

MILFORD CITY COUNCIL
MINUTES OF MEETING
May 29, 2012

The Milford City Council held a Public Hearing on Tuesday, May 29, 2012 in the Joseph Ronnie Rogers Council Chambers at Milford City Hall, 201 South Walnut Street, Milford, Delaware to hear the application of:

Eric Dunn of Dunn Development, LLC on behalf of Walter N. Thomas II requesting a Preliminary Major Subdivision of 71.918 +/- acres into 128 lots containing 452 residential units (312 apartments, 128 townhomes and assisted living facility) and a Conditional Use for a Planned Unit Residential Development. Site is located in an R-8 District at 1335 Milford-Harrington Highway (southwest side of State Route 14), Milford, Delaware. Tax Map MD-16-173.00-01-21.00; Tax Map MD-16-173.00-01-22.00

PRESIDING: Honorable Mayor Joseph Ronnie Rogers

IN ATTENDANCE: Councilpersons Steve Johnson, Garrett Grier III, S. Allen Pikus, Dirk Gleysteen,
Owen Brooks, Jr., Doug Morrow, Sr. and James Starling, Sr.

City Manager Richard Carmean, Police Chief E. Keith Hudson and City Clerk/Recorder
Terri Hudson

City Solicitor David Rutt, Esquire

Mayor Rogers called the Public Hearing to order at 7:04 p.m.

Planning Committee Chair Chuck Rini presented the application due to the absence of City Planner Gary Norris.

Mr. Rini advised the application went before the planning commission who voted favorably by a vote of 7 to 1 but added a condition that a noise notification statement be posted in the models and that any potential buyer receive a copy. In addition, Mr. Norris would provide a copy to Baltimore Air Coil as proof.

When asked for questions of council, Mr. Pikus stated that he reviewed the packet and agrees the planning commission did an outstanding job. He noted there were some items removed which he feels were apropos.

Phil Tolliver of Morris & Ritchie Associates was present to represent the application. Mr. Tolliver provided a brief history of the annexation and the first preliminary major subdivision application submitted to the city. That application was withdrawn following the Planning Commission meeting and was never reviewed by City Council. Though it had similarities, this is a new application.

He reported that the project will have two access points. The first access is off Holly Hill Road; the second is off State Route 14. He noted the specific areas where the apartments and townhouses will be located. The current proposal is for 312 apartments in 24 unit-buildings and 128 townhomes comprised of 4-8 units per group. A boardwalk is designed to allow easy access to the centrally located clubhouse, pool and tennis court area with very few tree clearings. The apartments and townhomes equate to 440 dwelling units.

Public utilities will be provided by the City of Milford. A stormdrain system and road will be designed in accordance with city and DelDOT standards. Stormwater management is also being designed in accordance with state and county regulations.

He referenced a recharge area adding they are below the standard in the city code which requires no more than 30% impervious coverage.

Mr. Tolliver explained the water table in one area is somewhat elevated; lakes will serve as stormwater facilities as well as amenity features. A bridge type structure will be created with fountains on both sides. They will also be stocked with

fish. The homeowners' association would maintain the green areas and stormwater management facilities that cover several acres.

Mr. Brooks questioned the amount of open space; Mr. Tolliver advised the code requires 25.84 acres though 41.41 acres is planned. He noted that in accordance with the PUD guidelines, there is a requirement of 4.04 acres of active/recreational space though 5.27 is provided.

He emphasized the project is well over the minimum requirements for open space.

In terms of density, Mr. Tolliver reported the allowable density for a PUD is 957 units. In addition, Section 230-48.1(c) states the spirit and intent of a PUD is to give the developer flexibility in the layout. It also allows council flexibility with approval. However, the intent is not to increase density. Density was calculated as though it was a standard by-right project and not as a PUD. Using 8 units per acre (allowable density in R-8 zone) would have allowed 554 units. They are only proposing 440 units.

Mr. Pikus asked if the city code only allows only 12 units per apartment complex; Mr. Tolliver explained that the 12 units per building does not apply in the PUD. The Homestead project, which is located across the road, also allows 24 units per apartment building. That plan went through a PUD process as well and requested the same number of units per building.

He then read section 230-48.1(d) which states: "Other Requirements. Off-street parking, parking beneath buildings, front, side and rear setbacks, landscaping and buffering, lot coverage, number of units per building and building separation shall be as determined by the Planning Commission."

He said the planning commission has the right to determine the maximum number of units. Mr. Pikus confirmed the planning commission recommended 24 units; Mr. Tolliver stated yes and as a tradeoff, the zoning code states that the minimum building separation should be 25 feet. Because they were permitted to go to 24 units, they doubled the building separation to 50 feet.

Mr. Pikus asked how the density was calculated; Mr. Tolliver explained the density is simply a function of the acreage or number of units divided by the acreage. In this case, the allowable density would yield 554 units though this plan is only 440 units. He explained that 440 (units) is divided by 69 (acres) which calculates to approximately 6.5 units per acre.

Mr. Pikus recalled that during the first presentations, density was a key factor. There were questions raised about the use of open space, wetlands, etc. He asked if Mr. Tolliver is considering wetlands as open space. Mr. Tolliver stated that wetlands are open space and in this case involves 2.5 acres.

Mr. Pikus emphasized that wetlands are not usable; Mr. Tolliver agreed that cannot be used in the density calculation. When asked if that was included in the 40%, Mr. Tolliver said it is part of the open space but not usable. In terms of calculating density, the gross acreage is 71.9 acres; the 2.5 acres of non-usable wetlands is then subtracted which leaves roughly 69.5 acres of net usable acreage. He noted that 69.5 multiplied by 8 is 554 allowable units.

Mr. Pikus confirmed that the assisted living facility requested was denied by the planning commission. Mr. Tolliver explained that during the last comp plan review, a questionnaire was sent out to city residents. One of the questions asked of residents was what they wanted to see more of in the city. The number one response was assisted living facilities. Residents also wanted multi family housing and apartment complexes which is similar to what is proposed.

Mr. Tolliver advised that over the past several months, they have had conversations with assisted living facility developers who showed a great deal of interest in this project. However, they were uncertain whether they wanted a low level assisted facility with no medical care (medications would be administered and feeding assistance) or an upper-level facility which would include an Alzheimers or dementia wing. As a result, the developers were unsure of what to do in terms of the matrix of the assisted living facility. This was discussed with the planning commission last month at which

time they were reviewing two applications. This application involved apartments and townhouses but not the assisted living. The second application was for a conditional use for the assisted living facility and was not approved. It was not approved because they were unable to provide the information the planning commission needed. The developer was basically asking for an ok to proceed with some sort of living facility. Their plan was to submit the final site application before construction could begin. At that point, they would have a definite plan in place. However, the builders needed a better comfort level the plan would be later accepted which is the reason they attempted to get a tentative or conceptual approval for the assisted living facility.

Mr. Tolliver stated they also talked with Milford Memorial Hospital who provided a letter of support for their plan for an assisted living facility. However, that is not part of this application.

Mr. Pikus said he does not doubt Mr. Tolliver's calculation though a better review is needed; Mr. Tolliver advised the city solicitor and planning commissioner reviewed the density calculations and found them to be accurate. The application has been through DAC and their comments addressed. In addition, he has met with the city engineer on numerous occasions. According to Mr. Tolliver, all parties have reviewed and approved the calculations currently shown on the plan.

He then emphasized this is only a preliminary plan noting that he will be back with the final plan for council review.

Mr. Tolliver then referenced renderings of a similar project. He stated they plan to start construction of the project as soon as possible noting the waiver of the hook up fees which he said is an incentive.

He pointed out that extensive landscape berms are planned around the perimeter between the neighbors to the east and to the south. Meandering berms with plantings will line the sides, along with a white fence, similar to those that currently exist at the Rookery Golf Course on Route 1.

Parking exceeds the 2.5 spaces per apartment unit as well as for the townhouses. Mr. Tolliver explained that there will be overflow parking in the interstitial spaces around the green areas.

Mr. Brooks noted that 440 units with 2.5 vehicles could result in more than a thousand cars. Mr. Tolliver said the code requires 2.5 spaces per unit and he exceeded that number. He agrees that more parking is preferred.

When asked the exact number of parking spaces, Mr. Tolliver stated that the apartment section requires 780 spaces though they are providing 799 spaces. The townhouse section requires 320 and 328 are planned. He feels that Milford's requirement of 2.5 spaces is higher than the 2 spaces typically required in other towns.

It was confirmed that the application will still need to go through the DeIDOT process.

Mr. Tolliver stated that in summary, they are asking for the same concept as the Homestead property across the road. He then asked for approval of the plan noting that the DAC and planning commission reviewed the plan and both recommend approval.

City Solicitor Rutt reported the application was initially for 452 units. However, Milford's Planning Commission pared off 12 units related to the assisted living. Their resolution contains an approval of the planned unit development. That vote took into account the reduction of the 12 units for the assisted living and the fact that component was not part of the approval.

Mayor Rogers then asked for comments from the public.

Noel Primos of 144 Church Hill Road then addressed council stating he had also attended the planning commission meeting. He said that as a resident of the area, he does not feel this proposed development fits with the character of the area which is primarily rural and single family homes.

Mr. Primos also noted that Mr. Tolliver indicated they are seeking to do the same type development that was proposed with the Homestead Development across the road. That development has not gone forward. He pointed out the Homestead Development was zoned R-3 and when the planning commission recommended 24 units in each building in this plan, he does not believe they understood the Homestead development was zoned R-3 and a higher density.

Mr. Primos further stated that though the assisted facility is not under consideration because it was not approved by the planning commission, he does feel that should be taken into account as council considers the application. He said the proposal was for a 114-bed facility. One reason it was denied is because it was a very vague. The proposal was for an assisted living facility and the city solicitor raised the point there is a difference between an assisted living facility and a nursing home. Some of the things being described were more in line with a nursing home. He said the solicitor also noted the difference between the Heritage and Milford Center. He said there is a wing at the Heritage where the residents are free to come and go and many have their own vehicles. In this case, the proposed parking would have been insufficient to accommodate the 114-bed facility.

Mr. Primos reiterated a minimal assisted living facility is a different matter than a nursing home facility. Therefore, it makes a difference when considering density. When taking into account a number of mini apartments as are provided in the Heritage, it is a much different scenario which should be considered when calculating density.

He then referenced the fish-stocked stormwater ponds. He noted there will be run off from the parking lots that have oil residue and will affect the survival of aquatic life in the stormwater ponds.

He also asked if there have been similar type developments by this developer in other areas and questioned their history. Mr. Primo said if there is a possibility of an assisted living facility, how have those type facilities worked in conjunction with apartments and townhomes.

Concerns were also raised by a number of residents about the increase in traffic on Route 14 which is already a busy thoroughfare. Even though the assisted living facility is not being considered, a traditional nursing home with medical personnel coming and going or with minimal assisted living with residents coming and going will all have an impact.

Mr. Gleysteen then commented that he drives by this area every day. As can be seen by the photo, the area is all farmland and wooded. Having an R-8 there does not make sense to him. That zone should be complimentary to the surrounding area; he feels that R-8 is not complimentary to A-R or R-1. He understands this meets the zoning though it does not seem to fit within the area.

Though he is unaware of the average person per residential unit is, considering the 452 with two people living in each is about 10% of the size of Milford now. They will all be crammed into a 71-acre parcel. He has some serious concerns about the proposed density and location on the outskirts of town.

Mr. Pikus agrees with Mr. Gleyseen's concerns. He recalled that during the zoning hearing, he had requested it be zoned R-1 though it was approved with an R-8 zone. He noted that the road conditions fall under DelDOT jurisdiction though he has a major question about the density being proposed. He does not question Mr. Tolliver's calculation though he is unsure how it was calculated though Mr. Tolliver provided an explanation.

Mr. Pikus has a major problem going from 12 units to 24 units and though the development was approved across the road, nothing has been developed.

He commends the planning commission's review though they did not consider the difference in the R-3 and R-8 zone.

He then referenced a very serious accident that occurred on the highway this morning that may have been a fatality. He reiterated that he understands that falls under DelDOT's jurisdiction.

Mr. Pikus asked that the record reflect he has a major problem with the density in comparison to this location.

Mr. Brooks added that he agrees with Mr. Gleysteen and Mr. Pikus noting the same concerns.

When asked if anyone else wished to comment, no one responded.

Solicitor Rutt then explained this is an R-8 zone stating that if the proposed use fits the criteria of the R-8, it cannot be denied on that basis. He said the law is very clear that if a use is proposed that is permitted in the zone of a code, it cannot be denied.

Mr. Pikus asked the purpose of density; Mr. Rutt explained it must meet the density criteria. He further stated the density was reviewed on the preliminary, but when the final site plan is laid out, it must meet the density requirement criteria listed in Section 200-3 that outlines what is and what is not open space. If the final site plan is presented and does not meet the criteria, that number could be reduced.

The solicitor also clarified the density under an R-8 is 8 units per acre.

When asked by Mr. Pikus if they are putting more than 8 units per acre by using the 24 units per building versus the 12 units per building prescribed in our zoning ordinance, Mr. Rutt explained that is a different issue. He said the ordinance allows 12-unit apartments with 25 foot spacing. Because it was filed as a PUD, council has the flexibility to adjust that number. The idea of a PUD is creativity in the design. What is proposed is 24 units per building as opposed to 12; under a PUD, council has the flexibility to adjust it.

Mr. Pikus confirmed that council has the right to deny the 24; Mr. Rutt advised that because this is a major subdivision and a conditional use (PUD), council can impose conditions they feel are needed.

Mr. Pikus questions the calculation on open space; Mr. Rutt explained that will be part of the final site plan. The planning commission will use what is on the final site plan. He said the definition clearly defines open space which states it cannot include specific areas of land. In addition, the ten subparts are listed.

Mr. Rutt explained that council could make a condition that there be no open space that does not take into account the ten criteria in the calculation.

Mr. Brooks asked if the additional thousand cars can be considered; in his opinion, that is a conservative number because there could be 1,138. He does not feel that area is capable of handling a thousand more vehicles. Mr. Rutt reiterated that is a DeIDOT issue. Mr. Brooks responded by stating that he went on record, at the time of the Homestead review, that DeIDOT has never denied any application he is aware of.

Mr. Rutt understands but emphasized it is a DeIDOT issue.

Mr. Brooks referenced the backups yesterday at the Route 113/Route 14 intersection where traffic was at a standstill. He noted this will add another thousand cars into the mix.

The public hearing was then closed by Mayor Rogers asking councils' pleasure.

Mr. Pikus moved to deny the application based on the questions regarding open space. He then asked for verification from the city solicitor that density cannot be used. Mr. Rutt explained that 71 multiplied by 8 comes to 568; the applicant is proposing 440. However, there are adjustments with regard to what can be included in the density figures. That is why he referenced the final site plan during which time those calculations will need to be correct.

Mr. Pikus asked if his motion to deny the application is legal; Mr. Rutt asked if the motion is to deny the request for the subdivision. Mr. Pikus stated yes for the subdivision as presented and asked if that is legal; Mr. Rutt responded by stating that he does not think so.

Mr. Johnson asked if council can address the 24 units per building; Mr. Rutt said a condition can be made that 24 units per building be reduced to 12 units. Mr. Pikus said he is not satisfied with the proposal as presented this evening and feels there is room for error. In his opinion, council needs more information. If it is more appropriate to table it, he will make that motion.

Mr. Morrow said we need to keep in mind this is just a preliminary; Mr. Grier asked if more information is provided during the site plan approval. Mr. Morrow said we are trying to get all questions answered at this point though they are unable to provide that information.

Mr. Pikus reiterated that he made a motion to deny the application based on the increase from 12 to 24 units per apartment building and the proposed use of open space.

Mr. Rutt reminded council that site plans do not come before council and fall under the jurisdiction of the planning commission.

Mr. Johnson seconded the motion.

The vote resulted in the following 4-3 vote:

Yes-Johnson, Pikus, Gleysteen, Brooks

No-Grier, Morrow, Starling

Mr. Johnson stated he votes in favor of the motion noting that last time he came before council we added a lot of flexibility in what could be done with this property. However, 24 units in a building was not one of them and he is not in favor of that.

Mr. Grier votes no based on the fact we approved the land for R-8 which is 8 units per acre. There is still a final site plan review and the plan still needs DelDOT approvals and there are questions regarding the motion itself according to our city solicitor.

Mr. Pikus votes yes based on the information he presented.

Mr. Gleysteen votes yes adding he also has safety concerns about the impact this density will bring to the local area that he does not see addressed in this PUD.

Mr. Brooks votes yes.

Mr. Morrow votes no stating that he feels there are some questions that do not need to be answered at this time. Also, council at this stage has wiggle room as far as moving it from 24 down to 18 or 12. He said to kill this project may do away with our economic development effort. He understands the thousand car concern though this will not happen next week. Instead, he feels it could 20 years to build out. It will also be built out the way the city wants. It may not end up with 24 per building. However, to sit here after all efforts of Mr. Grier in relation to economic development and jobs and to turn down the one project that comes to Milford in the last five years, he will not agree. He would like for Mr. Pikus to rescind his motion and allow us to go back to the drawing board and get something we want there. If he understands this right, if the application is denied, they are unable to come back for another year.

Mr. Rutt stated there was a recommendation from the planning commission to approve the application. In order to overturn the recommendation, a three-quarter vote is needed. Therefore, it would have to be turned down by six yes votes.

Mr. Morrow continued by stating he believes there is room to make this work for the benefit of the city, the benefit of the developer and jobs and economic development. He said we are trying to hire an economic development director while stating we are not interested in this so he votes no.

Mr. Starling votes no.

Mr. Rutt then stated the vote does not overturn the recommendation of the planning commission.

Mr. Pikus then moved to table the application. Mr. Gleysteen seconded the motion.

When asked for questions, Mr. Morrow questioned why it is being tabled. Mr. Pikus said he feels it is wrong to question the economic development issue noting that all of council is in favor of economic development. He emphasized there are too many unknowns just to approve it carte blanche.

Mr. Morrow feels it is not being approved carte blanche because it will come back. Right now, council has the capability to say we want 12 or 18 instead of 24. He will not agree to kill it completely.

Mr. Rutt explained that council has the right to vote and approve it subject to conditions. Council can oppose its own conditions on the approval.

Mr. Morrow stated that one condition could be for Mr. Pius to reduce it from 24 to 20. Mr. Pikus said he is uncomfortable with 24 and uncomfortable with the open space.

Mr. Morrow said that comes with the site plan and to him we are trying to put the cart before the horse.

Mr. Pikus asked if the open space comes under the site plan; Mr. Rutt explained that when the final site plan is reviewed, it must meet the open space requirements. Mr. Pikus confirmed that council does not review the site plan. Mr. Rutt agreed stating that under a PUD, there is flexibility. Council has the right to add a condition that the application has to meet the ten criteria under what is not included in open space in the definition of the Subdivision of Land Code. In that manner, the applicant will have to meet each and every criterion or it must be built into the formula to assure whatever open space available is maximized.

Mr. Pikus asked if a motion can be made that the applicant must comply with all ten stipulations under the open space section in the subdivision code and the units be reduced from 24 to 12. Mr. Morrow stated he must do that anyway. If we kill it, he is unable to come back for a year.

Mr. Brooks asked if we can make an exception to that requirement as well.

Mr. Tolliver then asked if the public testimony closed; Mr. Rutt stated the record is closed.

Mr. Rutt then announced that he misspoke about the earlier vote and explained that the code states that if the planning commission votes to deny the application, a three-quarter vote of city council is needed to overturn it. Therefore, the first motion to deny the application by a vote of 4-3 actually passed. He apologized for the error.

Mr. Pikus then withdrew his first motion to deny the application; Mr. Johnson withdrew his second.

Mr. Pikus then stated that he also withdraws his second motion to table the application; Mr. Gleysteen withdrew his second.

Mr. Pikus then moved to approve the application for a maximum of 440 units subject to the condition that the apartment buildings not exceed 12 units per building, that the open space must meet the ten points set forth in Section 200-3 of the Subdivision Code, that (1) a Sellers Disclosure statement detailing the existing industrial use on the neighboring property will be required, (2) a separate form, similar to the Sellers Disclosure statement, will be provided to people at the model home(s) and (3) the statement detailing the existing industrial use on the neighboring property will be added to the HOA documents.

When asked for questions, Mr. Gleysteen asked if a new PUD will come back before council; Mr. Rutt explained the site plan will then go before the planning commission. Mr. Rutt then advised that can be added as a condition as well.

Mr. Starling then asked why the reduction from 24 to 12 units; Mr. Pikus referenced the code which states 12 units.

Mayor Rogers then asked Planning Commission Chairman Rini to comment on the question. Mr. Rini then asked the city solicitor if he should explain how the planning commission went from 12 units per building to 24. Mr. Rutt advised that is councils' decision; there was no response from council members.

Mr. Morrow then stated that the reduction will only change the number of buildings which will now double. He said that with 12 units to a building, it appears there will be 30 buildings. That will also reduce the amount of open space.

Mr. Morrow seconded motion. Motion carried by the following 6-1 vote:

Yes-Johnson, Grier, Pikus, Brooks, Morrow, Starling

No-Gleysteen

Mr. Gleysteen stated he is voting no because the higher density is going to create a number of safety concerns to the intersection and he does not feel that has been properly addressed.

Mr. Brooks stated he agrees with Mr. Gleysteen noting that the traffic in the area concerns him though he will vote yes just to keep it on the table so that something can be done. However, he emphasized his concern about traffic as well.

Mr. Morrow votes yes to keep the project moving adding that this type housing is needed in the city.

Adoption of Ordinance 2012-06

Mr. Morrow moved to adopt Ordinance 2012-06 as amended and consistent with the motion, seconded by Mr. Pikus:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILFORD, DELAWARE APPROVING A CONDITIONAL USE TO ALLOW A PLANNED UNIT DEVELOPMENT TO BE KNOWN AS HICKORY GLEN FOR ERIC DUNN OF DUNN DEVELOPMENT, LLC ON BEHALF OF WALTER N. THOMAS II ON 71.918 +/- ACRES IN AN R-8 DISTRICT LOCATED AT 1335 MILFORD-HARRINGTON HIGHWAY, MILFORD, DELAWARE. TAX MAP NO(s): MD-16-173.00-01-21.00 and MD-16-173.00-01-22.00.

Whereas, the City of Milford Planning Commission reviewed the application at a Public Hearing on April 17, 2012 and has presented item to be considered by the City Council; and

Whereas, Milford City Council held an advertised Public Hearing on May 29, 2012 to allow for public comment and review of the application; and

Whereas, it is deemed in the best interest of the City of Milford to allow a Conditional Use for a Planned Unit Development as herein described.

Now, Therefore, the City of Milford hereby ordains as follows:

Section 1. Upon the adoption of this ordinance, Eric Dunn of Dunn Development, LLC on behalf of Walter N. Thomas II is hereby granted a Conditional Use Permit in accordance with the application, approved plans and the following conditions:

- (1) 440 units approved
- (2) apartment buildings cannot exceed 12 units per building,
- (3) open space must meet the ten points set forth in Section 200-3 of the Subdivision Code,

- (4) a sellers disclosure statement detailing the existing industrial use on the neighboring property will be required
- (5) a separate form, similar to the sellers disclosure statement, be provided to people at the model home(s)
- (6) statement detailing the existing industrial use on the neighboring property will be added to the HOA documents

Section 2. Construction or operation shall be commenced within one year of the date of issuance or the conditional use permit becomes void.

Section 3. Dates.

Adoption Date: 05-29-12

Effective Date: 06-08-12

Motion carried by unanimous roll call vote.

Mr. Brooks then discussed the PUD ordinance noting that the original PUD's were different from what is requested today. City Manager Carmean agreed that the applications now are geared more toward the maximum density. However, they do allow creativity as Mr. Rutt alluded to though when the creativity is being done for profit is not always good for the city.

Mr. Brooks said we have opened the door and developers now want the maximum density which he feels takes advantage of its intent. Mr. Carmean advised the ordinance can be changed if council is unhappy with it.

Mr. Brooks reiterated his concern with an additional thousand cars being added to the Milford-Harrington Highway traffic.

Mr. Gleysteen commented that economic development is much more than building housing developments though the construction may provide short term jobs. Typically, it involves three workers per house per year. He agrees it will bring new homes and construction, but a couple homes can instead be built in different areas without creating high density and related problems to one small area. He favors economic development but does not feel that applies in this situation.

Mr. Pikus emphasized there are more than a thousand undeveloped lots zoned R-3 in the city.

Mr. Carmean feels that though council reduced the number of units per building from 24 to 12, he does not believe the area residents will be any happier. He said there is a code that allows a PUD and he does not believe this will be the last complaint.

Adoption of Ordinance 2012-07

Chapter 230--Zoning Code Amendment/Article VI--Signs

Planning Commission Chair Rini then presented the following zoning code amendment for adoption:

AN ORDINANCE TO AMEND Chapter 230--Zoning, Article VI--Signs, of the Code of the City of Milford.

The City of Milford hereby ordains:

Section 1. Amends §230-26-General Standards.

Section 2. Adds a New Paragraph 10 to §230-26(F)--EMB Signs which will read as follows:

(10) All EMB Signs shall have a height of no less than a minimum of two feet and no greater than a maximum of five feet. All EMB signs shall have a width of no greater than a maximum of twelve feet and shall be no larger than thirty-two square feet total.

Section 3. Amends Sign Chart by clarifying size restrictions of EMB signs in the C-3 zoning district.

Section 4. Dates.
Adoption: May 29, 2012
Effective: June 8, 2012

He explained that the original ordinance stated the sign would be 32 square feet with a ratio of 3x4. The sign companies then informed the city they do not make a 3x4 sign. Therefore, a new paragraph was drafted by the city planner as stated above.

Mr. Grier moved for adoption of 2012-07, seconded by Mr. Gleysteen. Motion carried by unanimous roll call vote.

With no further business, Mr. Pikus moved to adjourn the Public Hearings, seconded by Mr. Morrow. Motion carried.

Meeting adjourned at 8:16 p.m.

Respectfully submitted,

A handwritten signature in black ink that reads "Terri K. Hudson". The signature is written in a cursive, flowing style.

Terri K. Hudson, MMC
City Clerk/Recorder

MILFORD CITY COUNCIL
MINUTES OF MEETING
May 29, 2012

A Meeting of Milford City Council was held in the Joseph Ronnie Rogers Council Chambers of Milford City Hall, 201 South Walnut Street, Milford, Delaware on Tuesday, May 29, 2012.

PRESIDING: Mayor Joseph Ronnie Rogers

IN ATTENDANCE: Councilpersons Steve Johnson, Garrett Grier III, S. Allen Pikus, Dirk Gleysteen, Owen Brooks, Jr., Douglas Morrow, Sr., and James Starling, Sr.

City Manager Richard Carmean, Police Chief Keith Hudson and City Clerk/Recorder Terri Hudson

City Solicitor David Rutt, Esquire

CALL TO ORDER

Mayor Rogers called the Monthly Meeting to order at 8:16 p.m.

INVOCATION AND PLEDGE

The Pledge of Allegiance followed the invocation given by Councilman Starling.

RECOGNITION

Proclamation 2012-10/Honoring Teresa K. Hudson/MMC Designation

Mayor Rogers then surprised City Clerk Hudson with the following proclamation which was read into record by Councilman Pikus:

Whereas, The Office of the Municipal Clerk is the oldest among public servants and a vital part of local government that exists throughout the world; and

Whereas, Beginning her public service in 1978, Teresa K. Hudson served as the Administrative Assistant to the Chief of Police before her appointment to the position of City Clerk of the City of Milford on July 28, 1997; and

Whereas, As the City Clerk, Teresa K. Hudson provides the professional link between the citizens, Milford City Council and agencies of government at all levels while being ever mindful of her neutrality and impartiality, rendering equal service to all; and

Whereas, after dedicating more than four years to completing the requirements of the International Institute of Municipal Clerks (IIMC), Teresa K. Hudson earned the distinction of Master Municipal Clerk on March 16, 2012; and

Whereas, eligibility for this prestigious title requires the individual be an active member of IIMC, a Certified Municipal Clerk, complete demanding education requirements and demonstrate a record of significant contributions to their local government, community and state; and

Whereas, Milford City Council is pleased to commend the achievements of Teresa K. Hudson and share our pride in her success and in the important role she plays in enhancing the democratic process in the City of Milford; and

Whereas, Teresa K. Hudson is only one of two current Delaware Municipal Clerks to be named a master municipal clerk and the third from Delaware to receive this designation.

NOW THEREFORE, BE IT RESOLVED THAT, I, Joseph Ronnie Rogers, Mayor of the City of Milford, join in recognizing Teresa K. Hudson, MMC for this meritorious accomplishment and extends his sincere congratulations.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Official Seal of the City of Milford to be affixed this 29th Day of May in the Year of our Lord Two Thousand and Twelve.

s/Mayor Joseph Ronnie Rogers

Mr. Pikus then presented the proclamation to Ms. Hudson on behalf of city council and city employees in recognition of exceptional accomplishments in her position as Master Municipal Clerk. It was noted there are only two persons in the State of Delaware that hold that position and that in the history of Delaware, there have only been three.

Mayor Rogers then congratulated Ms. Hudson noting this is an achievement for the entire city and its residents.

Mr. Carmean stated that this is first for the city being the first proclamation he has ever written.

Ms. Hudson thanked the Mayor, City Council and city manager for allowing her the time away from the office needed to obtain the educational requirements needed for this designation.

COMMUNICATIONS & CORRESPONDENCE

Mr. Pikus then thanked the administration, mayor and city council and entire city for the condolences he received in the recent loss of his brother, Terry. He said it was well appreciated by his entire family. He also personally thanked Chief Hudson and his entire staff for their assistance with the procession noting they went well above the call of duty.

City Manager Carmean then announced a ceremony will be held at DEMEC in Smyrna on June 7th at 11 a.m. when the new Warren Beasley #2 Power Unit will be put into operation.

City Solicitor Rutt announced that invitations were mailed for the Rotary Clubs Can-Do Playground Groundbreaking on June 11th at 11 a.m. at 101 Delaware Veterans Boulevard.

UNFINISHED BUSINESS

Adoption of Resolution 2012-05/Copying & Fees Related to FOIA Requests & Revised FOIA Request Form

Delaware FOIA law requires each public body to develop a FOIA policy. With the recent enactment of a law requiring all municipalities to use a standard request form, a new document was developed and our policy amended. A copy of the new FOIA form is included in the council packet.

Mr. Morrow moved to adopt the following resolution, seconded by Mr. Pikus:

WHEREAS, requests are made of the City of Milford for public records, certain documents, correspondence and reports by person(s); and

WHEREAS, the City Council of the City of Milford authorizes the Office of the City Clerk and other City departments (hereafter referred to as "The City") to assess and collect a reasonable fee by an interested person pursuant to the Freedom of Information Act or other applicable law; and

WHEREAS, the City shall make every reasonable effort to respond to a request within ten (10) days; and

WHEREAS, the City is not required to create records that do not exist at the time the request is made; and

WHEREAS, the City may authorize certain exemptions from such fees and charges, as deemed appropriate; and

WHEREAS, all requests for Law Enforcement Records fall under the jurisdiction and policies and procedures of the Milford Police Department and shall be immediately forwarded to the Chief of Police or made directly at the Milford Police Department.

NOW THEREFORE, IT IS HEREBY RESOLVED that the Mayor and Council authorize the following fees be charged for complying with a request under the FOIA, as applicable:

Duplicating/Copying Fees

The following are duplicating/copying charges for providing public records:

- (1) Standard Sized, Black and White Copies
Cost for duplication or publication, including labor, for standard sized, black and white public records shall be \$0.25 per page, for 8.5" x 11", 8.5" x 14", and 11" x 17" sized paper.
- (2) Computer/Electronically Generated
Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including, but not limited to: cassette tapes, video tapes, computer disk costs) and administrative costs. Actual costs shall be assessed for copying computer generated records and providing other materials such as video tapes, computer disks, etc.

Administrative Fees

The following are administrative fees for providing public records:

- (1) Actual Labor Costs
In calculating the cost of labor incurred, the City may not charge more than the hourly wage of the lowest paid City employee capable of retrieving the information necessary to comply with the request. Labor charges will be billed to the requestor per quarter hour. Labor charges will be in addition to any duplicating/copying charges. Charges for actual labor costs include:
 - * Staff time associated with processing FOIA requests;
 - * Locating and reviewing files;
 - * Monitoring file reviews;
 - * Generating computer records (electronic or printouts); and
 - * Any other time rendered by the employee in researching, examining, developing, duplicating, reviewing, and separating exempt from nonexempt information that has been requested.
- (2) Other Costs
Any other actual costs associated with fulfilling a request for information, such as postage, shall be at the expense of the requestor.

If the City does not have the resources or equipment to duplicate requested records, the City, at its discretion, may arrange to have records duplicated by an outside contractor. In this instance, the requestor will be liable for payment of these costs.

Motion carried.

Introduction of Ordinance 2012-10 /City of Milford Electric Tariff Amendment/Late Notice Discontinuance

Mr. Carmean recalled this matter being discussed at the last meeting, Because this is a change in our utility billing procedure, an ordinance amending the tariff is required.

Mr. Grier then introduced the following ordinance:

An Ordinance to Amend the Regulations of the City of Milford by Revising Section 4, Payment Terms of Chapter 119, Electrical Standards-Rules and Regulations-of the City of Milford Code by Repealing the Requirement that Written Notices of Service Termination will be provided by the City of Milford if Payment is Not Received.

The City of Milford Hereby Ordains as follows:

Section 1. §4(E) of the City of Milford Electric Tariff is hereby amended by replacing "Late Payment Notice" with "AUTHORITY TO DISCONTINUE SERVICE FOR NON PAYMENT", repealing the first sentence in its entirety, adding "FOR NON PAYMENT to second paragraph and adding "SUCH TERMINATION OF SERVICE WILL BE WITHOUT WRITTEN NOTICE" as a new, third paragraph.

RULES AND REGULATIONS

Section 4 - Payment Terms

E. ~~Late Payment Notice~~ AUTHORITY TO DISCONTINUE SERVICE FOR NON PAYMENT

~~A notice will be sent to the Customer stating that service will be terminated by a given date if payment is not received.~~

The City of Milford reserves the right to discontinue service FOR NON PAYMENT in accordance with provisions of these Rules and Regulations and the accompanying Tariff and/or take any other action permitted by law with respect to any Customer who fails to make full and timely payment of all amounts due the City.
(See Section 15-A-3).

SUCH TERMINATION OF SERVICE WILL BE WITHOUT WRITTEN NOTICE.

Section 2. Dates.

City Council Introduction: May 29, 2012
Adoption Date: June 11, 2012 (Projected)
Effective Date: June 21, 2012 (Projected)

A final vote is scheduled for the next meeting.

At 8:29 p.m. Vice Mayor Morrow took over as presiding officer when Mayor Rogers had to leave the meeting for an appointment.

NEW BUSINESS

City of Milford Interconnection Agreement
Facilities Study Agreement
Feasibility Study Agreement
System Impact Study Agreement

Mr. Carmean advised that these agreements have been reviewed numerous times including one by our city solicitor. Late this afternoon, the following paragraph was added:

Concurrent with the execution of this Agreement (or if requested at any time hereafter by Utility) the Parties hereto shall execute a Facilities Study Agreement, a Feasibility Study Agreement and a System Impact Study Agreement, if requested by Utility (City of Milford). The results of such ancillary Agreements shall establish milestones to implement this Agreement if requested by Utility.

Mr. Pikus asked if each member is required to pay \$1,000 per study. Mr. Carmean stated yes if we request a study. In the future, he said this will help the city meet our green energy requirements. In addition, all DEMEC members will benefit from the fact we don't have the capacity charges to pay on the 12 megawatts. Once the city system reaches 10, it will continue to generate though the meter will run backwards which means a credit to all DEMEC members.

He explained that Sunolar needs to go to settlement on June 1st on the property. He is unsure if the balance of the agreements will be needed because the feasibility and facility issues were already considered. However, it is required for their financing.

The city manager prefers to postpone approval. If he is correct, he would like it adopted with the stipulation it can be removed. Mr. Rutt agreed that is appropriate.

Mr. Pikus moved to postpone, seconded by Mr. Grier. Motion carried by unanimous roll call vote.

EXECUTIVE SESSION

Pursuant to 29 Del. C. §10004(b)(2) Preliminary discussions on Site Acquisitions for Publicly Funded Capital Improvements

Mr. Pikus moved to go into Executive Session reference discussions on site acquisitions, seconded by Mr. Grier. Motion carried.

Vice Mayor Morrow recessed the Council Meeting at 8:35 p.m. for the purpose of an Executive Session as is permitted by Delaware's Freedom of Information Act.

Open Session

Council returned to open session at 8:43 p.m.

Executive Session Matters

Mr. Pikus moved to approve the land acquisition, seconded by Mr. Grier. Motion carried with no one opposed (6-0).

ADJOURN

With no further business, Mr. Pikus moved to adjourn the Council Meeting, seconded by Mr. Starling. Motion carried.

Meeting adjourned at 8:44 p.m.

Respectfully submitted,



Terri K. Hudson, MMC
City Clerk/Recorder

MILFORD CITY COUNCIL
MINUTES OF MEETING
May 29, 2012

The City Council of the City of Milford met in Workshop Session on Tuesday, May 29, 2012 in the Joseph Ronnie Rogers Council Chambers of Milford City Hall, 201 South Walnut Street, Milford, Delaware.

PRESIDING: Vice Mayor Douglas Morrow, Sr.

IN ATTENDANCE: Councilpersons Steve Johnson, Garrett Grier III, S. Allen Pikus, Dirk Gleysteen, Owen Brooks, Jr. and James Starling, Sr.

City Manager David Baird, Police Chief Keith Hudson and City Clerk/Recorder Terri Hudson

City Solicitor David Rutt

The Workshop Session convened at 8:45 p.m.

Downtown Milford, Inc./Directional Signs/Scott Angelucci

Mr. Angelucci stated they are moving forward with the idea they started a few years ago with the visioning project. During that time, Downtown Milford (DMI) worked closely with Delaware Economic Development Office (DEDO) to get a concept of what was needed to revitalize the downtown area. A lot has since been accomplished as they continue to proceed. At the next board meeting, they will revisit their vision, examine how far they have come and determine if they are on track or need to redefine the vision. However, he feels they remain on course.

He said they are working on promoting the assets of the downtown area to travelers. DEDO taught them by showcasing their assets—downtown area, riverwalk, non-profits and art league, they can be used for economic development. Promoting the area to people traveling around the city who are unfamiliar with the area allows them to tap into some of the tourism occurring in surrounding areas. He then presented the artist rendering of the proposed sign on Route 1, both on the north and south side.

Mr. Angelucci explained the idea is to promote to Route 1 and Route 14 travelers the branding which highlights Milford as a rivertown, art town and hometown. The letters will be approximately four feet tall and in the area of the Route 30 overpass.

He is currently looking for inexpensive pricing because the city has requirements other than just signage. He asked council for a preliminary approval of the concept.

He said that in addition, attraction signs will be provided and installed by DelDOT. He said Design Committee Chair Mitch Edmondson and he met with Mr. Carmean to discuss getting signs for attractions that will help highlight the downtown areas. However, the city will need to provide the costs.

DelDOT conditions for such attractions require they are 501(c)3's, have established hours and are three miles from the established sign. Included would be the Milford Museum, Mispillion Art League, Delaware Music School, Milford Library and possibly the Riverwalk area.

He confirmed that the signs would be north of Milford or just south of Lynch Heights.

When Mr. Angelucci reiterated the city would pay for the attraction signs, Mr. Pikus asked the cost; Mr. Angelucci said they had an estimated cost of \$1,500 for either two or three signs depending on where they are placed. The intent is to place a sign on the north end of the city, one on the south end of Route 1 and possibly another on Route 14.

When asked, Mr. Angelucci said it is preferred the branding signs be lit which is another consideration when determining the design. He has consulted with some sign companies who informed him the signs would be created on a metal framework with a wire grid. A composite letter would be fastened to the grid. Plantings would also be provided.

Mr. Pikus then asked how the branding signs will be funded; Mr. Angelucci said they hope to obtain the money from city council though there is a possibility it could be a joint effort of DMI and city council. The money they received for the banners was obtained from the USDA through an art grant. He is unsure if this would fall under those guidelines.

Mr. Angelucci said it was agreed that Parks and Recreation would be responsible for maintaining the plantings. It was then confirmed that the Parks and Recreation Director was aware and in agreement.

He then explained the idea to promote cultural tourism by utilizing the arts, museum and architecture. This will attract travelers who will spend money in this community.

The state will provide some marker signs for the other attractions. He confirmed they also have a couple of marker signs on the gateway signs.

It was confirmed the plan is to place a sign on the northbound and southbound of Route 1. Mr. Gleysteen asked about Route 113; Mr. Angelucci said they are placing them on the roads with the most impact. Mr. Gleysteen feels that Route 113 will have more traffic than Route 14. Mr. Angelucci explained that Route 14 is used by Washington, D.C. and Baltimore area residents. Their focus is to pick up those traveling to the beaches from all metropolitan areas. Their long term plan is to replace other signage on Route 113 with the new branding as well.

As a business owner, he said they are struggling to continue to promote the downtown area though they have come a long way since the economic downturn. They get some support from the city though it is beneficial to get more support from travelers to this area.

Mr. Pikus recalled previous signs that incorporated the Kiwanis Club, Rotary Club and the Moose. He asked if that has been considered. Mr. Angelucci said there may be another place for that but the intent is to establish the branding and the two should not be mixed together.

Mr. Morrow said that council is probably very supportive, and this something that could be considered at that time. Mr. Pikus agrees noting that the costs must be provided before anything can be considered.

Mr. Angelucci said he is getting some prices and though he has obtained some already, other components are needed.

Mr. Pikus asked that he provide something by Wednesday or Thursday and suggested a package. Mr. Angelucci stated he will oblige.

With no further business, the Workshop Session of Council concluded at 8:57 p.m.

Respectfully submitted,



Terri K. Hudson, MMC
City Clerk/Recorder