract design change - Bearing Construction has requested a change to the design for the water treatment plant improvements, Contract B, due to the change in equipment selection. Bearing Construction, Inc. has requested a substitution of approved alternate equipment for the Plate Settler. The approved alternate Plate Settler impacts other equipment and building structure requiring changes. CABE has been requested by Bearing Construction, Inc., to make the necessary changes to the drawings to facilitate construction. Bearing suggested that CABE bill Millsboro directly for all work and Bearing would reimburse Millsboro for all CABE invoices. Faye had explained that she did not object if the contractor was willing to pay for it and she would like that in writing. An agreement has been received by the town with the Bearing president signing the agreement stating that they would reimburse the Town of Millsboro for the cost of this change in the amount of \$9,200.00. Hodges motioned, Bryan

second to approve the request for the design change to the 2008 Water Treatment Improvements Contract B by the contractor, Bearing Construction, Inc., for the substitution of an approved alternate equipment for the Plate Settler with Bearing Construction, Inc. reimbursing The Town of Millsboro for all of CABA's invoices for the changes in the estimated not-to-exceed amount of \$9200.00. Motion approved unanimously.

CABA Assoc. - Chesapeake Tract - The Town of Millsboro has been approached with an annexation request for the Chesapeake Tract, LLC, which will be developing approximately 417 acres, which is not currently contiguous to the Town, for a horse racing track and ancillary uses. An annexation agreement has been reached between Chesapeake Tract, LLC and J.G. Townsend Jr. & Company, who own a 225 acre property that is both contiguous to the Town and the Chesapeake Tract, LLC property. The Town of Millsboro has requested that CABA Associates, Inc. prepare the Plan of Services for the requested annexations and submit the Plan of Services to the Office of State Planning. Thoroughgood motioned, Bryan second to accept the contract with CABA Associates for preparation of the Plan of Services for the Chesapeake Tract, LLC requested annexations for an estimated amount of \$10,000. Motion approved unanimously.

MAYOR'S REPORT

Memorandum of Understanding - The Sussex County Memorandum of Understanding was introduced last month. This is an agreement between the town and the county to work cooperatively through the planning process regarding land planning and land use practices in the Town and the Intergovernmental Coordination Zone. Tempe Steen, Town Solicitor, did bring to the Council's attention that the proper name of the town needed to be modified in the agreement from City of to The Town of Millsboro. Bryan motioned, Thoroughgood second to approve and accept the Sussex County Memorandum of Understanding with the modification from City of to Town of. Motion approved unanimously.

Annexation of Roads - Renewal of Committee - A committee was appointed previously to study the annexing of certain roads and highways before the resolution actually listed the areas they were to study. Tempe Steen, Town Solicitor, has rewritten that resolution adding a list of roads and highways that are to be considered for annexation. Ms. Steen has rewritten the resolution using Sheep Pen Road and a question was posed as to if that should be Sheep Pen Branch. It was decided that it should be Sheep Pen Branch. The committee previously appointed was Bob Bryan-Chairman, Michelle Truitt and Tim Hodges. Hodges motioned, Truitt second to reappoint the committee, Bob Bryan-Chairman, Michelle Truitt, Tim Hodges, to investigate the possibility of annexing certain roads and highways within and adjacent to the current boundaries of The Town of Millsboro including U. S. Route 113, State Road 20, State Road 24, and State Road 30 including said territories in the Open Space (OS) District with a report due from that committee with their recommendations no later than May 3, 2009. Motion approved unanimously.

Committee Replacements - Due to the passing away of Councilman John (Jack) Wilkins there are some committees that need a replacement. The Liborio Project will add Michelle Truitt. That committee will now be Thoroughgood-Chairman, Irene Keenan and Michelle Truitt. Millwood Expansion will add Tim Hodges. That committee will now be Irene Keenan-Chairman, John Thoroughgood and Tim Hodges. Somerton Chase committee will now add Irene Keenan. That committee will now be Bob Bryan-Chairman, Tim Hodges and Irene Keenan. Wharton's Bluff will now add Bob Bryan. That committee will now be John Thoroughgood-Chairman, Irene Keenan and Bob Bryan. The Zoning/Comprehensive Plan will now add Bob Bryan. That committee will now be Tim Hodges-Chairman, Michelle Truitt and Bob Bryan.

Replacement of Wilkins Council Seat - Mr. Wilkins seat does not end until June 2011. Council can appoint someone to fill the seat if they would like. It is an at large district so the candidate can live anywhere in town. It was noted it does not have to be filled. Bryan motioned, Thoroughgood second to advertise a public notice stating that the town is accepting letters of interest from those who might wish to fill this council seat. Motion approved unanimously.

Zoning Amendment - Planned Commercial District - An amendment to the Planned Commercial District zoning was brought before Council last month and tabled for more discussion and research. This is an amendment that will provide additional flexibility in the implementation of the Planned Commercial District (PCD) by adding additional permitted uses and providing for certain conditional uses if they are found to be in the best interest of the town. This amendment would add a new subsection to be titled "Commercial Recreation" which would add permitted uses such as golf courses, country clubs, public or private pools, and amusement parks/water parks. It would also allow certain conditional uses such as horseracing facilities, convention/conference centers and sports arenas. These conditional uses would have accessory uses as conditional uses to conditional uses listed as livery stables, riding academies and casinos. This amendment would give more control to Council as to what can be brought into town in the PCD District. Councilman Hodges questioned what time frame should be placed on the conditional uses. He feels it should be 20 years. He also questioned what height restrictions should be placed on buildings in this zoning. There is concern with the height as to what equipment the Fire Department has and what heights they would be able to handle in case of a fire. After some discussion it was decided to table a decision on this amendment and the resolution to go to public hearing until the annexation committee could meet to discuss what height restrictions should be placed on this amendment and other concerns before taking this to public hearing. Tempe Steen, Town Solicitor, is going to revise the amendment to reflect a 20 year time frame on the conditional uses.

Tree Removal/Monroe St. - The town has received a report from Complete Tree Care, Inc. that gives a final recommendation for removal of the tree on Monroe Street next to Brandywine Apts. The tree does have a lot of damage and is showing signs of root rot. It is the recommendation from the arborist that this tree is a candidate for removal as it is located in an area heavily traveled by vehicles and

pedestrians. Bryan Hall, Office of State Planning, who was formerly with the State Forestry Office, spoke to council with his concerns about this tree as this did come up for discussion while he was with the State Forestry Office. He feels that with the increased traffic on Monroe St. and the potential of the tree falling over if there were ever a direct hit by a vehicle that the tree should probably be removed. Costs would be very high if the town were to try and save this tree by bracing the tree with concrete. This would also create a stronger barrier for a car to hit it there were an accident and would cause considerable more damage. Mr. Hall suggested that if the tree were removed another could be planted elsewhere in town, such as Cupola Park, in memory of Jack Wilkins. Councilman Thoroughgood told council he feels the tree needs to be removed for the safety of town residents but that he feels it should be replaced by two trees, one in memory of Jack Wilkins and the other to replace that tree itself. After some discussion Thoroughgood motioned, Hodges second to have Complete Tree Care, Inc. remove the tree on Monroe Street and to have two trees planted in Cupola Park, one to replace the tree being removed and the other as a memorial to deceased Councilman John (Jack) Wilkins. Motion approved unanimously.

Bryan motioned, Thoroughgood second to recess the Regular Council meeting at 8:30 PM and to enter into an Executive Session at 8:40 PM to discuss legal and personnel issues.

9:20 pm meeting called to order with Mayor Larry D. Gum presiding. Present were Vice Mayor Robert Bryan, Secretary Tim Hodges, Treasurer Michelle Truitt, Council persons John Thoroughgood and Irene Keenan, Town Solicitor Tempe B. Steen, Town Manager Faye Lingo.

Thoroughgood motion, Hodges second to approve the wastewater engineering contract with CABE Associates, approved unanimously.

Thoroughgood motion, Hodges second to approve the water engineering contract with CABE Associates, approved unanimously.

Irene Keenan recuses herself from the annexation committee for Chesapeake Properties and the Townsend property and from voting on the annexation when it comes to the council for approval.

Mayor Gum appointed Michelle Truitt to replace Keenan on the committee.

9:30 pm, Bryan motion, Truitt second to adjourn the meeting.

Respectfully submitted,

Tim P. Hodges,

Secretary