

**MAYOR and COUNCIL
TOWN OF MILLSBORO
322 Wilson Highway
Millsboro, Delaware 19966 - 1216**



**Phone: (302) 934-8171
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TOWN OFFICE
PARKS/RECREATION
STREETS
WATER/SEWER

POLICE DEPT. 934-8174

OFFICE HOURS
MONDAY — FRIDAY
8:00 a.m. to 4:30 p.m.

**Minutes
Millsboro Town Council
Regular Council Meeting
Millsboro Fire Hall
109 E. State Street
Millsboro, Delaware
June 4, 2012**

7:00 P.M. meeting called to order by Mayor Robert Bryan presiding. Present were Vice-Mayor John Thoroughgood, Secretary Greg Hastings, Treasurer Michelle Truitt, Council Persons, Irene Keenan, James Petruzella, and Tim Hodges, Town Manager Faye Lingo, Assistant Town Manager Matt Schifano, Town Solicitor Mary Schrider-Fox, Development Coordinator Linda Johnson and Town Clerk Tammy Phillips. Guest - see attached list.

PLEDGE OF ALLEGIANCE

PUBLIC COMMENTS - NO COMMENTS

PUBLIC HEARING - Wharton's Bluff - final site plan amendment - Dennis Gilligan developer on 1-33-17.00-16.02 Parcel B to amend the final site plan: (1) to alter the footprint of Building 3, 4, 5 & 6; and (2) to create building pads around Buildings 3,4, 5 & 6 for purposes of financing and out conveyance to the contractor participating in the project. Thoroughgood moved Hastings second to close the Public Hearing for the final site plan on Phase B at Wharton's Bluff 1-33-17.00-16.02 parcel B. Thoroughgood moved Hastings second to approve amend the final site plan: (1) to alter the footprint of Building 3, 4, 5 & 6; and (2) to create building pads around Buildings 3, 4, 5 & 6 for purposes of financing and out conveyance to the contractor participating in the project. Motion approved unanimously.

SECRETARY'S REPORT - Secretary Greg Hastings presented the minutes from the May 7, 2012 council meeting for Council's approval. Keenan moved Petruzella seconded to approve the minutes from the May 7, 2012 council meeting as written. Motion approved unanimously.

TREASURER'S REPORT - Treasurer Truitt presented the bills and bank balances to Council for approval. Hodges moved Hastings seconded to pay the bills from the designated accounts as presented. Motion approved unanimously.

MILLSBORO FIRE COMPANY -No Report

GREATER MILLSBORO CHAMBER OF COMMERCE - Amy Simmons Chamber Coordinator the new maps are out for the Town of Millsboro. June 21st Grotto @ Long Neck for Membership luncheon speaker Mark Cathell from US 13 Speedway. He is to speak on Decorating Delmarva that is going on at the Speedway for Christmas. Amy will have more information at the next meeting. May 27th Funsters performed and have approximately 200 people attend. June 24th Milford Smooth Dance Band, July 22nd Doc Watson Band, August 5th United States Navy Electric Brigade, Aug 10th & 11th Millsboro Annual Big Thursday Festival Friday- Elvis & the Mystery Train Band and Saturday Funsters.

MILLSBORO POLICE DEPARTMENT - Chief Murphy stated a departmental shoot was held on the May 3rd, "A" shift shot and both firearms instructors recertified. No issues to report for Homeland Security. CALEA update assessment report has been completed. No issues to report with recruit training. A graduation has not been announced. Numerous dates have been added to the schedule - July 4th parade, Big Thursday, Hispanic Festival, Christmas Parade, etc.

PARKS AND RECREATION - NONE

STREET REPORT -NONE

WATER AND SEWER REPORT - Ratifying Caba contract to comply with USDA regulations. This involves moving what is left on the contract that the town currently has with CABA and entering the information on the USDA required form. Since the bottom line has not changed there should not be an issue. Sauer, finance director has gone through and verified that the numbers are the same. Hastings motioned, Truitt second to approve the contract to comply with USDA regulations. Motion approved unanimously.

Agreement Millsboro Middle School - Thoroughgood motioned, Petruzella second to approved agreement with Millsboro Middle School and the Town of Millsboro for Contract F Beneficial Reuse. Motion approved unanimously.

MAYOR'S REPORT- USDA resolution - for the borrowing of funds; there are actually two resolutions on is on form 1780-27 that is a requirement of USDA to have signed. The second is a bond counsel resolution, again requested by USDA that gives his findings. Thoroughgood moved Truitt second to approve loan resolution authorizing and providing for the incurrence of indebtedness for the purpose of providing a portion of the cost of acquiring, constructing, enlarging, improved, and/or extending its water and sewer \$3,028,000.00 and accept a grant in amount not to exceed \$ 1,500,000. Motion approved unanimously. The foregoing Resolution authorizing the issuance of General Obligation bond, Series 2012-RUS of the Town was duly moved and seconded and adopted by a majority vote of the Town Council of said Town at a duly called and convened public meeting of said Board held on June 4, 2012; and that the roll of the Town Council was called and such members voted

or were absent as follows. **Vote taken with Thoroughgood yes, Keenan yes, Hastings yes, Petruzella yes, Hodges yes, Truitt yes, and Mayor Bryan yes motion passed.**

Delaware State Revolving Fund - for borrowing of funds, action tabled until further notice.

Mitchell Avenue Associates, LLC - Millwood Sussex County Tax Map 2-33-5.00-012.00 preliminary plan expansion approval request for (1) one year time extension. Hodges moved Truitt second to approve Millwood; Sussex County Tax Map 2-33-5.00-012.00 preliminary plan expansion for (1) one year June 2013. Motion approved unanimously.

Conditional use - Renewal - "Cruz-N" Washington Street, Sussex County Tax Map 1-33-17.13 parcel 143.1; Millsboro Postal Service and the Dairy Queen allowing for the Tuesday night "Cruz-N". We have received request from GKHP Enterprises, LLC (Dairy Queen) for the use of the Post Office property next to the Dairy Queen, 100 Main St., to continue to be used for the weekly Cruz in for classic cars. Thoroughgood moved Keenan seconded to grant the GKHP Enterprises, LLC (Dairy Queen) a two year conditional use renewal June 2014 for the premises at the intersection of Main and Washington Streets, Millsboro, Sussex County Tax Map 1-33-17.13 parcel 143.1, owned by the United States Postal Service, for the "Cruz-in" activity, as a commercial use in the UB-Urban Business District. Motion approved unanimously.

Conditional use - new application - Delaware Hospice 315 Old Landing Rd; Sussex County Tax Map 1-33-17.00 parcel 80.00; property owner Old Town Hall Associates zoned COMM. - Commercial, Delaware Hospice request to place a storage shed on property. Hodges moved Keenan second to approve a new conditional use application for one year (1) June 2013 to remove the current pod and replace with a storage shed on 315 Old Landing Rd; Sussex County Tax Map 1-33-17.00 parcel 80.00; zoned COMM. - Commercial with approval from Old Town Hall Associates. Motion approved unanimously.

Conditional use - Renewal - Lencraft Commercial, LLC Sussex County Tax Map 1-33-16.00 parcel 72; Lennar request for conditional use renewal for two (2) years to keep the sign at this location of 16 x 8 sign will be on the commercial piece corner of Hardscrabble Road (State Route 20) and DuPont Boulevard (South Route 113) will help promote their development, Town Center planned, and golf course. Hastings moved Thoroughgood seconded to approve 16 x 8 sign on the commercial corner of Hardscrabble Road (State Route 20) and DuPont Boulevard (South Route 113) Sussex County Tax Map 1-33-16.00 parcel 72.00 is granted for two years June 2014. Petruzella abstained due to being a resident in the Plantation Lakes development. Motion approved by a vote 6 yeas - 1 abstention. Motion approved with Petruzella abstaining.

Conditional use - Renewal - Villages of Millwood, Sussex County Tax Map 2-33-5.00-086.00 NVR, dba/Ryan Homes at Villages of Millwood, zoned RPC Residential Planned Community request for conditional use renewal for two years (2) to keep the sign at Mitchell Street. Keenan moved Petruzella seconded to grant NVR, Ryan Homes a two years (2) conditional use renewal June 2014 for the premises at Mitchell Street,

Millsboro, Sussex County Map 2-33-5.00 parcel 086.00, owned by Clover Development, for community sales, and zoned RPC Residential Planned Community. Motion approved unanimously.

Millsboro Fire Protection Ordinance- providing for the prevention and extinguishment of fires within the corporate limits of The Town of Millsboro by the Millsboro Fire Company Station 83. Hodges moved Petruzella second to approve the necessary and appropriate ordinance to identify the Millsboro Fire Company, Station 83, as the fire station primarily responsible for the prevention and extinguishment of fires with the Town in order to further the aforementioned protection and preservation goals. Motion approved unanimously.

Conservation Easement with State of Delaware finalizing the agreement. Hastings moved Truitt second to approve the easement and authorize Lingo to include the exhibit to be prepared by CABA showing the metes and bounds, variance, and distances that go with the easement. Motion approved unanimously.

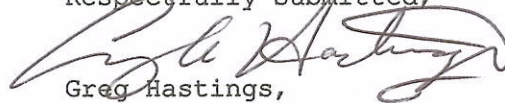
Award of Contract G Beneficial Reuse, bids have been opened and ready for review and award. There were four bids received; Daisy Construction \$ 3,932,260.95; Kuhns Construction \$ 3,972,249.40; George & Lynch \$ 4,186,061.65; A. P. Croll & Son \$ 4,206,543.00. Schrider-Fox stated to award contract to the lowest responsive bidder that a determination would need to be made that all bids are responsive at the date of bid opening. The lowest bid Daisy Construction did not have all the required documentation the DBE. Mark Downes from Caba Associates, Inc stated the bid requirement this time was a little unusual; requiring documentation that they have solicited subcontractors work to be done. It's a funding requirement that all contractors attempt to hire those subcontractors. What was not submitted was the calling log verifying when they contacted the various subcontractors; it arrived the day after the bid opening. The calculations, however, were included in the bid. Schrider-Fox stated if council can confirm whether or not the defect bids initial omission for the bid effects the initial material of the bid. Downes stated that it is his opinion that it does not have any effect of the cost of project or scope of work or schedule of work. To also point out that Daisy Construction is not required to meet the goals, they are only required to attempt to meet these goals or utilize percentages. Hodges questioned, "Where they the only ones that did not submit these documents?" Downes stated that there were two (2) that did not and (2) that did. This is the first bid that Downes has been associated with that made this a requirement. All the previous projects with the Town of Millsboro where this has been required to be submitted normally after bids are opened; the rules have changed at this time and as a result it was an oversight. Hodges questioned who was the other bidder who did not send in the DBE document? Downes stated A. P. Croll and Son. Hastings questioned, is it council's discretion whether we accept the lowest bid? Schrider-Fox stated to award the contract to the lowest responsible bidder; now where the discretion can come into play is at the day of bid opening (1) of the lowest bid was not technically complete. According to your bid instructions you reserve the right to reject anything deemed non responsive (i.e. incomplete package). Or, you reserve the right to waive if you consider the omission a technical not essential material, precise to affect price, time and scope of

work. that if a technical non compliance bidding package effect price, time and scope of work than you reserve discretion in your bidding instructions to waive that technical compliance and accept the bid and award it anyway. Cabe Associates, Inc has recommended in it's letter that this late submission of DBE information is not material in terms of price, time and scope of work, and thus a typical. You are now faced with determining the lowest responsive bidder. The lowest bid submitted was by Daisy Construction. The Town Council is allowed to use discretion to say we know XYZ company and we think that his one company is at more risk than the other, but if you do that and you decide not to go with the lowest bidder be cause of not being a responsible bid you need to very clear and state why the lowest bidder is not being responsible. Hastings - Daisy was the lowest bid. Does Daisy have a lot of history doing work with the Town of Millsboro? Lingo stated recalls only one Beneficial Reuse project that involve installing a line from sewer plant to W. B. Atkins Park and the town is still holding the retainer amount for this project. Hastings questions, what was the allotted time for that project? Downes stated, four (4) to six (6) months. Hastings questioned was that the time allotted? Downes stated "Yes." Hastings questioned what is the allotted time for Contract G? Downes stated Contract G approximately fourteen (14) months, its transmission main from wastewater plant to White Farm; previous under another contract started from wastewater plant to W. B. Atkins Park. This project will start at W. B. Atkins Park crosses over State Street goes on out over Betts Pond and makes way to White Farm about 25,000 feet. Hastings stated it has to go across the north and south DuPont Blvd. Downes stated, "Correct". Schifano commented also includes a storage tank. Downes stated "Correct". Thoroughgood stated, we have to pick the lowest bid by law. Schrider-Fox stated, the lowest responsible bidder, that's pretty standard for all towns. Hodges stated, if we select Daisy Construction, we have to do so by saying the item documentation that they did not provide at the time of the bid is not waived otherwise we can not choose Daisy Construction, we have to choose the next lowest responsible bid. Schrider-Fox stated if you decide to go with Daisy part of your motion has to that the late submission of the additional DBE information you find it did not effect material price, time and scope of work and thus you are using discretion to waive that requirement and than you can make the award to Daisy Construction as the lowest responsive bidder, assuming that lowest bid would be the lowest number. If you choose not to go with Daisy Construction as the lowest bidder even though your ok with the technical irregularity in the bid package then if has to be based on it being irresponsible and you would have to create a record why you did not find that company to be responsible. Mayor Bryan asked if the second lowest bidder included all required paperwork on time? Downes stated "yes". Thoroughgood motioned, Hastings second to approve to go with Kuhns Construction due to the fact that they had all the paperwork in proper order; and they were the next lowest bidder and council chooses not to waive technical irregularity in Daisy's bid. Motion approved unanimously. Frank Ash from Daisy Construction addressed Council asking if council realized that they had met the goals and exceeded the percentages required and that the missing sheets do not change the amount of the bid. Those sheets having to be included with the bid is totally different, usually they are submitted after the bids are opened. Daisy had everything in order but had not submitted the documentation. Mr. Ash said he does not understand why they lost the bid.

Schrider-Fox advised that the bidding instructions made it very clear that the package needed to be complete and all the information was required to be submitted at the time of the opening of the bid; placed May 31st at 3 p.m. and at that time the bid submitted was not complete. Hastings asked who was present at the bid opening? Lingo answered, a representative from Cabe Associates, Kenny Niblett, Matt Schifano, a representative from DNREC, a representative from each contractor that placed a bid (4) and herself. The seals were broken, the company names and amounts were read aloud. Cabe then takes the bid packets back to their office and reviews and verifies the information.

7:58 p.m. Keenan moved Hastings seconded to adjourn the meeting. Motion approved unanimously.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Greg Hastings", written in dark ink.

Greg Hastings,
Secretary