

**NOTES OF THE MILLVILLE
TOWN COUNCIL WORKSHOP
November 26, 2013 @ 7:00PM**

In attendance were Mayor Gerry Hocker, Deputy Mayor Jon Subity, Council Members Robert Gordon, Joan Bennett and Harry Kent; Town Solicitor Seth Thompson, and URS Representative Kyle Gulbranson. Town Manager Debbie Botchie and Town Clerk Matt Amerling were absent.

1. CALL TO ORDER:

Mayor Hocker called the meeting to order at 7:00 p.m.

2. PLEDGE OF ALLEGIANCE

3. NEW BUSINESS:

A. Jeremy Kalmbacher, P.E., Director of Engineering for Tidewater Utilities Inc., will discuss the process involved with the installation of water mains during the SR26 Mainline Project.

Mr. Jeremy Kalmbacher, of Tidewater Utilities Inc., introduced Greg Coury, also of Tidewater Utilities Inc., who is project engineer overseeing the Route 26 Mainline Project. Mr. Kalmbacher handed out an aerial overview map showing the water mains and shows Route 26 as the main line across the map. Mr. Kalmbacher stated there are two outlined symbols: the blue lines which represent all of the existing water mains throughout Tidewater's "Ocean View district," and sections of red where there are no current water mains. Mr. Kalmbacher further stated Tidewater is waiting for DelDOT to complete the road widening project so Tidewater can get the water mains in the red areas. Mr. Kalmbacher stated the sections of rectangles are areas where Tidewater has to replace water mains because of DelDOT's project. Mr. Kalmbacher stated Mr. Coury has currently been designing and laying out the water lines, and has been corresponding with DelDOT regularly as well as utilizing DelDOT's base drawings so Tidewater has the most up-to-date information as far as where the right-of-way is and where sidewalks, storm drains, etc., are going to be placed. Mr. Kalmbacher stated Tidewater knows that George Lynch has been hired by DelDOT to do its work, and Tidewater's preference is to use Mr. Lynch to do the water main but Tidewater is required to solicit bids for that work to make sure the pricing is the best pricing for the customers.

Mr. Kalmbacher stated one of Tidewater's areas of possible disruption to existing customers located along Route 26 is while Tidewater is replacing the sections of main in the rectangle areas is Tidewater will be putting in new service laterals, so there will be a short time period when the old main is taken off and the new one is replaced, customers will experience a little bit of an outage, but that will all be coordinated with the individual homeowner. Mayor Gerry Hocker asked if the lateral water lines being hooked up will be the responsibility of the homeowner to hire a licensed plumber or if it will be the responsibility of Tidewater. Mr. Kalmbacher stated the homeowner shouldn't need a plumber at all, and Tidewater will be doing all the work – including moving the meter pit – to connect back the plumbing.

Mr. Kyle Gulbranson, of URS, asked regarding in the new service areas what Tidewater's procedures will be, considering connections with the new customers. Mr. Kalmbacher stated Tidewater will be sending out a letter of notification, letting people know that Tidewater will be putting the water main in and to give Tidewater a call if there are any questions or concerns. Mr. Gulbranson asked if the connections will be able to happen concurrently or after the main lines are put in. Mr. Kalmbacher stated it will have to be after the main lines are put in. Council Member Harry Kent stated he assumed Tidewater will be coming down one side of the road with the water main line, and asked, while the Route 26 construction is being done, what will be done for potential lots for future customers. Mr. Kalmbacher stated Tidewater did not factor in a lot of services and they will have to look at that aspect because usually if Tidewater's water main is in a location where they cannot dig it back up, then usually Tidewater prefers to tap the line when the customer requests service. Mr. Kalmbacher further stated that if Tidewater's main line is going to be under a sidewalk and DelDOT is not going to let Tidewater dig it up, usually there is a five-year moratorium, and if the line is going to be in a paved shoulder or something like that, Tidewater will bring a pre-installed service lateral across so Tidewater will not have to cut the road up later and Tidewater will leave the lateral stubbed out to the property.

Mr. Gulbranson stated it looks like the main line is going to be on the north side of the road and there are quite a few structures on the south side. Mr. Kalmbacher stated as long as Tidewater can access the main, even though there is some conflict with sidewalks, then Tidewater can mole from the line underneath across Route 26 to the other side. Mr. Kalmbacher further stated he thinks with the notice to the homeowners along Route 26 and their interest, Tidewater will usually be able to go ahead and get those homeowners set up and service in during construction so it poses less of a problem afterwards. Mr. Coury stated Tidewater would like to bring the line across if people need it and know they are going to connect lines, Tidewater is more than willing to bring it across ahead of time. Mr. Kent stated the concern he has, and it is something Mr. Kent has already heard from DelDOT officials that were project managers, is DelDOT was not intending to allow for any cuts for at least five (5) years, and that concerns Mr. Kent because Mr. Kalmbacher says "usually," and, to Mr. Kent, that means it is not 100% true that Tidewater can bore without messing up the road, so DelDOT could turn around and say no to the digging, which could create a problem for a homeowner or business owner along Route 26. Mr. Kalmbacher stated that is part of Tidewater's standard practice for services – to bore from underneath roads that have a moratorium or not – as opposed to the traffic issue with cutting up the road, and Mr. Kalmbacher does not anticipate any problem whatsoever when people request service on the other side of the road. Mr. Gulbranson stated Tidewater's practice is pretty much standard operating procedure these days. Mr. Kent stated the only problem he is having with this announcement is this is the first time Mr. Kent is hearing there is any plan in place and DelDOT was emphatic to Mr. Kent about a month-and-a-half ago when there was no plan in place, so now Mr. Kent is trying to understand who is telling him what. Mr. Kent further stated he specifically said he knew the Town had gaps on the water mains in the municipality and the Town is going to be having some serious issues over the next couple of years because of Route 26 being dug up, and he would dread the Town having to go through another experience like that because Council was not proactive and say, "Hey, we somehow need mains across the street." Mr. Kent stated he is concerned because it seems to him that Tidewater and DelDOT "do not seem to be on the same page," and Mr. Kent has heard twice from DelDOT that there is no plan in place from Tidewater, which is troublesome to him. Mr. Coury stated he has been coordinating with Century

Engineering, DeIDOT's engineering company, on this project for over a year now and he does not know who from DeIDOT has been telling Mr. Kent that Tidewater has not been coordinating with DeIDOT. Mr. Kalmbacher stated Tidewater usually deals with the utility permits section, which is a different section than the section that builds roads, so there could be a slight disconnect there and Tidewater is pretty up to speed on all of DeIDOT's requirements to cross roads. Mr. Kalmbacher stated Mr. Ed Maloney is the local manager with whom Tidewater gets all of their permits through, so Mr. Kalmbacher is not sure who DeIDOT is getting their information through. Mr. Kent stated he was specific about it to DeIDOT because the Town had these issues and it did not seem like a very good time – since DeIDOT is digging up the road – to have Tidewater do this construction, and DeIDOT said there was nothing DeIDOT could do about it because Tidewater is a private utility, DeIDOT has nothing to say about it, and there is no plan in place under the DeIDOT project. Mr. Kent further stated, to him, all of the other utilities were accounted for except Tidewater. Mr. Kalmbacher stated with Tidewater's design, Tidewater has utilized Century Engineering's design for the roadwork and all of the other utilities going in, and this water main project has been on the books for years and Tidewater has been specifically waiting for this opportunity to fill these gaps because there was no previous right-of-way to do this work, so Tidewater has been waiting for this probably as long as Council has. Mr. Kent stated this is a concern he has and he does not know how Council would address it but Mr. Kent would like to make sure DeIDOT is in the same mindset that both organizations are in agreement this is going to happen, and Mr. Kent would hate to see the Town get tangled up in a situation later where Tidewater cannot open – or bore under – a road for whatever reason, not that we want to because that causes a whole other set of problems, and DeIDOT representatives who came to the Town to explain to people the process had no knowledge of the Tidewater plan. Council Member Bob Gordon stated it has been a few years that Tidewater was not doing their part and this is the first claim Council has seen for some time from Tidewater on any water line, and Council has heard a lot of rhetoric about the Town getting a 12-inch water line which would come from the Fire Company and was going to connect up at Whites Neck Road. Mr. Gordon further stated even through Century Engineering, even a month-and-a-half ago when Council attended a meeting, DeIDOT knew nothing about Tidewater's plan. Mr. Kalmbacher stated he could only tell Council that Tidewater has been planning this project for years and Tidewater has not finalized their design, and the main shown based on their schedule shown is not going to happen for another one-and-a-half to two (2) years. Mr. Kent asked if that estimate is based on the Town's project schedule. Mr. Kalmbacher stated that is correct, but Tidewater is still in the middle of design and have decided to upsize the 12-inch main to a 16-inch, from the firehouse [to] out past Denton Mills. Mr. Kalmbacher further stated Tidewater is in the process of that redesign now and that will be resubmitted to Office of Drinking Water and the Fire Marshal's office for approval as a revision. Mr. Kalmbacher stated the original plans have already been submitted and approved so Tidewater will have to go back and get reapproval, and Mr. Kalmbacher honestly has no idea why DeIDOT is telling Council DeIDOT and Tidewater are not prepared for this plan. Mr. Kent asked Mr. Gordon who told Council DeIDOT had no knowledge. Mr. Gordon stated Mr. Tom Banez was for DeIDOT and Jill was the project manager from Century Engineering. Mr. Kalmbacher stated Tidewater has been dealing with Jill for well over a year on this plan. Mr. Kent stated somebody has got to get their story straight because it does not sit well with him and concerns Mr. Kent that the Town is being told two different stories, and Mr. Kent does not want to be hearing the next two years from now that "we're sorry but we can't provide water to your community because ...". Mr. Kalmbacher stated he could assure Council there is only one story and that

would be Mr. Kalmbacher's story.

Mr. Gulbranson asked if the new water main would be in DelDOT's right-of-way and there would be no need for additional easements. Mr. Kalmbacher stated there would be no need for additional easements, but there may be a couple of tight spots for fire hydrants because they require some right-of-way, but not a lot of right-of-way, and when the hydrant extends two (2) to three (3) feet minimum on either side, Tidewater might run into some issues there but they will have to address them in the field and it will be nothing major. Mr. Coury asked if there are property owners Council is aware of that are looking for service where this issue is in. Mr. Kent stated this is just a concern because, first, there is a number of people along Route 26 who don't have water today; and, second, there is a large percentage of property in that area that has a potential, and one of the problems with this is digging for a single well or multiple wells. Town Code and Building Administrator Eric Evans stated if this water line goes in, property owners will not be allowed to put in a well. Mr. Kent stated he understands that but if this plan does not happen or is done in such a way that it is "not feasible" for whatever reason, the Delaware Department of Natural Resources and Environmental Control (DNREC) regulation would have a problem because if the water cannot be provided, then the property owner has a right to punch a well and that is a costly alternative. Mr. Gordon stated he and Mr. Kent have been looking at this plan for over three (3) years for the Town because they were looking to put a sprinkler system in Town Hall for fire protection, and, right now, to try and find out how they would feed the sprinkler system, the only option they had was the possibility of buying a water tank, filling it, and using that as a way of taking care of the water problem, but it was at an extreme cost. Mr. Evans asked if it would be possible for Tidewater to contact all of the property owners prior to this line going down, and the reason why Mr. Evans suggests this is because if Tidewater has to jack-and-bore or torpedo, costs double or triple for the tapping and impact fees because someone has to be hired to do this; whereas if the road is open, and if a property owner says he needs it and asks for one-inch line, it will be open and all Tidewater has to do is get another trench in there, bury the hose and the property owner will still have to pay tapping and impact fees, but they do not have to pay for torpedoing, jack-and-boring or the eight hours of labor involved, and it would be very advantageous for the citizens if they were contacted prior to the construction and offered to pre-register for this service and inform them of the cost. Mr. Evans further stated that with this strategy, property owners may choose whether to stay with their wells or go with the water main, and some property owners could plan ahead and have the line attached to their property. Mr. Coury stated notifying the property owners prior to the construction has been a part of Tidewater's plan all along. Mr. Kalmbacher stated Mr. Evans made a good point for a domestic service as long as it is two (2) inches smaller, there is no extra charge to the customer whether Tidewater jack-and-bores across or they bring it across now or later, there is no extra charge, so anyone who wants a domestic service will not have to worry about an extra charge; however, for a larger service, the property owner would have to bear some of the extra cost. Mayor Hocker asked if there is a certain timeframe of a mandatory hook-up for property owners to hook up to once the new line is in and running. Mr. Kalmbacher stated no, it is not mandatory. Mayor Hocker asked if it is one of those situations that once a well goes bad, then DNREC will make the owner hook up to the line. Mr. Kalmbacher stated yes, DNREC would make them do so. Council Member Joan Bennett stated she is so glad for Council to be talking with Tidewater about this because, aside from the fact that Council and administration here at Town Hall have a concern about what's going to happen with the property, which is Council's responsibility, Ms. Bennett also sees an economic development

issue of some import for the Town with the larger parcels of commercial land.

Mayor Hocker stated, looking at the map provided by Tidewater, he sees where Tidewater's new line stops and asked whether Tidewater did that as a reference because of the Town's properties or is the water line going to the St. George's Church – like the Route 26 DelDOT project. Mr. Kalmbacher stated the original plan was to stop kind of where the map is displaying, but Tidewater is currently considering extending the line down to Route 17. Mr. Gulbranson asked if Tidewater currently has the CPC out that far. Mr. Kalmbacher stated he believes Tidewater does, and Tidewater has had some development interest, but their long-term plan is to head down Route 17, all the way down to Millville by the Sea (MBTS), and there is some commercial development potential in that Route 17 area, so it would make sense because DelDOT is going to rip the road up now and Tidewater thought they should get down to that point because they could stub out and be ready to head down Route 17. Mr. Kent asked if there would be some kind of looping arrangement because he is thinking that MBTS currently already has water – he does not know where the water source is from – but is this to create some kind of loop. Mr. Kalmbacher stated yes, to create a big master plan loop. Mr. Kalmbacher further stated a lot of Tidewater's supplies are in the Bethany Bay/Bay Forest Club area, and Tidewater has a one million-gallon tank site at MBTS, so Tidewater's long-range plan is to have a 16-inch backbone which connects the north to the south, so the supply can back and forth. Mr. Kent asked if that "backbone" was on the site off Substation Road Mr. Kalmbacher was talking about. Mr. Kalmbacher stated yes and that is the 10-year plan. Mr. Kent stated he understands but, again, Council needs to look to the future rather than just the "immediate now." Mr. Kalmbacher stated Mr. Coury still is finalizing some of the design issues and Tidewater is also looking to get into the preliminary design work to head down to Route 17, DelDOT would not currently know about Tidewater's idea to go to Route 17. Mr. Kent stated he understands but this issue is an issue the Town has been going back-and-forth on with DelDOT because the Town is effectively going to be turned into an island for a period of time because of the DelDOT's "construction games" and Mr. Kent's concern is he does not want the Town to progress with this plan and in another two years or more, Tidewater will come and want to tear up more road or sidewalks, causing more strife for local businesses.

Ms. Bennett asked Mr. Kalmbacher regarding the map, there is a jog in the red (preliminary) line which appears to be right opposite Town Hall, so, at one point in time, coming from the east, the line appears to be on the north side of the road, then jogging up the opposite south side of Town Hall and Millville United Methodist Church (MUMC), and is this all Tidewater's correct preliminary plan. Mr. Kalmbacher stated that is correct, and Tidewater does plan on crossing right at Dukes Drive and there is no little "blip" in the red line. Mr. Kalmbacher stated with the change from a 12-inch to a 16-inch main, it was prudent to make that crossing where Ms. Bennett located it. Mr. Coury stated Tidewater is also planning another main that is going to come up Club House Road and head north, but it is not shown on this map provided because it is considered a part of the longer term plan, which Tidewater is working on a hydraulic model and it shows Tidewater needs some extra main improvements on the north side. Mr. Coury further stated Tidewater will most likely stub out a certain distance up Club House Road to get out of what DelDOT is doing. Ms. Bennett asked if the main will be terminal on Club House Road. Mr. Coury stated it will initially be terminal, and then a few years after that, it will run up Club House Road and tie in. Mayor Hocker asked if Tidewater had all of their approvals and what the issues are with the

tax ditch next to Town Hall. Mr. Kalmbacher stated Tidewater will drill underneath the tax ditch. Mr. Evans asked Tidewater if they think it will be about the same time DelDOT is redoing the bridge. Mr. Kalmbacher stated if all goes according to plan and Tidewater gets the same contractor, Mr. Lynch, then Tidewater will take advantage to do all of the work, including the water main, at the same time. Mr. Kent stated his concern is that he is hearing from Tidewater tonight a lot of “if”s from them, and asked how does one make sure that DelDOT and Tidewater are on the same page with this concept because DelDOT oversees all of the activities along Route 26. Mr. Kalmbacher stated Tidewater cannot guarantee Tom Banez that Mr. Lynch will be the selected contractor on this job, and Tidewater cannot guarantee anyone that Mr. Lynch will be selected because, by law, Tidewater must put the job out for bid. Mr. Kent stated this basically means that DelDOT’s milestones and Tidewater’s milestones are potentially radically different. Mr. Coury stated no, both milestones will be the same. Mr. Coury stated Tidewater had this same issue with Sussex County and the Angola-by-the-Bay area, which was an existing development that Tidewater already had a water main in, and Sussex County came in, ripped up everything to put in sewer, and, at the exact same time, Tidewater replaced its water line. Mr. Coury further stated there was a lot of coordination involved but Tidewater had a similar issue with insuring that Tidewater got the same contract to do the work. Mr. Coury stated he understands Mr. Kent’s concern with all of the “if”s. Mr. Kent stated a project of this magnitude has to be well-coordinated and if it’s not, it’s a disaster. Mr. Kent further stated unfortunately, he has only been in Delaware a few years, but Mr. Kent saw Route 54 get done, and he would call that a disaster. Mr. Coury stated Tidewater ran into a similar issue with the construction work done on Route 1 in the Rehoboth Beach/Lewes area a few works ago, and they did not bid their water main work with DelDOT, but A-Del Construction got the low bid, and A-Del did the work with no issues. Mr. Kent stated he is simply concerned because he has seen DelDOT’s work, and knowing their track record, he can see a disaster happening in Town. Mr. Kalmbacher stated Tidewater will make sure its contractor and DelDOT will coordinate effectively so “both pieces of this puzzle happens.” Mayor Hocker stated it will be similar situation to the sewer expansion DelDOT is doing that Sussex County did not anticipate doing until DelDOT’s making County run it from where it stubs out in Clarksville and running it to St. George’s Church. Mr. Kalmbacher stated he thinks DelDOT learned its lesson from the Route 54 project, and Mr. Banez is “under the gun” to make sure this project is finished in a timely manner. Mr. Kalmbacher stated, as Council can see, a lot of the other utilities are already being relocated well in advance, and that is fantastic planning on DelDOT’s part. Mr. Evans asked Tidewater if they could email Town Manager Debbie Botchie another set of plans showing the newly updated path. Mr. Coury stated yes. Mr. Kalmbacher stated Tidewater is still a few weeks away from finalizing the design but as soon as they have it done, they will forward it to Town. Mr. Coury asked Council if they would like Tidewater to send the letters out to property owners imminently or is there a timeframe Council would like to see. Mr. Gulbranson stated he thinks it benefits everyone to get the letters out as soon as possible. Mr. Coury asked if after Tidewater finalizes the drawings, Tidewater will send them to Council and Ms. Botchie, and, if it looks like it’s good for the Town, Tidewater will – maybe in January – send the letters out to the property owners. Mr. Gulbranson stated that would be good.

4. OLD BUSINESS:

A. Review and discuss the Town’s draft Ordinance 14-02 regarding accessory structures in the Residential and C1 Commercial Districts. *Synopsis:* Town Council previously discussed twice the

sizes of accessory structures for residential-zoned properties and commercial properties with residential uses with URS representative Kyle Gulbranson.

URS representative Kyle Gulbranson stated the issues regarding the accessory detached garages has been put into a draft ordinance, and this draft covers the ideas and issues discussed at Council's last meeting. Mr. Gulbranson stated if Council looks at section one, one of the things that has been done is that the current Code references garages and one of the issues Council had was that the Town did not have an actual definition, so it will now officially be called a "detached accessory garage" and there is a definition included. Mr. Gulbranson further stated, in the residential district, section 155-10, Council will see that "any lot less than .75 acres still may have up to an 800 square-foot detached accessory garage." Mr. Gulbranson stated, on the second page, there has been an addition – which Council previously discussed – which states "any lot of greater than .75 acres may have a detached accessory garage not to exceed 1200 square-feet." Mr. Gulbranson further stated the next item is "storage space located in the attic shall be included in the total square footage," with the word "storage" replacing the word "habitable." Mr. Gulbranson continued with "a detached accessory garage must have a pitched roof and shall not exceed either one-and-a-half stories or 18 feet in height." Mr. Gulbranson stated "no detached accessory garage should be located in the front yard area." Mr. Gulbranson stated "a detached accessory garage shall have the following setbacks from the rear and side property lines, which is a sliding scale based on the size of the building: up to 800 square-feet, the setback would be 10 feet; 800 to 1000 square-feet, the setback would be 15 feet; and more than a 1000 square-feet, the setback would be 20 feet." Mr. Gulbranson stated "a detached accessory garage shall not occupy more than 20 percent of the side or rear yard in which it is located." Mr. Gulbranson stated "all accessory buildings and principle buildings shall not exceed the maximum lot coverage of 30 square-feet," which is in the current Code. Mr. Gulbranson stated the one added from the last Council meeting was "all properties along Route 26 and Route 17 shall follow the Town's development standards and guidelines." Mr. Gulbranson further stated that takes any residential property and issues the new Code citations for accessory garages. Mr. Gulbranson stated in section "F," "a structure other than a primary residence or a detached accessory garage, such as a shed, could be used for storage of equipment to maintain that property on an individual parcel; however, the structure is not to be used for rent or income nor for any type of commercial storage other than personal use. Said structure shall not exceed 400 square-feet," and that is for any other accessory structure in the residential zone.

Mr. Gulbranson stated in section 2, for section 155-13C(1), "Route 26 Commercial Town Center – Commercial District," which mimics the residential requirements for size, "anything less than .75 acres may have up to an 800 square-foot accessory garage, and anything in excess of .75 acres may have up to a 1200 square-foot building." Mr. Gulbranson stated basically the requirements are the same with the setbacks going by a sliding scale based on the size of the structure; coverage has not changed – cannot exceed 35 percent of the lot size; and any structure will have to follow Route 26 design standards if it is in that corridor. Mr. Gulbranson further stated section three (3) is the amendment to the appurtenances section to clarify the language, and reads as follows: "Accessory buildings which are not a part of main building, and are not a detached accessory garage, may be constructed in a rear yard setback area provided that such accessory buildings do not contain more

than 600 square-feet of area and provided that the accessory building may be located 5 feet from the side lot line and 5 feet from the rear lot line unless otherwise specified in a particular zoning district.”

Mr. Gulbranson stated in section four (4) there is the definition, which Town Manager Debbie Botchie, Town Code & Building Administrator Eric Evans, and he worked on: “Detached accessory garage: an accessory building detached from a single family residential unit with overhead doors or bays, used for the purpose of storage of passenger vehicles, trailers, boats, and other household goods, and tools of the owner or occupants of the primary single family residential unit.” Mr. Gulbranson stated hopefully that clarifies some of the issues discussed at the last Council meeting. Mr. Gulbranson stated he knows there has been one issue floating around which is possibly putting a limit on the number of accessory structures. Mr. Gulbranson stated the size is definitely limited by the coverage and percentage requirements but there could be a lot of small buildings, which is something Council may want to discuss this evening. Mr. Kent stated that is a little concern he would have because the Town is upscaling the garage facility, allowing for an extra building (which is fine), but, at what point, does the Town have a statement that says 5 feet is OK for a setback. Mr. Gulbranson stated that 5 feet is for the accessory building and not the garage. Mr. Kent stated that is what he is getting at. Mr. Gulbranson stated that is how it is currently written in the Town’s Code. Mr. Kent stated his concern is that the Town is allowing for a bigger building and he has no problem with the second building, but if there was a third or fourth building, that would be too much – especially for the neighbors. Mr. Gulbranson stated to keep in mind that this is the residential district and the “C-1” (commercial) district, which are the larger lots within the Town and they are not within a residential planned community (RPC) or a master planned community (MPC). Mr. Kent stated yes, but asked if these larger lots are not potentially backing up to a property owner who is in an RPC or MPC. Mr. Gulbranson stated he has increased the setbacks for the garages but did not increase the setbacks for the other accessory structures which could be placed on the property. Mr. Evans stated he does not think the setbacks on the smaller structures is a big issue, and he thinks the limiting of the amount of accessory structure buildings a property owner has is not a bad idea.

Council Member Joan Bennett asked if an individual had a commercially-zoned piece of property but it was used as a residence, they would be allowed to have an accessory structure with the current code. Mr. Gulbranson stated the way the code is written is if it is a residentially-used property, the residence is the primary structure and the accessory is supposed to be just that – an accessory to that primary use. Ms. Bennett stated such as a detached garage. Mr. Gulbranson stated yes. Mr. Gulbranson further stated typically in zoning the accessory structure is supposed to be smaller than the principal use, so if someone had a 5,000-square-foot house, then most likely the garage and shed will be smaller than the house. Mr. Gulbranson stated the problem is if the property is used commercially, there is no set limit to how big an accessory structure could be because it is part of the business. Ms. Bennett asked if Council were to do nothing, would property in a commercially-zone used residentially be capped at 800-square-feet. Mr. Gulbranson stated yes, if the property was used residentially.

Ms. Bennett stated she sees in the residential section, subsection 7, underneath the first graph, that “a

detached accessory garage shall not take up more than 20 percent of the side or rear yard in which it is located.” Ms. Bennett stated if she had a fair-sized side yard and a fair-sized back yard, so is it “or” or “and,” because if it is “or,” she can see someone coming in and thinking they can put up an accessory structure in the side yard, which does not go over 20 percent, and a structure in the back yard which does not go over 20 percent, as well as each not being over 300 square-feet so that is not exceeded, then there are multiple structures. Mr. Gulbranson stated the garages are allowed either in the side yard or the rear yard, but, Ms. Bennett is correct, there is no limit. Town Solicitor Seth Thompson stated, looking on the first page, he thinks the Town could change it to “accessory uses are incidental to and support principal use of the lot, the following are permitted accessory uses,” and then, under subsection A, the Town could say “1: Detached Accessory Garage.” Mr. Thompson stated with that “#1” item, that helps to limit uses, and the Town does the same thing in the commercial zone. Mr. Gulbranson stated he thinks the Town needs a cap on the number of accessory buildings. Mr. Thompson stated this gets a little “hairy” in the Town’s residential as swimming pools are designed as an accessory use, as well as shelters for domestic pets (i.e., dog houses) and fire places, and there is a broad meaning. Mr. Thompson stated if someone had a dog house and a fire place in their back yard, they would reach their limit of structures even though those things don’t take up a lot of space, and would not be permitted to build a garage. Mr. Gulbranson stated he agrees that the Town has to distinguish the difference between structures and buildings. Mr. Evans asked if, in the write-up, the Town has the terminology of “shed” the Town could use. Mr. Thompson stated the buildings are probably the bigger concern, because not a lot of people are going to be building multiple swimming pools in their back yard. Mr. Evans stated he could see multiple trellises, especially if there was a nice walking garden, but that is more a landscaping issue, but if the language of an accessory shed is used, Mr. Evans thinks putting a capped number on it would be good protection for the Town. Mr. Gulbranson stated he would say “accessory building” because that covers everything. Mr. Evans stated that term covers garages, sheds, playhouses, cabanas, pool houses, etc. Mr. Gulbranson asked what Council would think the appropriate number of buildings would be. Mr. Kent stated that is where the ordinance gets dicey because how many buildings does the Town want to go with because, for instance, there could be a pool house that has a portion of it used as a storage shed in the back yard. Mr. Gulbranson stated yes, but it would only be one structure. Ms. Bennett stated hopefully the percentage will help limit this ordinance with numbers of structures. Mr. Gulbranson stated the percentage will especially help limit these buildings in the residential zones. Mr. Gulbranson further stated he thinks Council can tie the language “accessory buildings” to the ordinance with the size percentage restriction and that would be safe.

Ms. Bennett asked about the discrepancy between the 400 square-feet, in section “F,” and the 600 square-foot structures listed elsewhere. Mr. Gulbranson stated the intent of what is written within the original Code is that, within the residential district, a property owner can have a 400 square-foot accessory building, and, in the commercial district, a property owner can have a 600 square-foot accessory building. Ms. Bennett asked if the supplementary district regulation is only pertinent to the commercial portion. Mr. Gulbranson stated it is not but he thinks “F,” in the residential section, caps the residential district at 400 square-feet. Mr. Evans asked if there is a setback on the 400 square-feet in residential. Mr. Gulbranson stated he thinks it is five (5) feet. Mr. Gulbranson stated the residential district regulations do spell out the setback, but it is just not here because Council is not

modifying it. Mr. Thompson stated the only provision of the supplementary regulations is that it has a more specific figure in the residential, which is the 400 square-feet versus the 600 square-feet, but it does not address the five (5) feet setback, and that seemingly is in conflict, although it could be made clearer. Mr. Thompson stated one way to make it clearer would be to put in that “the building does not contain 600 square-feet of area in the commercial or 400 square-feet in the residential district.”

Mr. Gulbranson stated, back to the cap, in the term of the numbers of buildings, he is thinking three (3) buildings. Mr. Kent and Mr. Gordon both agreed with that number. Mr. Evans stated the language should say something like “the property owner is allowed three (3) accessory structures, excluding dog houses, swimming pools, fire places, play houses, etc.” Mr. Gulbranson stated he thinks the Town should differentiate between “building” and “structure,” and limit the number of buildings to three (3) or four (4). Mayor Hocker stated he would say no more than four (4). Ms. Bennett stated she is ambivalent because she thinks the coverage percentage is going to take care of it – even in the larger lots. Mr. Gulbranson asked if Council would like to set a maximum number. Mayor Hocker stated they may not need a maximum number because the square-footage is going to be restrictive. Mr. Kent asked if a property owner needs a permit to get pre-fabricated buildings placed on their property. Mr. Evans stated yes. Mr. Kent asked, regarding the pitched roof, if the Town needs to have a minimum pitch described. Mr. Gulbranson stated that number is in the design standards, which covers anything on Route 26 whether it’s residential or commercial.

Mayor Hocker stated Ordinance 14-02 would be placed on the Council’s January 14, 2014, meeting docket for vote.

5. PROPERTY OWNERS/AUDIENCE COMMENTS:

There were no comments.

- 6. ANNOUNCEMENT OF NEXT MEETING – December 10, 2013** – Mayor Hocker announced the next meeting of the Town Council would be a Town Council Meeting on Tuesday, December 10, 2013, at 7:00 p.m.

7. ADJOURNMENT:

Council Member Kent motioned for adjournment at 8:16 p.m. Council Member Gordon seconded his motion. All present voted yes. Motion carried 5-0.

Respectfully submitted,
Matt Amerling, Town Clerk