

**MINUTES OF THE MILLVILLE
TOWN COUNCIL MEETING
January 14, 2014 @ 7:00PM**

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

Mayor Hocker led the pledge of allegiance.

3. ADOPTION OF TOWN COUNCIL MINUTES

Deputy Mayor Jon Subity motioned to adopt the Council minutes from December 10, 2013. Council Member Harry Kent seconded the motion. Motion carried 5-0.

4. ACCEPTANCE OF TREASURER'S REPORT

Council Member Bennett read the Financial Report for the month ending 12/31/13.

December 31, 2013:

General Revenue:	\$	13,417.	General Expenses:	\$	38,857.
Restricted Revenue:		32,992.	Restricted Expenses:		8,470.

Council Member Bob Gordon motioned to approve the Treasurer's Report for the month ending December 31, 2013. Deputy Mayor Jon Subity seconded the motion. Motion carried 5-0.

5. ADMINISTRATIVE REPORT

Town Manager Debbie Botchie had no comments.

6. NEW BUSINESS

A. Discuss and possible vote on a three year (3) year extension on the approved final site plans for the Dove Landing Residential Planned Community. *Synopsis:* Final Plans for the Dove Landing RPC was approved in December of 2007; the Code states a subdivision will be deemed null and void after three (3) years of recording unless substantial construction is in place. The developer was granted a three (3) extension on February 8, 2011.

Mr. Steve Marsh, of GMB, asked for a 3-year extension on the final site plan approval of Dove Landing. Mr. Marsh stated the Sussex Conservation District recently approved an extension request on stormwater approval, which was critical to Beazer and GMB because the stormwater rates changed in January. Mr. Marsh stated the entrance to the community has already been constructed – being a part of the Burbage Road improvements – at the same time the entrance to Bishops Landing was constructed, and DeIDOT has released that bond, so DeIDOT has accepted the entrance as it is currently constructed. Mr. Marsh stated the reason for this request is because Beazer team has put invested considerable resources into Bishops Landing right now,

sales as well as development are going great at Bishops, and Beazer feels that, in three years, they should be able to transfer that investment over to Dove Landing and get that community going without having a negative impact or “cannibalizing” what’s going on at Bishops Landing.

Council Member Harry Kent stated Beazer has been out there how long and there is another request for three more years. Mr. Kent asked if there is any process so if Beazer comes to Council again in three years, will Council have to go through another extension. Town Manager Debbie Botchie stated the Town’s Code does not include or require a cap on how many times a developer can extend. Town Solicitor Seth Thompson stated the site plan has not changed at all. Mr. Marsh stated that was correct. Mr. Steve Brodbeck, of Beazer Homes, stated the primary focus is Beazer has established Bishops Landing and they want to keep the growing velocity going, and Beazer does not want to “compete against ourselves,” but keep the positive momentum going. Mr. Brodbeck stated Beazer is not looking for completion in three years or more, but rather 18 to 24 months, and with the DeIDOT state entrance already in and approved, Beazer is dedicated to keep going. URS representative Kyle Gulbranson stated the entrance being constructed is a huge milestone itself. Council Member Bob Gordon asked if the Council does not grant this extension, what will happen next, or would Beazer reduce the time from a 3-year period to an 18-month period. Mr. Brodbeck stated to keep in mind that when the previous 3-year extension was requested, Bishops Landing had not been started at that time and the market was very flat so Beazer did not feel there was validity to the market in this place to put multiple million dollars. Mr. Brodbeck further stated just in the land development of Bishops Landing is \$19 million and Beazer is probably going to be \$12 to \$14 million coming to Dove Landing, so Beazer has to moderate their assets for their shareholders, and because Beazer has already put in the state highway entrance, that is Beazer’s commitment that they are going to be moving over to the Dove site. Mr. Gordon stated his concern is that whatever the Council grants to Beazer – if the extension is granted today – Council is setting precedence that if any other developer comes in, the Town could be sitting on nine years waiting for something to happen. Mr. Brodbeck stated Council has to look at what Beazer has done within the community in the last nine months. Mr. Thompson stated there are also some facts in terms of competing developments, and Council must remember that if the approval lapses, Beazer is free to come in with the exact same plans and ask for approval. Mr. Marsh stated when this project was originally introduced to the Town, the plan had Bishops Landing and Dove Landing as one development but, since then, Beazer has broken the communities up through the approval process and now has simply started the Bishops Landing side first before moving on to Dove Landing. Mr. Gulbranson stated Dove Landing can basically be considered the next phase of Bishops Landing.

Mr. Kent asked regarding the property right now, there are three propane tanks that service Bishops Landing, and if this extension is granted, will there be a risk to the permanent tank farm. Mr. Brodbeck stated no, there cannot be because of the 100 settlements within Bishops Landing which will then convert the site to the permanent tank farm. Mr. Kent stated because of the extension of the other development, is there anything that affects the tank farm plan already in place. Mr. Brodbeck stated no. Mr. Gordon asked when the DeIDOT entrance road was put in and completed. Mr. Brodbeck stated probably about nine months ago. Mayor Gerry Hocker stated he is sure a well-established company like Beazer has been over the life of its developments and would love for the extension to be less time. Council Member Joan Bennett asked Mr. Marsh regarding the numbers of housing units, if there was a “substantial change”

would that would require a re-submission of the plan, and would like to know what would constitute a “substantial change.” Ms. Botchie stated any time there is a five percent change in housing type or access points, then there would be a need for re-submission but the developer would not need to pay the \$450 per lot, but the process does need to start over.

Mayor Hocker motioned to approve a three year (3) year extension on the approved final site plans for the Dove Landing Residential Planned Community. Council Member Kent seconded the motion. Ms. Bennett voted yes. Deputy Mayor Subity voted yes. Mr. Kent voted yes. Mr. Gordon voted yes. Mayor Hocker voted yes. Motion carried 5-0.

B. Discuss and possible vote on a submission of a request from Beazer Homes to release the bond 0606970. *Synopsis:* The bond was for a temporary sales center, which was removed and all work has been completed and inspected by the Town of Millville.

URS representative Kyle Gulbranson stated the site has been inspected by Town Code & Building Administrator Eric Evans and was found to be in good condition and returned to its original state. Council Member Bob Gordon motioned to approve the request from Beazer Homes to release the bond 0606970. Council Member Joan Bennett seconded the motion. Motion carried 5-0.

C. Discuss and possible vote on a submission of a request from Beazer Homes to reduce the bond K08626261. *Synopsis:* The work within Bishops Landing has been inspected by the Town of Millville and meets the approved plans.

Mr. Steve Brodbeck, of Beazer, stated this request was for a bond reduction and not a bond release. Mr. Brodbeck stated the bond was for the right-of-way in phase one, and Beazer had submitted the extra contract documents for top coating and curbing. Mr. Gulbranson stated the original amount of the bond was for \$2,016,995.30, and is now being requested to be reduced to \$439,311, which represents 125% of the cost to complete the improvements. Council Member Joan Bennett motioned to approve the request from Beazer Homes to reduce bond K08626261 as outlined in the January 9, 2014, memo from URS Corporation regarding this bond request where the dollar amounts are stated within. Deputy Mayor Subity seconded the motion. Motion carried 5-0.

7. **PUBLIC HEARING:** Council Member Bob Gordon motioned to open the **Public Hearing** at 7:25 p.m. Council Member Kent seconded his motion. All present voted in favor. Motion carried 5-0.

PUBLIC HEARING

A. To consider enacting Ordinance 14-02 to amend Chapter 155 at Article VI District regulations, §155-10 R-residential district, C. Permitted accessory uses; §115-13. C1 Route 26 corridor/town center commercial district, C. Permitted accessory uses; Article VII Supplementary district regulations, §155-17 Appurtenances, C. Accessory structure and uses; §155-79. Definitions and word usage; Article XIV Terminology. *Synopsis:* Town Council previously met three times and discussed 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 he and the Council have been working for several months on this Ordinance which allows for accessory residential garages in the residential zoning district and the C1 (commercial) district. Those districts were previously allowed but there was some confusion as to the size that was allowed for those types of structures. Mr. Gulbranson stated he and the Council tried to come up with an appropriately-sized accessory garage, and what Council found is that a sliding scale was the best way to approach this issue. Mr. Gulbranson stated the sliding scale basically means that if a property owner has a larger lot, they can build a larger accessory garage. Mr. Gulbranson further stated any structure that is placed on a residential lot in the “R” or “C1” zone is still held to lot coverage requirements, there’s a percentage of coverage that cannot exceed 20% of the rear or side yard, as well as the larger the garage, the greater the setback. Mr. Gulbranson stated he thinks this Ordinance will work out well for the Town. There were no comments or questions from the public.

Deputy Mayor Subity motioned to enact Ordinance 14-02. Council Member Kent seconded the motion. Ms. Bennett voted yes. Deputy Mayor Subity voted yes. Mr. Kent voted yes. Mr. Gordon voted to abstain. Mayor Hocker voted yes. Motion carried 4-0-1 (abstain).

- B.** To consider for approval the final site plan submitted by Millville Town Center, LLC, located within Millville by the Sea (MBTS), on parcel 1-34-12.00-380.00 (part of). The applicant is proposing to develop for construction four (4) building lots per plans dated October 10, 2013, by CEA, LLC. Synopsis: The Planning & Zoning Commission met on October 21, 2013, and agreed to recommend for approval by Town Council for the model community, with a proviso that the setbacks are equal to what is to be established for the remainder of the community.

Mr. Chuck Ellison, of Miller & Smith, stated Miller & Smith recently submitted a plan to the Planning & Zoning (P&Z) Commission for Summerwind Village (which Mr. Ellison pointed out on his map), and Miller & Smith are requesting a new model home park on four lots in the southeast corner of the plan. Mr. Ellison stated Miller & Smith had submitted all of the necessary permits to the necessary agencies – all of which were approved. Council Member Joan Bennett asked if there would be additional signage shown on the plan would be just for Summerwind Village. Mr. Ellison stated the sign would be for all of MBTS. Ms. Bennett asked in reference to the four model homes being constructed, is it the intention of Miller & Smith to retain the four models permanently, or would the models be a long-term temporary feature to introduce the models that are particularly being built in Summerwind Village. Mr. Ellison stated he would guess that Miller & Smith would need those models for a three- to five-year window because they do change product periodically, for instance, as they get into other villages within MBTS; and then they would be sold as residence homes. URS representative Kyle Gulbranson stated URS has gone through the final site plan with P&Z, and the plan meets the Town’s requirements, as well as the conditions of P&Z.

Mr. Richard Shoobridge, of Tybee Street, stated Mr. Ellison just requested a sign for the new neighborhood (Summerwind Village), and, having lived in MBTS for over four years, Sand Dollar Village has no sign on either end of the community to identify the name. Mr. Shoobridge asked if Mr. Ellison had taken into account that there is no sign for Sand Dollar but yet all of these developments have decoration (i.e. rocks, gardens, water, etc.). Mayor

Gerry Hocker stated the sign is not on tonight's docket or application so if Mr. Shoobridge would like to ask Mr. Ellison about this issue, he may do so during the public comments/questions portion of the agenda. Mr. Ellison stated that was correct and Miller & Smith are not requesting approval for a sign at this time, but there has been some discussion about placing a sign outside of Sand Dollar Village as Mr. Shoobridge is not the first person to express his concern over this matter. There were no written public comments.

Council Member Joan Bennett motioned to approve the final site plan submitted by Millville Town Center, LLC, as presented to develop for construction four (4) building lots per plans dated October 10, 2013, by CEA, LLC. Council Member Kent seconded the motion. Ms. Bennett voted yes. Deputy Mayor Subity voted yes. Mr. Kent voted yes. Mr. Gordon voted yes. Mayor Hocker voted yes. Motion carried 5-0.

Council Member Gordon motioned to close the Public Hearing at 7:39 p.m. Deputy Mayor Subity seconded the motion. Ms. Bennett voted yes. Deputy Mayor Subity voted yes. Mr. Kent voted yes. Mr. Gordon voted yes. Mayor Hocker voted yes. Motion carried 5-0.

8. NEW BUSINESS:

A. Discuss and possible vote on a submission from Mr. Robert Harris, Gulfstream Developers, to release the Coventry Performance Bond BDS400169. Synopsis: The work has been completed and inspected by the Town of Millville.

URS representative Kyle Gulbranson stated this bond was for the completion of the extended portion on Blue Heron Drive in Coventry. Mr. Gulbranson stated the improvements have all been made, with the exception of the top coat, and Town Code & Building Administrator Eric Evans has inspected the roads and has found everything in compliance with the Town's standards. Mr. Gulbranson stated Mr. Evans and URS are recommending the Town release the bond, but there is still an additional bond in place, held by the Town, for \$50,640 for the completion of the top coat on that portion of the roadway once the construction is complete.

Council Member Joan Bennett asked on this bond (to be released) if Mr. Evans has made his inspection on the roadbed improvements. Mr. Gulbranson stated the asphalt coat is down, but the final coat is not done yet, but will be done upon completion of most of the construction. Ms. Bennett asked if construction continues with lots in this vicinity on this roadway for a period of time and something were to go amiss while under this bond, then what would happen. Mr. Gulbranson stated the contractor is still liable for the streets until such time that the roads are turned back over to the homeowners association (HOA), and if it is deemed that there is damage to the roadbed, then the developer is responsible for completing the work and fixing any damages. Mr. Gulbranson stated the bond that is currently in place is adequate to put the final coat on, but there is still a one-year warranty period on the roadway. Ms. Bennett asked if once the bond is released and something were to go amiss, would the fixing be between the developer and the HOA, or would the Town have any say in the matter. Mr. Gulbranson stated the process is that once the road is completed, inspected by the Town and the Town feels everything is in order, and then the Town will allow for the transference to the HOA. Mayor Hocker asked if the one-year warranty is from the date the road was turned over to the HOA. Mr. Gulbranson stated the time is from the date the road is turned over to the HOA.

Deputy Mayor Subity motioned to approve the release of Coventry Performance Bond BDS400169. Council Member Gordon seconded the motion. Motion carried 5-0.

B. Discuss and possible vote on a final site plan submitted by Dickens Parlour Theatre, LLC, located at 35715 Atlantic Avenue, tax map parcel #134-12.00-282.00, to build an addition to the existing facility; approximately 1600 sq. ft. *Synopsis:* The P&Z Commission voted at its December 9, 2013, meeting to recommend the final site plan be approved subject to the fact that the prominent entrance requirement that appears on the design standards on page 15 be fulfilled, and that the appropriate number of handicapped spaces be identified on the site plan.

Mr. Richard Haden, of McCarthy Homes, stated his company was contacted by Mr. Richard Bloch to design a new green room facility for the actors coming in to his establishment (Dickens Parlour Theatre), as well as to house props for the productions so they will not get ruined. Above the addition would be a Beracah modular added with two rooms for performers to prepare as well as a meeting/community room, and stairs leading down. Mr. Haden stated the site plans and building plans were approved by the state Fire Marshall and McCarthy and Mr. Bloch are now seeking the Council's approval. URS representative Kyle Gulbranson stated URS has reviewed the site plan and worked closely with the Planning & Zoning (P&Z) Commission, and all of the site plan requirements have been met. Mr. Gulbranson further stated there were some concerns by P&Z on design standards and a majority of all the design criteria had been met, but P&Z had one thing they wanted changed and modified in the plan and that was to have a prominent entrance to which the builders and owner came up with a compromise with adding awnings, planters, and things of that nature. Mr. Gulbranson stated the other concern P&Z had was with handicapped spaces because the Americans with Disabilities Act (ADA) requirements require one handicapped space per every 50 parking spaces, and since the theatre has less than 50 spaces, the one handicapped space was sufficient.

Council Member Gordon asked if the addition would change any of the parking places. Mr. Gulbranson stated no, there is no loss of parking spaces but one car space and one subcompact parking space. Mr. Gordon asked if when it gets time to the building permit, should there be an engineer study the bottom building and see if it will support the top building structure. Mr. Haden stated yes, it is a state requirement to have a professional structural engineer to come in and make the determination for approval. Mr. Gulbranson stated the concern has been discussed and what is before the Council tonight is strictly the site plan, so once this plan is approved, the builder will come forward with a building permit application and construction plans will have to be reviewed and approved separately. Council Member Kent asked how this addition on top would play into DNREC and FEMA and any other agencies which have issues with water, and are there any issues with this building being elevated. Mr. Gulbranson stated this is a better scenario because the addition will be elevated. Mr. Kent asked if there will be any structural issues when the Town approves this kind of elevation. Mr. Gulbranson stated no and basically this is going to be a structure on top of pilings, much like a residential home in Bethany Beach that stands atop pilings. Mr. Haden stated that is correct, although this addition on top would not be residential because there would be no cooking facilities, sleeping facilities or showers, but rather just two half bathrooms.

Deputy Mayor Subity motioned to approve the final site plan submitted by Dickens Parlour Theatre, LLC, tax map parcel #134-12.00-282.00, to build an addition to the existing facility for

approximately 1600 sq. ft. Council Member Kent seconded the motion. Ms. Bennett voted yes. Deputy Mayor Subity voted yes. Mr. Kent voted yes. Mr. Gordon voted yes. Mayor Hocker voted yes. Motion carried 5-0.

Mayor Hocker motioned for a five-minute recess at 7:56 p.m. Mr. Kent seconded the motion. Motion carried 5-0.

Mayor Hocker motioned to re-open the meeting at 8:01 p.m. Mr. Gordon seconded the motion. Motion carried 5-0.

C. Discuss and possible vote on allowing commercial businesses 3-5 years to comply with the new sign Ordinance 13-02, which was adopted on August 14, 2012. Synopsis: This vote would allow the Town Manager to draft an amendment of Ordinance 13-02.

Town Manager Debbie Botchie stated the Town's current Ordinance changed in August 2012 but the language was not changed, stating that businesses had to comply within 2 years from the date of the Ordinance to meet the Town's current Code with the regulations. Ms. Botchie stated Council needs to make a decision on how many years to educate and allow the business owners time to comply with sign regulations. Council Member Gordon asked if the Council ever decided how the Town is going to go about letting businesses know about this change in regulation. Ms. Botchie stated she has already met with a lot of business owners who would be affected by this change – and many already know about it and some are not happy with it – but once Council decides what they want to do and have the Ordinance amended, then Ms. Botchie plans on having some workshops for business owners to show them examples of how signs should be to meet the Code. Mayor Hocker stated it should also be taken into account that with DelDOT's Route 26 road widening project, it will take at least three (3) years before anything can be done, so he thinks three years would be too short of a timeframe; however, five (5) years would be plenty of time. Town Solicitor Seth Thompson stated the Town Code already covers that if 50% of the replacement value of the sign is destroyed, the business needs to comply, so the issue would really be what signs within the expansion area hadn't been torn down by the time period which Council will decide. Mayor Hocker stated any of the signs affected by the road widening project, DelDOT worked it into their acquisition fee so quite a few businesses have been paid for a new sign already. Ms. Botchie stated DelDOT had done that with Town Hall. Council Member Gordon stated he likes the three- to five-year time period but he would like to know when the exact start date is so every business owner would have the same start date and however many years to comply with the sign regulations. Council Member Bennett asked if the start date could be from the time the Ordinance is adopted. Mr. Gordon stated he would like to see that implemented. Mr. Thompson stated this is a zoning issue, so the Town would have to submit a newspaper notice 15 days before the public hearing. Council Members Kent, Gordon, Bennett, Deputy Mayor Subity and Mayor Hocker stated they believed five (5) years should be the time frame for compliance with Ordinance 13-02.

Council Member Bennett motioned to – from the consensus of Council – adopt a five-year window for Ordinance 13-02, originally adopted on August 14, 2012, as well as to authorize the Town Manager to draft an amendment to Ordinance 13-02 and that a subsequent public hearing for these purposes be scheduled as appropriate and legal to do so. Council Member Gordon seconded the motion. Ms. Bennett voted yes. Deputy Mayor Subity voted yes. Mr. Kent voted

yes. Mr. Gordon voted yes. Mayor Hocker voted yes. Motion carried 5-0.

9. PROPERTY OWNERS/AUDIENCE COMMENTS:

Linda Kent, of Cypress Point Trail, stated, as the as the chair of the Millville volunteers, there is a new volunteer, who is 50-years-old, so Ms. Kent will have to sit down with Council Member Bob Gordon to have approve of someone that age joining the Millville Volunteers. Ms. Kent stated the Town car is back in working order after having a flat tire.

Mr. Steve Maneri, of Pembroke Lane, asked regarding the Route 26 DelDOT project, when DelDOT was going to start digging and where was the start point. Town Manager Debbie Botchie stated DelDOT had started on January 13, 2014, and they would be starting on both ends of Route 26, clearing grubbing. Mr. Maneri asked if the work crews would be working through the night. Ms. Botchie stated the crews do have permission to work at night. Council Member Gordon stated the crews do not plan on working at night, but it is at the discretion of the contract.

10. ANNOUCEMENT OF NEXT MEETING:

Mayor Hocker announced the next Town meeting will be the workshop on January 28, 2014.

11. ADJOURNMENT:

Council Member Kent motioned to adjourn the meeting at 8:16 p.m. Council Member Gordon seconded the motion. Motion carried 5-0.

Respectfully submitted,
Matt Amerling, Town Clerk