

**MINUTES OF THE MILLVILLE
TOWN COUNCIL MEETING
March 10, 2015 @ 7:00 PM**

In attendance were Mayor Gerry Hocker, Deputy Mayor Bob Gordon, Council Members Harry Kent and Susan Brewer; Town Solicitor Seth Thompson; URS representative Kyle Gulbranson; Town Manager Debbie Botchie, Executive Assistant Matt Amerling and Town Financial Administrator Lisa Wynn. Council Member Steve Maneri was absent.

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. SWEARING-IN OF COUNCIL MEMBERS – Executive Assistant

A. Robert Gordon

B. Harry Kent

C. Susan Brewer

4. TOWN COUNCIL APPOINTMENTS – Selection of Mayor, Deputy Mayor, Treasurer & Secretary

Council Member Bob Gordon motioned to appoint Gerry Hocker Jr. as Mayor. Council Member Harry Kent seconded the motion. Motion carried 4-0.

Mr. Kent motioned to appoint Bob Gordon as Deputy Mayor. Mayor Hocker seconded the motion. Motion carried 4-0.

Mr. Gordon motioned to appoint Harry Kent as Treasurer. Mayor Hocker seconded the motion. Motion carried 4-0.

Mr. Kent motioned to appoint Steve Maneri as Secretary. Mr. Gordon seconded the motion. Motion carried 4-0.

5. ADOPTION OF TOWN COUNCIL MINUTES

A. Adoption of Town Council Minutes – February 10, 2015

Council Member Susan Brewer motioned to approve the Council minutes for February 10, 2015. Council Member Harry Kent seconded the motion. Motion carried 4-0.

6. FINANCIAL REPORT – Treasurer

A. February 2015

Treasurer Harry Kent read the Financial Report for the month ending 2/28/15.

February 28, 2015:

General Revenue: \$ 53,166. General Expenses: \$ 29,954.

Restricted Revenue: 9,922. Restricted Expenses: 1,444.

Mr. Gordon motioned to approve the Treasurer's Report for the month ending February 28, 2015. Ms. Brewer seconded the motion. Motion carried 4-0.

7. ADMINISTRATIVE MATTERS

A. Administrative Report for February 2015 – Town Manager

There were no comments.

MOTION TO ENTER PUBLIC HEARING

Mr. Kent motioned to enter Public Hearing at 7:07 p.m. Mr. Gordon seconded the motion. Motion carried 4-0.

8. PUBLIC HEARING

A. Public Hearing Notice – Mayor Gerry Hocker

B. Written Comments – Town Manager

There were no written comments to read.

C. Discuss and possible vote on draft Ordinance 15-02. Synopsis: Ordinance 15-02 amends the Town of Millville Code to amend the Town of Millville Code, Chapter 155, Article VIII “Nonconforming Lots, Uses, Structures and Premises,” at § 155-37.

Town Solicitor Seth Thompson stated Ordinance 15-02 provides, within the C1 (Commercial) district, any commercial use and structure which existed and was permitted on May 13, 1992 but is now nonconforming may be extended or enlarged on one occasion during its permitted nonconformity, provided that the extension or enlargement does not exceed fifty (50) percent of the gross floor area existing on May 13, 1992, and the extension or enlargement does not violate any other provisions of this chapter (155) or other applicable town ordinances. Mr. Thompson stated the May 1992 date is specific because it was the enactment of the Town's first zoning ordinance, so the ordinance allows a one-time extension or enlargement as long as it's during the permitted non-conformity. Mr. Thompson further stated this ordinance ultimately allows a use and a structure which was permitted under the County zoning ordinance prior to the Town's zoning ordinance to expand one time, fifty (50) percent of the gross floor area. URS representative Kyle Gulbranson stated he thinks this ordinance is appropriate.

D. Property Owner Comments & Questions

Mr. Ronald Lips, of Juniper Court, asked if a business chooses to take advantage of this new ordinance, does the new business have to give the proper permits and go through the usual submission. Mr. Thompson stated yes, the business will still be subject to the

usual process in terms of submitting a site plan. Mr. Lips asked if there are any businesses which have voiced their interest in wanting to do this. Mr. Thompson stated the thinks there is one business and the Town's zoning ordinance does allow for a property owner to petition for a zoning change, which was the impetus for this ordinance. Mr. Lips asked if the identity of the one business is public knowledge. Town Manager Debbie Botchie stated the business has not filled out any applications so the information is not currently public record.

MOTION TO EXIT PUBLIC HEARING

Mr. Kent motioned to exit the Public Hearing at 7:14 p.m. Mr. Gordon seconded the motion. Motion carried 4-0.

9. NEW BUSINESS

- A.** To consider for possible vote the approval of Ordinance 15-02.
1.) Mayor Hocker request individual vote.

Mr. Kent motioned to approve Ordinance 15-02. Mr. Gordon seconded the motion. Ms. Brewer voted yes. Mr. Kent voted yes. Mr. Gordon voted yes. Mayor Hocker voted yes. Mr. Maneri was absent. Motion carried 4-0.

- B.** To discuss and possibly vote on a site plan application submitted by Banks Wine and Spirits. The applicant is requesting improvements to the entrance/exit of its business site and construction of a new warehouse building. *Synopsis:* Land Tech Land Planning, LLC, represents Banks Wine and Spirits, who are planning some improvements to their store located on the corner of Atlantic Avenue and Town Center Drive. The improvements included are: (1) Reconfiguration of the site entry/exit on Town Center Drive from a full service entrance and exit to an entrance only; (2) construction of a new full service entrance and exit on Town Center Drive aligning with an existing interior shopping center driveway and creating a four-way intersection; (3) re-alignment of the retail store customer parking lot; (4) establishment of a paved emergency apparatus connection with the Millville Fire Department property abutting the Banks Wine and Spirits site to the west; (5) construction of a new warehouse building with dedicated delivery truck unloading zones; and (6) reconfiguration of retail space within the existing retail store/warehouse.

Mr. Jeffrey Clark, of Land Tech Land Planning, LLC, stated he is representing Banks Wine and Spirits tonight, and is looking to get approval of a preliminary site plan. Mr. Clark stated when he first met with Banks in July 2013, the priority was to improve the entrance and exit off of Town Center Drive, and the problems with the one entrance/exit was the exiting traffic from the store's property – particularly in the summer – leaving long lines to get onto Town Center Drive due to the stop light. Mr. Clark stated this particular store existed before the shopping center and this was a problem Banks wanted to try and resolve. Mr. Clark stated, in the process, if Land Tech could accomplish a new entranceway, to form a four-way intersection, to eliminate the exiting queue of cars, it would be beneficial to the Town, residents, visitors and businesses. Mr. Clark further stated Banks and Land Tech had to approach the owner of the shopping center to learn if

he had any objection to Banks acquiring an easement from the owner to allow a piece of their pavement to cross the owner's land to accommodate this interest. Mr. Clark stated this plan does have a full-service entrance and exit off of Town Center Drive to create a four-way intersection and a reconfigured parking lot. Mr. Clark stated there are a couple of additional features to the plan which he would like to review. Mr. Clark stated one is the separation of delivery traffic from the customer traffic, primarily for safety reasons; and the other is an additional storage building with a covered docking area. Mr. Clark stated, additionally, the Millville Volunteer Fire Company (MVFC) became involved in the process and there were talks with them about if there were some accident or event which prevented the MVFC from exiting their lot, with this new layout, the MVFC would have an opportunity to cross over the Banks property and giving them more directions to leave the property and get onto Route 26. Mr. Clark stated the Town Code requires the parking lot be landscaped and there is illustration on the site plan. Mr. Clark stated there is also pedestrian access via a sidewalk from the Route 26 sidewalk.

Mr. Clark stated Land Tech is filling a piece of an old agricultural ditch which was originally a part of the farm before this was all developed, so Land Tech had to go through the U.S. Army Corps of Engineers to have them verify in writing that it was not jurisdictional for them, and the same had to be done with the State of Delaware. Mr. Clark stated Land Tech reviewed the letter Mr. Gulbranson had sent Land Tech and all of those requirements have been satisfied. Mr. Clark stated there is a proposed building which will be a storage facility and the existing storage will become more retail space. Mr. Clark further stated the existing building and the new building are going to be refaced to correspond with the Town's design standards so both buildings have the same look.

Mr. Clark stated he received a letter today from Mr. Ronald Palmieri, of Thornberry Road, who is the president of the homeowners' association (HOA) of The Villas at Cedar Cove, located behind Banks and the Giant Food shopping center. Mr. Clark stated Mr. Palmieri's – and the Cedar Cove community's – concern is with the 25-foot gravel easement between Banks' parking area and stormwater pond number nine (9). Mr. Clark further stated Mr. Palmieri's letter mentioned The Villas of Cedar Cove is a 40 percent owner of pond #9 and the community must be involved in any decision-making as relates thereto. Mr. Clark stated he does not know if this information is true or not and will have to look at the tax records, but the owner is Millville Town Center Associates, LLC, and if there is some other record in existence which Land Tech has not discovered before tonight, then this may be an issue which needs to be resolved after tonight. Mr. Clark stated the remnant of the old agricultural ditching system has a lot of ditch bank trees and growth which will need to largely be removed for this project, and some of the Cedar Cove residents are concerned that their view will be drastically changed. Mr. Clark stated Land Tech has proposed to put in new ornamental plantings to replace the ditch bank plantings which will need to be removed. Mr. Clark further stated Mr. Palmieri's letter mentions the fact this project will change the nature of the community's stormwater management and how it may have a negative impact on the Cedar Cove community. Mr. Clark stated in reply to this, none of the stormwater from this Banks site currently goes into pond #9, and there will not be any water directed that way after the new development. Mr. Clark stated Land Tech is removing a piece of open pond storage on

Banks' site and that will not have any impact in terms of increasing the drainage on the neighboring property. Mr. Clark further stated the comforting here is Land Tech still needs to undergo the process of review by the Sussex County Conservation District to assure that what Mr. Clark is saying tonight is true, and Land Tech cannot move forward without the Conservation District's approval.

Mr. Kent stated, in reference to Mr. Clark's comment on the turning of the 55-foot tractor trailers in the parking lot, Mr. Kent is concerned about the long trucks exiting out with the radius they have and not climbing over the curb. Mr. Clark stated Land Tech does not exactly know what the situation is going to be or how the trucks are going to exit, but Land Tech has looked at flattening the curb so the truck can drive over that area. Mr. Kent asked, in reference to the MVFD, Mr. Kent assumes MVFD have already looked over this site plan because some of the MFVD's equipment is quite large and if they have an expectation to get out on Route 26, Mr. Kent can see the MVFD going out the road by Banks so Mr. Kent thinks this should be an issue to consider in terms of the island in the middle of Banks' parking lot area. Town Solicitor Seth Thompson asked, regarding Mr. Clark's mention of stormwater not using pond #9, where is the stormwater management for the parcel, or where does the water go? Mr. Clark stated the area near the rear of the site is a tax ditch and there is a 42-inch pipe which stretches from the tax ditch and leads water under the site, across Route 26, and empties out to near Whites Creek. Mr. Thompson asked how the new plan changes the old system. Mr. Clark stated what the Sussex Conservation District has asked Land Tech to do is to put catch basins on top of their pipe and let the water go directly in. Mr. Gulbranson asked if the natural drainage is to the north. Mr. Clark stated yes. Mr. Gulbranson asked if the water is flowing away from pond #9. Mr. Clark stated yes. Mr. Clark stated there is a proposal to relocate the emergency spillway for pond #9 from the location it is now over to the area where the tractor trailer trucks will arrive for deliveries, and Land Tech has spoken to the tax ditch people and they seem to be agreeable to that concept. Mr. Clark stated he believes the Villas at Cedar Cove representatives have contacted Jessica Watson (of the Sussex County Conservation District) and she will be reviewing over all of this construction as a watershed and she is not looking at individual applications.

Mr. Ronald Palmieri stated he did meet with Ms. Watson and they reviewed various ponds around Cedar Cove. Mr. Palmieri stated they looked at pond #9, of which Cedar Cove owns 40 percent, and the tax ditch which goes from Banks goes all the way around Cedar Cove's property and into pond #3, which is in the back of Cedar Cove. Mr. Palmieri stated when he met with Ms. Watson, at first she was not aware of the water levels, but after she looked at the ponds, she stated pond #9 is higher than the other ponds, and the water cannot flow uphill so the water goes through a continual cycle of going from pond to pond. Mr. Palmieri stated one of the problems the Cedar Cove HOA has is, with some of the recent storms the area has had, the Giant Food shopping center parking lot floods and it connects with pond #9, so the water pushes from pond #9 to pond #6, which is behind Thornberry Road. Mr. Palmieri stated his concern is specifically with the water from Banks flowing into pond #9, and the tax ditch running along the MVFD, goes all the way back into pond #3. Mr. Palmieri further stated Cedar Cove's concern is Mr. Capano, who owns the Giant Food shopping center and sixty (60) percent of pond #9, "does his own thing." Mr. Palmieri stated Cedar Cove HOA has tried

to meet with Capano and he refuses to do so. Mr. Palmieri stated it his responsibility as president of the Cedar Cove HOA for all sixty-eight (68) homeowners to watch out for the water damage, and so, his major concern is where the water is going.

Mr. Thompson stated this is the preliminary phase of the process and this is not the final approval for Banks. Mr. Thompson stated if this preliminary plan gets approved tonight, Land Tech and Banks still have to get approval from other state agencies before they can get the green light to move forward in their construction. Mr. Thompson further stated in terms of the ownership of pond #9, the Council is going to look out for the interest of its residents and make sure the stormwater is dealt with appropriately, regardless of who owns what. Mr. Thompson asked in regards to Cedar Cove owning 40 percent of pond #9, is there some kind of maintenance agreement in place. Mr. Palmieri stated yes. Mr. Thompson stated legal title is not divided that way but, rather, that is how the pond is used and asked if maintenance costs are split in the 60-40 fashion. Mr. Palmieri stated it is Cedar Cove's understanding that Capano needed a percentage of pond #9 to get Giant up and running, so somehow Capano took 60 percent of the pond and gave Cedar Cove the remaining 40 percent. Mr. Palmieri stated Cedar Cove has been paying for pond #9 for 10 years now and Cedar Cove has documents from Capano stating Cedar Cove owns that portion. Town Manager Debbie Botchie stated she looked it up and the Town has no record of what Mr. Palmieri is stating, but the Town's records indicate Millville Town Center LLC own the entire parcel and not Cedar Cove, but there is an agreement between Cedar Cove's HOA and Capano in which Capano maintain 60 percent – with the remaining 40 percent going to Cedar Cove – of the cost in maintaining pond #9, but nothing is land ownership. Mr. Thompson stated such an agreement is fairly common where two different developments or parcels might share a stormwater management pond, so they divide the maintenance costs based on the usage. Mr. Thompson further stated there are particular agencies in place which are there to make sure every necessary step is taken to ensure the betterment of the community as well as protect the communities from any poor construction.

Mr. Palmieri stated Cedar Cove's main concern is the rain running off into pond #9 and overflowing. Mr. Palmieri stated right now, with the runover of rain from the Giant Food shopping center parking lot, the water floods the entrance road into Cedar Cove and residents cannot get to their homes. Mr. Clark stated Banks and Land Tech are not contributing a drop of water to pond #9, so Cedar Cove's situation is not going to be any better or worse after Land Tech is done construction. Mr. Clark stated the type of storm Mr. Palmieri has described is probably exceeding the design. Mr. Gulbranson stated yes, the August 2013 thunderstorm was considered a 100-year storm event so it is rare. Mr. Clark stated none of the systems are designed for that and no one could develop land nor could the Town – or anyone – afford to develop land if they had to design at that level. Mr. Clark further stated the storm events are the average and there will be times in any system when rain may overwhelm it. Mr. Lips stated, as a community, Cedar Cove want to be a friendly neighbor, and the Banks have always been true, good neighbors to Cedar Cove, but our concern is to merely represent the property owners within Cedar Cove and voice any potential threats to the community.

Mayor Hocker asked, regarding the connection to the MVFD, what is going to stop some motorists from cutting through the MVFD entrance and taking the connecting route to the Banks parking lot to avoid the traffic light. Mr. Clark stated this will be Mr. Banks' property and no one can trespass or enter the property unless he gives them permission to do so. Mr. Clark further stated Mr. Banks does have an agreement with the MVFD to prevent such an abuse of using the connecting roadway. Mr. Banks stated he is going to put in a jersey barrier or gate so just the MVFD can have open access when required.

Mr. Lips stated his property backs up to the Banks store and he hopes there will be some protection against car lights coming from the Banks store parking lot. Mr. Gulbranson stated after Land Tech and Banks get their state agency approvals, Land Tech will come forward before Council as part of the final site plan application process, with a landscaping and lighting plan, and Council will make sure there are such protections and considerations in place, as well as residents will be able to come in before a Council meeting and review the plans.

Mr. Gordon motioned to approve the preliminary site plan application, submitted by Banks Wine and Spirits, requesting improvements to the entrance/exit of Banks Wine & Spirits' business site and construction of a new warehouse building. Mr. Kent seconded the motion. Motion carried 4-0.

- C. Discuss and possible vote on a request from Miller & Smith, developer of Millville by the Sea (MBTS), to release bond PB03010400351. *Synopsis:* The bond was for the construction of Lake Summerwind, also known as Phase 2C Pond, in MBTS. The Sussex County Soil Conservation District has approved the final as-built survey and construction.

Mr. Gulbranson stated the pond is approved and everything is in order, and he thinks it is an appropriate time for the bond to be released. Mayor Hocker motioned to approve the release of bond PB03010400351. Mr. Kent seconded the motion. Motion carried 4-0.

- D. Discuss and review FY16 Budget draft.

Ms. Botchie stated presented tonight is the first draft for the fiscal year 2016 (FY16) Town budget, and Town Financial Administrator Lisa Wynn got Ms. Botchie up-to-date on the expenses and revenue. Ms. Botchie stated overall, the Town's expenses are only going to increase 1.55 percent from last year, but that increase is before any of the payroll items are reviewed and possibly approved. Ms. Botchie stated she and Mr. Kent went over the budget, and on the general expense detail, under the phragmite mitigation, the Town currently has \$298 (for Solitude to cut treat the phragmite) and the Town is going to bump up the price up to \$300 to keep up maintenance on the phragmite along the side of Town Hall. Ms. Botchie further stated Mr. Kent wanted administration to check in on the price for a flat file storage for the Town's site plans, and Ms. Botchie plans on asking Mr. Gulbranson about the pricing of such filing items.

Ms. Botchie stated, for the general revenue, the Town has talked with the various developers, but is very conservative with its numbers in terms of building permit

income. Ms. Botchie stated, regarding Municipal Street Aid, the Town has not put a number in because, due to the State of Delaware, Governor Markell is looking to decrease the amount which has been allocated to municipalities, from five (5) million dollars to three (3) million dollars, which has to be spread up and down the entire state. Ms. Botchie stated the Sussex County Association of Towns (SCAT), the Delaware League of Local Governments (DLLG) and all of the town managers have been writing letters to the state representatives and senators to ask this decrease not happen. Ms. Botchie stated, fortunately, this will not affect Millville like it will the neighboring towns because those towns do own their roads and they need a lot of money to keep up with improvements and the like. Ms. Botchie stated the Town of Millville is backing our fellow municipalities by writing to our representative to support our neighbors.

Ms. Botchie stated the Town will be paying for the Pumpkin Festival and the Town will not be asking for fees from vendors or contributions from sponsors for the event. Ms. Botchie stated the Town has \$79,000 in its economic development account so the Town wants to do something for the residents and local community. Ms. Botchie further stated she would like to continue the "Stockings for Soldiers" program in which volunteers get together and make Christmas stockings, and in which residents donate various items to fill the stockings, for soldiers stationed overseas. Ms. Botchie stated, for the Town's Holiday Market, the price went up from \$500 to \$1300, because the Town also used the Millville United Methodist Church's (MUMC) banquet hall this year and the Town wanted to pay for the cleaning of the church, plus there were also more activities for children this past year. Ms. Botchie stated she is requesting Council allow her to continue the event for this year, which is free for the community and the attending vendors, and believes \$1300 is a very small sum in the grand scheme of things.

Ms. Botchie stated, for Sussex County grants, the County Council has been gracious enough to give municipalities, which do not have police departments but do outsource with the State police, monies, so with also having a neighborhood watch, the County Council has given the Town \$12,500 and the Town has not expended those monies yet this year. Ms. Botchie further stated the County Council has also given Millville an additional \$5000, which has to be used by June 30, 2015, but Ms. Botchie stated this is all an assumption and the Town will not know for sure if it will receive these monies until after the budget comes out. Ms. Botchie stated the Town is budgeting \$9000 for a new HVAC unit. Mr. Kent stated the Town replaced one of the units about a few months ago when it died, and there are two more units still in operation, which are the same age, so the Town would like to budget for replacing one of those units in case it dies during the upcoming fiscal year. Mr. Kent stated the front half of the Town Hall office where Mr. Amerling and Town Building & Code Administrator Eric Evans sit is not on the same generator as the remainder of the building, so Mr. Kent is looking into pricing for another generator to run the entire building. Mr. Kent further stated this would prevent from extreme cold temperatures and power outages in case they happen during business hours, as well as preventing pipes from freezing overnight during the winter season.

Ms. Botchie stated if the Council wants to continue with State police coverage of the Town during special events such as the Pumpkin Festival, as well as the twelve (12) hours of patrolling done per week in Town, then the pricing has been placed in the

budget for that service, in the sum of \$61,775. Ms. Botchie further stated, assuming the Town would receive the \$12,500 grant from County Council, that would bring the sum down to \$49,275 for police coverage, and that is for 52 weeks. Ms. Botchie stated the Town's police fund currently has \$457,000 so this \$49,275 is covered and would be covered for a few years to come. Mr. Kent stated if one were to look at the complete sum of \$61,775, a town could not put one police officer unit on the road for that amount, and, from what Mr. Kent has heard around Town, the public feel safe and protected with the recent State police coverage, so it makes the money well spent. Ms. Botchie stated, since the State police have been patrolling, there have been no reports of criminal activity, but rather traffic violations.

10. PROPERTY OWNERS/AUDIENCE COMMENTS AND QUESTIONS

There were no comments.

- 11. ANNOUNCEMENT OF NEXT MEETING** – The next meeting will be the Town Council Workshop meeting on March 24, 2015.

12. ADJOURNMENT

Mr. Gordon motioned to adjourn the meeting at 8:32 p.m. Mr. Kent seconded the motion. Motion carried 4-0.

Respectfully submitted,
Matt Amerling, Executive Assistant