

Town of Cheswold
1856



State of Delaware
1787

Town of Cheswold
Minutes of the Monthly Town Council Meeting
Monday – April 6, 2015
6:00 p.m.
Cheswold Fire Hall
371 Main Street
Cheswold, Delaware 19936

The following persons were in attendance:

Mayor Don Tinari
Vice Mayor Bob Sine
Secretary/Treasurer Theon Callender
Councilperson Sherry Lambertson

Police Department: Chief Christopher Workman - Excused (Vacation)

Planning Commission: Mr. Dennis Coker - Chairperson

Town Employees: Mrs. Christina Thompson, Esquire – Connolly Gallagher

of Cheswold Fire Company Present: 0

of Town Residents: 0

of Visitors: 3

Mr. Justin Olear – Eddie Evans Farms, LLC
Mr. Harry Miller – Eddie Evans Farms, LLC
Mr. Barrett Edwards, Esquire – Hudson Jones

Notice:

Notice of this meeting has been made in accordance with the Delaware Open Meeting Act, by properly posting it on January 29, 2015, on the Town of Cheswold website at: <http://www.cheswold.delaware.gov>. Copies of the agenda were posted outside the Cheswold Town Hall; in the local Post Office; at the Fox Pointe Management Office and on the Official Web Site for the Town of Cheswold, at <http://www.cheswold.delaware.gov>; and was filed with the Clerk of the Town of Cheswold on March 23, 2015. Copies of the agenda were available for pick-up at the Town Hall. Subsequently, the agenda was revised and re-posted on March 25, 2015 for the following reasons:

Under New Business - Add the following items for review and potential acceptance vote:

1. Annexation Application and Agreement – Jarrell Properties, LLC
2. Annexation Application and Agreement – Nobles Pond
3. Revision to Land Use Ordinance to Add New R-5 Zoning Code – Age Defined Communities

TOWN of CHESWOLD
P.O. Box 220 – Cheswold, Delaware 19936
Phone: (302) 734-6991 – Fax: (302) 734-1355

**Monthly Town Council Meeting
Monday, April 6, 2015**

Meeting:

The meeting was called to order by Mayor Tinari, at 6:21 pm, immediately following the Public Hearing held at 6:00 p.m. As a result the Pledge of Allegiance and Moment of Silence which was conducted in the earlier meeting was not repeated.

Recognition of Proper Posting of Meeting:

The Mayor declared that the meeting had been properly posted, and Secretary/Treasurer Callender stipulated that the meeting time had been properly posted on the website notice.

Roll Call:

The Mayor requested Secretary Callender to conduct a roll call of Council members and attendance was confirmed as noted above. A quorum of members was presented to the Mayor and he in turn acknowledged and welcomed the visitors at which time the meeting continued.

Agenda Review:

Mayor Tinari requested the Council review the accuracy of the agenda and for a motion to accept as presented or to make changes and amendment requests as needed.

A motion to accept the agenda as presented was made by Vice Mayor Sine and seconded by Councilperson Sherry Lambertson. A roll call vote on the motion was as follows:

Councilperson Theon Callender – Yes Councilperson Sherry Lambertson – Yes
Vice Mayor Sine – Yes

The motion carried with a unanimous vote.

Review of Previous Month's Minutes:

Mayor Tinari requested the Council to review the accuracy of the previous month's minutes and for a motion to accept them as presented or to make changes and amendment requests as needed.

The minutes to be reviewed were as follows:

March 2, 2015 – Monthly Town Council Meeting
March 17, 2015 – Town Council Workshop Meeting

A motion to accept the minutes as presented was made by Councilperson Sherry Lambertson and with a second to the motion from Vice Mayor Bob Sine, the votes were as follows:

Councilperson Theon Callender – Yes Councilperson Sherry Lambertson – Yes
Vice Mayor Sine – Yes

The motion carried with a unanimous vote.

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Treasurer's Report:

The Mayor requested Council to make any necessary statements or to make a motion to approve the following Treasury Reports.

1. a. The Treasurer's Reports for the **Month of March, 2015** are as follows:

Monthly Cash Flow Comparisons

TOWN of CHESWOLD	March, 2015
Cash Receipts	\$ 21,781.20
Cash Disbursements	\$ 8,536.63
Positive Monthly Cash Flow	\$ 13,244.57

ADMINISTRATION	March, 2015
Cash Receipts	\$ 4,083.68
Cash Disbursements	\$ 5,894.70
Negative Monthly Cash Flow	(\$ 1,811.02)

POLICE DEPARTMENT	March, 2015
Cash Receipts	\$ 17,597.52
Cash Disbursements	\$ 2,641.93
Positive Monthly Cash Flow	\$ 14,955.59

597.52

PUBLIC WORKS	March, 2015
Cash Receipts	\$ 100.00
Cash Disbursements	\$ 0.00
Positive Monthly Cash Flow	\$ 100.00

The Treasurer's Report, **(Account Balances)**, for the **Month of March, 2015** is as follows:

As of:	March, 2015
Capital Account	\$ 7,602.98
Cheswold Pride Day Account	\$ 4,515.40
Eide Grant Fund Account	\$ 6,252.70
Fire Company Account	\$ 3,318.51
General Fund Account	\$ 62,066.47
Land Use Applicant's Account	\$ 3,847.77
Litigation Account	\$ 813.01
Municipal Street Aid Account	\$ 32,554.93
Salle Grant Fund Account	\$ 4,166.51

A motion to accept the Treasury Report as presented was made by Vice Mayor Sine and Councilperson Lambertson made a second to the motion. The votes on the motion were as follows:

Councilperson Theon Callender – Yes Councilperson Sherry Lambertson – Yes
Vice Mayor Sine – Yes

The motion carried with a unanimous vote.

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Treasurer's Report "continued":

2. Requisitions

<u>Requisition #</u>	<u>Department</u>	<u>Vendor</u>	<u>Item</u>	<u>Amount</u>	<u>To Be Paid By</u>
R5-00047	Police	DE Police Chief's Council	2015 Conf. Registration	\$ 570.00	SALLE
R5-00048	Police	Expedia, Inc.	Airfare - IACP	\$1,794.45	EIDE
R5-00050	Police	Partex Solutions	Thermal Ticket Paper	\$ 352.47	Police Dept.
R5-00054	Police	Ford Motor Credit Co.	Final Dodge Payment	\$7,861.66	Police Dept.
R5-00056	Admin	Staples	Office Envelopes	\$ 171.96	General Fund

A motion to approve the above requisitions for payment was made by Vice Mayor Sine and Councilperson Lambertson made a second to the motion. The votes on the motion were as follows:

Councilperson Theon Callender – Yes Councilperson Sherry Lambertson – Yes
Vice Mayor Sine – Yes

The motion carried with a unanimous vote.

3. Proposed Purchases – *Nothing to Report*

Tax Collector's Report:

a. Month of March, 2015

TAX REPORT: FISCAL YEAR 2014 – 2015

Total Amount Billed: \$132,269.33

Payments as of:

	<u>Current Year;</u>	<u>Past Due:</u>
07/31/2014	\$ 27,746.42	\$ 1,743.56
08/31/2014	\$ 59,550.10	\$ 767.97
09/30/2014	\$ 22,408.34	\$ 280.82
10/31/2014	\$ 1,494.95	\$ 286.71
11/30/2014	\$ 69.60	\$ 5.90
12/31/2014	\$ 2,542.00	\$ 264.65
01/31/2015	\$ 633.65	\$ 118.58
02/28/2015	\$ 746.18	\$ 17.88
03/31/2015	\$ 1,637.91	\$ 479.97
04/30/2015		
05/31/2015		
06/30/2015		

A motion to accept the Tax Report as presented was made by Vice Mayor Sine and Councilperson Lambertson made a second to the motion. The votes on the motion were as follows:

Councilperson Theon Callender – Yes Councilperson Sherry Lambertson – Yes
Vice Mayor Sine – Yes

The motion carried with a unanimous vote.

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Secretary/Treasurer Callender interrupted the meeting to make a motion to move Items 15b of the agenda:

1. *Annexation Application and Agreement – Jarrell Properties, LLC*
2. *Annexation Application and Agreement – Nobles Pond*
3. *Revision to Land Use Ordinance to Add New R-5 Zoning Code – Age Defined Communities*

to this part of the agenda, in order to accommodate and respect the time of the visitors. Vice Mayor Sine made a second to the motion and the votes to approve were as follows:

Councilperson Theon Callender – Yes Councilperson Sherry Lambertson – Yes
Vice Mayor Sine – Yes

The motion carried with a unanimous vote.

Review and Potential Vote of Acceptance of Annexation Applications and Review and Potential Referral of Proposed Amendment to Land Use Ordinance of New Zoning Code 5 – Age Defined Communities and Elimination of Age Defined Residential Overlay – Mayor and Council

Mrs. Callender submitted the Annexation Applications and Agreements for the Jarrell Properties, LLC and Nobles Pond to the Mayor and Council. She informed them that the Annexations must be reviewed, processed and subsequently approved, if so decided, in the order presented, as the Jarrell Property is contiguous with the Town of Cheswold, while the Nobles Pond property will not become contiguous until after the approval of the Jarrell Property.

She explained that the purpose of the Council review was to determine if the Annexation Applications should be forwarded to the Planning Commission for the assignment of the appropriate Zoning Code. The Jarrell Property is requesting an assignment of R-3, (*Multi-Family and Townhouses*), and Nobles Pond is requesting R-5, (*Age Defined Community*), which is a code not yet reviewed or approved for assignment.

Mrs. Callender also introduced and requested the Mayor and Council for their reviews of the proposed amendment to the Land Use Ordinance, to add a R-5 Age Defined Community Zoning Code and to Eliminate the Age-Defined Residential Overlay.

While waiting for responses from the Mayor and Council, Mrs. Callender stated that her current issue was with Section 11 of the Annexation Agreement, which stipulated that Nobles Pond would provide a \$25,000 payment towards the purchase of a building for the Police Department, contingent upon the approval of the annexation. She further stated that any agreement about such building was made between Mr. Harry Miller and Chief Chris Workman and there was no involvement on the part of the Town, and thus there was and should not be any relationship between that agreement and the Annexation Agreement.

After some discussion, it was agreed by all parties to remove Section 11 from the Annexation Agreement.

There was a question posed as to whether the Annexation Applications and Agreements could be handled separately. Attorney Thompson explained that our Town Charter, Section 3.2.8 requires that *the Resolution annexing the territory, (as provided by § 3.2.7 [c]), shall recite that the annexation is subject to an annexation agreement and shall incorporate the terms of such agreement b specific reference and the Town shall be bound to honor the provisions of such agreement unless released therefrom by the petitioner(s).*

So, the Annexation Applications and Agreements must be considered and processed together.

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Review and Potential Vote of Acceptance of Annexation Applications and Review and Potential Referral of Proposed Amendment to Land Use Ordinance of New Zoning Code 5 – Age Defined Communities and Elimination of Age Defined Residential Overlay – “continued”

There were then questions concerning exactly which sections of Nobles Pond were being involved in the Annexation Applications. Attorney Edwards presented a Plot Plan identifying the specific lots within Nobles Pond involved in the Annexation Application. And Attorney Thompson explained that this annexation situation is somewhat unique from an undeveloped property annexation, in that sections of this property are already developed and sold to individual property owners and thus cannot be annexed into Cheswold as part of this application.

Mayor Tinari expressed concerns about the same Annexation Agreement being used for both properties; the status and relationship of the HOA to the Town; the fact that the R-5 proposal has aspects of other Zoning Codes within it; if others will be permitted to use the facilities at Nobles Pond and if the HOA will be turned over to the community once all of the properties are sold.

There was also a question about the process for modifying the Annexation Agreement.

Attorney Edwards explained that the same agreement applies to both properties and Mrs. Callender added that she'll just attach a copy of the agreement to each of the applications.

Mr. Miller added that there is a HOA, but it is applicable to the homeowners and not the Town. The HOA is currently maintained by a management company and each home owner is provided with the HOA rules and regulations prior to their signing for the purchase of their homes. Mrs. Callender contributed that there is no relationship between the Town and any HOA. The Town may advocate on the part of a resident, but it has little to no authority over the HOA.

Attorney Edwards explained that for the most part, the R-5 code is a duplicate of the existing R-3 code, which also has aspects of other codes within it. The contents of the R-5 code is a result of the review completed by Mr. Edwards, Esquire and Town Attorney Max Walton, but the Town now has the opportunity to review, question, and present any changes that may be deemed appropriate.

The concern about who will be permitted to use the facilities at Noble Pond and if the HOA will be turned over to the residents was not addressed.

Attorney Edwards clarified the concern about changes to the Agreement by citing Section 3.2.8 Paragraph 4 of the Town Charter: *An annexation agreement may be modified or amended by mutual agreement of the petitioner and the Town Council at any time prior to the resolution ordering the special selection pursuant to § 3.2.3. of this Charter, but any material modification or amendment shall be deemed to be the withdrawal of the original petition and the filing of a new petition under § 3.1.1.*

When asked for additional comments from anyone, Planning Commissioner Dennis Coker expressed his concern that the assignment of a Zoning Code to the Nobles Pond property was dependent upon a Zoning Code that does not currently exist. He requested to know what happens if the R-5 code is not approved.

Attorney Edwards responded that if the R-5 Code Amendment is not approved then both Annexation Applications and associated Agreements would be withdrawn with an expectation of the return of the application fee. Mrs. Callender stated that consideration of the return of the application fee would be given in that situation.

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Commissioner Coker also stated that timing may be an issue for the Commission as generally it takes some time for review of submitted documents to pass through the recommendation process. He additionally stated that he believed that the application of an overlay may apply in this annexation situation.

Mr. Miller replied that he doesn't believe that overlay are viable at this and Mrs. Callender supported his belief as a result of conversations that she has had with Town Attorney Max Walton and the Office of State Planning Coordination.

Attorney Thompson also explained that overlays can be viewed as unequal treatment in similar situations and although they may apply in some situations, this situation will be best served by the passing and assignment of a defined zoning code, such as R-5.

At the conclusion of all discussion, two motions were made as follows:

1. A motion to forward the R-5 Age Defined Community Zoning Code and Elimination of the Age Defined Residential Overlay proposed amendment and associated Map Amendment to the Land Use Ordinance, to the Planning Commission for review and action recommendation to the Town Council, was made by Secretary/Treasurer Callender and a second to the motion was made by Vice-Mayor Sine.
2. A motion to accept the Annexation Application and associated Agreements of the Jarrell Properties, LLC and Nobles Pond, with the removal of Section 11 from the Annexation Agreements and to forward them to the Planning Commission for review and action recommendation to the Town Council, was made by Councilperson Lambertson and a second to the motion was made by Secretary/Treasurer Callender.

The votes to approve both motions were carried as follows:

Councilperson Theon Callender – Yes Councilperson Sherry Lambertson – Yes
Vice Mayor Sine – Yes

The motions carried with a unanimous vote.

NOTE: The meeting then followed the Agenda as posted.

Police Department Report – *Chief Christopher Workman*

Note: Although Chief Workman was on vacation and not available to attend the meeting, he provided the March, 2015 Police Department Report to the Mayor and Council prior to the meeting.

• **TRAINING**

- Reminder: Chief Workman and PFC Kline will be attending the Delaware Police Chief's Conference in Rehoboth Beach, DE, from May 18 to May 21, 2015. Training will be paid by the SALLE grant.
- Chief Workman will be attending the re-scheduled all day re-certification class for Heartsaver First Aid, on May 8, 2015 at the Delaware Fire School, in Dover DE.

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Police Department Report – “continued”

- **ALARM VIOLATIONS**

Letters were sent out to all violators with positive results. Alarm registrations were received in a timely manner and alarm issues were discussed with those who have had numerous alarms.

- **LESO**

The Department acquired a few items from LESO during the month of March. The items include six, (6), cubicles to replace dilapidated furniture and provide additional office space. We were also awarded three, (3), never used gasoline generators to be used in emergency situations and for electricity during crime scene operations. They will also be used in situations if a residence has lost power during a certified Federal, State, County or Municipal emergency.

On February 23, 2015, a LESO Program Compliance Review, (PCR), was completed by the DLA Distributions Services LESO PCR Team. On March 24, 2015, the Chief received an e-mail that the Cheswold Police Department was **100% in compliance** with 1033 Program Property and Documentation requirements. *(Attached is a copy of the report pertaining to Cheswold)*

- **SPECIAL TRAFFIC ENFORCEMENT – APRIL**

The month of April is designated as Distracted Driving month and NHTSA, *(National Highway Traffic Safety Administration)*, is kicking off its’ national visible enforcement campaign with the motto **U Drive; U Text; U Pay**. The State of Delaware Office of Highway Safety has asked agencies to participate by watching for distracted drivers. The Cheswold Police Department is pleased to work with the State to provide safe roadways for all drivers.

- **TRAFFIC SUMMONS**

Officers issued 225 traffic summons in the month of March, 2015.

- **MONTHLY INCIDENT REPORT – March, 2015**

911 Disconnects = 1	Fraud = 1	Resisting Arrest = 0
Accidents-H/R = 0	Fugitives = 6	Robberies = 0
Accidents-PD = 0	Harassment = 0	Sex Crimes = 0
Accidents PL = 0	Lock Jock = 0	Shoplifting = 1
AED/CPR = 0	Lost Property = 0	Solicitation = 0
Alarms = 1	Loud Party = 0	Stolen Vehicle = 0
Alcohol Violations = 0	Megan’s Law = 0	Suspicious Person/s = 2
Animal Comp = 0	Mental Patient = 1	Suspicious Vehicle/s = 0
Assaults = 0	Misc. Investigation = 1	Terroristic Threat/s = 0
Assist Other Agencies = 11	Missing Person = 0	Thefts = 0
Burglary = 0	Noise Complaint = 0	Traffic Hazards = 0
Civil Dispute = 1	Offensive Touching = 0	Traffic Violations = 15
Court Violation = 0	Open Door/Window = 0	Trespass = 0
Criminal Impersonation = 0	Overdose = 0	Unassigned = 1
Criminal Mischief = 0	PFA Violation = 0	Unfounded = 0
Disorderly = 0	Property Checks = 1	Vehicle/s – Abandoned = 0
Domestics = 1	Public Assistance = 0	Vehicle/s – Disabled = 1
Drugs = 0	Pursuit = 0	Vehicle/s – Recovered = 0
DUI = 0	Rape = 0	Vehicle/Unauthzd Use = 0
Fight = 1	Relay = 1	Warrant Service = 0
Found Property = 0	Repossessions = 0	Welfare Check = 3

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Cheswold Fire Company Report –*Fireman Fred Neese*

- **Status Report** –
 - Fireman Neese was not in attendance

Public Works Report – *Secretary/Treasurer Theon Callender*

- **Status Report** –
 - a. The March, 2015 report, as submitted by Public Works Director Doug Burns is as follows:

	<u>PERMITS ISSUED</u>	<u>NEW VIOLATIONS</u>	<u>CLOSED VIOLATIONS</u>	<u>BUSINESS LICENSES ISSUED</u>	<u>BUILDING INSPECTIONS</u>
MARCH, 2015	2	4	2	9	2

OTHER

- Dumpster on Commerce Street has been removed.
- Bobby Ridgeway and Officer Susan Kline cleared trash from Commerce Street.
- On April 2, 2015 - Bobby Ridgeway distributed letters to specific Commerce and New Street residents informing them that their parking privileges may be lost if trash is continued to be dumped on the railroad side of Commerce Street.

Planning Commission Report – *Planning Commissioner Dennis Coker*

- **Status Report** –
 - **Town Hall Parking Lot** – Town Engineer Tom Wilkes, Mayor Tinari and Land Use Administrator Sam Callender attended a meeting with Kent Conservation District representatives, Mr. Jared Adkins, P.E. – Program Manager and Mr. David Cahill, Sediment & Stormwater Plan Reviewer on April 1, 2015, in their office.

At that time 15 -20 issues were discussed as requiring revisions prior to another review by KCD. The issues varied from silt content concerns to the binding and tabbing of the materials forwarded for review. Mr. Wilkes committed to providing the required response within 30 days of the meeting and KCD committed to responding within 30 days of receipt. If all goes as planned, the start date for the parking lot is estimated at September 1, 2015.

- **Status Report on Old Town Water Project** – All Engineering documents as required by the USDA have been submitted to them for review and response.

Old Business – *Secretary/Treasurer Theon Callender*

- **Responses to Issues of March 17, 2015 Town Council Workshop Meeting**
The following questions were submitted to Mrs. Callender at the March 17, 2015, Town Council Meeting and the associated answers were supplied at this April 6, 2015 Town Council Meeting:

1. How many houses are there in Cheswold?

To answer this question would require a physical count. The Mayor decided that a physical count would not be necessary.

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**Monthly Town Council Meeting
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Old Business – “continued”

2. Status of Receipt of Annexation Plot Plans
Plot Plan map was submitted to Town Council and Planning Commission prior to this meeting.
3. What is the relationship of HOA Documents to the Town?
There is no relationship.
4. Can we request revisions to HOA Documents?
Yes
5. Are there any specifics associated with the request for R-5 Zoning?
Not sure. The opportunity to review the code provides the space and time for making such determinations.
6. If a new Zoning code is involved with a proposed annexation, what is the timeline?
As this is the first request of its kind, a timeline is yet to be determined. But it will most likely be longer than has been requested.
7. Can annexations for two separate properties utilize one annexation agreement?
Yes

• **Status of Stonington Recording** – *Secretary/Treasurer Callender*

Mrs. Callender informed the Mayor and Council that she had received a call from Mr. Ring Lardner, P.E., for Stonington Development. He wanted to know what has to be done prior to the recording of the approved revised plans for Stonington and that she had informed him of the following requirements:

1. Written approval from Town Engineer Tom Wilkes that all of the requirements set forth in his correspondence of April 1, 2014 have been met.
2. Cold patches for all valves and manholes have been repaired prior to the final top coat.
3. Completion of base course, (potholes) repairs.
4. Payment of ½ of annexation fee at recording date and final half to be paid one year from recordation date.
5. Commitment on plot plan to a minimum of 20 parking spaces at the clubhouse.

New Business

• **Vote on Amendment to Land Use Ordinance – Addition of Section 4.9 Re-Zoning Resolution 04-01-15-045**

After the review of the Resolution to add Section 4.9 Re-Zoning, to specify the processes and purposes for allowing a change from the current land use, (Residential, Commercial, Industrial, etc.) and/or density, (number of buildings), requirements on that property, and to clarify the standards and requirements for a property owner or the Town of Cheswold to change the current Zoning of a property to a classification which permits the desired use, to the Land Use Ordinance, a motion was made by Councilperson Callender to approve the addition as submitted and with a second from Vice-Mayor Sine, the votes on the motion were as follows:

Councilperson Theon Callender – Yes Councilperson Sherry Lambertson – Yes
Vice Mayor Sine – Yes

The motion carried with a unanimous vote.

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New Business – “continued”

- **Town Council Workshop Meeting**

The February meeting is scheduled as follows:

TUESDAY, MARCH 17, 2015
6:00 pm
CHESWOLD TOWN HALL
691 MAIN STREET
CHESWOLD, DELAWARE 19936

Community Comments/Concerns

Nothing to Report

Council Member Comments

- *Secretary/Treasurer Theon Callender* – Nothing to Report
- *Vice Mayor Sine* – Nothing to Report
- *Councilperson Sherry Lambertson* – Nothing to Report

Mayor's Comments

- Nothing to Report

Motion to Adjourn –

A motion was made by Vice Councilperson Callender, seconded by Councilperson Lambertson to adjourn at 8:20 p.m. and the votes on the motion were as follows:

Councilperson Theon Callender – Yes Councilperson Sherry Lambertson – Yes
Vice Mayor Sine – Yes

The motion carried with a unanimous vote.

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