

The regular meeting of Mayor and Council was held on the above date with Councilmen 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 August 6, 2018 as prepared. Motion Carried Unanimously.

4. Treasurer's 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 prepared. Motion Carried Unanimously.

6. Police Report: Chief Michael Iglio

The MPD responded to 1,028 calls for service for the month of August.

- 8/11 & 12/18: S. Ridge Avenue – damage to an apartment under construction.
- 8/31/18: 459 Green Giant Road – theft (copper and tools).
- 8/3 & 4/18: 315 Auto Park Drive – construction site theft (copper wire).
- 8/6/18: Parking lot of Jakes Way Back Burgers – subject with gun arrested.
- 8/5/18: Rt. 301 & Doc Levinson Drive – fatal motorcycle collision.
- The MPD issued 152 traffic tickets; 82 warnings; 51 arrests; 314 incident reports and 35 field service reports.

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

7. Middletown Main Street Update: None

8. Public Hearings:

8-A. Motion to appoint David Woodward to the Board of Adjustment for the Town of Middletown and Morgan Aird to the Middletown Action Network Committee.

Moved by Mr. Reynolds and seconded by Mr. Stout to appoint David Woodward to the Board of Adjustment and Morgan Aird to the Middletown Action Network Committee. Motion Carried Unanimously.

8-B. 0 Summit Bridge Road – Conditional Use Permit request to build two, two-story self-storage buildings (45,940 square-feet and 42,030 square-feet) in a C-3 zoned area. CU-16-18. Tax Parcel No. 23-001.00141.

Tabled per request by owner.

8-C. 0 Summit Bridge Road – Conditional Use Permit request for grading and fill work within the RBA for FEMA CLOMR, to build two, two-story self-storage buildings (45,940 square-feet and 42,030 square-feet) in a C-3 zoned area. CU-17-18. Tax Parcel No. 23-001.00-141.

Tabled per request by owner.

8-D. Summit Bridge Road/Summit Plaza Shopping Center – Record Major Land Development Plan for the Reybold Self-Storage and Retail Center of Middletown, comprised of two, two-story self-storage buildings (45,940 square-feet and 42,030 square-feet) and retail center in a C-3 zoned area. Tax Parcel Nos. 23-001.00-141 and 23-001.00-084.

Tabled per request by owner.

8-E. Motion to Adopt Ordinance 18-02-03 for the Annexation of the Casapulla Farm containing 119.32+/- acres contiguous to the Town of Middletown, in accordance with the Town of Middletown Comprehensive Plan. The property is proposed to be zoned as 95.48 acres of R-2 zoned lands and 23.84+/- acres of R-3 zoned lands. Tax Parcel 13-026.00-005.

Mike Reimann and Christopher Duke with Becker Morgan Engineers and Rich Julian, Developer, presented the annexation request.

- The plan has been modified in response to feedback from Council, Planning and Zoning and community members, as well as follow-up discussions with DelDOT, since presentation in April.
- The site is located on Middle Neck Road and adjacent to the new Rt. 301 bypass.
- The Comprehensive Plan designates the parcel as residential.
- As requested by the community, the entire project will be Deed Restricted for a 55+ community; that agreement has been executed and will be recorded with the plan.
- A full service corporation will handle the maintenance of the community.
- The entrances have been adjusted as requested.
- The age-restricted apartments will be enclosed with an interior corridor and central elevator.
- 39 units were removed.
- The developer will be responsible to widen Middle Neck Road from the intersection to the limits of the property, with eleven (11) foot lanes and five (5) foot shoulders.
- Residents will have direct access to the Rt. 301 interchange for points north and south.
- The developer will be responsible for improvements to the Levels Road intersection. According to DelDOT's study, the additional lanes will reduce the delay at the intersection from 165 seconds to 106 seconds.
- The water table is 8' to 18'; average infiltration rate is 5" per hour.
- The site drains to the creek, away from Middle Neck Road. Infiltration and bio-retention practices will be used to handle run-off. More detail will be provided with the stormwater management report. The plan will comply with DNREC and Town requirements.
- Wetlands will not be disturbed.
- About 37% open space is proposed throughout the development; 8% is required per code.
- An age-restricted development typically reduces density and traffic, and doesn't generate school children.
- A total of 432 units are proposed: 168 single family, 24 twin homes and 240 apartments. The single family and twin homes will be sale units; the apartments will be rentals.
- The revised plan provides about a 30% reduction in traffic.

Mayor Branner added that at the community meeting, everybody agreed that as a condition of annexation,

each purchaser must sign a statement acknowledging they are aware that the Puglisi egg farm is a current, on-going operation. That signed statement must be in-hand before the Town will issue any certificate of occupancy. The condition of annexation will be added to the motion.

Charles O'Brien, with Gordon, Fournaris and Mammarella law firm, represented Puglisi Egg Farm. Mr. O'Brien commented that the egg farm has been operating since 2008; the agriculture use has been consistent for two decades. He noted Section 910 of the Agriculture Preservation Act requires that "the owner of any new subdivision development located within a certain distance of an agricultural district property, provide in deed restrictions, for such development and any lease or agreements of sale for any residential lot or dwelling, an express notice with respect to acquiring property rights within the vicinity of an agricultural use property, and that the use and enjoyment of such property is expressed in conditions on acceptance of any annoyance or inconvenience which may result from such normal agricultural uses and activities related thereto". The Casapulla property is located within the requisite distance set forth in the State Code requiring this express notice in the form of Deed Restrictions.

Mr. O'Brien requested that the Town of Middletown, as Mayor Branner noted, require as a condition of annexation and future development approval, the owner and developer comply with the agriculture use notice provision.

Mayor Branner asked Mr. O'Brien to provide the Town with a document for the purchasers/tenants to sign. The Town will require that the developer has the document signed and returned to the Town before any certificate of occupancy is issued for a property.

Moved by Mr. Stout and seconded by Mr. McGhee to adopt Ordinance 18-02-03 for the Annexation of the Casapulla Farm containing 119.32+/- acres contiguous to the Town of Middletown, in accordance with the Town of Middletown Comprehensive Plan. The property is proposed to be zoned as 95.48+/- acres of R-2 zoned lands and 23.84+/- acres of R-3 zoned lands. A condition of annexation requires that each purchaser/tenant sign a document acknowledging the existence of the Puglisi Egg Farm nearby. Tax Parcel No. 13-026.00-005.

Robert Stout: I vote Yes because it fits in the Comprehensive Plan.

Robert McGhee: I vote Yes because it's in compliance with our Comprehensive Plan.

Jim Reynolds: I vote Yes because it is in compliance with our Comprehensive Plan.

Jason Faulkner: I vote Yes because it is in compliance with our Comprehensive Plan.

Drew Chas: I vote Yes because it fits within our Comprehensive Plan.

Howard Young: I vote Yes because it fits within our Comprehensive Plan.

Motion Carried Unanimously.

8-F. Westown Town Center, Phase 3 – Amended Record Major Land Development Plan to change the use of building G-3 on the plan from a 2,000 square-foot restaurant, to a credit union, and to replace the restaurant's outdoor seating with two (2) drive-up automatic teller (ATM) machines. Tax Parcel Nos: 23-040.00-009 and 23-049.00-038.

Jim Curran with Karins and Associates represented WS Merrimac LLC.

- The Westown Town Center is located on Middletown-Warwick Road.
- Parcel G-3 is located west of Texas Roadhouse.
- The plan was originally recorded in 2017 with two buildings, 5200 square-feet; in January 2018 the plan was revised to include a third building and increased the square-footage by approximately 450 square-feet. The plan proposed two restaurants on each end with retail in the center.
- This plan replaces the restaurant and outdoor seating with a credit union and two drive-up ATM's.
- No changes are required to the stormwater management and no utilities are affected.

Moved by Mr. Faulkner and seconded by Mr. Chas to amend the Westown Town Center, Phase 3 Record Major Land Development Plan to change the use of building G-3 from a restaurant to a credit union as presented. Motion Carried Unanimously.

8-G. Middletown Village/Northside Shopping Center – Revised Record Major Land Development Plan for the development of a fast food restaurant, to replace a previously-approved bank site on the plan. Tax Parcel No. 23-003.00-010.

Scott Lobdell with VanClee Engineers represented Ash Ramunno Associates.

- The plan was part of the original Middletown Village plan approved in the late 90's.
- This pad site was approved for a bank with a drive-thru and now proposes a restaurant with a drive-thru.
- The building is slightly smaller than previously approved.
- No changes are proposed to the stormwater management system.
- The drive-thru is located between the parking area and the building.
- Access to the restaurant is by a right-in/right-out entrance off 301 constructed by DelDOT as part of the Rt. 301 project. Access is also available from Ash Boulevard via the service road behind Burger King.
- The partial service road behind the Burger King will be finished with the construction of this project.
- A Popeye's Restaurant is proposed.

Moved by Mr. Faulkner and seconded by Mr. Stout to approve the request for the Revised Record Major Land Development Plan for the Middletown Village/Northside Shopping Center to replace the previously approved bank site with a fast food restaurant. Motion Carried Unanimously.

8-H. Motion to Ratify a Resolution regarding accreditation for the Town of Middletown Police Department.

Chief Iglie reported the Middletown Police Department received re-accreditation last year. As part of the accreditation, the Commission on Accreditation Agency requires an official statement from the Town reaffirming the Chief of Police has the authority and responsibility for the management and operation of the Middletown Police Department.

Moved by Mr. Stout and seconded by Mr. Faulkner to Ratify a Resolution regarding accreditation for the Middletown Police Department. Motion Carried Unanimously.

8-I. Motion to Ratify a construction agreement for the Main Street and Broad Street Crosswalks Restoration Project.

Morris Deputy: Only one bid was received for the project last summer from Austin and Bednash in the amount of \$222,586, considerably higher than estimated. The motion was tabled to allow for re-evaluation of the project. After reviewing the project with the engineers, Austin and Bednash lowered their bid to \$186,280. The recommendation is to award the bid to Austin and Bednash for an amount not to exceed \$186,280.

Mr. Reynolds said the work will be done at night.

Moved by Mr. Faulkner and seconded by Mr. Reynolds to accept the recommendation of the Town Manager to award the bid to Austin and Bednash for the Main Street and Broad Street Crosswalks Restoration project, for an amount not to exceed \$186,280. Motion Carried Unanimously.

8-J. Motion to Ratify a construction agreement for Rapid Infiltration Basins (RIBS) on the Town of Middletown spray disposal site along Green Giant Road.

Morris Deputy: The FY'19 budget included the construction of the Rapid Infiltration Basins (RIBs). Four bids were received – the low bid was incomplete. The recommendation is to award the bid to the second lowest bidder, Eastern States Construction Service, Inc., and to construct nine (9) RIBs for \$225,500. The budget allowed \$465,000 for the construction. Eastern States met all required qualifications.

Moved by Mr. Reynolds and seconded by Mr. Young to Ratify a construction agreement for Rapid Infiltration Basins (RIBS) on the Town of Middletown spray disposal site as recommended by the Town Manager. Motion Carried Unanimously.

8-K. Motion to Ratify an agreement with Nichols Excavation for the improvements associated with the sports complex on Levels Road.

Mayor Branner commented the law suit has been settled and the Town has agreed to reimburse Nichols \$375,000 for the work they completed for the sports complex on Levels Road. The Town will improve the remaining four fields for a total of six fields to be available in the spring for spray irrigation.

Moved by Mr. Stout and seconded by Mr. Faulkner to Ratify an agreement with Nichols Excavation for the improvements associated with the sports complex on Levels Road. Motion Carried Unanimously.

9. Unfinished Business:

- Ray Lynch, 301 E. Lake Street, said the weed issue has been taken care of but there are still issues with the Habitat houses and sidewalks not being completed. He asked if sidewalks would be completed this year.

Morris Deputy said he explained to Mr. Lynch that before sidewalks can be installed, a survey has to be completed to mark property lines as well as a topo plan. Because there is only 2-1/2 feet between the edge of the pavement and his right-of-way, we need permission from him to put sidewalk on his property, or move it inside the road which may affect the road alignment. It also appears the water drains toward his house. Until a plan is prepared, the sidewalks cannot be installed. The plan should be done sometime this week.

Mayor Branner said if we get the plan from the engineers this week, Morris will contact him. He told Mr. Lynch that if he cooperates with the Town on the location, the sidewalks should be completed this year.

10. New Business:

- Lisa Sanderson from Health South, requested approval to place a permanent vinyl sign on the side of the Health South building facing Rt. 299.

Moved by Mr. Stout and seconded by Mr. Reynolds to grant permission to Health South to place a permanent sign approximately 10 x 60 feet on the side of their building facing Rt. 299. Motion Carried Unanimously.

- Mayor Branner congratulated David Carter for winning the primary election as our County Council Representative.

Moved by Mr. Reynolds and seconded by Mr. Faulkner to enter into Executive Session. Motion Carried Unanimously.

11. Executive Session:

Moved by Mr. Chas and seconded by Mr. Reynolds to return to the regular session in the Council Chambers. Motion Carried Unanimously.

A. Discuss personnel matters in which the names, competency and ability of individual employees or students are discussed, pursuant to 29 Del. Code §10004(b)(9).

Moved by Mr. Stout and seconded by Mr. Reynolds to accept the recommendation from Police Chief Iglie for an officer promotion. Motion Carried Unanimously.

B. Hearing on employee disciplinary or dismissal case, pursuant to 29 Del. Code §10004(b)(8).

Moved by Mr. Stout and seconded by Mr. Reynolds to accept the recommendation for the discipline of an officer from Police Chief Iglie. Motion Carried Unanimously.

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

The meeting adjourned at 8:58 p.m.