

# City of Milford



## AGENDA

Monthly Council Meeting

August 9, 2010

Joseph Ronnie Rogers Council Chambers, Milford City Hall, 201 South Walnut Street, Milford, Delaware

COUNCIL MEETING - 7:00 p.m.

Call to Order - Mayor Joseph Ronnie Rogers

Invocation

Pledge of Allegiance

Approval of Previous Minutes

Recognition

Monthly Police Report

City Manager's Report

Committee Reports - Annexation Committee Report/Walter Thomas II Petition

Communications

Unfinished Business -

Planning Commission Vacancy

Planning Commissioner Term Reviews

Ward Redistricting

Rescind Previous Action/Hearthstone II Phase I Major Subdivision/Final Plan

Adoption of Resolution 2010-12/Approval of Hearthstone II Phase I Major Subdivision/Final Plan

New Business -

Adoption of Fiscal Year 2010-2011 Tax Warrant

Landscape Architectural Services LLC Agreement & Preliminary Plan/Chaney-Wilmont Greenway/Parks and Recreation

Adoption of Resolution 2010-13/Halloween Events

Introduction of Ordinance 2010-14/Zoning Code Amendment/Parking Spaces\*

FY2009-10 Budget Adjustment\*\*

Monthly Finance Report

Adjourn

This agenda shall be subject to change to include additional items including executive sessions or the deletion of items including executive sessions which arise at the time of the public body's meeting.

**SUPPORTING DOCUMENTS MUST BE SUBMITTED TO THE CITY CLERK IN ELECTRONIC FORMAT  
NO LATER THAN ONE WEEK PRIOR TO MEETING; NO PAPER DOCUMENTS WILL BE ACCEPTED  
OR DISTRIBUTED AFTER PACKET HAS BEEN POSTED ON THE CITY OF MILFORD WEBSITE.**

# CITY OF MILFORD

DELAWARE



OFFICE OF THE CHIEF OF POLICE  
E. KEITH HUDSON

“THE GARDEN CITY OF TWIN COUNTIES”

400 N.E. FRONT STREET  
MILFORD, DELAWARE 19963  
(302)422-8081 FAX (302)424-2330

## MEMORANDUM

TO: Mayor and Members of City Council

FROM: E. Keith Hudson, Chief of Police

DATE: August 4, 2010

RE: Activity Report/July 2010

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### **Monthly Stats:**

A total of 385 arrests were made by the Milford Police Department during July 2010. Of these arrests, 165 were for criminal offenses and 220 for traffic violations. Criminal offenses consisted of 40 felonies and 125 misdemeanors. Traffic violations consisted of 49 Regular Duty Radar, 7 Drunk-Driving charges, 33 Special Duty Radar and 131 other.

Police officers investigated 34 accidents during the month (5 personal injury, and 29 property damage) and issued 120 written reprimands. In addition, they responded to 1138 various complaints including city requests and other agency assistance.

A total of \$9,179.03 was collected in fines during July.

Two False Alarm Violation Invoices were issued during the month of July.

### **Monthly Activities:**

Pfc. Joseph Melvin is currently attending the N.A.S.R.O (National Association of School Resource Officers) in Nashville, Tennessee. Pfc. Melvin will be the new school resource officer and is attending this conference for his certification.

Our Community Policing Division spoke with approximately 30 children at the Family Resource Center (former Boys & Girls Club) and presented a safety power point.

The department recently participated in the Brightway Common's picnic by cooking the hotdogs and

hamburgers and interacting with former and new residents.

The senior patrol and the seasonal officers assisted with traffic control for the Hospice 5K Run\Walk last month which involved temporary closings of the Airport Road to allow the participants to cross.

Community Policing conducted a tour of the police department for kids enrolled in the Parks & Recreation Summer Program.

Community Policing and Police Operations conducted Neighborhood Watch training at Brightway Commons.

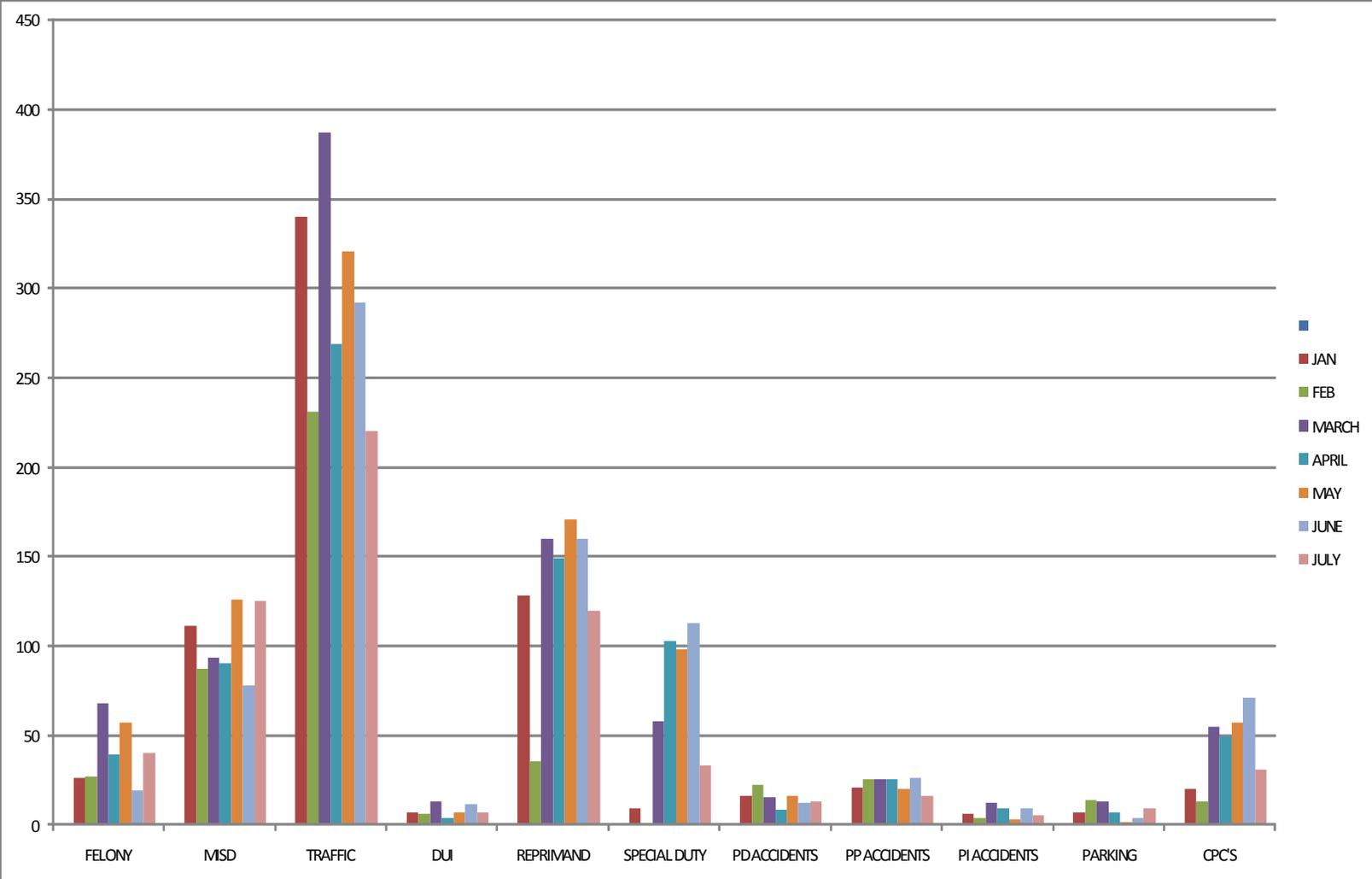
The department is currently working with Seawatch to develop an Emergency Response to deal with ordnances that are sometimes found in clams.

We are also planning to meet with the Delaware State Police in the near future to clarify boundaries, especially along the south east sections of the city.

EKH/vrk

## JULY ACTIVITY REPORT

	<u>JUL 2009</u>	<u>TOTAL 2009</u>	<u>JUL 2010</u>	<u>TOTAL 2010</u>
<u>Complaints</u>	1301	8254	<b>1138</b>	<b>7979</b>
<u>Criminal Arrests</u>	184	1381	<b>165</b>	<b>986</b>
Felonies	67	413	<b>40</b>	<b>276</b>
Misdemeanors	117	968	<b>125</b>	<b>710</b>
<u>Traffic Arrests</u>	475	2987	<b>220</b>	<b>2042</b>
Regular Duty Radar	133	475	<b>49</b>	<b>185</b>
D.W.I.	14	104	<b>7</b>	<b>55</b>
Special Duty Radar	98	460	<b>33</b>	<b>414</b>
Other	230	1948	<b>131</b>	<b>1428</b>
<u>Reprimands</u>	213	1586	<b>120</b>	<b>923</b>
<u>Accidents</u>	69	339	<b>34</b>	<b>299</b>
Personal Injury	10	35	<b>5</b>	<b>48</b>
Property Damage	59	304	<b>29</b>	<b>260</b>
Fatal (included in PI)	0	2	<b>0</b>	<b>1</b>
<u>Parking Summons</u>	3	83	<b>9</b>	<b>55</b>
<u>Crime Prevention Checks</u>	82	294	<b>31</b>	<b>295</b>
<u>Fines Received</u>	\$14,459.07	\$75,259.11	<b>\$9,179.03</b>	<b>\$64,627.44</b>



**City Manager's Report**  
**August 9, 2010**

- **Community Transportation Funding**

The City will be receiving \$425,000 in Community Transportation Funds from Senator Simpson, Senator Bonini, Representative Walls and Representative Carey. The funding will be used for Street Paving (\$275,000) that are now out to bid and for the next phase of the Riverwalk project (150,000) that will be discussed later this evening. On behalf of the City, I would like to thank each of these gentlemen for their continued support of projects within the City.

- **Neal Moore Lease**

Upon request of Mr. Moore, the City and Mr. Moore have exercised the option in the current lease that will keep the lease in place through December 31, 2010.

- **Can Do Playground**

We have met with representatives of the area Rotary Clubs sponsoring the Can Do Playground about the possibility of further collaboration by incorporating the City's existing and proposed playground facilities at the Tony Silicato Memorial Park. The Can Do Consultant provided by Rotary will be working with Gary Emory and our playground facility representative to explore the four options being considered. With this in mind, the City will be delaying moving forward on the \$35,000 capital expenditure for a second playground until a decision has been reached on the partnership.

- **205/207 N.W. Front Street Condemnation Appeal**

The Board of Appeals met on three separate occasions (2 hearings and 1 site visit) to consider the appeal of the condemnation order by the property owners. The last hearing was held on Wednesday, August 4, 2010 and the board completed presentations by all parties involved. The Board will be reconvening in the next two weeks to render a final decision on the matter.

- **Water Facilities Plan**

The City has requested DBF prepare a water facilities plan that incorporates a review of all of the City's water facilities. The plan will include an evaluation of current and proposed wells, treatment plants, and towers and examine the operational efficiency of each. The purpose behind this is to gain a clear understanding of what improvements should be made to our system to gain efficiencies and develop a schedule for capital investment to the water system.

- **Impact Fee Waiver Report**

Since the start of the incentive in June, four projects have qualified for the impact fee waiver and the amount of the waived fees is \$17,415 (Water-\$7,664; Sewer-\$4,051; Electric \$5,700). The projects included a commercial fit out for NeMours Healthcare Dental Office, Avenue UM Church expansion and renovations, a new single family home in Lighthouse Estates and Interior and Exterior Renovations to a Duplex on Carlisle Ln.

- **NE Front/SE Front Street Projects**

Councilman Pikus and I recently met with members of Downtown Milford, Inc. regarding the possibility of funding approximately \$3,000,000 for improvements to NE Front Street and SE Front Street. In order for the City to take on this type of project, it should be expected a referendum be necessary. I will continue to work on this issue and I recommend the Finance Committee work with DMI on possible funding options.

- **North Front Street Sewer Project**

DBF continues to coordinate corrective action with JJID on this project. JJID will be submitting options to the City on Friday, Aug. 6, 2010 for review by DBF. We are stressing the impact this delay has on local business and traffic in the construction area and that work needs to progress on the project.

- **Bid Openings**

The City has bid openings scheduled for the following

Street Paving/Curbing—August 19, 2010

Garbage Truck—August 24, 2010



# DELAWARE SOLID WASTE AUTHORITY

Pasquale S. Canzano, P.E., BCEE  
*Chief Executive Officer*

Richard P. Watson, P.E., BCEE  
*Chief Operating Officer*

**Board of Directors**  
Richard V. Pryor  
*Chairman*  
Ronald G. McCabe  
*Vice Chairman*  
Theodore W. Ryan  
Timothy P. Sheldon  
Tonda L. Parks  
Gerard L. Esposito  
Gregory V. Moore, P.E.

July 15, 2010

Mr. David Baird  
City of Milford  
P.O. Box 159  
Milford, DE 19963

Dear David:

Enclosed please find the 'Recycle Delaware' numbers and the curbside numbers for the month of June 2010 for the City of Milford. You will be able to see the savings the City of Milford receives from sponsoring the 'Recycle Delaware' program.

Sincerely,

Rich Von Stetten  
Sr. Manager of Statewide Recycling

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Attachments: City of Milford Site Totals

1128 S. Bradford Street, P.O. Box 455, Dover, Delaware 19903-0455  
Phone: (302) 739-5361 Fax: (302) 739-4287

CITIZENS' RESPONSE LINE: 1-800-404-7080 [www.dswa.com](http://www.dswa.com)

CITY OF MILFORD June-10	CARDBOARD	SINGLE-STREAM	TOTAL	USED OIL
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LOCATION	LBS	LBS	LBS	
MILFORD MIDD.SCHOOL	971	4,129	5,100	
MARSHALL ST	3,449	56,252	59,701	750
MILFORD COMMONS	1,377	13,934	15,311	
TOTAL POUNDS	5,797	74,315	80,112	
TOTAL TONS	2.90	37.16	40.06	
AVOIDED USER FEE	\$178.26	\$2,285.19	\$2,463.44	

CITY OF MILFORD CURBSIDE RECYCLING REPORT

7/15/2010

Pick up Day	Town Customer Total	Total # of Households	Households picked up	weights/lbs	Tons	% PICKED UP	Avg Lbs
6/4/10		914	616	14,620	7.31	67%	23.73
6/10/10		1,088	785	16,480	8.24	72%	20.99
6/17/10		916	748	15,820	7.91	82%	21.15
6/24/10		1,089	732	14,940	7.47	67%	20.41
<b>JUNE 2010 TOTALS</b>	<b>1969</b>	<b>4,306</b>	<b>3,204</b>	<b>81,640</b>	<b>40.82</b>	<b>72%</b>	<b>22</b>

*MILFORD CITY COUNCIL  
MINUTES OF MEETING  
July 19, 2010*

A Meeting of the Annexation Committee of Milford City Council was held in the Joseph Ronnie Rogers Council Chambers at Milford City Hall, 201 South Walnut Street, Milford, Delaware on Monday, July 19, 2010.

PRESIDING: Chairwoman Katrina Wilson

IN ATTENDANCE: Committee Members Douglas Morrow and S. Allen Pikus  
Planning Commission Chairman Chuck Rini

City Clerk/Recorder Terri Hudson

Chairwoman Wilson called the Annexation Committee Meeting to order at 7:06 p.m. to review the following request submitted by Walter N. Thomas II dated May 4, 2010:

*It is our understanding that in order to annex a property into the City of Milford a formal letter must be submitted to you requesting this action to take place. With this stated, and by virtue of this letter, we hereby formally request that the property be annexed into the City of Milford.*

*More specifically described, the property, located at 1335 Milford-Harrington Highway, consists of tax parcels 62.00 and 62.02, block no. 1, as shown on tax map 173.00 in the Milford Hundred of Kent County, Delaware. Currently the property is zoned AC in Kent County and is comprised of 71.92 acres of land. The property is contiguous to the City of Milford municipal boundary both to the north and south. Please refer to the enclosed City Annexation Exhibit for additional information including bearings and distances of the subject parcels and a location map. As indicated to Gary Norris via e-mails from Mr. Phillip Tolliver, P.E., we are requesting an R-3 zoning designation in the City of Milford. As you know, the approved City of Milford comprehensive plan does include the subject property as an immediate annexation area.*

*As time is of the essence, we would respectfully ask that you expedite this process. Should you have any questions or comments regarding this issue, please feel free to contact Mr. Phillip Tolliver, P.E. with Morris and Ritchie Associates, Inc. at 302-326-2200.*

Ms. Wilson advised that City Planner Norris was not in attendance due to another obligation.

She then announced the land is located on the south side of the Milford Harrington Highway (State Route 14) near the intersection of Canterbury Road/Holly Hill Road and Milford Harrington Highway with parcels and acreage noted below:

Tax Parcel 5-00-173.00-01-62.00-00001  
64.362 Acres Parcel of Land

Tax Parcel 5-00-173.00-01-62.02-00001  
7.556 Acre Parcel of Land

The property is currently zoned A-C in the county; the requested zoning is R-3.

The following report was provided by City Planner Norris:

<i>Property Owner:</i>	<i>Phillip Tolliver of Morris and Ritchie Associates on behalf of Walter N. Thomas II</i>
<i>Location:</i>	<i>The south side of Milford Harrington Highway near the intersection of Canterbury Road/Holly Hill Road and Milford Harrington Highway.</i>

Size:	72 +/- Acres
Existing Zoning:	AC: Agricultural Conservation
Proposed Zoning:	R-3, with a maximum residential density of 10 units per acre
Tax Map and Parcel Number:	MD-00-173.00-01-62.00, MD-00-173.00-01-62.02

**APPLICANT**

An application by Phillip Tolliver of Morris and Ritchie Associates on behalf of Walter N. Thomas II for the annexation of 71.92 acres into the corporate limits of the City of Milford.

**LOCATION**

The property is identified as Kent County tax parcels MD-00-173.00-01-62.00 and MD-00-173.00-01-62.02 and would be located in the Fourth Ward of the City of Milford.

**STREETS**

The property fronts the Milford-Harrington Highway which is maintained by the State of Delaware. Access approval will be required from DelDot. There is one single family detached dwelling located on the property.

**DRAINAGE**

Storm water management on the parcel will be controlled by the Kent County Soil Conservation District at the developer's expense.

**ZONING**

The area proposed to be annexed is currently zoned AC in Kent County under the Kent County Zoning Ordinance. The application requests the property to be zoned R-3 Moderate Density Residential under the City of Milford's Zoning Ordinance. Proposed development is a residential community with 768 residential units.

**SEWER**

The area proposed to be annexed would be connected to the City of Milford's sewer system and then be treated at the Kent County Regional Sewer Authority. All costs for utility extensions to this property shall be completed at the expense of the developer and upon completion, the utility lines transferred to the City for incorporation into the City's wastewater system. Wastewater capacity cannot be guaranteed until a final site plan has been approved by City Council, building permits issued, and the scheduled impact fees are remitted to the City.

**WATER**

The area proposed to be annexed would be connected to the City of Milford's water system. All costs for utility extensions to this property shall be completed at the expense of the developer and upon completion, the utility lines transferred to the City for incorporation into the City's water system. Water capacity cannot be guaranteed until a final site plan/subdivision has been approved by City Council, building permits issued, and the scheduled impact fees are remitted to the City.

**ELECTRIC**

The Electric Department has 3 phase electric currently running down RT 14. It would make it easier to get to the development beside the BAC plant on Holly Hill Rd if we could get an easement.

**TRAFFIC**

The Department of Transportation may require a traffic impact study and entrance permits for project. The developer will pay the related costs.

**ENVIRONMENTAL ISSUES**

*The U.S. Army Corp of Engineers will control provisions under Section 404 of wetlands on the parcel. The applicant has not determined if wetlands are on the property at this time, however according to maps in the 2008 Comprehensive Plan there are wetlands shown on this site. This parcel is located in an excellent and good recharge area. The southern third of property is located in an excellent recharge area and the northern part of the parcel is in a good recharge area. The developer will have to comply with the Excellent Recharge Area Ordinance of the City of Milford and conform to the provisions of this ordinance. According to Map 3A Natural Features, of the 2008 City of Milford Comprehensive Plan, this property is not located in a Well Head Protection Area.*

#### **AREA LAND USES**

*The area proposed to be annexed is located on the south side of the Milford-Harrington Highway or Route 14. Lands to the north are located in the City of Milford, undeveloped, and zoned R-3 with a PUD designation. Lands to the west and east are out of the City's limits with scattered single family home sites on parcels of land and are zoned AC under the Kent County Zoning Ordinance.*

#### **FIRE AND POLICE**

*The Carlisle Fire Company, Inc currently provides and would continue to provide fire protection. Police protection is primarily provided by the Delaware State Police with assistance from the Milford Police Department. Upon annexation, primary police service would be provided by the City of Milford Police Department. The Carlisle Fire Company would provide ambulance service. The State Fire Marshall's Office would regulate construction issues relating to fire protection*

#### **COMPREHENSIVE LAND USE PLAN**

*The City of Milford's Comprehensive Plan identifies this section as the Neighborhood- North. The property is recommended in the Comprehensive Plan as Moderate Density Residential or R-3.*

#### **PROPERTY TAXES AND OTHER ECONOMIC CONSIDERATIONS**

*According to John Darsney, Land Management Data Manager for the City of Milford, there are no farmland assessments or preservation districts on the parcels under consideration. The site as surveyed, 72 acres at the requested R-3 zoning district, with no subdivision approval, would have an assessment estimate of \$600,000, with an annual tax liability of \$2,760. It is anticipated that the property taxes, after development, will increase on this property and the City would benefit from the revenues received from building permits and real estate transfer taxes. Construction costs as well as user service fees cannot be determined at this time, as the applicant has not proposed a project to assess.*

#### **ADVANTAGES TO THE CITY**

- 1. The property would be within the planning area of the City of Milford.*
- 2. The City would receive revenues (property tax, real estate transfer tax, building permits, etc.) for activity on the property.*
- 3. Potential for additional water, sewer, and electric customers.*
- 4. Identified within the Urban Growth Boundary Area of the 2008 Comprehensive Plan.*
- 5. Increases the amount of development opportunities within the City limits, which have the potential to spur other economic benefits to the City.*

#### **DISADVANTAGES TO THE CITY**

- 1. Concerned about the increase in population and the demand for additional services with possible increase in the cost of services for this annexation.*
- 2. Cost associated with the maintenance of expanded infrastructure.*
- 3. Unknown impact on the neighboring properties and infrastructure.*

#### **RECOMMENDATION**

*Based on the issues and comments discussed in this report, the Annexation Committee of the City of Milford recommends approval/disapproval of the application, with the following comments:*

Chairman Rini then presented an oral report on behalf of City Planner Norris. He advised that access approval will be required by DelDOT. The petitioner is proposing a residential community with an R-3 zoning with a maximum residential density of ten units per acre which calculates upward of 768 residential units.

The proposed area to be annexed will be connected to the City of Milford sewer system with treatment through the Kent County Regional Facility. Water will be provided by the City of Milford. In order to provide electric, the electric superintendent recommends an easement from Holly Hill Road to serve the development.

DelDOT may require a Traffic Impact Study and entrance permits for the project.

The southern third of the property is located in an excellent recharge area; the northern part of the parcel is in a good recharge area. The developer will need to comply with the section of the Zoning Ordinance of the City of Milford that addresses groundwater recharge areas. According to Map 3-A, the Natural Features Map in the city's comprehensive plan, this property is not located in a well head protection area.

The site will be served by Carlisle Fire Department. Currently served by the Delaware State Police, police protection will be solely provided by Milford Police Department.

Mr. Rini then read the advantages into record adding there are no disadvantages.

It was confirmed that R-1 is a single family district and R-2 permits housing at a greater density than the R-1 by providing low to medium-density housing.

Mr. Pikus asked why R-3 is being referred to as moderate density. He said his understanding was that R-1 was low density, R-2 was moderate and R-3 should be considered high density.

Mr. Morrow asked if an R-3 with a PUD would be considered high density emphasizing that would require conditional use approval.

That matter was deferred to be later clarified by the city planner.

Phil Tolliver with Morris and Richie Associates spoke on behalf of the application reporting his firm is representing the fee simple owner and the equitable owner. He explained the fee simple owner of record is Walter Thomas II; the equitable owner is Eric Dunn or Hickory Glen Holdings LLC. Mr. Dunn does not legally own the property but plans it purchase in the very near future.

Mr. Tolliver explained the property is in the 2008 Comprehensive Plan and has been identified as an immediate annexation parcel. That package was reviewed by State Planning Director Connie Holland and her staff after which the plan was certified. As a result, the request is consistent with the comprehensive plan which called for a moderate density property to be zoned R-3. He feels this is consistent with the zoning on the southern property, known as the Amberwood Project, which they also engineered. He referenced another property across the road, known as the Fry Farm, also zoned R-3.

The engineer advised the property is comprised of 71.92 acres based on an actual boundary survey they conducted.

He further explained that approximately six months ago, a minor subdivision was done that created a smaller parcel within the large parent parcel which is the reason for the two parcel numbers. He said the objective is to develop the property in accordance with the zoning code and R-3 designation. The zoning code specifies an allowable density based on the use; an apartment project, the code allows up to 16 units per acre, a townhouse project 10 units per acre and a single family project would permit 4 units per acre or something similar.

He then questioned Mr. Norris' report which indicated the proposed zoning has a maximum residential density of 10 units per acre. Mr. Tolliver pointed out the R-3 permits up to 16 units per acre. He believes that may be the proposed density of 768 units divided by 71.92 acres. Mr. Pikus answered that would be slightly less than 11 units but more than 10.

Mr. Rini advised the city planner's report specifically states an R-3 zone with a maximum residential density of 10 units per acre. He agreed that may have been based on the application that was submitted. Mr. Tolliver stated they submitted the application for a proposed 768 units. He added that other factors, including open space and similar areas, cannot be

developed.

Ms. Wilson prefers to have clarification from our city planner. Mr. Tolliver then confirmed it specifically works out to 10.68 units. He said this would be a multi-phase project and annexation is only the infantile stage of the process. Once this is completed, the preliminary plan, site plan, etc. will follow.

Mr. Tolliver said there was a reference in the report about a Phase 3 electric easement which would help the city to run electric to this property and provide service to the Amberwood project.

Chairman Rini confirmed that Mr. Norris was referencing the Baltimore Air Coil site which is across the road from this property noting an easement would permit power to other side.

Mr. Pikus pointed out the Fry property, across the street from this site, was proposed for 1,227 houses. The Forest property to the southeast was proposed for 216 units. He then verified there is a sales agreement on this property.

Mr. Pikus pointed out there are approximately 6,000 units in Milford that received approval for development that are sitting idle. Therefore, he is skeptical about the R-3 zoning.

Mr. Tolliver explained that if the land does not receive the R-3 zone, the prospective land purchaser would back out of the agreement. He said one reason he was asking for the R-3 zone is because it was consistent with the comprehensive plan. He emphasized that the comp plan was approved by city council and the state. It is also consistent with the zoning of the Forest property to the south and the Fry farm to the north. He believes that a lower density at this site would not make sense when it was surrounded by R-3 zoning.

He then addressed the second issue brought up by Mr. Pikus and whether there was a need for more R-3 in the city. Mr. Tolliver referred to another client with an apartment project in Georgetown. Construction for two buildings with 180 plus units started approximated eight months ago and 143 have already been pre-leased. There has been no advertising except for a billboard in front of the site. When asked where the renters are coming from, the developer indicated that about 40% are coming from the Milford area. He confirmed the apartments are market rate.

Mr. Tolliver explained that following that conversation, he started looking around the area for apartment sites noting there are not a lot of available apartments in Milford. He is unaware of any with a clubhouse, pool or tennis courts. He did see a number of older apartment complexes that appear to be fully booked. He added they called everyone within a five-mile radius. Mr. Dunn saw this property and took into consideration the people moving from Milford to rent in Georgetown.

When asked if this will involve rental properties or units that could be purchased, Mr. Tolliver said they do not know for sure right now it appears they will be rentals. However, it could end up being a mix of townhouses and apartments. The objective is to get an R-3 zone and without that, it will not work.

He agrees that 768 appears to be a large number and it will most likely be developed in phases. That would allow them to test the market to see if it works. If the market does not respond, they could come back and re-engineer to townhouses or singles.

Mr. Tolliver said to make this work, the property must be purchased at the right price. A lot of the vacant parcels Mr. Pikus is referring to were bought at the wrong time. He said this will allow the construction costs and rents to be lower which would make the project go forward.

It was confirmed that property owners within 200 feet of the applicant property will be notified of the Planning Commission and City Council Public Hearings.

Ms. Wilson announced that confirmation was received from the city planner the R-3 zoning does permit up to 16 units per acre.

Ms. Wilson then pointed out that for thirty years, Milford had very little growth. She is familiar with many individuals who have moved or want to move to Milford and have found housing a major issue at every level. She remembers when several developers wanted to come to Milford and build and council saw that as an opportunity. They began annexing property and all of a sudden, Milford was growing. Now in 2009 and 2010, the economy has hit rock bottom and many of the plans for those projects have fallen apart. This could be the chance to turn things around. As a member of this committee for a number of years, she has reviewed each of these petitions to ensure they were appropriate, benefitted the area, met the criteria for zoning and if everything fit, the committee would recommend proceeding with the annexation.

Mrs. Wilson said that based on the zoning of the surrounding properties and the location of the site in relation to city lands, the committee should recommend this property be annexed into the City of Milford with an R-3 zone.

Mr. Morrow added that this is the first annexation committee meeting in several months and he hopes it is a positive sign there is some new interest in the market. In addition, accepting this property into the city will increase our tax revenues which will benefit all our property owners. He is firm believer of free enterprise and though many developments have been approved, the one that is organized and ready to proceed is the one that should succeed. In addition, the request complies with the current comprehensive plan which means it fits into the city's future growth plans.

Mr. Rini also emphasized that in addition to complying with the comprehensive plan, he is a firm believer that a development this close to the city should be annexed to allow the city to have control over the land versus it being in the unincorporated area and the county having control.

Mr. Tolliver added that the developer did discuss a possible PUD in the county. He said they could petition the county which would be permitted by the Kent County Code as long as it was within 1,000 feet of a municipality or the growth zone of the county so that public sewer could be provided. He feels if that happened, Artesian or Tidewater would be extremely happy to have the franchise rights for service to this property. He emphasized that they prefer dealing with the City of Milford. He said if a project is built, the City of Milford Police Department will respond to any complaints because it is so close. All of the city services would be there so it makes no sense to let the county get the benefit of the connect and impact fees instead of the city.

Ms. Wilson advised that public comment will be provided at the Planning Commission Meeting on August 17, 2010 at 7:00 p.m. A second public hearing will be scheduled before City Council on September 27, 2010.

Mr. Morrow then moved to recommend council proceed to approve the annexation of the Walter N. Thomas II properties with an R-3 zone. Mr. Rini seconded motion.

Motion carried by the following 3-1 vote:

Yes-Morrow, Rini, Wilson

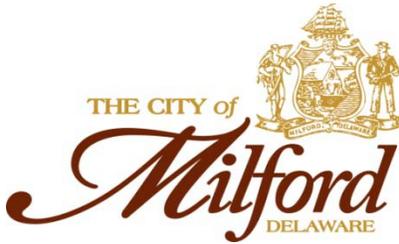
No-Pikus

Mr. Pikus is voting no to the zoning and prefers it come in with an R-1 or R-2 based on his knowledge of the real estate in that area. He said there is more R-3 planned than the city is capable of handling in the next thirty years. He is pro-growth and pro-economic growth adding we need lots of businesses and lots of companies to come to town. Companies do bring with them requests for housing. He said Milford is working hard to get business to come here to bring new jobs. We currently have 6,000 units zoned residential. He pointed out if those 6,000 units are filled, this community will truly become a city. At this point, he has a problem with the R-3. He has also talked with seven of the neighboring property owners. Most have no problem with the annexation, but do have a problem with the density. An R-1 or R-2 would allow larger lots and nicer homes adding there are many apartment complexes and condos planned though very few quarter or half-acre lots.

With no further business, Ms. Wilson adjourned the Committee Meeting at 7:42 p.m.

Respectfully submitted,

Terri K. Hudson, CMC  
City Clerk



TO: Mayor Ronnie Rogers & City of Milford Council Members  
 FR: Annexation Committee  
 DA: 07/19/10  
 RE: Annexation Committee Report

A public meeting was held in Council Chambers on July 19, 2010 to consider the annexation request for lands described as:

Property Owner:	Phillip Tolliver of Morris and Ritchie Associates on behalf of Walter N. Thomas II
Location:	The south side of Milford Harrington Highway near the intersection of Canterbury Road/Holly Hill Road and Milford Harrington Highway.
Size:	72 +/- Acres
Existing Zoning:	AC: Agricultural Conservation
Proposed Zoning:	R-3, with a maximum of 768 units
Tax Map and Parcel Number:	MD-00-173.00-01-62.00, MD-00-173.00-01-62.02

**APPLICANT**

An application by Phillip Tolliver of Morris and Ritchie Associates on behalf of Walter N. Thomas II for the annexation of 71.92 acres into the corporate limits of the City of Milford.

**LOCATION**

The property is identified as Kent County tax parcels MD-00-173.00-01-62.00 and MD-00-173.00-01-62.02 and would be located in the Fourth Ward of the City of Milford.

**STREETS**

The property fronts the Milford-Harrington Highway which is maintained by the State of Delaware. Access approval will be required from DelDot. There is one single family detached dwelling located on the property.

**DRAINAGE**

Storm water management on the parcel will be controlled by the Kent County Soil Conservation District at the developer's expense.

**ZONING**

The area proposed to be annexed is currently zoned AC in Kent County under the Kent County Zoning Ordinance. The application requests the property to be zoned R-3 Moderate Density Residential under the City of Milford's Zoning Ordinance. Proposed development is a residential community with 768 residential units.

## **SEWER**

The area proposed to be annexed would be connected to the City of Milford's sewer system and then be treated at the Kent County Regional Sewer Authority. All costs for utility extensions to this property shall be completed at the expense of the developer and upon completion, the utility lines transferred to the City for incorporation into the City's wastewater system. Wastewater capacity cannot be guaranteed until a final site plan has been approved by City Council, building permits issued, and the scheduled impact fees are remitted to the City.

## **WATER**

The area proposed to be annexed would be connected to the City of Milford's water system. All costs for utility extensions to this property shall be completed at the expense of the developer and upon completion, the utility lines transferred to the City for incorporation into the City's water system. Water capacity cannot be guaranteed until a final site plan/subdivision has been approved by City Council, building permits issued, and the scheduled impact fees are remitted to the City.

## **ELECTRIC**

The Electric Department has 3 phase electric currently running down RT 14. It would make it easier to get to the development beside the BAC plant on Holly Hill Rd if we could get an easement.

## **TRAFFIC**

The Department of Transportation may require a traffic impact study and entrance permits for project. The developer will pay the related costs.

## **ENVIRONMENTAL ISSUES**

The U.S. Army Corp of Engineers will control provisions under Section 404 of wetlands on the parcel. The applicant has not determined if wetlands are on the property at this time, however according to maps in the 2008 Comprehensive Plan there are wetlands shown on this site. This parcel is located in an excellent and good recharge area. The southern third of property is located in an excellent recharge area and the northern part of the parcel is in a good recharge area. The developer will have to comply with the Excellent Recharge Area Ordinance of the City of Milford and conform to the provisions of this ordinance. According to Map 3A Natural Features, of the 2008 City of Milford Comprehensive Plan, this property is not located in a Well Head Protection Area.

## **AREA LAND USES**

The area proposed to be annexed is located on the south side of the Milford-Harrington Highway or Route 14. Lands to the north are located in the City of Milford, undeveloped, and zoned R-3 with a PUD designation. Lands to the west and east are out of the City's limits with scattered single family home sites on parcels of land and are zoned AC under the Kent County Zoning Ordinance.

## **FIRE AND POLICE**

The Carlisle Fire Company, Inc currently provides and would continue to provide fire protection. Police protection is primarily provided by the Delaware State Police with assistance from the Milford Police Department. Upon annexation, primary police service would be provided by the City of Milford Police Department. The Carlisle Fire Company would provide ambulance service. The State Fire Marshall's Office would regulate construction issues relating to fire protection

## **COMPREHENSIVE LAND USE PLAN**

The City of Milford's Comprehensive Plan identifies this section as the Neighborhood- North. The property is recommended in the Comprehensive Plan as Moderate Density Residential or R-3.

## **PROPERTY TAXES AND OTHER ECONOMIC CONSIDERATIONS**

According to John Darsney, Land Management Data Manager for the City of Milford, there are no farmland assessments or preservation districts on the parcels under consideration. The site as surveyed, 72 acres at the requested R-3 zoning district, with no subdivision approval, would have an assessment estimate of \$600,000, with an

annual tax liability of \$2,760. It is anticipated that the property taxes, after development, will increase on this property and the City would benefit from the revenues received from building permits and real estate transfer taxes. Construction costs as well as user service fees cannot be determined at this time, as the applicant has not proposed a project to assess.

**ADVANTAGES TO THE CITY**

1. The property would be within the planning area of the City of Milford.
2. The City would receive revenues (property tax, real estate transfer tax, building permits, etc.) for activity on the property.
3. Potential for additional water, sewer, and electric customers.
4. Identified within the Urban Growth Boundary Area of the 2008 Comprehensive Plan.
5. Increases the amount of development opportunities within the City limits, which have the potential to spur other economic benefits to the City.

**DISADVANTAGES TO THE CITY**

1. None.

**RECOMMENDATION**

Based on the issues and comments discussed in this report, the Annexation Committee of the City of Milford recommends approval of the application, following a 3-1 vote, with the following comments:

1. Annexation is consistent with the “Comprehensive Land Use Plan”.
2. Property is contiguous to existing City Limits.
3. Any changes to the property are subject to review by the City of Milford Planning Commission and/or City Council.
4. Property will be served by City Electric, Sewer, and Water. At present, these utilities are not available to the site.
5. An executed Annexation Agreement is required prior to final City Council approval.
6. Upon Council approval, a Municipal Annexation Plan of Services will be submitted to the Office of State Planning for their approval.

The property should be annexed with the following zoning classification: R-3 with a maximum of 768 units.

\_\_\_\_\_  
Council Representative/Committee Chairman Katrina Wilson

\_\_\_\_\_  
Date

\_\_\_\_\_  
Council Representative Douglas Morrow

\_\_\_\_\_  
Date

\_\_\_\_\_  
Council Representative S. Allen Pikus

\_\_\_\_\_  
Date

\_\_\_\_\_  
Planning Commission Chairman Charles Rini

\_\_\_\_\_  
Date

# CITY OF MILFORD

## PLANNING COMMISSION MEMBERS

---

Charles M. Rini, Chairman  
119 Ginger Lane  
Milford, DE 19963  
Appointed: 07/07  
Term Expiration: 08/31/11

Kim S. Hoey-Stevenson, Vice Chair  
509 S Walnut Street  
Milford, DE 19963  
Appointed: 10/05  
Term Expiration: 08/31/11

James F. Burk, Secretary  
129 School Place  
Milford, DE 19963  
Appointed: 11/08  
Term Expiration: 08/31/12

Dirk G. Gleysteen  
426 S Walnut Street  
Milford, DE 19963  
Appointed: 05/07  
Term Expiration: 08/31/10

Karen K. McColley  
416 NE Tenth Street  
Milford, DE 19963  
Appointed: 02/08  
Term Expiration: 08/31/10

Marvin C. Sharp  
844 NE Front Street  
Milford, DE 19963  
Appointed: 09/08  
Term Expiration: 08/31/12

Archie J. Campbell  
6 Little Pond Drive  
Milford, DE 19963  
Appointed: 10/09  
Term Expiration: 08/31/10

George R. Pilla  
238 S Landing Drive  
Milford, DE 19963  
Appointed: 10/09  
Term Expiration: 08/31/11

VACANT  
Appointed:  
Term Expiration: 08/31/12

Gary Norris  
City Planner

Christine Crouch  
Recording Secretary/Department Administrative Assistant

*All correspondence is to be mailed to:*

*Planning Commission  
c/o Planning Department  
201 S Walnut Street  
Milford, DE 19963*

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## CITY OF MILFORD MEMORANDUM

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**TO:** Mayor & City Council  
**FROM:** David W. Baird, City Manager  
**SUBJECT:** Election Ward Redistricting  
**DATE:** August 5, 2010

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Attached you will find four options for consideration by City Council to address the error that was discovered during the Charter review process. The options are:

**Option 1**

Make no changes and address the redistricting following the release of detailed 2010 census data.

**Option 2**

Correct the issue of contiguity and the Meadows at Shawnee, McColley, Dugan, Isaacs, and Mills property are moved from Ward 3 into Ward 1.

**Option 3**

Revise the wards as shown or in another manner that balances out the number of registered voters in each ward. Under the scenario shown, Wards 1,2 and 4 are balanced while Ward 3 is approximately 20% larger. I recommend a variation of this option.

**Option 4**

This option is based upon the number of parcels in each ward and is not a good representation of population. I recommend this be eliminated from consideration.

**Process for the modification of ward boundaries**

The following is an excerpt from Section 2.07 of the City's Charter as it relates to the procedure and enactment of the modification of ward boundaries:

(d) Procedure. The procedure for the Council's consideration of the report shall be the same as for other ordinances, provided that the summary, including both the map and descriptions of the recommended districts, must be published in two newspapers of general circulation in the City of Milford, no less than one month prior to its adoption.

(e) The Commission may, but is not required to, establish five Wards instead of four, with two Councilpersons to be elected from each Ward.

(f) Enact Ordinance. The Council shall adopt the ordinance at least six months (October 23, 2010) before the next regular City election. (April 23, 2011)

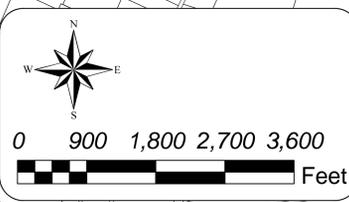
(g) Effect of Enactment. The new Council districts and boundaries, as of the date of enactment, shall supersede previous Council districts and boundaries for all the purposes of the next regular City election, including nominations. The new districts and boundaries shall supersede previous districts and boundaries for all other purposes as of the date on which all Councilpersons elected at the regular City election take office.

**Ward #4**  
**447 Voters**

**Ward #3**  
**554 Voters**

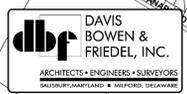
**Ward #2**  
**561 Voters**

**Ward #1**  
**819 Voters**



**City of Milford**

**Existing Wards**

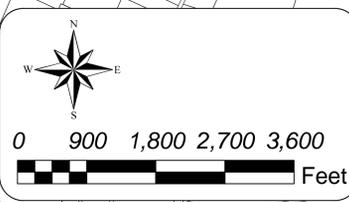


**Ward #4**  
**447 Voters**

**Ward #3**  
**378 Voters**

**Ward #2**  
**561 Voters**

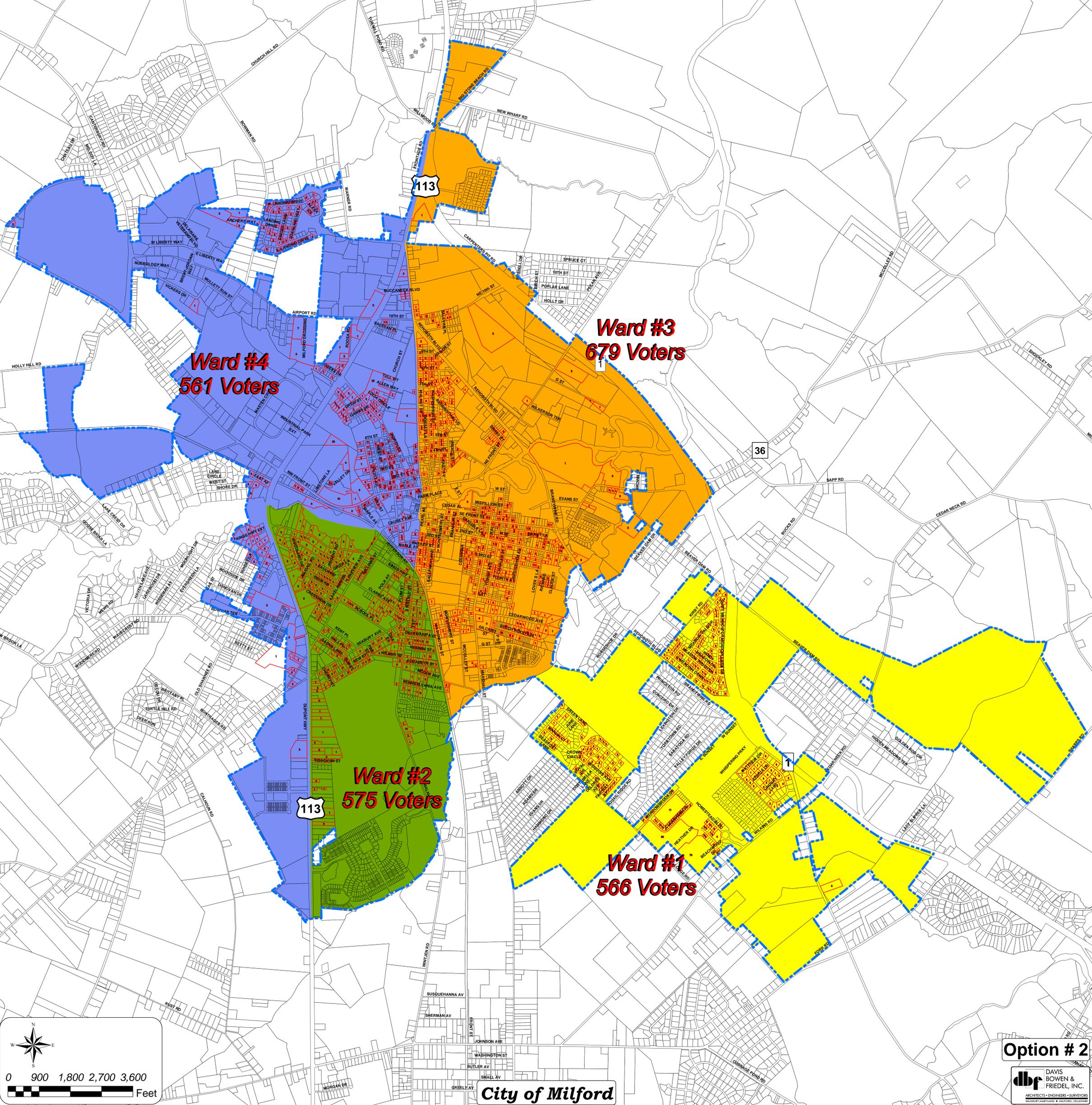
**Ward #1**  
**995 Voters**



**City of Milford**

**Option # 1**

**DAVIS BOWEN & FRIEDEL, INC.**  
ARCHITECTS • ENGINEERS • SURVEYORS  
Baltimore, Maryland • Milford, Delaware

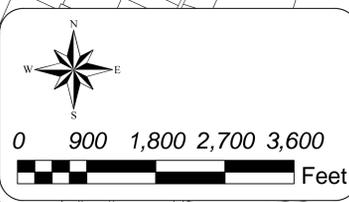


**Ward #4**  
**561 Voters**

**Ward #3**  
**679 Voters**

**Ward #2**  
**575 Voters**

**Ward #1**  
**566 Voters**



**City of Milford**

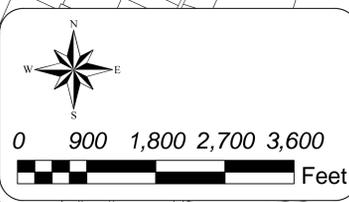
**Option # 2**  
dbp DAVIS BOWEN & FRIEDEL, INC.  
ARCHITECTS • ENGINEERS • SURVEYORS  
BALTIMORE, MARYLAND • MILFORD, DELAWARE

**Ward #4**  
**1591 Parcels**

**Ward #3**  
**1964 Parcels**

**Ward #2**  
**1176 Parcels**

**Ward #1**  
**816 Parcels**



**City of Milford**

**Option #3**

**dbf** DAVIS BOWEN & FRIEDEL, INC.  
ARCHITECTS • ENGINEERS • SURVEYORS  
Baltimore, Maryland • Milford, Delaware

# FINAL MAJOR SUBDIVISION PLAN

## and CONSTRUCTION PLANS for PHASE I of HEARTHSTONE MANOR II PARCEL ID #03-30-15-22.00 ELKS LODGE RD. (ROAD 211) & MARSHALL ST. (ROAD 225) CITY OF MILFORD, SUSSEX COUNTY, DELAWARE

### Plan Data:

- OWNER OF RECORD: ELMER G. & MARY ANN FANNIN  
14701 HIGHWAY ONE  
MILTON, DELAWARE 19968
- EQUITABLE OWNER/DEVELOPER: ELMER G. & MARY ANN FANNIN  
14701 HIGHWAY ONE  
MILTON, DELAWARE 19968
- ENGINEER: KEY ENGINEERS, INC.  
600 N.E. FRONT STREET EXT., SUITE 1  
MILFORD, DELAWARE 19963  
(302) 422-4926
- LAND SURVEYOR: DAVIS, BOWEN, & FRIEDEL, INC.  
23 NORTH WALNUT STREET  
MILFORD, DELAWARE 19963  
(302) 424-1441
- TAX PARCEL: MAP #3-30-15-22.00
- AREA OF SITE: 121.00 ACRES, ± (PHASE 1 = 36.22 AC.)
- DEED SUMMARY: DEED BOOK 2333, PAGE 218  
PLOT BOOK 80, PAGE 305
- EXISTING ZONING: R-2 & R-3, RESIDENTIAL
- PROPOSED ZONING: PLANNED UNIT RESIDENTIAL DEVELOPMENT (PUD)
- EXISTING USE: AGRICULTURAL
- PROPOSED USE: RESIDENTIAL (SINGLE- & MULTI-FAMILY DEVELOPMENT)
- SURVEY BENCHMARK: U.S.G.S. MONUMENT  
N: 332,985,7281  
E: 660,643,0044  
Z: 36.06  
VERTICAL: NGVD 1929  
HORIZONTAL: NAD 1983
- FLOOD ZONE: PER COMMUNITY PANEL 10005C0043J, THIS SITE IS LOCATED IN ZONE X (UNSHADED), AN AREA DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOOD.

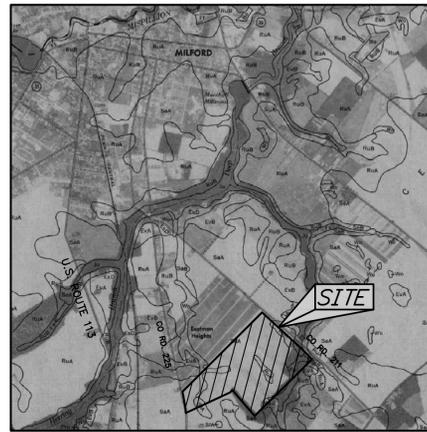
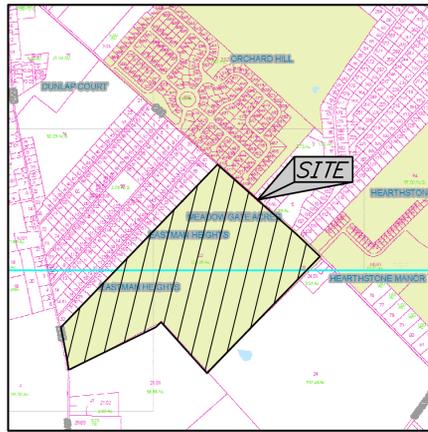
### Area & Bulk Requirements

EXISTING ZONING - R-2 & R-3, RESIDENTIAL, CITY OF MILFORD  
\*SUBDIVISION DESIGNED AS A PLANNED UNIT RESIDENTIAL DEVELOPMENT

	REQUIRED	PROPOSED
MINIMUM LOT SIZE:	4,000 S.F.	7,500 S.F. MIN.
MINIMUM LOT WIDTH:	40 FEET	75 FEET MIN.
MINIMUM LOT DEPTH:	100 FEET	100 FEET MIN.
MINIMUM FRONT YARD SETBACK:	30 FEET	30 FEET
MINIMUM SIDE YARD SETBACK:	8 FEET	8 FEET
MINIMUM REAR YARD SETBACK:	25 FEET	25 FEET
MAXIMUM IMPERVIOUS COVERAGE:	35 PERCENT	<35 PERCENT
MAXIMUM BUILDING HEIGHT:	48 FEET (4 STORIES MAX.)	<48 FEET, 4 STORIES MAX.

### General Notes:

- ALL PARCEL DESIGNATIONS SHOWN REFER TO THE OFFICIAL TAX MAP OF THE COUNTY OF SUSSEX.
- OUTBOUND INFORMATION OBTAINED FROM A BOUNDARY SURVEY OF THE LANDS OF L.P. ISAACS FAMILY LIMITED PARTNERSHIP, PREPARED BY DAVIS, BOWEN, & FRIEDEL, INC., DATED MARCH 2003, AND ON FILE WITH THE SUSSEX COUNTY RECORDER OF DEEDS AS PLOT BOOK 80, PAGE 305.
- TOPOGRAPHIC INFORMATION OBTAINED FROM FIELD WORK PERFORMED BY THE DESIGN CONSULTANTS GROUP, L.L.C. TOPOGRAPHY CONFIRMED AND ADDITIONAL FIELD LOCATIONS PERFORMED UNDER THE SUPERVISION OF KEY ENGINEERS, INC.
- PLAN BEARING DATUM IS ASSUMED & REFERS TO DEED BOOK 2333, PAGE 218. HORIZONTAL COORDINATES ARE GIVEN TO CONVERT DATUM TO THE NORTH AMERICAN DATUM OF 1983 (NAD83). VERTICAL CONTROL IS BASED ON THE NATIONAL GEODETIC VERTICAL DATUM OF 1929 (NGVD29). COORDINATES SHOWN DETERMINED IN THE FIELD THROUGH THE USE OF GPS INSTRUMENTS.
- WETLANDS DELINEATION PERFORMED BY ENVIRONMENTAL CONSULTING SERVICES, INC., ON NOVEMBER 20, 2002, & VERIFIED IN NOVEMBER 2005. REQUEST FOR DEPARTMENT OF THE ARMY JURISDICTIONAL DETERMINATION SUBMITTED ON NOVEMBER 10, 2005.
- TO THE BEST OF OUR KNOWLEDGE, NO PROTECTIVE COVENANTS OR DEED RESTRICTIONS EXIST FOR THIS PARCEL.
- SUBDIVISION STREETS CONSTRUCTED WITHIN THE LIMITS OF THE RIGHT OF WAY ARE HEREBY DEDICATED TO PUBLIC USE, AND ARE TO BE MAINTAINED BY THE CITY OF MILFORD FOLLOWING THE COMPLETION OF THE STREETS BY THE DEVELOPER TO THE SATISFACTION OF THE CITY. THE CITY ASSUMES NO MAINTENANCE RESPONSIBILITIES WITHIN THE DEDICATED STREET RIGHT OF WAY UNTIL THE STREETS HAVE BEEN ACCEPTED BY THE CITY.



**Regional Map**  
Taken from the Sussex County, DE Online Maps, Sheets 11 & 15  
Scale: 1"=1,200'

**Soils Map**  
Taken from the Sussex County (Delaware) Soils Survey, by U.S.D.A Plate 3  
Scale: 1"=2,500'

**U.S.G.S. Map**  
Taken from the United States Geological Survey (U.S.G.S.) Milford Quadrangle  
Scale: 1"=2,000'

**Key Map**  
Taken from Yahoo! Maps  
Scale: 1"=0.5 miles

### Legend

---	Property Line
---	Center Line
---	Building Setback Line
---	Soil Group
---	Wetlands Line
---	Fence Line
---	Existing San. Sewer Main
---	Proposed San. Sewer Main
---	Existing Storm Sewer
---	Proposed Storm Sewer
---	Existing Water Main
---	Proposed Sewer Main
---	Existing Woods Line
---	Proposed Woods Line
---	Phase Line
---	Existing Contour Line
---	Proposed Contour
---	Existing Spot Elevation
---	Proposed Spot Elevation
---	Silt Fence
---	Limits of Disturbance
---	Time of Concentration
---	Utility Pole w/ Guy Wire
---	Light Pole
---	Parking Space Count
---	Proposed Eight-Inch Water Main
---	Proposed Ten-Inch Water Main
---	Proposed Water Valve

### Overall Subdivision Density Calculations

Zone	Gross Site Area	Wetland Area	Area Reserved for Commercial Development	Gross Development Area	Net Development Area	Minimum Lot Area	Permitted DU/Acre	Permitted DU	DU/Acre (GDA)	DU/Acre (NDA)	Open Space
R-2	70.50 Acres	0.00 Acres	4.10 Acres	66.40 Acres	49.80 Acres (75% of GDA)	4,000 S.F.	N/A	542 Units	10.87 Units/Acre	8.16 Units/Acre	No Requirement
R-3	50.50 Acres	3.53 Acres	0.00 Acres	46.97 Acres	35.23 Acres (75% of GDA)	N/A	16 Units/Acre	563 Units	11.98 Units/Acre	15.98 Units/Acre	49.7%

### Phase I Data:

- Proposed Single Family Residential Lots: 40  
Proposed Condominium Units: 176  
Proposed Villa Units: 24  
Total Proposed Units: 240
- Parking Requirements:  
2.5 Spaces/Unit Required (176 Condominiums x 2.5 = 440 Spaces)  
2.2 Spaces/Unit Per Preliminary Subdivision Approval  
(176 Condominiums x 2.2 = 392 Spaces)  
2.3 Spaces/Unit Provided
- Sidewalks shown as approved for Phase I only.

### Utility Companies:

- Electric:** City of Milford Electric Department  
201 South Walnut Street  
Milford, DE, 19963  
Contact person: Mr. Richard Carmean,  
Superintendent - (302) 422-1110 x 137  
Version (800) 942-5000
- Telephone:** Chesapeake Utilities Corporation  
350 South Queen Street  
Dover, DE 19904  
(800) 422-2883
- Water/Sewer:** City of Milford Water and Sewer Department  
201 South Walnut Street  
Milford, DE, 19963  
Contact person: Mr. Steve Ellingsworth,  
Administrator (302) 442-1103 x 107  
Contact person: Mr. Robert Moore,  
Supervisor (302) 442-1103 x 106
- Cable:** Comcast Cablevision of Delmarva  
426 N Dupont Hwy Apt A  
Georgetown, DE 19947  
(302) 655-9602

### Declaration of Easements, Covenants, and Restrictions

WITH RESPECT TO LOTS, ALL INTERIOR SIDE LOT LINES ARE HEREBY RESERVED FOR THE CENTER LINE OF A TEN (10) FOOT WIDE DRAINAGE AND/OR UTILITY EASEMENT, FOR DECLARANT, ITS SUCCESSORS AND ASSIGNS. IN ADDITION, PERIMETER SIDE LOT LINES HAVE THE SAME TEN (10) FOOT RESERVED EASEMENT FROM AND WITHIN THE LOT BOUNDARY LINES. IN ADDITION, A TEN (10) FOOT WIDE DRAINAGE AND/OR UTILITY EASEMENT IS HEREBY RESERVED FROM AND WITHIN THE LOT BOUNDARY LINES OF ALL LOTS, ADJACENT TO ANY STREET. IN ADDITION, A TEN (10) FOOT WIDE DRAINAGE AND/OR UTILITY EASEMENT IS HEREBY RESERVED FROM AND WITHIN THE REAR BOUNDARY LINE OF ALL LOTS. NO LANDSCAPING OR STRUCTURES SHALL BE PERMITTED IN ANY OF THE RESERVED EASEMENT AREAS. A BLANKET EASEMENT OVER ALL PORTIONS OF SUCH PROPERTY UPON WHICH THE RESERVAGE IS LOCATED IS HEREBY RESERVED FOR THE DEVELOPER, ITS SUCCESSORS AND ASSIGNS, FOR THE LOCATION OF DRAINAGE ELEMENTS AND UTILITIES, WHENEVER POSSIBLE AND ECONOMICALLY PRACTICABLE, SUCH DRAINAGE ELEMENTS AND/OR UTILITIES WILL BE LOCATED WITHIN THE RESERVED EASEMENT AREAS IN SUCH A MANNER AS TO MINIMIZE INTERFERENCE WITH THE REASONABLE ENJOYMENT THEREOF.

### Owner's Certification:

I, ELMER G. FANNIN, HEREBY CERTIFY THAT I AM THE OWNER OF THE PROPERTY DESCRIBED AND SHOWN ON THIS PLAN, THAT THE PLAN WAS MADE AT MY DIRECTION, THAT I ACKNOWLEDGE THE SAME TO BE MY ACT, AND DESIRE THE PLAN TO BE DEVELOPED AS SHOWN IN ACCORDANCE WITH ALL APPLICABLE LAWS AND REGULATIONS.

### Engineer's Certification:

I, GREGORY B. FUSCO, HEREBY CERTIFY THAT THIS PLAN HAS BEEN PREPARED UNDER MY SUPERVISION AND TO THE BEST OF MY KNOWLEDGE COMPLIES WITH THE APPLICABLE ORDINANCES OF THE CITY OF MILFORD AND LAWS OF THE STATE OF DELAWARE.

GREGORY B. FUSCO, PROFESSIONAL ENGINEER NO. 13754  
KEY ENGINEERS, INC.  
600 N.E. FRONT STREET, SUITE 1  
MILFORD, DE 19963 - (302)-422-4926

REPRODUCTION, ALTERATION AND AMENDMENT OF THIS PLAN SHALL BE PERMITTED ONLY BY KEY ENGINEERS, INC. AND SHALL BE PERFORMED UNDER THE ABSOLUTE DIRECTION OF THE LICENSED PROFESSIONAL WHOSE NAME AND SIGNATURE APPEARS HEREON.

THESE PLANS HAVE BEEN ENDORSED FOR THE PLANNING REVIEW PROCESS ONLY AND HAVE NOT BEEN REVIEWED OR APPROVED FOR CONSTRUCTION AT THIS TIME. THESE PLANS ARE SUBJECT TO REVISIONS AND MODIFICATIONS AS A RESULT OF THE REVIEW PROCESS BY ALL OUTSIDE AGENCIES

REV.	DATE	DESCRIPTION	DRWN.	CHKD.
9	01/05/10	REVISE PER CLIENT'S COMMENTS		TD
8	05/14/08	REVISE PER S.C.D. REVIEW LETTER DATED 05/12/08		TD
7	03/07/08	REVISE PER S.C.D. REVIEW LETTER DATED 02/26/08		MF
6	02/15/08	REVISE PER ENGINEER'S REVIEW LETTER DATED DECEMBER 13, 2007		MF
5	01/08/08	GENERAL REVISIONS		MH
4	09/17/07	REVISIONS PER OFFICE OF DRINKING WATER		MH
3	07/01/07	REVISIONS PER SUSSEX S.C.D. & DELDOT		MH
2	12/12/06	GENERAL REVISIONS/REVISIONS PER SUSSEX S.C.D.		MH
1	10/23/06	GENERAL REVISIONS		MH

REV. DATE DESCRIPTION DRWN. CHKD.

**Cover Sheet**

**Hearthstone Manor II Major Subdivision**  
Tax Parcel ID #3-30-15-22.00  
Sussex County Routes #211 & #225

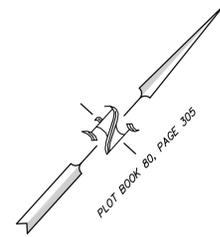
Cedar Creek Hundred  
Sussex County, State of Delaware

PROJECT No. 36-027DE0605 DATE: AUGUST 31, 2006 FIELD BOOK/PAGE: -  
DRAWN BY: MH CHKD. BY: GBF SCALE: AS NOTED SHEET No. 1 of 44

**GREGORY BLASE FUSCO**  
PROFESSIONAL ENGINEER & PLANNER  
DELAWARE PE #13754 MARYLAND PE #30865 NEW JERSEY PE #32853  
NJ PROFESSIONAL PLANNER #4076 PENNSYLVANIA PE #036608-E

**KEY ENGINEERS, INC.**  
80 S. WHITE HORSE PIKE phone: (856) 787-6111  
BERLIN, NEW JERSEY 08009-2399 fax: (856) 753-1091  
CERTIFICATE OF AUTHORIZATION #246A28041300 www.keyengineers.com

DATE \_\_\_\_\_



PLOT BOOK 89, PAGE 305

**PHASE II**

**PHASE I**

**PHASE III**

**PHASE IV**

Sussex County Route #225  
(R.O.W. Width Unknown)

Costabella Lane

Delores Drive

Fair Way Street

Quail Ridge Road  
(60' Wide R.O.W.)

Lexington Drive

Little Birch Drive  
(50' Wide R.O.W.)  
Entrance to Hearthstone Manor I

Sussex County Route #211  
(60' Wide R.O.W.)

$R = 1937.00'$   
 $A = 195.76'$   
 $\Delta = 05^{\circ}47'26''$   
 $CH. DIR. = N 04^{\circ}32'40'' W$   
 $CH. LENGTH = 195.68'$

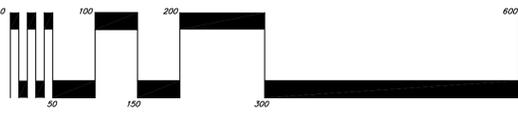
$S 67^{\circ}42'32'' W 1379.76'$   
lot 21.01

$S 49^{\circ}41'59'' W 100.65'$

$N 38^{\circ}25'20'' W 971.64'$

$S 47^{\circ}54'47'' W 2299.63'$

lot 24.01  
 $R = 6891.50'$   
 $A = 473.04'$   
 $\Delta = 03^{\circ}55'58''$   
 $CHORD BEARING = S 43^{\circ}03'13'' E$   
 $CHORD LENGTH = 472.94'$



Graphic Scale:  
1 Inch = 150 Feet

AREA RESERVED FOR FUTURE DEVELOPMENT

AREA RESERVED FOR FUTURE DEVELOPMENT

WETLANDS

REV.	DATE	DESCRIPTION	DRWN.	CHKD.
9	01/05/10	REVISE PER CLIENT'S COMMENTS		TD
8	05/14/08	REVISE PER S.C.D. REVIEW LETTER DATED 05/12/08		TD
7	03/07/08	REVISE PER S.C.D. REVIEW LETTER DATED 02/26/08		MF
6	02/15/08	REVISE PER ENGINEER'S REVIEW LETTER DATED DECEMBER 13, 2007		MF
5	01/08/08	GENERAL REVISIONS		MH
4	08/17/07	REVISIONS PER OFFICE OF DRINKING WATER		MH
3	07/01/07	REVISIONS PER SUSSEX S.C.D. & DELDOT		MH
2	12/12/06	GENERAL REVISIONS/REVISIONS PER SUSSEX S.C.D.		MH
1	10/23/06	GENERAL REVISIONS		MH

**Phasing Plan**  
**Hearthstone Manor II Major Subdivision**  
Tax Parcel ID #3-30-15-22.00  
Sussex County Routes #211 & #225

Cedar Creek Hundred  
Sussex County, State of Delaware

PROJECT No. 36-027DE0605 DATE: AUGUST 31, 2006 FIELD BOOK/PAGE: -  
DRAWN BY: MH CHKD. BY: GBF SCALE: 1"=150' SHEET No. 3 of 44

**GREGORY BLASE FUSCO**  
PROFESSIONAL ENGINEER & PLANNER  
DELAWARE PE #13754 MARYLAND PE #30865 NEW JERSEY PE #32853  
PA PROFESSIONAL PLANNER #4076 PENNSYLVANIA PE #036608-E

**KEY**

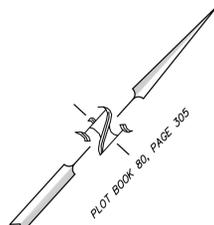
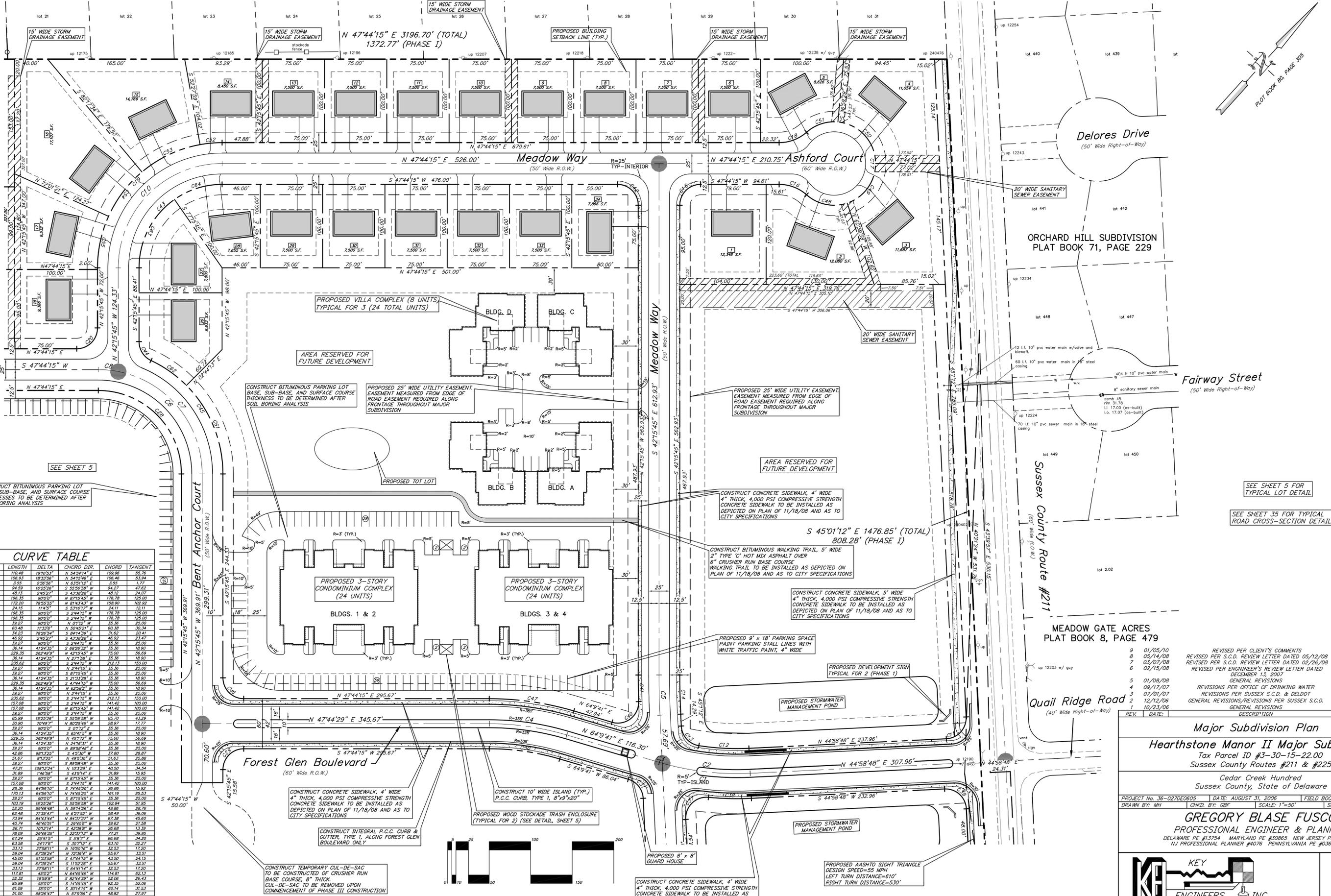
**ENGINEERS, INC.**

80 S. WHITE HORSE PIKE  
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CERTIFICATE OF AUTHORIZATION #246A28041300

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DATE \_\_\_\_\_

EASTMAN HEIGHTS SUBDIVISION  
PLAT BOOK 8, PAGE 156



**CURVE TABLE**

CURVE	RADIUS	LENGTH	DELTA	CHORD DIR.	CHORD	TANGENT
C1	330.00	110.48	197.053°	N 54°41'4" E	109.96	55.76
C2	330.00	108.53	193.766°	N 54°15'4" E	106.46	54.14
C3	330.00	155	0°56'56"	N 63°51'2" E	155	177
C4	330.00	94.59	162°22'26"	S 55°56'56" W	94.57	47.62
C5	1000.00	69.13	2°45'22"	S 43°38'28" E	68.12	25.02
C6	125.00	196.35	80°0'0"	N 87°15'45" W	176.78	125.00
C7	125.00	172.20	78°35'35"	N 81°43'4" W	158.90	102.92
C8	125.00	24.15	11°5'4"	S 53°01'7" E	24.11	12.11
C9	125.00	196.35	80°0'0"	S 2°44'15" W	176.78	125.00
C10	125.00	196.35	80°0'0"	S 2°44'15" W	176.78	125.00
C11	25.00	39.27	80°0'0"	N 0°12'2" E	35.36	25.00
C12	300.00	60.48	11°31'3"	N 50°45'21" E	60.38	30.34
C13	25.00	14.23	1°42'34"	S 84°14'38" E	14.12	20.41
C14	975.00	46.52	2°45'22"	S 43°38'28" E	46.52	23.47
C15	25.00	39.27	80°0'0"	S 2°44'15" W	35.36	25.00
C16	50.00	38.14	41°24'35"	S 2°44'15" W	35.36	18.90
C17	50.00	229.35	282°49'2"	N 42°15'45" W	75.00	56.69
C18	50.00	38.14	41°24'35"	S 2°44'15" W	35.36	18.90
C19	150.00	158.62	80°0'0"	S 2°44'15" W	212.13	150.00
C20	25.00	39.27	80°0'0"	N 2°44'15" E	35.36	25.00
C21	25.00	39.27	80°0'0"	S 87°15'45" E	35.36	25.00
C22	30.00	36.14	41°24'35"	S 2°44'15" W	35.36	18.90
C23	50.00	229.35	282°49'2"	S 47°44'15" W	75.00	56.69
C24	50.00	38.14	41°24'35"	S 2°44'15" W	35.36	18.90
C25	25.00	39.27	80°0'0"	N 2°44'15" E	35.36	25.00
C26	150.00	235.62	80°0'0"	S 2°44'15" W	212.13	150.00
C27	100.00	157.08	80°0'0"	N 87°15'45" W	141.42	100.00
C28	25.00	39.27	80°0'0"	S 2°44'15" W	35.36	25.00
C29	300.00	60.48	11°31'3"	S 84°14'38" E	60.38	30.34
C30	300.00	60.48	11°31'3"	S 84°14'38" E	60.38	30.34
C31	25.00	30.90	70°49'7"	N 80°25'46" E	28.97	17.77
C32	25.00	39.27	80°0'0"	S 0°12'2" E	35.36	25.00
C33	50.00	38.14	41°24'35"	S 65°41'5" E	35.36	18.90
C34	50.00	229.35	282°49'2"	N 42°15'45" W	75.00	56.69
C35	50.00	38.14	41°24'35"	N 42°15'45" W	35.36	18.90
C36	25.00	39.27	80°0'0"	N 89°58'46" E	35.36	25.00
C37	25.00	42.86	98°13'25"	S 4°53'0" E	37.80	28.87
C38	360.00	54.69	87°32'5"	S 48°42'38" E	54.63	28.87
C39	25.00	39.27	80°0'0"	S 89°58'46" E	35.36	25.00
C40	25.00	47.21	108°12'24"	N 10°32'0" E	40.50	34.54
C41	100.00	103.69	116°30'1"	S 43°18'1" E	111.69	112.95
C42	25.00	39.27	80°0'0"	N 87°15'45" W	35.36	25.00
C43	100.00	157.08	80°0'0"	N 87°15'45" W	141.42	100.00
C44	25.00	78.09	84°39'10"	S 74°45'0" E	76.06	12.99
C45	150.00	170.13	64°59'10"	N 74°45'20" W	161.16	95.53
C46	25.00	39.27	80°0'0"	S 87°15'45" W	35.36	25.00
C47	360.00	103.19	87°32'5"	S 55°56'56" W	103.04	51.95
C48	50.00	52.20	59°48'48"	N 59°14'26" E	49.86	28.76
C49	50.00	52.48	57°52'48"	S 63°27'5" E	58.49	30.08
C50	50.00	73.94	84°14'44"	N 84°17'3" E	67.39	45.60
C51	50.00	40.74	46°40'51"	S 29°40'5" E	36.62	21.58
C52	150.00	26.71	101°14'4"	S 42°38'5" E	26.68	13.19
C53	150.00	78.09	29°49'35"	S 22°37'1" E	77.81	39.95
C54	150.00	67.24	25°41'5"	S 59°7'2" E	66.68	34.20
C55	150.00	61.59	24°17'5"	S 30°77'1" E	61.09	32.27
C56	50.00	33.13	17°38'11"	N 19°50'16" W	32.53	17.20
C57	30.00	38.08	67°39'24"	N 22°39'4" W	35.67	33.51
C58	50.00	45.00	61°13'56"	S 47°44'15" E	43.00	24.15
C59	50.00	59.04	67°39'24"	S 11°52'26" E	55.67	33.51
C60	50.00	33.13	17°38'11"	S 64°14'4" E	32.53	17.20
C61	150.00	117.81	45°21"	N 64°45'46" W	114.81	63.13
C62	150.00	52.32	18°59'8"	S 82°44'59" W	52.08	26.43
C63	100.00	95.69	55°0'0"	S 14°45'24" E	92.15	52.08
C64	100.00	61.09	35°0'0"	S 30°14'5" W	60.14	31.53
C65	30.00	31.00	58°29'47"	N 57°59'0" E	48.82	27.97
C66	50.00	63.67	72°5'48"	S 83°32'14" E	59.46	36.97
C67	50.00	63.67	72°5'48"	N 81°30'6" E	59.46	36.97
C68	50.00	31.00	58°29'47"	S 32°47'32" W	48.82	27.97



**MEADOW GATE ACRES**  
PLAT BOOK 8, PAGE 479

9 01/05/10  
8 05/14/08  
7 03/07/08  
6 02/15/08  
5 01/08/08  
4 09/17/07  
3 07/01/07  
2 12/12/06  
1 10/23/06

REVISED PER CLIENT'S COMMENTS  
REVIEWED PER S.C.D. REVIEW LETTER DATED 05/12/08  
REVIEWED PER S.C.D. REVIEW LETTER DATED 02/26/08  
GENERAL REVISIONS  
REVIEWED PER ENGINEER'S REVIEW LETTER DATED DECEMBER 13, 2007  
GENERAL REVISIONS  
REVISIONS PER OFFICE OF DRINKING WATER  
REVISIONS PER SUSSEX S.C.D. & DELDOT  
GENERAL REVISIONS/REVISIONS PER SUSSEX S.C.D.  
GENERAL REVISIONS

TD  
TD  
MF  
MF  
MH  
MH  
MH  
MH  
MH

REV. DATE: DESCRIPTION DRWN. CHKD.

**Major Subdivision Plan**  
**Hearthstone Manor II Major Subdivision**  
Tax Parcel ID #3-30-15-22.00  
Sussex County Routes #211 & #225  
Cedar Creek Hundred  
Sussex County, State of Delaware

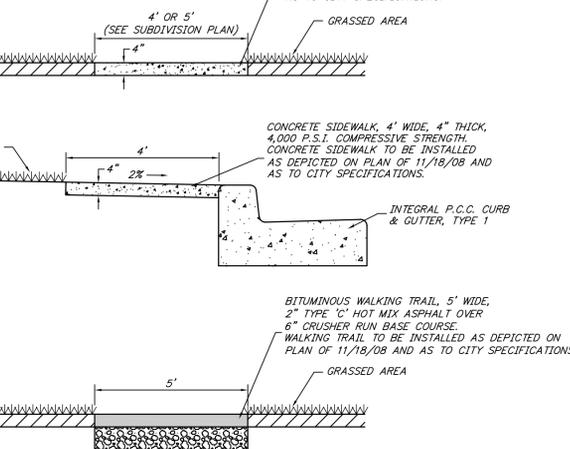
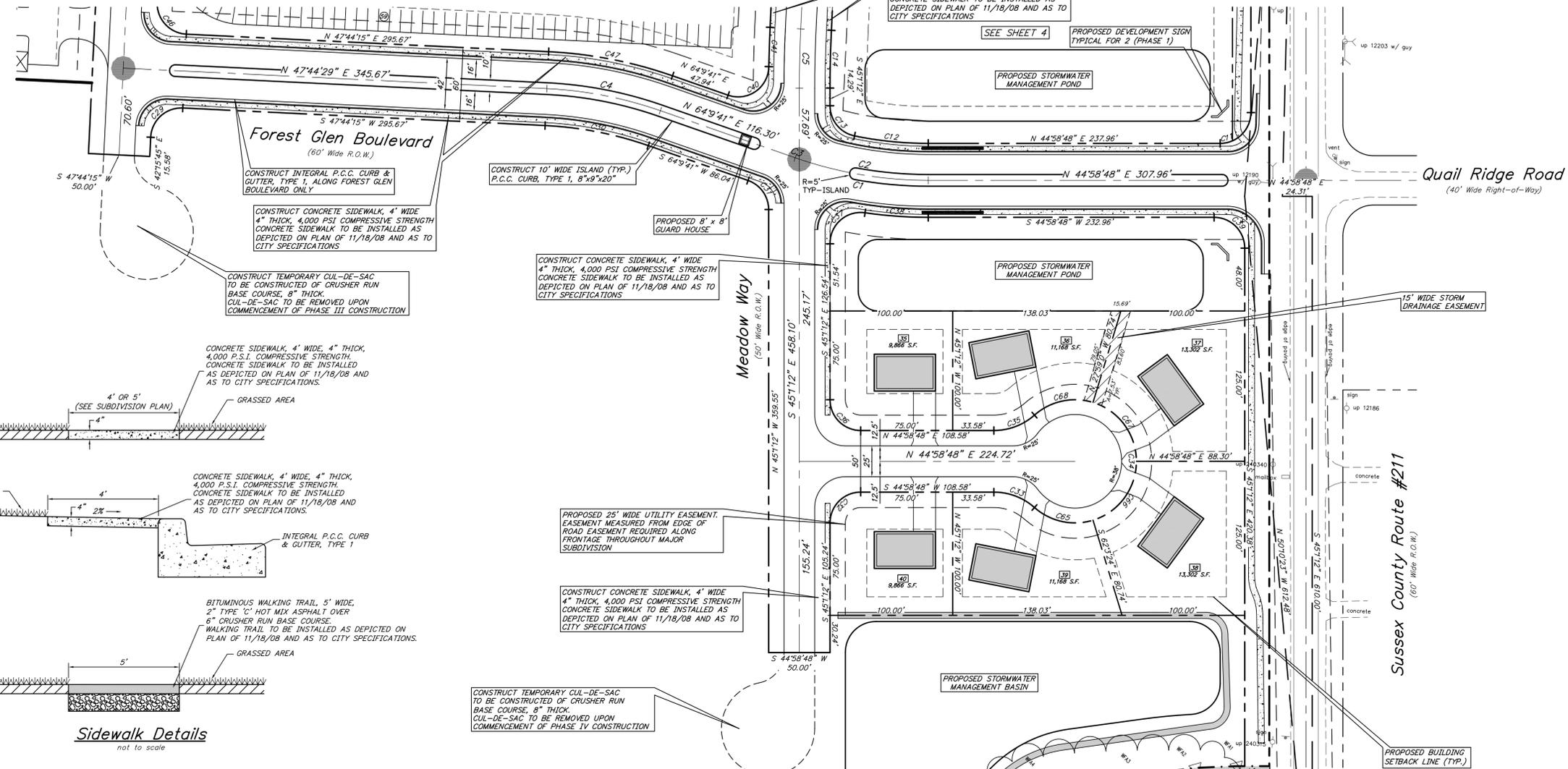
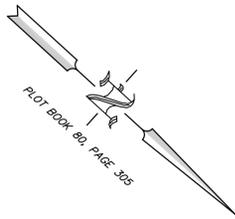
PROJECT NO. 36-0270605 DATE: AUGUST 31, 2006 FIELD BOOK/PAGE: -  
DRAWN BY: MH CHKD. BY: GBF SCALE: 1"=50' SHEET NO. 4 of 44

**GREGORY BLASE FUSCO**  
PROFESSIONAL ENGINEER & PLANNER  
DELAWARE PE #13754 MARYLAND PE #30865 NEW JERSEY PE #12853  
NJ PROFESSIONAL PLANNER #4076 PENNSYLVANIA PE #036608-E

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BERLIN, NEW JERSEY 08009-2399  
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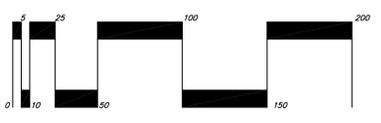
DATE \_\_\_\_\_



Sidewalk Details not to scale

- SIDEWALK NOTES:
A. CONCRETE SIDEWALKS SHALL BE REPLACED AS REQUIRED...
B. SIDEWALKS IN AREAS NOT SUBJECT TO VEHICULAR LOADING...
C. SIDEWALKS IN VEHICULAR LOADING AREAS SHALL BE A MINIMUM THICKNESS OF SIX (6) INCHES REINFORCED WITH SIX (6) INCHES BY SIX (6) INCH, W1.4 X W1.4 WIRE MESH...

CURVE TABLE with columns: CURVE, RADIUS, LENGTH, DELTA, CHORD DIR, CHORD, TANGENT. Lists curve data for various points from C1 to C68.



Graphic Scale scale: 1 inch = 50 feet

SEE SHEET 5 FOR TYPICAL LOT DETAIL

SEE SHEET 35 FOR TYPICAL ROAD CROSS-SECTION DETAILS

Revision table with columns: REV, DATE, DESCRIPTION, DRWN, CHKD. Lists revisions from 1 to 9.

Major Subdivision Plan
Hearthstone Manor II Major Subdivision
Tax Parcel ID #3-30-15-22.00
Sussex County Routes #211 & #225

Cedar Creek Hundred
Sussex County, State of Delaware

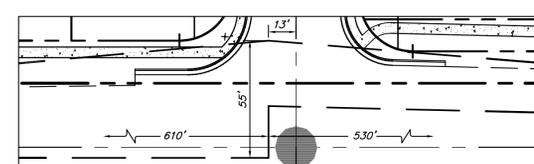
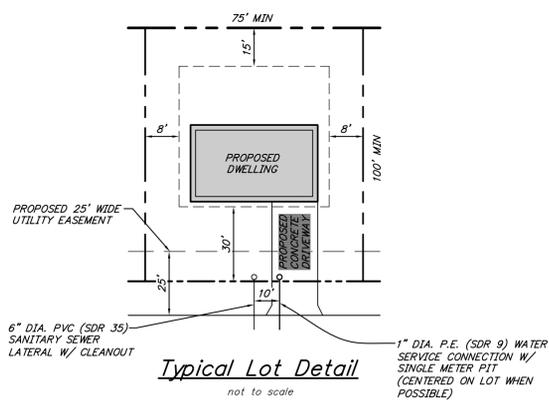
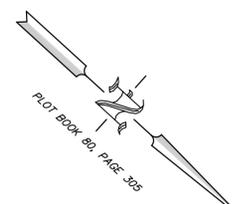
PROJECT No. 36-027DE0605 DATE: AUGUST 31, 2006 FIELD BOOK/PAGE: -
DRAWN BY: MH CHKD BY: GBF SCALE: 1"=50' SHEET No. 6 of 44

GREGORY BLASE FUSCO
PROFESSIONAL ENGINEER & PLANNER
DELAWARE PE #13754 MARYLAND PE #30265 NEW JERSEY PE #32853
NJ PROFESSIONAL PLANNER #4076 PENNSYLVANIA PE #036608-E

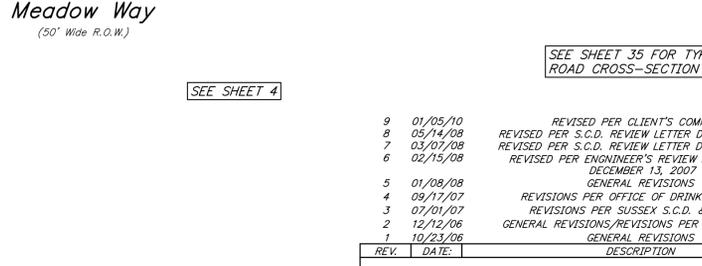
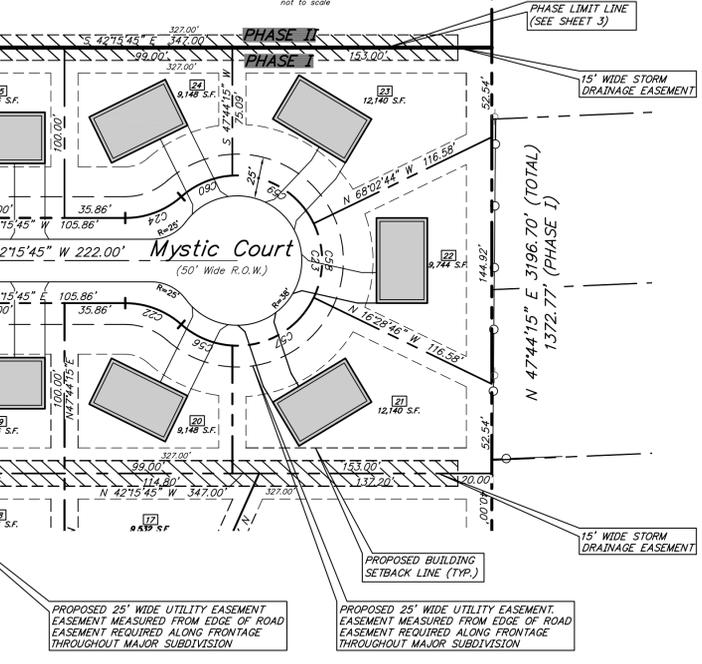
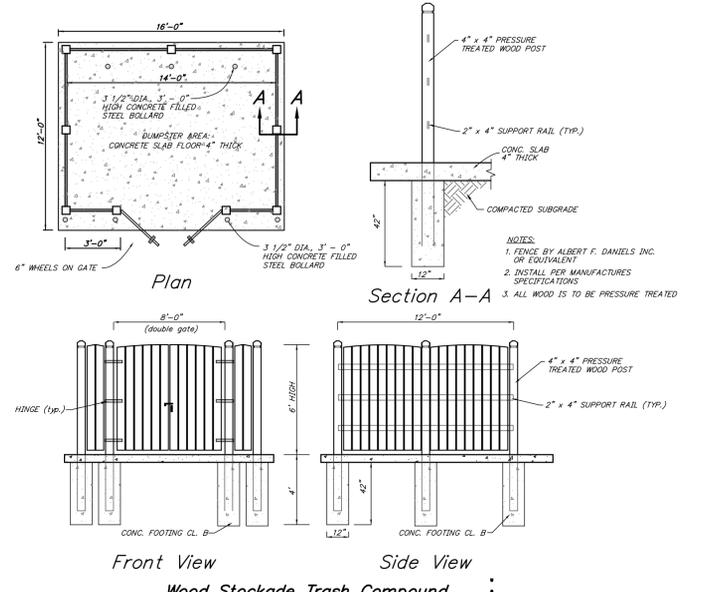
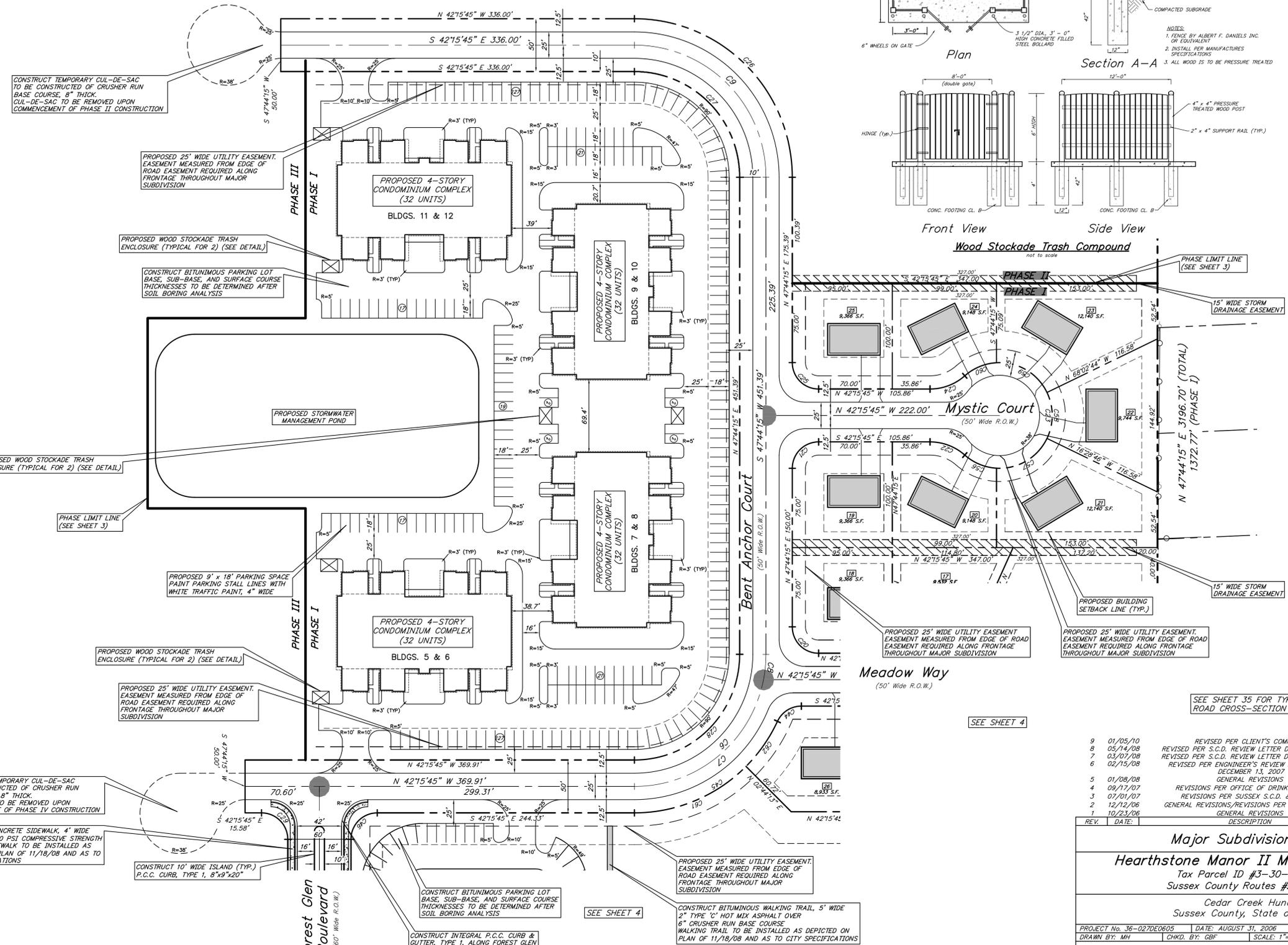
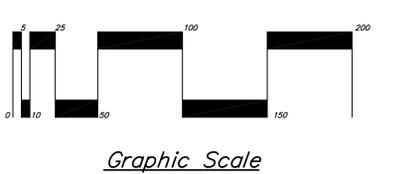
KEY ENGINEERS, INC. logo and contact information including address (80 S. WHITE HORSE PIKE), phone (856) 787-1111, fax (856) 753-1091, and website www.keyengineers.com.

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CURVE	RADIUS	LENGTH	DELTA	CHORD DJR	CHORD	TANGENT
C1	330.00	110.48	1870.53'	N 54°34'14\"/>	108.96	55.76
C2	330.00	106.83	1813.56'	N 54°15'46\"/>	106.46	53.84
C3	330.00	3.56	0.36.36'	N 63°31'12\"/>	3.55	17.77
C4	330.00	24.59	1622.26'	S 35°36'56\"/>	24.27	47.62
C5	1000.00	48.13	242.27'	S 43°38'28\"/>	48.12	24.07
C6	125.00	196.15	800.00'	N 87°15'45\"/>	176.78	125.00
C7	125.00	172.20	785.55'	N 81°43'43\"/>	158.90	102.92
C8	125.00	24.15	114.9'	S 53°16'17\"/>	24.11	12.11
C9	125.00	196.15	800.00'	S 2°44'15\"/>	176.78	125.00
C10	125.00	196.15	800.00'	S 2°44'15\"/>	176.78	125.00
C11	25.00	39.27	800.00'	S 2°44'15\"/>	35.36	25.00
C12	300.00	64.68	1131.9'	N 82°55'17\"/>	60.38	35.34
C13	25.00	34.23	7826.54'	S 84°14'39\"/>	31.62	20.41
C14	975.00	46.92	242.27'	S 43°38'28\"/>	46.92	23.47
C15	25.00	39.27	800.00'	S 2°44'15\"/>	35.36	25.00
C16	50.00	36.14	4124.35'	N 68°26'32\"/>	35.36	18.90
C17	50.00	228.15	10249.9'	N 42°15'45\"/>	212.13	150.00
C18	50.00	36.14	4124.35'	N 2°15'58\"/>	35.36	18.90
C19	150.00	235.62	800.00'	S 2°44'15\"/>	212.13	150.00
C20	25.00	39.27	800.00'	S 2°44'15\"/>	35.36	25.00
C21	25.00	39.27	800.00'	S 87°15'45\"/>	35.36	25.00
C22	50.00	36.14	4124.35'	S 21°33'28\"/>	35.36	18.90
C23	50.00	228.15	10249.9'	S 47°44'15\"/>	212.13	150.00
C24	50.00	36.14	4124.35'	N 68°26'32\"/>	35.36	18.90
C25	25.00	39.27	800.00'	N 2°44'15\"/>	35.36	25.00
C26	150.00	235.62	800.00'	S 2°44'15\"/>	212.13	150.00
C27	100.00	157.08	800.00'	S 2°44'15\"/>	141.42	100.00
C28	100.00	157.08	800.00'	N 87°15'45\"/>	141.42	100.00
C29	25.00	39.27	800.00'	S 2°44'15\"/>	35.36	25.00
C30	300.00	64.68	1131.9'	S 55°56'58\"/>	60.38	43.29
C31	25.00	39.27	800.00'	N 80°25'46\"/>	35.36	25.00
C32	25.00	39.27	800.00'	S 01°17'2\"/>	35.36	25.00
C33	50.00	36.14	4124.35'	S 60°41'5\"/>	35.36	18.90
C34	50.00	228.15	10249.9'	N 82°55'17\"/>	212.13	150.00
C35	50.00	36.14	4124.35'	N 24°16'31\"/>	35.36	18.90
C36	25.00	39.27	800.00'	N 89°58'48\"/>	35.36	25.00
C37	25.00	42.86	881.72'	S 4°15'0\"/>	37.80	25.00
C38	360.00	51.67	81.72'	N 49°30'0\"/>	51.63	25.88
C39	25.00	39.27	800.00'	S 89°58'48\"/>	35.36	25.00
C40	25.00	42.86	881.72'	N 49°30'0\"/>	40.50	25.88
C41	1025.00	31.89	146.58'	S 43°19'4\"/>	31.89	15.85
C42	25.00	39.27	800.00'	N 87°15'45\"/>	35.36	25.00
C43	100.00	157.08	800.00'	S 2°44'15\"/>	141.42	100.00
C44	25.00	28.36	6459.07'	S 74°45'20\"/>	26.86	15.92
C45	150.00	170.13	6459.07'	N 74°45'20\"/>	161.16	105.63
C46	25.00	39.27	800.00'	S 87°15'45\"/>	35.36	25.00
C47	360.00	103.19	1622.26'	S 55°56'58\"/>	102.84	51.95
C48	50.00	52.82	5946.44'	N 58°14'59\"/>	49.86	25.76
C49	50.00	62.48	7135.42'	N 62°23'2\"/>	58.49	36.06
C50	50.00	73.94	8843.44'	N 84°37'0\"/>	67.38	45.60
C51	50.00	40.74	4063.01'	S 29°40'0\"/>	38.62	25.88
C52	150.00	26.71	1072.74'	S 42°38'9\"/>	26.69	13.39
C53	150.00	30.89	1249.55'	S 22°37'3\"/>	27.31	15.85
C54	150.00	27.24	1024.55'	S 32°01'2\"/>	26.69	14.20
C55	150.00	63.58	247.79'	S 30°17'2\"/>	63.10	32.27
C56	50.00	33.13	3738.11'	N 19°30'16\"/>	32.45	17.20
C57	50.00	59.04	6739.24'	N 72°39'4\"/>	55.67	33.51
C58	50.00	43.00	5113.58'	S 47°44'15\"/>	43.50	24.15
C59	50.00	59.04	6739.24'	S 11°52'28\"/>	55.67	33.51
C60	50.00	33.13	3738.11'	S 64°11'4\"/>	32.63	17.20
C61	150.00	17.01	450.9\"/>	N 64°45'46\"/>	174.81	62.13
C62	150.00	32.32	1292.91'	S 82°14'39\"/>	32.08	25.43
C63	100.00	95.99	550.0\"/>	S 14°45'45\"/>	92.35	52.06
C64	100.00	61.09	350.0\"/>	S 30°74'5\"/>	60.14	31.53
C65	50.00	51.00	5828.44'	N 81°29'54\"/>	48.82	23.91
C66	50.00	63.67	727.48'	N 81°12'16\"/>	59.46	36.87
C67	50.00	63.67	727.48'	N 81°12'16\"/>	59.46	36.87
C68	50.00	51.00	5828.44'	S 32°42'57\"/>	48.82	23.91



REV.	DATE	DESCRIPTION	DRWN.	CHKD.
9	01/05/10	REVISED PER CLIENT'S COMMENTS		TD
8	05/14/08	REVISED PER S.C.D. REVIEW LETTER DATED 05/12/08		TD
7	03/07/08	REVISED PER S.C.D. REVIEW LETTER DATED 02/26/08		MF
6	02/15/08	REVISED PER ENGINEER'S REVIEW LETTER DATED DECEMBER 13, 2007		MF
5	01/08/08	GENERAL REVISIONS		MH
4	09/17/07	REVISIONS PER OFFICE OF DRINKING WATER		MH
3	07/01/07	REVISIONS PER SUSSEX S.C.D. & DELDOT		MH
2	12/12/06	GENERAL REVISIONS/REVISIONS PER SUSSEX S.C.D.		MH
1	10/23/06	GENERAL REVISIONS		MH

**Major Subdivision Plan**  
**Hearthstone Manor II Major Subdivision**  
 Tax Parcel ID #3-30-15-22.00  
 Sussex County Routes #211 & #225  
 Cedar Creek Hundred  
 Sussex County, State of Delaware

PROJECT NO. 36-027E0605    DATE: AUGUST 31, 2006    FIELD BOOK/PAGE: -  
 DRAWN BY: MH    CHKD BY: GBF    SCALE: 1"=50'    SHEET NO. 5 OF 44

**GREGORY BLASE FUSCO**  
 PROFESSIONAL ENGINEER & PLANNER  
 DELAWARE PE #13754    MARYLAND PE #30865    NEW JERSEY PE #32853  
 NJ PROFESSIONAL PLANNER #4076    PENNSYLVANIA PE #036608-E

**KEY ENGINEERS, INC.**

80 S. WHITE HORSE PIKE    phone: (856) 787-8111  
 BERLIN, NEW JERSEY 08009-2399    fax: (856) 753-1091  
 www.keyengineers.com    CERTIFICATE OF AUTHORIZATION #246A28041300

DATE \_\_\_\_\_

REPRODUCTION, ALTERATION AND AMENDMENT OF THIS PLAN SHALL BE PERFORMED ONLY BY KEY ENGINEERS, INC. AND SHALL BE PERFORMED UNDER THE ABSOLUTE DIRECTION OF THE LICENSED PROFESSIONAL WHOSE NAME AND SIGNATURE APPEARS HEREON.



ENGINEERING DEPARTMENT  
302.422.1110, FAX 302.422.1119

180 VICKERS DRIVE  
MILFORD, DE 19963

[www.cityofmilford.com](http://www.cityofmilford.com)

## MEMORANDUM

TO: David Baird, City Manager

FROM: Mark S. Mallamo, P.E., City Engineer 

DATE: August 4, 2010

REFERENCE: Hearthstone II Engineering Reviews

The first engineering review of Hearthstone II was completed December 13, 2007 and included detailed comments on water and sewer systems, streets and drainage and sidewalks. Most of those comments were addressed satisfactorily with a few exceptions such as sidewalks and downstream sewer upgrades. A second review letter March 20, 2008 detailed those outstanding issues resulting in some corrections by the owner, but the lack of sidewalks remained an issue at that time. Detailed correspondence from both the owner's representatives and the City continued for some time attempting to resolve the disputed issues.

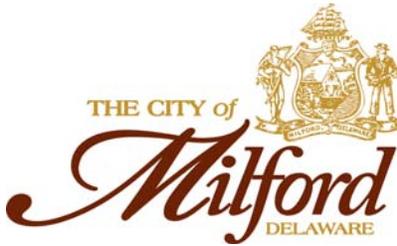
Just prior to final approval meetings for this project the owner submitted in electronic format a modified site plan that did show sidewalks, active open space and a tot lot. However this was not submitted to the Engineering Department for review nor was the document a stamped engineered drawing. The result was denial of final approval by City Council for reasons noted in the minutes.

On Wednesday July 28, 2010 I met with Dave Hitchens of Key Properties and reviewed detailed engineered construction drawings for Hearthstone II that included the added sidewalks, walking pathways and a tot lot. These plans now have approximately 3500 feet of sidewalk along the major streets and entrance on Elks Lodge road, and approximately 2700 feet of walking trails and a reserved space for a tot lot. Some areas of the subdivision still do not have sidewalks, but the owner made a reasonable effort to add sidewalks in higher traffic areas and where the overall layout of the streets permitted this without a complete redesign of street geometry.

For the record Council should understand that the revised plans have some curb and gutter drainage with sidewalks as well as some areas with no sidewalks and swale drainage. It is also noteworthy that in the cul-de-sac single family home areas the drainage does not meet the code required standards of a grassed shoulder and open swale. These areas are served by a drainage system where the water travels along the edge of pavement where it meets the front yard grass. There is no defined swale. This is similar to the drainage in Lakelawn Estates and is a functional design. However it does not meet code and the owner was informed of this discrepancy. It is my opinion that this alternate drainage system is proven to be functional and could be approved for final.

The sidewalks as presented will provide residents with a safe walking area out of the travel lanes along the main entrance and in some of the higher density multi-family housing areas. However the single family homes on Meadow Way and the cul-de-sac areas do not have sidewalk and those streets must share the roadway with both cars and pedestrians. These are not through streets and should experience only local traffic, so in my opinion this is an acceptable condition.

In closing I want to state I have considered this project's history of review, approval and denial and believe both the developer and the City have expressed valid concerns in seeking a resolution to the variances from City Code. The developer has made substantial concessions in redesigning the subdivision to provide useful amenities like sidewalks and trails for the future residents after initially stating they were opposed to this. As a result the City has gained a better designed product and should reconsider the development for final approval.



PLANNING & ZONING DEPARTMENT  
P 302.424.3712, F 302.424.3559

201 SOUTH WALNUT STREET  
MILFORD, DE 19963

[www.cityofmilford.com](http://www.cityofmilford.com)

# MEMO

TO: David Baird  
FR: Gary J. Norris, AICP, City Planner  
DA: August 5, 2010  
RE: Review of Hearthstone II

On Wednesday August 4, 2010 I met with Dave Hitchens of Key Properties and reviewed the revisions made by the developer to the Hearthstone II project. I have the following comments and suggestions regarding this development.

1. According to Section 200-5 (B) **General requirements and design standards** of the Subdivision Ordinance for the City of Milford:

*Sidewalks shall be required in all subdivisions on both sides of the street.*

The development still lacks sidewalks along the single family detached dwellings as required by the Subdivision Ordinance. As a possible remedy to this requirement I have suggested the developer consider the construction of bituminous sidewalks on private property to meet this requirement.

2. According to Section 230-21 (B) **Parking and loading standards** of the Zoning Ordinance for the City of Milford:

*Dwelling, townhouses, garden apartment or multifamily dwelling require 2.5 off street parking spaces per unit.*

The developed is providing 2.2 spaces per unit. I have reviewed the plans and it appears that there is sufficient off street parking for the single family detached dwellings and the villas, but the proposed condominiums lack the required number of off street parking spaces. Having lived in Hearthstone I, when there is an activity and guests are invited, these guests have a difficult time finding adequate off street parking. My suggestion is to provide additional "Guest Parking" near the proposed condominiums to meet this requirement.

3. I would suggest a five foot walkway from the western terminus of Ashford Court to the sidewalk along Elks Lodge Road. This would enable residents of the single family detached dwellings to walk a shorter distance instead of taking a circuitous route to reach the same point.

While there may be some deficiencies in the strict adherence to the City of Milford's Ordinances and given the status of the local residential development for the City of Milford at this time, I would recommend approval of this proposed residential development.

# City of Milford



## RESOLUTION 2010-12

### Approval of Hearthstone Manor II, Phase I, Major Subdivision Final Plan Tax Map 3-30-15.00-022.00

WHEREAS, the owner and applicant has made application with the City of Milford; and,

WHEREAS, the proposed application complies with the standards and regulations of the Code of the City of Milford; and,

WHEREAS, the project was reviewed for Preliminary Major Subdivision approval by DAC on April 26, 2006, received a recommendation to deny by the Planning Commission on May 16, 2006, and received approval from City Council on July 10, 2006; and,

WHEREAS, the project was reviewed for Preliminary Major Subdivision Extension approval and received a recommendation for approval by the Planning Commission on October 21, 2008, and approval from City Council on October 27, 2008; and,

WHEREAS, the project was reviewed for Final Major Subdivision, Phase I approval by DAC on September 24, 2008; and,

WHEREAS, the Planning Commission met and heard said application during a public hearing on November 17, 2008 and by a vote of 6 to 1, recommended approval of the application with conditions; and

WHEREAS, following a public hearing before City Council, a motion was made to approve the final plan for Phase I of Hearthstone Manor II but failed to receive a favorable vote by a 3 to 4 roll call vote; and

WHEREAS, an extension on the Hearthstone II Preliminary Plan was granted by City Council on October 26, 2009 with an expiration date of March 27, 2010; and

WHEREAS, a seven-month extension was granted on March 10, 2010 by City Council.

NOW, THEREFORE, BE IT RESOLVED, that by a vote of \_\_\_\_\_, Milford City Council is approving the Final Plan for Hearthstone Manor II, Phase I, Tax Map 3-30-15.00-022.00 with the following conditions, or as amended by City Council on this date:

- \*\$400 per unit will paid to the Parks & Recreation fund at time of building permit issuance.
- \*A note will be added to the plat specifying a 1:4 maximum ratio on all swales.
- \*Parking will be provided at no less than 2.3 spaces per unit.
- \*Sidewalks will be installed to City Specifications, as presented on the plan shown on \_\_\_\_\_.

---

Mayor Joseph Ronnie Rogers

---

City Clerk Teresa K. Hudson

Adopted: August 9, 2010

# City of Milford



August 9, 2010

GREETINGS:

The Charter of the City of Milford provides the following:

"Article X, Section 10.11: Attached to said tax list shall be a warrant, under the Seal of the City of Milford, Signed by the Mayor and Attested to by the Secretary, commanding the City Manager to make collection of Taxes as stated in the Tax Lists."

THEREFORE, YOU, THE CITY MANAGER, DULY APPOINTED BY THE COUNCIL OF THE CITY OF MILFORD, ARE HEREBY COMMANDED TO COLLECT THE TAXES AS LEVIED IN THE FOUR WARDS AS FOLLOWS:

Assessed Per Billing Register	\$774,617,267.00
Exemptions	[123,380,100.00]
<b>TOTAL ASSESSED VALUE</b>	<b>\$651,237,167.00</b>
	<u>                  x .0046</u>
<b>ESTIMATED TAX PER PROPERTY VALUES</b>	<b>\$2,995,690.98</b>
Senior Citizen Discount	[11,592.00]
<b>TOTAL TAXABLE (Fiscal Year 2010-2011)</b>	<b>\$2,984,098.98</b>

Given this 9<sup>th</sup> day of August in the Year of Our Lord 2010

---

Mayor Joseph Ronnie Rogers

---

City Clerk

COLUMBIA STREET  
(38' RIGHT-OF-WAY)

PROPOSED WALK OUT TO MISPELLION RIVER

DOROTHY L. CHANEY  
3-30-7.17-11  
1828/230

30' EASEMENT



SECTION:  
Greenway Walk at Overlook  
Horizontal Scale: 3" = 1'-0"  
Vertical Scale: 3" = 3'-0"

- PROPOSED TREE
- PROPOSED SHRUBS
- PROPOSED SPOT ELEVATION
- PROPOSED CONTOUR LINE
- PROPOSED SIDEWALK
- PROPOSED RETAINING WALL
- EXISTING HIGH WATER LINE
- EXISTING FENCE TBR
- EXISTING CONTOUR LINE



NOW OR FORMERLY  
WILL-MONT GROUP, LLC  
3-30-7.17-68.02  
2169/356

BASE MAP INFORMATION FROM  
SURVEY BY BOB NASH  
RECEIVED 02-25-10

STATEMENT OF ACCURACY  
I, MATTHEW SPONG, HEREBY STATE THAT I AM A REGISTERED  
LANDSCAPE ARCHITECT IN THE STATE OF DELAWARE, THAT THE  
INFORMATION SHOWN HEREON HAS BEEN PREPARED UNDER MY  
SUPERVISION AND TO THE BEST OF MY KNOWLEDGE AND BELIEF  
REPRESENTS GOOD LANDSCAPE ARCHITECTURAL PRACTICES AS  
REQUIRED BY THE APPLICABLE LAWS OF THE STATE OF  
DELAWARE.

DATE: MATTHEW T. SPONG #126-E

MISPELLION RIVER

FUTURE DOCK  
37.5 x 10'

EXISTING WARNELL GREENWAY

MARSHALL STREET  
(40' RIGHT-OF-WAY)

<p>LANDSCAPE ARCHITECTURAL SERVICES, LLC 1000 W. MARKET STREET, SUITE 200 WILMINGTON, DE 19801 TEL: 302.486.1111 FAX: 302.486.1112 WWW.LANDSCAPEARCHITECTS.COM</p>	<p>1</p>
<p>PRELIMINARY PLAN</p>	
<p>CHANEY - WILMONT GREENWAY COLUMBIA and MARSHALL STS.</p>	
<p>City of Willford Department of Parks &amp; Recreation Mr. Gary Emory, Dir.</p>	
<p>PROJECT NUMBER:</p>	<p>DATE:</p>
<p>DESIGNER:</p>	<p>CHECKED BY:</p>
<p>DRAWN BY:</p>	<p>DATE:</p>



**LANDSCAPE  
ARCHITECTURAL  
SERVICES, L.L.C.**



Preliminary Cost Estimate

Client: Chaney-Wilmont Greenway - Milford DE  
Date: 7-7-2010

<b>Quantity</b>	<b>Description</b>	<b>Unit Cost</b>	<b>Total</b>
6206 sf	At-Grade Concrete Walk 8' wide	7.50	46,545.00
2039 SF	At-Grade Concrete Walk 6' wide	7.50	15,292.50
664 LF	Concrete Retaining Wall	55.00	36,520.00
3	6' Bench	750.00	2,250.00
	General Conditions	15,000.00	15,000.00
	Grading & Fill	15,000.00	15,000.00
	Landscaping	8,500.00	8,500.00
3	Overhead Bench Shelter	1,600.00	4,800.00
	<i>Sub-total</i>		143,816.50
	<i>20% Contingency</i>		27,803.50
	<b>Total</b>		<b>171,620.00</b>
	Professional Fees, Permitting, Construction Documentation, & Contract Administration		40,000.00
<b>ADD ALTERNATE</b>			
	37.5' x 10' Floating Dock		60,000.00
	Professional Fees, Permitting, Construction Documentation, & Contract Administration		10,000.00
	<b>Total Add Alternate</b>		<b>70,000.00</b>

Note: This option disturbs 3,656 sf of preliminary tidal wetlands. Cost of design will vary with final design, material selection and time of implementation.



# AIA<sup>®</sup> Document B101<sup>™</sup> – 2007

## Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the 9th day of August in the year 2010  
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:  
(Name, legal status, address and other information)

City of Milford  
Dept. of Parks & Recreation  
207 Franklin St.  
Milford, De 19963  
Attn: Mr. Gary Emory, Director

and the Architect:  
(Name, legal status, address and other information)

Landscape Architectural Services , LLC  
P.O. Box 293  
Dover DE 19903  
Attn: Matthew T. Spong, R.L.A., A.S.L.A., Principal

for the following Project:  
(Name, location and detailed description)

Chaney Wilmont Greenway Greenway, Phases 15 & 16 between Columbia St. &  
Marshall Street  
Milford, Delaware

The Owner and Architect agree as follows.  
The Landscape Architect will prepare design development documents based on the revised preliminary plan dated "revised 3/19/10", final cost estimate, prepare construction documents, assist in agency permit acquisitions, prepare bid advertisements, analyze and recommend bid award and provide contract administration of the greenway construction.

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

## TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 ARCHITECT'S RESPONSIBILITIES
- 3 SCOPE OF ARCHITECT'S BASIC SERVICES
- 4 ADDITIONAL SERVICES
- 5 OWNER'S RESPONSIBILITIES
- 6 COST OF THE WORK
- 7 COPYRIGHTS AND LICENSES
- 8 CLAIMS AND DISPUTES
- 9 TERMINATION OR SUSPENSION
- 10 MISCELLANEOUS PROVISIONS
- 11 COMPENSATION
- 12 SPECIAL TERMS AND CONDITIONS
- 13 SCOPE OF THE AGREEMENT

### EXHIBIT A INITIAL INFORMATION

#### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

*(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)*

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

- .1 Commencement of construction date:

3/15/1011

- .2 Substantial Completion date:

8/15/1011

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

#### ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

*(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)*

.1 General Liability

\$1,000,000. per occurrence, \$3,000,000. General Aggregate

.2 Automobile Liability

\$500,000. single limit

.3 Workers' Compensation

\$100,000. each accident, \$500,000. each employee limit

.4 Professional Liability

\$500,000. per claim, \$1,000,000. aggregate

### ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

**§ 3.2 SCHEMATIC DESIGN PHASE SERVICES \*\*\*\*\* 3.2 thru 3.2.7 N/A \*\*\*\*\***

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

**§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES**

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and

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electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

#### § 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

#### § 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

##### § 3.5.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

##### § 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

Init.

### § 3.5.3 NEGOTIATED PROPOSALS

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by

- .1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors; and
- .3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

### § 3.6 CONSTRUCTION PHASE SERVICES

#### § 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

#### § 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

### § 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

### § 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests

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for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

**§ 3.6.5 CHANGES IN THE WORK**

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

**§ 3.6.6 PROJECT COMPLETION**

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

**ARTICLE 4 - ADDITIONAL SERVICES**

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

*(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)*

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming	N/A	
§ 4.1.2 Multiple preliminary designs	N/A	
§ 4.1.3 Measured drawings	N/A	
§ 4.1.4 Existing facilities surveys	N/A	

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§ 4.1.5	Site Evaluation and Planning (B203™–2007)	N/A	
§ 4.1.6	Building information modeling	N/A	
§ 4.1.7	Civil engineering	Provided	
§ 4.1.8	Landscape design	Provided	
§ 4.1.9	Architectural Interior Design (B252™–2007)	N/A	
§ 4.1.10	Value Analysis (B204™–2007)	N/A	
§ 4.1.11	Detailed cost estimating	N/A	
§ 4.1.12	On-site project representation	N/A	
§ 4.1.13	Conformed construction documents	N/A	
§ 4.1.14	As-Designed Record drawings	N/A	
§ 4.1.15	As-Constructed Record drawings	N/A	
§ 4.1.16	Post occupancy evaluation	N/A	
§ 4.1.17	Facility Support Services (B210™–2007)	N/A	
§ 4.1.18	Tenant-related services	N/A	
§ 4.1.19	Coordination of Owner's consultants	N/A	
§ 4.1.20	Telecommunications/data design	N/A	
§ 4.1.21	Security Evaluation and Planning (B206™–2007)	N/A	
§ 4.1.22	Commissioning (B211™–2007)	N/A	
§ 4.1.23	Extensive environmentally responsible design	N/A	
§ 4.1.24	LEED® Certification (B214™–2007)	N/A	
§ 4.1.25	Fast-track design services	N/A	
§ 4.1.26	Historic Preservation (B205™–2007)	N/A	
§ 4.1.27	Furniture, Furnishings, and Equipment Design (B253™–2007)	N/A	

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;

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- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of bidders or persons providing proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 three ( 3 ) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 six ( 6 ) visits to the site by the Architect over the duration of the Project during construction
- .3 six ( 6 ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 two ( 2 ) inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within twelve ( 12 ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

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§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

## ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot

and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

**§ 6.3** In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

**§ 6.4** If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

**§ 6.5** If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

**§ 6.6** If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

**§ 6.7** If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

## **ARTICLE 7 COPYRIGHTS AND LICENSES**

**§ 7.1** The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

**§ 7.2** The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

**§ 7.3** Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

### § 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

*(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)*

- Arbitration pursuant to Section 8.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other (Specify)

### § 8.3 ARBITRATION

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

### § 8.3.4 CONSOLIDATION OR JOINDER

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

### ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses

incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

#### ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

**ARTICLE 11 COMPENSATION**

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

*(Insert amount of, or basis for, compensation.)*

CLASSIFICATION	man hours	rate	amount
Principal Registered Landscape Architect	150	\$40.	\$6000.
Associate Principal Landscape Architect	150	35.	5250.
Assistant AutoCAD Tech	150	22.	3300.
Total Payroll .....			14550.
Payroll Burden & Overhead cost 123% of payroll .....			17896.
Fixed fee of 10% .....			3244.
Direct Cost other than Payroll			
Sussex Conservation General Sediment & Erosion Control permit fee .....			\$500.
NOI fee (DNREC) .....			195.
Bid Advertisements .....			340.
100 blueprints .....			350
Postage .....			100.
Total Direct Cost (other than payroll) .....			\$1485.
Subconsultants at cost			
Baker Ingram & Associates, structural engineers .....			\$2000.
Bob Nash Associates Surveying.....			1500.
Total Subconsultants .....			3500.
<b>TOTAL FEE .....</b>			<b>\$40,675.</b>

forty thousand six hundred seventy five dollars.

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:  
*(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:  
*(Insert amount of, or basis for, compensation.)*

- Principal Registered Landscape Architect \$98.00 per hr.
- Associate Principal/landscape architect \$85.00 per hr.
- Assistant Project Manager \$55.00 per hr.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus ten percent ( 10 %), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	percent (	N/A	%)
Design Development Phase	percent (	N/A	%)
Construction Documents Phase	percent (	N/A	%)
Bidding or Negotiation Phase	percent (	N/A	%)
Construction Phase	percent (	N/A	%)
<b>Total Basic Compensation</b>	<b>one hundred percent (</b>	<b>100</b>	<b>%)</b>

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

**Employee or Category**

**Rate**

N/A

#### § 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus N/A percent ( N/A %) of the expenses incurred.

#### § 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of

the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

#### § 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of eleven thousand dollars (\$ 11,000. ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid forty five ( 45 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.  
*(Insert rate of monthly or annual interest agreed upon.)*

one point five % 1.5 %

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

#### ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

#### ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:
  
- .3 Other documents:  
*(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)*

This Agreement entered into as of the day and year first written above.

OWNER

ARCHITECT



\_\_\_\_\_  
*(Signature)*

Mayor of Milford  
Joseph (Ronnie) Rogers

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*(Signature)*

Landscape Architectural Services, LLC  
Matthew Spong R.L.A., A.S.L.A., Principal

\_\_\_\_\_  
*(Printed name and title)*

Init.

# City of Milford



## RESOLUTION

*2010-13*

WHEREAS, it has been a custom for many years for children and adults to celebrate the Eve of All Saints Day by costuming, masquerading and fun-making; and

WHEREAS, we would like to continue the celebration in an orderly manner.

NOW, THEREFORE, BE IT RESOLVED, I, Joseph R. Rogers, Mayor of the City of Milford, do hereby request and urge the observance of this annual period as follows:

WEDNESDAY, October 20, 2010 starting at 6:30 p.m. and ending at 9:00 p.m. shall be the time for the Annual Community Parade.

SATURDAY, October 23, 2010 shall be the official date for youngsters to make their annual UNICEF collections to be completed by dark.

SATURDAY, October 30, 2010 shall be the official date for youngsters to observe Halloween Trick or Treat Night.

AND, BE IT FURTHER RESOLVED THAT:

\*Only celebrants of 12 years and under will be permitted to engage in Trick or Treat between the hours of 6:00 p.m. and 8:00 p.m.

\*All celebrants are requested to refrain from committing acts of vandalism or destruction.

\*Residents are requested to indicate their willingness to welcome children by keeping their porch or exterior lights on and that youngsters call only on homes so lighted.

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Mayor Joseph Ronnie Rogers

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City Clerk Teresa K. Hudson

Adopted: August 9, 2010

NOTICE OF PLANNING COMMISSION & CITY COUNCIL PUBLIC HEARINGS  
City of Milford Zoning Code Amendment  
Ordinance 2010-14

NOTICE IS HEREBY GIVEN the Planning Commission of the City of Milford will hold a Public Hearing on the following amendment to the City of Milford Zoning Code on Tuesday, September 21, 2010 at 7:00 p.m., or as soon thereafter as possible.

A FINAL PUBLIC HEARING is scheduled on Monday, September 27, 2010 at 7:00 p.m. before Milford City Council. Following the hearing, Ordinance 2010-14 may be adopted, with or without amendments.

Ordinance 2010-14

The City of Milford hereby ordains as follows:

Chapter 230: ZONING

Section 1.

An Ordinance to Amend the Code of the City of Milford, Chapter 230, thereof, entitled Zoning, by providing a potential waiver in the number of off street parking spaces for large commercial developments.

Section 2.

Section 230-21, Parking and loading standards, Subsection B, Use Standards, is hereby amended by adding a new sub-paragraph entitled §230-21- B (1) to read as follows:

§230-21- B (1) Reduction in the Required Number of off Street Parking Spaces in the case of developments such as shopping centers or other commercial developments required to provide more than 50 off-street parking space.

The developer must set aside space to accommodate 100% of the area necessary to provide the parking requirements established by this Ordinance, but, upon the request of the developer, if agreed by the City of Milford, the developer may be permitted to set aside space to accommodate 100% of the area necessary to provide the parking requirements established by this chapter but not be required to construct more than 80% of the required parking spaces. In the event the developer is permitted to construct fewer than the required parking spaces, the remainder of the parking area set aside must be kept free of all construction and be planted and maintained as a grassy area and designated as Future Parking Space. The City of Milford may require construction of the remaining parking spaces at any time by the then owner of the premises upon giving the owner not less than six months' advance written notice. In the event of the granting of the waiver herein described, the fact of the grant as well as the requirement that the owner maintain the space set aside as a level grass area and that the City of Milford has reserved the right to require construction of the remaining parking spaces upon six months' notice to the owner of the site must be reflected in a note appearing on the subdivision or site development plans recorded.

### Section 3.

#### Dates.

Introduction to City Council: 08-09-10

Planning Commission Hearing: 09-21-10

City Council Hearing and Projected Adoption Date: 09-27-10

Ordinance will become effective ten days following adoption.

Both the Planning Commission and City Council Public Hearings will be held in the Council Chambers at Milford City Hall, 201 South Walnut Street, Milford, Delaware.

The public is invited to attend and encouraged to comment on the amendment to the Zoning Code. If unable to attend, written comments will be accepted up to one week prior to hearings.

A complete copy of the Code of the City of Milford is available by request through the City Clerk's Office at Milford City Hall, 201 South Walnut Street, Milford, Delaware, 19963 or through the city website at [cityofmilford.com](http://cityofmilford.com).

FY2009-2010 Budget Amendment:

Request the following Budget Adjustment:

Transferring \$200,000

from

Sewer Capital Reserves Account# 203-0000-390-10-10

into

Kent County I&I Expense Account# 203-3030-432-40-20

**CITY OF MILFORD  
FUND BALANCES REPORT**

Date: JUNE 2010

Cash Balance - General Fund Bank Balance	\$1,591,395
Cash Balance - Electric Fund Bank Balance	\$2,928,879
Cash Balance - Water Fund Bank Balance	\$608,482
Cash Balance - Sewer Fund Bank Balance	\$365,924
Cash Balance - Trash Fund Bank Balance	\$520,440

	<u>General Improvement</u>	<u>Municipal Street Aid</u>	<u>Real Estate Transfer Tax</u>	<u>Water Bond Escrow</u>
Beginning Cash Balance	474,675	576,418	910,570	412,476
Deposits			12,748	
Interest Earned this Month	88	111	163	18
Disbursements this Month	(14,142)		(68,033)	
Investments			1,600,000	
Ending Cash Balance	\$460,621	\$576,529	\$2,455,448	\$412,494

	<u>GF Capital Reserves</u>	<u>Water Capital Reserves</u>	<u>Sewer Capital Reserves</u>	<u>Electric Reserves</u>
Beginning Cash Balance	685,896	1,005,366	686,516	1,827,948
Deposits				
Interest Earned this Month	56	6,423	6,376	22,702
Disbursements this Month	(300)	(6,715)	(11,405)	(12,431)
Investments	1,000,000	2,960,000	2,000,000	7,486,000
Ending Cash Balance	\$1,685,652	\$3,965,074	\$2,681,487	\$9,324,219

	<u>Water Impact Fee</u>	<u>Sewer Impact Fee</u>	<u>Electric Impact Fee</u>
Beginning Cash Balance	16,380	14,074	5,901
Deposits			
Interest Earned this Month			
Disbursements this Month			
Investments	850,000	\$625,000	\$250,000
Ending Cash Balance	\$866,380	\$639,074	\$255,901

INTEREST THROUGH THE TWELTH MONTH OF THE FISCAL YEAR:

General Fund	13,885	Water Fund	4,144
GF Capital Reserves	15,375	Water Bond Escrow	248
General Improvement Fund	2,365	Water Capital Reserves	29,591
Municipal Street Aid	3,422	Water Impact Fees	3,821
Real Estate Transfer Tax	12,582	Sewer Fund	2,069
Electric Fund	21,314	Sewer Capital Reserves	29,002
Electric Reserves	93,855	Sewer Impact Fees	2,877
Electric Impact Fees	1,095	Trash Fund	2,519

TOTAL INTEREST EARNED TO DATE \$238,164

**REVENUE REPORT**

Page Two

Date: JUNE 2010	AMOUNT BUDGETED	MTD	YTD	100% of Year Expended YTD%
ACCOUNT				
Budgeted Fund Balance	264,600	0	264,600	100.00%
General Fund Capital Reserves	104,600	0	104,600	100.00%
Property Transfer Tax-Capital	184,300	26,700	180,334	97.85%
Property Transfer Tax-Police	520,000	43,333	520,000	100.00%
Real Estate Tax	2,929,600	1,932	2,917,843	99.60%
Business License	48,000	1,250	35,200	73.33%
Rental License	62,500	500	87,550	140.08%
Building Permits	40,000	2,146	28,459	71.15%
Planning & Zoning	40,000	300	45,451	113.63%
Misc. Revenues	342,575	126,425	342,212	99.89%
Transfers From	3,215,480	267,956	3,215,480	100.00%
Police Revenues	305,000	129,318	290,716	95.32%
Engineering & Inspection Fees	50,000	3,044	37,764	75.53%
<b>Total General Fund Revenues</b>	<b>\$8,106,655</b>	<b>\$602,904</b>	<b>\$8,070,209</b>	<b>99.55%</b>
Water Revenues	2,160,130	205,698	2,265,636	104.88%
Sewer Revenues	2,264,970	157,732	2,206,302	97.41%
Kent County Sewer	1,600,000	121,283	1,356,819	84.80%
Solid Waste Revenues	1,015,000	85,671	1,022,437	100.73%
Solid Waste Rebate	48,000	0	46,988	97.89%
Solid Waste Budgeted Fund Balance	112,065	0	0	0.00%
Electric Revenues	28,225,431	2,468,832	27,005,754	95.68%
<b>TOTAL REVENUES</b>	<b>\$43,532,251</b>	<b>\$3,642,120</b>	<b>\$41,974,145</b>	<b>96.42%</b>
YTD Enterprise Expense		97,302		
YTD Enterprise Revenue		84,267		
LTD Carlisle Fire Company Building Permit Fund		20,268		

EXPENDITURE REPORT

Page Three

Date: JUNE 2010

100% of Year Expended

ACCOUNT	AMOUNT BUDGETED	MTD	YTD	YTD%	UNEXPENDED BALANCE
<b>City Manager</b>					
Personnel	378,310	\$46,841	384,806	101.72%	(6,496)
O&M	136,390	\$9,109	108,710	79.71%	27,680
Capital	0	\$0	0		0
<b>Total City Manager</b>	<b>\$514,700</b>	<b>\$55,950</b>	<b>\$493,516</b>	<b>95.88%</b>	<b>21,184</b>
<b>Planning &amp; Zoning</b>					
Personnel	157,435	\$17,765	156,348	99.31%	1,087
O&M	66,105	\$1,821	38,116	57.66%	27,989
Capital	0	\$0	0		0
<b>Total P, C &amp; I</b>	<b>\$223,540</b>	<b>\$19,586</b>	<b>\$194,464</b>	<b>86.99%</b>	<b>29,076</b>
<b>Code Enforcement &amp; Inspections</b>					
Personnel	205,390	\$23,851	166,956	81.29%	38,434
O&M	45,205	\$5,635	36,498	80.74%	8,707
Capital	0	\$0	0		0
<b>Total P, C &amp; I</b>	<b>\$250,595</b>	<b>\$29,486</b>	<b>\$203,454</b>	<b>81.19%</b>	<b>47,141</b>
<b>Tax Department</b>					
Personnel	71,940	\$7,337	\$69,622	96.78%	2,318
O&M	24,020	\$103	\$10,122	42.14%	13,898
Capital	0	\$0	\$0		0
<b>Total Tax Department</b>	<b>\$95,960</b>	<b>\$7,440</b>	<b>\$79,744</b>	<b>83.10%</b>	<b>16,216</b>
<b>Council</b>					
Personnel	30,150	\$3,718	32,192	106.77%	(2,042)
O&M	84,800	\$965	82,142	96.87%	2,658
Capital-Green Acres	100,000	\$0	100,000	100.00%	0
Council Expense	12,000	\$447	13,686	114.05%	(1,686)
Contributions	268,000	\$0	268,000	100.00%	0
Codification	2,500	\$1,964	1,964	78.56%	536
Employee Recognition	8,000	\$0	6,357	0.00%	1,643
Community Events	10,000	\$0	0	0.00%	10,000
Insurance	16,920	\$3,610	15,036	88.87%	1,884
<b>Total Council</b>	<b>\$532,370</b>	<b>\$10,704</b>	<b>\$519,377</b>	<b>97.56%</b>	<b>12,993</b>
<b>Finance</b>					
Personnel	360,565	\$42,867	362,575	100.56%	(2,010)
O&M	63,300	\$7,290	40,331	63.71%	22,969
Capital	0	\$0	0		0
<b>Total Finance</b>	<b>\$423,865</b>	<b>\$50,157</b>	<b>\$402,906</b>	<b>95.06%</b>	<b>20,959</b>
<b>Information Technology</b>					
Personnel	219,275	\$34,776	231,116	105.40%	(11,841)
O&M	160,360	\$9,444	150,305	93.73%	10,055
Capital	86,300	\$29,300	83,867	97.18%	2,433
<b>Total Information Technology</b>	<b>\$465,935</b>	<b>\$73,520</b>	<b>\$465,288</b>	<b>99.86%</b>	<b>647</b>

EXPENDITURE REPORT

Page Four

Date: JUNE 2010

100% of Year Expended

ACCOUNT	AMOUNT BUDGETED	MTD	YTD	YTD%	UNEXPENDED BALANCE
<b>Police Department</b>					
Personnel	3,369,535	\$332,893	3,298,864	97.90%	70,671
O&M	413,525	\$42,911	365,303	88.34%	48,222
Capital	112,200	\$0	96,467	85.98%	15,733
<b>Total Police</b>	<b>\$3,895,260</b>	<b>\$375,804</b>	<b>\$3,760,634</b>	<b>96.54%</b>	<b>134,626</b>
<b>Streets &amp; Grounds Division</b>					
Personnel	397,975	\$37,523	386,594	97.14%	11,381
O&M	344,850	\$45,071	330,732	95.91%	14,118
Capital	0	\$0	0		0
Debt Service	46,720	\$5,045	46,716	99.99%	4
<b>Total Streets &amp; Grounds</b>	<b>\$789,545</b>	<b>\$87,639</b>	<b>\$764,042</b>	<b>96.77%</b>	<b>25,503</b>
<b>Parks &amp; Recreation</b>					
Personnel	460,730	\$48,255	444,833	96.55%	15,897
O&M	229,515	\$17,841	228,779	99.68%	736
Capital	110,000	\$0	110,000	100.00%	0
<b>Total Parks &amp; Recreation</b>	<b>\$800,245</b>	<b>\$66,096</b>	<b>\$783,612</b>	<b>97.92%</b>	<b>16,633</b>
<b>Engineering &amp; Inspections</b>					
Personnel	160,825	\$16,853	158,686	98.67%	2,139
O&M	50,795	\$8,364	48,073	94.64%	2,722
Capital	0	\$0	0		0
<b>Total Engineering &amp; Inspections</b>	<b>\$211,620</b>	<b>\$25,217</b>	<b>\$206,759</b>	<b>97.70%</b>	<b>4,861</b>
<b>Less Interdepartmental Revenue</b>	<b>(\$96,980)</b>	<b>(\$14,480)</b>	<b>(96,980)</b>	<b>100.00%</b>	<b>0</b>
<b>Net Engineering &amp; Inspections</b>	<b>\$114,640</b>	<b>\$10,737</b>	<b>\$109,779</b>	<b>95.76%</b>	<b>4,861</b>
<b>Total General Fund</b>					
<b>Operating Budget</b>	<b>\$8,106,655</b>	<b>\$787,119</b>	<b>\$7,776,816</b>	<b>95.93%</b>	<b>329,839</b>
<b>Budgeted General Fund Balance</b>					
City Hall Renovations	149,188	\$0	\$78,621	52.70%	70,567

EXPENDITURE REPORT

Page Five

Date: JUNE 2010

100% of Year Expended

ACCOUNT	AMOUNT BUDGETED	MTD	YTD	YTD%	UNEXPENDED BALANCE
<b>Water Division</b>					
Personnel	244,770	\$26,373	243,135	99.33%	1,635
O&M	1,137,400	\$88,072	1,003,674	88.24%	133,726
Capital	45,000	\$45,000	45,000	100.00%	0
Debt Service	732,960	\$285,209	732,950	100.00%	10
<b>Total Water</b>	<b>\$2,160,130</b>	<b>\$444,654</b>	<b>\$2,024,759</b>	<b>93.73%</b>	<b>135,371</b>
<b>Sewer Division</b>					
Personnel	246,115	\$26,370	243,118	98.78%	2,997
O&M	1,304,255	\$117,897	1,482,921	113.70%	(178,666)
Capital	35,000	\$30,648	35,000	100.00%	0
Debt Service	679,600	\$430,153	679,586	100.00%	14
<b>Sewer Sub Total</b>	<b>\$2,264,970</b>	<b>\$605,068</b>	<b>\$2,440,625</b>	<b>107.76%</b>	<b>(175,655)</b>
Kent County Sewer	1,600,000	\$121,148	1,356,433	84.78%	243,567
<b>Total Sewer</b>	<b>\$3,864,970</b>	<b>\$726,216</b>	<b>\$3,797,058</b>	<b>98.24%</b>	<b>67,912</b>
<b>Solid Waste Division</b>					
Personnel	322,265	\$28,390	297,127	92.20%	25,138
O&M	662,800	\$59,346	652,671	98.47%	10,129
Capital	190,000	\$0	0	0.00%	190,000
<b>Total Solid Waste</b>	<b>\$1,175,065</b>	<b>\$87,736</b>	<b>\$949,798</b>	<b>80.83%</b>	<b>225,267</b>
<b>Total Water, Sewer</b>					
<b>Solid Waste</b>	<b>\$7,200,165</b>	<b>\$1,258,606</b>	<b>\$6,771,615</b>	<b>94.05%</b>	<b>428,550</b>
<b>Electric Division</b>					
Personnel	1,110,695	\$134,254	1,044,039	94.00%	66,656
O&M	1,931,106	\$158,081	1,656,108	85.76%	274,998
Transfer to General Fund	2,500,000	\$208,333	2,500,000	100.00%	0
Capital	515,520	\$465,520	503,467	97.66%	12,053
Debt Service	668,110	\$370,000	668,110	100.00%	0
<b>Electric Sub Total</b>	<b>\$6,725,431</b>	<b>\$1,336,188</b>	<b>\$6,371,724</b>	<b>94.74%</b>	<b>353,707</b>
Power Purchased	21,500,000	\$1,959,900	20,254,371	94.21%	1,245,629
<b>Total Electric</b>	<b>\$28,225,431</b>	<b>\$3,296,088</b>	<b>\$26,626,095</b>	<b>94.33%</b>	<b>1,599,336</b>
<b>TOTAL OPERATING</b>					
<b>BUDGET</b>	<b>\$43,532,251</b>	<b>\$5,341,813</b>	<b>\$41,174,526</b>	<b>94.58%</b>	<b>2,357,725</b>

**INTERSERVICE DEPARTMENTS REPORT**

Page Six

Date: JUNE 2010

100 % of Year Expended

ACCOUNT	AMOUNT BUDGETED	MTD	YTD	YTD%	UNEXPENDED BALANCE
<b>Billing &amp; Collections</b>					
Personnel	428,105	42,776	413,955	96.69%	14,150
O&M	162,500	16,273	133,357	82.07%	29,143
Capital	0	0	0		0
<b>Total Billing &amp; Collections</b>	<b>\$590,605</b>	<b>59,049</b>	<b>\$547,312</b>	<b>92.67%</b>	<b>43,293</b>
<b>Garage</b>					
Personnel	124,260	6,164	134,067	107.89%	(9,807)
O&M	26,402	2,036	24,447	92.60%	1,955
Capital	15,638	15,638	15,638		0
<b>Total Billing &amp; Collections</b>	<b>\$166,300</b>	<b>23,838</b>	<b>\$174,152</b>	<b>104.72%</b>	<b>(7,852)</b>
<b>Meter Department-Water</b>					
Personnel	123,455	11,049	123,800	100.28%	(345)
O&M	93,585	9,127	71,624	76.53%	21,961
Capital	60,500	0	57,914	95.73%	2,586
<b>Total Billing &amp; Collections</b>	<b>\$277,540</b>	<b>20,176</b>	<b>\$253,338</b>	<b>91.28%</b>	<b>24,202</b>
<b>Meter Department-Electric</b>					
Personnel	236,435	24,902	237,846	100.60%	(1,411)
O&M	122,405	5,250	77,744	63.51%	44,661
Capital	32,000	0	32,079	100.25%	(79)
<b>Total Billing &amp; Collections</b>	<b>\$390,840</b>	<b>30,152</b>	<b>\$347,669</b>	<b>88.95%</b>	<b>43,171</b>
<b>Public Works</b>					
Personnel	0	0	0		0
O&M	143,480	10,484	138,132	96.27%	5,348
Capital	0	0	0		0
<b>Total Billing &amp; Collections</b>	<b>\$143,480</b>	<b>10,484</b>	<b>\$138,132</b>	<b>96.27%</b>	<b>5,348</b>

**ALL COSTS SHOWN ON PAGE 6 ARE ALSO INCLUDED IN THE VARIOUS DEPARTMENTS LISTED ON PAGES 3-5 OF THE EXPENDITURE REPORT WHO UTILIZE THE SERVICES OF THE DEPARTMENTS LISTED ABOVE. INTERSERVICE FUNDS ARE ENTIRELY FUNDED BY OTHER CITY DEPARTMENTS.**

*MILFORD CITY COUNCIL*  
MINUTES OF MEETING  
*July 12, 2010*

The Monthly 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 Monday, July 12, 2010.

PRESIDING: Mayor Joseph Ronnie Rogers

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

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

CALL TO ORDER

Mayor Rogers called the Monthly Meeting to order at 7:30 p.m.

PLEDGE AND INVOCATION

Following the Pledge of Allegiance, the invocation was given by Councilman Starling.

APPROVAL OF PREVIOUS MINUTES

Motion made by Mr. Pikus, seconded by Mr. Brooks to approve the minutes of the May 25, June 1, June 3, June 14 and June 28, 2010 meetings as presented by the city clerk. Motion carried.

RECOGNITION

*Jim Gray/Parade Inserts-Utility Bills*

Mayor Rogers advised that Jim Gray is present to ask permission to include the parade flyers in the August and September utility bills for the October parade.

Mr. Gray announced this is the 25<sup>th</sup> year his family has planned the parade for the City of Milford. He stated that though this is the City of Milford's parade, they only coordinate the affairs and money. In the past they were allowed to have a flyer added to the utility bill and are asking that be done twice this year.

Mayor Rogers asked that council make a motion so it could be on record. Mr. Pikus moved for approval, seconded by Mr. Brooks. Motion carried.

POLICE REPORT

Mr. Morrow noted that the police department continues to be extremely busy. Mr. Morrow moved to accept Chief Hudson's report, seconded by Mr. Starling. Motion carried.

CITY MANAGER REPORT

City Manager Baird read the following report into record:

*Milford Charter Amendments (SB312 w/SA 2)*

*The Delaware State Senate passed the Charter Amendments with one amendment by unanimous vote on June 29 and was followed by the Delaware House of Representatives taking the same action by unanimous vote on June 30. At the request of Sen. Simpson, I testified before the full Senate during its debate on June 29. The bill is now on its way to the Governor for his signature. The amendment is included as an attachment to the report. I would like to thank Sens. Simpson and*

*Bonini along with Reps. Carey and Walls for their support of the bill.*

#### *Election Ward Realignment*

*Per direction provided by City Council during the Charter review process, City staff is preparing options for Election Ward realignment by City Council. It is my intention to have this information presented to City Council no later than August 31 so that consideration can be given to each of the options presented. I recommend a decision should be made no later than October 2010.*

#### *Municipal Street Aid*

*This year's Bond Bill included \$4 million in Municipal Street Aid which is \$2 million short of the full funding level of \$6 million. This is better than last year when the program was not funded at all, but over 2 years the City is receiving only \$183,000 of the \$550,000 that should have been funded. This loss of revenue is taking its toll on the maintenance of the City's transportation infrastructure.*

#### *Governor Markell to speak in Milford*

*Governor Markell will be addressing the Greater Milford Chamber of Commerce during their lunch meeting on Wed. July 14 at Shawnee Country Club.*

#### *Street Improvement Bid Packages*

*Staff is preparing bid packages for the 2010 Street Improvement Program. The tentative street improvement list includes the following streets: N. Church St.; Part of Masten Circle; Evans Drive, Foster Street, and NE 10<sup>th</sup> Street. Bids are expected to be out later this month and awarded by City Council in August.*

#### *SE Master Plan*

*Mr. Norris and I will be meeting with State officials on July 13 for what we anticipate will be the last round of State comments on the SE Master Plan for Milford. Once this final review has been completed by the State, the plan will be ready for public review and comment before being presented to City Council for final adoption.*

\*Senate Amendment No. 2

To

Senate Bill No. 312

AMEND Senate Bill No. 312 by 1 deleting Section 3.04 (consisting of lines 317 thru 322, inclusive,) thereof in its entirety and by renumbering Sections 3.05 thru 3.09 thereof as Sections 3.04 thru 3.08 respectively.

FURTHER AMEND Senate Bill No. 312 by deleting "public" as it appears on lines 462 and 490 thereof and insert in lieu thereof "municipal".

SYNOPSIS - This Amendment removes the notice of action requirement from the Bill and clarifies that the utilities regulated are municipal utilities.

Mr. Adkins asked if the city has considered any more micro-surfacing adding he was impressed with the way it turned out on his street. Mr. Baird said it will not be used until they determine how it will hold up over the winter. He said Kings Highway is a great example of the two finishes where you go from micro-surfacing to paving. He explained the micro-surfacing is only a maintenance product used to extend the life of a surface for seven to ten years. An overlay has a lifespan of ten to twenty years depending on the volume of traffic.

#### COMMITTEE REPORTS

##### *Economic Development Committee*

Mr. Grier advised he is working on some ideas to move forward with economic development. His plan is to schedule a committee meeting for the purpose of developing a five-year plan and will report back at the next monthly council meeting.

##### *Fourth Ward Community Gathering*

Mr. Starling thanked Chief Hudson and his officers for their assistance with a recent neighborhood event at Brightway Commons. He informed council the Community Action Group, under the direction of Pastor Malissa Dukes, planned the event in addition to a number of other projects at the housing development.

*ADA Compliant Curb Project*

Mr. Pikus asked what response Mr. Baird received from DelDOT regarding the sudden halt of the intersection work in the downtown area; Mr. Baird said he received a voice mail late this afternoon.

CORRESPONDENCE

The city clerk read the following letter from Butch Elzey into record:

*Mayor and Council:*

*Some months back Milford a young Marine–Lance Corporal Lee Folke. I did not know Lance Corporal Folke and also am aware he was not killed in combat. Be that it may, he was still a Marine who was serving our country. I would hope and pray that our town would do something to honor this young Marine as we should honor all our servicemen and women. I would be honored to help in anyway I can. I have seen so many wounded the last five years at Walter Reed Medical Center and have seen the appreciation on the faces of the parents during our barbeque. We all need to honor our fallen and show the parents that we all truly appreciate the sacrifice their families have given to our country. Trust me; this gesture will help them heal.*

*Mayor Rogers and Council, great job on balancing the city budget. Word on the street is that Milford has one of the best councils we have ever had.*

Mayor Rogers said he just received the letter and is considering something be done at the opening ceremony of the Fall Fling. He added it is unfortunate we missed this opportunity on Memorial Day and/or the Fourth of July.

UNFINISHED BUSINESS

*North Front Street Sewer Project/Status Report*

Mr. Baird recalled the Sewer Repair and Replacement Contract awarded to JJID earlier this year for work on North Front Street.

He reported the work on Northwest Front Street is close to completion. Work continues on Northeast Front Street by the Kent County Pump Station in front of the police station and headed east. A couple of conflicts have arisen that have created a difference in the city's position and the contractor's position. The contract is currently suspended awaiting formal response from the contractor with regard to their engineer drawings and detail plans of how to proceed.

He said that Mr. Dennehy and Mr. Mallamo have been involved in a number of meetings and felt council should be updated at this time.

Principal Randy Duplechain of Davis, Bowen and Friedel then recalled the city entering into a contract with JJID for approximately \$790,000. He explained the portion near Truitt Avenue is close to completion. Only a couple of minor checklist items remain on that end. The contractor was paid \$210,000; \$23,230 is being retained until the project is completed and closed out.

Mr. Duplechain advised the contractor has made a claim for an additional \$40,000. JJID claims they are owed additional compensation due to the Maintenance of Traffic issues related to both portions of the project. The city responded by declining those claims and referencing the project plan specifications which clarifies their responsibility. Mr. Duplechain pointed out the real issue is related to the work taking place at Brady Drive, the start of the second portion of the project which is an extension of sewer from Brady, east on Front Street toward Rehoboth Boulevard. The original

plans called for a bore and jack where they would bore a 30" steel casing pipe. This was needed for the county's 24-inch force main that serves the entire city. The plan was to bore beneath the county's force main with the casing pipe and slip the 18-inch carrier pipe inside. He reported that everything was headed in the right direction until the bore was done by the subcontractor responsible for the bore. The next day, they were able to go inside the manhole to observe where the casing pipe location would be centered with the manhole. He said that unfortunately, it was about 14 inches off center.

Mr. Duplechain said they have asked JJID for specific plans of how they are going to access the misaligned bore because it is very close to the 24-inch force main.

The contractor came back with a plan and the city responded with comments. The city advised them that all costs associated is their responsibility as well as the time it will take to review and approve a plan needed to move forward.

The contract was stopped until the next week to allow time for JJID to submit the information; the week before last they came back with a letter stating they were going to submit a claim for the misaligned bore. The city again responded stating we were not responsible.

Mr. Duplechain advised that Brad Dennehy and he met with JJID representatives on Wednesday. They felt it was a positive meeting and it appeared they were willing to proceed as was requested. Then late Thursday afternoon another e-mail was received with the following demands and if met by DBF and the city, they would be willing to waive the claim for the misaligned bore:

1. Eliminate all project liquidated damages.
2. JJID maintains its rights to continue to pursue claims related to the eliminated forcemain, MOT and extended overhead issues.
3. City agrees to pay in full the bore lump sum on the next pay estimate when the fix as detailed in our meeting on July 7<sup>th</sup> is accomplished.

Mr. Duplechain feels this is ridiculous and responded as such. They are again waiting for a response with their means and methods for accessing the bore. He said there is a chance the bore may not be able to be utilized going into the existing manhole and a new manhole required.

As a result, there are a lot of concerns related to the fact that this excavation is still open. In addition, Wadkins Garage and Towing and Blue Hen Spring Works, both businesses in that area, are being impacted.

He concluded by saying they are holding the contractor to the contract documents.

Mayor Rogers asked how much time should they be given; Mr. Duplechain feels we should give them as much time as they need though they seem to stalling now. He does not want to rush them into a situation because it is very critical with the location of the force main. A decision will need to be made at some point that they must proceed.

Mr. Baird reported that DNREC has also been informed because the project was funded with SRF dollars. He said at this point, he is comfortable with the manner the city is handling this.

Mr. Pikus asked how this affects their time frame as far as this contract noting the 120-day completion requirement. Mr. Duplechain advised they are currently at 159 days. He explained that an extension was not provided though the time frame was suspended which means the clock was stopped. They have approximately 21 days left to complete the project. He said that is basically impossible and will most likely result in liquidated damages which are calculated at \$500 per day. When questioned, Mr. Duplechain said they like the method being proposed with the timber sheeting but will need more details.

More information will be provided at a later date.

Presented was the agreement for recyclables the city will be collecting effective August 1, 2010. Mr. Baird advised that notices have been sent out to customers informing them of the changes along with a schedule though there are no major changes. The agreement is for six years and expires June 30, 2016.

The city manager also reported that if the city decides we no longer want to collect recyclables and instead contract that service out, this agreement can be assigned to the new contractor. The agreement includes a clause that states if our recyclables include 5% or more items being delivered, it can be rejected and those items disposed of as normal waste.

Mr. Baird recommends approval of the agreement as is being presented.

When asked if Mr. Baird foresees a potential return on the investment from recyclables in the future, Mr. Baird answered that under this type of contract that answer is no. He said that is because we are not playing the market and instead are taking our recyclables to DSWA. If after the agreement expires and decided to get into the business a little deeper, he believes we could see a small return. He added the only way he could potentially see any type of return during this six-year term, is if our numbers increased to a point we were seeing a significant savings in tipping fees.

He added the bill adopted this year in Delaware provides some goals which includes some percentages that will kick in over the next couple of years. He feels we may start seeing a return at that point though he is unable to guarantee anything..

Mr. Pikus asked if during the past three years of recycling, has there been any reduction in the standard trash collection. Mr. Baird answered a slight reduction as far as tonnage, but not enough to offset the cost of recycling.

In addition to the facility being in Milford, it was agreed there is an advantage that this is one of the few facilities in the state that accepts recyclables.

Mr. Brooks then advised the notice sent out stated that when the recycling collection fell on holidays, it would be picked up the day prior to the holiday. He asked how our crews will be able to handle both regular collections and recycling in one day. Mr. Baird advised that in addition to our streets and grounds staff, some of the utility crews will be multi-tasking on those days. He agrees that will be a challenge because currently, we have an open collection day which allows some flexibility on collections. During those times, other city staff will need to be utilized.

The city manager advised that last week, employees from other departments were used to assist during the extremely hot days.

Mr. Pikus moved for approval of the Agreement for the Management of Recyclable Materials between DSWA and the City of Milford, seconded by Mr. Grier. Motion carried by unanimous roll call vote.

#### *DSWA Municipal Discount Disposal Fee Agreement*

Mr. Baird recalled previous conversations regarding landfill tipping fees when two options were being considered. The other choice was the deferral option in which the DSWA was going to provide an \$8 rebate the first year, it would even out the second year, and the deferral being paid back the third year. DSWA also sent that agreement in which both he and Mr. Portmann were uncomfortable with the language and how it would show as a liability on the city's financial statements.

They then considered the second option with is a standard differential disposal fee which includes a discount taken right at the gate. That discount will be a \$4 per ton off their base rates which last week went to \$80 a ton. On July 1, 2011, it will increase to \$82 a ton and to \$84 a ton on July 1, 2012. He explained the city's net costs will be \$76, \$78 and \$80 over the three years. The numbers work out the same between the two options, though this is a cleaner agreement and will better reflect our true costs.

In addition, this will not impact the rates proposed in the ordinance covered by this three-year agreement.

Mr. Brooks moved for approval of the Municipal Discount Disposal Fee Agreement between DSWA and the City of

Milford, seconded by Mr. Morrow. Motion carried by unanimous roll call vote.

*Adoption of Ordinance 2010-11/Chapter 193/Solid Waste Rates*

The rates proposed in Ordinance 2010-11 are those needed to balance the FY2011-12 budget as has been discussed and which ordinance was introduced at the previous meeting.

Mr. Baird noted that one change was made to the ordinance introduced on June 28, 2010. It stated the commercial rates for the 95 gallon cart allowed one collection per week. However, it will be collected twice a week.

Mr. Pikus asked if customers that provide their own bins are still being picked up twice a week; Mr. Baird explained that all commercial collections are twice a week adding that he is unsure why they would not have a city-issued container though it may be lack of room.

Mr. Pikus moved to adopt Ordinance 2010-11, seconded by Mr. Adkins:

Chapter 193: SOLID WASTE

Section 1.

Section 2 of Chapter 193, Rate Schedule, is hereby amended to read as follows:

§ 193-2. Rate schedule.

Code Number Description Monthly Rate

Residential Rates Current Adopted

01 Single Family [includes Multi-Units ~~\$22.00~~ \$23.50  
(12 and below)]

~~1/week collection~~ Weekly Collection

~~1/week recycling~~ Bi-Weekly Recycling

Commercial Rates

CART 95-gallon, ~~1/week~~ **2/week\*** ~~\$30.00~~ \$32.00

05 3-yard, 2/week, light ~~\$75.00~~ \$80.00

06 Customer-owned, 3-yard, 3/week, heavy ~~\$180.00~~ \$192.00

07 3-yard, 3/week, medium ~~\$125.00~~ \$134.00

08 City-owned, 3-yard, 3/week, heavy ~~\$185.00~~ \$198.00

09 4-yard, 3/week, extra heavy ~~\$425.00~~ \$454.00

Section 3.

Introduction Date: June 28, 2010

Adoption Date: July 12, 2010

Effective Date: July 22, 2010\*

\*Utility bills generated after July 22, 2010 will reflect the solid waste fees established by this ordinance.

Motion carried by unanimous roll call vote.

*Adoption of Ordinance 2010-12/Chapter 185/Sewer Rates*

The rates proposed in Ordinance 2010-12, introduced at the previous meeting, are those also needed to balance the FY2011-12 budget.

Mr. Baird explained that city rates will increase from \$2.43 to \$2.71 per 1,000 gallons. All other rates, including the out of town rates, will be adjusted accordingly.

Mr. Brooks asked for confirmation the average household uses 5,000 gallons; Mr. Baird stated yes, that is correct.

Mr. Pikus asked if the big users will be given some adjustment; Mr. Baird said that is an option which will be addressed once this impact has been determined. Mr. Pikus feels that is important in order to keep the image the city is commercial and industrial friendly. Mayor Rogers agreed.

Mr. Adkins moved to adopt Ordinance 2010-12, seconded by Mr. Grier:

*Chapter 185: SEWERS*

*Section 1.*

*An Ordinance to Amend the Code of the City of Milford, Chapter 185, thereof, entitled Sewers, for the purpose of amending sewer user rates.*

*Section 2.*

*Section 10 of Chapter 185, Schedule of Rates and Charges, Paragraphs (A) and (B), is hereby amended to read as follows:*

*§ 185-10. Schedule of rates and charges.*

*The Council has the authority to establish sewer rates and charges set forth in the following schedule, which shall be effective ~~August 1, 2008~~ July 22, 2010\* and shall be collected from the customer of the sewer system under operation of the City of Milford. The rates and regulations shall be reviewed on an annual basis and adjusted as necessary. Each user of the wastewater facilities will be notified annually of effective user charge rates either by mail or advertisement in a paper of general circulation within the City of Milford.*

*A. Rate schedule based on metered water consumption.*

*(1) City service rate:*

*(b) Over 1,000 gallons: ~~\$2.43~~ \$2.71 per 1,000 gallons.*

*B. Rate schedule based on metered sewage flows.*

*(1) City service rate:*

*(b) Over 1,000 gallons: ~~\$2.43~~ \$2.71 per 1,000 gallons.*

*Section 3.*

*Dates.*

*Introduction Date: June 28, 2010*

*Adoption Date: July 12, 2010*

*Effective Date: July 22, 2010\**

*\*Utility bills after after July 22, 2010 will reflect the sewer rate established by this ordinance.*

Motion carried by unanimous roll call vote.

*Planning Commission Vacancy*

Mayor Rogers is planning to fill the one vacancy on the Planning Commission in August, at which time the current commissioners' terms expiring will be reviewed. In addition, he is hoping that more information will be provided on the newly aligned wards.

The item will be placed on the August Monthly Meeting agenda.

**NEW BUSINESS**

*DEMEC/Beasley Station Generator Expansion Project/Pat McCullar*

Pat McCullar, President of Delaware Municipal Electric Corporation (DEMEC) and Kimberly Schlichting, Vice President were present.

Mr. McCullar then addressed the proposed expansion of the Warren F. Beasley Power Station in Smyrna, Delaware needed to meet our growing demands and address some of the costs associated with generation on the peninsula.

Mr. McCullar reminded council that DEMEC is the Joint Action Agency created by the Municipal Electric Utilities in the State of Delaware in 1979 and is authorized under Title 22 of the Delaware Code. Their job is to handle wholesale electric supply and the capital financing needs of its members and services in the state. In addition, DEMEC is a generation owner.

Mr. McCullar advised the core seven members in 1979 are Clayton, Middletown, Milford, New Castle, Newark, Seaford and Smyrna. The City of Dover joined in 1992 and the City of Lewes in 1994.

Some of the most recent generation projects they have participated in include the Dover Sun Park Project, a 10 MW solar park on 110 acres in the Garrison Business Park on the east side of Dover. DEMEC took 15% of the project or 1,500 KW of photovoltaic. That project is expected to be in service next year.

Mr. McCullar also reported the Blue Water Wind Project was expected to be up and running in 2014. Given the way federal legislation and regulation is currently going, he believes that date may slip. DEMEC was the first electric utility in the national to sign an agreement for off shore wind supply. They are very much behind that project and their investment in the life of the project will be somewhere between \$200 and \$300 million. DEMEC has a firm contract with Blue Water Wind though there has been zero costs because it is a take and pay contract, which means they must provide energy before they are paid. There was an announcement another firm from New Jersey may become involved in the Blue Water Wind Project.

In relation to the renewable energy grant programs, DEMEC has encouraged the installation of 375 KW of solar voltaic systems in our service territories since 2007. Over \$1.5 million in grants have been awarded to customers.

Mr. McCullar added a commitment was made by DEMEC to expand the percentage of renewable energy in its power supply portfolio. To do that, a number of additional projects will be needed to meet the 25 year goal the State of Delaware has put out.

He reported that DEMEC needs to add the second combustion turbine generator to the project. In 2001, the project was designed as a two-unit facility though one unit was installed initially. That investment is needed with the growing demand, need to control costs and to assure the reliability of electric services on the Delmarva Peninsula.

The second unit, similar to the first, is a combustion turbine. Natural gas will be the primary fuel with a backup fuel of low-sulfur diesel.

Depending on which technology is chosen, nominal output will be 45-55 MW and will be a black-start capable unit as the first unit is.

Mr. McCullar further stated we are tied directly into the distribution system of the Town of Smyrna which means when their outside service fails, this unit can pick them up and supply the electric service. During May, that was done on two consecutive days. Delmarva had to do some transmission system maintenance and if this had not been there, Smyrna would have been in the dark for about four hours a day, two days in a row. Instead, the turbine was brought up and gauged to the Smyrna system and without anyone knowing, the power remained on as normal.

He said the estimated project costs for the second unit are between \$35 and \$38 million and depends which technology is chosen.

Two options are under consideration. They include a second GE LM6000 Combustion Turbine which matches unit #1 with 45 MW of additional output at a cost of \$35 million. The second technology being reviewed is a Rolls Royce Trent Combustion Turbine which is similar technology with a higher output that includes a 55 MW addition at a cost of \$38 million. He explained the KW installed cost is \$777KW for the GE though the additional higher output can be obtained at a lower installed cost of \$690/KW.

Mr. McCullar advised that Dan Corrigan, Vice President of Engineering will be the primary in the recommendation of which unit is selected.

The first project is owned by seven members of DEMEC; it is currently proposed those seven members will take the ownership shares in Unit #2. The participant percentages are proposed with the final ratio shares determined by the DEMEC Board of Directors. He said that the most favored scenario by the board would give Milford 19.58% of the project output. In addition, the board is also considering recasting the allocation for Unit #1 and Unit #2 at the same time to better match with the current peak demand of the members. With that, Milford will have 19.58% of the entire facility and approximately 100 MW of output.

Mr. McCullar then discussed the impact of installing the second unit. The debt service to finance capital improvement will add about \$2.50 a MWH to the power bills of each participating members. However, the impact of having that domestic generation on the Delmarva Power is estimated to decrease the capacity costs by approximately \$3 a MWH.

He said the unit will pay for itself and will return revenues to the members. They anticipate conservatively a total supply cost decrease of 50 cents a MWH or \$550,000 a year for the entire DEMEC group; Milford's share would be approximately \$107,000 per year. Therefore, the unit will return additional revenues.

Mr. McCullar said there is a growing demand on the Delmarva Peninsula which is why the second unit is needed. Right now, we are in an economic downturn and have seen industrial activity curtailed and a lot of projects that would have otherwise moved forward sit down. When the downturn is over, that demand will come rushing back based on past experiences. DEMEC must be prepared to meet that growing demand, otherwise the economic recovery of Delaware may be disadvantaged.

He also reported that transmission capability is inadequate. Without the domestic generation running on the peninsula during peak summer days, the state would be black. The import capability of the transmission lines cannot bring enough power into the state to meet the demands. That is why there is a need for local generation. They are hoping the MAPP Transmission Project will be built though currently, PJM keeps delaying it. Even with that, without any domestic generation, we are at risk.

McCullar said we must find a way to reduce the capacity surcharge that Delaware plays. PJM has a capacity resource model which is locational. If an area is capacity deficit, additional generation must be built or higher transmission charges will be imposed. The capacity charge in Delaware adds about 10% to the power costs of Delaware citizens compared to Pennsylvania, New Jersey and Maryland. The only way that can be eliminated is to get more domestic generation on the peninsula.

There is a public policy that will require more renewable energy which he explained is a intermittent source. Solar power is only available when the sun is shining and wind power is only available when the wind is blowing. There must be a way to back up power supply and when those powers diminish, a fast start generation is needed to make up the difference.

Mr. McCullar asked the City of Milford consider entering into the Purchase Power Agreement as a member of DEMEC. He noted it is similar to the agreement Milford and other members executed in 2001. It provides for the members to secure power entitlement shares in the project and will obligate DEMEC to build, own and operate the facility for the participant's benefits solely. The contract life is equal to the life of the bonds which will be between 25 and 35 years depending on what the most attractive financing is in the market. It is a take or pay contract commitment. Milford and the other members will be obligated to pay the costs of the project, including capital operating and other costs, regardless of whether or not the unit ever generates a kilowatt of energy.

Should all the members approve the agreement, DEMEC will go to the financial markets with the A rated credit and secure a sale of bonds. Once they receive a commitment, they will begin construction of the project in 2011; the target commercial operation date will be June 1, 2012.

Mr. McCullar stated their credit rating is "A" which is an increase from last year's "A-". He reported that most utilities in the country have "Triple B" credit. DEMEC is one of the highest rated utilities.

The actual cost to Milford is approximately \$2.50 a MWH and is approximately \$400,000 a year. The total cost of the project will be \$2.7 to \$3 million debt service cost and O&M.

Mr. Pikus asked the cost to Milford residents in their electric bill. Mr. McCullar stated there should be a reduction in their costs. He explained that right now, Unit #1 is returning positive returns to its members and has done for several years. DEMEC expects this project to return more revenue from capacity and energy sales than debt service and O&M costs.

Mr. Baird referenced the \$550,000 shown in annual costs with Milford's net savings of \$107,690.

Mr. Pikus noted the number of alternative energy possibilities and asked the possibility of turning garbage into energy. Mr. McCullar said they would like to consider a biomass project though there is a specific state law that bans those projects in Delaware.

When asked about hydroelectric, Mr. McCullar said we do not have the geology nor the minimum water drops necessary to run a hydro.

A question was asked if the other municipalities had already committed; Mr. McCullar explained the agreement is before seven members with one already committing. Over the next two weeks, they expect all seven to approve the purchase power agreement. If one member withdraws from the project, it will go back before the Board of Directors and Milford's allocation would most likely increase. If a substantial number of members withdraw, the project would not proceed.

Mr. McCullar pointed out that if this occurred and Milford paid more, Milford would also receive a larger share of the revenues.

Mayor Rogers pointed out that Milford has a member on the board to look out for Milford's best interests.

Mr. McCullar noted that DEMEC has two members that do not have any participation or ownership in Unit #1 and are paying more for their supply. He advised the City of Dover will most likely not participate because they are currently developing their own project for a combined cycle unit which DEMEC may also participate in. The City of Lewes is also interested in this project though that must be determined by DEMEC's board. The existing seven participants get right of first choice in the project.

Mr. Baird then stated that DEMEC and other electric utilities will need a greater percentage of renewable power supplies in its portfolio which will cost our rate payers more money because it is more expensive than what is seen today. By moving forward with a second generator, Milford's projected share of the savings will be approximately \$100,000 a year based on the 2012 numbers. He feels those numbers will increase as the capacity costs continue to rise. The \$100,000 in savings will be needed as further investments are made in the renewable portfolios and energy supplies. This is not only to meet the requirements of the law, but also because that is the direction that all utility providers are dealing with throughout the county. It creates a pot of money that can be used for reinvestment in some of the renewable portfolios required for investments.

Mr. Pikus asked for further clarification should two or three members withdraw. Mr. McCullar said the contract requires Milford City Council to pass a resolution authorizing the mayor and city manager to enter into the agreement. The agreement will not be executed until an affirmative commitment is received from all seven. If one withdraws, he verified he would come back and re-visit the percentages to make sure the economics of the project still make sense.

When asked if Milford would have the right to rescind the resolution, Mr. McCullar stated yes, the mayor would simply refuse to sign the contract. He explained that after each member's approval, a simultaneous signing will occur. That also allows the board to make a last minute decision to kill the project.

Mr. Baird then referenced the \$3 capacity cost decrease capacity shown. Instead of paying the \$3 to someone else, we will pay \$2.50 to ourselves (DEMEC) which will result in a revenue-producing asset. Mr. McCullar emphasized the \$3 capacity cost will increase over the years and the \$2.50 is a fixed debt service cost. If \$3 becomes \$5, the savings becomes \$2.50 rather than 50 cents.

A question was asked if the new generation would run at 100% capacity; Mr. McCullar explained it is designed as a peaking generator and will only run in the high demand hours of the year which are typically during June, July, August, December, January and February. Currently, it is running 15 hours a day and has been since late June. Once the hot weather and peak demand for electricity are over, the unit will only run when necessary to meet peak demand or to maintain reliability on the transmission system.

William Pilecki of 79 Ivy Lane asked if it is not running to capacity, does it have the ability to transmit electricity to other areas; Mr. McCullar answered this unit can deliver electricity anywhere in the PJM region.

Mr. Pilecki then asked if there is an option to sell it elsewhere if the demand was there in order to recoup a profit. Mr. McCullar said that is correct but we would not operate the unit at a loss unless it was absolutely necessary in an emergency situation. He said other than that, it is bid everyday in the PJM and if the bid is economic based on PJM's need for energy, they would dispatch it to generate electricity. Regardless of whether it is generating electricity, it is earning capacity revenues 365 days a year.

It was confirmed that FERC (Federal Energy Regulatory Commission) regulates DEMEC and not the Public Service Commission of Delaware. Mr. McCullar noted that DNREC issues the air permit because it is a carbon burning unit. He noted this is the cleanest carbon based generating facility in the State of Delaware.

Mr. McCullar reported that DEMEC has a better record of reliability rating than Delmarva Power and Delaware Cooperative. It was then confirmed that Milford has the third lowest electric rates in the state.

A resolution will be presented to City Council for adoption at the next meeting authorizing Mayor Rogers and Mr. Baird to move forward with this.

When asked about the possibility of increasing membership, Mr. McCullar answered that currently all nine municipal electric utilities that exist in the state are members of DEMEC. There has been some interest from municipal utilities in New Jersey and Pennsylvania. Though they want to entertain that possibility, they want to make sure that expanding membership would not be a disadvantage to the existing membership economically.

Mr. McCullar then discussed three energy bills that were recently passed by the general assembly.

Senate Bill 119 is a revision to the Renewable Portfolio Standards originally adopted in 2006. It is included in Title 26, Subchapter III-A has substantial new impacts and obligations for municipal electric companies.

This was first discussed during the 2009 legislative session but did not proceed. The administration was proposing to eliminate the municipal and cooperative alternative compliance language currently in the RPS law. Instead, this would set the RPS goals the same for all utilities in Delaware. That would have required utilities to meet annual targets which escalate from 2% to 20% in 2019 and 29% by 2029. In 2029, 29% of our power supply would have to come from eligible renewable energy sources. They also wanted to assess large penalties that failed to meet the goals. Alternative Compliance Payments (ACP) would have been in the range of \$200 to \$550/MWH. They also wanted to double the system benefit charge to customers.

Mr. McCullar said this was strongly supported by Governor Markell and his administration. Their approach is create a new industry segment in Delaware around the renewable energy policies.

He reported they went to the governor and indicated they wanted to support this and understand the need to create a new industry to help our economy. However, they explained we are a different business model than Delmarva Power. DEMEC is owned by our communities and we want to make sure the communities are able to decide how this is done. They pointed out Dover's Sun Park and the Blue Water Wind contract and that they have stayed ahead of Delmarva Power. If DEMEC is allowed to do it their way, there will be better results and those goals reached sooner.

The administration agreed and the legislation that was settled on would allow a comparable program for the RPS. The regulation is not by the state but by the local regulatory authority which in Milford is the City Council.

The law requires green energy contributions continue though we do not have to continue grant programs. However, the green energy funds must be used for renewable energy and energy efficiency.

All the incentives that are given to Delmarva Power to invest in renewable energies will now be given to DEMEC.

When asked how this would impact our customers' bills if the costs are very high, Mr. McCullar said the state capped the cost at 3% annually. As a result, the cost of meeting renewable portfolio standards cannot exceed 3% of our wholesale power costs each year. If it does, city council has the right to freeze the program until those costs are projected to be less

than 3%.

He advised there are no penalties in the final legislation, no alternative compliance payments and no loss of special provisions to control the programs at home.

Municipal utilities will be asked to meet targets of 25% by 2025. Of that 25%, 3.5% will come from solar though schedule will be determined by the municipalities. The programs will not have to start until January 2013.

The local regulatory authorities will, either independently or through DEMEC, design a plan to be presented to city councils, the general assembly and the State Energy Office. Each year, the progress must be reported. City councils will have the right to change the plan as often as necessary to meet the goals and control costs for their communities.

In addition, the local regulatory authority will determine what the program looks like based on local needs, value, feasibility and the economic and environment well-being of its members. Besides the 3% cap, there is a subcap of 1%. If the cost of solar power exceeds 1%, the program can be stopped.

The Green Energy Fund programs will continue with contributions of 0.178 MWH of all sales. Funds must be used to support energy efficiency and renewable energy technologies and demand side management programs. Grant programs to end-use customers are not required and communities can decide individually whether to continue the grant programs or use the money for other purposes.

The local authority also has the right to increase the contribution.

The state requirement for the Green Energy subscription has been eliminated. Municipalities may choose to continue to eliminate it. Municipal electric utilities will receive all renewable energy credit incentives currently provided to Delmarva Power & Light. The state will give a 10% bonus for all Delaware projects and use at least 50% of the equipment manufactured in Delaware. An additional 10% bonus will be given for projects sited in Delaware that 75% of the labor comes from the Delaware workforce.

Any new incentives offered to DPL will automatically be offered to the municipal utilities.

There is no state regulation involved by the general assembly, DNREC or PSC and instead is locally control. Each town council will determine the program pace and cost impacts to customers.

More information will be provided by DEMEC for suggested implementation over the next eighteen months.

Senate Bill 226 modifies the state's Green Energy Endowment Program, Title 29, Chapter 80, Subchapter II-The Delaware Energy Act. It has no direct obligations on municipal electric companies though it changes the way the state will allocate and spend the green energy endowment money. The control of grants had been given to the Secretary of DEMEC and the SEU (Sustainable Energy Utility) Oversight Board. They have been very slow to bring anything forward, though Mr. McCullar hopes they will come up with some good programs to advance energy efficiency in Delaware.

Senate Bill 267 addresses Aggregate Net Metering, Title 26, Chapter 10, Electric Utility Restructuring. It allows retail customers to aggregate usage and invest in renewable generation and requires the towns to accommodate that. It has substantial administration and billing impacts and possible revenue impacts on municipal impacts.

Mr. McCullar also advised that this will allow customers to sign contracts with the developer who may build a community base solar project, then require the local utility to allow it to be installed and to buy excess energy off the product. The system can be built up to 110% of the aggregated consumption of the group of customers. Because it is an aggregate, the projects can be larger than just our typical roof top solar which would inject larger amounts of energy into the distribution system which is a concern.

An amendment was added to strengthen the generator interconnection application process. In that manner, the stability and safety of the distribution systems can be assured.

The bill originally required the electric utilities to manage all individual accounts. They saw this as a billing nightmare and asked for the right to bill and credit a single account and allow the participants to divide it among themselves. He still expects significant challenges in metering and accounting to ensure it works correctly.

The legislation also allows third-party suppliers to serve load inside a municipal service territory. Mr. McCullar said that is in violation of state law for retail competition. He said this is being readdressed with the state.

It could also impact revenues if large projects are built. Those impacts may need to be addressed through rate designs and may decouple retail rate designs similar to what Delmarva is considering for their service territory.

Because of these concerns, they asked that implementation be delayed until July 1, 2011 to allow for further study. The state agreed that if significant issues were raised, they will agree to make changes.

Further information will be provided as these matters develop.

Council thanked Mr. McCullar and Ms. Schlichting for attending tonight's meeting. ,

#### MONTHLY FINANCE REPORT

Mr. Pikus reported that through the eleventh month of Fiscal Year 2009-2010 with 92% of the fiscal year having passed, 88.05% of revenues have been received and 82.31% of the operating budget expended.

#### ADJOURN

Mr. Pikus moved to adjourn the meeting, seconded by Mr. Grier. Motion carried.

The Monthly Meeting was adjourned at 9:25 p.m.

Respectfully submitted,

Terri K. Hudson, CMC  
City Clerk/Recorder

*MILFORD CITY COUNCIL  
MINUTES OF MEETING  
July 19, 2010*

A Meeting of the Annexation Committee of Milford City Council was held in the Joseph Ronnie Rogers Council Chambers at Milford City Hall, 201 South Walnut Street, Milford, Delaware on Monday, July 19, 2010.

PRESIDING: Chairwoman Katrina Wilson

IN ATTENDANCE: Committee Members Douglas Morrow and S. Allen Pikus  
Planning Commission Chairman Chuck Rini

City Clerk/Recorder Terri Hudson

Chairwoman Wilson called the Annexation Committee Meeting to order at 7:06 p.m. to review the following request submitted by Walter N. Thomas II dated May 4, 2010:

*It is our understanding that in order to annex a property into the City of Milford a formal letter must be submitted to you requesting this action to take place. With this stated, and by virtue of this letter, we hereby formally request that the property be annexed into the City of Milford.*

*More specifically described, the property, located at 1335 Milford-Harrington Highway, consists of tax parcels 62.00 and 62.02, block no. 1, as shown on tax map 173.00 in the Milford Hundred of Kent County, Delaware. Currently the property is zoned AC in Kent County and is comprised of 71.92 acres of land. The property is contiguous to the City of Milford municipal boundary both to the north and south.*

*Please refer to the enclosed City Annexation Exhibit for additional information including bearings and distances of the subject parcels and a location map. As indicated to Gary Norris via e-mails from Mr. Phillip Tolliver, P.E., we are requesting an R-3 zoning designation in the City of Milford. As you know, the approved City of Milford comprehensive plan does include the subject property as an immediate annexation area.*

*As time is of the essence, we would respectfully ask that you expedite this process. Should you have any questions or comments regarding this issue, please feel free to contact Mr. Phillip Tolliver, P.E. with Morris and Ritchie Associates, Inc. at 302-326-2200.*

Ms. Wilson advised that City Planner Norris was not in attendance due to another obligation.

She then announced the land is located on the south side of the Milford Harrington Highway (State Route 14) near the intersection of Canterbury Road/Holly Hill Road and Milford Harrington Highway with parcels and acreage noted below:

Tax Parcel 5-00-173.00-01-62.00-00001  
64.362 Acres Parcel of Land

Tax Parcel 5-00-173.00-01-62.02-00001  
7.556 Acre Parcel of Land

The property is currently zoned A-C in the county; the requested zoning is R-3.

The following report was prepared by City Planner Norris:

<i>Property Owner:</i>	<i>Phillip Tolliver of Morris and Ritchie Associates on behalf of Walter N. Thomas II</i>
<i>Location:</i>	<i>The south side of Milford Harrington Highway near the intersection of Canterbury Road/Holly Hill Road and Milford Harrington Highway.</i>
<i>Size:</i>	<i>72 +/- Acres</i>
<i>Existing Zoning:</i>	<i>AC: Agricultural Conservation</i>
<i>Proposed Zoning:</i>	<i>R-3, with a maximum residential density of 10 units per acre</i>
<i>Tax Map and Parcel Number:</i>	<i>MD-00-173.00-01-62.00, MD-00-173.00-01-62.02</i>

**APPLICANT**

*An application by Phillip Tolliver of Morris and Ritchie Associates on behalf of Walter N. Thomas II for the annexation of 71.92 acres into the corporate limits of the City of Milford.*

**LOCATION**

*The property is identified as Kent County tax parcels MD-00-173.00-01-62.00 and MD-00-173.00-01-62.02 and would be located in the Fourth Ward of the City of Milford.*

**STREETS**

*The property fronts the Milford-Harrington Highway which is maintained by the State of Delaware. Access approval will be required from DelDot. There is one single family detached dwelling located on the property.*

**DRAINAGE**

*Storm water management on the parcel will be controlled by the Kent County Soil Conservation District at the developer's expense.*

**ZONING**

*The area proposed to be annexed is currently zoned AC in Kent County under the Kent County Zoning Ordinance. The application requests the property to be zoned R-3 Moderate Density Residential under the City of Milford's Zoning Ordinance. Proposed development is a residential community with 768 residential units.*

**SEWER**

*The area proposed to be annexed would be connected to the City of Milford's sewer system and then be treated at the Kent County Regional Sewer Authority. All costs for utility extensions to this property shall be completed at the expense of the developer and upon completion, the utility lines transferred to the City for incorporation into the City's wastewater system. Wastewater capacity cannot be guaranteed until a final site plan has been approved by City Council, building permits issued, and the scheduled impact fees are remitted to the City.*

**WATER**

*The area proposed to be annexed would be connected to the City of Milford's water system. All costs for utility extensions to this property shall be completed at the expense of the developer and upon completion, the utility lines transferred to the City for incorporation into the City's water system. Water capacity cannot be guaranteed until a final site plan/subdivision has been approved by City Council, building permits issued, and the scheduled impact fees are remitted to the City.*

**ELECTRIC**

*The Electric Department has 3 phase electric currently running down RT 14. It would make it easier to get to the development beside the BAC plant on Holly Hill Rd if we could get an easement.*

**TRAFFIC**

*The Department of Transportation may require a traffic impact study and entrance permits for project. The developer will pay the related costs.*

### **ENVIRONMENTAL ISSUES**

*The U.S. Army Corp of Engineers will control provisions under Section 404 of wetlands on the parcel. The applicant has not determined if wetlands are on the property at this time, however according to maps in the 2008 Comprehensive Plan there are wetlands shown on this site. This parcel is located in an excellent and good recharge area. The southern third of property is located in an excellent recharge area and the northern part of the parcel is in a good recharge area. The developer will have to comply with the Excellent Recharge Area Ordinance of the City of Milford and conform to the provisions of this ordinance. According to Map 3A Natural Features, of the 2008 City of Milford Comprehensive Plan, this property is not located in a Well Head Protection Area.*

### **AREA LAND USES**

*The area proposed to be annexed is located on the south side of the Milford-Harrington Highway or Route 14. Lands to the north are located in the City of Milford, undeveloped, and zoned R-3 with a PUD designation. Lands to the west and east are out of the City's limits with scattered single family home sites on parcels of land and are zoned AC under the Kent County Zoning Ordinance.*

### **FIRE AND POLICE**

*The Carlisle Fire Company, Inc currently provides and would continue to provide fire protection. Police protection is primarily provided by the Delaware State Police with assistance from the Milford Police Department. Upon annexation, primary police service would be provided by the City of Milford Police Department. The Carlisle Fire Company would provide ambulance service. The State Fire Marshall's Office would regulate construction issues relating to fire protection*

### **COMPREHENSIVE LAND USE PLAN**

*The City of Milford's Comprehensive Plan identifies this section as the Neighborhood- North. The property is recommended in the Comprehensive Plan as Moderate Density Residential or R-3.*

### **PROPERTY TAXES AND OTHER ECONOMIC CONSIDERATIONS**

*According to John Darsney, Land Management Data Manager for the City of Milford, there are no farmland assessments or preservation districts on the parcels under consideration. The site as surveyed, 72 acres at the requested R-3 zoning district, with no subdivision approval, would have an assessment estimate of \$600,000, with an annual tax liability of \$2,760. It is anticipated that the property taxes, after development, will increase on this property and the City would benefit from the revenues received from building permits and real estate transfer taxes. Construction costs as well as user service fees cannot be determined at this time, as the applicant has not proposed a project to assess.*

### **ADVANTAGES TO THE CITY**

- 1. The property would be within the planning area of the City of Milford.*
- 2. The City would receive revenues (property tax, real estate transfer tax, building permits, etc.) for activity on the property.*
- 3. Potential for additional water, sewer, and electric customers.*
- 4. Identified within the Urban Growth Boundary Area of the 2008 Comprehensive Plan.*
- 5. Increases the amount of development opportunities within the City limits, which have the potential to spur other economic benefits to the City.*

### **DISADVANTAGES TO THE CITY**

- 1. Concerned about the increase in population and the demand for additional services with possible increase in the cost of services for this annexation.*
- 2. Cost associated with the maintenance of expanded infrastructure.*
- 3. Unknown impact on the neighboring properties and infrastructure.*

**RECOMMENDATION**

*Based on the issues and comments discussed in this report, the Annexation Committee of the City of Milford recommends approval/disapproval of the application, with the following comments:*

Chairman Rini then presented an oral report on behalf of City Planner Norris. He advised that access approval will be required by DelDOT. The petitioner is proposing a residential community with an R-3 zoning with a maximum residential density of ten units per acre which calculates upward of 768 residential units.

The proposed area to be annexed will be connected to the City of Milford sewer system with treatment through the Kent County Regional Facility. Water will be provided by the City of Milford. In order to provide electric, the electric superintendent recommends an easement from Holly Hill Road to serve the development.

DelDOT may require a Traffic Impact Study and entrance permits for the project.

The southern third of the property is located in an excellent recharge area; the northern part of the parcel is in a good recharge area. The developer will need to comply with the section of the Zoning Ordinance of the City of Milford that addresses groundwater recharge areas. According to Map 3-A, the Natural Features Map in the city's comprehensive plan, this property is not located in a well head protection area.

The site will be served by Carlisle Fire Department. Currently served by the Delaware State Police, police protection will be solely provided by Milford Police Department.

Mr. Rini then read the advantages into record adding there are no disadvantages.

It was confirmed that R-1 is a single family district and R-2 permits housing at a greater density than the R-1 by providing low to medium-density housing.

Mr. Pikus asked why R-3 is being referred to as moderate density. He said his understanding was that R-1 was low density, R-2 was moderate and R-3 should be considered high density.

Mr. Morrow asked if an R-3 with a PUD would be considered high density emphasizing that would require conditional use approval.

That matter was deferred to be later clarified by the city planner.

Phil Tolliver with Morris and Ritchie Associates spoke on behalf of the application reporting his firm is representing the fee simple owner and the equitable owner. He explained the fee simple owner of record is Walter Thomas II; the equitable owner is Eric Dunn or Hickory Glen Holdings LLC. Mr. Dunn does not legally own the property but plans it purchase in the very near future.

Mr. Tolliver explained the property is in the 2008 Comprehensive Plan and has been identified as an immediate annexation parcel. That package was reviewed by State Planning Director Connie Holland and her staff after which the plan was certified. As a result, the request is consistent with the comprehensive plan which called for a moderate density property to be zoned R-3. He feels this is consistent with the zoning on the southern property, known as the Amberwood Project, which they also engineered. He referenced another property across the road, known as the Fry Farm, also zoned R-3.

The engineer advised the property is comprised of 71.92 acres based on an actual boundary survey they conducted. He further explained that approximately six months ago, a minor subdivision was done that created a smaller parcel within the large parent parcel which is the reason for the two parcel numbers. He said the objective is to develop the property in accordance with the zoning code and R-3 designation. The zoning code specifies an allowable density

based on the use; an apartment project, the code allows up to 16 units per acre, a townhouse project 10 units per acre and a single family project would permit 4 units per acre or something similar.

He then questioned Mr. Norris' report which indicated the proposed zoning has a maximum residential density of 10 units per acre. Mr. Tolliver pointed out the R-3 permits up to 16 units per acre. He believes that may be the proposed density of 768 units divided by 71.92 acres. Mr. Pikus answered that would be slightly less than 11 units but more than 10.

Mr. Rini advised the city planner's report specifically states an R-3 zone with a maximum residential density of 10 units per acre. He agreed that may have been based on the application that was submitted. Mr. Tolliver stated they submitted the application for a proposed 768 units. He added that other factors, including open space and similar areas, cannot be developed.

Ms. Wilson prefers to have clarification from our city planner. Mr. Tolliver then confirmed it specifically works out to 10.68 units. He said this would be a multi-phase project and annexation is only the infantile stage of the process. Once this is completed, the preliminary plan, site plan, etc. will follow.

Mr. Tolliver said there was a reference in the report about a Phase 3 electric easement which would help the city to run electric to this property and provide service to the Amberwood project.

Chairman Rini confirmed that Mr. Norris was referencing the Baltimore Air Coil site which is across the road from this property noting an easement would permit power to other side.

Mr. Pikus pointed out the Fry property, across the street from this site, was proposed for 1,227 houses. The Forest property to the southeast was proposed for 216 units. He then verified there is a sales agreement on this property.

Mr. Pikus pointed out there are approximately 6,000 units in Milford that received approval for development that are sitting idle. Therefore, he is skeptical about the R-3 zoning.

Mr. Tolliver explained that if the land does not receive the R-3 zone, the prospective land purchaser would back out of the agreement. He said one reason he was asking for the R-3 zone is because it was consistent with the comprehensive plan. He emphasized that the comp plan was approved by city council and the state. It is also consistent with the zoning of the Forest property to the south and the Fry farm to the north. He believes that a lower density at this site would not make sense when it was surrounded by R-3 zoning.

He then addressed the second issue brought up by Mr. Pikus and whether there was a need for more R-3 in the city. Mr. Tolliver referred to another client with an apartment project in Georgetown. Construction for two buildings with 180 plus units started approximated eight months ago and 143 have already been pre-leased. There has been no advertising except for a billboard in front of the site. When asked where the renters are coming from, the developer indicated that about 40% are coming from the Milford area. He confirmed the apartments are market rate.

Mr. Tolliver explained that following that conversation, he started looking around the area for apartment sites noting there are not a lot of available apartments in Milford. He is unaware of any with a clubhouse, pool or tennis courts. He did see a number of older apartment complexes that appear to be fully booked. He added they called everyone within a five-mile radius. Mr. Dunn saw this property and took into consideration the people moving from Milford to rent in Georgetown.

When asked if this will involve rental properties or units that could be purchased, Mr. Tolliver said they do not know for sure right now it appears they will be rentals. However, it could end up being a mix of townhouses and apartments. The objective is to get an R-3 zone and without that, it will not work.

He agrees that 768 appears to be a large number and it will most likely be developed in phases. That would allow them

to test the market to see if it works. If the market does not respond, they could come back and re-engineer to townhouses or singles.

Mr. Tolliver said to make this work, the property must be purchased at the right price. A lot of the vacant parcels Mr. Pikus is referring to were bought at the wrong time. He said this will allow the construction costs and rents to be lower which would make the project go forward.

It was confirmed that property owners within 200 feet of the applicant property will be notified of the Planning Commission and City Council Public Hearings.

Ms. Wilson announced that confirmation was received from the city planner the R-3 zoning does permit up to 16 units per acre.

Ms. Wilson then pointed out that for thirty years, Milford had very little growth. She is familiar with many individuals who have moved or want to move to Milford and have found housing a major issue at every level. She remembers when several developers wanted to come to Milford and build and council saw that as an opportunity. They began annexing property and all of a sudden, Milford was growing. Now in 2009 and 2010, the economy has hit rock bottom and many of the plans for those projects have fallen apart. This could be the chance to turn things around. As a member of this committee for a number of years, she has reviewed each of these petitions to ensure they were appropriate, benefitted the area, met the criteria for zoning and if everything fit, the committee would recommend proceeding with the annexation.

Mrs. Wilson said that based on the zoning of the surrounding properties and the location of the site in relation to city lands, the committee should recommend this property be annexed into the City of Milford with an R-3 zone.

Mr. Morrow added that this is the first annexation committee meeting in several months and he hopes it is a positive sign there is some new interest in the market. In addition, accepting this property into the city will increase our tax revenues which will benefit all our property owners. He is firm believer of free enterprise and though many developments have been approved, the one that is organized and ready to proceed is the one that should succeed. In addition, the request complies with the current comprehensive plan which means it fits into the city's future growth plans.

Mr. Rini also emphasized that in addition to complying with the comprehensive plan, he is a firm believer that a development this close to the city should be annexed to allow the city to have control over the land versus it being in the unincorporated area and the county having control.

Mr. Tolliver added that the developer did discuss a possible PUD in the county. He said they could petition the county which would be permitted by the Kent County Code as long as it was within 1,000 feet of a municipality or the growth zone of the county so that public sewer could be provided. He feels if that happened, Artesian or Tidewater would be extremely happy to have the franchise rights for service to this property. He emphasized that they prefer dealing with the City of Milford. He said if a project is built, the City of Milford Police Department will respond to any complaints because it is so close. All of the city services would be there so it makes no sense to let the county get the benefit of the connect and impact fees instead of the city.

Ms. Wilson advised that public comment will be provided at the Planning Commission Meeting on August 17, 2010 at 7:00 p.m. A second public hearing will be scheduled before City Council on September 27, 2010.

Mr. Morrow then moved to recommend council proceed to approve the annexation of the Walter N. Thomas II properties with an R-3 zone. Mr. Rini seconded motion.

Motion carried by the following 3-1 vote:

Yes-Morrow, Rini, Wilson

No-Pikus

Mr. Pikus is voting no to the zoning and prefers it come in with an R-1 or R-2 based on his knowledge of the real estate in that area. He said there is more R-3 planned than the city is capable of handling in the next thirty years. He is pro-growth and pro-economic growth adding we need lots of businesses and lots of companies to come to town. Companies do bring with them requests for housing. He said Milford is working hard to get business to come here to bring new jobs. We currently have 6,000 units zoned residential. He pointed out if those 6,000 units are filled, this community will truly become a city. At this point, he has a problem with the R-3. He has also talked with seven of the neighboring property owners. Most have no problem with the annexation, but do have a problem with the density. An R-1 or R-2 would allow larger lots and nicer homes adding there are many apartment complexes and condos planned though very few quarter or half-acre lots.

With no further business, Ms. Wilson adjourned the Committee Meeting at 7:42 p.m.

Respectfully submitted,

Terri K. Hudson, CMC  
City Clerk

*MILFORD CITY COUNCIL  
MINUTES OF MEETING  
July 26, 2010*

The Milford City Council held Public Hearings on Monday, July 26, 2010 in the Joseph Ronnie Rogers Council Chambers at Milford City Hall, 201 South Walnut Street, Milford, Delaware.

PRESIDING: Mayor Joseph Ronnie Rogers

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

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

COUNSEL: City Solicitor Timothy Willard

Mayor Rogers called the Public Hearing to order at 7:03 p.m..

Public Hearings were scheduled for the purpose of taking public comment and to make final determinations on the following matters:

*ORDINANCE NO. 2009-10*

*AN ORDINANCE TO AMEND THE CODE OF THE CITY OF MILFORD BY ADDING A NEW CHAPTER ENTITLED LIGHTING STANDARDS.*

*NOW, THEREFORE, THE CITY OF MILFORD HEREBY ORDAINS:*

*Section 1. Amend the Milford Code by adding a new Chapter entitled Lighting Standards to read as follows:*

*Chapter \_\_\_\_  
Lighting Standards*

*§ -1 Statement of Need and Purpose*

*The City of Milford recognizes the following:*

- 1. Improperly located lighting can cause unsafe and unpleasant condition;*
- 2. Excessive lighting can cause unsafe, unhealthful and unpleasant conditions, waste electricity and threaten the natural environment;*
- 3. Obtrusive lighting and light trespass can cause unsafe and unpleasant conditions;*
- 4. Proper lighting can enhance safety and enjoyment of the built environment;*
- 5. Illumination levels should be appropriate to the visual task.*

*§ -2 Ordinance Establishment*

*This ordinance is established to promote the public health, safety, and welfare and is intended to accomplish the following purposes:*

- 1. Allow appropriate lighting levels to preserve safety, security, and the nighttime use and enjoyment of property;*
- 2. Reduce light pollution, light trespass, glare, and offensive lighting;*
- 3. Promote energy conservation;*
- 4. Allow people in residential areas to view the stars against a dark sky;*
- 5. Enhance the aesthetics of the built environment; and*
- 6. Protect the character of the natural environment and preserve ecological values.*

*§ -3 Lighting Definitions*

*For the purpose of this chapter, certain words and phrases shall be interpreted or defined as follows:*

*Glare: Intense and blinding light. Causes visual discomfort or disability.*

*Landscape lighting: Luminaries mounted in or at grade (but not more than 3 feet above grade) and used solely for landscape rather than any area lighting.*

*Obtrusive light: Spill light that causes glare, annoyance, discomfort, or loss of visual ability.  
Light Pollution.*

*Luminary (light fixture): A complete lighting unit consisting of one or more electric lamps, the lamp holder, any reflector or lens, ballast (if any), and any other components and accessories.*

*Fully shielded (full cutoff) luminary: A luminary emitting no light above the horizontal plane.*

*Spill light: Light from a lighting installation that falls outside of the boundaries of the property on which it is located. Usually results in obtrusive light.*

*Light trespass: Light falling where it is not wanted or needed. Light trespass is intrusive lighting.*

*Spill light (also called stray light) is light falling outside of the intended area, and it can result in light trespass. Light coming into a yard or bedroom window at night from streetlights, the nearby car dealer or mall, or from a neighbor's security light is light trespass. This type of light pollution usually has glare and always wastes both light and energy.*

#### *§ -4 Maximum Lamp Wattage and Required Luminaries or Lamp Shielding*

*All lighting installations shall be designed and installed to be fully shielded (full cutoff), except as in exceptions below, and shall have a maximum lamp wattage of 250 watts for commercial lighting, 100 watts incandescent, and 26 watts compact fluorescent for residential lighting. In residential areas, light should be shielded such that the lamp itself or the lamp image is not directly visible outside the property perimeter.*

#### *§ -5 Applicability*

- 1. New construction/uses. The provisions of this ordinance shall apply to parking lots, buildings, structures, and land uses established after the effective date of this ordinance.*
- 2. Expansion and redevelopment. The provisions of this ordinance shall apply to the entire building/structure, parking area, or use, as appropriate, under the following conditions:*
  - a. When a building or structure is expanded in size by 25 percent or more;*
  - b. When the area of a parking area is expanded by 25 percent or more;*
  - c. If existing lighting is shown to be a safety hazard;*
  - d. When an outdoor use (e.g., outdoor storage, vehicle sales) is expanded by 25 percent or more; and*
  - e. Any other activity subject to site plan or subdivision review, and*
  - f. During the course of natural upgrades and maintenance so all lighting in the city will comply by January 2025.*
- 3. Exemptions. The following are exempt:*
  - a. Lighting in swimming pools and other water features governed by Article 680 of the National Electrical Code.*
  - b. Exit signs and other illumination required by building codes.*
  - c. Lighting for stairs and ramps, as required by the building code.*
  - d. Signs are regulated by the sign code, but all signs are to be fully shielded.*
  - e. Holiday and temporary lighting (less than forty-five days use in any one year).*
  - f. Football, baseball, softball and other sport field lighting utilizing sensible curfews (not past 10 p.m. unless in conjunction with an event already started and continuing before that time).*
  - g. Low voltage landscape lighting, but such lighting should be shielded in such a way as to eliminate glare and light trespass.*
- 4. Severability and conflicts with other ordinances*
  - a. Validity and Severability: Should any section or provision of this Ordinance be*

*declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.*

*b. Conflict with Other Ordinances: Should any section or provision of this Ordinance be found to be in conflict with any other municipal ordinance or regulation, the more stringent section or provision shall prevail.*

*§ -6 Additional Requirements:*

- 1. Residential Outdoor lighting. Lighting attached to single-family home structures should not exceed the height of the eave and should be shielded such that the lamp image is not directly visible outside the property perimeter.*
- 2. Pole-mounted luminaries. Luminaries shall not be taller than 15 feet in residential and downtown zoning districts or when placed within 50 feet of a residential zoning district. In all other zoning districts, luminaries shall not be taller than 30 feet;*
- 3. Building-mounted luminaries. In non-residential zoning districts, building-mounted luminaries shall not be attached to a sloped roof and shall not be taller than 30 feet or the height of the principal building, whichever is less. The use of wall-pack luminaries is discouraged;*
- 4. Overhead electrical lines prohibited. For new installations, electrical lines for luminaries mounted on freestanding poles shall be placed underground between poles.*
- 5. Material for light poles. Light poles shall be anodized, painted or otherwise coated so as to minimize glare from the light source;*
- 6. Continued maintenance. Lighting installations shall be maintained in good repair to meet the provisions of this ordinance on an on-going basis;*
- 7. Lighting curfew. For parcels with non-residential uses, lighting in vehicle parking areas containing 20 parking spaces or more shall be reduced to 50 percent one hour after the business closing to one hour before the business opens;*
- 8. Luminaire types. Full-cutoff luminaries shall be used in parking areas, along internal streets, and along pedestrian ways. The City/town may allow cutoff luminaries or semi cutoff luminaries in these locations when the overall uplight would be less than for full cutoff luminaries. To promote a unified development theme, post top luminaries (also referred to as period lighting) may be used as an alternate if they have built-in reflectors that effectively eliminate uplight. Except as provided in this ordinance, all other luminaries shall be directed downward and the light source shall be shielded so that it is not visible from any adjacent property;*

*§ -7 Other Guidelines*

- 1. Flag poles, statues and similar monuments. A flag pole bearing a state flag, a flag of the United States or a flag of a foreign nation may be illuminated provided the following standards are met:
  - a. The luminaries shall be fully shielded.*
  - b. Upward aiming luminaries shall be placed as close to the base as possible.*
  - c. The luminaries shall not collectively exceed 40,000 mean lumens.*
  - d. Public statues, memorials or other similar monuments may also be lighted upon approval by the planning board, provided the above standards are met.**
- 2. Building façade lighting. The exterior of a building may be lighted provided the following standards are met:
  - a. The lighting is done to accentuate an architectural or aesthetic element of the building, not the entire building.*
  - b. The light shall only be directed onto the building façade and not spillover beyond the plane of the building.*
  - c. Upward aimed lighting shall not exceed 4,000 mean lumens per accent feature, shall be fully shielded, and mounted as flush to the wall as possible.*
  - d. Lighting exceeding 4,000 mean lumens per accent feature shall be aimed downward, fully shielded, and mounted as flush to the wall as possible.**

*Section 2. Dates.*

*Introduction to City Council: June 22, 2009*

*Planning Commission: July 21, 2009, August 18, 2009*

*City Council Hearing & Adoption Date: July 26, 2010*

*Effective Date: August 5, 2010*

City Planner Gary Norris reported this ordinance addresses lighting standards the planning commission had worked on to minimize residential and commercial lighting from shining skyward or into adjacent right of ways or private properties. It is a response to complaints about lights shining into homes and private properties that can keep people awake at night or destroy their sense of privacy.

He said the planning commission held several public hearings and at one of those hearings, Rick Carmean, Electric Superintendent was present and gave his approval of the proposed standards.

Mr. Brooks expressed concern about its impact on safety referencing his home's proximity to Milford High School and the benefit of additional lighting. He also pointed out the abundance of lighting at Walmart which he feels is an advantage. Mr. Norris explained that he does not want this to be misinterpreted as restricting the amount of lighting that is necessary for safe and efficient operations emphasizing the minimum standards for safety would still need to be met.

Mr. Pikus asked if there is any place in Milford that currently violates the ordinance. Mr. Norris said this will only apply to new construction and any existing sites would be grandfathered. New developments would be required to meet these lighting standards.

When asked who would make that determination, Mr. Norris responded the planning commission in conjunction with the electric superintendent. They would review the lighting plans for any large commercial or residential development.

Mr. Pikus then asked what course of action a business would have should they install improper lighting. Mr. Norris referenced the subdivision ordinance that contains language which states that applicants may request, at the time of application submission, the varying or waiving of requirements of Chapter 200. He feels that if someone wanted a waiver, it would be indicated on the application and a recommendation made by the planning commission, after which council would make the final decision.

Mr. Brooks asked what happens if it is later discovered the lighting does not meet these standards, Mr. Norris stated that Mr. Carmean would use his expertise to review the plan ahead of time to ensure it meets the standards.

Planning Chairman Chuck Rini then addressed council stating the planning commission looked at this as a national dark sky agenda that will not impede lighting needed for safety and visibility. Instead, it addresses light that is poorly designed and throwing increasing quantities of light up into the night sky. This would bring Milford's codes up to what is considered state of the art lighting standards while addressing light pollution.

Mr. Rini added that dark sky awareness has become more prominent over the past few years in various parts of our country with many programs in place to protect the environment.

Jim Higgins of 20 Meadow Lake Drive, Meadows at Shawnee, then explained the dark sky initiative is very serious. He pointed out its interference with satellites, airplanes and impact on bird migration along the east coast. Many cities are considering it and the Franklin Institute is studying how to reduce lighting in the City of Philadelphia. He suggests Milford take the lead by showing we care about this matter and the migration in our area.

City Manager Baird asked why this was included in the subdivision code and asked how we will capture it for large commercial projects; Mr. Willard said the document was designed to be a separate ordinance and will apply to more than residential subdivisions. This creates a new chapter that deals with lighting standards for all site plans. He feels the ordinance needs some additional work and a decision made on where it should be placed. His advice is to make it a separate chapter, similar to the streets and sidewalk ordinances. Whether it is for a subdivision or a simple site plan, the developer/builder will have to abide by the law and enforcement would be clear.

The solicitor agrees the intent is to prevent light pollution by restricting things that light up the entire sky.

When asked for additional comments from the public, no one responded.

Ms. Wilson moved to defer action on this ordinance so the ordinance can be re-reviewed, seconded by Mr. Pikus. Motion carried.

*Ordinance 2010-22*

*AN ORDINANCE TO AMEND CHAPTER 230 OF THE MILFORD CODE RELATING TO BILLBOARDS.*

*The City of Milford hereby ordains as follows:*

*Section 1.*

*An Ordinance to amend the Code of the City of Milford, Chapter 230, thereof, entitled Zoning Code.*

*Section 2.*

*Amends §230-4, Definitions and Word Usage, by adding 'Billboards' and the following definition:*

*BILLBOARDS—A sign directing attention to a business, commodity, service or entertainment conducted, sold or offered elsewhere than upon the premises where the sign is maintained.*

*Section 3.*

*Amends §230-26, General Standards, by adding:*

*(E), Billboards as a Conditional Use in C-3 Zoning District.*

*BILLBOARDS are permitted in the C-3 Zoning District as a Conditional Use provided they meet any State of Delaware requirements as well as the following requirements:*

- (1) Height: Billboards shall be no greater than 32 feet in height.*
- (2) Size: Billboards shall be no smaller than 200 square feet or no larger than 400 square feet in area and only one advertisement per side shall be permitted.*
- (3) Location: All measurements shall be made parallel to the roadway between perpendiculars extended from the billboard locations in question.*
  - (a) No billboard shall be closer than a fifteen hundred (1500) foot radius from another billboard.*
  - (b) The leading edge of all billboards must be set back 50 feet from the street right of way.*
  - (c) No billboard shall be constructed within two thousand (2000) feet of any residential unit within the City of Milford.*
  - (d) No billboard shall be placed to face abutting residential property within the City of Milford.*
- (5) Lighting: Floodlighting shall be arranged so that the source of light is not visible from any point off the lot and that only the sign is directly illuminated thereby.*
  - (a) Flashing lights are expressly prohibited; flashing means any method of conveyance produces or creates the illusion of motion or revolves in a manner to create the illusion of being on or off.*
- (2) Maintenance: Billboards shall be constructed of durable material and kept in good condition and repair. Any billboard which is allowed to become dilapidated and considered by the City of Milford Code Enforcement Officer to constitute a nuisance shall be removed at the expense of the owner or lessee of the property on which it is located.*

*Section 4.*

*Amends §230-26, General standards, Sign Chart, as follows:*

*SEE ATTACHED SIGN CHART*

*Section 5.*

*Introduction to City Council: 11-23-09*

*Planning Commission Public Hearing: 12-15-09*

*City Council Public Hearing & (Projected) Adoption Date:*

*Projected Effective Date:*

Mr. Norris recalled that in the past, the city's interpretation of the zoning ordinance was that billboards were not permitted. However, it was noted as "N/A" in the code. He recalled the court case the city initiated against a property owner with a billboard. That case ended up in Chancery Court in Georgetown where the judge determined billboards were not adequately defined in the code. Since that time, the planning commission has considered and reviewed several options over a period of time. The ordinance proposed is a culmination of their work.

This ordinance only permits billboards in a C3 zone as a conditional use and read aloud the definition and restrictions being proposed. The city planner informed council the planning commission held several public hearings on the matter and solicited input from a variety of sources.

Mr. Pikus referenced the State of Delaware law that regulates outdoor advertising or billboards. He asked if the city spells out the difference between signs and billboards. Mr. Norris reiterated the proposed ordinance specifically defines billboards. The zoning ordinance addresses signs including advertising signs, business signs, gross surface area of signs, etc.

Mr. Pikus asked how state law differs from this proposed ordinance. Mr. Norris explained the control criteria for size, spacing and lighting differs from the state code. The state allows the maximum area for any signs to be 1,200 square feet with a maximum height of 25 and maximum length of 60 feet. This ordinance requires them to be 2,000 feet from a residential area.

As an example, Mr. Pikus referenced the number of homes in the area of Route 1 or Route 30. He recalled a number of comments at the (proposed) overpass hearing from residents who suggested a large sign be erected welcoming people to Milford. He suggested a sign be sponsored by different businesses or entities in Milford such as Parks and Recreation or Milford Library that may be considered a billboard.

Mr. Pikus asked if 2,000 feet could become a burden. Mr. Norris believes that would be a judgment call noting the planning commission considered several distances though this was their final recommendation. He emphasized that anyone wishing to install a billboard less than the 2,000 feet being proposed would have the right to appeal to the Board of Adjustment.

He emphasized the old ordinance, as was interpreted, did not permit any billboards. The new proposal allows billboards in the C-3 district with criteria.

Mr. Pikus agreed that a great deal of work and research was done and commended the city planner and planning commission.

Mr. Rini advised that state law falls under the sign section of Title 17-Highways. He explained the 500 feet distance applies to all signs controlled by the state. He reiterated the planning commission was tasked by city council to provide a definition for billboards after the city lost the billboard case. The ordinance has a specific definition and asked that not be confused with state law.

According to Mr. Rini, the planning commission previously received a recommended definition for a sign that advertises an activity or business on a different tax parcel. The current sign chart implied they were prohibited in all zoning classifications. He understands the city did not want to prohibit billboards which is why the ordinance was developed.

When asked about existing signs located at the site of the business being advertised, Mr. Rini explained the main criteria for a billboard is that it is on a site other than the business/activity it is advertising.

Mr. Brooks asked Mr. Norris to clarify the difference between a billboard and a sign. He said in a recent trip to Missouri, he observed a number of signs welcoming visitors to their community. He feels they were signs and not billboards. Mr. Norris agreed noting a billboard advertises something commercial in nature where a service is offered

in another location and not at the site of the billboard. Simply put, he explained it is outdoor advertising for something not on the same parcel.

Ms. Wilson questioned the 2,000 foot restriction from any residential unit. She said that a billboard being placed off one of our major highways could be impacted by a number of the newly proposed developments. Mr. Norris advised that many of those subdivisions would be zoned residential and this is only permitted as a conditional use in the C-3 zone.

Ms. Wilson asked if there were other considerations besides the 2,000 foot restriction considered. Mr. Norris responded by saying there were several options considered, but the planning commission felt this was the most appropriate. It was even suggested that the commissioners actually observe the various spacing possibilities when traveling down the highway.

Mayor Rogers said he has dealt with billboards in the past as a member of the Board of Adjustment. He noted that Milford has very few billboards and asked where once could be placed in a C-3 district. He considers them a way to attract visitors, new residents and businesses to Milford.

The mayor commended the work the planning commission has put into this but feels this could send the wrong message to someone wanting to develop here. Ms. Wilson agrees that 2,000 feet may be too restrictive considering the size of Milford and lack of billboards.

Mr. Baird said he considers this to be about a half a mile from a residential unit. When he met with Mr. Norris and Mr. Rini, he also asked where a billboard could be placed in the C-3 zone. Mr. Norris stated along Route 1, south of the existing billboards on Route 1 and in some areas along Route 113.

Mr. Norris noted they were scaled off and a couple of potential spots found, though it was minimal.

Mr. Rini pointed out that when this was presented to the planning commission, the feeling of council was to limit the scope for billboards. Personally, he agrees with Mayor Rogers that this may be too restrictive. He does not want something that would prevent anything from being put up. He agrees that 2,000 feet is a concern and he would have no problem adopting the ordinance with an amendment reducing the spacing to 1,000 feet. Some other areas would then become eligible including the area where the new overpass is proposed south of Milford.

Mr. Pikus agreed noting the northern end of Milford seems to be appropriate.

Mr. Grier then asked what other municipalities allow; Mr. Rini said they researched other towns for a definition of billboards in addition to other states. Mr. Norris explained that what is being presented to council is a pared-down version. The original ordinance was two to three times larger. The planning commission removed a number of items they did not feel were necessary. Other municipalities were considered and a representative from the City of Dover attended one meeting to explain how Dover handled it. It was his understanding the City of Dover does not permit billboards.

Mr. Rini advised a subcommittee was assigned to address this issue. They met with Downtown Milford and the Chamber of Commerce for their input. He emphasized this ordinance requires a conditional use in addition to meeting the State of Delaware standards along highways.

Mr. Willard agreed the State of Delaware regulations apply within the City of Milford and all outdoor advertising intended to be viewed from a state road is within their jurisdiction. They cannot be in derogation to them nor can state regulations take away the city's power though council has the ability to make them more restrictive.

Jim Higgins of 20 Meadow Lark Drive, Meadows at Shawnee, stated that his lives just off Route 1. He said it appears that council feels advertising on billboards will only be for Milford. A number of council members then indicated that was not their opinion.

Mr. Higgins disagrees that billboards are advertising Milford. Instead, he said billboards advertise Rehoboth Beach and they will not create new jobs in Milford. Reducing this to 500 feet will put these billboards in this backyard because across Route 1 from his house is the C-3 zone. He does not understand why Milford needs any billboards at all and suggests the ordinance state that billboards are prohibited as was originally thought. He feels this will provide more pollution, whether it is visual or light pollution.

Mr. Higgins feels they will affect the value of his home. He said the planning commission has come up with some regulations, but in his opinion, they simply should not be allowed.

Mr. Brooks said that in the past, the Board of Adjustment heard the cases and it worked well. He asked the mayor how many billboard requests went before the Board of Adjustment in the past 28 years; Mayor Rogers stated two. Mr. Brooks agreed there were two hearings though there are four currently in the city. Two came in when the land they were on was annexed.

Mayor Rogers agreed there were no problems with that process noting that billboards were never permitted in the backyard of a residence. He feels that 2,000 feet of separation is too much and favors state law. He is also unsure where billboards could be put in the city.

Joe Palermo of 5 Misty Vale Court recalled that when this went before the Board of Adjustment, Dennis Silicato wanted to install a billboard and move one or two existing billboards. The Board voted unanimously to reject it. At that time, the board included the mayor, city manager and city solicitor. Mr. Palermo wants businesses to come to Milford, but feels that Mr. Higgins made some valid points. Though some people may think that 2,000 feet is excessive, he also feels that 500 feet is extremely low.

Ms. Wilson said there is a need for something in writing so the efforts and work of the planning commission were not in vain. She believes written guidelines are necessary to protect the city. With the projected growth that Milford will hopefully experience, she feels an ordinance is needed. Having to go before the Board of Adjustment is costly and having an ordinance in place prevents that. Because of the recent court ruling, an ordinance should be developed. In her opinion, the separation restriction can be changed and the ordinance adopted as amended.

Bob Connelly of 107 Barksdale Court, Hearthstone Manor, said the first time he spoke before council was on this issue after which he followed up with a packet showing billboards in town. He said that council is thinking about this backwards and it appears that billboards are going to drive business into Milford. He believes billboards are driving businesses out of here. He lived here more than two years and did not know what Pot Nets was until he accidentally drove there. Any developer in Milford should say no more billboards because they are driving business out of here. Until Grotto gets here, they are driving pizza buyers to the other Grottos and taking them away from local pizza restaurants. He is unsure how billboards will encourage business in Milford.

Mr. Connelly said as a home buyer, he would prefer a neighborhood with no billboards. Council wants to approve billboards every 500 feet and he will not move there because it would be ugly. He would not want to live there and believes this is driving the wrong kind of residents here. This will attract people who are looking for low-incoming housing and not upscale housing. He feels council is thinking about this backwards and does not understand the conversation about getting them closer together and closer to residential areas. This will destroy the fabric of the neighborhoods, quality of the community and quality of the developments we have. He said he is unsure how council feels this will improve the neighborhoods.

Mr. Connelly agrees that an ordinance is needed but also agrees with Mr. Higgins that the ordinance should say we want a better community and not one that is full of litter.

Mr. Pikus reiterated this is the result of recent legal action in which the ordinance was not clear in relation to billboards. Milford lost the case based on not having clarity in the ordinance.

Mr. Willard explained Milford's sign chart in its code has the word 'billboard' in it. For every zoning district, it states 'not applicable'. The code also has a definition of signs which is something advertising what is occurring there. In the sign chart, it indicates that billboards are not applicable. The city argued that a billboard is something advertising off site. Milford has a 'no billboard prohibition' ordinance which is what the judge in this case based their opinion on. There is a section in the code that clearly states certain signs are prohibited but it does not include billboards.

The solicitor also explained there is a section of Title 11, which is the criminal code in Delaware, that says if you are going to charge someone with a criminal code, it has to be explicit and expressed for obvious reasons. The code has a specific section listing prohibited signs which does not state billboards. Therefore, billboards were excluded in every section of the code by table and there was a definition of signs but nothing specific for billboards. In a criminal case, it was simply not enough.

He added that as this process evolved, the planning commission defined billboards as something that was off premises. Dimensions were added which allowed it to be permitted as a conditional use in a specific district as is being presented in this ordinance.

Mr. Pikus asked if the city were to adopt state law and limit it as a conditional C-3, would we be protected; he does not want to end up in court time after time which will only cost the city more money. He asked if an ordinance that piggybacks state law in the C-3 zoning would that protect us.

Mr. Willard explained it would be allowed anywhere in C-3 and not just along the highway. Mr. Willard further explained that Title 17 does not specifically define billboards. It defines outdoor advertising which means all signs. He said we will still need to define them and in this ordinance, the planning commission went one step further by including dimensions. He does not believe it will be that easy because there is no clear billboard law in the state.

Mr. Pikus said he is trying to come up with a compromise that will protect the city. He cannot relate to other states and wants to concentrate in the Delaware area. He believes we should protect ourselves but does not want to discourage business at the same time. He also does not want to continue to lose cases and continue spending taxpayers' money.

Mr. Baird explained the definition of billboard, with a conditional use in the C-3 zone, as part of the review, would include some criteria that either the Board of Adjustment or City Council could consider. This could include size, height, location, lighting, etc. This would address the needs of the city by having a regulation on the books. It could still comply with DelDOT restrictions along state highways, but a conditional use would be required before a DelDOT permit could be issued.

Mr. Higgins then asked why the city cannot have an ordinance that states no billboards and asked if that is an option. He has heard a lot of discussion about the various feet, adding that if one is put across the street from his house, his home will be put up for sale immediately. He does not want that pollution in his backyard noting that he already gets pollution from Route 1 though he was aware of that when he bought his house. He does not understand why the city cannot say 'no billboards' and include the definition which is all that is required.

Mr. Higgins stated emphatically that the current signs do not promote Milford but instead promote other communities where those businesses are located.

Mr. Connelly then added there was some discussion about allowing council some leeway to deny one billboard but approve another. He feels that is going back to where we are now and if it is that vague, we will end up back in court. The first time someone is denied after another has been approved, the city will be sued.

Mr. Baird said that is where the criteria, including height, size, location, lighting, etc., comes into play. He said there will be some subjectivity now as the Board of Adjustment exercised in the past. Under the conditional use process, city council has the right to impose conditions.

Mayor Rogers asked the pleasure of city council. He noted the planning commission has done a great deal of work though he has some concerns. He does not feel Milford has a problem with billboards adding the city only approved the Geyer billboard as well as the one north of Milford. The other two were approved through the county and came in through annexations. Though he understands the concern that a billboard could end up in someone's rear yard, he does not feel council will all that to happen.

Ms. Wilson recommended approving Ordinance 2009-22 and amending the 2,000 feet to 500 feet. After a brief discussion, Mr. Wilson moved to amend the 2,000 feet to 500 feet, seconded by Mr. Starling.

Mr. Baird then clarified the motion reduces the separation from any residential unit from 2,000 to 500 feet.

Ms. Wilson then withdrew her motion. She then changed the motion by reducing the distance of 2,000 feet to 1,000 feet from any residential unit, seconded by Mr. Starling.

Motion failed by the following 2-5 vote:

No-Johnson, Grier, Pikus, Brooks, Morrow

Yes- Starling, Wilson

Mr. Brooks voted no and recalled the former city manager stating in November of 2006 that no more billboards would be permitted in the City of Milford.

Noting the failed motion, Mayor Rogers then asked for action on the proposed ordinance.

Mr. Pikus moved to defer action on Ordinance 2009-22 asking for more clarification on state law and an opinion from the city solicitor to piggyback that law and allow appeals through the Board of Adjustment. Mr. Grier seconded the motion.

Mayor Rogers restated the motion to defer action to allow time to allow for clarification and implementation of the state law by the city solicitor.

Mr. Pikus added that with due respect to Chairman Rini and the planning commission, he feels we need to adopt an ordinance with a clearer explanation of the state law which will protect the city and the public which is the basis for the deferral.

Mr. Brooks said he prefers addressing these ordinances in a workshop session before it is presented for adoption by city council.

Motion carried by the following vote:

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

No-Wilson

Mr. Morrow votes yes but asks that we not linger too long noting the time spent already on this matter.

Ms. Wilson votes no stating there is no use deferring action to spend another two-hours discussing it and not making a decision. She prefers an amendment to the ordinance and finalizing it now.

Mayor Rogers asked if council prefers meeting in workshop session to discuss this matter. Mr. Brooks feels that is the purpose of a workshop.

Mayor Rogers recommended it be discussed at the August workshop.

City Solicitor Willard stated he is willing to work with Mr. Pikus before it is added to another agenda. Mr. Pikus feels there are other council members who would also like some input.

With no further business, Mayor Rogers adjourned the Public Hearings at 8:13 p.m.

Respectfully submitted,

Terri K. Hudson, CMC  
City Clerk/Recorder

Attachment

Zoning Dist	Wall or Mailbox (residence/occupant ID)		Freestanding (mounted on posts(s))		Fascia: Commercial (wall, roof edge, etc) (of wall square feet)	Hanging/ Projecting (extended from wall) (square feet)	Marquee (movable letters)		Illuminated (non flashing)		EMB	Mobile (mounted, trailer, etc.)	Billboard (outdoor advertisement)	PROPOSED: Billboard		
	Ht	Sq Feet	Ht	Sq Feet			Ht	Sq Feet	Ht	Sq Feet	Sq Ft				Ht	Sq Feet
R-1	42"	2	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Prohibited	N/A	N/A	Prohibited		
R-2	42"	2	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Prohibited	N/A	N/A	Prohibited		
R-3	42"	2	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Prohibited	N/A	N/A	Prohibited		
C-1	42"	2	48"	4	10%	15	48"	9	48"	4	Prohibited	N/A	N/A	Prohibited		
C-2	N/A	N/A	48"	4	10%	20	48"	9	48"	4	Prohibited	N/A	N/A	Prohibited		
C-3	N/A	N/A	28'	225	10%	20	10'	48	28'	225	32 and ratio of 4:8	N/A	N/A	32' 200 up to 400		
H-1	N/A	N/A	25'	70	5%	N/A	N/A	N/A	25'	70	Prohibited	N/A	N/A	Prohibited		
OC-1	N/A	N/A	28'	225	5%	N/A	10'	48	28'	225	Prohibited	N/A	N/A	Prohibited		
I-1	N/A	N/A	28'	200	5%	N/A	10'	48	28'	200	Prohibited	N/A	N/A	Prohibited		
I-2	N/A	N/A	28'	200	5%	N/A	10'	48	28'	200	Prohibited	N/A	N/A	Prohibited		

*MILFORD CITY COUNCIL*  
MINUTES OF MEETING  
*July 26, 2010*

The Milford City Council met in Workshop Session on Monday, July 26, 2010 in the Joseph Ronnie Rogers Council Chambers of Milford City Hall, 201 South Walnut Street, Milford, Delaware.

PRESIDING: Mayor Joseph Ronnie Rogers

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

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

COUNSEL: City Solicitor Timothy Willard

The Workshop Session then convened at 8:13 p.m.

*Recognition of Marine Lance Corporal Lee R. Folke*

Mayor Rogers recalled a letter presented to council asking for recognition of U.S. Marine Lance Corporal Lee Folke who died last year. He asked council for suggestions.

It was asked what the protocol is in such cases. Mayor Rogers stated that he felt it would be appropriate to recognize him during the fall fling because it is a community event. He has discussed it with the VFW Commander who was willing to provide an honor guard and help plan a ceremony.

The mayor agrees the young marine deserves to be recognized noting he died at Camp Lejeune in North Carolina after returning from a tour of duty in Iraq.

Council agreed he should be recognized by the city and directed Mayor Rogers to continue with his plans. He will report back to council once everything is finalized.

*Ward Redistricting Update*

City Manager Baird recalled when the Charter Review Committee discovered an error in the ward placement of some land within the city.

Mr. Baird then read the following section from the City of Milford Charter:

*Each district shall be formed of compact, contiguous territory, as nearly as rectangular as possible, and its boundary lines shall follow the center lines of streets or other natural boundaries or survey lines as required.*

He explained this is the case with the exception of a territory in the city that involves properties on the southeast side of town beginning with Milford Moose Lodge, Meadows at Shawnee Subdivision, McColley, Dugan, Isaacs and Mills properties. All are shown in the third ward though they are not contiguous with the remainder of that district.

Mr. Baird explained we are trying to determine how best to correct this. He said it is not as simple as moving it into the correct ward because the wards need to be balanced as well. Therefore, consideration is being given to the number of registered voters and the number of parcels within each ward. He said we do not have accurate population counts because the census data is old and the new numbers are not yet available.

Options will be presented in August. We currently have a map showing registered voters in addition to a parcel count which will result in a couple of options on how to redraw the boundary lines.

The city manager then read into record the following procedure:

*Procedure. The procedure for council's consideration of the report shall be the same as for other ordinances provided that the summary, including both the map and descriptions of the recommended districts, must be published in two newspapers of general circulation in the City of Milford no less than one month prior to its adoption.*

*The commission may, but is not required to establish five wards instead of four, with two councilpersons to be elected from each ward.*

*Enact Ordinance. Council shall adopt the ordinance at least six months before the next regular city election.*

Mr. Baird announced the next city election is scheduled for Saturday, April 23, 2011. He said if council wishes to complete the redistricting before that election, the deadline to adopt the ordinance will be October 23, 2010.

He then continued to read:

*Effect of Enactment. The new council district and boundaries, as of the date of enactment, shall supersede previous council districts and boundaries for all the purposes of the next regular city election, including nominations. The new districts and boundaries shall supersede previous districts and boundaries for all other purposes as of the date on which all councilpersons elected at the regular city election take office.*

Mr. Baird then asked council to consider the process and suggested council discuss this among themselves and decide whether this should be completed before the 2011 election or if they prefer waiting until 2012. He said right now, he is moving forward under the auspice it be effective this year.

Mayor Rogers advised that because it has been determined this is not legal, it should be changed as soon as possible and asked why we would wait another year. Mr. Baird said he only wanted a consensus from city council to ensure everyone is moving on the same time schedule.

It was pointed out the committee reported this error prior to the last election and nothing was done at that time which could have created some potential problems during the election.

Mayor Rogers directed the city manager to proceed and realign the wards to ensure they are contiguous and legal. Solicitor Willard added that once the new census numbers are provided, the wards can again be addressed to ensure they are as balanced as possible.

Council agreed the redistricting work needs to continue and the realignment completed in time for the 2011 election.

With no further business, the Workshop Session concluded at 8:21 p.m.

Respectfully submitted,

Terri K. Hudson, CMC  
City Clerk/Recorder

*MILFORD CITY COUNCIL*  
*MINUTES OF MEETING*  
*July 26, 2010*

A Meeting of Milford City Council was held in the Joseph Ronnie Rogers Council Chambers at Milford City Hall on Monday, July 26, 2010.

PRESIDING: Mayor Joseph Ronnie Rogers

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

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

*Call to Order*

Mayor Rogers called the Council Meeting to order at 8:21 p.m.

INVOCATION AND PLEDGE

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

*Adoption of Resolution 2010-11/DEMEC Power Sales Contract/Generation Contract*

Mayor Rogers recalled the July 12<sup>th</sup> meeting where DEMEC President and CEO Patrick McCullar presented a plan for a second generator at the Beasley Power Station in Smyrna. Mr. Baird explained this resolution will authorize DEMEC to proceed with the project and the mayor and him to exercise any authority on behalf of the city. Any modifications to the documents, as were presented by Mr. McCullar, will need to be brought back before council.

Mr. Pikus asked for clarification that if any of the members drop out, the contract would become null and void because the percentages would change. Mr. Baird answered there are seven municipality/members (with the exception of Lewes and Dover who do not purchase power through DEMEC) and each has been asked if they are interested in the second generator. Those seven charter members have first priority. If Lewes is added, some minor modifications will be made to the ownership ratio. The same will apply to Dover though they are not expected to participate because they have their own generating asset. Either scenario would change the plan considerably.

Mr. Brooks asked for an update on the status of the other seven members; Mr. Baird said he is unsure though they are proceeding with councils meeting and addressing the matter. The last count was that three or four of the seven were taking action with some decisions being made this week. However, his opinion is that all seven members will support the project.

Mr. Pikus moved for adoption of Resolution 2010-11, seconded by Mr. Morrow:

*CITY OF MILFORD ("Project Participant")*  
*2010-11*  
*CONTRACT RESOLUTION*

*A RESOLUTION APPROVING A PROJECT TO BE UNDERTAKEN BY THE DELAWARE MUNICIPAL ELECTRIC CORPORATION; AUTHORIZING THE EXECUTION OF A POWER SALES CONTRACT BETWEEN THE CITY OF MILFORD AND THE DELAWARE MUNICIPAL ELECTRIC CORPORATION; AUTHORIZING THE REFUNDING BY THE DELAWARE MUNICIPAL ELECTRIC CORPORATION OF CERTAIN BONDS; AND AUTHORIZING OTHER MATTERS RELATED THERETO.*

*WHEREAS, the City of Milford (the "Project Participant") is a duly organized and validly existing political subdivision under the laws of the State of Delaware (the "State"), and particularly pursuant to its Charter, 57 Del. Laws Ch. 726, as amended (the "Charter"); and WHEREAS, the Delaware Municipal Electric Corporation ("DEMEC") is a municipal electric company incorporated in the State, established by certain cities and towns, and formed pursuant to Chapter 13 of Title 22 of the Delaware Code (the "Act"); and*

*WHEREAS, the Project Participant is a member of DEMEC, and by a resolution heretofore duly adopted by the Council, the Project Participant has duly authorized, executed and delivered the Agreement and Articles of Incorporation, dated as of July 9, 1979 forming DEMEC, and all amendments thereof and supplements thereto (the "DEMEC Joint Action Agreement"); and*

*WHEREAS, DEMEC is authorized and empowered under the Act and the DEMEC Joint Action Agreement, among other things, (i) to plan, develop, acquire, construct, reconstruct, operate, manage, dispose of, participate in, maintain, repair, extend or improve one or more electric projects (as defined in the Act); (ii) to issue its bonds, notes or other evidences of indebtedness to pay all or part of the costs of acquiring and developing such projects; and (iii) to exercise all other powers which may be necessary and convenient to effectuate the purposes of DEMEC; and*

*WHEREAS, DEMEC has previously undertaken a project consisting of the acquisition, development, construction and equipping of a peak power generating station in Smyrna, Delaware (the "Initial Project"); and*

*WHEREAS, DEMEC and the Project Participant have previously entered into a Power Sales Contract dated May 1, 2001 (the "Initial Power Sales Contract") whereby DEMEC agreed to sell and the Project Participant agreed to purchase the Project Participant's share of the electric energy and electric capacity of the Initial Project; and*

*WHEREAS, in order to finance the Initial Project, DEMEC issued its Electric Revenue Bonds, Series 2001, dated September 1, 2001, in the initial principal amount of \$34,790,000 (the "2001 Bonds") and pledged its right to receive payments from the Project Participant under the Initial Power Sales Contract to the trustee for the 2001 Bonds to secure payment on the 2001 Bonds; and*

*WHEREAS, DEMEC has determined to undertake a new project (the "New Project") consisting of the development, engineering, design and installation of a second generator at DEMEC's existing power generation station in Smyrna, Delaware, and all ancillary equipment necessary for the generation of up to an additional 67MW of nameplate capacity and certain other related capital improvements to benefit the Project Participant and certain other participating members of DEMEC (collectively, the "Project Participants"), all as more fully described in the Independent Engineer's Report (the "Engineer's Report"); and*

*WHEREAS, DEMEC will undertake and operate the New Project in order to supply Electric Capacity and Electric Energy (each as defined in the hereinafter mentioned New Power Sales Contract) to the Project Participant and to the other Project Participants contracting with DEMEC therefor, and will sell the Electric Capacity and Electric Energy of the New Project to the Project Participant pursuant to a New Power Sales Contract between DEMEC and the Project Participant (the "New Power Sales Contract") and pursuant to contracts substantially similar to the New Power Sales Contract with such other Project Participants (all such contracts are hereinafter referred to collectively as the "New Power Sales Contracts"). A draft of the New Power Sales Contract is attached hereto as Exhibit A; and*

*WHEREAS, in order to enable DEMEC to issue its electric revenue bonds, or bond anticipation notes (such bonds and notes are hereinafter referred to as the "Bonds"), to pay the cost of acquiring and constructing the New Project, it is necessary for DEMEC to have entered into the New Power Sales Contracts with the Project Participant and the other Project Participants, and to pledge such contracts and the payments required to be made in accordance with such contracts as security for the payment of such Bonds; and*

*WHEREAS, pursuant to Section 2.01 of the Charter and Section 1307(a) of the Act, the Project Participant has the authority to enter into the New Power Sales Contract, and by the adoption of this Resolution desires to authorize the execution of the New Power Sales Contract.*

*NOW, THEREFORE, BE IT RESOLVED by the Council of the Project Participant as follows:*

*Section 1. Approval of New Project. The Project Participant hereby approves the New Project as described in the Engineer's Report, and requests DEMEC to undertake the New Project for the benefit of the Project Participants. A copy of the Engineer's Report has been reviewed by the appropriate officials of the Project Participant, including those sections of the Engineer's Report analyzing the capital and operating costs of the New Project.*

*Section 2. Authorization of New Power Sales Contract. The Project Participant hereby authorizes the execution of the New Power Sales Contract, and authorizes and directs the Mayor and the Clerk of the Project Participant to execute and acknowledge the New Power Sales Contract on behalf of the Project Participant. The New Power Sales Contract shall be substantially in the form presented to this meeting, which is hereby approved, subject to such changes and modifications as counsel may recommend and the Mayor of the Project Participant may approve, such approval to be conclusively evidenced by his/her execution thereof.*

*The Project Participant acknowledges that under the terms of the New Power Sales Contract, the Project Participant is obligated to make payments (the "Payments") for its share of all of DEMEC's Monthly Power Costs (including debt service on the Bonds, reserves for debt service, operating and maintenance expenses of the New Project and reserves therefor, the requirements of any rate covenant with respect to debt service coverage for the Bonds, and other amounts as set forth in the New Power Sales Contract) and all Monthly Transmission Costs of DEMEC properly allocable to the Project Participant irrespective of whether energy is produced or delivered to the Project Participant or whether the New Project is completed, operable or operating, and notwithstanding suspension, interruption, interference, reduction or curtailment of the output of the New Project, and shall not be subject to any reduction, whether by offset, counterclaim, or otherwise, and shall not be otherwise conditioned upon performance by DEMEC under the New Power Sales Contract or any other agreement or instrument or the validity or enforceability of any other New Power Sales Contract, or any other agreement between DEMEC and any other Project Participant. The Project Participant acknowledges that DEMEC's ability to issue the Bonds and finance the New Project depends on the inclusion of the above-described provisions in the New Power Sales Contracts. The obligation of the Project Participant to make Payments under the New Power Sales Contract shall not constitute a debt of the Project Participant or a general obligation of or pledge of the full faith and credit of the Project Participant, and the Project Participant shall not be obligated or compelled to levy ad valorem taxes to make the Payments provided for in the New Power Sales Contract.*

*The obligation to make Payments shall constitute an operating expense of the Project Participant's electric utility system payable solely from the revenues and other available funds of the electric utility system.*

*The Project Participant also acknowledges that under the terms of the New Power Sales Contract, if one or more of the Project Participants defaults in its payment of its obligations under its New Power Sales Contract, the Project Participant, together with all the other non-defaulting Project Participants, shall be required to accept and pay for the capacity and energy which was the obligation of the defaulting Project Participant.*

*Section 3. Authorization of Refunding of 2001 Bonds. The Project Participant hereby authorizes DEMEC to refund the 2001 Bonds if it can be demonstrated that debt service savings can be achieved by refunding the 2001 Bonds, after taking into account any necessary costs associated with refunding the 2001 Bonds. If the determination is made by DEMEC to refund the 2001 Bonds, the Project Participant acknowledges the refunding bonds (the "Refunding Bonds") will be considered "Bonds" under either the Initial Power Sales Contract or the New Power Sales Contract, and agrees to include payments for debt service on the Refunding Bonds in its required payments under either the Initial Power Sales Contract or the New Power Sales Contract, as the case may be.*

*Section 4. Certificate of Project Participant. Attached hereto as Exhibit B is a Certificate of the Project Participant which must be executed and delivered to DEMEC upon the execution of the New Power Sales Contract. The Council hereby finds that the information set forth in said Certificate is true and correct and authorizes and directs the Mayor and the Clerk to execute said Certificate and deliver it to DEMEC upon execution of the New Power Sales Contract, and any "bring-down" certificate required upon the issuance of the Bonds. A similar certificate is authorized in the event Refunding Bonds are issued.*

*Section 5. Authorize Other Action. The Project Participant hereby authorizes the Mayor and the Clerk to take all other*

*action and sign any other documents or agreements necessary or appropriate to cause the New Project to be completed, the Bonds to be issued, and the 2001 Bonds to be redeemed and the Refunding Bonds to be issued (if so determined), all as contemplated by this Resolution.*

*Section 6. Confirm Appointment to DEMEC Board of Directors. The Project Participant hereby confirms the appointment of David Baird as the Project Participant's member on the Board of Directors of DEMEC.*

*Section 7. Effective Date. This Resolution shall go into effect immediately upon its adoption by Council.*

*Dated July 26, 2010*

Motion carried by unanimous roll call vote.

Mr. Baird confirmed the City of Milford electric rates remain the third lowest residential rate in the State of Delaware.

*Executive Session*

Mr. Morrow moved to go into Executive Session pursuant to 29 Del. C. §10004(b)(2) preliminary discussions on site acquisitions for publicly funded capital improvements, seconded by Mr. Pikus. Motion carried.

Mayor Rogers recessed the Council Meeting at 8:29 p.m. to go into a closed session.

*Return to Open Session*

Council returned to open session at 8:40 p.m.

No action required.

ADJOURN

Mr. Pikus moved to adjourn the Council Meeting, seconded by Mr. Grier. Motion carried.

Mayor Rogers adjourned the Monthly Council Meeting at 8:41 p.m.

Respectfully submitted,

Terri K. Hudson, CMC  
City Clerk/Recorder