

Town of Cheswold
1856



State of Delaware
1787

**Town of Cheswold
Special Town Council Minutes
Cheswold Town Hall
691 Main Street
Cheswold, Delaware 19936
Monday – August 3, 2020
6:00 p.m.
ZOOM Teleconference
1-929-205-6099 Meeting ID: 9728359352#
<https://us02web.zoom.us/j/9728359252>
FACE MASKS WERE REQUIRED**

The following persons were in attendance in person:

Mayor Larence Kirby
Vice Mayor Santo Faronea
Secretary/Treasurer Theon Callender
Councilperson Mark Moxley
Council person Mr. Michael Wysong

Public Works: Michael Callender – Code Enforcement Officer
Davis, Bowen & Freidel: Mr. Ring Lardner, P.E., Stonington Development Representative

Excused:

Councilperson Judith Johnson

Zoom Attendees:

Town Engineer: Tom Wilkes, P.E.
Stonington Residents: Ms. Christina Blackburn – 73 Pumice Drive
Ms. Sylvia Christmas – 78 Pumice Drive
Mr. Brandon Diemicke – 11 Graphite Court
Ms. Ellyn Diemicke – 11 Graphite Court
Mr. John Snow – 61 Sedimentary Rock Road
Ms. Tamara Snow – 61 Sedimentary Rock Road

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

NOTICE:

Notice of this meeting has been made in accordance with the Delaware Open Meeting Act, by properly posting it on August 17, 2020, on the Town of Cheswold website at: <http://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://cheswold.delaware.gov>; and was filed with the Clerk of the Town of Cheswold on August 17, 2020. Copies of the agenda were available for pick-up at the Town Hall.

A special notice of the meeting and the availability to attend via Zoom was also hand delivered to every current residence in the Stonington development.

MEETING:

The meeting was called to order Mayor Kirby, at 6:02 pm, and immediately followed by the Pledge of Allegiance and a Moment of Silence.

ROLL CALL:

Mayor Kirby requested Secretary/Treasurer Callender to call the roll. And with five, (5), members of the six (6) person Council present, Ms. Callender presented a quorum to the Mayor and the meeting continued.

PROPERLY POSTED: Based on the dates of the posting of the meeting and the agendas, Mayor Kirby acknowledged that the meeting had been properly posted.

REVIEW of AGENDA

As there was only on (1) agenda item, a review of the agenda was not required.

REVIEW of FINAL PLAN

Application 2020-08-03-086

Mr. Ring Lardner, P.E., Davis, Bowen & Friedel

Representative of Ms. Joanne Capano - Stonington Developer

Ms. Callender introduced Mr. Lardner and Mr. Tom Wilkes, P.E., Town of Cheswold – Town Engineer and requested Mr. Lardner to present the Final Plan to the Council.

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Mr. Lardner reviewed the history of the Stonington Development and the transition of the plans from single family homes to a combination of single-family, duplex, and multi-family homes to the current plan returning to the original plan of the construction of 388 single family homes.

He explained that all agency approval letters and ability to serve letters had been received, except for construction approval from DelDOT as to the layout of the exit/entrance lanes on Ruby Road.

He also stated that revisions to the Annexation Amendment Agreement #3 and the Deeds and Covenant Document to specify that the Police Department of the Town of Cheswold has an irrevocable authority to enforce all traffic and vehicular laws of the State of Delaware within the Development has been completed and is pending signature, by the Developer and the Town.

COUNCILPERSON COMMENTS:

At this time, Mayor Kirby asked the Council if they had any comments concerning the review and potential vote on the plan.

Councilperson Wysong took the opportunity to ask for the following clarifications from Mr. Lardner:

- **Annexation Agreement #3 – Item 5biii: “Topsoil may be removed from the site”**
 - **Question:** Will enough topsoil be left on site to accommodate landscaping and grass for home sites?
 - **Response:** Yes. All home sites will have sufficient topsoil and be seeded for grass. In addition, no topsoil will be removed without the permission of the Town Engineer.

- **Annexation Agreement #3 – Item 6**
 - **Question:** What is a tot lot?
 - **Response:** A playground for children. The age range for use is yet to be determined.
 - **Question:** Will it contain equipment?
 - **Response:** YES. It will be typical playground type equipment.

Mayor Kirby interjected that Parkers Run contained a tot lot, and suggested Councilperson Wysong visit to obtain a clearer vision of how the proposed tot lot may appear.

- **Annexation Agreement #3 – Item 6**
 - **Question:** What is the meaning of an “unorganized play area”?
 - **Response:** It’s an area that will be suitable for many types of physical activities including, but not limited to baseball, softball, soccer, tag, football, etc.

Councilperson Wysong asked if the construction of a basketball court had been considered. Mr. Lardner replied that it had been discussed, but the construction of a basketball court limits the opportunity for other types of activities to be conducted due to the paving of the court.

Mayor Kirby stated that it really is not the responsibility of the Council to decide on playground types for the development and perhaps that decision should be left to the residents via the HOA. Councilperson Callender agreed that it should be a resident decision because typically no residents want a basketball court next to or near their home, plus they tend to draw those who are not residents of the area.

- **Annexation Agreement #3 – Item 9**
 - **Question:** What are the public agencies referred to in this item?
 - **Response:** DNREC; DelDOT; Office of the State Fire Marshall; Tidewater; Delaware Co-Op; Delmarva; Chesapeake Gas

- **Annexation Agreement #3 – Item 12**
 - **Comment:** Please clarify. Secretary/Treasurer Callender joined Councilperson Wysong in expressing their confusion about this item. It appears to indicate that a new HOA and Declaration of Covenants, Conditions and Restrictions will be created in addition to the existing HOA and Declaration. Thus, indicating there will be two separate HOAs and Declarations. Additionally, it states that the Town will become the HOA should the HOA become defunct. This is an issue because the Town cannot become an agent for a Development.
 - **Response:** That was not the intent of the Item and it be removed in its entirety if required. Ms. Callender suggested that the first sentence be revised from “will be” to “has been” and all references to the Town becoming an HOA agent be removed. Mr. Lardner agreed.

- **Annexation Agreement #3 – Item 17**
 - **Comment:** The item indicates a “Public Hearing” will be held prior to the vote by the Town Council.
 - **Response:** Ms. Callender responded that the Agreement had been satisfactorily revised to indicate “public meeting” instead of “Public Hearing”.

TOWN ENGINEER’S COMMENTS:

Mr. Wilkes, Town Engineer stated that he was in receipt of related construction plans and was in the process of providing a written response of his review.

He was satisfied with the Annexation Agreement #3 as submitted, except for the Map Id's shown for some properties as excepted and he had no conflicts with the Declaration. Mr. Wilkes indicated that the Map ID's as listed seemed to show that approximately 209 lots were excluded from the Agreement. Ms. Callender stated that she believed that the Map ID numbers were written incorrectly.

Mr. Lardner agreed that the numbers may have been written incorrectly and that he would verify them and correct them as deemed necessary. He also explained that it was meant that the first four Pavarone properties were to be excluded.

Subsequent to the meeting, Mr. Lardner, Ms. Callender and Mr. Mike Callender – Code Enforcement Officer for the Town of Cheswold that the Map ID's involved are as follows:

- 4-03-04602-04-8100-00001
- 4-03-04602-04-8200-00001
- 4-03-04602-04-8300-00001
- 4-03-04602-04-8400-00001

STONINGTON RESIDENTS COMMENTS:

A few residents reviewed their unpleasant experiences with the lack of response from the Development owners in dealing with the environmental conditions present in the Development while they waited for the Development to be developed.

One resident acknowledged that conditions have improved recently and expressed her desire that it continue in that vein.

These are the expressed comments/concerns/questions of the residents and responses from either Mr. Lardner or members of the Council:

- **Question:** What are the past and current conditions permitted by the Declaration, specifically, is a pool permitted?
 - **Response:** The conditions are the same as those stated in the Declaration and if the former Declaration permitted a pool, then it is still permitted.

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AUGUST 24, 2020
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- **Question:** We don't have an HOA, so what is the current status?
 - **Response:** Per Mr. Lardner - There is an HOA, but it is under the control of the Developer until such time as there are sufficient homeowners for it to be turned over to them.

(Note: Article IV – Membership and Voting Rights of the Association of the Declaration provides the specifics for when and how the HOA reverts to the homeowners)

- **Question/Concern:** We paid an HOA fee at the time of closing, what is the status of those fees?
 - **Response:** Per Mr. Lardner – Those fees were put into an escrow account for the HOA and will become available with an accounting when the HOA becomes the responsibility of the homeowners.
- **Question:** What services are provided for by the HOA?
 - **Response:** Per Mr. Lardner – Maintenance and landscaping of the common areas; snow removal; development lighting; maintenance roadway
- **Comment/Concern:** Homeowners feel left not knowing the state of the plans for the development because they are not given information.
 - **Response:** Per Mr. Lardner – The plans are the same as those shared with the homeowners some years ago at a meeting in the Cheswold Fire Hall. Per Ms. Callender – Plans and home designs are available for viewing at Town Hall and Town Hall is open Monday through Friday, from 8:30 to 4:30 at 691 Main Street, Cheswold. Please remember that face masks and social distancing are required.
- **Question:** Is there going to be an additional entrance/exit to the Development?
 - **Response:** Per Mr. Lardner – No. DelDOT may require a fixed left lane turn from Ruby Drive onto Lynnbury Woods Road.
- **Question/Concern:** How is the Council going to vote on a plan that they are just reviewing?
 - **Response:** Per Ms. Callender – The Council is not required to review the plans in depth, because the Town accepts the reviews of the Town Engineer, the Town Building Inspector and Code Enforcement Officer and the recommendation of the Planning Commission, all of whom have the expertise to review and recommend actions about the plans. It is the responsibility of the Council to review the Annexation application and agreements and to vote on the plan in its totality.

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- **Concern/Question:** Residents have parked on the streets since the beginning of the development. Now it appears that something was said about no parking. Exactly what does that mean, and where are visitors going to park during parties and holidays?
 - **Response:** Per Mr. Lardner – the street widths are 22'. Street parking will prohibit access of emergency vehicles, so in the interest of the health, safety, and welfare of the community it has been decided that street parking will not be permitted.

(Note: Subsequent to this meeting, Ms. Callender met with Chief Workman and discussed the administration of the prohibition on street parking. As stated by Mr. Lardner, the greater interest is in the health, safety and welfare of the community, however, the Town recognizes that there may be situations where additional parking is required. In those instances, it is requested that visitor parking is all on the same side of the street to facilitate an unobstructed path, if required.

With no more comments, questions, or expressions of concern from Stonington residents, the Mayor moved on to the Council for comments and potential vote.

COUNCIL COMMENTS/VOTE:

Mayor Kirby asked Council members to provide any questions/concerns or comments they may have. When none were presented, the Mayor asked Council if they were prepared to pass a motion on the Final Plan review.

Secretary/Treasurer Callender made a motion to approve the Final Plan as submitted, based on the completion of the contingencies outlined below. Councilperson Moxley made a second to the motion as presented and a unanimous vote of the Council present passed the motion.

CONTINGENCIES:

1. Satisfy all comments of Town Engineer Thomas Wilkes, P.E. in his correspondence of August 26, 2020.
2. Revise Annexation Agreement #3
 - a. Correct excluded Map ID's to be:
 - 4-03-04602-04-8100-00001
 - 4-03-04602-04-8200-00001
 - 4-03-04602-04-8300-00001
 - 4-03-04602-04-8400-00001

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- b. Item 12 – Change “will be” to “has been” in the first sentence.
- c. Item 12 – Remove all references to the Town of Cheswold becoming an agent as or of the HOA

- 3. Provide copies signed by the Development owner of revised and recorded Annexation Agreement #3
- 4. Provide copies of Record Plan with appropriate signature block
- 5. Provide copy of Record Plan after recordation with Kent County Recorder of Deeds
- 6. Provide DelDOT agreement letter to Town Engineer according to schedule on Record Plan
- 7. Provide copy of revised Declaration of Covenants after recordation with Kent County Recorder of Deeds

Failure to adhere to any of these contingencies within two years of the date of these minutes will render the Final Plan unapproved.

Motion to Adjourn

A motion was made by Vice Mayor Faronea and seconded by Councilperson Wysong to adjourn at 7:10 p.m. A roll call vote on the motion resulted in a unanimous vote to approve. The meeting adjourned immediately thereafter.

Submitted by: Secretary/Treasurer Sam Callender – August 26, 2020