

**MINUTES OF THE MILLVILLE
TOWN COUNCIL MEETING
July 8, 2014 @ 7:00PM**

In attendance were Mayor Gerry Hocker, Deputy Mayor Bob Gordon, Council Members Harry Kent and Steve Maneri; Town Solicitor Seth Thompson, URS representative Kyle Gulbranson; and Town Manager Debbie Botchie and Executive Assistant Matt Amerling.

1. CALL TO ORDER:

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

2. PLEDGE OF ALLEGIANCE TO THE FLAG

3. ADOPTION OF TOWN COUNCIL MINUTES

A. Adoption of Town Council Minutes – June 10, 2014

B. Adoption of Town Council Executive Session Minutes – June 10, 2014

Council Member Harry Kent motioned to approve the Council and Executive Session minutes for June 10, 2014. Council Member Steve Maneri seconded the motion. Motion carried 4-0.

4. ACCEPTANCE OF TREASURER’S REPORT

Due to the absence of personnel, there was no treasurer’s report.

5. ADMINISTRATIVE REPORT

Due to the absence of personnel, there was no administrative report.

MOTION TO ENTER PUBLIC HEARING

Deputy Mayor Gordon motioned to enter the public hearing at 7:02 p.m. Mr. Kent seconded the motion. Motion carried 4-0.

6. PUBLIC HEARING

A. Public Hearing Notice – Secretary Harry Kent

B. Written Comments – Town Manager – Comments from Sally Griffin and Penney McCormick were read for the record.

C. Review and discuss a revised final site plan application, submitted by Millville Seaside Properties II, LLC; in Millville by the Sea (MBTS) / Sand Dollar Village Phase II. The applicant is requesting an addition of 6.5-foot wide use easements to the following lots: 40-45 and 48-53. *Synopsis:* On February 12, 2013, the Town Council approved the final site plan for Sand Dollar Village Phase II and the Developer had the plans recorded as approved. On April 23, 2014, Scott and Shuman, PA, recorded a Deed of Use Easement for the Developer in the Sussex County Recorder of Deeds, encompassing the majority of lots in said phase. On June 9, 2014, P&Z recommended the plan to Council subject

to the fact that Millville Seaside Property II LLC provides upfront notification in sales literature as to the “dos and don’ts” associated with the use easements.

Council Member Steve Maneri recused himself from this item of business. Town Manager Debbie Botchie read two letters – one from Ms. Penney McCormick, of Tybee Street, who was unable to attend the meeting, and the second from Ms. Sally Griffin, of Huntington Street.

Mr. Doug Smith, of Miller & Smith and Millville Seaside Properties II (MSP2), stated his apologies for having to come before Council in this manner and, in hindsight, this could have been done better, but when MSP2 has done use easements before, it has not been necessary to go before Council. Mr. Smith stated MSP2 has distributed out information packets to Council regarding the sales information distributed to potential buyers. Mr. Smith stated the specific easement Miller & Smith is trying to do are cottage units (pictures provided) with the property line in the middle, between the two units, but not trying to change the property lines but rather “homeowner A” gives a right of “homeowner B” to use that six-foot easement in order to “enhance the livability of that side space and add value to the product.” Mr. Smith stated this is something that Christopher Company came to Miller & Smith and talked about doing this. Mr. Smith further stated what the easement would be providing is the six-foot space – not changing the property line to a zero (0) lot line – but so “homeowner A” can use “homeowner B”’s six-foot lot of space for their enjoyment, and “homeowner B” would use the space next door. Mr. Smith stated this use easement is done in many product types – particularly, in this case, the cottage lot where there is an alley loaded – and provides a full space for each homeowner so the side space can be fully utilized. Mr. Smith stated Christopher Company has done a great job in educating the customer before purchasing a home or agreeing to a use easement.

Ms. Debbie Rosenstein, of MSP2, stated MSP2 knows the use easement situation needs to be explained to potential homeowners, so MSP2 has developed some marketing information containing answers to frequently asked questions (FAQs). Ms. Rosenstein stated these questions include the “beach cottage living” and what it is, why it’s unique, what is the purpose of the use, what does someone having the use mean to the neighbor; and, at the point of sale, if someone is interested in the cottages, the marketing information provided is included in their sales package. Ms. Rosenstein further stated there is a salesperson at the sales office who can answer questions about this package and the use easements, and the potential buyer will see the floorplan of the cottages, the use easement issues, and, if there is further interest, the salesperson can take the potential buyer out to an existing cottage and show them what the use easement entails as well as what is allowed (i.e., plants, shrubs, trellises, etc.) and not allowed (i.e., grills, permanent structures, etc.). Ms. Rosenstein stated a lot of times people ask if a 6-foot-high fence is allowed, but only 4-foot-high fences are allowed. Ms. Rosenstein stated if a buyer does want the home with a use easement, then they would get not just the contract but also an agreement for the use easement; so from the sales process to the contract process and then to the settlement process, the deed of use easement is specifically mentioned in the deed. Ms. Rosenstein stated the deeds are subject to the use easement recorded in the office of the recorder of deeds’ enforcement deed book 4251, page 140. Ms. Rosenstein stated in each step of the sales process, there is information given to the purchasers so that the purchasers are comfortable by the end of the process and comfortable with signing the contract. Ms. Rosenstein stated there are two residents who sent in email messages regarding their favor of the use easements, and that one of

them was in attendance tonight. Town Manager Debbie Botchie stated the resident could stand up during the public comment portion and speak out. Town Solicitor Seth Thompson stated the two emails from residents, Mr. David Carr, who is not in attendance, and from Ms. Frances Deering, were submitted to Council before tonight's Council meeting.

Mr. Smith stated when a customer goes to settlement, the deed of use easement is included at that time and must be signed to continue the buying process. Mr. Smith stated this easement enhances the value of the community and is used in other parts of the country such as California, Texas, and just outside of Washington, D.C. Mr. Smith further stated as the Delmarva Peninsula grows, Mr. Smith thinks people are going to see this used more often down here as well, so, while this concept is probably new to a lot of people here in the room, it is not a new concept, and many of Miller & Smith's customers are coming from areas that have use easements. Mr. Smith stated the customer is educated and aware of every step and responsibility in terms of the use easement process, and by recording this deed, it really solidifies what the use easement not just for this purchaser but for anyone doing a title search on this piece of ground – whether it's an insurance company, a future purchaser, etc. – so the deed of use easement is something that can be found and addressed if there is an issue.

Deputy Mayor Bob Gordon stated he understands the benefit for the developer as going through this process as it should have been done prior to getting to this point; but Mr. Gordon believes this is "opening a can of worms" because it may be nice for the homeowner to buy this property with an easement today, but if he ever wants to rent it out somewhere down the line, who is going to inform the people coming in to rent what the purpose of the property is and what it can and cannot be used for. Mr. Gordon stated he can see a lot of people coming in to Town Hall to complain, and this will make it a headache for the Town as well as the homeowner's association (HOA), and Mr. Gordon sees no benefit to the people or the Town. Mr. Gordon stated this is a nice-looking house, but it's simply on the wrong kind of lot.

Mr. Craig Hovenner, of Christopher Companies, stated it is difficult to regulate what people do, but, in the case of rental property, responsible rental property owners and rental managers have rules and regulations. Mr. Hovenner stated these rules are pretty clearly stated what the renter can and cannot do, so assuming that the rules will be followed most of the time, Mr. Hovenner would suspect that, yes, there may be an issue from time to time just as there is with any rental property. Mr. Hovenner stated this is very similar to what is going on here at the beach with older, similar properties in Dewey Beach and Bethany Beach where homes are closer together, and everybody seems to co-exist and respect each other's rights and privacy. Mr. Hovenner further stated he expects any arguments that arise will be handled person-to-person, and it will not involve the HOA or the Town Council or administration. Mr. Hovenner stated he understands the concern whenever there are residents who live within close proximity to each other because there is always an opportunity for something to arise, but the way these homes are designed is even though the side yard is narrow, it's addressed in terms of the elevation of the house that it faces such that the square windows are high in the wall so if you are seated within the living area of the home, you cannot see out that window into the side yard and vice versa. Mr. Hovenner stated the homes are built in accordance with all the political zoning and building codes, and the side setbacks for those lots are the same as the side setbacks for the single family front-load garage homes which are around the perimeter of the same phase, and it

is a five-foot setback to the property line. Mr. Hovenner stated in the case of the home in question here tonight, the setback is actually six-and-a-half feet because the builder tried to be true to an authentic detailing in terms of cottage appearance, so there is a rather broad overhang on the eaves of these homes. Mr. Hovenner further stated as the Town Code Official pointed out early in the game, the overhang needed to be outside of the setback as well because it is a part of the building so the main building wall is actually six-and-a-half feet from the property line as opposed to five which zoning would have permitted had Miller & Smith not had the broad overhang. Mr. Hovenner stated the lots are what they are because the product was designed to be very flexible, and Miller & Smith have a number of options with the product, which is a single family home, 24-by-30-feet, with no garage and an ample backyard. Mr. Hovenner stated buyers can add on to the backyard, such as an additional bedroom or a detached garage, so there are a lot of options for a buyer to “create their own environ” within the confines of their property line. Mr. Hovenner further stated from a consistency standpoint, it seemed like it was best to create an easement that could be universally applied to, and work for the property owner better than if they did not have a garage or master suite so they could add one of those on. Mr. Hovenner stated if the property owner has this easement as a number of Miller & Smith’s buyers have opted for – the attached master suite and the garage – then the sideyard is the owner’s outdoor space and there is a porch to take advantage of the outdoor space. Mr. Hovenner stated the deed of use easement is a way to improve the overall use and utilization of that space for Miller & Smith’s traditional fee simple homes that have a five-foot setback on both sides, which, although it gets some light and air through there, is somewhat of a nuisance to mow and really has no use for other than maybe an outside shower. Mr. Hovenner stated with this easement, at least one can use the full ground space for recreation, which is why the easement is before Council tonight. Mr. Hovenner stated Christopher Companies and MSP2 honestly felt – based on what they were told – this easement was something that was acceptable, but it was pointed out to them with the process they went through, it was not transparent and it is very unfortunate how the process went. Mr. Hovenner stated he believes there was a misunderstanding in terms of the language of the Town Code applied to a public easement, and Christopher Companies and MSP2 believed this was not a public easement but, rather, a private easement between private parties, given that it was recorded by a subsequent property owner versus the original developer. Mr. Hovenner stated this recording of the use easement was not anything intended to be sneaky, and there was no intention to try and take something that wouldn’t work and trying to make it work by going over Council’s head. Mr. Hovenner stated they were merely thinking of who will enjoy these types of homes and how it will maximize their enjoyment of the property. Mr. Gordon stated, in his opinion, Mr. Hovenner’s reply still has not changed anything.

Mr. Thompson stated the whole interplay with the authority of the HOA when it comes to the HOA is – as he takes it – is that this is not something the HOA will have to enforce but rather will be an issue between the two neighbors if any disputes arise. Mr. Hovenner stated in terms of the use easement in terms of legality, Mr. Thompson is correct, but Mr. Hovenner stated Mr. Billy Scott is much better equipped to answer the question in terms of the HOA. Mr. Billy Scott, of Scott & Shuman, stated there is currently nothing in the deed of use easement that delegates the authority to the HOA or to the Town or anybody else the obligation to either police it or to preside over issues between the two, but there is an arbitration clause in the contract which says if two people cannot agree as to what may be a reasonable use, then there is

an arbitration procedure which will be implemented if it got to that stage. Mr. Scott stated at the P&Z meeting, he spoke a little bit about the understanding that there are these sideyards and, in some cases, Mr. Scott thinks the easement will reduce the amount of potential arguments between neighbors; but there is nothing in the deed of use easement which requires the HOA or Town to get involved, but, rather, a private contractual easement which happens all the time between two landowners. Mr. Scott further stated Council must understand the houses were designed to comply with all of the requirements of the Town, and all the deed of use easement really permits is having twice the size of the six-and-a-half-foot sideyard, making the one side more useable and also giving up the other side of the yard to the neighbor so they have the same amount of space.

Council Member Harry Kent stated he read the information given out by Miller & Smith (& MSP2 & Christopher Companies), telling the property owner what they can and cannot do, and if he is reading this correctly, what Mr. Kent believes Miller & Smith is saying is that permanent structures are considered forbidden so one cannot put a permanent structure up in the other guy's yard. Mr. Scott stated that is correct. Mr. Kent stated the way he understands zoning currently is if he were to put a block patio down in this Town, it is considered a temporary structure and it is non-taxable; however, in Sussex County, a patio of any significance will be taxable. Mr. Kent asked what the remedy is here for the person who suddenly has – on his property – a patio that the guy next door decided to put a patio down. Mr. Scott asked Mr. Kent if he was asking who would be responsible for paying the additional tax if a patio were put down. Mr. Kent stated yes. Mr. Scott stated the person responsible for paying would be the person who benefitted from the easement area – just as they would be responsible for all of the maintenance costs of the easement area. Mr. Kent asked how the County would know to tax the owner who benefits from the easement as opposed to the property owner of title. Mr. Scott stated he does not know if the County would, but, if County increases the tax – and Mr. Scott is personally not convinced County would increase – but if County would increase the tax, County would reassess and tax it to the title owner and not the easement owner. Mr. Hovenner stated MSP2 and Christopher Companies agreed at the P&Z meeting to send an exhibit to the County assessor just to try and head that off at the pass, so Christopher Companies will send them an exhibit – a plaque for this phase – to let County know what is going on, and hopefully that will address the issue that there are no guarantees and some assessments could possibly be flagged for an extra patio. Mr. Hovenner stated he is not sure how the assessors actually walk the individual properties and know there is a patio there, but that is the only proactive thing Christopher Companies could do.

Mr. Chuck Ellison, of Miller & Smith, stated to even put in a block patio in Sussex County, one has to get a building permit for it, so, therefore, the County assessment and assessor goes by the name on the building permit which would be the person who benefits from it. Mr. Kent stated he knows where Mr. Ellison is going with his answer but Mr. Kent's concern is the title holder is going to be the person who County is going to go to and not the person who put the permit in. Mr. Kent stated he is not sure the building people and the tax people work that closely enough to know who puts in what and who should be taxed for it. Mr. Kent stated his other question is, assuming he puts in a patio, the information handed out by MSP2 and Christopher Companies states one cannot have barbecue grills, but, if Mr. Kent is going to enjoy this property, most people down at the shore assume they can grill food. Mr. Scott stated one can grill but just

cannot grill in the six-and-a-half-foot easement that is next to your neighbor's home; but you can use a grill in the backyard or front yard. Mr. Kent asked who is responsible for the maintenance such as plantings and other such stuff. Mr. Scott stated the person responsible is the person who benefits from the easement. Mr. Kent asked if the person who benefits likes cactus in the sideyard, then the neighbor is going to have cactus whether he likes it or not. Mr. Scott stated the person responsible for the maintenance of the improvements in that easement will do what he/she wants, but these properties are still subject to the overall covenants for MBTS. Ms. Botchie stated when an individual wants to put in a paver patio, it is under the parcel number so it is under the homeowner and not who's getting the patio; so the person who actually owns the property will be assessed a higher value and it will not be much, but the property owner's tax will go up. Mr. Kent stated it is not the person enjoying the use whose tax will go up. Mr. Kyle Gulbranson, of URS, stated the property owner has to sign the building permit. Mr. Thompson stated when it comes to the Town taxes, the Town will "fall in line" with the County assessment. Ms. Botchie stated yes, the County taxes would be raised, as would the Town taxes. Mr. Kent stated yes, so the property owner who does not benefit from the use easement will have his taxes increased due to something he may not want.

Mayor Hocker asked regarding the insurance liability, who is insuring the six-and-a-half-foot easement? Mr. Scott stated the owner who has benefitted will insure the six-and-a-half-feet, so the homeowner insurance that is taken out – provided that it is a recorded easement because it's not a recorded easement for the lots of which are the subject of the application tonight – then that creates an insurable interest in the person who's benefitted from the easement and can be covered by their own homeowners insurance, but it has to be recorded for that to happen. Mr. Kent asked to further clarify the process. Mr. Scott stated the homeowner's insurance that you would take out for your home covers the easement area so long as the easement is a recorded easement; and the deed of use easement creates an insurable interest in the person being benefitted by the easement, so if you had a private contract with someone, that is probably not enough for the homeowner's insurance company but the recorded easement creates the insurable interest in the person benefitting from the easement. Mr. Kent asked if he is enjoying the benefit, then he should be paying the insurance bill. Mr. Scott stated no, when you take out your homeowner's insurance, the insurance covers that easement area. Mr. Kent asked if his neighbor has a cousin or relative or friend and they fall from the roof of the neighbor's house into Mr. Kent's easement area, does it go on Mr. Kent's insurance? Mr. Scott asked if Mr. Kent is the one who is benefitting from the easement area. Mr. Kent stated yes. Mr. Scott stated if you are the one benefitting from the easement area, you have the obligation to indemnify the person allowing you to be in that easement area – which would be your neighbor – and then it would come against your homeowner's insurance. Mr. Kent stated it is the neighbor's cousin who falls off the side of the neighbor's house while painting or doing roof work onto Mr. Kent's easement. Mr. Scott stated Mr. Kent is only required to indemnify the person who granted Mr. Kent the easement if it is Mr. Kent's use of the easement area, and the neighbor does not have the right to be in the area, so Mr. Kent would be required to indemnify them. Mr. Kent asked if the neighbor had the right to be doing maintenance on his own home. Mr. Scott stated the neighbor has a right to be in that easement area so long as he is not interfering with the benefits and uses of what he has granted to his neighbor. Mr. Smith stated he thinks in the use easement it talks about maintenance of the homes and as long as there is reasonable notice of a neighbor needing to fix their siding or roof, then it's no different than any other house where the neighbor

has to occasionally use their neighbor's space to maintain their house or yard. Mr. Smith further stated he thinks these use easements are something any homeowner could do in any part of Millville. Mr. Kent stated with this situation, it concerns a cluster of a significant number of homes and it amplifies everything Mr. Smith and Mr. Scott are saying; and Mr. Kent can understand that an individual can grant a use easement but who will arbitrate when there is an issue? Mr. Scott stated the easement says there is a prevailing party provision which says that if you end up in a lawsuit, the person who loses the lawsuit is going to be responsible for paying for the person who wins the lawsuit and it would end up in chancery court. Mr. Kent stated he is trying to look ahead so the current people are happy about this easement, but if something arises and the owners go to the HOA, but the HOA tells the owners the HOA does not handle the issue and to go to the Town, then the owners will go to the Town, and what is the Town supposed to say because the Town has no authority over the issues? Mr. Scott stated Mr. Kent is correct and the Town would have to tell the owners it is not within the Town's authority to handle the issue, and it's the same with any dispute between neighbors which would be considered a private dispute and civil matter.

Mr. Kent asked how many of these personal use easements are currently in Sussex County. Mr. Scott stated he was not sure of anything exactly like this in Sussex County but asked Mr. Smith if he had the answer. Mr. Smith stated MSP2 recorded personal use easements as part of single family homes within a community in the peninsula; and he knows there are not a lot in Sussex County right now but there are a lot across California, Texas, Maryland, and Virginia, and they've been there for 30 years – and California is probably one of the most litigious states in the country – and you don't really see a lot issues of that magnitude with these use easements. Mr. Smith further stated MSP2 has built maybe 300 or 400 houses with use easements in communities in which they have been either a builder or developer and they have had no issues. Mr. Kent asked if this however was another state. Mr. Smith stated yes, but future homeowners here will be made to understand what the use easement is so as they are purchasing that house, the real estate agent is selling that easement as a benefit of the house. Mr. Kent asked if the entire curb-to-curb easement is granted to the property owner to use. Mr. Smith stated yes. Mr. Kent asked if the easement included up to the corner of the property owner's neighbor's front porch. Mr. Smith stated the use easement is to the fence, the front of the back of the property line. Mr. Kent asked which it is – to the fence or the property line. Mr. Gulbranson stated the easement as presented runs to the right-of-way line – front to back – along the property line, and the fence is most likely is on the front setback line so the use easement goes from the front fence, running along the property line, to the rear right-of-way line. Mr. Kent stated he finds it hard to understand because the fence – to Mr. Kent – looks like it is set back from the front of the porch so the setback line has got to be forward to that step. Mr. Gulbranson stated the setback line is probably the front porch and the stoop is probably encroaching into the setback line, so, probably, if you're looking from the front post, running along the property lines to the back right-of-way line, and that is what is indicated on the plan presented tonight.

Mayor Hocker asked, regarding the Peninsula, he had no idea there other situations with use easements in Sussex County, and asked if these easements were something that the County granted and recorded or was it something the developer did amongst themselves within that property and worked out the agreement with the adjacent property owners themselves. Mr. Smith stated he thinks the way some of the stuff was done on the Peninsula is the way the

zoning is that even though they are single family lots, it is under a federalist condominium type zoning so those use easements are recorded throughout the Peninsula on all the single family lots because they could be on condominium lots but it defines what your space is and what you have to use. Mayor Hocker asked if there wasn't any Town involvement. Mr. Smith asked he has not done the research but all he knows is what is in place on the Peninsula when MSP2 has dealt with use easements. Mr. Kent stated he has no photo of what the backyard area of these lots look like and he is curious as to how they look. Mr. Thompson stated he thinks the testimony was that there are occasionally garages on the back side. Mr. Gulbranson asked if it is possible that your neighbor's driveway may be in your use easement area. Mr. Hovenner stated no because of the linear nature of the driveways, but, to Mr. Kent's point, the easement he is looking at has subsequently been vacated so that is no longer record and it was not MSP2 or Christopher Companies' intention to encompass the front yard areas in the scope of the easement; so if and when there is Council's permission to have this re-recorded, MSP2 and Christopher Companies would eliminate that front section which is about 16 feet, which includes an 8-foot porch and the setback to the property line. Mr. Hovenner further stated the fences are restricted to encroach frontwards from the main building wall because MSP2 does not want the fences to come out into the front porch area. Mr. Kent stated regarding a request for a high fence and only being able to get a four-foot fence, if this easement is granted, the fence is which homeowner's decision. Mr. Hovenner stated the fence shown is a standard part of the product offering and that same fence can be applied anywhere, including the back. Mr. Kent asked if Mr. Hovenner is saying, because of the HOA, the property owner cannot use any other height but the particular four-foot fence height. Mr. Hovenner stated because of the ARP. Mr. Kent stated he was under the impression there was some other fence height and Mr. Kent is trying to picture how this fence and all would lay into each other. Mr. Hovenner stated anything done in this phase, in the future, would be consistent with what is there.

Mr. Thompson asked Mr. Scott if he knew if the Peninsula use of these use easements was approved through the County or done privately. Mr. Scott stated he does not know the answer to that. Mr. Kent stated he was looking over the information packet distributed by MSP2, Christopher Companies and Miller & Smith, and it shows the easements portrayed in this discussion, and it looks to Mr. Kent as if there is a 40-foot lot with a use easement on it, and in another lot in the next section up, there is the same lot but without a use easement. Mr. Hovenner stated the way the homes are designed to be sided, there is the side porch always facing north and south so on one road, all the porches face south, and the person on the end's porch is facing the street, so there is no need for an easement there. Mr. Kent asked about the 38-foot lot since they do not look like they have any easements and asked if the homes are the same product. Mr. Hovenner stated those homes are the same product but those are the other lots which easements currently exist on already, but the lots being discussed tonight are the second half of that section. Mr. Thompson stated those lots which already exist have already been recorded. Mr. Kent asked if the easement is smaller on the first set of homes because of the homes discussed tonight are 40-feet and the pre-existing ones are 38-feet, the pre-existing ones are two feet smaller, and what happened to the two feet. Mr. Hovenner stated you have 24 feet in the house and six-and-a-half feet on one side, so that is 30-and-a-half-feet, so there is an extra seven-and-a-half-feet on the 38-foot lots, and an extra nine-and-a-half-feet on the 40-foot lots.

Mr. Thompson stated why the Council is here tonight is for an amendment to a final site plan

and this amendment – according to Town engineer Kyle Gulbranson – meets the Town requirements of what needs to go on a site plan; and the question for Council is whether this site plan’s deed of use easements fit with the purposes of the Town’s zoning code and subdivision code. Deputy Mayor Gordon asked if for some reason Council rejects the developer’s proposal tonight, what is the developers’ next step? Mr. Thompson stated arguably, the developers can re-record because this is not technically the developers’ property. Mr. Gordon stated he understands about those property owners who have already bought land with use easements and how they will not be affected, but it does not address Mr. Gordon’s concerns with the future logistics of who will police all of this, who is going to be responsible, where is the zoning going to go, who is in charge of a particular piece of property. Mr. Gordon further stated if it is all confusing to Council, it’s got to definitely be confusing to the people who are signing for the house. Mr. Thompson stated he cannot disagree with Mr. Gordon and Mr. Thompson thinks that is why the applicant presented the information in terms of what they’re doing upfront, because the testimony reflects this is highly uncommon for our immediate area.

D. Property Owner Comments & Questions

Mr. Thompson stated at this point in the hearing, it is the public’s turn at asking questions and making comments. Mr. Steve Maneri, of Pembroke Lane, stated he is speaking as a private citizen, and Mr. Maneri thinks what happened here is a grave injustice because MSP2, Christopher Companies, and Miller & Smith went ahead and recorded this deed of use easement without the Town’s – or Council’s – knowledge. Mr. Maneri further stated to allow MSP2, Christopher Companies and Miller & Smith to be able to do this use easement, the Town is setting precedent for other builders to do a “trailer park scheme.” Mr. Maneri stated if he owned one of those houses and he had a renter or full-time resident next to him, and they built a patio up to his home, which they can do, and they put up a grill, who will stop them? Mr. Maneri asked if there is anyone constantly patrolling the area. Mr. Maneri stated he could be trying to sleep and he’s got a loud group of neighbors standing against his house, keeping him awake, and he thinks that’s wrong. Mr. Maneri further stated with the neighbor getting a hike in their property tax, and hearing the tax won’t be raised that much; however, it is still a raise in taxes – Mr. Maneri doesn’t care if it’s one cent, that is one cent more that the neighbor should not have to pay.

Ms. Pat Moulder, of Tybee Street, asked at what point are potential customers notified of the use easement. Mr. Thompson stated he thinks the applicant will address that again at a later point.

Ms. Fran Deering, of Park View Street, stated she owns a cottage with a use easement in MBTS, and her choice before she bought that product was either a “Sea Isle” on a single family lot or the cottage which she wound up buying. Ms. Deering stated she liked the concept of the cottage – it is very private versus the single family home which has no privacy when you’re sitting out on your front porch or patio. Ms. Deering stated she selected the cottage, it was her choice and what she wanted; and she takes care of from the front to the side of her house in the back, which includes maintaining the yard. Ms. Deering stated if she did not like the concept of the easement, she never would have bought the house. Ms. Deering stated regarding the barbecue, according to the fire department, it is a fire hazard to put a barbecue closer than six feet from the house, so Ms. Deering likes that restriction and does not want somebody putting a barbecue

against her house on the neighbor's easement side. Ms. Deering stated regarding renters, if Ms. Deering's neighbor has a renter and they do something she finds offensive, she will have a dialogue with her neighbor, and if they don't fix it, then she will go to the HOA. Ms. Deering stated it is the property owner's responsibility who they rent their house to inform them to maintain that the renter abides by the rules and regulations of the HOA. Ms. Deering stated regarding property values, Ms. Deering thinks this product is unique, different and reminds her of a townhouse in a cottage form, and she does not see the property values going down at all. Ms. Deering further stated regarding the use easement, Ms. Deering owns property in Florida and she had a five-foot county easement there, and there was an awareness that if the county (in Florida) needed to get back into her property for whatever reason, it was her responsibility – financially – to put back whatever the county may have dug out. Ms. Deering stated she was fully aware of the easement in MBTS, she liked it, that was why she selected that particular product, and she is very happy there.

Mr. Richard Shoobridge, of Tybee Street, stated he did not know there were any set of easements involved in the first set of houses allotted in 2013, and he would like to see Council vote this amendment down because the residents of MBTS have been lied to, cheated, promised condo documents for two years now – which the residents have not received – and he thinks this decision will adversely affect MBTS's HOA.

Mr. Bob Linett, of Tributary Lane, stated he thinks because this looks like a single family house and it is not, there should have been notification about it when it was discussed at the P&Z meeting. Mr. Linett stated, at P&Z Commission's request, MSP2 showed him the document which was prepared by Christopher Companies to tell people what could be expected and he think it was a legal back-and-forth as opposed to an actual situational thing regarding what the easement neighbor can possibly do with their sideyard. Mr. Linett further stated what he most regrets is he thought the Town had a good dialogue going with Miller & Smith, and Mr. Linett is not sure the Town was "dealing with the right people," and somehow the Town's Code having to do with the subdivider has to be rectified so when P&Z and Town Council deals with a development coming in to Town, the Town will know who they are dealing with so the plan envisioned on a piece of paper is what is realized.

Ms. Rosenstein stated regarding when potential customers are notified about the use easement, the potential customer is given the information provided earlier and shown on site what the easement is and how it works. Ms. Rosenstein stated when and if they decide to buy, they have a deed of use easement at the contract signing so by the time they get to settlement, the customer knows what they are buying.

Mr. Smith stated what is evident is that within the community there are different types of products that appeal to different types of people – and that includes the use easement which brings some more character to the community. Mr. Smith stated if MSP2 and Christopher Companies were not transparent, he is sorry but they have put in some policies and procedures to make sure this is much clearer in the future, and this was merely a misunderstanding between what a private use easement is and what a public use easement is. Mr. Smith stated this product may not be the kind of product that appeals to you as a purchaser but it is a product that does appeal to customers; and all the policies and procedures as far as protections are followed

accordingly.

MOTION TO EXIT PUBLIC HEARING

Mr. Gordon motioned to exit the public hearing at 8:31 p.m. Mr. Kent seconded the motion. Motion carried 3-0.

7. NEW BUSINESS

- A. Review and discuss the revised final site plan application, submitted by Millville Seaside Properties II, LLC; in MBTS / Sand Dollar Village Phase II. The applicant is requesting an addition of 6.5-foot wide use easements to the following lots: 40-45 and 48-53.

Council Member Harry Kent motioned in favor for the request of the revised final site plan submitted by Millville Seaside Properties II LLC, located in MBTS/Sand Dollar Village Phase II, an addition of 6.5-foot wide use easements to the following lots: 40-45 and 48-53. Mr. Thompson stated this will not have to do with the front easement going all the way to the right-of-way. Mr. Gordon seconded the motion for purposes of further discussion. Mr. Kent voted no because he feels this will be a problem going forward because he does not see the HOA taking up any disputes – and he understands it should go to court – but Mr. Kent sees the Town having to intercede and it is a burden the Town does not need. Mr. Gordon voted no because his concerns are the same as Mr. Kent’s concerns (i.e., who will police the regulations, and who will maintain what), as well as containing more future problems rather than solutions. Mr. Hocker voted no because even though the product looks good and he is sure it fits well within the community, but the product is so new that the Town needs some better data for future recourse because once the developer is gone, the units continue to resell and any issues will become the Town’s issues – especially if the Town approves of this easement. Mayor Hocker further stated he knows there are private ways that the developer can have use easements and that is there, but in terms of precedence, Mayor Hocker cannot speak for other developers but he is not so sure this is so new, and if Council voted for this, it would set precedence for the future. Mayor Hocker stated if MSP2 does this use easement privately and it works, then bring it before Council again and maybe it can be integrated into another phase. Mr. Maneri recused himself. Motion failed 3-0.

Mr. Kent made a motion to reject the request made by Millville Seaside Properties II, LLC for the addition of 6.5-foot wide use easements to lots 40-45 and 48-53 in MBTS / Sand Dollar Village Phase II. Mr. Gordon seconded the motion. Mr. Kent stated his reason to reject is because he feels the easement will be a problem with the Town, which he feels will be the mediator of any disputes. Mr. Kent voted yes. Mr. Gordon voted yes. Mr. Hocker voted yes. Mr. Maneri recused himself. Motion carried 3-0.

8. PROPERTY OWNERS/AUDIENCE COMMENTS:

Ms. Linda Kent, of Cypress Point Trail, stated, as Farmers Market manager, the market did very well this past week with total sales being \$2238.00 combined from produce and everything else. Ms. Kent stated the Beebe Medical Center representatives will be at the market on July 17, 2014, as well as the Delaware State Department of Health attending to provide Medicare information for Part D, which has changed. Ms. Kent stated Beebe will return on August 14,

and on August 21, the Delaware Department of Natural Resources and Environmental Control (DNREC) will most likely be at the market, speaking on water conservation and composting. Ms. Kent stated Operation SEAS the Day had a table at the market on July 3 and will be back in another couple of weeks to continue selling hats and shirts, the money of which will go to the families so they will not have to put any money out because the organization sees to the meals and transportation, but there are some small essentials. Ms. Kent stated she will let the Town know more when she gets more details.

9. ANNOUNCEMENT OF NEXT MEETING: The next meeting will be the Town's workshop on July 22, 2014.

MOTION TO GO INTO EXECUTIVE SESSION

Deputy Mayor Gordon motioned to exit the normal Council session and enter into Executive Session at 8:44 p.m. Mr. Kent seconded the motion. Motion carried 4-0.

10. EXECUTIVE SESSION – Preliminary discussions on site acquisitions for any publicly-funded capital improvements.

MOTION TO COME OUT OF EXECUTIVE SESSION AND RECONVENE OPEN MEETING.

Deputy Mayor Gordon motioned to come out of the Executive Session at 9:02 p.m. Council Member Maneri seconded the motion. Motion carried 4-0.

11. ADDITIONAL NEW BUSINESS

A. Discussion and possible vote on Executive Session matters.
There was no vote.

12. ADJOURNMENT:

Deputy Mayor Gordon motioned to adjourn the meeting at 9:02 p.m. Council Member Kent seconded the motion. Motion carried 4-0.

Respectfully submitted,
Matt Amerling, Executive Assistant