

**Special Milton Town Council Meeting
Milton Public Library, 121 Union Street
Thursday, October 23, 2008, 6:30 P.M.**

1. **PUBLIC HEARING** portion of the meeting was called to order by Mayor Post at 6:30 p.m. At this time I am going to turn it over to our Attorney, Mary Schrider-Fox, who will take it from here.
 - a. Mary Schrider-Fox: Proof of Publication of the Notice for tonight's Public Hearing is the first item to be addressed. For the record, as part of this Public Hearing, the Notice that I am about to read was published on October 9, 2008 in the *News Journal* and the *Delaware State News*, which is fifteen days prior to today's public hearing. It was also published again on October 15, 2008 in the *Sussex Countian Newspaper* and the notice reads, as such: "Notice of Special Town Council Meeting and Public Hearing. Please be advised that a Special Meeting of the Milton Town Council and Public Hearing will be held on Thursday, October 23, 2008 beginning at 6:30 p.m. at the Milton Public Library, located at 121 Union Street, Milton, Delaware. The subject of the Public Hearing shall be to reconfirm and ratify certain zoning matters addressed at the May 17, 2007 and August 6, 2007 meetings of the Town Council by considering and passing an Ordinance to amend a zoning map of the Town of Milton, to initially zone as R-1 Single Family Residential District; and then to re-zone from said R-1 Single Family Residential District to R-3/LPD Large Parcel Development District, a certain 86.58 acre parcel of land identified as Sussex County Tax Map and Parcel Number 2-35 21.00 44.00 and to ratify the May 17, 2007 and August 6, 2007 approvals of the Town Council of the Application for the initial zoning designation and change of zoning designation, submitted by Delaware Land Ventures, LLC and Key Ventures, LLC.
 - b. The next item to identify for the record as part of this Public Hearing is the posting of the Agenda for tonight's meeting/hearing. The Agenda was posted on October 8, 2008, sixteen days prior to tonight's meeting, on the Town Hall Bulletin Board, in front of the Police Department, and here at the Milton Library.
 - c. Now moving on to the substantive portion of tonight's Public Hearing, as opposed to just the procedural, I would like to give a very brief summary, for the record, of the events leading up to this evening. On December 12, 2006, Key Ventures, LLC and Delaware Land Ventures, LLC submitted an application for annexation into the Town of Milton for an 86.58 acre parcel of land identified as Sussex County Tax Map and Parcel Number 2-35 21.00 44.00, which I shall refer to from this point forward as "the subject parcel". The Application included an Annexation Agreement and also requested an Initial Zoning Designation for the subject parcel of R-1 Single Family Residential. On May 17, 2007, a Public Meeting of the Town Council was held, at which time the Town Council received the report of the Annexation Committee, recommending annexation of the subject parcel and the Town Council heard the presentation of the Applicants. At the conclusion of said meeting, the Town Council approved the annexation of the subject parcel into the Town of Milton with an Initial Zoning Designation of R-1 Single Family Residential, which was memorialized in writing by Resolution 200705-0004. Thereafter, an Application was made to re-zone the subject parcel and the initial R-1 Single Family Zoning Designation to an R-3/LPD Zoning Designation. A duly noticed Public Hearing on said Application was held on July 17, 2007 before the Town's Planning & Zoning Commission, at which time the Commission voted to recommend approval of the Application to the Town Council. Thereafter, on August 6, 2007 a duly noticed Public Hearing on the Rezoning Application was held before the Town Council, at which time it received a recommendation to approve the rezoning from the Planning & Zoning

Commission and heard the presentation of the Applicant, as well as public comments. The Town Council made the decision at that time to approve the rezoning application to change the R-1 zoning designation of the subject parcel to R-3/LPD. Because the zoning decision is forthcoming from the May 17, 2007 meeting and the August 6, 2007 meeting need to be memorialized in Ordinance format, this evening's Special Meeting and Public Hearing was called for that purpose, i.e. so that these zoning decisions made in May and August 2007, may be properly passed in Ordinance format. This is an important part of amicably resolving the pending litigation in the Court of Chancery, entitled Coalition for Transparent Government, et al. vs. Town Council of the Town of Milton, Key Ventures, LLC, Tidewater Environmental Services, Inc., et al., Identified as Civil Action Number 340-CC." It is also important so that the Applicants will be able to submit proper title work in subsequent transactions involving the subject parcel, whether it be an out-conveyance to a third party or placement of a mortgage on the property, etc. That is the brief summary of how we all came to be here this evening. A lot of work was already done at these previous meetings, that I have mentioned and documents submitted and presentations made by the Applicants; therefore, at this time, I ask for a Motion to Incorporate by Reference and make a part of the record for tonight's Public Hearing the Minutes from the May 17, 2007 and August 6, 2007 meetings; all documents presented during said meetings regarding the subject parcel; any and all public testimony and comments made about the subject parcel during said meetings; and any other information regarding the subject parcel, which is a part of the Town's records, at said meetings.

Roll Call was called for by Mayor Post: C Martin-Brown "present"; C Duby "present"; C Hudson "present"; C Prettyman "present"; C Abraham "present"; Vice Mayor Betts "present"; Mayor Post "present"

Mary Schrider-Fox: So I've asked for the Motion that I described. C Prettyman: I make a motion to Incorporate by Reference and make a part of the record for tonight's Public Hearing the Minutes from the May 17, 2007 and August 6, 2007 meetings; all documents presented during said meetings regarding the subject parcel; any and all public testimony and comments made about the subject parcel during said meetings; and any other information regarding the subject parcel, which is a part of the Town's records, at said meetings. C Duby: Second. Mayor Post: We have a motion and a second. Are there any questions to that Motion? All in favor say "aye"; opposed. Motion carried.

d. Mary Schrider-Fox: Now moving on to the next part of this Public Hearing. At this time, I would like to open the floor for any comments from the Public regarding either the initial R-1 Zoning decision made on May 17, 2007; or the subsequent R-3/LPD Zoning decision made on August 6, 2007. Please remember that if you made any comments, back in May or August of 2007, those comments are now a part of the record of tonight's hearing. Therefore, only new or different comments need to be made. Anyone speaking, please begin by stating your name and address for the record. Is there anyone who would like to speak? Please let the record show that no persons came forward to speak with regard to the May 17, 2007 R-1 Zoning decision or the August 6, 2007 R-3/LPD Zoning decision. That ends the Public Comment portion of tonight's Public Hearing.

Mayor Post: So I will now at 6:40 p.m. close the Public Hearing.

2. The Town Council Meeting was called to Order by Mayor Post at 7:00 p.m.
3. A Moment of Silence was led by C Betts.
4. The Pledge of Allegiance to the Flag was said by all in attendance.
5. Roll Call was made by Mayor Post: C Martin-Brown “present”; C Duby “present”; C Hudson “present”; C Prettyman “present”; C Abraham “present”; Vice Mayor Betts “present”; Mayor Post “present”
6. Additions or Corrections to the Agenda
Mayor Post: Are there any additions or corrections to the Agenda? Can I have a motion to approve the Agenda, as presented? C Prettyman: I make a motion that we approve the Agenda, as presented. C Abraham: Second. Mayor Post: We have a motion and a second. Any questions to the Motion? All in favor say “aye”; opposed. Motion carried.

7. Old Business

Mayor Post: To ratify the May 17, 2007 and August 6, 2007 approvals of the Town Council of the Application for the initial zoning designation and change of zoning designation submitted by Delaware Land Ventures, LLC and Key Ventures, LLC. “Town of Milton Ordinance Number 0005, an Ordinance to amend the zoning map of the Town of Milton from R-1 Single Family Residential District to R-3/LPD Large Parcel Development District for a certain 86.58 acre parcel of land identified as Sussex County Tax Map and Parcel Number 2-35 21.00 44.00 and to ratify the August 6, 2007 approval of the Town Council of the Applications for a change of zoning submitted by Delaware Land Ventures, LLC and Key Ventures, LLC. WHEREAS, on December 12, 2006 an Annexation Application was filed on behalf of Delaware Land Ventures, LLC and Key Ventures, LLC for an 86.58 acre parcel of land identified as Sussex County Tax Map and Parcel Number 2-35 21.00 44.00. HEREINAFTER, the subject parcel, together with the submission of an Annexation Agreement and a request to have the parcel annexed as R-1 Single Family Residential, and, WHEREAS, on May 17, 2007, after duly held Public Hearings and proper notice thereof, and receipt of requisite reports from the Annexation Committee of the Planning & Zoning Commission recommending the annexation, the Town Council for the Town of Milton approve Resolution 200705-0004 annexing the subject parcel into the Town with an R-1 Single Family Classification, and WHEREAS on July 17, 2007, a Public Hearing was held, after proper notice, before the Town’s Planning & Zoning Commission on an Application for Rezoning of the parcel from R-1 to R-3/LPD with a condition that 20 acres of the parcel be dedicated to the Town for a wastewater treatment facility; at which time the Planning & Zoning Commission voted to recommend approval of the Application to the Town Council, WHEREAS on August 6, 2007, after duly held Public Hearings, and proper notice thereof, and upon receipt of requisite recommendations of the Planning & Zoning Commission the Town Council by a vote of 3 in favor and 2 against approved the rezoning application, based upon the following rationale, as expressed by Mayor Post, C Prettyman and C Abraham. a. Mayor Post: The Application promotes managed growth and the parcel is located within the

Milton's growth area. The proposal will provide the citizens of Milton with much needed infrastructure improvements associated with growth, as it will also bring in impact fees to help with much needed sewer infrastructure. b. C. Abraham: the approval is in the best interest of the Town, revenue to the Town will be approximately \$1,000,000 that will help pay for capital improvements, street improvements, parks and recreation equipment, and, hopefully, a new meeting place for Town Senior Centers and Boys and Girls Clubs. Approval will provide for a sewer plant within the town limits that might otherwise be located elsewhere. Residents on San Lucas Road will have the opportunity of accessibility to the Town. c. C Betts: the approval provides the Town the opportunity to build a sewer plant within the town that will resolve a serious and costly problem for the taxpayers of Milton. The Town faces potential fines of \$10,000 per day, as described in correspondence from the State of Delaware; taxpayer's are currently paying almost \$100,000 annually to haul sludge from the current sewer plant; the plant that is almost at capacity due to pre-sold EDU's; the proposed development is manageable; R-3/LPD is zoning that currently exists in the Town, that the Developer could apply for with or without providing the 20 acres to the Town of Milton; the zoning was recommended for approval by the Planning & Zoning Commission for R-3/LPD; the rezoning will increase the property tax base for the Town of Milton; the location is beneficial to the San Lucas area and provides good solutions to the troubled area; the proposed development will provide land, as well as for recreational use for the Town of Milton Mayor Post, and, WHEREAS, it is in the present intent and purpose of the Town Council to ratify the May 17, 2007 approval of the application for initial zoning and the August 6, 2007 approval of the application for rezoning, for the reasons set forth at said meetings, and more specifically at the August 6, 2007 meeting and vote (as restated herein and above) in Ordinance format in order to amicably settle and resolve the litigation filed by opponents to challenge the annexation and rezoning approvals as set forth in the Complaint entitled Coalition for Transparent Government, et al. vs. Town Council the Town of Milton, Key Ventures, LLC, Tidewater Environmental Services, Inc., et al., Board of Chancery Civil Action Number 340-CC. NOW THEREFORE, the Town Council of the Town of Milton and Counsel met and hereby ordains: Section 1 – the Zoning Map of the Town of Milton be amended by inserting the current designation of R-3/LPD District as it applies to the subject property hereinafter described. Section 2 – the subject property is described as Sussex County Tax Map and Parcel Number 2-35 21.00 44.00. Section 3 – the Ordinance shall ratify the decisions of the Town Council dated May 17, 2007 and August 6, 2007 to approve the initial zoning designation and later change of zone application for the reasons set forth at the meetings on May 17, 2007 and August 6, 2007, respectively, as set forth herein and above and shall take affect immediately upon its adoption by a majority of the vote of all members of the Town Council of the Town of Milton, adopted by the Council of the Town of Milton, Delaware on the 3rd day of November, 2008 AD, if approved.” This will be signed by Mayor Post and the Secretary of the Town Council.

Mary Schrider-Fox: That is the Ordinance presented. Would anybody like to make a motion to approve the Ordinance, as read by Mayor Post? Vice Mayor Betts: I will make a motion to approve the Ordinance, as read by Mayor Post. C Prettyman: Second. Mayor Post: I have a Motion and a second. Are there any questions to the Motion? All in favor, say “aye”; all opposed. Motion carried.

8. Adjourn

C Prettyman: I make a motion we adjourn. C Betts: Second. Mayor Post: I have a Motion and a second. All in favor. Meeting adjourned at 6:52 p.m. C Hudson: I make a motion that we **reopen** the Special Meeting. C Prettyman: Second. Mayor Post: We have a motion and a second. All in favor say “aye”; opposed. Motion carried.

Mary Schrider-Fox: The purpose for **reopening** the Special Meeting is we need to correct part of the reading of the Ordinance that was just passed. The wrong caption was read. The caption should read, as follows: “An Ordinance to Amend the Zoning Map of the Town of Milton from R-1 Single Family Residential District to R-3/LPD Large Parcel Development District for a certain 86.58 acre parcel of land identified as Sussex County Tax Map and Parcel Number 2-35 21.00 44.00 and to ratify the May 17, 2007 approval of the Town Council of an Initial Zoning Designation and the August 6, 2007 approval of the Town Council of the Application for a change of zoning submitted by Delaware Land Ventures, LLC and Key Ventures, LLC.” The rest of the Ordinance, as read, was correct and should remain as is. Mayor Post: Prior to the motion, can I have a real quick roll call, just to show who is still here? C Martin-Brown “present”; C Duby “present”; C Hudson “present”; C Prettyman “present”; C Abraham “present”; Vice Mayor Betts “present”; Mayor Post “present” C Prettyman: I make a motion that we accept the amended reading of the Ordinance 005. C Hudson: Second. Mayor Post: I have a motion and a second. Are there any questions to this motion? All in favor say “aye”; opposed. Motion carried.

9. Adjourn

C Martin-Brown: I make a motion we adjourn. C Betts: Second. Mayor Post: I have a Motion and a second. All in favor say “aye”; opposed. Meeting adjourned at 6:57 p.m.