

**MILTON TOWN COUNCIL
MONDAY, OCTOBER 3, 2016, 6:30PM
MILTON LIBRARY, 121 UNION STREET**

The meeting was recorded; the below minutes are a summary of the agenda items.

- 1. Call to order (6:29pm) by Mayor Kanakos**
- 2. Moment of silence was observed (6:29pm)**
- 3. Pledge of Allegiance to the Flag (6:29pm)**
- 4. Roll Call – (6:30pm)**

Mayor Kanakos – Present
Stell Parker-Selby – Present
Michael Cote – Present
James ‘Sam’ Garde – Present
Charles Fleetwood – Present
Emory West – Present
Kevin Kelly – Present

- 5. Public Hearing on a Proposed Amendment to the Zoning Map – see Old Business item 14a – If you are not able to attend the public hearing, written comments will be accepted at Town Hall until 5pm on October 3 (6:30pm)**

John Collier – During the course of preliminary site plan review it was discovered that there was a flaw in our zoning map that indicated that approximately one third of the HOB school property was not within Town limits. This was consistent with our zoning map and the counties tax map and parcels. There was some investigation and it was determined that yes indeed there was a mapping error. Title 22 of the Delaware code state that anytime you amend your zoning map, even to correct an error you must hold a public hearing and receive comment. As of 5:00pm there were no written comments, had two walks that asked what it was about and two people who called in. Consensus is that most people want to see the new school be built.
Mayor Kanakos – Are there any comments from the audience.

No one made any additional comments

Seth Thompson – Just for the record we have the advisory report from planning and zoning. Will answer any questions. Council certainly free to adopt the reasoning that planning and zoning out in their advisory report. From a legal standpoint, we are only changing a mapping error and going about it by ordinance and we will need to change our comprehensive plan, but we will do that in the context of the comprehensive plan revision that has been on going.

Mayor Kanakos – would like Chief Longo to introduce the newest officer.

Chief Longo – Would like to introduce Nick Bogan, he is a certified officer coming to us from Accomack County Sheriff’s Office in Virginia, he has 5-6 years of experience, he will be going through what we call comparative compliance or reciprocity. Welcome aboard.

Officer Nick Bogan – Thank you everyone for your time. I grew up around the Delmarva area. My goal when going to college was to become a police officer.

Vice Mayor Parker-Selby – Want to thank Chief Longo for doing wonderful job representing our town.

- 6. Public Participation - (6:37pm)**

Mary Odoms (608 Mulberry St) – Concerned about the children that catch the bus at clipper square. Kids are outside in the weather. Tired of seeing them out there because we will not help these children. They need shelter of some kind. Can't believe this town can't help them with some kind of shelter.

Mayor Kanakos – We will look into it.

Steve Crawford (216 Ridge Rd) (6:43pm) - Would like the status on the Comp plan, charter revisions and what's going on with getting the sewer plant off the river.

Kristy Rogers – I will help with the first two. On the Comp Plan – a few months ago the Mayor and I met with Mr. Goodinson, the chairman of Planning and Zoning, we decided we would have a preliminary review by the Office of State Planning, while I was out, I received comments back and I just haven't had the opportunity to review them and get back to Planning and Zoning. For the charter, I believe we are going start hearings and workshops, maybe the end of the month or the beginning of November.

Steve Crawford – *And the sewer plant.*

Mayor Kanakos – It's in the process of being moved within probably the next two years.

Seth Thompson – We have set up a plan with Tidewater, if there are certain criteria met it should happen in the next two years.

Councilman Fleetwood – As a member of the public wanted to invite everyone to Broadkill Banjos and Seafood Festival, on Saturday in the park. Starts at 11, there will be 5 bands performing all day. Also, putting together a Christmas Concert which is going to be held at Goshen Church on December 17.

7. **Requests for Removal of Items from the Consent Agenda (6:46pm)** – Mayor Kanakos would like 8f removed. Mayor has not found two people to sit on the board. Sam Garde would like to remove minutes of May 2nd (portion of 8d) and public works monthly report (portion of 8b).
Motion to approve Consent Agenda with remaining items by Vice Mayor Parker-Selby. Second by Councilman Fleetwood. All approve. None opposed.
8. **Approval of the Consent Agenda: (6:48pm)** Motion to approve Consent Agenda with remaining items by Vice Mayor Parker-Selby. Second by Councilman Fleetwood. All approve. None opposed.
 - a. **Written Committee Reports**
 - b. **Written Department Reports: Administrative, Code Enforcement, Project Coordinator, Police and ~~Public Works~~**
 - c. **Finance Report and Statement of Revenues and Expenditures**
 - d. **Minutes: April 4 and ~~May 2~~**
 - e. **Resolution 2016-009 to ratify the adoption of the fiscal year 2017 fee schedule**
 - f. **~~Resolution 2016-010 to appoint the Board of Appeals~~**
9. **Discussion and possible vote on items removed from the Consent Agenda (6:48pm)**
Councilman Garde – The reason I asked for the removal of the public works report is not because it isn't an excellent report, it's just in one place it states that the tenting of the tower behind HO Brittingham is scheduled for the spring of 2017. I have heard conflicting reports of when construction is supposed to start on the new HO Brittingham School, which would have multiple items of equipment and construction actions going on contemporaneously.

Recollection from public hearing was that construction is supposed to begin in the spring of 2017, but I read somewhere in the paper that someone is asking to begin in the beginning of 2018. I just want to bring to everyone's attention whether it's prudent to have construction of HOB, tenting of the water tower and all of the activities associated with the cooling of the water tower going on at the same time. The children's play areas will be restricted due to the construction. Think need to confirm when the construction of HOB will begin.

Greg Wingo – Think simultaneous construction would be best.

Motion by Councilman Garde to approve public works report with no additional comments.

Second by Councilman Fleetwood. All in favor. None opposed

Motion by Councilman Garde to hold off on approving May 2 minutes until further clarification on some items can be made. Second by Councilman Kelly. All in favor. None opposed

10. Additions or Corrections to the Agenda: No additions or Corrections

11. Agenda Approval (6:55pm): Motion was made by Councilman West to approve the agenda; second by Vice Mayor Parker-Selby. All in favor. None opposed.

12. Presentation of donation to Milton Garden Club (6:56pm)

Mayor Kanakos – Presentation of donation check in the amount of \$3,000.00 to Mrs. Trask of the Milton Garden Club.

13. Presentation from M & T Bank relating to investments (6:57pm)

Pia Calhoun (Senior Financial Consultant for M & T Security) - Met with K. Rogers and Councilman Cote and presented several options. Created a portfolio of corporate bonds, something more stable for the Town. They must be held to maturity. Examples of various bonds and their key attributes. Explained the difference with various types of CD's, bonds, brokered and getting them to maturity.

Councilman Cote – Just so everyone is clear the corporate bonds are NOT FDIC insured.

Pia Calhoun – Can also use brokered CD's which are FDIC insured but you have to leave them until maturity or you definitely lose funds

14. Old Business – Discussion and possible vote on the following items: (7:32pm)

a. Amendment to the zoning map – the purpose of this amendment is to correct a mapping error involving 400 Mulberry Street further identified by Sussex County Tax Map and Parcel ID #235-14.00-88.00

Mayor Kanakos – Letter received by Sussex County concluding that the correct location of the boundary is the property lines and will support the Town in any way necessary to make this change and we will review our maps. This is just a house keeping changed.

Motion by Councilman West to adopt this amendment to correct the zoning map.

Second by Councilman Cote. Discussion by Councilman Garde – first page stated annexation and we are not annexing.

John Collier – Maps generated by Pennoni and did note the error.

Seth Thompson – The maps themselves won't have any wording is that correct.

John Collier – That is correct.

After discussion; all were in favor. None opposed.

15. New Business – Discussion and possible vote on the following items: (7:35pm)

a. Sidewalk waiver request for 210 Lavinia Street

Motion by Councilman West to grant this request.

Mayor Kanakos – Don't think someone should get a waiver for sidewalk before they get a building permit. Did find that we have granted waivers for someone without a building permit and with a building permit.

Councilman Cote – We recently granted a waiver on Lavinia Street with a condition that if the Town required sidewalks, they would be responsible for the sidewalk.

Seth Thompson – Don't think it was a condition, more so caution that this was not a permit waiver.

Mayor Kanakos – Doesn't feel that the waiver should be transferable if the property is sold.

Seth Thompson – Normally in land use conditions follow the property. Could put an expiration date on the waiver.

Councilman Kelly – You are aware that on parts of Lavinia have curbing and even bike paths.

Motion by Councilman West to grant the waiver request with the condition that it is not transferrable, and that they may be required to install sidewalks later at the towns request. Second by Councilman Garde. All in favor. None opposed

b. M & T Bank Investments

Mayor Kanakos requested to discuss in executive session.

Motion by Councilman Fleetwood to table until further review.

Seth Thompson – Probably does not need to be in executive session, generally when talking about spending town money it would be done during a public session.

Second by Councilman West. Councilman Fleetwood amend motion that it be discussed during a public workshop. Amended motion second by Councilman West.

All in favor. None opposed.

c. Recommendation from the Personnel Committee – revisions to the Town Manager job description

Councilman Garde – Made a few minor changes in the job description in education requirements.

Motion by Councilman West to accept the recommendations from the personnel committee for the revisions to the Town Manager job description. Unable to detect who made second

d. Ordinance 2016-009 to amend Town Code Chapter 167 entitled “Security Systems and Protective Services”

Mayor Kanakos – This needs to be struck we don't have all the documentation and information that we need to discuss it.

Seth Thompson – Trying to iron out some things, need to find out from Department of Homeland Security what regulations were passed in relation to a third party vendor. So basically, if the Town were to issue a summons and then somebody would say they wanted a hearing then it needs to be in front of that third part vendor. We need to know who that is and how that all works.

e. Ordinance 2016-010 to amend Town Code Chapter 220 entitled “Zoning”, relating to signage (7:49pm)

Seth Thompson – One change is in the definition of free standing sign. You do allow certain free standing sign in Town but an issue came up in regards to a sign on a tree, whether it was free standing or not, or on a utility pole. So that is being added that it not be supported by a building, tree or utility pole.

On the back, in relation to Reed vs Town of Gilbert, US Supreme Court decision from last year. Need to make sign ordinances content neutral. One issue was political signs. Town not alone in the sense the most municipalities had their ordinances drafted this way. The problem that your political sign definition is tied to advancing a political statement, cause or candidate. In other words, you are favoring political speech over non-commercial speech. One suggestion is to remove ‘intended to advance a political statement, cause or candidate for office’. So, it’s still tied to the election time period but it doesn’t necessarily have to have the candidate’s name, although that is what most people are going to use it for, but at least this way even though the term is political sign and that is based on the timing of when the sign is allowed. It doesn’t necessarily have to be a political sign anymore in kind of the normal sense that it doesn’t have to have the candidates name on it, it doesn’t have to have vote no on referendum xyz, that type of thing. Trying to think of a good approach so that people can advocate for candidates and that type of thing but still have the ordinances content neutral.

Councilman Garde – Allowing the term political signs but just taking out of our definition any relation to politics.

Seth Thompson – Other than the election timeframe.

Councilman Garde – Not sure how that complies. Can’t restrict my free speech. But since this body can’t discriminate against other kinds of speech.

Seth Thompson – That is correct, you can’t prefer one type of speech over another. That is what the Supreme Court has said. So, we are in a position where you could blanketly not allow political signs, I think that is bad for democracy.

Councilman Garde – I think a first amendment challenge would win that.

Seth Thompson – You are allowed to regulate time and place and manner in terms of speech. People need to have a permit for a rally or that kind of thing, but you can’t say if your parade is for cause X you are not getting a permit.

Mayor Kanakos – Example: vote Joe Smith for Governor and use Joe Smith The plumber. What’s the difference?

Seth Thompson – Those are both permitted under the language in the ordinance now, but they would both have to come down 14 days after election.

Mayor Kanakos – Even the plumber?

Seth Thompson – Correct

Mayor Kanakos – So he can only keep his sign on somebody’s property while he is working there? We already have that kind or ordinance, don’t we?

John Collier – That’s a different type of sign. Contractor signs are regulated by a different part of the code and there is a limitation for them as well.

Seth Thompson – The difficulty here is basically the Supreme Court said that this church, the appellate in the case, wants to have a sign out saying ‘Hey come worship on Sundays’ and they are not allowed to have that sign but on that exact same parcel you can have a hundred (100) candidate signs. So that’s kind of the background and the reason we regulate signs is really for safety, in terms, you don’t want them to be distracting and for aesthetics.

Councilman Kelly – Is the problem that in the original signage statement it identifies three particular uses or purposes of the sign.

Seth Thompson – Yes, that is exactly right.

Councilman Kelly – Would it be addressed by simply saying that a temporary political sign, which does not then suggest statement, cause or candidate but differentiates from that of for example a plumber.

Seth Thompson – The difficulty there is you are favoring the political speech. I am not saying this is a great solution.

Councilman Kelly – I understand and I know what ruling you are referring to.

Councilman Fleetwood – I have a question, this resolution that we are going to pass is to have a public hearing on this ordinance.

Seth Thompson – That's right because it is a zoning ordinance.

Councilman Fleetwood – I think we should go ahead and have the public hearing on November the 7th and see what the public has to say, we can make the decision then and we will be done with it tonight.

Councilman Garde – There should be a draft ordinance that we approve.

Seth Thompson – I agree.

Councilman Garde – to present to the public.

Motion by Councilman Fleetwood to accept this resolution as it is pending a public participation and input at the public hearing to be held on November 7, 2016.

Second by Councilman West.

Mayor Kanakos – So here we are 'e' we are proposing an ordinance to amend something and then we have a resolution to have a public hearing before we can do it.

Councilman Garde – That is correct.

Councilman West – So that will take out 'e' ad 'f' if we do it this way.

Councilman Fleetwood – Yes, that was my intention.

Councilman Kelly – Feels somewhat to me, and this to be disrespectful, seems to me just kicking the can down the road. Can we not resolve this issue today?

Seth Thompson – No we can't resolve it today because it's a zoning ordinance.

Councilman Fleetwood – Someone out there in the audience at the public hearing might have a better idea then we do. That was my point.

Councilman Kelly – They won't have our idea because we haven't provided that at the public

Councilman Fleetwood – We can provide it that night.

Councilman Garde – His motion provides this. The motion as I understand it, said that we would agree to put fourth this draft ordinance to the public at the public hearing.

Councilman Fleetwood – Right.

Councilman Garde – And that's not necessarily approving this ordinance, it's just saying that this is the draft we are going to present at the hearing.

Councilman Kelly – I'm uncomfortable with that, because that's not actually, that's what we are presenting at the hearing but it will naturally, whether legitimately or simply in appearance convey that there is some support or some sense that this constitutes a fair transition or change in the language that we did. That's my view of it.

Mayor Kanakos – I look at that we have to amend this sooner or later and we can amend and then the next part we have to get this approved at a hearing.

Seth Thompson – Correct

Mayor Kanakos – Let us vote to amend The Town Code Chapter 220, entitled "Zoning" relating to signage. So, the Council is saying yes, we can amend it. We are voting to amend it but we don't get the approval to amend it until we discuss it with the public.

Seth Thompson – Any sort of zoning amendment isn't going to be able to take effect until after a public hearing. I think Councilman Garde explained it pretty well, based on Councilman Fleetwood's notion of this we will call it our working draft. We are kind of approving this as our working draft. Hopefully someone from the public says this is great or somebody might say 'hey I have a better idea why don't we do it this way,'

Mayor Kanakos – This is our working draft.

Councilman Garde – But it also doesn't restrict us, anyone the Council Members from having a better idea at a future time that they didn't think of tonight.

Seth Thompson – Correct

Councilman Garde – But in terms of presenting, we have our Town Solicitor's recommendations, and putting it fourth. I am in no position tonight to make a better suggestion.

Seth Thompson – This is a difficult issue. You could ordinarily tailor this to say, this is what we are going to do but also these political signs, even though we are calling them political signs, even though they can have a different message on them, are only allowed in certain zonings. You could say you are only going to permit them in residential zones. Then you are kind of avoiding that a business is going to use this a notion to put up an additional sign. Then the business is kind of losing out on its opportunity to express its view on some political issues.

Mayor Kanakos – Can we just, 15e an Ordinance 2016-010, we agree to amend The Town Code, Chapter 220 "Zoning" pertaining to signage pending a public hearing.

Seth Thompson – That was the motion.

Mayor Kanakos – So that's e

Councilman Fleetwood – Pretty much. We have a motion and a second.

Mayor Kanakos – Any more discussion. All in favor. None opposed

f. Resolution 2016-011 to schedule a public hearing on a proposed amendment to Town Code Charter 220 entitled "Zoning", relating to signage (7:59pm)

Councilman Fleetwood – My motion included the date to have it.

Mayor Kanakos – November 7th? Is that alright Mrs. Rogers?

Councilman Garde – We have to have another motion to approve what we just did.

Mayor Kanakos – Pending a public hearing, we are sponsoring this for public discussion, but we are not adopting anything until we get the input. Can we just vote on f.

Seth Thompson – You can but the one thing

Councilman West – We just did

Mayor Kanakos – No we voted on e

Councilman Fleetwood – My motion mentioned November 7th, 2016 for the public hearing. It's part of the motion I made, so we already do.

Mayor Kanakos – So we don't need f or we do need f?

Seth Thompson - I like to do the resolution scheduling the public hearing because your code mentions doing it in that format.

Motion by Councilman Garde to approve the resolution 2016-011 to establish time and place for a public hearing on proposed amendments to the zoning code, specifically 6:30pm in the Milton Public Library on November 7, 2016.

Second by Councilman West. All in favor. None opposed.

16. Executive Session: (8:00pm) Motion made by Councilman West to enter executive session, second by Councilman Kelly. All in favor. None opposed.

- a. Strategy sessions, involving legal advice or opinion from an attorney-at-law, with respect to collective bargaining or pending or potential litigation, when an open meeting would have an adverse effect on the bargaining or litigation position of the public body
- b. Discussion of the content of documents, excluded from the definition of "public record" in § 10002 of this title where such discussion would disclose the contents of such documents

17. Discussion and possible vote on Executive Session items– Motion by Councilman to return to regular session.

18. Adjournment: (8:18pm) Motion to adjourn by Councilman Fleetwood. Second by Councilman West. All in favor. None opposed