

The regular meeting of Mayor and Council was held on the above date with Council Members Jim Reynolds, Jason Faulkner, Robert McGhee, Drew Chas, Rob Stout and Howard Young present, with Mayor Kenneth Branner presiding. Town Manager Morris Deputy and Town Solicitor Scott Chambers were also present.

**1. Call to Order**

**2. Pledge of Allegiance**

**3. Minutes Approval:** Moved by Mr. Reynolds and seconded by Mr. McGhee to approve the Minutes for October as prepared. Motion Carried Unanimously.

**4. Treasurer's Report:** Moved by Mr. Chas and seconded by Mr. Stout to approve the Treasurer's Report as prepared. Motion Carried Unanimously.

**5. Bills Payable:** Moved by Mr. Reynolds and seconded by Mr. Chas to approve the Bills Payable as presented and pay as funds become available. Motion Carried unanimously.

**6. Police Report: Chief Michael Iglio**

The MPD responded to 916 calls for service during the month of October.

- Burglary: 546 Swansea Drive (under construction)
- Burglary: 301 Truck Plaza
- Robbery: Valero customers - E. Main Street
- A 15-year old juvenile was arrested for multiple indecent exposure incidents.
- During the month of November, members of the Middletown Police Department are participating in "No-Shave November", typically a way to raise cancer awareness. This year, the department is raising awareness for the victims of hurricane Maria in Puerto Rico. An officer's grandfather and uncle lost their dwelling in the storm. Normal grooming standards will resume December 1.
- CALEA assessors will be returning November 12-14 to conduct an on-site inspection to assess compliance with national standards for re-accreditation. The purpose of the program is to improve public safety services. A public information session will be held on November 13 between 1:00 and 3 p.m. at the police station, where the public can call 302-376-9966 and give their opinion on whether the MPD is meeting the standards. On that same date at 4:30 p.m., an open public forum will be held for the public to give their opinions to the assessors in person. This information is on the MPD's website.
- 160 Traffic Summonses; 50 Criminal Arrests; 30 Warnings; 282 incident reports; and 33 field service reports.

Mayor Branner pointed out that calls to comment on the police department would go directly to the assessors and not the Middletown Police Department. Information on the public session will be on the Town's website.

Moved by Howard Young and seconded by Mr. Stout to accept the Police Report as presented by Chief Iglio. Motion Carried Unanimously.

**7. Middletown Main Street Report: Daneya Jacobs**

- November 4<sup>th</sup> – Live on Main – live manikins will appear in merchants’ windows.
- Three lampposts are reserved for community members to decorate. The application is on the website ([www.middletownmainstreet.com](http://www.middletownmainstreet.com)).
- November 24<sup>th</sup> – Tree lighting and caroling on Cochran Square.
- November 25<sup>th</sup> – Small Business Saturday.
- December 2<sup>nd</sup> – Christmas Parade – a council member will be Santa this year.

**8. Public Hearings:**

**8-A. Public Assembly Request for the Buddy Walk 2018 to be held at Silver Lake Park on May 19, 2018.**

Lauren Camp, Executive Director of Down’s Syndrome Association of Delaware and Theresa Berry requested permission to hold the Annual Buddy Walk on May 19<sup>th</sup> at Silver Lake Park. The walk is similar to the Relay for Life setup; about 2,000 people attend.

Mr. Reynolds commented that little league and soccer should be notified about the planned walk because they both use the park facilities on Friday and Saturday.

*Moved by Mr. Reynolds and seconded by Mr. McGhee to approve the Public Assembly Request for the Buddy Walk at Silver Lake Park. Motion Carried Unanimously.*

**8-B. Lot 20/21, Levels Business Park – Preliminary Major Land Development Plan for a one-story, 12,000+/- square-foot warehouse/office space on 1.21+/- acres (Lot 20) and a one-story, 11,000+/- square-foot warehouse/office space on 1.08 acres (Lot 21); both parcels are in an MI-zoned area. A 30-foot wide common access easement is proposed between the two lots. Tax Parcel Nos. 23-041.00-022 and 23-041.00-023.**

Rick Woodin represented the owner.

- The buildings are similar to existing office/warehouse structures at Levels Business Park.
- The two buildings will back up to each other and share an access drive.
- Infrastructure is in place.
- An off-site stormwater management pond near Rt. 301 will handle stormwater.
- Additional rooftop recharge will be installed.
- Planning and Zoning recommended approval of the Preliminary Plan.

*Moved by Mr. Stout and seconded by Mr. Chas to approve the Preliminary Major Land Development Plan for Lots 20 and 21 at Levels Business Park. Motion Carried Unanimously.*

**8-C. Westown Business Park, Lots 6 thru 12 – Preliminary Major Land Development Plan for three-story apartment buildings totaling 264+/- units; clubhouse, open space areas, associated utilities and site improvements, on a 20+/- acre parcel, located between Merrimac Avenue and Hedgelawn Way; and Kohl Avenue and Patriot Drive, in a C-3 zoned area. Tax Parcel Nos. 23-040.00-010 through 23-040.00-016.**

Rick Woodin with Woodin and Associates represented AJAXCAP LLC, equitable owner of Lots 6 through 12 in the Westown Business Park. The legal owner is Westown BP 60 Acres, LLC.

- The property contains 20 acres located on the west side of Town.

- The perimeter of the property is bounded by Kohl Avenue, Hedgelawn Way, Patriot Drive and Merrimac Avenue South.
- Hedgelawn Plaza, a 55,000 square-foot retail area, will be located on the north side of the apartments.
- The Cochran farm and Amazon are located to the East of the property; Datwyler and Johnson Controls are located to the south; and west is a proposed storage facility.
- The current zoning is C-3, Commercial.
- Town utilities will serve the site.
- A Concept Plan was presented to Council in August proposing 288 units; the plan was presented to State Planning in July.
- A Preliminary Plan was presented to Planning and Zoning October 19.
- Eleven buildings with 24 units are proposed for a total of 264 units; 24 units less than the Concept Plan. The number of units was reduced based on comments received from the Town.
- A second entrance off Patriot Drive was added to the project to address concerns expressed at the Concept Plan presentation.
- The project includes a clubhouse and pool for the residents.
- Market-rate units are proposed.
- Architecture will be similar to The Parkway at South Ridge units under construction.

Mr. Woodin addressed several supporting factors:

- The property is zoned C-3 which allows apartments by right.
- Adequate capacity is available for all utilities.
- Multiple means of access are available. Access to over three-million square feet of employment is within 2 miles of the project, as well as a variety of retail facilities.
- Open space requirements for an apartment project is 40%; commercial centers only require 15-20%.
- Trips generated from the apartment complex will be half of what a shopping center in the same location would produce.
- Comments from Delaware State Housing include:
  - ◊ The project is in close proximity to retail and employment opportunities.
  - ◊ The housing market is shifting toward rental housing.
  - ◊ Rental units are more manageable for the young and the old, as well as single heads-of-household.
  - ◊ There is an ongoing growth and demand for market-rate apartments.
  - ◊ The project is part of the Westown area and will encourage more walking, bicycling and DART Transit Services to employment and shopping areas.

Mr. Faulkner emphasized that the area was originally planned and intended as an employment area, not a residential development; multi-family was never discussed and considered for this area. The apartments will be constructed in the middle of industrial and commercial properties.

Mr. Woodin commented that 200 acres of Industrial property were added to the back of the Kohl south farm and a portion of the Kohl farm was rezoned to commercial; the commercial zoning at that time included retail and multi-family.

Mr. Woodin noted that the Bunker Hill development was originally an employment center but changed to a commercial/residential, multi-family and age-restricted active adult area.

Mr. Faulkner remarked the Bunker Hill area had a logical progression – Westtown Business Park was envisioned as an employment center, and now residential is being proposed on a 20-acre parcel in the middle of the commercial/industrial area.

A resident in Town, and Bernard August from Newark stated violations have been issued to Johnson Controls for emitting toxic chemicals. They fear the residents in the complex will be exposed to lead contamination and toxic chemicals and recommended Mayor and Council deny the request based on these issues.

Mayor Branner explained that DNREC is responsible for issuing and tracking permits for industrial sites, not the Town. Johnson Controls on Patriot Drive has never received a violation from DNREC. If any violations had been issued by DNREC, the Town would have been informed.

Resident from Springmill asked how many units are in each building and how much parking is required. He agreed that this is not a good location for apartments.

Mr. Woodin said the project proposes 11 buildings with 24 units each, for a total of 264 units. Per code, two off-street parking spaces are required for each unit.

Paul Cook questioned the safety of pedestrians walking to the commercial/retail areas, and expressed concern for kids crossing Rt. 301 to get to Walmart, etc.

Mr. Woodin said the Town requires six-foot sidewalks along all streets; a multi-modal path extends from the Goddard School to Levels Park; a sidewalk will extend from the south side of Rt. 301, Hedgelawn Plaza, to West Main Street. Mr. Woodin said he would not expect young kids to cross 301 to go to Walmart. He added that sidewalks will be constructed within the development and surrounding area where people could walk for pleasure or shop.

Mr. Cook pointed out that along with the additional traffic from Amazon when they increase their holiday shifts, the apartments could possibly impact 301 and Levels Road with an additional 400 to 450 more vehicles.

Mr. Woodin said the developer is required to contribute to DelDOT's infrastructure fund for improvements to the roadway. The morning peak hour traffic would be similar but the afternoon peak hour for apartments will be half of what retail would generate.

Gene Kirchner commented that in many aspects, it is a good project, but he agrees that the location is not good for an apartment complex. Planning and Zoning also thought it was the wrong place. The zoning allows retail, but it also allows an office park, which would generate less traffic than either retail or residential.

Mr. Woodin stated that he feels this is a good location because services and employment will be within walking distance for the residents and the apartments will help fill a need for affordable housing.

Mr. Faulkner reiterated that it was always discussed that this area would be an employment center.

Mayor Branner pointed out that this plan was presented before the zoning code was amended to require conditional use approval to allow apartments in the C-3 zone.

*Moved by Mr. Chas and seconded by Mr. Stout to approve the Westtown Business Park, Lots 6 – 12 Preliminary Major Land Development Plan for three-story apartment buildings totaling 264 +/- units; clubhouse, open space areas, associated utilities and site improvements, on a 20+/- acre parcel, located between Merrimac Avenue and Hedgelawn Way; and Kohl Avenue and Patriot Drive, in a C-3 –zoned area. Tax Parcel Nos. 23-040.00-010 through 23-040.00-016.*

*Mayor Branner asked Council to state the reason for their vote:*

*Rob Stout: Yes. I have concerns on this project. This was not the intended use per our Comprehensive Plan, but from a timing and zoning standpoint, I think, we have to follow those zoning rules that existed. Based on that, I am voting yes.*

*Robert McGhee: No. I have a concern for the safety of the residents for the proposed apartments. I vote no.*

*Jim Reynolds: No. I'm voting no for this project because it does not fit what I envisioned for this property, and I also have major concerns about the safety and density in that area.*

*Jason Faulkner: No. I am voting no on this project. I do not believe it is consistent with the intent of the Comprehensive Plan or any previous discussions about the development of the property.*

*Drew Chas: No. I also vote no for the same reasons as Mr. Faulkner – I do not believe it was the intended use of this area.*

*Howard Young: No. I also vote no due to the density level, traffic and safety.*

*The Motion is denied 5 to 1.*

Mayor Branner noted that had the vote been tied and he had to vote, his feeling is the same – it is allowed by code, but this is not what was intended for this parcel.

#### **8-D. Ratify a Construction Agreement for the Sharondale Erosion Control Project.**

Morris Deputy: The Town received four bids for the Sharondale Erosion Control Project to install outlet improvements to a storm drain to alleviate a severe erosion issue. Mr. Deputy recommended Council to award the bid to the low bidder, Jeff Bartsch Trucking and Excavation, for the bid amount of \$104,000.

*Moved by Mr. Reynolds and seconded by Mr. McGhee to ratify a construction agreement with Jeff Bartsch Trucking for the Sharondale Erosion Control Project for the low bid of \$104,000, as recommended by the Town Manager. Motion Carried 5 to 0.*

*Councilman Faulkner recused himself from voting because of his employment with one of the bidders.*

#### **8-E. Ratify a Consultant Agreement for a Wastewater Facilities Plan associated with the Wastewater Planning Grant received through the Delaware Department of Natural Resources and Environmental Control (DNREC).**

Morris Deputy reported the Town received a \$50,000 planning grant through DNREC to assist with the cost of developing a wastewater facility plan to study the overall treatment plant operations at the 2.5 MGD Middletown Wastewater Treatment Plant. The grant will cover 50% of the consultant cost. Duffield Associates submitted a proposal to prepare the plan for an amount not to exceed

\$89,500. The grant will cover \$50,000 and the Town will be responsible to pay the remaining \$44,750.

***Moved by Mr. Reynolds and seconded by Mr. McGhee to ratify a Consultant Agreement for the Wastewater Facilities Plan with Duffield Associates for an amount not to exceed \$89,500, as recommended by the Town Manager. The Town's portion of the grant will be \$44,750. Motion Carried Unanimously.***

**8-F. Motion to accept a Proposal for the Middletown Sports Complex. Portion of Tax Parcel No. 23-043.00-001.**

Mayor Branner reported that one response was received, but no RFP's were submitted for the Sports Complex. He recommended Mayor and Council not accept the response, re-evaluate the Town's stance on the Sports Complex, and determine a path forward.

***Moved by Mr. Faulkner and seconded by Mr. Chas not to accept the response submitted as an RFP for the Sports Complex. Motion Carried Unanimously.***

**8-G. Adopt a Reimbursement Resolution authorizing the reimbursement of a prior expenditure of funds from the proceeds of a tax-exempt bond or bonds to be issued for the financing of certain capital projects.**

Morris Deputy: The Town is in the process of obtaining financing through PNC for the installation of "bird balls" for one of the wastewater lagoons. This Resolution will allow the Town to reimburse itself with tax-exempt bond proceeds for a portion of upfront costs paid by the Town before closing on the bond.

***Moved by Mr. Stout and seconded by Mr. McGhee to adopt a Reimbursement Resolution authorizing the reimbursement of a prior expenditure of funds from the proceeds of a tax-exempt bond or bonds to be issued for the financing of certain capital projects, as recommended by the Town Manager. Motion Carried Unanimously.***

**9. Old Business:**

- Mr. Reynolds requested residents that still have an old yard waste container to call Greta Stewart at Public Works (378-2211) to arrange for the Town to pick it up.

**10. New Business:**

- Mr. Young requested a moment of silence for the victims of the mass shooting in Texas.
- Mr. Young recognized Debra Walker as an outstanding member of the community.
- Angelo Gallego, Spring Arbor, asked what the outcome was of the meeting held in October between the Town, Cirrus DE, and the three potentially interested parties for the Middletown Technology Center.  
Mayor Branner said the discussions are ongoing.
- Joe Enrico, resident, expressed concern with the Town's permitting and inspection procedures for rental units. Mr. Enrico explained he purchased a townhouse with a finished basement and bathroom, but before he could rent out the unit, he had to hire an electrician and a plumber to certify the work, because the town had no record of any permits issued to finish the basement and install a bathroom. After a second inspection, additional violations were brought to his attention. Mr. Enrico obtained a set of house plans from the builder that shows the unit as it stands today, for which a Certificate of Occupancy was issued in

2005. He feels this aggravation and expense could have been avoided if the Town had their records in order.

Mayor Branner apologized to Mr. Enrico for his inconvenience and said the Town will look into the rental procedures.

Mr. Enrico asked to be reimbursed for the \$210 he paid for the electrical inspection. Mayor Branner said the Town would take care of it.

- Jim Young, coordinator for the Salvation Army Kettle Drive, announced this year's drive runs from November 18 through December 23. In 2016, over 250 volunteers logged 618 hours in the Town. He thanked the Town for their continued support and effort. Over 230 families in the MOT area have received assistance from the Salvation Army, ranging from utility assistance, clothing, crisis intervention, food and toys at Christmas, etc.
- Greta Stewart, bell ringer coordinator for the town, said 20% of the employees including Mayor and Council ring the bell. She encouraged everyone to volunteer for this very rewarding experience.
- Debbie Pierce from Lakeside asked if the residents of Lakeside could be informed when 5K's are scheduled because the main route goes through their neighborhood. She said she would gladly be the contact person and put the information on Lakeside's face book page. She also asked if signs could be placed at the entrance of the development to alert motorists of the event.

Mayor Branner suggested she contact Kristen Krenzer for coordination of the events.

#### **11. Executive Session: None**

***Moved by Mr. Reynolds and seconded by Mr. Faulkner to adjourn. Motion Carried Unanimously.***