

Town of Milton
Town Council Meeting Minutes
August 1, 2005

Presentation from Public Integrity Commission – Janet Wright, Esq.

Janet Wright of the Public Integrity Commission gave a presentation regarding Ethics and the Code of Conduct. She gave out pamphlets and stated that she can be contacted for questions or other matters that public officials or the general public may have.

OPEN FLOOR (7:25 p.m.):

- A.) Joan Martin-Brown - regarding annexations & how she doesn't agree with them being "enclaves"/separatist colonies. They should be annexed as a part of town.
- B.) Norman Lester - reiterated Mrs. Brown's sentiments. He also asked questions regarding the ads in the liquor store windows. Mr. Evans will notify all owners to remove their window signs.
- C.) Dick Greig – reiterated Mrs. Brown's comments regarding annexations. He also asked if we have sought expert/neutral advice regarding the water/sewer system and annexation issues.
- D.) Ed Harris – also reiterated Mrs. Brown's comments. He noted that the Historical Society has done a nice job on the architecture on the museum restoration. He thanked Mrs. Greig and Elaine Carbone of the Garden Club for a nice job with beautifying the Town. Mr. Harris also brought up concerns about the work DeIDOT is doing and that they need to be pay attention; they left several hazards (rebar sticking up, tripping hazards, etc.) last weekend.
- E.) Nancy Broadhurst – With regard to public integrity, she has a conflict/human life issue. She noted that the Chief of Police was at Chandler Street and purposely stopped his police vehicle in front of her son who was skateboarding, and her son almost hit the Chief's car, but was able to stop. Why is the Chief endangering kids just to tell them that skateboarding is against the ordinances? The Town Manager will set up an appointment with her to resolve this issue.
- F.) Michele Christopher – did not wish to speak.
- G.) Gemcraft Homes – Mayor Bushey noted that this item is also on the agenda. Bill Luther owner of Gemcraft Homes stated that the reason he came tonight is because they have homeowners that want to get into their homes; he wanted to ask that the Certificates of Occupancy be released so they can move in. He asked Dave Schuster, attorney for Gemcraft to give their side and where they stand on the matter. Mr. Schuster noted that Gemcraft is concerned that there is a drainage problem at the site/development. That part of the development is unrelated to the 8 units about to be turned over to homeowners to live in. The County has approved 4 certificates (Lots 28-31), the next 4 online for inspection are Lots 24-27. They are to be inspected tomorrow. Gemcraft bought the lots finished. They didn't develop the site. They weren't responsible for grading, engineering, or infrastructure. That's not to say that they don't care about those things, they do. The Town's position is to hold up the Certificates of Occupancy and is in effect blaming Peter for something that Paul did. Gemcraft has no control over the approval processes for the site planning, infrastructure. That is not Gemcraft's job. Gemcraft simply buys finished

lots and builds houses on those. If there is a problem later with the drainage in a particular area, then that is the developer's responsibility. He is pleased to report that it is his understanding that the developer is addressing those issues. There is a plan in place to solve the drainage issues and that is being handled. That shouldn't be used as a tool against Gemcraft. Gemcraft is just not responsible for those areas and now people that are ready to move in can't do that because the Town won't issue the Certificates of Occupancy. The County is on record as having reported to the Town that all the requirements with respect to Lots 28-31 have been met. There really is nothing more that the Town needs to do with respect to those lots. They do ask that the Town reconsider its position. He understands Mr. Willard will speak about that later tonight. He noted that he would like opportunity during his presentation, if at all possible, to ask questions or make comments. He ended by saying that Gemcraft feels as though there are little options they have at this point. It seems to Mr. Schuster the wisest use of resources is not to engage in a protracted dispute, it is to move on, solve the problems that are there and get that in the rearview mirror so these people can move in.

- H.) Nancy Davis – noted that she has put a Native American Medicine Wheel in her yard (has even bought plants from Canada) and has to continuously clean up after cats. She objects to giving the CatSnippers anymore money. Also, she walks at 5:30 or 6:00 a.m. in the morning and stated that she is concerned because it is increasingly dangerous with no sidewalks and no police on duty. The State is supposed to be covering until noon, but when she placed a call to them one morning, she was told that there would be no coverage until noon. She finds this objectionable. There is speeding, etc. She doesn't feel safe and would like more police protection.

Councilwoman Betts offered a moment of silence at 7:55 p.m. The Pledge was not done because there was no American Flag displayed.

Mayor Bushey called the roll.

PRESENT: Mayor John Bushey (7:30 p.m. – working)
Councilwoman Leah Betts
Councilman Gene Dvornick
Councilwoman Ronda Melson
Councilman Don Post
Councilman Noble Prettyman (6:45 p.m.)
Councilman Jerry Hudson

Others Present: Hal Godwin, Town Manager
Eric Evans, Code Enforcer
Allen Atkins, Maintenance Supervisor
Dawn Johnson, Administrative Assistant
William Phillips, Chief of Police
Tim Willard, Town Attorney

Presentation and Approval of Minutes

Councilman Prettyman made a **motion** to approve the minutes of the July 5, 2005 regular meeting, seconded by Councilman Dvornick.

Motion carried – “Aye”

Dr. George E. Stone, Cape Henlopen School District Superintendent – Introductory Remarks

Dr. Stone has come to Cape Henlopen School District from Delmar School District. He is committed to working with Town and to making Cape great.

FY 04 Audit Presentation – Tom Sombar

Mr. Sombar presented and briefly discussed the FY 04 Audit.

Committee Reports

Sewer & Water – Councilman Hudson reported that the Committee will make a presentation at the August 4 special meeting.

Streets & Sidewalks – Alleyways: Councilwoman Betts reported that the Committee asked Eric Evans to research to see if he could find any money for the fence around the tank possibly through a Homeland Security Grant. The Committee passed a motion to recommend that the alleyways be surveyed and the Town Manager prepare an estimate to be cleared on an alley by alley basis.

Preserve on the Broadkill: A motion was passed not to pay for electricity for street lights in Preserve on the Broadkill.

Sidewalks: The Committee recommended asking Town Council to decide if they wanted to proceed as per Code (requiring owners to repair, replace & maintain).

Federal Street Café: Committee passed a motion to change the 2-hour parking restriction in front of the Federal Street Café to a 30-minute parking limit.

Library: Committee agreed to recommend to Council that cones be installed to make the yield signs at the library more visible.

Truck Route Signs: Committee asked Town Manager to contact DeIDOT for an update on installation of the truck route signs.

Councilman Prettyman gave an update on the DeIDOT work easements for Mulberry Street. They have gotten many of them signed by property owners and will be getting more signed tomorrow.

Personnel/Pension – No report.

Parks & Recreation – Councilman Post reported that we have submitted grant applications for \$25,000 for Rails to Trails and \$35,000 for the Bicentennial Garden. He is working in a \$150,000 grant for Park Revitalization.

Economic Development – Councilman Post reported that there will be a meeting within the next two (2) weeks to go over the questionnaire and Town survey.

Planning & Zoning – No report.

Board of Adjustment – John Collier reported that four (4) applications were approved; two (2) with conditions regarding Historic Preservation.

Milton Development Corporation – Councilwoman Betts reported that there will be an off-Broadway musical at the theater on October 14, 15, 16 and October 21, 22, and 23. The cost will be around \$15.00 per ticket. Dr. Wagner then reported that MDC had the opportunity to purchase the Post house. They hope to partition some of the property near the alleyway to have access to the rear of the theater. They will be stabilizing the shoreline and extending Governor’s Walk and adding a patio area, expanding the stage and second floor. Then they will be putting the house back on the market.

Finance/Risk Management – Councilman Dvornick reported that the Finance Committee met on July 21 to do a preliminary review of the Audit. The next meeting will be August 25 at 10:00 a.m. for Budget Review and finalizing for September.

200th Anniversary – No report.

Police Building – No report.

Land Acquisition – No report.

Written Reports

Maintenance Reports

Councilman Dvornick made a ***motion*** to approve the Maintenance Reports, seconded by Councilman Prettyman.

Councilman Hudson asked Mr. Atkins if the problem with sludge buildup has been taken care of. Mr. Atkins stated that he is unsure of the cause, but it seems to be under control right now. The flow has been normal, but the BOD flows have been high.

The question was called on the motion.

Motion carried – “Aye”

Code Enforcer Report

Councilman Hudson made a ***motion*** to approve the Code Enforcer’s Report. The motion was seconded by Councilman Prettyman.

Motion carried – “Aye”

Police Department Report

Councilman Prettyman made a ***motion*** to approve the Police Department Report. Councilwoman Melson seconded the motion.

Motion carried – “Aye”

Town Manager Report

Motion was made by Councilman Dvornick to approve the Town Manager’s Report, seconded by Councilman Prettyman.

Motion carried – “Aye”

Correspondence

Councilwoman Melson read letters from:

- Deena Pers/Mary Conte: objecting to huge development proposed
- Barbara Stellar: commending Police Department

Councilwoman Melson also announced that National Night Out Against Crime will be held on Wednesday, August 3, 2005 from 5:00 p.m. to 9:00 p.m. in the Park.

Old Business

Shipbuilders Village Certificates of Occupancy – Tim Willard

Mr. Willard asked that this item be on the agenda specifically because he had been contacted by David Schuster. Mr. Willard pointed out that the Sussex Conservation District is involved in this problem. They are the ones that originally asked that the Certificates of Occupancy be withheld in May, which the Town did. The problem has since come to a head. Mr. Willard made reference to the June 20 letter from Jessica Watson. He has spent considerable time on the phone with Jessica Watson of Sussex Conservation District. What Mr. Schuster has said about the history of Shipbuilders Village is true. It is a little messy and the Town probably wouldn’t do a development like it today; at least legally with the approval because it is old and it developed slowly and it has changed hands. Gemcraft finds itself in the position it is in. Having said that, the highlights of Jessica Watson’s letter is that she believes they have made significant progress. They have worked closely with the developer, Christiana Construction and Duffield. They are now pumping stormwater. Christiana Construction has gone so far as to clean out older systems. They met on site on June 13 and have a temporary plan with Ms. Watson. Her panel ultimate is that the four (4) already inspected be released and then they are four (4) more in the hole. He suggested going into Executive Session if Council requires a more detailed response from him because Mr. Karsnitz went so far as to send him a verified complaint that he reviewed with the law, which is to say if we can’t resolve this, this is how we are going to go. That is really a courtesy thing and not that unusual. Legally, what the Town is relying on is Section 17-36.

Councilman Dvornick made a *motion* to go into Executive Session at 8:23 p.m.
Councilwoman Melson seconded the motion.

Motion carried – “Aye”

Councilman Dvornick made a *motion* to come out of Executive Session at 8:45 p.m.,
seconded by Councilwoman Melson.

Motion carried – “Aye”

Mr. Willard referred to the June 20 Sussex Conservation District regarding a temporary solution and asked what the status was and why more progress had not been made... Mr. Capano stated that there were concerns with regard to the size of the pond. They have a meeting with the school scheduled to ask if they could put a pipe on their property in case the pond fills up. Mr. Willard asked the status of the construction. Mr. Capano stated that the manholes have been delivered and the stone should be delivered any day. From there, it should take two (2) weeks. Mr. Willard asked why this had not been begun sooner; the letter was dated June 20. Mr. Capano stated that it had not been approved by the Sussex Conservation District.

Mr. Schuster thinks that the Town is holding up certificates of occupancy that don't relate to the problem the Town is trying to solve and holding up certificates of occupancy that don't relate to a problem that was not caused by his client. That is the predicament they are in. They are here so to speak, with their hat in their hands, saying please don't hold up the sale of these houses. People are ready to move in and this is affecting people that have nothing to do with this. People who want to take possession of their house. If the County is satisfied that the developer is taking action to solve the problem on a different part of the development that should give everyone comfort, but it doesn't relate to the specific issue we are trying to address.

Mr. Schuster noted that everything that has happened at the site has been approved by the County, the Town. Gemcraft is not involved in that process and did not even enter into the picture until they began building houses on finished lots.

Bill Luther, the owner of Gemcraft, stated that Gemcraft is here to stay in the state. They have projects everywhere as does Mr. Capano. Both of them got into this project that was approved 20 years ago, everything was signed on off and done. When they bought the property they thought the same thing. Gemcraft has spent thousands of dollars to fix it.

Mr. Capano stated that the Town is blaming him for something that the Town approved; he didn't have anything to do with it except putting it in the ground. Mr. Luther stated that Mr. Capano spent hundreds of thousands of dollars and he is going to do whatever it takes because both of them are going to be in Delaware for a long time. Mr. Capano has projects all over the state and if he doesn't perform here, both Gemcraft's owner and the

different State agencies are going to be on him if he doesn't perform. Mr. Capano is here tonight to tell the Town he is going to do it. Mr. Capano asked if he had done anything to hurt the Town. Gemcraft noted that there is a lady here tonight saying when can I move into my house. That's the whole reason they are here tonight because they want her to move in.

Councilman Post stated that he understands, but at the same time, we have residents living out there that are saying we have to live like this. Mr. Capano stated that he had a blueprint that was stamped by the Town of Milton Engineer. He put it in the ground; it doesn't work. He is being blamed; he is 20 years later. He is here to stay; he is fixing it. He is paying \$200,000 to fix the problem. Don't blame him for the problem. Why would they blame him for the problem? The Town approved the plan or somebody before him did.

Councilman Prettyman stated that whether or not the plan was approved, there is a problem there. He feels that Mr. Capano is part of the problem. This is not something that just happened. This has been going on for a few years of that area flooding. We have allowed people to move in. When that water is sitting in there stagnating, it becomes a safety issue. Those residents have no clue when they walk out of their doors with their pant legs rolled up, stepping on the ground if there are nails or something there. And yet, Council is told their insurance will take care of it. He doesn't think this lady would want to move out there and two weeks after she moves in she has to walk around in water. He doesn't think this is right at all. There has been opportunity given to Gemcraft, Capano, Christiana, and Shipbuilders to fix this. They have passed it from this person to this person to that person and no one wants to take control and fix this problem. He thinks it is time enough that the bucks stops right here and fix it and let the residents have a decent place to live where they don't have to go out in swimsuits or pants rolled up to the knees. He lived out there a few years ago and there would be ice out there. This is not right. Not one of these people requesting release of the certificates lives out there. They don't have to roll their pant legs up and walk in that water.

Mr. Luther stated that they don't, but they are not the ones that caused the problem. They are the ones trying to fix the problem. Mr. Prettyman stated that they haven't done it; the Town is still waiting. They have had a whole month and have not done one thing. He hasn't seen anything done, and he has been out there in the last couple of weeks. Mr. Capano stated that there have been \$30,000 worth of manholes delivered. Mr. Prettyman stated that those manholes covers have just been sitting there for over three (3) weeks. Mr. Capano stated that they had to be ordered, he couldn't just go pick them up.

Councilwoman Melson made a **motion** to table this issue, seconded by Councilman Prettyman.

Motion carried – “Aye”

Hours of Construction

Councilwoman Dvorick made a ***motion*** to accept the hours of construction as presented tonight, seconded by Councilman Dvornick.

Motion carried – “Aye”

New Business

Receipt of Annexation Request from James and Nancy White for Sussex County Tax Map 2-35-14.00 Parcel 132.00, 132.01, 132.02, and 132.03

Mayor Bushey reported that this is to annex the balance of this parcel not located in Town limits.

Colby Cox was present on behalf of the application. Councilman Post asked Mr. Cox who the partners in Chestnut Properties are. Mr. Cox stated that the partners are: Pret Dyer, Blake Thompson, Joe Reed, and himself.

They are requesting R-3 with LPD overlay. Councilman Post stated that it should be R-1; R-3 is too high of density. He is against mixing commercial into developments.

Mr. Cox stated that they are willing to enter into a voluntary deed restriction between R-1 and R-3 (4-10 units). They proposed commercial would complement the existing Town commercial.

Mayor Bushey asked if the proposed Boardwalk area along the River would be for everyone (all Town citizens).

Councilman Dvornick asked Mr. Cox how much of the 76 acres is wetlands. Mr. Cox believes 7.91 acres. Councilman Dvornick asked how much (less the wetlands) is dedicated Open Space. Mr. Cox was not certain and will provide at a later date.

Councilman Post asked what the density per acre is. Mr. Cox stated 7. Councilman Dvornick asked the net density. Mr. Cox stated it is 7.51 +/-.

Mr. Cox asked that Council reserve judgment until all information is presented. The intention is to be part of the Town.

Councilwoman Melson made a ***motion*** to send the application to Planning & Zoning, seconded by Councilman Prettyman.

Motion carried – 5 Aye
2 No (Betts, Post)

Sidewalk Bids

Councilwoman Betts made a **motion** to award the sidewalk bid to AMS Rentals. Councilman Post seconded the motion.

Motion carried – “Aye”

Town Manager Godwin reported that he would like to see the Town include the curb and sidewalk at Kings Ice Cream. The reason he would like to replace the sidewalk is because the curb has been broken for quite some time and resulted in the damage to the sidewalk.

Councilman Post made a **motion** to have AMS Rentals replace the curb and sidewalk in front of Kings Ice Cream (not to exceed \$3,500), seconded by Councilman Dvornick.

Motion carried – “Aye”

Any Other Business

Sidewalks

Councilwoman Betts asked what Council wanted to do with regard to the sidewalks (as reported under Committee Reports). Mayor Bushey suggested we go after grant money to repair the sidewalks.

Councilwoman Melson made a **motion** to accept grants, funding, transfer tax monies, etc. for sidewalk repairs/replacements. Councilman Prettyman seconded the motion.

Council Dvornick suggested prioritizing sidewalks by condition. Councilman Post would like to see the same.

It was decided to have the Town Manager develop a sidewalk plan.

The question was called on the motion.

Motion carried – “Aye”

Cleaning of Alleyways

Councilwoman Betts made a **motion** to have the Town Manager prepare an estimate on an alley by alley basis and have same surveyed. Councilman Post seconded the motion.

Councilman Prettyman asked the cost for surveying the alleys. Mr. Godwin noted that there is still \$5,000 still in the budget from last year.

The question was called on the motion.

Motion carried – “Aye”

Adjournment

Councilman Dvornick made a *motion* to adjourn the meeting at 9:35 p.m., seconded by Councilwoman Melson.

Motion carried – “Aye”

Respectfully submitted,

Dawn Johnson
Administrative Assistant

dmbj:8/9/05