

**MINUTES OF THE MILLVILLE
TOWN COUNCIL MEETING
May 10, 2016 @ 7:00 p.m.**

In attendance were Mayor Bob Gordon, Deputy Mayor Steve Maneri; Secretary Valerie Faden; Council Member Steve Small; Town Solicitor Seth Thompson, Town Executive Assistant Matt Amerling, and Town Code & Building Administrator Eric Evans. Council Member Susan Brewer and Town Manager Debbie Botchie were absent.

1. CALL MEETING TO ORDER

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

2. PLEDGE OF ALLEGIANCE TO THE FLAG

3. ADOPTION OF TOWN COUNCIL MINUTES AND NOTES

- A. Adoption of Town Council Minutes – April 12, 2016
- B. Adoption of Town Council Workshop Minutes – April 26, 2016
- C. Adoption of Town Council Executive Session Minutes – April 12, 2016
- D. Adoption of Town Council Workshop Executive Session Minutes – April 26, 2016

Council Member Steve Small motioned to approve the minutes from the April 12, 2016, Town Council meeting; the April 26, 2016, Town Council Workshop meeting; the April 12, 2016, Town Council Executive Session; and the April 26, 2016, Town Council Workshop Executive Session meeting. Deputy Mayor Steve Maneri seconded the motion. Motion carried 4-0.

4. FINANCIAL REPORT – Secretary Valerie Faden

- A. April 2016

Council Member Valerie Faden read the Financial Report for the month ending 4/30/16.

April 30, 2016:

General Revenue:	\$ 71,206.	Restricted Revenue:	\$ 283,910.
General Expenses:	46,899.	Restricted Expenses:	6,220.

Mr. Maneri motioned to approve the Treasurer's Report for the month ending April 30, 2016. Mr. Small seconded the motion. Motion carried 4-0.

5. ADMINISTRATIVE MATTERS

- A. Administrative Report for April 2016 – Town Manager

Town Code & Building Administrator Eric Evans stated, regarding the status of the Town's park on Dukes Drive, the asbestos from the existing structure on the property has been removed, making it ready for demolition, and the trees marked to come down will be brought down on May 19 and 20, 2016.

6. NEW BUSINESS

- A. Discuss and possible vote on the construction contract between the Town of Millville and Harkins Contracting Company in the amount of \$1,107,871.00 to construct an addition to the current Town Hall facility. *Synopsis:* Harkins Contracting Company was awarded the bid for the construction of a new facility on December 22, 2015.

Town Solicitor Seth Thompson stated he reviewed the contract with Harkins Contracting Company and noticed Harkins had a few revisions which Mr. Thompson thinks Council should discuss. Mr. Thompson stated the contract provides two-hundred-ten (210) days from the date of commencement to substantial completion, and Harkins wants the date of commencement to be within two (2) weeks of the latter by their receiving all of the Town permits, or provision of an unencumbered site, meaning Harkins would have the site to use. Mr. Thompson stated the other element was Harkins removed was the liquidated damages clause, saying it does not apply to this particular job. Mr. Thompson stated Harkins also said actual punitive damages do not apply here; and punitive damages usually do not apply in a contract. Mr. Thompson stated the function of liquidated damages is to essentially serve as the parties agreeing on a level of damages without somebody having to prove some sort of financial calculation of actual damages; so Council would be agreeing ahead of time to the fact that if someone were to breach the contract, then a particular amount of dollars would be owed. Mr. Thompson stated he thinks actual damages have to apply here in the sense that if Harkins doesn't complete something, then they can be held accountable for having to complete it. Mr. Thompson stated the liquidated damages is typically a negotiated term, and Council does have retainage in that the Town has ten percent (10%), but it is ten percent of only the first fifty percent (50%); so the Town's maximum retainage is going to actually be only about five percent (5%) of the total contract price. Mr. Thompson stated if the Council is comfortable with the retainage as being the means of getting the work done, then the Town might have to deal with the worst-case scenario – for instance, if the contractor walks off the job. Mr. Thompson further stated personally, he prefers liquidated damages because that's an easy calculation, but Mr. Thompson is comfortable either way.

Deputy Mayor Maneri asked if the retainer is only five percent (5%). Mr. Thompson stated it is only ten percent (10%) but there can only be a charge of retainage for the first fifty percent (50%) of the project. Town Code & Building Administrator Eric Evans stated he's looking at section five-point-one-point-eight (5.1.8) in the contract in regards to the retainage. Mr. Thompson stated yes, so it would be ten percent (10%) until fifty percent (50%) of the work is being completed. Council stated they did not have a copy of the contract. Mr. Thompson stated the Town can only do the retainage for the first fifty percent (50%) of the project. Council Member Valerie Faden asked if Council's options are to either grant this request, deny this request, or come up with another option. Mr. Thompson stated yes. Ms. Faden stated she does not know if any of her fellow Council members have any of the same feelings on this contract and she knows she's new to Delaware and Delaware regulations, but Ms. Faden's inclination is to either deny the request or to increase the retainage if Council grants the request. Mr. Thompson stated Council can certainly do that and there is a ten percent (10%) retainage throughout. Mr. David Strauss, of Harkins Contracting, stated he did not write that particular language, and that contract is simply the way it came to them. Mr. Thompson asked Mr. Strauss if he would be willing to do the ten percent (10%) throughout

instead of liquidated damages. Mr. Strauss stated there weren't any liquidated damages stipulated because, generally, in a construction contract and bidding situation, that item is identified and clarified prior to the bid that there are no liquidated damages, but it was not in this case. Mr. Randy Swift, vice president of Harkins Contracting, stated they can work something out with the Town if need be. Mr. Strauss stated the language currently placed in the contract came from GMB, specifically Morgan Helfrich. Mr. Thompson stated he thinks a ten percent (10%) retainage certainly covers what the liquidated damages would do in the sense that it keeps everybody on track. Ms. Faden stated she would be concerned about diminishing what the Town could recover in the event the Town needed to recover something, and she would want the Town to receive something in exchange for giving something up. Ms. Faden stated if the Town is giving something up on the contract, then the Town should receive something in exchange, and, to her, it seems fair and equitable to increase the retainage if the Town would be giving something up.

Council Member Steve Small asked Mr. Evans what he thought of this or if he has any recommendations to Council. Mr. Evans stated the engineer who designed this was with GMB and they are not here tonight, but Mr. Evans thinks – if the parties and Town is OK with it – a ten percent (10%) retainer is acceptable. Mr. Thompson stated the email came from Morgan Helfrich, of GMB, and while GMB didn't expressly say they are comfortable with the changes, there still seems to be some tacit approval in the sense that there is no “kicking and screaming.” Mr. Thompson stated the other changes were weather delays, interest rate – which the Town doesn't have to worry about late payments – and ADR, meaning there would be arbitration if both parties could not mediate an issue. Ms. Faden asked if the events which could potentially cause damages to occur, the retainage would have to be implemented. Mr. Thompson stated the liquidated damages are more an issue of “let's keep everybody on time,” and, frankly, having a ten percent (10%) retainage, people would like to get paid that ten percent, so even though it's going about it a different way, it all still gives the same result.

Mr. Maneri asked if the Town got all of the estimates in, including from the Delaware State Police (DSP). Mr. Evans stated no, the DSP is going to be separately and the Town is only working with them in regards to the fob system, the alarm setup, and if there are any specialty items the DSP would like to have inside, they will let the Town know and the Town can purchase them. Mr. Maneri asked if the job would cost more money because the Town hasn't heard from the IT person yet. Mr. Evans stated after speaking with the DSP captain he and Town Manager Debbie Botchie spoke with, the costs will actually be reduced in that area. Council Member Steve Small asked what the square footage is which will be added by this project. Mr. Evans stated he believes it's about “four-thousand (4,000) and change” but it definitely falls under the five-thousand (5,000) square-foot requirement for sprinklers. Mr. Strauss stated the building is four-thousand-eight-hundred-eighty-five (4,885) square feet. Mr. Thompson stated if there is any change order in the process, the cost will be Harkins' actuals plus a twelve percent (12%) markup, and if it involves additional time, it will be three-hundred-fifty dollars (\$350) per day.

Mr. Small stated this looks like an awfully expensive project on a cost-per-square-foot basis and Mr. Small asked what are the reasons for that high expense. Mr. Thompson stated

Harkins was the lowest responsive bidder, but in terms of the actual project, Mr. Thompson was not involved in the process. Mr. Strauss stated some of the reasons are the site – with an undercut situation – with twelve (12) inches all across the site, because the builders are anticipating bad soils so rather than put something unrealistic in there, GMB and Harkins thought of “leveling the playing field for everybody” and putting out a cost which would include any ground work improvement. Ms. Faden asked if some of the contingencies Mr. Strauss thinks will happen don’t occur, then is it possible the costs to the Town would be reduced. Mr. Strauss stated he is not sure and would have to get back to Council with the answer. Mr. Evans stated there is a lot of site work starting from the existing parking lot and what encompasses the whole site; there is blacktop, drainage, sand, concrete involved, and it’s about two-hundred-thirty dollars (\$230) per square foot. Ms. Faden stated she thinks it is a significant point that the Town does not know if it will be refunded if the contingencies don’t occur. Mr. Swift stated on the other hand, if the contingencies or conditions are worse, then that goes the other way and it would cost the Town more. Mr. Strauss stated Harkins is willing to stick to the current contract, but if the Town decides to want to reduce costs if no contingencies occur, that would be OK too; however, if conditions are worse, then Harkins would have to go the other way and charge accordingly. Mr. Thompson stated, from a legal standpoint, the way the agreement was structured, it’s really incorporated by reference the project manual with all the specs, which, he assumes, is where all of that information is held; so it is not as if Council can locate it in this document.

Ms. Faden stated she may abstain as she hasn’t seen the contract and doesn’t have enough details to personally feel comfortable to vote on this issue. Mr. Small stated his agreement as he feels Ms. Faden and he are disadvantaged by not having taken seats on this Council at a time when a good deal of this was being discussed, and Mr. Small doesn’t want to hold this back but an extension is his only alternative. Mayor Gordon stated the Town can put this on the agenda for the Town Workshop meeting on May 24, 2016, after Council has had more time to review the contract. Mr. Thompson stated he asked Mr. Strauss and Mr. Swift if it was OK to table the vote on the contract until the May 24, 2016, workshop meeting. Mr. Strauss and Mr. Swift stated yes.

Mr. Small motioned to table the matter of the construction contract between the Town of Millville and Harkins Contracting Company in the amount of \$1,107,871.00, until the May 24, 2016, Town Council Workshop meeting. Ms. Faden seconded the motion. Motion carried 4-0.

- B.** Discuss and possible vote on a bond reduction submitted by Miller & Smith for Lakeside Village (Millville by the Sea); Bond #PB03010401591. *Synopsis:* Miller & Smith are requesting to reduce their bond from \$662,876.00 to \$93,983.75. AECOM recommends that Bond #PB0301041591 be reduced to \$95,483.75 holding \$1,500.00 for 40 linear feet (LF) of curb repair.

Deputy Mayor Maneri recused himself. Council Member Steve Small asked Mr. Jack Tucker, of Miller & Smith, if he was comfortable with the reduction being brought to \$100,000.00, rather than \$93,983.75. Mr. Tucker stated he was fine with that amount. Mr.

Small motioned to reduce bond #PB03010401591 from \$662,876.00 to \$100,000.00. Ms. Faden seconded the motion. Motion carried 3-0.

- C. Discuss and possible vote on Ordinance 17-01. *Synopsis:* Due to the new fiscal year, Ordinance 17-01 is the new assigned number to draft Ordinance 16-07, which amends the Town of Millville Code at Chapter 90 entitled “Licenses”, § 90-11 License fees and taxes, and § 90-12 Conditions attached to license; revocation of breach of condition; notice and hearing, which will allow the Town to provide businesses and organizations an event license for a fee. The ordinance was previously discussed at the April 26, 2016, Town Council Workshop meeting.

Mr. Thompson stated Ordinance 17-01 would place the language discussed at the April 26, 2016, Town Council Workshop meeting for event licenses into the Town Code. Mr. Thompson stated language was added, saying “not sponsored by the Town” so Town-sponsored events would be excluded from the event license fee, as well as language indicating yard sales would not have to apply; and, under the “vendor” definition, added language so non-profit organizations would not have to apply, such as the Girl Scouts.

Ms. Faden motioned to approve Ordinance 17-01. Mr. Maneri seconded the motion. Motion carried 4-0.

- D. Discuss and possible vote on Resolution 17-01. *Synopsis:* Resolution 17-01 is a resolution to amend Resolution 16-05, a fee schedule for fiscal year 2017, as amended, entitled “Event License Fee: \$25.00 per each day of event.”

Mr. Thompson stated this resolution was simply to put into the current fiscal year’s fee schedule the event license cost that was just approved by Council. Ms. Faden motioned to approve Resolution 17-01. Mr. Small seconded the motion. Motion carried 4-0.

7. PROPERTY OWNERS/AUDIENCE COMMENTS AND QUESTIONS

There were no comments.

8. **ANNOUNCEMENT OF NEXT MEETING** – The next meeting will be the Town’s workshop on May 24, 2016.

9. ADJOURNMENT

Ms. Faden motioned to adjourn the meeting at 7:40 p.m. Mr. Maneri seconded the motion. Motion carried 4-0.

Respectfully submitted,
Matt Amerling, Executive Assistant