

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. Faulkner and seconded by Mr. McGhee to approve the Minutes for August 1, 2016 as prepared. Motion Carried Unanimously.

4. Treasurer's Report: Moved by Mr. McGhee to approve the Treasurer's Report as prepared. Motion Carried Unanimously.

5. Bills Payable: Moved by Mr. McGhee 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 Daniel Yeager

The MPD responded to 1,123 calls for service for the month of August.

- Drug arrests: East Main Street; New Street
- Burglary: Simpson Place
- Weapons Offense at Chick-fil-A
- Robberies: 1 attempted on E. Lake Street; Shore Stop on E. Main Street
- 175 traffic summons; 63 criminal arrests; 44 warnings; 377 reports written; 27 field service reports and crime prevention checks.

Moved by Mr. Young and seconded by Mr. Stout to accept Chief Yeager's Police Report as presented. Motion Carried Unanimously.

7. Public Hearings:**7-A. 102 Sleepy Hollow Drive, Unit 202 – Conditional Use Permit Request for Saggio Accounting to locate in an M-I zoned area. CU-08-16.**

Mary Ellen Volpe requested Conditional Use approval to allow an accounting firm to occupy a suite at 102 Sleepy Hollow Drive, a Manufacturing-Industrial zoned district. The building is currently occupied by professional businesses.

Planning and Zoning recommended approval on August 18th.

Moved by Mr. Faulkner and seconded by Mr. Chas to approve Conditional Use CU-08-16 for 102 Sleepy Hollow Drive, Unit 202, for Saggio Accounting, as recommended by the Planning and Zoning Commission. Motion Carried Unanimously.

7-B. 103 Patriot Drive – Preliminary Major Land Development Plan for Summerton Place, a three-story, mixed-use building, with retail on the first floor and apartments on the second

and third floors (28 units). Parcel F in the Levels Road Business Park, zoned C-3. Tax Parcel No. 23-065.00-013.

Christopher Duke, Becker Morgan Group Engineers, and Brian Hutchison presented the Preliminary Plan Summerton Place.

- Summerton Place, a mixed-use building, is located at the corner of Levels Road and Patriot Drive, just south of the Royal Farms location.
- 16,000 sq. ft. of retail is proposed on the first floor.
- 28 one and two-bedroom apartments are proposed on the second and third floors.
- The site will have access from Levels Road and Patriot Drive. These access points are being constructed as part of the Royal Farms project.
- 121 parking spaces are proposed; 110 are required.
- Stormwater management will be handled by the regional pond located across Levels Road.
- Stair towers are located at each end of the building.
- An elevator access is located in the center lobby.
- Based on comments from Planning and Zoning, the elevation from Levels Road has been changed to give more of a store-front appearance.
- Possibly a mix of brick, stone and panels will be used for the construction.

Mayor Branner commented that Planning & Zoning recommended approval after some lengthy discussion. He also noted that Fire Chief Bailey expressed concerns about the building setback and being close to the power lines. Chief Bailey indicated he was satisfied that the issues would be addressed based on comments from the engineers.

Someone asked if a traffic study was done.

Mayor Branner said a traffic study was done and Levels Road will be upgraded – it was part of the Master Traffic Impact Study for Westtown.

Someone asked what rental rates are proposed.

Mayor Branner said \$1200 to \$1400 was indicated at the Planning and Zoning meeting.

Moved by Mr. Stout and seconded by Mr. Reynolds to grant approval for 103 Patriot Drive, Preliminary Major Land Development Plan for Summerton Place, per Planning & Zoning's recommendation. Motion Carried Unanimously.

7-C. 411 Merrimac Avenue – Re-Subdivision Plan of Parcel 1, Westtown Town Center Phase 3.
The purpose of the plan is to revise the entrance location of the hotel, increase the building size from 50,000 square-feet to 53,108 square-feet, and to reconfigure parking areas accordingly. Tax Parcel No. 23-022.00-193.

Clif Bakhsh from Bakhsh Engineering, presented the revised plan for the Comfort Inn Hotel and addressed several issues that were discussed at the Planning and Zoning meeting:

- Issue: The 4-story building presents a problem with getting fire trucks close enough to the building for the ladders to reach the fourth floor.
To address this issue, Mr. Bakhsh said all parking on the side of the building was removed and the curbing was moved closer to the building to give the trucks better access to the fourth floor.
- Another issue was the tight turn at the entrance closest to Commerce Drive.

To address this issue, the entrance width was increased, the radius was increased and the “bull-nose” on the curb was pulled back to create a mild “S” rather than a sharp turn.

- A dedicated fire lane will provide access to the rest of the property.
- The revised plan with the stated changes will be sent to the Fire Marshal’s office for approval; when received, the Fire Marshal’s approval will be forwarded to KCI and the Town.
- The outside swimming pool has been removed to allow trucks to get closer to the front of the building. The pool has been placed inside.
- The number of rooms was decreased from 90 to 81.
- The parking originally showed 109 spaces for the 90 rooms. The reduced room number only requires 86 spaces; 100 spaces are provided.
- The plan complies with KCI’s comments and Planning and Zoning’s comments.
- The landscape plan is being prepared and will be forwarded for approval.
- Revised plans have been sent to KCI for review and compliance.
- The hotel is located on the corner of Commerce Drive and Merrimac Avenue, behind Texas Roadhouse.

Mayor Branner read an email received from Chief Bailey indicating that he was satisfied with the changes made (changes were attached to the email), as outlined by Mr. Bakhsh.

Moved by Mr. Stout and seconded by Mr. Reynolds to approve 411 Merrimac Avenue with the condition the landscaping plan is approved, and approval is received from the Fire Marshal. Motion Carried Unanimously.

7-D. 124 W. Main Street – Preliminary Major Land Development Plan – 11,810 square-foot, three-story retail building. The plan would require demolition of the current on-site structure. Tax Parcel No. 23-008.00-015.

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7-E. Concept Plan – Project Eagle, located in Westown Business Park, Parcels 13, 14 and 15, in an M-I zoned area. Tax Parcel Nos: 23-042.00-006; 23-040.00-018; 23-040.00-019.

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7-F. Motion to Authorize the sale of real estate owned by the Town of Middletown. Tax Parcel No. 23-012.00-012.

Mayor Branner stated this is a land-locked parcel on Industrial Drive; it will be sold to Corrado and used for rail siding to accommodate future businesses requiring rail. The property was appraised and will be sold for full appraised value, \$198,000.

Moved by Mr. Reynolds and seconded by Mr. Chas to authorize the sale of real estate owned by the Town of Middletown. Motion Carried Unanimously.

7-G. Motion to Ratify an Agreement for the 2016 Road Restoration Project.

Morris Deputy reported that 7 contractors attended the pre-bid meeting. Bids were only submitted by Cirillo Brothers for \$348,919.65, and Adel Construction for \$653,927.40. The engineer’s

estimate was \$413,932. Mr. Deputy recommended the contract be awarded to the low bidder, Cirillo Brothers for the amount of \$348,919.65.

Move by Mr. Reynolds and seconded by Mr. Faulkner to accept the Town Manager's recommendation to award the Road Restoration Project bid to Cirillo Brothers for the low bid of \$348,919.65. Motion Carried Unanimously.

7-H. Introduce an Ordinance to Amend the Town of Middletown Comprehensive Plan, including Map 7, Future Land Use and Annexation Areas.

The Ordinance was introduced and will be acted on at October's meeting.

8. Unfinished Business:

Residents from the Estates at St. Anne's asked for an update on the following:

- progress of the clubhouse, golf course, paths, trees, and recreation area amenities
- the anticipated completion date
- not issuing building permits until significant work is completed
- pond path design, construction
- completion of open space on E. Glen Mare Drive (6" below grade comment)
- W. Kilts Lane: run-off system for the significant amount of run-off from the field affecting the path behind the homes.

Mayor Branner:

- Steel was set today for the clubhouse; carpenters are expected tomorrow. Town inspectors will determine what doesn't meet code. If something doesn't meet code, it will be replaced.
- Work was started on the retaining wall today.
- The engineers have reviewed the outfall of the pond. The outfall will be lowered, which, in turn will lower the pond level so it will be lower than the paths.
- Construction is proceeding on the trails around the Charter School.
- Black topping will start in Phase 5 to St. Anne's Boulevard. When that is completed, the construction entrance for the final phases will be off Green Giant Road with no access from St. Anne's Phases 1 through 5.
- Playground equipment has been ordered from Recreation Resources – they will also install the equipment; completion date is expected by the end of October.
- The pond paths are part of the recorded plan. Plans are available for review at Town Hall. Contact Morris Deputy.
- The Town cannot legally hold off issuing building permits if zoning is approved and a recorded plan for a development has been accepted.
- November 15th is the agreed upon completion date for these items. The penalties invoked will be collected after the CO's are issued for the pool and clubhouse.
- Trees have not been accepted. They have to live for a year from the date they are planted before the Town will accept them; dead trees have to be replaced. Bay Country is responsible for planting the trees.
- The open space on E. Glen Mare will not be accepted until it complies with the landscape plan. Resident will contact Morris Deputy for anticipated completion date.
- Morris Deputy said the path area behind the homes on West Kilts Lane has been inspected. A culvert will probably have to be installed under the path. Some of the inlets are covered with straw, which prevents the water from draining and causes flooding. The area also

needs seeding and stabilization. This area will be redesigned and addressed before the path is constructed.

Estates at St. Anne's Ownership:

- Richard Forsten briefly explained the ownership of St. Anne's: Middletown Greenways was the group who assembled the farms that make up the Estates at St. Anne's. The residential portion was sold to Capano's entity and the golf course was sold to Ron Coruzzi's entity. An agreement was made between the golf course developer and the residential developer as to how the two projects would be jointly developed. Anderson and Ryan bought lots to build homes. Capano only owned the residential portion of the project – he doesn't own the golf course, club house or pool and had no obligation to do any of that work. The Town and Mr. Capano entered into an agreement under which Capano agreed to build the pool and club house. He will be doing work on property he doesn't own and wasn't responsible for at the start of the project. If Capano doesn't abide by the terms of the agreement, he's in breach of the agreement and the Town can call the bond. Mr. Forsten commented that more work has been done in the past two years than previously, and yes, there is still a lot to be done.

Patti McCune, Levels Road:

- Thanked the Town for addressing the spray issue as discussed last month.
- Expressed concerns regarding the 138kV line to be installed from Townsend. Said State Planners have not yet been contacted regarding leases or applications for the Ag Land Preservation Foundation for the installation of the line. They require that utilities attend a meeting and have a negotiated lease in hand between the property owners and the utility.
- Mayor Branner said the Town won't be soliciting easement agreements until it is known exactly where the poles will be set. We do know the line is proposed on the west side of Levels Road and we are working through the process with DEMEC and Delmarva Power.
- Ms. McCune said she was told by a realtor that any potential buyer in the Estates at St. Anne's is supposed to be told they are surrounded by spray sewer. Ron Graeber from DNREC said their position is that they do not recommend spray water on golf courses and playgrounds.
- Mayor Branner commented that it is public record and posted that treated wastewater, treated to tertiary level, is sprayed. Graeber is correct; however, all of the Town's spray is treated to tertiary level.
- Ms. McCune asked about the inter-coordination boundary agreement between the county and the Town regarding development.
- Mayor Branner explained that the inter-governmental boundary is a two-mile radius where the Town works through the PLUS process on projects coming before the Town. The PLUS process includes review of projects by the state departments and county. However, the Town also works with the neighboring municipalities.

Resident from St. Anne's:

- What's the expectation for the paths and rec area to be completed?
- Mayor Branner said based on talking with the contractors doing the work, the paths should be done by the end of October. The clubhouse should move fast once the steel is set. The penalties on the pool and clubhouse will continue if not completed by November 15th. We were told 10 days ago that the equipment was ordered and should be delivered in 4 to 5 weeks, and completed by the end of October.

9. NEW BUSINESS:

- Rob Stout thanked the Town and everyone who participated in the 19th Big Ball Marathon. The event raises money for Habitat for Humanity, food banks, charities, scholarships, etc.
- Patti McCune reported that an interesting outline on the buying and selling of property by developers can be found at the court house. The article was prepared by attorney Fabrizio who represented her father during the sale of her grandfather's property to 299 Associates.

Moved by Mr. Reynolds and seconded by Mr. Faulkner to enter into an Executive Session for a hearing on employee disciplinary or dismissal case. Motion Carried Unanimously.

10. EXECUTIVE SESSION

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

B. Discuss competency and ability of various employees, pursuant to 29 Del Code §10004(b)(9).

Moved by Mr. Chas and seconded by Mr. Reynolds to exit the Executive Session and return to the public session in Council Chambers. Motion Carried Unanimously.

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

Moved by Mr. Stout and seconded by Mr. Chas to approve the promotion and disciplinary recommendations of Police Chief Yeager. Motion Carried Unanimously.

B. Discuss competency and ability of various employees, pursuant to 29 Del Code §10004(b)(9).

Moved by Mr. Stout and seconded by Mr. Chas to approve the promotions recommended by Councilman McGhee, Councilman Faulkner and Councilman Reynolds. Motion Carried Unanimously.

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

Meeting adjourned at 10:08 p.m.