

*MILFORD CITY COUNCIL*  
MINUTES OF MEETING  
*June 22, 2009*

A Meeting of Milford City Council was held in the Joseph Ronnie Rogers Council Chambers of Milford City Hall, 201 South Walnut Street, Milford, Delaware on Monday, June 22, 2009.

PRESIDING:               Honorable Mayor Daniel Marabello

IN ATTENDANCE:       Councilpersons Steve Johnson, Michael Spillane, John Workman, Jason Adkins,  
Owen Brooks, Jr., James Starling, Sr. and Katrina Wilson

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

COUNSEL:                City Solicitor Tim Willard

Mayor Marabello called the Council Meeting to order at 8:33 p.m.

*Introduction of Ordinance 2009-10/Lighting*

The following ordinance was introduced to council at this time:

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 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 thirty 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 semicutoff luminaries in these locations when the overall uplight would be less than for fullcutoff 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 Public Hearing: July 21, 2009

Projected Adoption Date by City Council: July 27, 2009

Projected Effective Date: August 6, 2009

City Planner Norris advised the amendment regarding lighting in subdivisions and developments has been discussed by the planning commission as well as Electric Superintendent Rick Carmean. The intent is to provide low level lighting and dark sky preservation. The ordinance was received favorably by members of the planning commission.

City Manager Baird asked if this is something council wants to introduce for further consideration adding this would establish a new chapter in the code.

Planning Commission Chairman Chuck Rini then advised council this also has an environmental impact and National Geographic recently did an article about why dark skies are needed and their impact on live species. There is an actual movement for dark skies which should also be taken into consideration.

Mr. Workman said he has dealt with problems created by extremely bright lights focusing on surrounding residential properties. He agrees with the concept as long as there is adequate lighting to prevent any safety issues.

Ms. Wilson agrees with Mr. Workman that safety needs to be considered particularly considering the fact that crime is on the increase. She feels that well-lit streets, parking lots and pedestrian areas need to be maintained. She is somewhat hesitant because dimmer lighting can sometimes add to that statistic. As long as it does not create a hazzard, she will agree.

Mr. Baird confirmed that the lights will remain lit but somewhat diffused.

Public comment will be taken on the ordinance at the July 27, 2009 meeting.

#### *Lower Level/City Hall Layout & Budget*

Mr. Workman advised that he and Mr. Baird have been in contact on this project as was directed by council. He asked the city manager to update council on their progress. Mr. Workman feels the final plan is a good plan and believes it will work.

The city manager recalled that during the last discussion, council asked for full utilization of the lower level of city hall as quickly as possible, provide either a partial or full payment center there, while at the same time get people back there as quickly as possible at a reasonable cost.

He presented a rough budget (see attached) based on an actual proposal received for the work. This will place the planning and zoning personnel, assessment staff, code enforcement and building inspection staff in the lower level at city hall. It has been developed with the use of a module wall system. Modifications will be made to the existing electric system with communications and wiring being done at the same time. Some minor modifications will be made to the fire alarm system per the fire marshal's requirements. Additional telephone hookups will be added and computer improvements done. A cash drawer fit out is included so that payments can be accepted at city hall.

The city manager said a 20% contingency of \$10,000 brings the rough estimate to \$60,000. He is very confident the work can be done for that amount though city council had previously authorized \$150,000 for modifications needed for the billing staff to return.

Mr. Baird said the other item city council addressed was the security issue at public works. They are refining some of those costs which he will present to council for approval in the very near future.

He has determined the amount needed to rehab the house at 209 South Washington Street for any use does not warrant the investment. Proposals to demo that structure came in between \$8,000 and \$10,000.

He believes that all three projects are within the \$150,000 budget previously approved.

Mr. Baird said this is being presented for approval to move forward in addition to getting feedback from city council.

Mr. Workman said there was considerable concern about the half walls. The sprinkler system was already in place and if solid walls were installed, the sprinkler system would have to be modified in relation to the walls. If floor to ceiling walls were built, the entire system would have to be changed.

Mr. Baird said there appears to be a general consensus to proceed in this direction.

When asked how long before staff would return, Mr. Baird said they have indicated the office systems will require four to six weeks or by late July/early August and two to three weeks for the other auxiliary work to be completed. Therefore, he expects all staff back by the first or middle of September.

Mr. Starling moved to proceed, seconded by Ms. Wilson. Motion carried by unanimous roll call vote.

Mr. Workman asked if the city manager and staff utilizing the ground floor would return to city hall sooner as was previously requested by council.

Mr. Baird said that with a clear path forward, he is ready to move in that direction. The only holdup in the past was whether hard physical construction was going to occur downstairs so that process can now begin. The move will be finalized over the month of July.

Mr. Workman verified that staff would be back by August 1<sup>st</sup>; Mr. Baird agreed.

*Executive Session - Pursuant to 29 Del. C. §10004(b)(4) Strategy sessions, including those involving legal advice or opinion from an attorney-at-law, with respect to collective bargaining or pending or potential litigation.*

Mr. Workman moved to go into Executive Session Pursuant to 29 Del. C. §10004(b)(4) strategy sessions, seconded by Mr. Spillane. Motion carried.

Mayor Marabello recessed the Council Meeting at 8:52 p.m. for the purpose of an Executive Session.

*Return to Open Session*

City Council returned to Open Session at 9:17 p.m.

*Key Properties/Easement Issue*

No action was needed as a result of the discussion in Executive Session.

*Adjourn*

Mr. Workman moved to adjourn the Council Meeting, seconded by Mr. Adkins. Motion carried.

The Council Meeting was adjourned at 9:18 p.m. by Mayor Marabello.

Respectfully submitted,

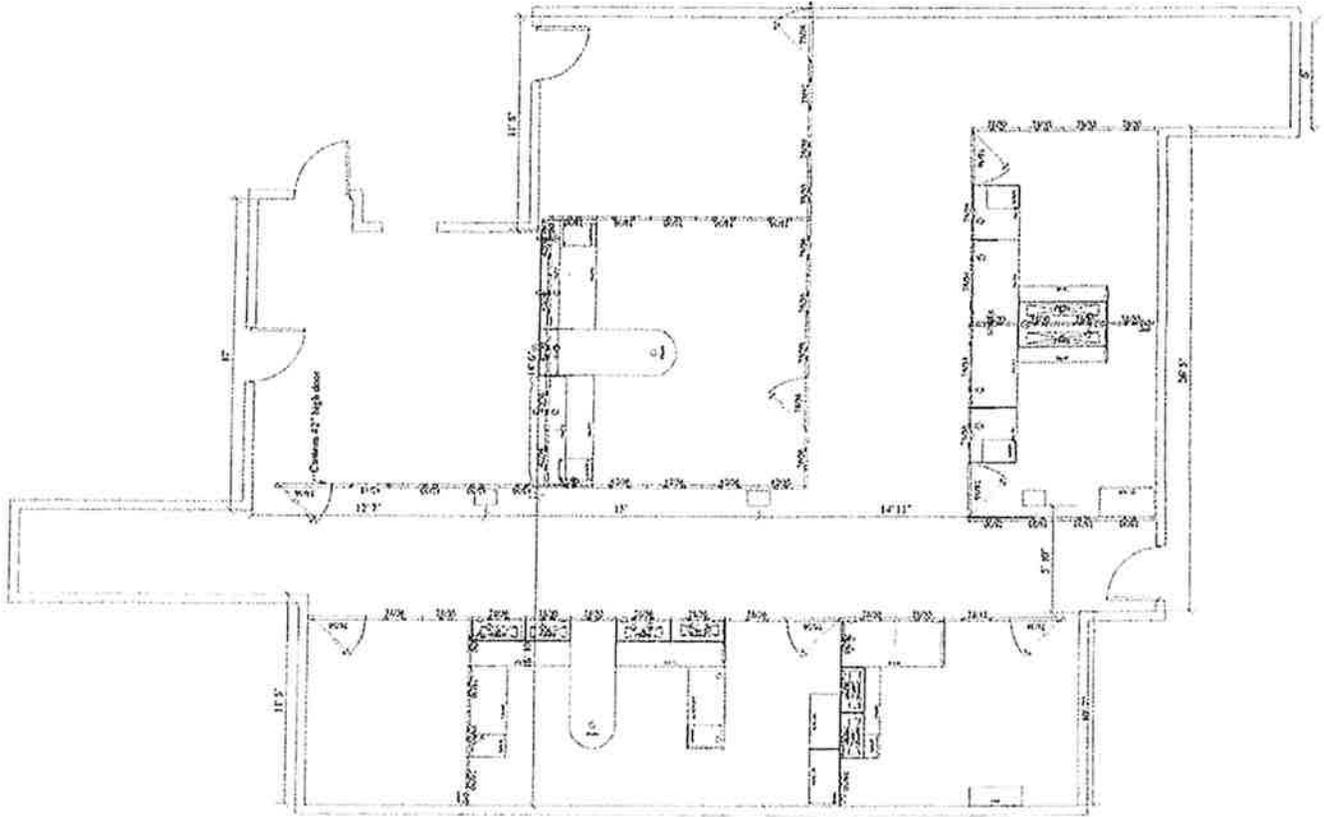


Terri K. Hudson, CMC  
City Clerk/Recorder

Attachments

## City Hall Lower Level Budget

Modular Wall System To Include: Deliver, setup and install panel system and furniture per layout	\$38,177.51
Electrical and Data Hook Up To Include: Supply & install electrical wiring for cubicles Supply & install wiring for fax/copier Supply & install wiring for phone jacks Supply & install wiring for DATA jacks	\$6,665.00
Alarm System Adjustments:	\$640.00
Telephone Hook Up at Panel: 5 additional Verizon lines	\$1,281.30 \$180.00
Cash Drawer Fit Out:	\$2,121.00
Drawings To Submit to Fire Marshal:	\$675.00
Conference Room Table	\$353.00
Contingencies:	\$10,000.00
Total:	\$60,092.81



*MILFORD CITY COUNCIL  
MINUTES OF MEETING  
June 22, 2009*

The City Council of Milford met in Workshop Session on Monday, June 22, 2009 in the Joseph Ronnie Rogers Council Chambers of Milford City Hall, 201 South Walnut Street, Milford, Delaware.

**PRESIDING:** Honorable Mayor Daniel Marabello

**IN ATTENDANCE:** Councilpersons Steve Johnson, Michael Spillane, John Workman, Jason Adkins, Owen Brooks, Jr., James Starling, Sr. and Katrina Wilson

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

**COUNSEL:** City Solicitor Tim Willard

Mayor Marabello convened the Workshop Session of City Council at 8:12 p.m.

*Draft/Ordinance 2009-12/Homeowners Association Requirement*

**ORDINANCE 2009-12**

**AN ORDINANCE TO AMEND THE CODE OF THE CITY OF MILFORD, CHAPTER 200, SUBDIVISION OF LAND, WHICH REQUIRES NEWLY ESTABLISHED HOMEOWNER ASSOCIATIONS TO MAINTAIN AND ENFORCE THE COVENANTS IN A SUBDIVISION.**

The City of Milford hereby ordains:

**Section 1: Amend Chapter 200-4 (B) by adding a new paragraph (6) and renumbering paragraphs thereafter.**

*(6) Before the final plat is approved for recordation, the subdivider must submit Restrictive Covenants to be recorded with the final site plan that establishes a homeowners association (including condominiums) with mandatory participation and dues. Such homeowners association shall provide for maintenance of all common areas, open space, retention ponds and detention ponds and a means to enforce the covenants against the subdivider. Such homeowners association shall be responsible for the private governance of the development when over fifty percent of the lots are conveyed to owners other than the subdivider. This required condition may be waived by Council for good cause.*

**Section 2. Dates.**

**Introduction to City Council: June 22, 2009**

**Planning Commission: July 21, 2009**

**Effective Date 10 days Following Adoption by City Council**

Mr. Willard drafted the above ordinance to be inserted in the approval section of the subdivision code. The purpose is for the subdivider to provide the covenants for the solicitor's review prior to final subdivision approval. It also requires maintenance of the open and common areas and will be used as a tool to enforce the covenants against the subdivider. In addition, management of the HOA would be turned over to the property owners after fifty percent of the lots are conveyed.

The solicitor recalls the state proposing an extensive bill dealing with this issue though it was tabled. Sussex County does not have specific homeowner association requirements. In their subdivision code, they require statements concerning proposed deed restrictions to be imposed by the owner, statements explaining how and when the subdivider proposes to provide for perpetual maintenance of certain areas and an owner's statement of dedication of streets. The provision of when it is turned over, can be done at anytime, but must be done when the last lot is turned over. He noted there are subdivisions in Milford where that is the case.

He said Mr. Metzner brought up a good point that the dues need to be built up before the homeowners are able to take it

over. He is convinced the idea of an HOA works more times than not.

The ordinance also includes a provision of what is required for the common areas to be turned over to the city. He suggests a requirement be added that certain notices be included in the covenants including any agricultural or wetland issues. The developer would be mandated to notify the buyer of such matters.

Mr. Willard agrees there is a danger of over micro-managing. As a result, he feels that clear, strict rules need to be established should someone want to subdivide, they would be aware of those rules in advance. However, council has the option to establish a committee.

Mr. Spillane suggests that council members be appointed and private citizens be appointed to make recommendations. Those recommendations would then be provided to the city solicitor.

Mr. Adkins feels that as this is being developed, the developers should also be asked what they feel is a reasonable expectation to prevent handicapping them. He said he is unfamiliar with what a reasonable percentage would be. He also asked if the different phases of a subdivision should be addressed when establishing a percentage. Mr. Willard agrees that could be spelled out in a per-phase manner.

Mr. Workman asked that as this is worked on, it needs to be done correctly. Feedback is needed from the residents that live there and any other person or business affiliated with an HOA. A public hearing should be scheduled and comments obtained at that time. However, he also agrees the city should not become so involved they end up micro-managing the process to a point where someone could come back on the city if something was not legal. He asked that caution be used as this is developed.

Ms. Wilson agrees with Mr. Workman that it is important to get feedback from those familiar with the process including the developers, the city planner and appointed council members. She asked that this be done correctly but does not want it to turn into a long and drawn out process for city council.

Mr. Willard suggests the committee include Planning Commission Chairman Chuck Rini, another commissioner, a couple members of council, the city manager, city planner and himself. The committee could then do a serious outreach to the residents and developers in order to get input from all those involved. Selecting individual private citizens gives the appearance some may have personal agendas. He feels this is much more appropriate and everyone will be heard.

Ms. Wilson agrees that this will allow more of an open door approach because it is important to hear from everyone. Mr. Workman concurs with Ms. Wilson stating that the residents will provide a different side and the developers another side. He said it is important to hear from the public and does not feel the committee should consist of only council members.

The city manager then recommended the committee be composed of a member of the planning commission, a member of city council, three or four individual property owners in HOA's, three or four individuals representing the developer/land management companies and Mr. Willard, Mr. Norris and himself will serve as support to the committee.

When asked if the meetings would be set up for open comment, Mr. Baird explained it would be an advisory committee of city council and would be subject to the meeting requirements.

Mr. Baird will contact all active homeowner associations and ask for the name of a person willing to serve on the committee. Then council can make the final appointments from a roster of names. He is proposing a committee of eight to ten total members.

The discussion concluded by Mayor Marabello stating we will reach out to each homeowner association and related developers for names of persons willing to serve on this committee in addition to a member of the planning commission and a member of city council. He asked that any interested council member contact him.

Mr. Baird said he will provide something to the homeowners' associations and developers within the next day or so.

*Draft/Ordinance 2009-13/Board of Adjustment/Composition & Terms of Office*

## ORDINANCE NO. 2009-13

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF MILFORD, CHAPTER 230, THEREOF ENTITLED ZONING, FOR THE PURPOSE OF AMENDING THE COMPOSITION OF THE BOARD OF ADJUSTMENT TO REFLECT CURRENT STATE LAW.

WHEREAS, the City Council recognizes a need to change the composition of the Board of Adjustment to allow for further citizen involvement.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MILFORD IN COUNCIL MET, HEREBY ORDAINS:

Section 1. Section 35 of Chapter 230 is hereby amended by striking the current title "Membership" and retitling section "Composition and Terms of Office".

Section 2. Section 35 of Chapter 230, Zoning, of the Code of the City of Milford is hereby amended by striking "consist of the Mayor, City Manager and City Solicitor or may" and adding "d" after 33 Del. C. §322 :

§230-35. Membership. *Composition and Terms of Office.*

The Board of Adjustment shall consist of the Mayor, City Manager and City Solicitor or may be established as provided in 22 Del. C. §322 (d).

Section 2. Dates

Introduction to City Council: June 22, 2009

Planning Commission Public Hearing: July 21, 2009

City Council Public Hearing: July 27, 2009

Mr. Baird recalled the discussions regarding the members of the Board of Adjustment over the past year. This amendment removes the mayor, city manager and solicitor and establish the board with residents as provided in the state code which states as follows:

22 Del. C. §322 (d)

(1) *Anything heretofore in this section to the contrary notwithstanding, any city or town, by its legislative body, may establish a board of adjustment consisting of not less than 3 nor more than 5 members who shall be residents of the city or town and who shall have knowledge of the problems of urban and rural development and who, at the time of appointment and throughout the term of office, shall not be candidates nor members of the legislative body nor employees of the city or town. The mayor or chief executive officer of such city or town shall appoint such members of the board of adjustment, and all such appointments shall be confirmed by a majority vote of the elected members of the legislative body.*

(2) *All appointments shall be for a period of 3 years, provided that the terms of the original members shall be established in such a manner that the term of at least 1 member shall expire each year and the successor shall be appointed for a term of 3 years. The board of adjustment so selected shall elect from among their own number a chairperson and a secretary.*

(3) *Any member of the board of adjustment may be removed from office by the legislative body for cause after a hearing by a majority vote of all the elected members of the legislative body of such city or town. A vacancy occurring otherwise than by the expiration of term shall be filled for the remainder of the unexpired term in the same manner as an original appointment.*

The city solicitor explained that under Title 22, there are three options to compose a Board of Adjustment for municipalities who have adopted a home charter rule. Currently, it does not comply with state law. He noted that substantively, this is a wise change because often in his position as the city attorney, he will provide his opinion and then later have to render a decision in the case. Many towns have boards that were made up of the mayor, city solicitor and manager or similar staff members, because they had the expertise and knew the laws.

It is Mr. Willard's recommendation to proceed with the change.

It was noted that the board can consist of three to five members. Mr. Willard emphasized that these residents will need to be oriented and become familiar with the legal standards. The city solicitor would continue to attend but in an advisory capacity.

City Planner Gary Norris suggested appointing a planning commission member to the Board of Adjustment in order to establish a dialogue between the two bodies. Mr. Willard disagrees noting the last section of the code allows the Board of Adjustment to refer matters to the planning commission for advice. In addition, he is unsure if a person is able to hold two offices within the city.

The mayor agrees with the solicitor but feels this is a similar conflict to the manner in which the board is currently composed with the city manager and solicitor providing opinions and then have a vote in the final decision.

Mr. Willard said the statute requires the members to be residents of the city or town who have knowledge of the problems of urban and rural development and who, at the time of appointment and throughout the term of office, shall not be candidates nor members of the legislative body nor employees of the city or town. He stressed that those members will need to be very carefully selected.

When asked how they are accountable, Mr. Baird said that any member of the board of adjustment may be removed from office by council for cause, after a hearing, by a majority vote of the legislative body.

Mr. Willard then advised that board of adjustment appeals go to Superior Court.

When asked what other towns do, Mr. Baird said there are towns where the staff, mayor and solicitor compose the board, but there are also towns whose composition is as this ordinance proposes though the number varies from three to five members. He said that in Georgetown, the board consists of five residents which works well.

When asked the duties of the board, Mr. Willard explained they typically address variances to the zoning code and mainly setback variances. The applicant is required to show a necessary hardship that cannot be economical. The second factor is it cannot adversely affect the neighboring properties. They also hear appeals from decisions of the city code official where it is alleged that there may be an error in an order, requirement or determination of the zoning code.

Mr. Spillane feels we would not have a need for board of adjustment hearings if we followed our code. Mr. Baird disagreed noting that any individual or property owner can make application to the board as is permitted in the code. The number of board meetings are driven by the number of applications received. If a homeowner feels there is an issue that causes them a hardship, has a practical difficulty because of the language or a problem with the interpretation of the code, then the appellate board is the board of adjustment.

It was determined that council has the right to appoint between three to five members and the decision can be made during the selection process. Mr. Workman disagrees and feels a number needs to be established before the ordinance is sent to the planning commission for their recommendation. Mr. Adkins prefers leaving the number at the mayor's decision depending on the quality number of applicants received.

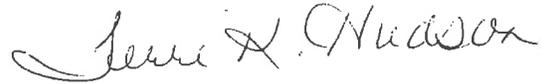
Mr. Baird advised that some communities have had three members and two alternates who could fill in during a member's absence or in the case of a conflict.

Mayor Marabello confirmed the consensus of council is to proceed with the ordinance with five members. He will follow up with the city manager.

Mr. Workman suggested we begin taking applications; Mr. Baird said he will have a notice placed on the website.

With no further workshop items, the Workshop Session concluded at 8:33 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Terri K. Hudson". The signature is written in black ink and is positioned above the printed name.

Terri K. Hudson, CMC  
City Clerk

*MILFORD CITY COUNCIL*  
MINUTES OF MEETING  
*June 22, 2009*

Prior to the official meeting of City Council, a Dedication Ceremony was held in the Joseph Ronnie Rogers Council Chambers of Milford City Hall, 201 South Walnut Street, Milford, Delaware on Monday, June 22, 2009.

PRESIDING:           Honorable Mayor Daniel Marabello

IN ATTENDANCE:   Councilpersons Steve Johnson, Michael Spillane, John Workman, Jason Adkins,  
Owen Brooks, Jr., James Starling, Sr. and Katrina Wilson

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

COUNSEL:           City Solicitor Tim Willard

The Council Chambers was officially dedicated to former Mayor Joseph Ronnie Rogers prior to the start of the regular Council Meeting in honor of his twenty-six years of service as Mayor and ten years as Council.

Former City Manager/Police Chief Richard Carmean, Councilman Owen Brooks, Councilwoman Katrina Wilson and Councilman James Starling then recognized the service of the former Mayor thanking him for improving life in Milford during his tenure.

Downtown Milford President Scott Angelucci was then asked to talk about the lettering he did for the chambers; Mr. Angelucci said he was approached by Mr. Carmean and asked to do something representative of the time of service Mayor Rogers provided to the city. He said gold leaf lettering was selected because it has longevity and represents value in recognition of the time Mayor Rogers committed to the city.

Mayor Marabello then acknowledged former Mayor Rogers stating the chamber is commemorative of his years of service to the city.

Mayor Rogers then thanked God, his wife, son and his family, as well as the citizens of Milford for allowing him to represent them for 18 continuous terms. He said he has served with 68 different council members, 6 city managers and 3 police chiefs. He also acknowledged the work of the numerous city employees hired during his tenure and acknowledged the tough decisions made over the years by council members during that time.

He concluded by saying he is extremely proud to be a Milfordian and plans to remain here the rest of his life. He then acknowledged Mayor Marabello and thanked him for his respect and friendship the last couple of years.

Mayor Marabello then formally dedicated the council chambers to Mayor Rogers noting it was renamed the Joseph Ronnie Rogers Council Chambers through a resolution adopted by City Council on May 12, 2008.

Mayor Marabello then turned the gavel over to Mayor Rogers to call the Public Hearing to order in recognition of this honor.

Respectfully submitted,



Terri K. Hudson, CMC  
City Clerk/Recorder

*MILFORD CITY COUNCIL*  
MINUTES OF MEETING  
*June 22, 2009*

The Milford City Council held Public Hearings on Monday, June 22, 2009 in the Joseph Ronnie Rogers Council Chambers at Milford City Hall, 201 South Walnut Street, Milford, Delaware.

PRESIDING:                   Honorable Mayor Daniel Marabello

IN ATTENDANCE:       Councilpersons Steve Johnson, Michael Spillane, John Workman, Jason Adkins,  
Owen Brooks, Jr., James Starling, Sr. and Katrina Wilson

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

In recognition of the dedication and naming of the Council Chambers prior to this hearing, Former City of Milford Mayor Rogers opened the Public Hearing to order at 7:11 p.m. at the request of Mayor Marabello.

City Council of the City of Milford then held a hearing to take public comment and make a final determination on the following matter:

*Donald M. Fisher on behalf of Fisher Sales & Services, Incorporated for a Conditional Use to allow Indoor Recreational Activities and Daycare at 107 N.E. Front Street. C-2 District; Area of Petition .428 +/- Acres.  
Tax Map MD-16-183.10-03-70.00  
Adoption of Ordinance 2009-8*

City Planner Gary Norris advised that he met with Mr. Fisher a couple of months ago and reviewed the intended use for the former Milford Boys and Girls Club. At that time, it was determined that no conditional use had been filed for the use by the Boys and Girls Club. As a result, he suggested Mr. Fisher submit a conditional use application outlining the proposed uses.

The application was then reviewed by the planning commission who recommended approval by a vote of 6-0.

Donald Fisher of 502 Crestview Drive presented the application. He provided a brief history of the building advising it was originally built in 1950 by his father. The family business, Fisher Appliance and Furniture, operated out of the facility until 1993. A couple of years later, the Boys and Girls Club was housed there until the first of this year when they moved to their new facility on Airport Road. The building has been brought up to code with modifications suitable for recreation purposes.

Mr. Fisher reported it will also be used on Sunday morning for church services to be shared by Pastor Jonathan Dukes and a Hispanic Minister. In the interim, it will be available for community uses. He added there is nothing concrete for the daycare at this point and are considering other options.

When asked if anyone from the public wished to comment, no one responded. The mayor then closed the floor to public comment.

Ms. Wilson advised she has spoken with Pastor Dukes and supports his plans to work with at-risk children which she feels will be a great benefit to the community as a whole.

Mr. Starling moved to approve the conditional use and adopt Ordinance 2009-8 as presented, seconded by Mr. Brooks. Motion carried by unanimous roll call vote.

Mr. Workman asked that if the daycare does not work out, any additional projects coincide with the zoning and/or conditional use as approved. Mr. Fisher agreed he would comply.

City Council of the City of Milford then held a hearing to take public comment and make a final determination on the following matter:

*Davis, Bowen and Friedel, Incorporated on behalf of Shawnee Farm LLC  
Final Approval of Phase I of the Major Subdivision to be known as Cypress Hall  
Southwest side of Route 113, 4,000 feet south of Shawnee Road/Route 36.  
Tax Map No. 1-30-3.00-261.01; Area 86.56 +/- Acres; R-3 District*

City Planner Norris advised the request is for a final approval of the subdivision of 384 units comprised of townhouses and apartments (exclusive of single family homes at this time). The planning commission recommended approval of the application by the Mayor and City Council with the following recommendations:

1. The City Planner be provided verification of open space calculation, verifying 40% open space has been provided. (Mr. Norris verified the open space requirement meets the previous requirement as noted in the subdivision code which was approved by City Solicitor Tim Willard.)
2. A sheltered bus stop be provided on site.
3. A copy of the Homeowners Association documents are provided to the City Planner.

Representing the application, Tim Metzner of Davis, Bowen and Friedel, Incorporated stated they are proposing a 384 unit mixed use residential development. This application applies to Phase I of the residential development. Phase II will be submitted at a later date and includes 162 single family units for a grand total of 546 units.

He advised the development has one access point off US Route 113 south of Route 36. The plans have been approved by all required agencies.

Mr. Metzner noted the preliminary plan was approved by council on September 24, 2007 with an extension was granted by council on September 23, 2008. At this time, they are requesting final approval of Phase I.

Mr. Workman said that based on the conditions recommended by the Planning Commission, at what point will it be turned over to the homeowners association (HOA). Mr. Metzner explained this is only the development of Phase I and the total development consists of 546 units. The homeowners association will take over Phase I at this point.

Mr. Spillane then asked if Phase I will be completely built out before Phase II is started; Mr. Metzner explained that will depend on the market as there are no definite plans in place for Phase II at this point in time. He said odds are they will proceed with the approvals and designs of Phase II prior to Phase I being completed in full. He anticipates Phase II beginning before Phase I is completed in its entirety.

It was confirmed that an agricultural notice was included on the plat as General Note #10. City Solicitor Willard referenced the proximity to the grain elevator which was an issue at the planning commission hearing.

He then asked if there is a note referencing the maintenance of the common area by the developer before it is turned over to the homeowners association. Mr. Metzner stated a standard note was added stating it is to be maintained by the developer until 75% of the certificate of occupancies are issued at which time it will be turned over to the HOA. Mr. Metzner explained that upon 75% of all lots being sold, the developer shall convey all amenities, common areas and similar items to the Property/Homeowners Association which is the norm throughout Kent and Sussex counties.

Solicitor Willard advised that he has also seen some developers wait until 90% of the lots are sold. He added that the idea is to promote self governance and from a financial aspect, the developer has an incentive to turn it over because of the costs that are incurred. Mr. Metzner agrees noting that until that a majority of the properties are sold, it is very difficult for the homeowners to handle the maintenance responsibilities. Most developers feel that at such reasonable time, the homeowners are able to support themselves.

Mr. Adkins questioned the final buffer zone for Milford Grain Company; Mr. Metzner explained a vegetated 150 feet buffer zone is shown on the landscape plan. He referred to the existing hedgerow as well as the added plantings up to the property line that does not contain existing vegetation.

Mr. Baird verified that a performance bond is required in the amount of 125% on the public portions of the project. He explained that anything dedicated to the city will be required to be bonded and must be provided before the notice to proceed to construction is issued by the city.

When asked if that is presently in the code, Mr. Baird explained there have been various amounts over the years the 125% is was is on the table for this development.

Mr. Spillane stated that because the 125% has not been adopted, he suggests the city use the state requirement of 145% or 150%. Mr. Baird explained the percentage varies depending on the agency involved; DelDOT has different requirements and the counties have different numbers in addition to each municipality in the state. He feels that with the competitiveness, 125% is very appropriate in today's market.

Mr. Spillane recommends we wait until the ordinance is adopted before this is approved. Mr. Baird said if the project is approved, the 125% will be an added requirement. If the project is deferred and council takes action to increase the amount, the larger amount could apply.

Mr. Metzner then advised that his client has agreed to pay the 125% bond and recommends that any changes be added as a condition. Should council decide to increase the percentage at a future date, his client would be receptive to that change. At this point, the developer does not wish to have the project held up for that reason. He noted that with the state of the economy, construction companies are anxiously waiting for the work and emphasized the need to proceed.

Mr. Spillane asked if the new legislation specifying the bond requirement will be passed soon; Mr. Baird stated it will but agrees with Mr. Metzner's suggestion that a condition be applied to the approval.

The mayor then opened the floor to public comment.

Paul Goldstein of 15 West Thrush Drive, Meadows at Shawnee said the project is a great one and he has no problem with its approval. He feels council should not take a position on the homeowners association portion because it is a disservice to those buying the houses. He feels it says people are unable to control the homeowners association in the beginning which is foolishness because they are adults, have bought the homes and should have full control. To wait for 75% could take many years. The city does not have a program in place and he feels council should give the conditional approval and have the builder agree that any future changes in the homeowners association protection be incorporated. In that way, there is no misunderstanding later when they say they were given approval to do anything they want. If there is 500 properties and six houses, those six property owners should have control. If they spend 'x' amount of money, all 500 of them should pay because that is how it is supposed to be. He said be fair to the people buying these houses. He feels it is very unfair for the city to approve this without knowing what it is giving to the people. This council should be proactive to help the citizens.

No further public comments were received and the Mayor closed this portion of the public comment period.

Mr. Metzner explained that the HOA documents must be recorded when the plans are recorded. Therefore, the homeowners receive an official copy at settlement. He reiterated the benefit of having the developer maintain control over the HOA until a predetermined number of lots are sold is to prevent the financial and legal responsibility of the development being placed on the first few homeowners.

He added that the current city code does not require council to approve the HOA documents. The planning commission requested a copy of the HOA documents only be provided to the planner prior to recordation. The developer is having the HOA documents recorded with the plan even though that is not required in the code. Presently, their attorneys are preparing that paperwork.

Mayor Marabello stated that may not be true in the future.

Mr. Workman feels that council can only require what is on the books currently. If some new legislation is later adopted, only those subdivisions approved following that adoption will be impacted. He then asked if council can make this

retroactive; City Solicitor Willard said no because they are bound by the law in place at the time they applied for the subdivision. Though he is unsure of what rules the real estate agencies have, he feels they must provide the homeowners association information beforehand. At settlement, the attorney is required to do a title search and give notice of the restricted covenants and details of the homeowners association. They are then required to inform their clients of the terms. He feels the concept has worked because it is in the developers and homeowners' best interest.

It was confirmed by Mr. Metzner the plat included in the packet was final. Mr. Spillane confirmed that is not ready to be recorded because of the work being done by the attorney on the HOA documents. Mr. Metzner feels it will be completed within a very short period of time and could possibly be recorded within the next two weeks.

Mr. Spillane stated he prefers the approval to be postponed until the HOA documents are completed.

Mr. Starling pointed out the application is complete and they are asking for final approval. It appears they have done more than was asked. Mr. Workman agrees reiterating that council needs to vote on the laws that are on the books today. The homeowners association ordinance will be addressed later though there is no guarantee of when it will be passed. He added that all approvals were received and it appears to be ready to proceed.

Mr. Starling moved for final approval of Phase I Cypress Hall Major Subdivision with the following conditions:

- \*The City Planner be provided verification of open space calculation, verifying 40% open space has been provided.
- \*A sheltered bus stop be provided on site.
- \*A copy of the Home Owners Association documents be provided to the City Planner

Motion seconded by Ms. Wilson. Motion carried by the following 5-2 vote:

Yes-Workman, Adkins, Brooks, Starling, Wilson

No-Johnson, Spillane

Mr. Johnson said he is voting no to see what the city will need as far as a homeowners association and where we suggest they go with that.

Mr. Spillane votes no stating we are going to talk about some things involving the HOA and thinks we should wait.

Mr. Workman said the developer has provided the complete application, has been very upfront when asked questions and has complied with the recommendations of the planning commission. Though the documents are still being prepared, he feels they will be provided and votes yes.

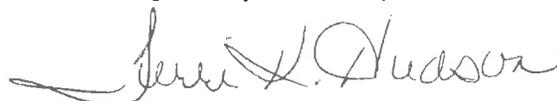
Mr. Brooks said he votes yes and agrees with Mr. Workman that it is necessary to vote on what was in place at the time the application was submitted and presented to council, not what may occur in the future as Mr. Willard has advised.

Mr. Starling is voting yes because the application has been submitted with everything required. He feels council needs to vote on what is on the books today. Everything presented is intact with what was required.

Ms. Wilson votes yes noting all the reasons those council members voting yes have stated.

With no further business, Mayor Marabello declared the Public Hearings adjourned at 7:49 p.m.

Respectfully submitted,



Terri K. Hudson, CMC  
City Clerk/Recorder

*MILFORD CITY COUNCIL*  
*MINUTES OF MEETING*  
*June 22, 2009*

On Monday, June 22, 2009, the City Council of the City of Milford held a Public Comment Session in the Joseph Ronnie Rogers Council Chambers of Milford City Hall at 201 South Walnut Street, Milford, Delaware, prior to the commencement of the official City of Milford Council Meeting in order to allow the public to comment about issues of interest that impact the City of Milford.

PRESIDING:               Honorable Mayor Daniel Marabello

IN ATTENDANCE:       Councilpersons Steve Johnson, Michael Spillane, John Workman, Jason Adkins,  
Owen Brooks, Jr., James Starling, Sr. and Katrina Wilson

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

COUNSEL:               City Solicitor Tim Willard

Mayor Marabello declared the Public Comment Session open at 7:49 p.m.

Vivienne Ginn of 20 Clearview Drive, Hearthstone Manor, referenced the HOA (Homeowners Association) ordinance on the workshop agenda. She advised the chapter number is 200(4)B but the agenda has another ordinance number (note: ordinance number is 2009-12 that amends Chapter 200).

Ms. Ginn recalled the recommendation on May 26, 2009 that a committee be organized to bring forth recommendations that suggested comments be incorporated into the deed restrictions, covenants, bylaws and documents prepared by the developer governing the HOA's. She said the committee has not been formed though an amendment has been drafted to amend the subdivision code by requiring the subdivider provide the restricted covenants be recorded with the final site plans. Ms. Ginn stated the documents are currently recorded in the Recorder of Deeds.

She then referred to the statement that the association shall be responsible for the private governance of the development when more than fifty percent of the lots are conveyed to owners other than the subdivider. She asked that a definitive number be required in lieu of the language 'over fifty percent'.

Paul Goldstein of 15 West Thrush Drive, Meadows at Shawnee said he requested the city consider an ordinance to cover homeowners associations. Though it is on the agenda, he feels council should have input from the citizens who care and are involved in this issue such as himself and others. He reiterated the need for protection of these homebuyers against the associations when they do not benefit the homeowners. Because the developer controls the association without the homeowners' input, there are a number of situations that can occur that create burdens on the homeowners. He feels this is a disservice to the citizens of Milford. He said some developers never relinquish their powers and change the rules and regulations every month. He feels the developer provides the services and has the power to grant or deny the rights of the homeowners.

Mr. Goldstein said a homeowners' group is needed to explain fifty things they see which can be narrowed down to twenty and given to our attorney who can say this can or cannot be done. He said it is for the fairness of the people. According to Mr. Goldstein, in his subdivision, the incorporated papers were never provided to any homeowner and no one knew they existed. They thought the maintenance agreement had to do with cutting grass and no one knew it had to do with the rules and regulations until they went to closing when they were finally provided with the deeded restricted list.

He again asked council to form a committee of concerned and interested citizens to prepare an ordinance so people will move to Milford because people are treated fairly by the builder.

Danny Perez advised he has an office at the Riverwalk Plaza at 233 NE Front Street and lives at 29 General Torbert

Drive in Sawmill Village. He is the general manager of a Hispanic radio station in Georgetown. He discussed the possibility of bringing a multi-cultural family festival to the Riverwalk Plaza which he stated is private property. He advised it would be a four-day event starting August 20<sup>th</sup> to August 23<sup>rd</sup> and terminating at approximately 9:00 p.m. Security will consist of twenty security officials employed by firms authorized by the State of Delaware.

Mr. Perez said he will provide a request for items of logistical support at a later date as he has discussed with the mayor.

With no other persons signed up, Mayor Marabello declared the Public Comment Session closed at 8:12 p.m.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Terri K. Hudson".

Terri K. Hudson, CMC  
City Clerk/Recorder