

## COUNCIL MINUTES

JUNE 4, 2007

The regular meeting of Mayor and Council was held on the above date with Council members Reynolds, Faulkner, Kelly and McGhee present with Mayor Branner presiding. Town Manager Morris Deputy and Town Solicitor Scott Chambers were also present.

Moved by Mr. Faulkner and seconded by Ms. Kelly to approve the Minutes for May 7, 2007 as presented. Motion Carried Unanimously.

Moved by Mr. Reynolds and seconded by Mr. McGhee to approve the Treasurer's Report as presented. Motion Carried Unanimously.

Moved by Mr. Reynolds and seconded by Ms. Kelly to approve the Bills Payable as presented and pay as funds become available. Motion Carried Unanimously.

Moved by Ms. Kelly and seconded by Mr. McGhee to approve the Police Report as presented by Capt. Debra Rees. Motion Carried Unanimously.

### **5. GRANT REQUESTS:**

a. Middletown Lions Club, MOT Service Foundation, Inc. – Mobile Food Service Trailer Refit- \$5,000: Lou Vitola, Chairman of the Grant Review Committee, reported the committee recommended approval of the grant. The Lions Club generates 90% of its funds through the use of the food trailer and all funds raised are redirected to the MOT area.

b. Redding Middle School – Middle School Basketball Tournament - \$544: Mr. Vitola reported the committee recommended approval for the grant because it will positively affect students at both schools and there is a legitimate need for the funding. This is a matching grant.

*Moved by Ms. Kelly and seconded by Mr. Reynolds to accept the recommendation from the Grant Committee and approve the request for grants from the Middletown Lions Club and Redding Middle School. Motion Carried Unanimously.*

### **6. PUBLIC HEARING – Rt. 299, Willow Grove Mill – Concept Plan for the Willow Grove Mill Townhouse Community on an R-3 parcel**

Tabled per the developer's request.

### **7. PUBLIC HEARING – Motion to ratify a Contract with Austin & Bednash for the Town of Middletown's Multi-Year Paving and Services Contract**

Morris Deputy reported that Austin & Bednash was the lowest bidder for the Paving and Services Contract and requested authorization to prepare and execute the contract.

*Moved by Mr. Reynolds and seconded by Mr. McGhee ratify the contract with Austin & Bednash, low bidders for the Town of Middletown's Multi-Year Paving and Services Contract. Motion Carried Unanimously with 3 yeas and 1 abstention (Mr. Faulkner).*

### **8. PUBLIC HEARING – Adopt an Ordinance authorizing the execution of a Memorandum of Understanding between Frog Hollow, LLC; Signature Golf Management, LLC and the Town of Middletown**

Per the following notice a Public Hearing was held on the above date:

Take notice a Public Hearing will be held on June 4, 2007 at 7:30 p.m. at Town Hall, 19 West Green Street, Middletown, DE at which time the Mayor and Council will adopt an Ordinance authorizing the execution of a Memorandum of Understanding between Frog Hollow, LLC; Signature Golf Management, LLC and the Town of Middletown.

Mayor Branner said that because the Town is a middle partner and controls the sewer, the Town has to authorize the execution of a Memorandum of Understanding in order to transfer the properties. As an equitable partner the Town will receive \$100,000. The Town will realize a financial gain of about \$677,000 for the sale of excess sewer if the capacity is increased to 250,000 gallons per day.

*Moved by Mr. Reynolds and seconded by Mr. Faulkner to adopt an ordinance authorizing the execution of a Memorandum of Understanding between Frog Hollow, LLC; Signature Golf Management, LLC and the Town of Middletown. Motion Carried Unanimously.*

### **9. PUBLIC HEARING – Motion to ratify a Memorandum of Agreement between the Town of Middletown and DNREC to comply with the National Pollution Discharge Elimination System (NPDES) permit for stormwater discharges into the Municipal Separate Storm Sewer System (MS4) as required by the Clean Water Act**

Per the following notice a Public Hearing was held on the above date:

Take notice a Public Hearing will be held on June 4, 2007 at 7:30 p.m. at Town Hall, 19 West Green Street, Middletown, DE at which time the Mayor and Council will ratify a Memorandum of Agreement between the Town of Middletown and DNREC to comply with the National Pollution Discharge Elimination System (NPDES) permit for stormwater discharges into the Municipal Separate Storm Sewer system (MS4) as required by the Clean Water Act.

Morris Deputy stated the EPA required the Town to enter into a Memorandum of Agreement with DNREC for the NPDES permit. We have to have in writing that we will keep them aware of any discharges from high risk facilities such as Johnson Controls, and keep an inventory of any high risks facilities in Town so they can monitor them. The Town has been doing that but it was never in writing.

*Moved by Mr. Faulkner and seconded by Mr. Reynolds to ratify a Memorandum of Agreement between the Town of Middletown and DNREC to comply with the National Pollution Discharge Elimination System (NPDES) permit for stormwater discharges into the Municipal Separate Storm Sewer system (MS4) as required by the Clean Water Act. Motion Carried Unanimously.*

**10. PUBLIC HEARING – Cleaver Farm Road – Record Major Land Development and Record Major Subdivision Plan for The Highlands at Middletown (tax parcel 23-015.00-002)**

Per the following notice a Public Hearing was held on the above date:

Take notice a Public Hearing will be held on June 4, 2007 at 7:30 p.m. at Town Hall, 19 West Green Street, Middletown, DE at which time the Mayor and Council will review the Record Major Land Development Plan and Record Major Subdivision Plan for The Highlands at Middletown to be located off Cleaver Farm Road (tax parcel 23-015.00-002).

Jerome Heisler, owner/developer of the property, presented the revised plan of The Highlands. It's a neo-traditional neighborhood with 1,250 units comprised of condo/apartment units and stacked townhomes as well as semi-detached homes. A clubhouse and active recreation space is also provided. DeIDOT's comments will be addressed.

Mayor Branner said most of DeIDOT's comments are about sidewalks, buffers, the Lake Street connection, etc. – things that have to be done anyway. The plan can be approved with conditions. If adjustments have to be made to the plan it will have to be presented to Council again for approval.

Morris Deputy said he wanted clarification on DeIDOT's comment about the roundabout not meeting the minimum size. They also mentioned stormwater being in the right of way – items 1 and 7 are his concern. Andrew Hayes from Foresite Associates said there is no stormwater facility in the right of way. The two roundabouts are designed to FHA guidelines and DeIDOT's requirements. Mr. Hayes will contact DeIDOT for clarification on their issues.

*Moved by Ms. Kelly and seconded by Mr. Faulkner to grant approval for the Record Major Land Development and Record Major Subdivision Plan for The Highlands at Middletown tax parcel 23-015.00-002 with the condition Morris Deputy o.k.'s the roundabouts and the issue with the stormwater management pond. Motion Carried Unanimously.*

**11. PUBLIC HEARING – Introduce an Ordinance to rezone 5485 Peterson Road from Manufacturing Industrial (MI) to Downtown Commercial (C-2)**

Per the following notice a Public Hearing was held on the above date:

Take notice a Public Hearing will be held on June 4, 2007 at 7:30 p.m. at Town Hall, 19 West Green Street, Middletown, DE at which time the Mayor and Council will introduce an Ordinance to rezone 5485 Peterson Road from Manufacturing Industrial (MI) to Downtown Commercial (C-2).

Mayor Branner introduced the Ordinance to rezone 5485 Peterson Road from Manufacturing Industrial to Downtown Commercial.

**12. PUBLIC HEARING – 5485 Peterson Road – Preliminary Land Development Plan**

Per the following notice a Public Hearing was held on the above date:

Take notice a Public Hearing will be held on June 4, 2007 at 7:30 p.m. at Town Hall, 19 West Green Street, Middletown, DE at which time the Mayor and Council will review the Preliminary Land Development Plan for Main Street Station, a two-story, 35,000 square foot building on the property known as 5485 Peterson Road (tax parcel 23-005.00-130).

Joe Charma, representing Lang Development Company, stated the concerns raised at the concept presentation have been addressed. Parking along Peterson Road has been eliminated; a loading bay has been added to the side of the building as recommended and the southerly parking lot was moved about 40 feet away from Main Street. The size of the building was decreased about 5,000 sq. ft. (from 35,000 to 30,000 sq. ft.). Comments received from KCI are being addressed. The Planning and Zoning Commission recommended approval of the plan.

There was discussion regarding a right-in/right-out on W. Main St. Mr. Faulkner stated the fire department needs access to at least 3 sides of the building; if the parking lot in the front is removed they will lose that access. Mr. Faulkner commented that a concrete island could be installed in the middle of Peterson Road to direct traffic to one lane. DeIDOT will determine the entrance requirement on W. Main Street.

*Moved by Mr. Reynolds and seconded by Mr. McGhee to approve the Preliminary Land Development Plan for 5485 Peterson Road. Motion Carried Unanimously.*

**13. PUBLIC HEARING – 17 Wood Street – Preliminary Land Development Plan**

Per the following notice a Public Hearing was held on the above date:

Take notice a Public Hearing will be held on June 4, 2007 at 7:30 p.m. at Town Hall, 19 West Green Street, Middletown, DE at which time the Mayor and Council will review the Preliminary Land Development Plan for Wood Street Medical, a three-story medical/commercial office building on the property currently used by Shone's retail operation at 17 Wood Street (tax parcels 23-005.00-017 and 23-005.00-038).

Jeff Lang, owner/developer of the property, stated the building is a three-story, 35,000 sq. ft. building proposed for medical and general office use. Based on previous comments, minor changes have been made to the parking and access to the parking lots. The radius on Lake and Wood has been modified to improve visibility and make it safer. Based on conversation after the Planning and Zoning meeting but not shown on the plan is the addition of a sidewalk to access the property from Lake Street and Scott Street.

Planning and Zoning recommended approval of the plan on May 17, 2007.

Mayor Branner commented that the new plan appears to include the changes that were requested - the entrances are across from each other on Wood Street, the corner radius on Wood and Lake has been smoothed out and the entrance into the parking lot has been removed.

*Moved by Ms. Kelly and seconded by Mr. McGhee to approve the Preliminary Record Land Development Plan for 17 Wood Street. Motion Carried Unanimously.*

Mr. Reynolds asked Mr. Lang to have the grass cut on the property.

**14. PUBLIC HEARING – Lot 15, 105 Sleepy Hollow Drive, Bunker Hill Centre II – Conditional Use Permit No. CU-03-07 to allow general office in a Manufacturing-Industrial (MI) zoned district**

Per the following notice a Public Hearing was held on the above date:

Take notice a Public Hearing will be held on June 4, 2007 at 7:30 p.m. at Town Hall, 19 West Green Street, Middletown, DE at which time the Mayor and Council will review Conditional Use Permit No. CU-03-07 to allow general office in a Manufacturing-Industrial (MI) zoned district on Lot 15, 105 Sleepy Hollow Drive in Bunker Hill Centre II.

John Garcia from Karin's Associates represented the owner of the property to request approval for general office use in a Manufacturing-Industrial zoning district. A conditional use was approved for medical office use a couple of years ago. Planning and Zoning recommended approval.

*Moved by Mr. Faulkner and seconded by Mr. Reynolds to approve Conditional Use CU-03-07 to allow general office in a Manufacturing-Industrial (MI) zoned district. Motion Carried Unanimously.*

**15. Unfinished Business**

During a discussion regarding the Treasurer's Report it was suggested that more information be shown on the report. Lou Vitola, Finance Manager, stated the investment portion of the report is prepared on the Friday before the council meeting. The statements from Wachovia are not always received prior to preparing the report. Next month, gains and losses for May and June will be reported. Additional information will be included in future reports.

**16. New Business**

- Mr. Reynolds informed everyone that the Seventh Annual Relay for Life for the American Cancer Society will be held at Silver Lake Park on June 8<sup>th</sup> and 9<sup>th</sup>. It starts at 5:30 p.m. and lasts until noon on Saturday.
- The Fourth of July fireworks will be held on Wednesday, July 4, 2007. Gates will open at 6:00; applications for vendors will be available for non-profit organizations. Fireworks will start at dark.
- Flags will be passed out on the morning of July 4<sup>th</sup>.
- The regularly scheduled meeting for Mayor and Council will be Monday, July 2, 2007.
- Helena Marerra, resident from Millbranch, registered a complaint about Verizon and their subcontractors not repairing homeowner's lawns after they install cable.  
Ms. Kelly said after the main cable is installed, they come back to run individual lines for customers. Villagebrook is having the same problem.
- A resident registered a complaint about the high grass on the properties proposed for annexation on Rt. 299 and Brick Mill Road. The Town will contact the owners of the property.
- It was recommended to buy a new eagle to replace the original one that was destroyed while preparing to refurbish it. Mayor Branner said that was an unfortunate incident – it held a lot of sentimental value and it will be replaced. Winterthur will be looking at the eagle and advise the best alternative.

- Speed limits on Rt. 299 and 301: DeIDOT has been contacted and traffic studies are being performed to determine the speed limit reduction. There should not be a problem with reducing the speed limit on 299.
- Susan Love from Middletown Village requested the Town's assistance to get the 3 tot lots proposed for Middletown Village installed; tot lots and walking trails are on the record plan but have not been installed. She also requested assistance to have the Doc Levinson Drive top coated – the street only has a base coat. Morris Deputy said Mr. Ramunno has requested a final inspection for the development and that should happen soon. The Town has also heard that some residents don't want the tot lots now. Mayor Branner said the Town won't allow the final top coat until the final inspection is satisfactory. We will find out exactly what needs to be done from our foremen and advise Mr. Ramunno.
- There was general discussion about the planted island at the entrance of Dove Run. A resident from Dove Run stated the residents wanted to keep the plantings and maintain it. Mayor Branner said if it isn't maintained the Town's policy is to remove the plantings and plant grass seed. The Town cannot enforce anything that is not on the record plan. The Town does not enforce deed restrictions. Typically homeowner's associations assess fees for that kind of maintenance. Residents can form homeowner's associations at any time; however, residents cannot be forced to join or pay. The Town does not require homeowner's/civic associations and cannot force the developers to initiate them. The Town will assist civic associations once they are formed. Mayor Branner said everything in Dove Run has not yet been accepted. Morris Deputy said that Richard Forsten, one of the attorneys for Dove Run, is working on the transformation to the homeowner's association.
- Work at The Promenade will resume about the second week of June, after school is out. Work stopped because trucks were using an entrance on Catherine Street and school children use that street to walk to school.
- Wal-Mart is moving forward. Plans are recorded and construction should begin in a couple of weeks.

Moved by Mr. Reynolds and seconded by Mr. Faulkner to enter into Executive Session to discuss personnel and legal issues. Motion Carried Unanimously.