

Town of Milton
Special Town Council Meeting Minutes
Milton Theatre, 110 Union Street
Monday, January 8, 2007

1. OPEN FLOOR: 7:15 p.m.

ZOE VETTE (120 West Shore Drive): I'm trying to get a permit to put an irrigation well on my property for my irrigation system. I'm currently being charged a sewer fee for water that is not going into the sewer line as a result of my irrigation system. My bill averages about \$200 per month between the sewer fee and the water fee and this can be alleviated by putting in the irrigation well. MAYOR POST: We will bring this to the attention of the Town Manager and then bring it into the agenda for next month because currently, private wells are not permitted in the town of Milton so that would be something we'd have to talk to our legal advisors about.

KATHRYN GREIG (326 Union Street): Milton Garden Club report. Soon we'll be removing all the red bows around town. The greens will have to be taken up soon. The first thing we're going to be doing for the new year is trying to raise some money, and we're having a fund raiser at Roadhouse Steak House on Monday, February 19, 2007. February will be our raffle for Spring Garden Cleanup or Planting Day giving to the person who wins the raffle ten hours by the Garden Club and I'll have more information about that next month.

ANNE YARBROUGH: 200th Anniversary of the naming of this town. I'd just like to highlight that on February 2 this year, Rodney Kay will be talking at the Historical Society about that name. The Historical Society is a membership-based organization. A significant number of our funds come from our memberships, and more important, is the way you support another one of the many important community organizations in town that got strength from its townspeople. So if anyone is interested in joining, please see me.

JIM WELU: My question to you is what criteria or checklist does the council and the administration have against which to judge whether, in dealing just with the one company, they're actually getting the best deal for the citizens of Milton. The second subject I'd like to address is that it was made very clear by most of the council that we wanted to get rid of the Town doing the water/sewer treatment plant and comments were made that we wanted to have the business and also be relieved from all liabilities relative to DNREC and PA and that type of thing with regard to any violations of going into the Broadkill River, those issues are raised. With that in mind, it seems a little parochial and narrow-minded than to say, "We don't want anything to do with the sewer treatment plant, we want Tidewater to take care of it, but we don't want anyone else in the region to use that plant unless they become part of the town." It seems to me that the plant ought to be a regional plant and that raises the question of why the Town hasn't consulted with the county if the county's plans for sewer treatment between Ellendale and all the way down Milton and doing a regional plant, which they have very much in the works in the discussion stage. If you have conversations with the people who work for the sewer authority for the county, you would know that they were looking at a regional solution to the problem. Dealing with Ellendale, Isaac's Glen, Elizabethtown, and whatever other town in between as well as the town of Milton, I think the town has been a little parochial in the way they've looked at the sewer treatment as a "Milton plant" and yet not want to take responsibility for it. MR. JOHN BRADY: Your two questions have legal implications; that's why I'll try to answer them as fast as I can. Because of the

FOIA complaint that was filed, I have not engaged in any negotiations until the Attorney General makes its ruling. When the Attorney General's ruling is made, it'll be posted on the Website, and Town Council will respond. If it's against the town, or if the Attorney General says the process was filed correctly, then we will proceed. But all talks, everything, have been held in abeyance from our end. I have been contacted by their attorney. I told them I would get back to them after the Attorney General's ruling. I felt that, from a legally sufficient basis, since there is a question about the process that was followed, until that process has been ruled upon, why needlessly spend town money? As for the criteria for negotiations, or if it is going to be with the best deal possible for the town, whatever I do on behalf of the town has to be approved by the Town Council and has to be voted on in public. Because it is not the subject of current lawsuit, it is not something for executive session, it is something that will be posted as a proposed contract and will be voted upon. There will be public notice at least seven days, unless something comes in later closer to a meeting. But I can guarantee there'll plenty of public comment allowed before it does, and before council makes that vote.

D.J. HUGHES: Spoke about Shipbuilder's Village. There was a Planning and Zoning meeting on December 19 about Shipbuilder's Village. I was very disappointed because once we got there it didn't seem like anyone knew why we were there, nor were they prepared for what was to be discussed. Basically, it was a very short meeting that didn't accomplish anything. Furthermore, my wife and I were told by Councilman Betts that the street lighting in Shipbuilder's was being addressed with the litigation, and we were told the town was going to negotiate the best deal for the residents of Shipbuilders with the litigation. So I asked Mr. Willard how the streetlights were affected by litigation and he had absolutely no idea what I was talking about. I'd like to know what is being done with regard to the street lighting. Also, with regard to the major subdivision application by Shipbuilder's for the six lots, a couple of the Commissioners took a stance, and I agree with them, that the town should not even consider that major subdivision until the drainage problems within the development have been fixed. The existing drainage should have been done right the first time, so they shouldn't get credit for getting approval for six lots because they're going to fix something they should have done right the first time. I don't know what you can or can't talk about with regard to litigation, but if there's anything you can tell me about what is involved in the litigation, I'd like to know that also. MAYOR POST: I know you can answer that. I also want to comment because we've had some discussion on that and *my* viewpoint is that should have never come over to Planning and Zoning and should not have been on the agenda the other night. That is an issue that is council's during a period of litigation and should have not been on a public agenda. And I would be glad to let Mr. Brady explain how it came about. But you're right, there was very little communication from Mr. Willard and there is a lack of communication with this issue. As we move forward, there will not be. MR. BRADY: During the process after the July meeting when the application for the major subdivision was presented, I got there and listened to the tape and reviewed the paperwork, I realized that one of the interested parties was related to somebody that I have an open case with and I recused myself. Mr. Willard, the former Town Solicitor, is finishing that part of the litigation. Mr. Willard, Mr. Robinson, and the other attorneys had a meeting, a precall conference with the Court of Chancery and said that they needed to have this presented to Planning and Zoning. I informed Planning and Zoning I can't, because of an ethics code issue, be involved with that matter, and that's why I can't tell you any more regarding this because I don't have any files. And, my understanding, Mr. Hughes, was they told me they had everything worked out, the streetlights, I was told, was something that was covered. That's the best answer I can give you, sir.

D.J.HUGHES: But is the street lighting supposed to be part of the litigation? MR. BRADY: The specific details, sir, I can't address. Mr. Willard would have been here tonight, but he is now the attorney for the town of Milford, and they are having their meeting tonight. He would have been here last week had it

not been cancelled, but there are always schedule difficulties and hopefully, that will get resolved shortly.

JOHN COLLIER: Recently there was a small group of citizens of Milton with the Adopt-A-Highway Program between Harbeson Road and Sand Hill Road out to Diamond Farm Road, and when I was looking into this program, one of the streets that I tried to adopt unsuccessfully was Front Street, a small portion from the Round Pole Bridge Road at Cave Neck Road because it does not belong to the town, and it's not long enough to meet the state's criteria for highway requirements. The group that I worked with, some of us are willing to provide the labor to clean this street, pick up all the trash. What we need from the town and what I'd like the Town Council to consider in the proper order of business is if they would assist us by hauling it away once we gather it. That's the only issue we cannot resolve ourselves. So if we could get that taken care of, the labor is taken care of, the trash bags included in this are taken care of, it's just a matter of having somebody to take it somewhere where it can be disposed of properly once it's picked up. So if you could entertain that under the proper order of business, we'd appreciate it.

MAYOR POST: I'll discuss that with George and I'll have some information for you.

BOB BLANEY (210 Chandler Street): Milton Carrow was unable to be here tonight and asked me to present some concerns that he has in the negotiating process with the contractor for the new sewer plant. He wanted me to surely applaud the Mayor and Council for their progress in the advancement of this long-standing issue with the town and is very happy to see that it is progressing, we hope, to a fruitful end. Mr. Carrow's first concern was the Tidewater experience. It has come to our attention that Tidewater is a subsidiary of a large company that manages water and sewer plants for nearby neighborhoods, but by itself has never built a sewer plant. If this is so, does it meet the standards of responsible figures required by the Town Charter? Second, he does not care who among the town officials is negotiating with Tidewater or the winning contractor. The discussions to be made in the contract negotiations in signing with the plant contractor should call upon the town to pull together the highest professionals in the engineering and national analysts for informational analysis because we know that these large corporations are going to bring top officials for the negotiations. And he's concerned that we have the proper professional backing in the engineering sense and professional analysis sense to represent the town in our best interest. Broadkill River issues designed staying with plans under discussion for the new service provided for the ultimate dumping of effluence into the Broadkill River. All the effluence which exceeds current DNREC standards would continue to discourage loops into the river. Environmental groups oppose this. Obviously, private enterprises expect to earn a profit to at least cover costs. It doesn't matter what commitment is made for control of rates to the user, should the costs to the contractor rise, it will cease to cover them or failing to obtain them, what course is open to the contractor? Mr. Carrow was concerned that the sewer construction and operations turnover to a private firm has provisions that the Town officials are being made to oversee these activities. We're not looking for an answer now. We're just bringing up these issues as concerns.

JOAN MARTIN-BROWN: If I might before the official meeting begins, as Chair of the Ad Hoc Charter Committee, I'm sad to inform the Mayor and Council that Mr. Gene Spencer, a valued member of the Charter Committee passed away last Wednesday. There'll be a memorial service in this theater on Sunday afternoon, January 21, 2007 at 1:00 P.M. We're very happy to have the service and time with him that we did. Thank you, Mr. Mayor.

Closed Open Floor: 7:39 p.m.

Mayor Post spoke on the closing of 2006, after which he presented the first “Citizen of the Year” award to Joanie Martin-Brown.

2. **REGULAR MEETING** opened at 7:56 p.m.

Moment of silence

The Pledge of Allegiance

Roll call.

Present: Councilman Harris
 Councilman Dvornick
 Councilman Frey
 Councilwoman Melson
 Councilwoman Betts
 Mayor Don Post

Absent: Councilman Prettyman

Additions/corrections to the agenda

COUNCILWOMAN BETTS: “I have one addition. I would like to have a discussion on the license state for professionals.” COUNCILMAN FREY: “I would like to add the North Milton Public Hearing of Sussex County Planning Commission on January 25, 2007, for discussion.” COUNCILWOMAN MELSON: “I have two issues. We need to strike under “New Business” the award of the Employee of the Quarter because further documentation is needed; and I need to amend the agenda to add “Charter Change Resolution” under “New Business”. Councilman Dvornick made a motion that the cleanup along Front Street be add under New Business. Councilman Dvornick made a motion to have an executive sessions meeting regarding Shipbuilders litigation. Councilman Dvornick made a motion to approve the items mentioned above. Councilman Frey seconds it. All in favor, “Aye”. Motion carried. Councilwoman Betts made a motion to approve the amended agenda. Councilwoman Melson seconds it. All in favor, “Aye”. Motion carried.

Approval of Minutes

November 13, 2006 and December 4, 2007

Councilman Dvornick made a motion to accept the minutes from December 4 and November 13, 2006 meeting as in printed form as presented. Councilman Frey seconds it. Motion carried.

Committee Reports

Planning and Zoning: Linda Rogers gave her report.

Board of Adjustments: John Collier gave report.

Personnel: No report.

Zoning Ordinance Review and Revision: Virginia Weeks gave the report.

Milton Development: Councilwoman Betts gave report

Streets and Sidewalks: Councilwoman Betts thanked the Town Manager and Allen Adkins. If anyone would like to know what street needs repairing or the cost, we have prices from contractors, and I'm going to refer the streets that need repairs over to the Town Manager, who has the report on that. Mr. Dickerson gave report. COUNCILWOMAN BETTS: Thank you. And the streets will be paved.

Parks and Recreation: Councilman Harris gave report. Spoke about Mill Park. "We've been looking at a potential new pavilion and new playground equipment in Downtown Park. I would like to put out a bidding process, get numerous bids from several companies to give us an overall design of the park. There are several options that we looking at that will actually pay for the renovations that are needed at the park. I'll be posting the meeting dates for 2007 in the next week."

Economic Development: Councilman Harris gave report.

200th Anniversary: Councilwoman Betts "They have sold a lot of the baskets and are continuing to ask people to purchase the baskets. They have a lot of material that they're going to be selling and it's really progressing."

Historic Preservation Committee: Stephanie Parker gave her report.

Written Reports

Maintenance Report: Councilman Frey made a motion to accept the maintenance. Councilman Harris seconds it. All in favor, "Aye". Motion carried.

Code Enforcer Report: Councilman Harris made a motion to accept the Code Enforcer's report as written. Councilman Frey seconds it. All in favor, "Aye". Motion carried.

Police Report: Councilwoman Melson made a motion to accept the Police Report as written. Councilman Frey seconds it. All in favor, "Aye". Motion carried.

Town Manager's Report: George Dickerson spoke regarding Planning and Zoning and Historic Preservation process. The Town is reviewing the process regarding how complaints come in, work orders for Allen, site plans and bills, various applications for proposed projects, inventories, annexation applications, plan review, planning process to make sure that the proper boards get those, engineering plan review, administration of the plan review, meeting with maintenance departments and to make sure all that information has been looked prior to Planning and Zoning having to go to a meeting. Talked about the Christmas House Tour and the Open House for the Town Hall, estimated that about 350 people came to the Town Hall that day. A new copy machine is being leased and staff was trained on it. Stephanie and Sherry met with Includ, Inc. our website provider. They will be expanding that over the next few months and make it more user-friendly. Comprehensive Plan meetings January 17 and January 30, both to be held at the Town Hall at 6:30 P.M. in the upstairs conference. Read into record the 2007 Municipal Election. Councilman Frey made a motion to accept the Town Manager's Report. Councilwoman Betts seconds it. All in favor, "Aye". Motion carried.

Old Business

Chesapeake Utilities Franchise Agreement: “Mr. Mayor and Council, the agreement that you have in front of you that we’re requesting approval for this evening, as you will recall I was here in December, and made a presentation, gave you a synopsis of the points that were within the proposed agreement. Subsequent to that meeting, there was a request forwarded to the Town Manager that we revise the agreement, to change it from an exclusive agreement to a non-exclusive agreement. I consulted with Chesapeake senior management; we proposed alternative language in Section 1 and Section 8, I believe, which is now incorporated in the draft that you have in front of you. That’s all I had this morning. If you have any questions, I’d be more than happy to try to answer those.” Councilman Dvornick made a motion to accept the Chesapeake Utilities Franchise Agreement. Councilman Frey seconds it. MR. BRADY: I have reviewed it; it’s legally sufficient and it matches what was proposed in the documents by Georgetown Town Council recently as their non-exclusive agreement. All in favor, “Aye”. Motion carried.

North Milton Public Hearing: Council members discussed and determined that a letter should be sent to Sussex County Council Planning and Zoning Commission to their public hearing on January 25, 2007, stating it is the official position of the Milton Town Council to oppose the project, also to the Governor and Attorney General, etc. It was decided that George would go to the meeting to represent the Town. Councilman Frey made a motion to send the letter to the Sussex County Planning and Zoning, Governor, and Attorney General opposing the North Milton project and have George represent the Town at the meeting. Councilman Harris seconds it. All in favor, “Aye”. Motion carried.

The Boat Dock Policy: Councilman Dvornick made a motion to accept the Boat Dock Policy as written. Councilman Frey seconds it. Councilman Harris felt that the Town should charge \$50 off season, \$100 on season. Councilman Dvornick made a motion that April through September it would be \$100 a month during on season, and for the off-season it should be \$50 per month. Councilwoman Betts seconds it. Motion carried.

Ordinances List D, E, F, and G on agenda: MR. BRADY: “The two questions that have come up: “What happens if someone who is already living there right now is living within 200 yards of the school before the passing of the ordinance?” Usually, you do not have what is called “ex post facto” or retroactive criminal law statutes. As to that point, that person would be allowed to live there and on property until they move on their own, and they would be an exception to the ordinance. The second issue, though, is a little more difficult and I have researched it but it’s not a clear consensus. What happens is someone owns property and I’m just saying they own it on “Mulberry Street”, and commit an offense within 100 yards of Mulberry Street and they’re convicted and become a registered sex offender, would they be forced to move? An application of the law is that if someone knows the status of the law, and performs criminal conduct, they are subject to all restrictions of the law at the time commit the offense. The answer would be “yes,” they would be forced to move or they’d be in violation of the ordinance. If they violated the ordinance, they also violated their probation, and would probably end up as an imprisoned sex offender. To comply with the provisions of the town charter, all four of the items need to be listed for a public hearing prior to the start of the Council meeting in February so that they can have their public hearing for the comments with the amendments and any other discussion, and then can be voted on at the February council meeting for all four of the ordinances which are listed under D, E, F, and G, provided further that the last one gets reported back from Planning and Zoning at their scheduled meeting this month.” Councilman Dvornick made a motion to move and have public

comments on all four ordinances listed under D, E, F, and G at the February meeting. Councilman Harris seconds it. All in favor, "Aye". Motion carried.

New Business

Boat Replica: Allen Davis 37 Carey Street along with Russ McCabe spoke regarding building a boat replica and asked that everyone consider allowing them to use Town property for the purposes of constructing the facility to build the vessel, where it's going to be stored, and to use it for a period of years for the betterment of the town and the education of the citizens. Mayor Post stated that it will be put on the agenda for the next meeting "so we can get moving and we might as well have it as an agreement so that we can move forward on that wetland issue. If it means this parcel, that would rule it out right there. If they say absolutely not, you can't do anything with it, then we'll go to the next parcel."

Annexation Requests Elwood Land Ventures, LLC Key Ventures, LLC Parcels 2-35-21.00-44.00: Douglas Marshall, attorney representing the property owners in the request of annexation. "I just have a procedural for us here tonight and that is to provide you with a supplemental application, a supplement to the petition which was filed on December which includes the 20 copies of the PLUS review, and the response to the PLUS review, which are needed to send the report to the Planning Commission should you decide that tonight. And also as housekeeping matter, Delaware Land Ventures LLC on Friday sold its interests so that there's only one entity now of Key Ventures LLC, and I have a representative of them here with us tonight. These supplements and petition simply points out that it is now Key Ventures LLC which provides the petitioner's request for the annexation, the reasons, benefits to the petitioners, and benefits to the town as suggested in the annexation section of the Charter, and also includes copies of the PLUS review in our response. This is in regard to 86.58 acres at Cave Neck Road and Sam Lucas and what we need here tonight from Council is to have it sent over to Planning and Zoning. Councilman Frey made a motion to accept and send to Planning Commission the annexation request for Key Ventures LLC, Parcel 2-35-21.00-44.00. Councilman Harris seconds it. All in favor, "Aye". Motion was carried.

Mayor Post: "At this same time, I am appointing Louise Frey, Ginny Weeks and Michael Falickio as the three Planning and Zoning members as according to the charter to review this annexation and report accordingly."

Cleanup Front Street: Councilman Frey made a motion to allow the town to pick up the trash on Front Street and dispose of it. Councilman Dvornick seconds it. Motion carried.

Charter Change Resolution: MR. BRADY "When a Charter change is proposed by the General Assembly, it goes into effect upon enactment. The problem would be that now we have opened an election season, and there is a proposal in there to change part of the election qualifications. Therefore, I would suggest that since the election is on March 3 that you delay sending this to the legislature so there can be no confusion about what law applies for the March 3, 2007 elections, and that the General Assembly review this when they reconvene on March 13, 2007. So it's my legal opinion that you wait and send it up March 13, 2007." MAYOR POST "It's not the full charter. This was only in regard to Section 19 and Section 20, which designates, and there's an unclarity in the current charter regarding the Town Manager's position and the Town Clerk's position. This proposes a new verbiage for both the Town Manager's position and the Town Clerk's position. And that's what we need a resolution for, and that's something that if we don't have a resolution tonight, we'll have to get it on to the next meeting."

MR. BRADY: If you want to get it up there, you need to compile everything you have to do with the letters for a special meeting, which have to be done seven days before as they were for tonight. So the earliest date for a special meeting would be next week. The process at the legislature: this would go into Executive Committee in either the House or the Senate, come out, it takes a week in each chamber. So it has to be up there by sometime next week. My concern is that I did not get the right language and I was under the impression that it was a total charter change and not just the two sections.” MAYOR POST: “Would the change call for a special meeting next week?” MR. BRADY: “You can call for meeting any time as long as you send out notice.” MAYOR POST: “There’s a Comprehensive Planning Meeting at 6:30 P.M. on the 17th, so we can schedule it before then at 6:00 P.M.”

License Fee: COUNILWOMAN BETTS: “I would like to have a discussion. I think we should reduce the professional license. It went up from \$50 to \$250 per year and, I think, even with an eating establishment and no liquor license, it’s only \$100 plus additional \$10 per table. I feel that we should reduce the professional services to be \$125 per year; and if anyone has already paid that \$250 they would be paid through 2008.” Councilwoman Betts made a motion to reduce the professional license from \$250 to \$125 per year. Councilwoman Melson seconds it. All in favor, “Aye”. Councilman Frey opposed. Motion carried.

Executive Session

Councilman Frey made a motion to go into executive session at 9:22 P.M. Councilman Dvornick seconds it. Motion carried. Came out of executive session at 9:45 p.m.

Adjournment

Councilwoman Betts made a motion to adjourn. Councilman Dvornick seconds it. All in favor, “Aye”. Motion carried.

Respectfully Submitted,

Julie Powers
Executive Secretary