

**MINUTES OF THE MILLVILLE
TOWN COUNCIL MEETING
September 8, 2015 @ 7:00 PM**

In attendance were Mayor Gerry Hocker, Deputy Mayor Bob Gordon, Council Members Harry Kent, Steve Maneri, and Susan Brewer; Town Solicitor Seth Thompson, AECOM representative Kyle Gulbranson, Town Manager Debbie Botchie, and Town 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 – August 11, 2015

Council Member Harry Kent motioned to approve the Council minutes for August 11, 2015. Deputy Mayor Robert Gordon seconded the motion. Motion carried 5-0.

4. FINANCIAL REPORT – Treasurer

A. August 2015

Treasurer Harry Kent read the Financial Report for the month ending 8/31/15.

August 31, 2015:

General Revenue:	\$ 75,865.	General Expenses:	\$ 33,203.
Restricted Revenue:	87,787.	Restricted Expenses:	27,211.

Mr. Gordon motioned to approve the Treasurer's Report for the month ending August 31, 2015. Council Member Steve Maneri seconded the motion. Motion carried 5-0.

5. ADMINISTRATIVE MATTERS

A. Administrative Report for August 2015 – Town Manager

There were no comments.

6. NEW BUSINESS

A. Discussion and possible vote to approve plans for the new municipal building.

Mayor Gerry Hocker stated the history of the planning and review process of the new municipal building, which began about a year ago, beginning with a committee created by Mayor Hocker, consisting of the Mayor; Council Member Steve Maneri; Town Manager Debbie Botchie, Town Code & Building Administrator Eric Evans; the personnel at George, Miles and Buhr, LLC (GMB) including Morgan Helfrich and Drew Lyons; and various personnel from the Delaware State Police. Mayor Hocker stated the entire process has gone very smoothly and the process is

now ready for the bid phase. Town Manager Debbie Botchie stated her appreciation to Mr. Evans for his knowledge, making him a huge asset in this process.

Mr. Gordon motioned to approve the plans for the new municipal building. Council Member Susan Brewer seconded the motion. Ms. Brewer voted yes. Mr. Maneri voted yes. Mr. Kent voted yes. Mr. Gordon voted yes. Mayor Hocker voted yes. Motion carried 5-0.

B. Discussion and possible vote to authorize the Town Manager to engage George, Miles & Buhr, LLC (GMB) to produce bid packets ready for public notice and then bid the project.

Mr. Gordon motioned to authorize the Town Manager Debbie Botchie to engage GMB to produce bid packets ready for public notice and then bid the project. Mr. Kent seconded the motion. Motion carried 5-0.

C. Discussion of status, including inspections, on purchase of two (2) parcels of land, tax-map-parcel #134-12.00-395.00 & 396.01, totaling 4.91 acres of land located at 32517 Dukes Drive, Millville, from John Scott Evans, Jr.

Town Solicitor Seth Thompson stated his firm has scheduled the closing for tomorrow, September 9, 2015, the underground storage tank was removed, and soil samples were taken and everything is good to go. Mr. Thompson further stated the phase one environmental assessment was done as well and everything came back satisfactory.

D. Discuss and possible vote on a request from Platte River Insurance Company, representing Windhurst Manor, to release bond 41140245. Synopsis: The bond was for the interior roads and related work in the subdivision of Windhurst Manor, which has been completed.

Town Code & Building Administrator Eric Evans stated the Town had to call the bond because the original developer had left and walked the property with AECOM to review and see what needed repairs within the right-of-way and worked with the bond company to have them contract George & Lynch to repair the curbs, put in sidewalks and top-coat everything. Mr. Evans stated the bond company has worked out everything needed and they would like to have the bond back. Mr. Kent asked if Mr. Evans was satisfied with the work. Mr. Evans stated yes. Ms. Botchie stated because of this particular situation, the Town has added additional language to the public works agreement that would cover the cost of the Town for inspections.

Mr. Gordon motioned to release bond 41140245 for the subdivision of Windhurst Manor. Mr. Kent seconded the motion. Motion carried 5-0.

E. Discussion and possible vote on two (2) new heat pump systems for the Town Hall – Treasurer/Facility Maintenance Liaison Harry Kent. Synopsis: The Town Council approved \$9,000 for one (1) new heat pump for FY16; however, both current heat pump systems need to be replaced.

Mr. Kent stated last year, the Town had replaced one of three units for Town Hall, hoping to stretch another year or so before having to replace the remaining two; however, just recently,

the normal unit inspections resulted in finding one of the units “in serious trouble” of breaking down and the second not close behind. Mr. Kent stated the Town already budgeted for replacing one unit – with the second not being budgeted for – but Mr. Kent is hoping to replace both units this year. Mr. Kent stated the cost of replenishing the gas in both units is costly because the gas used in the current units is so old, they use gas no longer utilized. Mr. Kent further stated the units are approximately ten (10) years old and almost close to being deemed unusable. Mr. Kent stated the Town will be receiving a discount as well as a loyalty discount. Mr. Kent stated the price for one unit will be approximately \$10,000.00, and the price of the second unit will be approximately \$9,000.00, and he would like to have both units acquired and installed so this is no longer an issue for the Town administration. Mayor Hocker stated both units are the same age as the one which was just replaced, so it’s only a matter of time before both of these would have to be replaced. Ms. Botchie stated the Town has saved about \$400 per month on the current new unit.

Mr. Maneri motioned to approve of option number one (1) for both units in the proposal. Mr. Gordon seconded the motion. Motion carried 5-0.

7. PROPERTY OWNERS/AUDIENCE COMMENTS AND QUESTIONS

Mrs. Robin McClane, of Surfsong Landing, stated she contacted Ms. Botchie regarding the trees the builder at Millville by the Sea (MBTS) was putting in the neighborhood as well as various concerns about where the trees are being placed, and was told by Ms. Botchie there was nothing that could be done. Mrs. McClane stated she does not know how nothing can be done when there are many issues which will come up regarding the type of tree being used. Mrs. McClane stated she just moved into MBTS two weeks ago and talked to maybe ten (10) neighbors, all of whom were unaware of what was planted in the space between the sidewalk and the roadway; and when the neighbors learned of this issue, their concerns mirrored Mrs. McClane’s. Mrs. McClane stated she would like to know how she and the homeowners can get the builder to cooperate, because they do not seem to want to do anything. Mrs. McClane further stated the Town has told her this issue is the builder’s responsibility, the builder chose the type of tree to plant and did not provide a list of trees to plant to the builder; while the builder is saying they were told by the Town what types of trees they could use, and nobody seems to want to take responsibility for the property owners will be left with in seven (7) to ten (10) years. Mrs. McClane stated the property owners need to know – as a community – what can be done before the builder is gone, because this will be a major issue. Mrs. McClane stated she believes this issue is happening in the Bear Trap community (in Ocean View), and she does not want to see the tree issue happening in MBTS. Mrs. McClane further stated she needs to know how the Town is approving these plans and what homeowners can do about it.

Town Solicitor Seth Thompson stated, from the legal perspective, in terms of the way development works, the Town has a Town Code which consists of all its ordinances, so when a developer or a private citizen comes in and wants to build, the Town applies the Code which exists at that point in time. Mr. Thompson stated once the developer has those approvals and they rely on them, the developer is entitled to rely on them and the Town has to stand by that. Mr. Thompson stated there is a vested right so, for example, if the Town were to rezone an area and someone were using it for a use which was no longer consistent with the new zoning, then they

are “grandfathered in” and that is because the Town, from a legal perspective, has to respect those property rights. Mr. Thompson further stated once something is approved and relied upon, a developer or anyone gets vested rights in that particular decision in that approval. Mr. Thompson stated the Town Code is a living document so if the Town or any member of Council decides that something better can be done or improved upon, then an amendment or ordinance can be introduced. Mr. Thompson stated if a developer receives approval, the Town “cannot pull the rug out from under them” and say, “Oh, sorry, we’ve decided to change the rules on you,” but that doesn’t prevent the Town from identifying a problem or clarify an issue going forward. Mr. Thompson stated this is all from the Town’s perspective, but when it comes to homeowners and developers and the homeowners association (HOA), there are contractual relationships there which don’t involve the Town, because the Town is seemingly acting on a more “global best interest viewpoint” so, for instance, if the Town goes out and issues a certificate of occupancy (c.o.), but it turns out the builder didn’t put the siding in the j-channel correctly, the homeowner would go to the builder to tell them it needs to be fixed, and not to the Town even though the c.o. was issued by the Town. Mr. Thompson stated the Town is going through those processes to generally keep the public safe, but when it comes to individual contractual relationships, there are claims out there which would not involve the Town. Mr. Thompson further stated a lot of the HOA is contractually based and that is in the MBTS declaration restrictions and normally there is some analysis in terms of when the HOA needs to be turned over from the developer to the homeowners.

Mrs. McClane stated the homeowners do not want the HOA turned over to them in the state that it is in and, from the handful of people she has spoken to already, this is not acceptable because one does not put a sixty-foot mature tree in a four foot area. Mrs. McClane stated this is her background, she’s graduated from Longwood Gardens, and she has spoken with Miller & Smith’s landscape architect, as well as sending pictures and articles to the Town and developer to help explain Mrs. McClane’s stance. Mrs. McClane stated Ms. Botchie quoted an article to her from Longwood Gardens, only quoting part of it, but the article does state one does not put trees of size in restrictive areas and on “postage stamp properties.” Mrs. McClane stated she understands the Code is “this and that” but, as a governing body of a Town, Mrs. McClane believes the Town has to revisit the Code because there is so much development down here and the Town is approving plans which are going to be devastating to homeowners and the assessment bills and the whatnot which go along with it. Mrs. McClane stated she came from a huge community and she has been on landscaping committees so she does know what she’s talking about, and there will be a lot of assessments and a lot of fees and it’s all going to be at once. Mrs. McClane stated the developer will be gone and the property owner will have to repair and replace sidewalks and take out trees which costs \$3000.00 to take out because the proximity to the houses they’re in, and all of the power lines, water lines, and everything else will be compromised because of the trees the developer selected. Mrs. McClane stated she intends to address all of the residents in the community on this issue because it will be a major issue.

AECom representative Kyle Gulbranson stated, as the Town’s engineer, in terms of the Town’s Code, the Town has two Code requirements for landscaping and trees: (1) a buffering and landscaping ordinance, which is a part of the subdivision Code, and it is not tree species specific; and (2) a requirement in the subdivision Code which states a tree should be planted in intervals of approximately sixty (60) feet along streets in communities (**TOWN NOTE:** The Town Code

states in Chapter 125-24 Street Improvements, sub-item O: "Shade Trees. Shade trees are to be located behind the curblines so as not to interfere with utilities, sidewalks, or driveways, at intervals of approximately 60 feet). Mr. Gulbranson stated, again, the Town does not have an official tree list. Mrs. McClane asked from what the sixty feet is required. Mr. Gulbranson stated every sixty feet along the street. Mrs. McClane asked what if the trees are every ten (10) feet. Mr. Gulbranson stated that choice is the developer's prerogative to do so. Mr. Thompson asked if the sixty feet is a minimum. Mr. Gulbranson stated it is a minimum of every sixty feet but the Town does not have specific requirements for tree species and it does not pick or limit the types of trees to be utilized. Mr. Gulbranson stated he believes some of the confusion was, some time ago, there was a listing from the Arbor Day Foundation of possible shade trees and that was circulated. Mr. Gulbranson further stated the Town does advocate that the developers use native plant species if at all possible. Mrs. McClane asked where the trees were to be native to. Mr. Gulbranson stated the trees were to be native to Sussex County. Mrs. McClane stated Miller & Smith did not do that. Mr. Gulbranson stated if the developer and homeowners want to make a change as to tree species in MBTS, that is well within the homeowners' rights to do so. Mr. Thompson stated it is difficult to retroactively approve an ordinance and get a developer or builder to take something out which has already been approved years in advance. Mrs. McClane stated she understands but she still thinks this is in the best interest of the people of Millville that Council review the Code, even if it does not help the current residents of MBTS. Mrs. McClane stated she believes this will be a safety, financial and insurance issue, and the builder is pretty much choosing to ignore all of that. Mr. Gulbranson stated the Summerwind Village plans were fairly specific as to the location of the street trees, and each block has open space at the end of the block, and the landscaping plans were not specific to species of trees even though there was a short list of possible trees from a category of trees such as "shade trees." Mrs. McClane stated the problem is the shade trees which were chosen are massive trees and the area in which they are being placed is a four- to five-foot space, so where will the roots go? Mr. Thompson stated this demonstrates the issue that the Town is not always involved, so if there are utility easements which run through there, and the trees are interfering with said utilities, then the utility company is not going to come to the Town to address the problem, but rather the utility company would go to the property owner and developer and address the issue.

Mrs. McClane stated she asked the developer to repurpose the trees because there are so many trees in the common area that she can tell are going to die (some of which are already half-dead). Mr. Thompson stated Mrs. McClane's concern is overplanting the number of trees as well as the size. Mrs. McClane stated yes and she attended a meeting at the University of Delaware with Dr. John Frett, a professor who's the head of the horticulture department, as well as Miller & Smith's Chuck Ellison and Dale Hall; and Dr. Frett explained in seven (7) to ten (10) years, the homeowners are going to have problems, but Miller & Smith continue to not want to make any concessions. Mrs. McClane stated now that the property owners are becoming aware, they are getting angry and concerned about safety issues with their homes. Mayor Hocker stated his appreciation for Mrs. McClane's comments and this may be something the Council can keep in mind when future plans come before them.

Mr. Chuck Ellison, of Miller & Smith, stated he and Miller & Smith have not ignored Mrs. McClane's concerns, and Miller & Smith has checked with numerous experts and the plans have been prepared by registered landscaping architects. Mr. Ellison stated he and Dale Hall did attend

the meeting with Dr. Frett and Mrs. McClane at the University of Delaware, and Mr. Ellison does not recall Dr. Frett saying Miller & Smith was doing anything wrong with the trees. Mr. Ellison stated there are concerns as trees grow but that is with any community and does not make their plan wrong. Mr. Ellison further stated Miller & Smith's tree list was prepared by Miller & Smith's landscape architect, and the trees on the list are on the state of Delaware's list of species the State said could be used for street trees. Mr. Ellison stated the trees are not planted ten (10) feet apart, but rather approximately forty (40) feet apart, and they do get adjusted as building goes along for fire hydrants, driveways, etc. Mr. Ellison stated Mrs. McClane is welcome to attend the first MBTS HOA meeting coming up this fall to address any concerns she may have. Mr. Ellison further stated Miller & Smith are working internally on a management review program for trees to keep tabs on preventative maintenance, so he believes Miller & Smith have a handle on the issues being addressed.

Mrs. McClane asked once the trees are growing, is there any problem with the branches being too low and growing on the street level so as to interfere with the mail delivery truck, traffic, etc.? Mr. Thompson stated he doesn't know if the Town has an ordinance on street visibility. Ms. Botchie stated the Town does and it's in the property maintenance section. Mrs. McClane stated the branches will be an issue as they grow out and hang down over time. Ms. Botchie asked Mr. Ellison if the MBTS HOA has a budget for tree maintenance. Mr. Ellison stated yes, the HOA does have a budget for tree maintenance. Ms. Botchie asked if the tree maintenance will happen. Mr. Ellison stated yes. Mr. Thompson asked Mrs. McClane if she knew of any Delaware ordinances from other Towns which address tree selection and/or maintenance. Mrs. McClane stated she just moved to Delaware two weeks ago and had been living in Pennsylvania before, but there would be public works maintenance which would come along and trim any low-hanging and/or overgrown branches which would grow past the curbside. Mr. Gulbranson stated such a practice is commonplace in areas where the streets are owned and/or maintained by a municipality, but, Mrs. McClane's situation here in MBTS is the streets are maintained and owned by the HOA.

Mr. Robert Gray, of Surfsong Landing, stated he is the next-door neighbor of Ms. McClane and he didn't know anything about these trees until speaking with Mrs. McClane. Mr. Gray stated he and some of the other residents of MBTS are learning some of the consequences of what could happen in ten (10) years, such as having to replace the sidewalks because the tree roots will push them up. Mr. Gray stated he has worked on a HOA for nine (9) years outside of Baltimore and he appreciates all of Council and he knows it's not the happiest job. Mr. Gray further stated for what property owners pay for HOA assessment, whether or not the money is going to be there and be enough to afford the replacement of sidewalks, I am not sure there will be enough. Mr. Gray stated he will be attending the first MBTS HOA meeting in the fall and he needs to see what the HOA's financial plan is before he can take a step forward and proceed with raising "a little you-know-what one way or another to try and put into place what we as homeowners are going to need in the future."

Mr. Thompson stated, on the HOA element, sometimes there is confusion in terms of the Town's role in HOAs. Mr. Thompson stated the Town is not in a position of enforcing the HOA declaration and, in this case, there is Town involvement when it comes to the group of plans, so the Town's involvement is to a certain degree; but in terms of what happens with the HOA, the

HOA governing docs are going to control these types of issues and the Town does not have any involvement in that element. Mr. Thompson further stated, in terms of plans, the public is more than welcome under the Freedom of Information Act (FOIA) to come into Town Hall and peruse any plans prior to buying or looking at a home and/or community within Town limits.

8. ANNOUNCEMENT OF NEXT MEETING – The next meeting will be the Town’s workshop on September 22, 2015.

9. ADJOURNMENT

Mr. Gordon motioned to adjourn the meeting at 7:47 p.m. Mr. Kent seconded the motion. Motion carried 5-0.

Respectfully submitted,
Matt Amerling, Executive Assistant