

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

**1. Call to Order**

**2. Pledge of Allegiance**

**3. Minutes Approval:** Moved by Mr. Reynolds and seconded by Mr. Faulkner to approve the Minutes for March 5 and March 12 as presented. Motion Carried Unanimously.

**4. Treasurers Report:** Moved by Mr. Chas and seconded by Mr. Faulkner 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: Capt. Mike Iglio**

The MPD responded to 970 calls for service for the month of March.

- 3/20/18 – Fulton Bank robbery – suspect apprehended and awaiting extradition.
- 3/23/18 – PNC Bank purse snatching – investigation on-going
- 3/28/18 – Cleaver Farm Road/Cole Blvd. - attempted abduction – investigation on-going
- 3/24/18 – Members of the MPD and Mayor Branner attended the final review hearing for National Accreditation by The Commission on Accreditation for Law Enforcement Agencies. The MPD was awarded re-accreditation for four more years by the Commission.
- The MPD issued: 207 traffic tickets; 54 warnings; 51 criminal arrests; 283 incident reports; 40 field service reports.

Mayor Branner congratulated the Chief and all the officers in the Middletown Police Department – only 10% of the police departments in the United States receive national accreditation.

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

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

- The Sidewalk Sale was very successful with more than 20 merchants participating.
- A merchants’ yard sale is scheduled for April 21<sup>st</sup> at noon.
- Sips and Sweets will be held again on May 5th for Cinco de Mayo, from 1 to 5 p.m. Registration to attend the event is encouraged so merchants can prepare accordingly.

**8. Public Hearings**

**8-A. 108 Patriot Drive – Conditional Use Permit request to operate an electrical contractor’s office in an M-I zoned area. CU-02-18. Tax Parcel No. 23-041.00-005.**

Frank Tice represented CECO Electric. The company has been in Middletown for six years, located at Sleepy Hollow Drive. A larger facility is needed for expansion.

***Moved by Mr. Faulkner and seconded by Mr. Young to approve 108 Patriot Drive Conditional Use Permit request to operate an electrical contractor's office in an M-I zoned area. CU-02-18. Motion Carried Unanimously.***

**8-B. 109 Patriot Drive – Levels Business Park – Conditional Use Permit request to operate a production microbrewery, including a taproom and kitchen (First State Brewing Company, LLC) in an M-I zoned area. CU-01-18. Tax Parcel No. 23-041.00-025.**

Paul Hester, founder of First State Brewery and Justin Faulkner, taproom and kitchen manager, requested Conditional Use approval for the brewery.

- The business is a production microbrewery producing beer and cider for both retail and wholesale.
- A taproom and limited-service kitchen will be available.
- The primary business of a microbrewery is manufacturing beer; a brewpub is primarily a restaurant that manufactures beer mostly for consumption on-site.
- Beer will be distributed to bars, restaurants and liquor stores for sale.
- The taproom will seat approximately 90 people; beer can be purchased for consumption on-site as well as to-go.
- An 11,000 square-foot building is proposed on Lot 23, 109 Patriot Drive, Levels Business Park.

***Moved by Mr. Chas and seconded by Mr. Reynolds to approve Conditional Use Permit CU-01-18 to operate a production microbrewery, including a taproom and kitchen for First State Brewing Company, LLC) in an M-I zoned area. Motion Carried 4 to 0; Jason Faulkner recused.***

**8-C. 107/109 Patriot Drive – Lots 23 and 24 Levels Business Park – Record Re-Subdivision Plan to amend the previously-recorded Record Minor Land Development Plan for Lots 23 and 24 Levels Business Park, located along the northerly side of Patriot Drive, approximately 1,000 feet west of Levels Road. Tax Parcel Nos. 23-041.00-025 and 23-041.00-026.**

Rick Woodin, Woodin and Associates Engineers, represented Bluegrass Investments, LLC. The request is to amend the previously-recorded Record Minor Land Development Plan for Lots 23 and 24 Levels Business Park, located next to Tractor Supply and Greenhill Car Wash.

- First State Brewery will occupy Lot 23.
- The building size will not increase, only the footprint configuration will change.
- The parking lot will be rotated to improve the traffic flow.
- Lots 23 and 24 will share a common access easement on the property line between the two lots.
- Planning and Zoning recommended unanimous approval.

***Moved by Mr. Chas and seconded by Mr. Young to approve the Record Re-Subdivision Plan to amend the previously-recorded Record Minor Land Development Plan for Lots 23 and 24 Levels Business Park. Motion Carried Unanimously***

**8-D. 121 W/ Cochran Street – Minor Land Development Plan for the rehabilitation of the existing barn on the property into a music studio in a C-2 zoned area. Tax Parcel No. 23-008.00-046.**

Forrust Miller, owner of “S Music Studio”, currently operates the music studio from his home in Port Penn.

- Approximately 125 students attend the studio on a weekly basis. They want to relocate to Cochran Street and expand the business.
- The plan is to rehab the barn, install metal siding, and add teaching rooms.
- Ten gravel parking spaces will be provided.
- A 300 sq. ft. shed will be torn down.
- A 600 square-foot addition will be added to the existing barn.

Mr. Reynolds commented on the following:

- The code requires 6' sidewalk around the property, from property line to property line, which is not shown on the plan.
- The gravel parking area appears to be only about 4 feet wide.  
Mr. Miller said it is actually the length of a vehicle – it's just overgrown.
- The handicapped parking is required to be paved.
- Mr. Reynolds commented the front of the building (facing Cochran St.) is only 12' from the street; after a 6' sidewalk is installed, there won't be much space from the sidewalk to the building.  
Mr. Miller said no parking is proposed in front of the building.

Mayor Branner asked if the addition would affect the parking.

Morris Deputy said the whole facility will be considered when calculating the parking requirement.

Mayor Branner said the Planning and Zoning Commission asked if the rooms will be sound-proofed. They also indicated the lot appears large enough to add more parking if needed based on plan review.

Mr. Miller said the building will be sound-proofed.

***Moved by Mr. Faulkner and seconded by Mr. McGhee to approve the Minor Land Development Plan for the rehabilitation of the existing barn on the property into a music studio in a C-2 zoned area, 121 W. Cochran Street. Motion Carried Unanimously.***

**8-E. Middletown Crossing Parcel B-3 – Modified Preliminary Major Land Development Plan to replace previously-approved 129,240 square-feet of commercial development with a new retail-residential apartment complex proposing 225 units (144 garden apartments), and 20,791 square-feet of retail and associated amenities. Tax Parcel No. 23-020.00-191.**

Mark Dunkle, attorney with Parkowski Guerke & Swayze, Alex Meitzler, traffic engineer and Seth Shapiro, architect, represented the property owner, Poet Holdings, LLC, and presented the following:

- The Comp Plan identifies the property for mixed use.
- In 2005, the property was identified as commercial; in 2012, it was suggested that mixed-use is better suited for the property.
- The property is zoned C-3 and allows anything permitted in C-2, which is mixed-use, offering employment, housing and shopping.
- Two, four-story buildings with retail on the ground level will be located at the end of the boulevard closest to the existing parking lot; three-story apartments will be above the retail. The three-story garden apartment buildings offering one, two and three bedrooms will be located closest to Dickenson Boulevard.
- Mixed-use development will generate less traffic than a big box user or shopping center.
- According to the traffic analysis, a big box user or shopping center would cause one intersection to drop from a Level C to Level D; it will stay at a Level C with mixed-use.
- They have discussed the proposed Rt. 299 Project with DelDOT and how it will work with this plan. DelDOT said the 299 Project was sized for the big box use – this project is undersized.
- A letter sent to the Planning and Zoning Commission from several Middletown Crossing residents expressed concern that the current traffic pattern to the shopping center would change – Mr. Dunkle indicated the current routes will not change.

Mr. Reynolds asked why only one hour, 7 to 8 a.m., and 4 to 5 p.m. was used for the study and not two hours, such as 6 to 8 a.m. and 4 p.m. to 6 p.m. He asked if the study included weekends when traffic is the heaviest. Alex Meitzler, engineer with Traffic Planning and Design, said the data was collected between 7 to 9 a.m. and 4 to 6 p.m., with the peak times being 7 to 8 a.m. and 4 to 5 p.m. He said the study did not include weekends. A retail center will generate more traffic on Saturdays, but the mixed-use will generate much less traffic on the weekends.

Mr. Meitzler said the 299 Project will make East Main Street four lanes from SR 1 to the Cleaver Farm Road intersection, and three lanes to Catherine St., with a center turn lane. DelDOT's proposed design used data for

a retail center being built – this mixed-use plan will produce less traffic than the currently approved retail center.

Mark Dunkle said concerns expressed by Planning and Zoning at the October 2017 meeting have been addressed to include:

- a traffic study has been completed;
- DelDOT's plan for Rt. 299 has been presented;
- the number of units was reduced slightly and the buildings have been slightly reconfigured;
- the plan is a by-right use that follows the Comp Plan. Planning and Zoning gave unanimous recommendation for approval.

Mayor Branner commented that Planning and Zoning also discussed that DelDOT's improvements would be completed almost simultaneously with the development, which is two to three years.

Jay Myers, Middletown Crossing: commented that he was led to believe the area would be retail; the existing parking lot is in dire need of repair; the access road floods and the grass in the open space rarely gets cut; expressed concerns regarding traffic and the amount of time it takes to get onto Rt. 299; the number of accidents on Dickenson Boulevard and the over-crowding of schools. Residents of Middletown Crossing are totally against the development.

Craig Sherman, Middletown Crossing: asked if the traffic information presented included the 244 apartments as well as the retail, what exactly are garden apartments, and will retail be located behind the houses on Shakespeare.

Alex Meitzler responded that the traffic analysis did include the apartments. The peaks are more consistent in the morning for residential developments; the p.m. generation varies more. A big box retail has steady trip generation throughout the day as well as higher generation on the weekends.

Seth Shapiro, architect, explained that a garden apartment is a two- or three-story apartment building served by stairways; one stair serves four units per floor with two modules together, for a total of 24 units. These apartments are not designated as "senior apartments". He also explained that a berm is behind Shakespeare and the buildings behind the berm are one-story garages; the four-story buildings are closer to the parking lot of the existing shopping center.

Mayor Branner said the size of the berm will be addressed at final plan approval – it will be higher and landscaped to provide a buffer between the existing houses and apartments.

Bob Nacrelli, Middletown Crossing: said he was told 13 years ago a berm would be constructed with landscaping to block the view, and only part of it has been constructed. He asked if these are the same developers who were going to build the development on the corner of Catherine and Main that never got built. He asked if there is a guarantee that the berm will be constructed properly.

Mayor Branner replied that the original berm was partially constructed because only part of the commercial area was built. As the final plan for this project moves forward, the Town will require a taller berm with landscaping on the top. The Town required the same thing for the apartments approved on the west side of Town. All requirements specified by the town, including landscaping, etc., will be on the Record Plan.

Mayor Branner stated there is no relationship between Andy Hobbs, the owner of this shopping center, and the developer who was going to build the Promenade.

Linda Pie, Middletown Crossing: stressed that lack of maintenance is a big issue with the existing shopping center -- the grass doesn't get cut, there are pot holes in the parking lot, and the road floods from Dickenson to the twin houses behind the Acme. She is concerned that the new project will not be maintained any better. Andy Hobbs, part owner of the project, commented that that area was supposed to have been resurfaced last year but due to the weather, it didn't happen. He said it will be resurfaced this year.

Mayor Branner said this is the first Council has heard about most of these issues and stressed to the residents they should contact Town Hall if/when they have issues so they can be addressed.

Bart Lippincott, resident, said he has the same issues with the roads and acme parking lot. He works on the other side of Town and it takes him half an hour to go through town.

Mayor Branner said the improvements for 299, scheduled to start next year, will start from Brick Mill Road and go to Catherine Street. Additional routes proposed to help alleviate traffic on Main Street include:

- The Town has been working with DelDOT and the developer of the property behind M&T Bank for a road from Brick Mill Road through Dove Run and the Highlands, to Lake Street to tie in to the west side.
- We are working with DelDOT for an alternate route from Middletown Crossing to Merrimac and Patriot Drive to get to 301. The route could possibly go behind the Post Office to Catherine Street, Green Street, past the fire house, through the Public Works area, and across Haveg Road to tie into Industrial Drive for a third corridor to go east and west.
- The 299 corridor is first; the Dove Run section depends on the development of the Highlands, which will probably start this year. The connection will go from Dove Run, through the Highlands to Lake Street to the west side.
- Another location being discussed with DelDOT is an interconnection to the west side, although that will probably not be done at the same time because a rail crossing will be required.
- The 301 access road is scheduled to be finished by the end of the year, which should help alleviate traffic through Town. He pointed out that, through his own observation, six out of ten cars from Rt. 1 through Town do not have Delaware tags.

Chris Palmer-Casey, resident on the corner of East Shakespeare and Dickenson said she doesn't think the berm will be large enough to hide a three-story building; garages will be behind the other homes; the bike path is behind her house. She added that tractor trailers use E. Shakespeare because they can't get down 299.

Seth Shapiro said a pedestrian link will be constructed to the bike path from the shopping center. The existing berm will be built up along the edge to Dickenson. They will work with the Town on the berm detail.

Mayor Branner noted the MPD will address the tractor trailer situation.

Mayor Branner asked the Middletown Crossing residents to contact Council with any issues or ideas pertaining to the proposed development.

Gene Kirchner asked if the rear of the apartments will be similar to the front.

Seth Shapiro said a cement fiber board material will surround all four sides of the building, and balconies will be on all sides – they are basically dual-frontage buildings.

Mayor Branner asked Council to give a verbal vote for the motion on the floor.

***Moved by Mr. Chas and seconded by Mr. McGhee to approve the Modified Preliminary Major Land Development Plan consisting of 225 apartment units (144 garden apartments) and 20,791 square-feet of retail and associated amenities, to replace a previously-approved 129,240 square-foot commercial plan, located on tax parcel 23-020.00-191.***

***Robert McGhee: I concur with the residents. I don't think it is a good fit for that neighborhood, but by-right, everything fits in the C-3 code. I vote yes.***

***Jim Reynolds: Because this project, according to code is a by-right use, I reluctantly vote Yes.***

***Jason Faulkner: I recuse myself from voting because my vote on another apartment complex was questioned because I work for a developer who owns another apartment project.***

***Drew Chas: I echo Mr. Reynolds' thoughts; even though I don't think it is the best use, by-right it is approved and I vote in favor of it.***

**Howard Young: I agree with the residents, but it is allowed in the C-3 zoning district and I vote yes.**

**Motion carried to approve the Modified Preliminary Major Land Development Plan for Middletown Crossing Parcel B-3. Motion Carried Unanimously.**

Mayor Branner reiterated, that even though it is allowed by-right, the residents in Middletown Crossing should contact Council with their concerns and ideas to make it the best plan possible.

**8-F. Ratify an agreement with Green Mountain Retirement Planning Service, Inc., for third-party administration of the Town of Middletown's Employee Money Purchase Pension Plan.**

Morris Deputy: This agreement will continue our business relationship with Green Mountain, managed by Sue Cobb, who has been our third party administrator since we have had a pension plan.

**Moved by Mr. Young and seconded by Mr. McGhee to accept the recommendation by the Town Manager to ratify an agreement with Green Mountain Retirement Planning Services. Motion Carried Unanimously.**

**8-G. Motion to Adopt Ordinance 18-02-03 for the Annexation of the Casapulla Farm Property containing 119.2 +/- acres contiguous to the Town of Middletown, in accordance with the Town of Middletown Comprehensive Plan. Tax Parcel No. 13-026.00-005.**

Mike Reimann and Chris Duke engineers with Becker Morgan Group and Richard Julian, Benchmark Builders represented the project.

- Annexation of the 119+/- acre Casapulla Farm located on Middle Neck Road is being requested.
- In December 2016, the Comp Plan was modified to include this parcel within the Future Land Use and Annexation Area with a residential designation – the plan is in conformance with the Comp Plan.
- R-3 and R-2 zoning are requested.
- A power line easement runs through the property.
- A preliminary, conceptual land development plan was presented proposing 106 active adult single-family units; 77 single family lots; and 240 garden style apartments (reduced from 288 per Planning & Zonings comments).
- No wetlands will be impacted -- a minimum 50' buffer will be maintained.
- The tree line on the southern side of the site will remain – very few trees will be removed.
- About 37% open space is provided, which exceeds code.
- Two access points are proposed from Middle Neck Road.
- Access to the new interchange is less than a mile. Traffic will have direct access north or south without using Rt. 299 through Town.
- DelDOT's traffic study for Levels Road/301 intersection after build-out, indicates a 165- second delay; constructing an additional lane at the intersection would reduce the delay to 106 seconds. This development will improve traffic operations at a critical intersection.
- Drainage: The site has good soil; the average infiltration rate is 5" per hour – DNREC requires 1" per hour. In addition to good soil and a low water table, the site has positive fall and drains to the south.
- Run-off was a concern raised at the Planning and Zoning meeting. Infiltration practices will be implemented to comply with DNREC's regulations. DNREC requires that no more water will be released after construction, than what existed before the new development. Stormwater runoff will actually be less after the development.
- Overall density is 3-1/2 units per acre.

Jim Reynolds questioned the Traffic Impact Study presented and commented that a Traffic Impact Study cannot be done until it's annexed.

Mike Reimann said at the PLUS meeting it was requested that a Traffic Analysis be completed to determine if it would be included in the Westtown TID, or if it would be treated like a traditional development. DelDOT concluded a Traffic Impact Study should be completed as part of the land development process.

Mayor Branner commented that DelDOT doesn't want it included with the Westtown TID.

Jason Faulkner pointed out that McCormick Taylor's study indicated the Levels Road/Rt. 301 intersection will still operate at a Level F, even if another lane is added. He asked if annexed, will the owners make whatever improvements are required to get the intersection out of a failing level, including all the other development proposed.

Mayor Branner commented the motion could stipulate that the annexation is contingent upon meeting DelDOT's requirements for the improvements of Rt. 301/Levels Road.

Mike Reimann said the intersection is at a Level F whether or not this development happens. Currently, with full buildout and all proposed improvements, the intersection will operate at a 165- second delay.

Morris Deputy added that DelDOT has concerns that the improvements may have already been maximized at the intersection. DelDOT doesn't agree that the additional lane will improve the intersection until they see a full TID. McCormick's study was to see how the development would fit with existing/proposed improvements.

Mike Reimann noted one contributing issue is the right turn movement from Rt. 301 to Levels Road is not a free-right movement, so traffic heading south on 301 backs up and causes delays. He said they suggested DelDOT make it a free right movement to see if it would help with the intersection. By adding a lane, the delay time drops to 106 seconds versus 165 seconds. A full study is required and all improvements requested by DelDOT would have to be implemented.

Jason Faulkner asked what happens if the property is annexed and DelDOT says no amount of improvements will get the intersection out of a Level F – does it not get built?

Mayor Branner responded that the Record Plan would not go forward with the current density. The only way to move forward would be to decrease the density.

Mr. Reimann said they understand the process would require the traffic study and they would be required to make improvements.

Morris Deputy pointed out that the next parcels to be developed will likely be the Money Farm and Sports Complex, which will have to be considered in the study.

Jason Faulkner asked why R-3 and R-2 zoning is being requested for the whole parcel and why R-1 zoning isn't being requested for the single family portion. From a planning point, the Town has to assume the worst scenario if R-2 and R-3 are approved.

Mr. Reimann said they will deed restrict the property – R-3 is required for the apartments. He said studies show there is a need for apartments.

Mr. Reynolds said the Town doesn't want apartments.

Mayor Branner said last month the Town approved, by-right, 264 apartments and today, 225 apartments, which gives us about 1500 approved apartment units on the books.

Mayor Branner asked if an entrance on the Warwick Road side was considered, which would be a better alternative than two entrances on Middle Neck Road.

Mike Reimann said they would consider that if DelDOT would allow it. He noted that upgrades to Middle Neck Road will also be required.

Mike Reimann asked if the plan could be tabled and they work with the Town to provide a better plan.

Paul Cook asked how close the property was to St. Anne's and if the residents would be using Levels Road. Mayor Branner said it's two miles from St. Anne's – it's on 301 past the truck plaza.

Harry Money, Middle Neck Road: expressed concern with the additional traffic on Middle Neck Road, wetlands disturbance, stormwater runoff and the pollution impact in the Chesapeake Watershed. He's against the apartments but wouldn't oppose a few single family houses.

Senator Bruce Ennis represented a number of residents from Middle Neck Road. He said the residents aren't opposed to the 55+ community but are totally against the apartments and the additional traffic that would be generated. He pointed out that the original concept of the Westown Plan included a "green belt" around the western approach to Middletown. The project is located in Investment Level 3 and 4. DNREC, DelDOT, Historic Preservation, and the Dept. of Ag all have concerns. Senator Ennis requested the Ordinance not be adopted until the plan is revised.

Mayor Branner said the engineer has requested the plan to be tabled for further review – a traffic study will be part of that review.

Mike Puglisi, Puglisi Egg farm on Middle Neck Road: New Castle County's Suburban Reserve zoning would allow only about 22 houses.

Mayor Branner commented New Castle County has Suburban Reserve zoning because they can't provide water and sewer service to the area.

Resident from Middle Neck Road said the new home buyers will likely complain about the smell from the chicken farm. She pointed out that 10 to 17 tractor trailers come to the farm on any given day.

Nicole Schuler-Geer, Middle Neck Road resident: Middle Neck Road will be the last exit before the toll booth and people will use that exit to avoid the high tolls. As far as density, she said they prefer no apartments – a 48-unit reduction is not what they were looking for.

Harry Money asked if sewer would be provided.

Mayor Branner explained that water, sewer and electric service would be provided by the Town of Middletown. If the development was built under the County's Suburban Reserve zoning, septic systems would be used.

Mike Reimann requested the plan to be tabled.

***Moved by Mr. Reynolds and seconded by Mr. McGhee to adopt Ordinance 18-02-03 for the Annexation of the Casapulla Farm Property containing 119.32+/- acres contiguous to the Town of Middletown. Tax Parcel No. 13-026.00-005.***

Mayor Branner asked for a new motion to table the Ordinance and rescind the first motion.

***Moved by Mr. Reynolds and seconded by Mr. Young to rescind the previous motion and to table Ordinance 18-02-03 until further notice. Motion Carried Unanimously.***

#### **8-H. Ratify a construction agreement for the 2018 Road Restoration Project.**

Morris Deputy reported the Town received four bids for the 2018 Road Restoration Project. Bids were received from Eastern States Construction, David A. Bramble, Inc., Adel Construction and Greggo & Ferrara, Inc. The recommendation is to award the contract to the low bidder, Eastern States Construction for a bid amount of \$475,710.75, to be paid through Municipal Street Aid.



***Moved by Mr. Reynolds and seconded by Mr. Young to accept the recommendation from the Town Manager to award the street package to Eastern States Construction for \$475,710.75. Motion Carried Unanimously.***

**9. Unfinished Business: None**

**10. New Business:**

- A resident requested to use the Armory basketball facility for a youth program. Mayor Branner said improvements are in the works to utilize the Armory more efficiently and the basketball court will be removed.
- Mayor Branner announced another Request for Proposals for the Sports Complex to be located on Levels Road will be issued and available for pick-up on April 9<sup>th</sup>. The Market Study will be included with the packet. Proposals will be due to the Town Manager's office Friday, June 1<sup>st</sup> at 12 p.m. Mayor and Council will review all proposals in Executive Session following the June 4<sup>th</sup> Council Meeting. Presentation and Public Hearings will be scheduled based on responses for the RFP.
- Paul Cook asked if the golf course would be included in the RFP. Mayor Branner said no, the golf course proposal is done. The golf course should be open for play in September; the clubhouse and pool should be open by Memorial Day. Summit Bridge Properties LLC is doing the clubhouse and Matt Richter is making the golf course improvements.

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