

## **Milton Town Council Meeting December 7, 2015**

### **Preliminary / Summary Minutes**

#### **Call to Order**

The meeting was called to order in the Milton Public Library at approximately 6:32 PM on December 7, 2015 by Mayor Jones. A moment of silence was then observed, followed by the pledge of allegiance to the flag.

#### **Roll Call:**

Theodore Kanakos, present  
Emory West, present  
Esthelda Parker-Selby, present  
Michael Cote, present  
Kevin Kelly, present  
Sam Garde, present  
Marion Jones, present  
Seth Thompson, the Town Solicitor was also present

#### **These Preliminary Minutes:**

These minutes cover only the high points of the meeting. The discussions were recorded, and will be transcribed at a later date. The transcription will serve as the final minutes of the meeting. Documents included in the Council Package are not included as attachments to these preliminary minutes.

#### **Public Hearing - Sussex County Community Development, regarding the Community Development Block Grant**

A Public Announcement of the hearing was included in the Council packet. Brad D. Whaley, the Director of Community Development and Housing for Sussex County was present and made comments including:

- The Program uses money from the Federal Housing & Urban Development Agency (HUD).
- HUD receives funds annually and makes a certain allocation to the State of Delaware.
- He anticipated that approximately \$2.2 million would be available in the State Fund for the year 2016.
- The Program is principally for the benefit of low income families.
- The definition of low income for the purposes of this Program is:
  - For a single person; less than \$35,000 per year, plus \$5,000 per year for each additional family member.
- Milton has received approximately \$435,000 in grants under the Program in the past.
- Habitat for Humanity is committed to assisting with low income housing, and is willing to help in Milton.
- The Program can be used for limited infrastructure projects, such as sidewalk repair where the Owner can't afford repairs, but only on a case-by-case basis.

- Feb 26 is the last day for applying to Sussex County and the Delaware State Housing Authority for a grant.
- The Town must be the applicant on behalf of the particular home owner.
- Work done by Contactors under this Program is guaranteed for one year.
- He left applicable documents with the Town Clerk.
- Mr. Whaley answered several citizen questions.

**Presentation by Richard Shaw, representing Cardiokinetics, relating to the Milton Police Department Physical Fitness Policy**

A handout from Cardiokinetics (CK) indicating their general capabilities and experience was included in the Council packet. Richard Shaw, President and Josh Hall, Chief Operating Officer of Cardiokinetics were present and made comments, including:

- CK was founded originally as a cardio rehabilitation firm
- CK did a recent physical assessment for the Milton Police Department.
- CK performs an annual test of every Delaware State Trooper and other municipal departments.
- CK does not perform drug testing.
- CK's reports include comments on what each individual can do to improve physical fitness and will work with individuals for wellness.
- CK hasn't experienced problems with injuries during testing in the past.
- In the absence of a municipality - specific standard, they use the Cooper Institute standards.

**Public Participation:**

Bob Burakiewicz of Heritage Creek made several comments, including:

- Heritage Creek is not an isolated village. It is an integral part of the Town of Milton.
- He and his wife love the Town of Milton, but were confused by apparently different interpretations of the recent punch list for dedicating the streets in Heritage Creek to the Town.

Mary Ann Donnan, 103 Pond Drive made several comments, including:

- She is very unhappy because of the possibility of the Town taking action regarding the trees and tree fences in the Downtown area.
- She commented that the trees have been in place for more than 12 years, and the tree fences for more than 10 years. She had a document with more than 100 signatures asking the Town to maintain the trees and tree fences.

Nancy Trask, 101 Mill Pond Ave, President of the Milton Garden Club (MGC) made several comments, including:

- She informed the Mayor and Town Council that the Garden Club is being sued by a resident of the Town who tripped over a tree fence and was injured.
- Sixty two (62) members of the MGC work diligently to provide flowers throughout the Town to keep it beautiful.
- The fences have been in place for approximately 10 years.
- The MGC needs help in defending the law suit.

- The Town, in response to a FOIA request submitted by the injured citizen's attorney, responded with information relating to the fences.
  - The Town Solicitor, Seth Thompson, commented that the Town simply provided information in reply to a FOIA request and that providing the documents is required by law.
  - Seth indicated that by responding diligently to a FOIA request, the Town did not "throw the MGC under the bus" as alleged by members of the MGC.

Ellen Passman, Federal Street made several comments, including:

- The efforts of the MGC have changed the appearance of the Town significantly for the better.
- The Town has a moral obligation to support the MGC and assist in the defense of the law suit.

Lorraine Wasserman, 244 West Shore Drive made several comments, including:

- She had tripped over a grate in Maryland and filed a law suit that was settled out of court.
- She appreciates everything that the MGC does to beautify Milton.

Leah Betts, 113 Magnolia Street made several comments, including:

- She was on the Town Council when the MGC came to Town Council asking for a donation for the fences.
- The then Mayor & Town Council did approve the installation of the fences.
- MGC did purchase the fences.
- MGC does much to help beautify the Town by donating and planting flowers.
- In a second trip to the microphone indicated that she had fallen in Town and was injured, but did not and would not sue.

Katherine Greig, MGC made several comments, including:

- Mayor & Town Council approved a recommendation from the Streets & Sidewalks Committee regarding installation of the tree fences several years ago. Although she could not recall the exact date, she thought it was around 2006, but it was while Don Post was Mayor.
- Opined that she couldn't figure out how a responsible person could trip over the tree fences.
- Opined that the law suit was a slap in the face of all MGC members.
- Opined that people have to be responsible for their own actions.
- MGC has informed their insurance broker of the lawsuit, but are not, at this time, willing to settle.
- Asked the question: if the fences belong to the MGC, why is there a resolution requesting a recommendation from the Streets & Sidewalks Committee relating to the tree fences on the Town Council agenda?

Elliot Welan made several comments, including:

- He attended the Chamber meeting last month and overheard that the complainant saying she tripped and fell by virtue of not paying attention.

Steve Crawford, 216 Ridge Road made several comments, regarding the mural project:

- The weather has turned cold, so the project is being delayed until the Spring.
- The funds donated so far will cover all but approximately \$1,100 of the \$13,000 goal.
- Informed Mayor & Town Council, as well as the people of the Town, that M&T Bank had donated \$1,000 toward the project.

### **Requests for Removal of Items from the Consent Agenda**

Requests were made to remove the Executive Session Minutes dated Nov 16 from item 9a; approval of Board of Elections, item 9e; Resolution 2015-024, item 9h; and the Project Coordinator report from item 9c.

### **Approval of the Consent Agenda**

- Councilman Garde made a motion to approve the Consent Agenda, as amended by the removal of items indicated above. Vice Mayor Parker-Selby seconded, and the motion was unanimously approved.

### **Additions or Corrections to the Agenda:**

A motion was made by Councilman West to remove items 13 d., e., & f. related to Old Business. Councilman Garde seconded, and the motion was unanimously approved.

### **Agenda Approval:**

A motion was made by Councilman West to approve the Agenda as amended. Vice mayor Parker-Selby seconded, and the motion was unanimously approved.

### **Old Business - Discussion and Possible Vote on the Following Items:**

#### a. Request from Fernmoor Homes relating to bond reduction of Heritage Creek Phase 3A.

- A letter from Pennoni Associates containing an updated recommendation on the Reduction of the Performance Guarantee for Heritage Creek Phase 3A, dated December 7, 2015, was included in the Council packet.
- Mr. Herb Maharg, Director of Land Development for Fernmoor Homes and Mr. Ben Gordy of Ocean Atlantic Companies, Project Manager for Fernmoor Homes at Heritage Creek were present and represented the Developer.
- After discussion and agreement among the representatives of the Developer, the Mayor & Town Council, and Pennoni Associates representative, a motion was made by Councilman Cote to reduce the Heritage Creek Phase 3A Performance Guarantee to \$64,557. This was in lieu of the \$75,863 recommended in writing in the Pennoni updated recommendation. Councilman Garde seconded and the motion was unanimously approved.

#### b. Request from Fernmoor Homes relating to bond dedication of Heritage Creek Phase 2A.

- A letter from Pennoni Associates containing an update status of the “Remaining Items” for the Street Dedication Request for Heritage Creek Phase 2A dated December 3, 2015 was included in the Council packet.

- Mr. Herb Maharg, Director of Land Development for Fernmoor Homes and Mr. Ben Gordy of Ocean Atlantic Companies, Project Manager for Fernmoor Homes at Heritage Creek were present and represented the Developer.
- Carlton Savage from Pennoni Associates led the discussions on behalf of the Town. His comments included the following highlights:
  - The Town is in receipt of the As-built drawings requested during the November Town Council meeting.
  - Revisions to final plans to comply with the Milton Code, Section 188-38, items F&G, missing from the November package, have been received.
  - The release of liens requested from subcontractors have been received.
  - The separate bond for the sidewalks was agreed and posted.
  - Mayor and Town Council agreed to remove the Date Certain criterion for installation of the sidewalks, provided that sufficient bonding remain in place to cover 125% of the estimated cost of these sidewalks until the work is completed and accepted.
  - The Town has initially approved the use of traffic control barrels as barricades to provide safety of the community as well as protection of the streets from unnecessary construction traffic.
  - A final walk-through was conducted on 11/20 & 11/23.
  - A punchlist was provided to the Developer on 11/24.
  - The Developer objected to the punchlist in an e-mail dated 11/25.
  - A meeting took place on 12/1 among Town Staff, Pennoni, and the Developer.
  - The punchlist had a total of 43 items.
  - Fernmoor agreed to not request a reduction in any other bond that may be in place for the development of the entire Heritage Creek development until the agreed items on the punchlist are satisfactorily completed.
- The Mayor and Town Council discussed the punchlist with the Developer and Pennoni, with the following results:
  - Items 31 & 33 are already taken care of.
  - There are 8 items (#2, 12 thru 15, and 20 thru 22), related to new asphalt, and should not hold up dedication, since deficiencies will be covered by the warranty should they become evident in the first year after dedication.
  - There are 3 items outside the area under consideration for dedication.
  - There are 2 items (#8 & 9) that the HOA has agreed to take responsibility for.
  - There are 2 low spots noted between Phases 2A & 3A that can be addressed at a later time.
  - That leaves 26 items to be taken care of prior to dedication, specifically, items 1, 4, 10, 11, 17 thru 19, 23 thru 35, and 38 thru 43.

Councilman Cote made a motion along the following lines: "That the Town of Milton accept dedication of the streets and street-related utilities in Phase 2A of Heritage Creek, subject to the fact that Fernmoor (and its successors and assigns) will not ask for a reduction in other bonds for all other phases until the 26 agreed to items on the punchlist provided to the Developer on November 24, 2015 be completed, and further that such items shall be completed no later than March 31, 2016." The motion was seconded by Councilman West. A roll call vote was called with the following results:

Councilman Kanakos: Yes

Councilman West: Yes  
Vice Mayor Parker-Selby: Yes  
Councilman Cote: Yes  
Councilman Garde: Yes  
Councilman Kelly: Yes  
Mayor Jones: Yes

Councilman Cote made a motion to release the bond relating to Heritage Creek Phase 2A (noting that this did not refer to the new bond relating to sidewalks discussed above). Councilman West seconded and the motion was unanimously approved.

c. Physical Fitness Equipment Usage Policy (Police Department)

Councilman Cote made a motion to table this item. Councilman Garde seconded, and the motion was unanimously approved.

d., e., and f. These items were removed from the Agenda, as no written recommendations were received.

g. Tasks assigned by Resolution 2015-021 requesting an expenditure plan from the Economic Development Committee.

- Councilman Kanakos commented that the engine that drives economic development should be industry.
- Councilman West commented that the Businessmen's Association gave money in the past for economic development, relieving the burden from the Town.
- Other comments included:
  - Store fronts are being filled, which is a positive indicator of current economic development.
  - The current process for opening a new business has streamlined the older process, and made it easier for new businesses.
- Councilman Garde made a motion to table further discussion of the Resolution until the next meeting. The motion was seconded and unanimously approved.

**New Business - Discussion and Possible Vote on the Following Items:**

No items.

**Executive Session**

- A motion was made by Councilman West to go into Executive Session. Councilman Kelly seconded. The motion was unanimously approved.
- At the end of the Executive Session, a motion was made by Councilman Garde, seconded by Councilman Kelly and unanimously approved to come out of Executive Session.

**Final Discussion and Possible Vote on the sale of 112 Federal Street, Milton, Delaware**

No further discussions.

**Discussion and Possible Vote on Executive Session Items:**

A motion was made, seconded and unanimously approved to go into Regular Session.

- A motion was made and seconded to not alter the basic aspects of the proposal discussed under item 1 in the Executive Session. The motion was unanimously approved.
- A motion was made and seconded to prepare a letter as discussed under item 3 in the Executive Session. The motion was unanimously approved.
- A motion was made and seconded to table the minutes of the Nov 3 & Nov 16 Executive Sessions. The motion was unanimously approved.

**Adjournment**

A motion was made, seconded and unanimously approved to adjourn.

Very Respectfully submitted,  
James C. ("Sam") Garde,  
Secretary of the Town Council