

MILFORD CITY COUNCIL
MINUTES OF MEETING
March 24, 2008

A Public Hearing was held before Milford City Council on Monday, March 24, 2008 in the Meeting Room of the Delaware Rural Water Association Facility, 210 Vickers Drive, Milford, Delaware to review Ordinance 2008-2 and make a final determination.

PRESIDING: Honorable Mayor Joseph R. Rogers

IN ATTENDANCE: Councilpersons Irvin Ambrose, John Kramlich, John Workman, Owen Brooks, Jr. and Katrina Wilson.

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

Mayor Rogers called the Public Hearing to order at 7:06 p.m.

Assistant City Manager David Baird presented the following final draft of Ordinance 2008-2 noting the amendments (as underlined in the ordinance) since its introduction on March 10, 2008. He reminded council the city is required to adopt a Source Water Protection Ordinance which is a federal mandate of the Safe Drinking Water Act Amendments of 1996 and the Delaware Source Water Protection Law of 2001. Municipalities are required to govern the use of land within the source water assessment, wellhead protection and excellent groundwater recharge potential areas by protecting those critical areas from activities and substances that may harm water quality and subtract from overall quality.

ORDINANCE NO. 2008-2

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF MILFORD, CHAPTER 230, ZONING, FOR THE PURPOSE OF ESTABLISHING WATER RESOURCE PROTECTION AREAS.

WHEREAS, the City of Milford relies on groundwater as its sole source of drinking water; and

WHEREAS, the protection of existing and proposed sources of water for public consumption is critical to the protection of public health, the environment, and continued economic prosperity; and

WHEREAS, the United States Congress has mandated the assessment of drinking water supplies through the provisions of the Safe Drinking Water Act Amendments of 1996; and

WHEREAS, the United States Congress has encouraged the protection of drinking water supplies through the provisions of the Safe Drinking Water Act Amendments of 1996; and

WHEREAS, the State of Delaware requires counties and municipalities with a population of 2,000 or more to adopt overlay maps delineating, as critical areas, source water assessment, wellhead protection, and excellent groundwater recharge potential areas through the provisions of the Delaware Source Water Protection Law of 2001; and

WHEREAS the State of Delaware, through the provisions of the Source Water Protection Law of 2001, requires counties and municipalities with a population of 2,000 or more to adopt regulations governing the use of land within source water assessment, wellhead protection, and excellent groundwater recharge potential areas to protect those critical areas from activities and substances that may harm water quality and subtract from overall water quality.

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

Section 1. Amend §230-4 A by inserting the following definitions:

Aboveground Storage Tank (AST): An AST is a single containment vessel greater than 250 gallons as defined in the Delaware Regulations Governing Aboveground Storage Tanks. ASTs with a storage capacity greater than 12, 499 gallons containing petroleum or hazardous substances, and ASTs with a storage capacity greater than 39,999 gallons containing diesel, heating fuel or kerosene are subject to the design, construction, operation, and maintenance requirements of the Delaware AST regulations.

Applicant: A person, firm, or government agency that executes the necessary forms to obtain approval or a permit for any zoning, subdivision, land development, building, land disturbance, or other activity regulated.

Aquifer: A geological formation, group of formations or part of a formation composed of rock, sand, or gravel capable of storing and yielding groundwater to wells.

CERCLA Hazardous Substances: Defined in terms of either those substances specifically designated as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), otherwise known as the Superfund law, or those substances identified under other laws. In all, the Superfund law includes references to four other laws to designate more than 800 substances as hazardous, and identify many more as potentially hazardous due to their characteristics and the circumstances of their release.

Contamination: Any physical, chemical, biological, or radiological substance that enters the hydrological cycle through human action and may cause a deleterious effect on ground water resources; it shall include but is not limited to hazardous waste, limiting nutrients, and sanitary sewage.

Delineation: The process of defining and/or mapping a boundary that approximates the areas that contribute water to a particular water source used as a public water supply.

Environmental Impact Assessment Report (EIAR): A report required by this ordinance that assesses the environmental characteristics of a source water protection area and determines what effects or impacts will result if the area is altered or disturbed by a proposed action that would increase impervious cover beyond the recommended 20% threshold.

Excellent Ground-Water Recharge Potential Area: Those areas with high percentages of sand and gravel that have "excellent" potential for recharge as determined through a Stack Unit Mapping Analysis delineated by the Delaware Geological Survey and presented in the Report of Investigations No. 66, Ground-water Recharge Potential Mapping in Kent and Sussex Counties, Delaware, Geological Survey, 2004.

Geologist: An individual who is registered in the State of Delaware to practice the profession of geology.

Ground Water: The water contained in interconnected pores located below the water table in an unconfined aquifer or located in a confined aquifer.

Hazardous Substance UST System: Underground storage tank system that contains a hazardous substance defined in 101(14) of the CERCLA (but not including any substance regulated as a hazardous waste under RCRA Subtitle C) or any mixture of such substances and petroleum, and which is not a petroleum UST system.

Hazardous Waste: A solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating irreversible, illness, or pose a substantial present or potential a hazard to human health or the environment when improperly treated, stored, transported, or dispose of, or otherwise managed, Without limitation, included within this definition are those hazardous wastes described in Sections 261.31, 261.32, and 261.33 of the Delaware Regulations Governing Hazardous Waste.

Impervious Cover: Surfaces providing negligible infiltration such as pavement, concrete, graded aggregate, buildings, recreation facilities (e.g. tennis courts, swimming pools, etc.).

Natural Condition: Open space that is essentially unimproved and set aside, dedicated, designated, or reserved for public or private use.

Passive Recreation: Recreation that involves existing natural resources and has a minimal impact because they do not require the alteration of existing topography. Such passive recreation shall include but not be limited to non-motorized vehicles, hiking, bicycling, picnicking, and bird-watching.

Public Water Supply Well: Any well from which the water is used to serve a community water system by section 22.146 (Public Water Systems) in the Delaware State Regulations Governing Public Drinking Water Systems.

Public Drinking Water System: A community, non-community, or non-transient non-community water system, which provides piped water to the public for human consumption. The system must have at least 15 service connections or regularly serve at least 25 individuals daily for at least 60 days.

Redevelopment: Any proposed expansion, addition, or major facade change to an existing building, structure, or parking facility.

Runoff: That portion of precipitation or snow melt that has not evaporated or infiltrated into the soil, but flows on land or impervious surfaces and discharges to a swale, ditch or stream.

Sanitary Landfill: A land site at which solid waste is deposited on or into the land as fill for the purpose of permanent disposal, except that it will not include any facility that has been approved for the disposal of hazardous waste under the Delaware Regulations Governing Hazardous Waste.

Site plan approval: Process for the review and approval of a development or redevelopment plan prior to the issuance of a development.

Source Water: Any aquifer from which water is drawn either periodically or continuously by a public water system.

Source Water Assessment Area: The area delineated by DNREC Source Water Assessment and Protection Program that contributes water to a public water supply system.

Source Water Assessment and Protection Program: Created by Congress as part of the Safe Drinking Water Act Amendments of 1996. The goal of the SWAPP is to better protect public drinking water resources by providing local and state governments, and the public more information about those resources. The susceptibility of each source of public drinking water to various types of contamination will be determined and published.

Source Water Assessment Plan: The October 1999 U.S. EPA approved plan for evaluating the sources of public drinking water in Delaware for their vulnerability and susceptibility to contamination.

Source Water Assessment Report (SWAP): The identification and evaluation of the sources of water within the state used by public water systems in an effort to determine the vulnerability and susceptibility to contamination.

Stormwater: The runoff of water from the surface of the land resulting from precipitation or snow or ice melts

Stormwater Management:

A) for water quantity control, a system of vegetative, structural, and other measures that may control the volume and rate of stormwater runoff which may be caused by land disturbing activities or activities upon the land; and

B) for water quality control, a system of vegetative, structural, and other measures that control adverse effects on water quality that may be caused by land disturbing activities or activities upon the land.

Source Water Protection Area: Wellhead Protection Areas and Excellent Ground-Water Recharge Potential Areas.
Vacant Property: Lands or buildings that are not actively used for any purpose as designated in the underlying zoning district/overlay for one year.

Underground Storage Tank (UST): A UST is one or a combination of Tanks including underground Pipes, the volume of which is 10% or more belowground, as defined in the Delaware Regulations Governing Underground Storage Tank Systems. The following USTs are not subject to the design, construction, operation, and maintenance requirements of the Delaware UST Regulations: Residential Heating Fuel, Agricultural, and Residential Motor Fuel USTs less than 1,100 gallons and any UST less than 110 gallons.

Wastewater: Solid, semi-solid or water-carried waste from septic tanks, water closets, residences, building, industrial establishments, or other places, together with such groundwater infiltration, subsurface water, and mixtures of industrial wastes or other wastes as may be present.

Water Quality: Those characteristics of stormwater runoff from an impervious surface or a land disturbing activity that relate to the chemical, physical, biological, or radiological integrity of water.

Water Quantity:

1) Those characteristics of stormwater runoff that relate to the volume of stormwater runoff to downstream-gradient areas resulting from land disturbing activities.

2) Those characteristics of stormwater that relate to the volume of stormwater that infiltrates the land surface and enters the underlying aquifer.

Wellhead: The upper terminal of a well, including adapters, ports, seals, valves, and other attachments

Wellhead Protection Areas (WHPA): Surface and subsurface areas surrounding public water supply wells or well fields where the quantity or quality of ground water moving toward the wells or well fields may be adversely affected by land use activity.

Wellhead Protection Plan: The March 1990 U.S. EPA approved plan for protecting the quality of drinking water derived from public water supply wells in Delaware.

Section 2. Amend Chapter 230, Article III by adding a new section 19.2 to read as follows:

§230-19.2 Source Water Protection District

- A. The purpose of the Source Water Protection District is to protect public health and safety in the City of Milford by minimizing contamination of aquifers, preserving, and protecting existing and potential sources of drinking water supplies. The district shall be established in delineated wellhead protection areas around all public water wells and excellent groundwater recharge potential areas located within the corporate limits of the City of Milford.*
- B. Superimposed district; effect on other provisions.*
- 1) To enable the Source Water Protection District to operate in harmony with the land use component of the City's Comprehensive Plan, subdivision and zoning regulations, the Source Water Protection District is created as a special district to be superimposed on other districts contained in the City of Milford's Zoning Ordinance.*
 - 2) The requirements and provisions established in this district shall prevail over conflicting requirements of the zoning and subdivision ordinances.*
- C. Source Water Protection Area Maps*
- 1) Overlay maps prepared or provided by the Department of Natural Resources and Environmental Control (DNREC) delineating wellhead protection and excellent groundwater recharge potential areas in the City of Milford are included as a part of the City's Official Zoning Map and shall be designated as the Source Water Protection District.*

2) The maps shall be utilized by the administrative official in determining whether a lot or parcel lies within the source water protection district as described in subparagraph D of this section. The lack of an indication on this map as to whether certain property is within or outside of the boundaries of this overlay district shall not be constructed as a conclusive determination that said property is within or outside the boundaries of the source water protection overlay district. Rather, the controlling factor in making such a determination shall be the description contained in subparagraph E of this section.

D. Source Water Protection Standards.

- 1) For a confined wellhead the wellhead protection area shall be 150 feet from the wellhead.
- 2) For an unconfined wellhead generating less than 50,000 gallons a day the wellhead protection area shall be 150 feet from the wellhead.
- 3) For an unconfined wellhead generating greater than 50,000 gallons a day the wellhead protection area shall be delineated by the State of Delaware, Department of Natural Resources and Environmental Control, Division of Water Resources, Source Water Assessment and Protection Program.
- 4) The area contained within a source water protection area shall be divided into zones:
 - a. Zone 1: A surface area extending in a 150 foot radius around the wellhead.
 - b. Zone 2: The remaining surface area of a delineated wellhead protection area outside of Zone 1.
 - c. Zone 3: Excellent groundwater recharge areas.
- 5) Zone 1 Requirements
 - a. Permitted Uses
 1. Infrastructure, equipment, buildings, access and other uses associated with the well, distribution and treatment facilities of the water system and their maintenance.
 2. Wells existing prior to December 31, 2007. No other structures or uses shall be permitted in Zone 1 unless the application, which shall demonstrate the proposed structure or use will not harm or potentially harm the public drinking water supply, is approved as a Conditional Use by City Council.
- 6) Zone 2 Requirements
 - a. Permitted Uses
 1. Uses permitted in the underlying zoning district may be permitted under an approved Conditional Use that protects the public drinking water supply for the City and meets the minimum requirements for stormwater management, impervious cover, above ground and underground storage tanks.
 - b. Stormwater Management
 1. Stormwater shall be treated by an approved stormwater quality management practice in accordance with current requirements of the Delaware Sediment and Stormwater Regulations dated October 11, 2006 or as later revised.
 2. For all new construction, all structures shall be required to discharge roof drains into recharge systems. Recharge systems shall be in accordance with Section 10.0 of the Delaware Sediment and Stormwater Regulations dated October 11, 2006 or as later revised.
 - c. Impervious Cover
 1. Wellhead Protection Areas should not exceed 20% impervious cover. New development in this Zone may exceed the 20% impervious cover threshold within Wellhead protection Areas, but shall be no more than 50% impervious cover, provided the applicant submits an Environmental Assessment Impact Report as provided for in §230-19.2F indicating the additional impervious area will not have an adverse impact on the drinking water supply.
 - d. Underground Storage Tanks (UST)
 1. Underground storage tanks with a capacity greater than 110 gallons containing petroleum, and Residential and Agricultural USTs with a capacity greater than 1,100 gallons containing heating fuel or motor fuel shall be permitted in a designated wellhead area if the USTs are designed, constructed, maintained, and operated in accordance with the Delaware Regulations Governing Underground Storage Tank Systems, or as later revised. (NOTE: Regulated USTs must be constructed with secondary containment of the tanks and piping and must have continuous monitoring for releases.) The property owner shall be required to submit an annual report, prepared by a licensed tank inspector, certifying the UST meets the criteria established herein.

2. *Underground storage tanks with a capacity greater than 110 gallons containing a hazardous substance as defined in CERCLA §101(14) shall be permitted in a designated wellhead area if the USTs are designed, constructed, maintained and operated in accordance with the Delaware Regulations Governing Underground Storage Tank Systems. (NOTE: Regulated USTs must be constructed with secondary containment of the Tanks and piping and must have continuous monitoring for releases.) The property owner shall be required to submit an annual report, prepared by a licensed tank inspector, certifying the UST meets the criteria established herein.*

c. *Above Ground Storage Tanks*

1. *Aboveground storage tanks with a capacity greater than 12,499 gallons containing petroleum or hazardous substances, and ASTs with a storage capacity greater than 39,999 gallons containing diesel, heating fuel or kerosene shall be permitted in a delineated wellhead area if the ASTs are designed, constructed, operated and maintained with the applicable requirements in the Delaware Regulations Governing Aboveground Storage Tanks.*

7) Zone 3 Requirements

a. Permitted Uses

1. Uses permitted within the underlying zoning district unless prohibited by this Section.
2. Hazardous Waste Storage, Treatment, and Disposal Facilities, Hazardous Waste Generators, Sanitary and Industrial Facilities as defined in the Delaware Regulations Governing Hazardous Waste, Vehicle Repair, Salvage Operations, Waste Sludge Storage or Application, Solid Waste Landfills, Tire Piles and Dredge Spoil Sites shall not be permitted in Zone 3.

b. Stormwater Management and Impervious Cover

1. There are no requirements contained in this section in order for the development to occur provided the impervious cover of that portion of the parcel within the excellent recharge area is thirty-five (35) percent or less.
2. Impervious cover of that portion of the parcel within the excellent recharge area or greater than thirty-five (35) percent but no more than sixty (60) percent is allowed provided the applicant demonstrates through a report prepared by a registered professional geologist or registered professional engineer familiar with the hydro geologic characteristics of the City of Milford and the surrounding areas using climatic water budget that post-development recharge quantity will meet or exceed the existing (pre-development) recharge quantity. Efforts to mitigate discharges to impervious surfaces shall count towards the formula used to compute post-development mitigation of any discharges.
3. For all new construction where the impervious surfaces exceed sixty (60) percent or where the level of post-development recharge is less than pre-development recharge, all structures shall be required to discharge roof drains into underground recharge systems or permeable surfaces that allow the discharges to infiltrate into the ground. Efforts to mitigate discharges to impervious surfaces shall count towards the formula used to compute post-development mitigation of any discharges.
4. Discharge from roof drains, containment areas or impoundments that have run-off from an area that may contain contaminants from mechanical systems shall be segregated and treated prior to discharge.

c. Underground Storage Tanks (UST)

1. Underground storage tanks with a capacity greater than 110 gallons containing petroleum, and Residential and Agricultural USTs with a capacity greater than 1,100 gallons containing heating fuel or motor fuel shall be permitted in a designated wellhead area if the USTs are designed, constructed, maintained, and operated in accordance with the Delaware Regulations Governing Underground Storage Tank Systems, or as later revised. (NOTE: Regulated USTs must be constructed with secondary containment of the tanks and piping and must have continuous monitoring for releases.) The property owner shall be required to submit an annual report, prepared by a licensed tank inspector, certifying the UST meets the criteria established herein.
2. Underground storage tanks with a capacity greater than 110 gallons containing a hazardous substance as defined in CERCLA §101(14) shall be permitted in zone 3 if the USTs are designed, constructed, maintained and operated in accordance with the Delaware Regulations Governing Underground Storage Tank Systems. (NOTE: Regulated USTs must be constructed with secondary containment of the Tanks and piping and must have continuous monitoring for releases.) The property

owner shall be required to submit an annual report, prepared by a licensed tank inspector, certifying the UST meets the criteria established herein.

d. Above Ground Storage Tanks

1. Aboveground storage tanks with a capacity greater than 12,499 gallons containing petroleum or hazardous substances, and ASTs with a storage capacity greater than 39,999 gallons containing diesel, heating fuel or kerosene shall be permitted in Zone 3 if the ASTs are designed, constructed, operated and maintained with the applicable requirements in the Delaware Regulations Governing Aboveground Storage Tanks.

E. *Boundary Determination for Source Water Protection Areas*

- 1) *All subdivision and land development plans depicting development or land disturbance submitted for City review shall be evaluated for the existence of source water protection areas. All such areas are as depicted on Source Water Protection Area maps. Maps/overlays are available from Delaware Department of Natural Resources and Environmental Control (DNREC), Division of Water Resources, Source Water Assessment and Protection Program (SWAPP). If a SWPA exists within a proposed development site, the boundaries of these areas shall be delineated on the plan by the applicant's State of Delaware Professional Engineer or Professional Geologist.*
- 2) *DNREC SWAPP may, when based on sound science and information, revise and update the overlay maps of wellhead protection areas.*
- 3) *The Delaware Geological Survey (DGS) may, when based on sound science and information, revise and update the overlay maps of good or excellent ground-water recharge potential areas.*
- 4) *When there appears to be a conflict between the mapped boundary and actual site conditions, the applicant may engage the services of Professional Geologist to prepare a report intended to determine more accurately the precise boundary of the Source water Protection Area. The Report shall include:*
 - a) *A detailed topographic layout of the subdivision and/or area to be developed and prepared by a State-registered professional land surveyor or Professional Geologist;*
 - b) *Evidence derived from a site-specific investigation that may include aquifer testing, test borings, test pits, observation wells, groundwater elevations, and topography surveys as appropriate for the type of source water protection area that clearly demonstrate that the area in question does not meet the definition of a source water protection area as defined.*
 - c) *Any challenges to the delineations of the good or excellent ground-water recharge potential areas must follow the methods used in the Delaware Geological Survey publication: Report of Investigations No. 66, Ground-Water Recharge Potential Mapping in Kent and Sussex Counties, Delaware. The challenge must be approved by DGS and DNREC SWAPP.*
 - d) *Notwithstanding any other section of this Chapter, if an owner initiates a precise boundary delineation pursuant to this section, any and all time review limitations shall be stayed pending the submission of the complete report contemplated by this section. Following submission of the report and all supporting documents, DNREC shall have ninety (90) days to finally approve or disapprove the exploratory sketch plan submission or such further time as deemed necessary by the Department, but not to exceed an additional ninety (90) days.*

F. *Environmental Impact Assessment Report*

New development may exceed the 20% impervious cover threshold within the Source Water Protection Area Zone 2, but be no more than 50% impervious, provided the applicant submits an environmental assessment report including a climatic water budget and systems to augment recharge that assure water quality as well as quantity. The environmental impact assessment must document that post-development recharge will be no less than predevelopment recharge when computed on an annual basis.

Commonly, the applicant offsets the loss of recharge due to impervious cover by constructing recharge basins that convey pretreated rooftop runoff for infiltration to ground water. Refer to Supplement 1 entitled Ground-Water Recharge Design Methodology for the details of how to design recharge facilities in Delaware source water protection areas.

A Delaware Registered Professional Engineer and/or Professional Geologist prepares an environmental assessment report, usually containing the following elements of planning, design, construction, and maintenance of ground-water recharge facilities:

- 1) *Site description of proposed development within the water resource protection area*

- 2) *Climatic water balance comparing predevelopment and post-development recharge potential*
- 3) *Subsurface exploration including borings, test pits, and infiltration tests*
- 4) *Design of ground-water recharge facilities that assure water quality as well as quantity*
- 5) *Construction and maintenance considerations*
- 6) *Recommended ground-water monitoring plan*
- 7) *Water management agreement between the applicant and the town, city, or county providing for monitoring and maintenance of the recharge system. The applicant will abide by the Ground Water Management Agreement as written in DNREC Supplement I to the Source Water Protection Guidance Manual for the Local Governments of Delaware: Ground-Water Recharge Design Methodology, dated May 2005 or as later revised.*

G. *Nonconforming Uses*

Nonconforming uses may continue in a source water protection area in the form in which they existed at the time of the adoption of this ordinance, unless they pose a direct hazard to the city's water supply, as determined by the water and waste water department upon advice from the Delaware Division of Public Health, or are causing some foreign substances (oil, salts, chemicals, or other substances) to be introduced into the city's water supply, as determined by the water and waste water department upon advice from DNREC's Division of Air and Waste Management and/or Division of Water Resources. In the latter case, the building department shall issue a mandatory cease and desist to stop the offending activity within the area. Nonconforming existing underground or above-ground storage of oil, petroleum, and petroleum products shall require secondary containment pursuant to the State of Delaware regulations governing underground storage tanks or for above-ground storage of petroleum products secondary containment facilities capable of capturing the material stored on the site, for existing facilities that are proposed either to be upgraded or replaced.

H. *Replacement and New Wells*

- 1) *The replacement of any existing public water supply well that was not required to meet this wellhead protection requirement at the date of its original installation and that has failed shall be exempt from meeting this wellhead protection requirement.*
- 2) *All public water supply wells within a housing development, subdivision, or strip development recorded on or after the implementation of the Delaware Regulations Governing the Construction and Use of Wells, dated April 6, 1997 or as later revised, shall be located at least one-hundred fifty (150) feet within the subdivision's or development's outermost property lines.*

Section 3. Dates.

Adoption Date: March 24, 2008

Effective Date: April 3, 2008

Mr. Baird explained the first change involves those areas identified as excellent groundwater recharge potential areas that were removed from zone 2 and will now stand alone as zone 3.

The next amendment adds a grandfathering clause for wells existing prior to December 31, 2007. A conditional use application can be applied for which shall demonstrate the structure or use will not harm the drinking water supply. Final approval of the conditional use is required by city council. Mr. Baird advised the reason for this clause is the Milford Library expansion project and its proximity to the public drinking water well across the street. Other existing properties in the downtown and surrounding areas could also be impacted though the city will own a 150-foot radius for any new wellheads to prevent future private property infringements.

The third amendment establishes regulations for the newly added zone 3, Excellent Groundwater Recharge Areas.

Mr. Baird said the proposed amendments are similar to those being considered as part of the Sussex County Source Water Ordinance.

Neither council nor the public had any comments or questions.

Mr. Workman moved for adoption of Ordinance 2008-2, seconded by Mr. Brooks. Motion carried by unanimous roll call vote:

Mayor Rogers declared the Public Hearing adjourned at 7:13 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Terri K. Hudson". The signature is fluid and cursive, with a large initial "T" and "H".

Terri K. Hudson, CMC
City Clerk/Recorder

MILFORD CITY COUNCIL
MINUTES OF MEETING
March 24, 2008

A Public Hearing was held before Milford City Council on Monday, January 28, 2008 in the Meeting Room of the Delaware Rural Water Association Facility, 210 Vickers Drive, Milford, Delaware, to take final action upon:

The request of Scott Engineering, Incorporated on behalf of First United Pentecostal Church for a Conditional Use to allow a Hotel in a C-3 District on the north side of Lighthouse Estates Drive, 322 feet east of Carpenter Pit Road in Milford, Delaware. Tax Map No. MD-16-174.00-03-01-000.

PRESIDING: Honorable Mayor Joseph R. Rogers

IN ATTENDANCE: Councilpersons Irvin Ambrose, John Kramlich, John Workman, Owen Brooks, Jr. and Katrina Wilson

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

Mayor Rogers called the Public Hearing to order at 7:13 p.m.

Gregg Scott of Scott Engineering presented the application on behalf of the property owner. Mr. Scott recalled this property being the subject of a number of applications over the past couple of years. The original property was approximately 73 acres; that southeast parcel was subdivided into a residential single family subdivision called Lighthouse Estates which is presently under construction. The property then went through a preliminary plan submission for the construction of a church on the northern portion of the property. As that was occurring, a change of zone was requested to change the remaining balance outside of residential area to C-3 in order to develop it as commercial property. Following that, a minor subdivision plan was submitted to cut out a series of lots. The church parcel is 27 +/- acres and the remaining three commercial sites include a 7.2 acre parcel, a 2.3 acre parcel and a 4.8 parcel.

Tonight he is presenting the preliminary plan and a conditional use which will permit the construction of a Hampton Inn on the 2.3 acre commercial as was highlighted on the drawing he presented. He explained that currently Carpenter Pit Road is being extended to the north to ultimately tie into New Wharf Road. A bridge was built over the stream to allow the extension of the road. The road to the north will also be improved according to DELDOT standards. All improvements are being done to accommodate the commercial properties including the Hampton Inn up through the corridor. Lighthouse Estates Drive is presently designed as a single family residential type road but will be upgraded as part of the Hampton Inn application to a commercial road.

Mr. Scott explained that as this property progresses through the development with different users, additional improvements will be made to add in the required right and left turn lanes on Carpenter Pit Road as well as the intersection of Lighthouse Estates Drive and Carpenter Pit Road.

He said the conditional use application is for an 81-room, 3-story Hampton Inn off Lighthouse Estates Drive adjacent to the residential subdivision. A 100-foot buffer is required between the residential subdivision and the commercial property. They are proposing 87 parking spaces though the minimum required is 85. Utilities will be present to serve the hotel. Sewer was extended by the residential subdivision and a pumping station installed. Adequate capacity is available for the Hampton Inn as well as the other commercial properties.

Bored beneath Route 1, water has been extended along Lighthouse Estates Drive and is being looped up Carpenter Pit Road. The force main for the pumping station follows the same route, crosses the highway and discharges into the city system. He advised there is adequate capacity to serve the hotel.

Comments have been received from the Development Advisory Committee which Mr. Scott has no problem meeting.

Council had no comments or questions on the application.

City Planner Gary Norris reported that by a vote of 7 to 0, the planning commission recommended approval of the conditional use for the hotel.

No one from the public spoke for or against the application.

Mr. Kramlich moved for approval of the conditional use to allow the hotel, seconded by Mr. Workman. Motion carried by unanimous roll call vote.

With no further business, Mayor Rogers declared the Public Hearing adjourned at 7:19 p.m.

Respectfully submitted,

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

Terri K. Hudson, CMC
City Clerk/Recorder

MILFORD CITY COUNCIL
MINUTES OF MEETING
March 24, 2008

A Public Hearing was held before Milford City Council on Monday, March 24, 2008 in the Meeting Room of the Delaware Rural Water Association Facility, 210 Vickers Drive, Milford, Delaware, to take final action upon:

Davis, Bowen and Friedel, Incorporated on behalf of Shawnee Farm LLC for a Conditional Use to allow a Shopping Center and Preliminary Review of the Major Subdivision of 69.23 +/- acres into 8 lots, in a C-3 Zone to be known as Cypress Hall on the southwest side of Route 113 at Shawnee Road/Route 36. Tax Map No. 1-30-3.00-261.00.

PRESIDING: Honorable Mayor Joseph R. Rogers

IN ATTENDANCE: Councilpersons Irvin Ambrose, John Kramlich, John Workman, Owen Brooks, Jr. and Katrina Wilson

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

Mayor Rogers called the Public Hearing to order at 7:19 p.m.

Randy Duplechain, P.E. of Davis, Bowen and Friedel, Incorporated was present to speak on behalf of the applicant. He presented a drawing of the proposed shopping center noting the plan has been reviewed by the Milford Planning Commission who approved the preliminary subdivision and conditional use. He is presenting the conditional use and preliminary subdivision plan for council's approval this evening.

Mr. Duplechain referred to the map showing the location of the project. He explained the first phase of the project is 237,000 square feet of commercial on a 44-acre parcel. He noted another section of approximately 15 acres of commercial which involves Phase 2, though there are no immediate plans for that area.

They are proposing an approximate 139,000 square foot home improvement store with a 55,000 square foot grocery store and another 55,000 square feet of miscellaneous retail.

The application has gone through DELDOT with a traffic impact study. Three site accesses are proposed; the first is from Route 36 with a change to a T-type intersection with protected left turn lanes. Currently, it angles in coming into Old Shawnee Road and goes through Route 36. When the intersection is restructured, this portion of Seabury Avenue would become a cul-de-sac

Mr. Duplechain advised the second access will be from a major interchange across from the Simpson Farm property which will become a fully signalized intersection with full movements from all directions.

The third point of access is on Route 113 and will be a rights in/rights out along with a left in.

Mr. Duplechain feels it will relieve some of the southbound traffic that would otherwise have to go through the signalized intersection.

He said a fourth connection will be added to the residential and future commercial portion. Another entrance further to the south will tie into the residential portion of the project. Mr. Duplechain reiterated this has gone through DELDOT along, with a review of the traffic impact study, and agrees with the location and types of entrances proposed.

He noted there was some discussion related to pedestrian access. Sidewalks will be added throughout the project and will be connected to the residential portion. A 12-foot wide multi-modal path along the frontage of Route 113 and Route 36 will allow bicycle and pedestrian uses.

Water, sewer and electric service is already available at the site. Stormwater management will be provided through the use of two large wet ponds with one on the west side of the property and one closer to the Route 36 entrance. The two ponds cover over five acres and are a combination of wet and dry ponds. There is a discharge under Route 36 which has resulted in some concerns. The state requirement is we cannot discharge more in the post-development rate than is being done in the pre-development rate.

The soil conservation district has discussed the downstream discharge. Mr. Duplechain believes a downstream study will be required to ensure the downstream users are not flooded. This was made clear in the PLUS comments. PLUS comments were received on February 25th and addressed on March 18th and resubmitted.

Mayor Rogers asked for questions from council.

Mr. Brooks asked for clarification on the water drainage issue across Route 36. Mr. Duplechain referred to a discharge pipe which most of the fields drain to. The project would discharge to the same location and be maintained at the pre-development rates as is required by soil conservation. He further explained that soil conservation has indicated some possible issues downstream that will be reviewed. If there are issues, an evaluation downstream would be needed.

When asked the location of the entrance in proximity to the transfer station, Mr. Duplechain explained the second entrance is further to the south of the project. The first entrance is directly across from the Simpson Crossing. He referred to another entrance at Milford Ponds which is further to the south.

Mr. Workman expressed concern about the runoff. He understands that everything must be in place before final approval is granted. Some of the farmers in this location are concerned about runoff on their property. Mr. Duplechain recalled that discussion at the planning commission meeting explaining that soil conservation prohibits any additional discharge in post-development than occurred at the pre-development rate. Whatever goes through the pipe at the present time cannot be increased. Because of the concerns downstream and a potential upstream impact, they want it reviewed.

Mr. Carmean advised that would have to be addressed before any permitting was allowed.

Kurt Hutson of 6493 Shawnee Road states he lives adjacent to the property and his home is one of the four homes in the triangle between Seabury and Route 36. He and his wife have lived at this property for nine years. Seabury is their backyard and Route 36 is at their front. They are next to the water pump station. When they moved in, they had a reasonable expectation of privacy, but understood that down the road someone might develop this property. However, they thought that when that occurred, it would be done in a responsible manner. He feels they are getting a double whammy with the development and the entrances. Traffic will increase substantially and his property value will decrease.

Mr. Hutson said there is no real buffer and no requirement for a fence or trees because they are further back from the property. However, they will still have to put up with added noise, litter, lights and headlights from vehicles. The area he is referring to will have approximately six out parcels. Where they are building in the future, they will have to put up with lights from the lamp posts which can be a problem and an annoyance.

He is also concerned about his grandchildren who play in his backyard. Their backyard is used to gather, recreate and relax. His concern is the people on the pads, or people shopping or going to the restaurant who will have a full view of his backyard because there is nothing to obstruct the view.

Mr. Hutson reported approximately 123 registered sex offenders are in the Milford area which includes tier two and tier three offenders. This does not include the higher number of tier one sex offenders. He said they will be shopping at these places and will be able to sit in their car and look at his backyard. The sex offenders and predators are the ones that concern him. He said they often watch or stalk their victims and many work in the food service industry.

Mr. Hutson said that, we as citizens of Milford, have a responsibility to protect our children. Any development should be done with a responsibility to do it correctly and in a manner to minimize criminal activity.

He said that on the lot behind the retail shop, there is a row of trees and a six-foot high privacy fence. All the people west of the intersection will have a privacy fence and trees so they will not have to put up with the noise.

Mr. Hutson is not asking for the plans to be scrapped as he does not have a problem with future development as long as it is done responsibly. But the residents in that area, and particularly those four homes in the triangle, are taking concessions. Traffic will increase substantially. They have moderate traffic now that will increase three or fourfold. The negative impact on their property values should also be considered.

Mayor Rogers asked if a buffer would help; Mr. Hutson stated he could not find another commercial area that backed up to a residence that did not have a seven or eight-foot fence. He found the same situation in the City of Dover. All the commercial sites with adjacent residences had fences separating the properties. No one wants anyone looking at them in their backyards. If it was a front yard, it might be different, but he does not want people looking at his children. He feels this can be done responsibly and with aesthetic value.

Mr. Duplechain said this buffering issue was discussed at the last meeting. They have no problem doing the same thing they are doing on the other side with a privacy fence and some landscaping. He offered to meet with the residents in that area to discuss their concerns and work with them to minimize the impact of the project.

Mr. Hutson said that will satisfy them if they can be held to it. Mayor Rogers said the city will hold them to it. He agrees the main concern is Mr. Hutson's privacy which Mr. Duplechain confirmed the applicant is willing to address.

Trish Marvel of 6525 Shawnee Road said she agrees with Mr. Hutson to a degree because landscaping is wonderful. She referred to the landscaping by the house next to Royal Farms which does nothing for the lights and the traffic. There is still a lot of activity. It does not stop the trash which blows through the trees. She does not feel that planting trees is the answer. She is for progress and believes we should move forward, but agrees it must be done in a manner that is a win/win situation.

Ms. Marvel is unsure if a berm could be added and though a fence is fine, but it causes you to lose the whole environment. She feels this is in the country and wants to be able to look and see the fields and barns. The fence isolates you from that. She is for progress and if this was residential, that would be a whole different story. This is a huge building and she does not want to look out and see the back of the building and the trash compactors, track trailers and those things associated with a commercial business. She feels it needs to go beyond planting trees or putting up a fence.

Kathleen and Robert Weldon of 6494 Shawnee Road then addressed council. Ms. Weldon said they live across the street from the Hutsons and Marvels. She advised they did not receive a notice regarding this project. They already have flooding in their backyard due to soil and water runoff now. They have no shoulder area on the north side of Route 36. They learned they will have to get in and out of their residence through an access road to a major development without any notice and only found out through a recent article in the local newspaper. She already has markers in her front yard and she has no idea why they are there.

Mr. Weldon feels it must have been something planned or the markers would not be there. Ms. Weldon said she must watch traffic to approach her mailbox which is on her side. They live in single family residential area that had been primarily serviced by Route 36. Now it is being turned into a commercial site. She finds the access road off Route 36 something that needs to be reconsidered. The runoff is already a problem for that property. They have talked to the soil conservation district who informed them it would take four years from last year before they could start the remediation process on the water problem. She asked if she is losing her house and for reconsideration of the two-lane road.

She does not understand how Route 36 can be widened, particularly with no shoulder on the north bound side, without taking her property, her trees and shrubbery. Ms. Weldon asked what the markers were placed on her property for.

Mr. Duplechain said he is unsure what the marker is. Mr. Weldon explained there are orange markers up and down the road. Mr. Duplechain said they recently did some soil borings on the site. If Miss Utility was called, they would label the utilities. Some surveying was done throughout the entire area, but that was approximately eight months ago.

Mr. Duplechain confirmed they are widening Route 36 in that section. He stated there is sufficient right-of-way in that area to construct the roadway though it does become tight where they are proposing the intersection. He assured the Weldons they are not taking any of their property adding that some residents think their property lines extend beyond their actual property. They do contain a right of way though he is unsure what the Weldons consider their property line though they

will be staying within the right-of-way.

Mr. Weldon said that Royal Farms was allowed to be built there. All along their road is trash. He went out and found a loaded handgun in his front yard and it will only get worse with this development. He called Milford Police Department and had them come out at 7:30 a.m. to pick the gun up. Every day his yard has beer cans, beer bottles, soda cans and trash. The Hutson and Marvel property have the same problems. There are trash trucks coming into Royal Farms at 4:30 a.m. which allows you to hear the banging and loud noises from those trucks at those times. Loud music is always playing at Royal Farms. There have been shootings there and he does not think there should be any more shopping centers so close to these homes. He appreciates everything the city has ever done for him but he does not think this should happen. Mayor Rogers confirmed that the Weldons are opposed to the development. Mr. Weldon added that the ditch that crosses Route 36 from Danny Fox' property, has caused water problems on his property. He had a shop built two or three years ago. Water backs up in there. He had the state come out to look at it. He has planted all new cypress trees along his property line in an attempt to block that area. He asked what will happen later.

Ms. Weldon said they are not opposed to development in a commercial area, but are opposed to the use of Route 36 as an access service road to this development. They want to maintain the residential quality of the neighborhood as it exists now.

Mr. Weldon advised they have a difficult time now getting in and out of the driveway because of the increased traffic traveling up and down that road.

Daniel Fox of 17794 Oak Hill Drive lives across the road from the Route 36 proposed entrance and exit. He stated that two years ago, they received a notice from the city stating they were changing the zoning to residential for 160 homes. They did not receive a notice for the change of zone to commercial until the third part of February. A few of the residents stated they received the notice but others did not. He said they were talking as neighbors when they learned of the hearing and came to the planning commission hearing to find out what was going on. He does not know when this section was rezoned to commercial because he did not receive a notice though it impacts his property along with a number of other people in that area.

Mr. Fox feels it will degrade the value of their property because this large commercial area will be behind these houses. No one will want to live next to that because they prefer to live in a nice, residential area.

He asked when the rezoning took place. Mr. Carmean thought it was more than a year ago. Mr. Duplechain said it was advertised and did go through the public hearing process for both the planning commission and city council.

Mr. Fox thought the notice of the planning commission hearing and council hearing came in his electric bill from the City of Milford. He indicated another neighbor received his notice of this hearing today and if he had gotten home from work late, he would not have been informed.

Mr. Fox feels that something underhanded happened because the public was not properly notified. He said it was obviously sent out in the mail for this meeting and the prior planning commission meeting. He has no problem with that because it was in advance. But he was never informed of the meeting when the zoning was changed from residential to commercial.

He also has a problem with the entrance/exit. The headlights of the vehicles coming out the exit onto Route 36 will shine their lights into his front door. There is no other shopping center in the City of Milford with exits in front of a residence. He said they can put a rights in only where you could bear off toward the dead end street so that the Hutsons, Marvels and others living in that section could access their property.

The other concern is increased traffic Route 36. He feels the drawing does not really show how bad the curve is but you cannot see around it. Mr. Fox referred to his driveway on the drawing, explaining that the road has already been widened and there is no shoulder. When they first did that, Mr. Fox was replacing a mailbox every other day. It is dangerous just to try to get his mail without worrying about being hit.

The traffic coming out from the shopping center will be impacted by his farm equipment. His top speed is 16 miles an hour which takes at least a quarter to a half mile to get up to.

Though Mr. Kovach is not in attendance, Mr. Fox said he will speak for him. He has a blacktopping business with large equipment that uses this road. It is hard to get out now because vehicles are flying around the curve going more than the 35 mile an hour speed limit. Milford Police Department sit there quite often and continuously catch speeders.

Mr. Fox also pointed out this is a major route to the hospital. Greenwood and other fire companies use that road as a major route to the hospital. If cars are backed up, the ambulance cannot get around the curve to trip the light. On an average, he sees approximately ten ambulances and many are not blowing their siren, which means they have someone on board in cardiac arrest. They do not blow their sirens in that situation because of the added stress to the patient. As a result, drivers are unaware of their presence because they are facing the light and not the ambulance behind them. Traffic remains stopped which prevents the ambulance from getting through the intersection to get the patient to the hospital.

He then referred to the location of his pasture and said if it is hit at an angle, one vehicle will go through his fence into his pasture. He said it will be very difficult to get a 1,200 or 1,500 pound bull back into the pasture.

With the extra exits they are proposing, he wonders why they need the light. He feels everyone will go to the exits to prevent dealing with the light. They are putting the light in as a place to encourage traffic to exit onto the road. When people exit the Lowes' Store in Lewes, they use back roads to get around to the lights only to go back in front of Lowes again. He has no problem with the rights in/rights out. He believes most people will cut through an access which is just another place for an accident.

Mr. Fox raises cattle and goats as part of his living. He referred to the contaminates that could run off the blacktop into the ground. A comment was made at the planning commission that no additional water would be allowed to run off. After a good soaking rain, someone can walk through without sinking in because there is no water in the low spot.

He located an area on the map that is all field right now and the existing wellhead. He explained the rain that goes into this field and into his field refills that well head and replenishes the aquifers down below. This could cause it to run out instead of allowing the ground to absorb it. Contaminates will be released though they claim it is supposed to hold it. There is no guarantee, according to Mr. Fox, depending on the amount of rain. Last year that may have been the case, but this year no one knows. A three-inch rain will cause it to fill up and go across his property. It will contain contaminates that his livestock will drink out of the water hole. If he finds a cow dead, he is out money for the production of her calf.

He referred to the stormwater ponds that cover approximately five acres. He questioned their 20-foot depth noting his wellhead is only 50 feet. This past summer, his well started to go dry and it cost almost \$1,000 to figure out what was occurring. He also had problems in the house because the water level dropped. This water is 20 feet with contaminates and has only 30 feet before it hits his aquifer.

Mr. Fox said he has a pond there and when the city put their well in, his pond dropped because they tapped into the spring. This past summer, his pond had possibly 10 gallons of water in it though it was supposed to be 15 feet deep. The aquifer will not refill if blacktop is on top of the ground.

He heard the earlier conversation about the 150-foot buffer around the wellheads, but Mr. Fox feels that is not enough to fill the aquifers. When this was residential, there were yards and grass which could absorb the rain.

Mr. Fox said he has no problem with the shopping center, but does not want the runoff on his property. Eventually those contaminants will spread to Silver Lake, the Mispillion and ultimately end up in the bay.

Denise Moore of 6502 Shawnee Road said she bought her house approximately four years ago. She likes the country setting and the branch that runs through her rear yard. She is concerned about the trash and the traffic, because this is a busy road and there is noise and the crime. Royal Farm already brings enough crime to this area which she was unaware of until she moved there.

Duane Fox of 809 New Street is confused how this project can remove a wetland when the state highway cannot build a road on wetlands. He said this was a spring but is now a ditch. He said that oil and gasoline will be running off the forty-four acres of blacktop and will not settle to the bottom and will end up floating on top of the water. It will go into Silver

Lake by way of the stream which is about a mile and a half.

He also asked how they got the entranceway on Route 113 because the city would not let Simpson Farm have a highway entrance and they were going to exit behind his house on New Street. Somehow, Cypress Hall was allowed.

Mayor Rogers informed Mr. Fox that is a decision of DELDOT; the city has no jurisdiction over Route 113 entrance and exits. Though a portion of the highway is in the city, the state has total jurisdiction over the entrance and exits.

Mr. Fox said the sketch on the Simpson Farm shows a cul-de-sac so they were unable to get an entrance.

Duane Fox then advised that his problem is the wetlands. He stated the gas and oil will run over and end up in the ditch. Eventually nothing will live out there. Mr. Duplechain explained they cannot legally run any additional water out there, but what is running across the ground, at least a third or a half, is settling in the ground. There will not be any dirt to settle in anymore.

Duane Fox also does not know how another lane can be added to Route 36. According to him, the right-of-way is the fire hydrant is in front of Mr. Hutsons' house though there may be a little right-of-way to Kovach's fence. The telephone pole is the right of way for the rest of the homes.

He agrees there are problem turning from the left lane into Danny Fox's driveway and that you cannot exit without getting hit because cars fly around the curve. He is interested because he owns a piece of ground across from this exit on Route 36.

Duane Fox said there were several things discussed with the planning commission about rights in, but no right out. At the planning commission, they indicated that would inconvenience the public, but the residents can go around. Because they closed Seabury Avenue off over by the pumping station, he now has to go around now.

Mr. Duplechain referred to the nutrient management previously mentioned and advised the applicant is required to do the same thing. It is required by law. It has a nutrient reduction requirement which is 45% for nitrogen and phosphorous and 96% for bacteria and is something that will be taken care of.

He continued explaining that in the stormwater management calculations, the soil types are tested and ranked A through D with A being the soils that infiltrate the best and D being the ones that don't infiltrate their clays. That is taken into account when the calculations are done for the pre-development rate. If there are good soils, as this is the case, that will be taken into account the pre-development rates are calculated. The post-development rates will be held to those pre-development rates. If there is not much water going through the culvert right now, they will have to hold to those rates and store in the two ponds. The ponds are in excess of five acres and are not twenty feet deep, but have a maximum of six feet deep from the water surface down which is a requirement of soil conservation and cannot be any deeper than six feet.

He reported the state also requires them to meet a water quality standard for this site as it exists now. The first two inches of runoff must be treated before it is discharged.

DELDOT was trying to create an access road that would start at Route 36 and come through the property to take traffic off Route 113. This access road will continue to the other residential development, to another entrance, onto another entrance on Route 113 to try to take traffic off Route 113. It is based on what DELDOT was looking for and who made the suggestion to close off Seabury Avenue Extended.

Mayor Rogers asked if those people were notified by the state highway department; Mr. Duplechain said they were not and he does not believe they were required to be notified by DELDOT. Presently, they are seeking preliminary site plan approval and conditional use approval. Once they get this approval, they will start the actual process.

Mayor Rogers asked why the state highway did not notify those property owners because of the impact it would have on them. Mr. Duplechain was unable to answer for DELDOT in that case.

Mayor Rogers understands the state has the right to close a road but agrees those four residences should have been notified; Mr. Duplechain does not disagree adding they will have some impact by this entrance at that location.

It is Mayor Rogers' impression that many of the residents do not have a problem with the project, but are concerned with how they are doing it. However, he also understands that the city does not have jurisdiction over DELDOT regulations.

He asked Mr. Duplechain to readdress DELDOT with the concerns expressed tonight. Mr. Duplechain offered to go back to DELDOT and discuss the problems and ask for a possible modification.

Mr. Workman said he is in agreement with Mayor Rogers and if DELDOT is supposed to send letters out, it is a concern the neighbors were not notified. Mr. Carmean and Mr. Duplechain both advised that DELDOT is not required to send letters in a case such as this.

Mr. Workman said that is a concern though he knows the city publishes these notices in the newspapers. Though we have two local newspapers, he said that many people read them but a lot of people don't.

Mayor Rogers said he would prefer for Mr. Duplechain to go back and ask for a reevaluation. Mr. Duplechain explained that though they are saying we are widening the road, it is actually an improvement to Route 36 with the widening and addition of another turn lane.

Mr. Duplechain said he will be happy to go back and discuss the public concerns to see if there is another way to work this out. He feels they will still want access at that point and possibly a rights in/rights out though possibly not a left in. But they will want something that will give some relief, but not to the point it would cause an inconvenience.

He reemphasized they will be happy to work with the neighbors to minimize their impact.

Ms. Wilson asked for some additional clarification with soil conservation in regard to the runoff. Mr. Duplechain said he will meet with them but they have already told them they will most likely do a drainage study downstream to determine the impact this project will have, if any, downstream. As he stated previously, they are required by law, not to increase the runoff that goes through the pipe.

He said he will meet again with soil conservation.

Mayor Rogers is confident that Mr. Duplechain will represent the public as best as he can and asked if they would provide a letter stating what is being done for the benefit of the residents. Mr. Duplechain understands but stressed it is the law. Mr. Carmean asked that if nothing can be done, Mr. Duplechain should obtain a letter stating that.

Mr. Norris then reported the following uses are permitted in a C-3 district:

Warehouses, large retail outlets, indoor storage accessory buildings, fast-food restaurants and drive-in restaurants, supermarkets, truck and trailer rentals, roadside produce markets, memorial stone shops, outdoor commercial recreational facilities, swimming clubs, indoor facilities for amusement or assembly, and bus stations.

Conditional uses under the C-3 are as follows:

Motels or hotels with a minimum lot size of three acres, commercial greenhouse, wholesale establishment, newspaper publishing or printing establishment, contractors', craftsmen's or general service shops, including welding and similar shops, laboratory, testing and research, car repair shops, used car lots, telephone central office or television cable central office, service station, automobile sales agency, public garage, parking garage or lot, shopping centers, day care centers, car washes, convenience stores with gas pumps and community residential treatment programs.

In addition, all uses permitted in a C-2 are permitted in a C-3; in a C-2 zones, all uses permitted in a C-1 are also permitted which includes residential and multi family.

Mr. Workman said his concern is what will be allowed if the box store is not developed.

Mr. Carmean said that it appears the traffic and entrance/exit issues are being given to city council to change. He asked Mr. Duplechain to make sure the residents understand that Milford did not ask for these things nor were they approved by the city and to confirm this is strictly a DELDOT decision. He added these requirements will cost the developer a great deal of money.

Mr. Duplechain explained that DELDOT wanted to make this a T intersection and close off Seabury. There has always been a connection shown on the plans. All the upgrades and changes to the road were mandates of DELDOT.

Mr. Duplechain said that what DELDOT is trying to do is to disperse the traffic so they are not all jammed up at one location. The multiple access points to the shopping center accomplishes that and is something that DELDOT has requested the engineers do. It appears it will work based on the traffic study and by specifically, closing off Seabury Extended.

Mr. Duplechain also reported that at the time this property was annexed, a portion of the property was zoned commercial and that the parcel was never completely zoned residential.

Ms. Marvel again addressed council stating that she is aware that a portion is zoned commercial, but that involves the frontage of the highway. Now the city is asking for entrances on Route 36 and is taking the commercial area back into the residential area. Where they live is all residential now but will become an extension of the commercial uses.

Mr. Duplechain pointed out that regardless of whether the project is commercial or residential, DELDOT would still require the connector road that runs along the property to remove traffic from Route 113.

Mr. Workman then made a motion to table this until a later date because of the number of questions that need to be answered. Mr. Brooks seconded the motion.

Mr. Duplechain verified the issues council wanted addressed which include the entrance and discussions with DELDOT and soil conservation though those issues are required by law. Mr. Workman added the runoff issue is a large concern and asked that it be confirmed. He understands there are rules, but prefers it be readdressed so the residents can have a better understanding of the process.

Mr. Workman is concerned with the runoff which could end up in Silver Lake and become possible contaminants. Ms. Wilson agrees with Mr. Workman and appreciates the public bringing this new awareness to them. She wants to make a decision that she will feel good about in the future.

Mr. Carmean added that Mr. Duplechain had also agreed to firm up the fencing and/or buffering matters in order to handle Mr. Hutson's concerns.

Motion carried with no one opposed.

Mayor Rogers declared the Public Hearing adjourned at 8:30 p.m.

Respectfully submitted,



Terri K. Hudson, CMC
City Clerk/Recorder

MILFORD CITY COUNCIL
MINUTES OF MEETING
March 24, 2008

A Public Hearing was held before Milford City Council on Monday, March 24, 2008 in the Meeting Room of the Delaware Rural Water Association Facility, 210 Vickers Drive, Milford, Delaware, to take final action upon:

Ramesh C. Batta Associates, P.A. on behalf of CCM-Koelig LLC for a Preliminary Review of the Major Subdivision of 40.60 +/- acres into 205 lots, in an R-3 Zone, to be known as Wickersham, on the northerly side of Johnson Road, Road 207, approximately 600 feet north of the intersection of U.S. Route 1 and Johnson Road, Milford, Delaware. Tax Map No. 3-30-16.00-5.00.

PRESIDING: Honorable Mayor Joseph R. Rogers

IN ATTENDANCE: Councilpersons Irvin Ambrose, John Kramlich, John Workman, Douglas Morrow, Owen Brooks, Jr. and Katrina Wilson

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

Mayor Rogers called the Public Hearing to order at 8:32 p.m.

Councilman Morrow arrived at this time.

John Tracy of Young, Conaway, Stargatt and Taylor represented CCM-Koelig. Gary Farrar from CCM-Koelig and Ramesh Batta, P.A., engineer of record, were both present.

Mr. Tracy recalled that this property was annexed in the spring of 2007 and is now seeking preliminary approval for a major subdivision. It was considered by the planning commission who unanimously recommended the plan on February 19th. This plan proposes 205 townhouse units on 41 acres of land; it supports the initiatives of the Governor's Livable Delaware Program by providing work force and first time home buyer housing as opposed to the larger lot single subdivisions.

The zoning is R-3 though the density is roughly five units per acre. A PUD allows up to sixteen units per acre and townhouse units can have a maximum of twelve units an acre, though this is capped at seven units an acre per an annexation agreement. However, this development is actually below that at five units per acre.

The proposed entrance is on Johnson Road approximately 1/4 mile southwest of Route 1. They are proposing 47% open space which is almost twenty acres. This includes a central green, over two acres in size, which will be the main open space area. Additional open space areas will also be spread throughout the community. Walking trails will tie into the sidewalks on both sides of the streets. It will contain 60-foot roads and 20-foot wide alleys. All homes will be accessed by rear loaded garages off the alleys. They have worked with DELDOT though no traffic study is required.

Each house will have two off street parking spaces, a single car garage as well as a parking pad adjacent to it. In addition, over one hundred additional off street parking spaces will be disbursed throughout the community. Stormwater management is spread throughout the community through several stormwater basins. The Stapleford Branch is shown on the drawing and runs along the bottom. The wetland areas will not be disturbed. A homeowners' association will be created who will maintain all the open spaces as well as the alleys which will be private.

The plan was reviewed by state PLUS at the end of February and was universally well received.

The applicant is seeking a variance from the Board of Adjustment. However, this waiver has nothing to do with the unit count, density or size of the lots. Under the code, there is a 30-foot front yard requirement for townhouses and a 15-foot rear yard requirement which makes the house and garage closer. It does not provide a meaningful backyard the residents can use. They are proposing to move the houses forward and the garages back toward the alley which will create a fenced-in courtyard effect for all properties.

The garages will end up being two-feet off the alley, which on both sides of the street, will leave a 24-foot wide alley and the houses would be 10 feet off the front yard. This has been reviewed by the utility departments who did not foresee any problems.

The design waiver has been discussed with the Office of State Planning and other state agencies involved in PLUS and was very well received. Two of the PLUS agencies provided letters of support of the variance request.

Mr. Tracy read a couple of quotes from each of those letters, the first being from the Office of State Planning:

‘The Office of State Planning supports the design approach as it is consistent with well established urban design practices described in the Better Models for Development in the Delaware Manual. Moving the townhouses closer to the street and replacing parking in the rear will greatly enhance the attractiveness of the streetscapes and improve the connectivity of the sidewalk network. While the streetscapes and open space areas will be public amenities for the development, it will be similarly important to provide small but meaningful private open spaces on the lots to enhance individual homeowner enjoyment of their units. These relatively simple design elements will greatly increase the functionality and attractiveness of this townhouse development.’

The Delaware State Housing Authority also provided a letter which was forwarded to City Solicitor Tim Willard, though it did not arrive until after the Board of Adjustment hearing. The letter stated as follows:

‘We support the proposed design for this development at a reduced setback distance. The developer will be using this reduced setback to create a courtyard backyard environment for new homeowners. Well-designed communities create psychological benefits for residents such as pride in their home and neighborhood. This leads to better maintenance of the property and homes. Homes that are well designed not only provide immediate benefits to the homeowners, but also throughout the years. DSHA applauds the developer and staff in their efforts to design a housing community that will be adaptable over time and allow flexibility for all populations to enjoy. Overall, good affordable housing design creates numerous benefits for the community.’

Mr. Tracy said the hearing before the Board of Adjustment occurred a couple of weeks ago. He felt the members of the board appreciated this was a variance request where they were not seeking additional density or additional units, but were simply looking within the lots created by the plan to provide some flexibility to create a backyard environment for the residents.

The board is currently considering the application. Part of the reason action was deferred was because City Solicitor Tim Willard did not have the opportunity to review the state housing letter and this variance request was unusual in comparison to what the board normally sees.

For purposes of council this evening, Mr. Tracy explained that the size of the development and the size of the lots will not change regardless of what the board of adjustment decides. If the variance is granted, they are able to move the garage and house apart creating the desired backyard environment. If it is not granted, it can be built with the house and garage closer together. Simply put, the front yards will be larger.

Mr. Kramlich asked if the variance was supposed to have been approved by this hearing. Mr. Tracy had hoped the board would have made a ruling on the day of the hearing. Because the city was not accustomed to seeing a subdivision wide variance, some additional research was needed. Mr. Tracy had provided several Delaware cases to Mr. Willard that involved similar requests; Mr. Willard is considering those and the item will be back on the April agenda.

Mr. Tracy emphasized that should the Board of Adjustment deny the variance, the developer will still move forward.

The city manager said that as a member of the Board of Adjustment, a development-wide variance was something they had never seen before. The planning commission sent this forward and actually liked the design. It appears to be a better project with smaller front yards, but more rear yards with greater outdoor living possibilities. He explained the board was not comfortable making a decision at that time and preferred that council review the plan first. The solicitor felt it was advantageous to look at some similar cases.

Mr. Willard explained the court cases Mr. Tracy presented were from New Castle. He felt the consensus of the board was to protect the integrity of the code and hardship variance law is supposed to take unique situations though that has been whittled away over time. However, the rarity in this case is this is a subdivision wide variance. He feels that a better way of handling this is to change the code. If everyone likes the design and setback for an alley garage situation, that is what should be added. The board of adjustment will make the decision and he will render his legal opinion at that time.

Mayor Rogers said that being the third member of the board of adjustment, he likes the concept, the look and feels it will work nicely for the residents. However, he agreed that council needed to see the design before a decision was made.

Mr. Kramlich asked if it would be appropriate to vote on this without an answer from the board of adjustment. Mr. Willard advised that the only way it would not be appropriate would be if the applicant requested it not be acted on.

Mr. Tracy emphasized the variance does not have an impact on what they will do. If the variance had an effect on the layout council is seeing as far as numbers or types of lots, that would be a problem if the board were to come back and say no after council said yes. But in this case, what they are talking about is internal and within the lots. Council is seeing the overall subdivision. The developer does not have a problem with a vote tonight.

Mr. Kramlich moved that the preliminary site plan for Wickersham Subdivision be approved, seconded by Ms. Wilson. Motion carried by unanimous vote.

Mayor Rogers declared the Public Hearing adjourned at 8:49 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Terri K. Hudson". The signature is fluid and cursive, with a large initial "T" and "H".

Terri K. Hudson, CMC
City Clerk/Recorder

MILFORD CITY COUNCIL

MINUTES OF MEETING

March 24, 2008

A Public Hearing on the following matter had been rescheduled for March 24, 2008 in the Meeting Room of the Delaware Rural Water Association Facility, 210 Vickers Drive, Milford, Delaware for final action by City Council:

The request of Steve Buckles on behalf of Joy Courtney for a Change of Zone from R-1 to O-C at 820 Seabury Avenue, Milford, Delaware. Tax Map 1-30-3.11-055.01.

Because a final recommendation has yet to be received from the City of Milford Planning Commission, the Public Hearing was again postponed until a future date.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Terri K. Hudson". The signature is fluid and cursive, with a large initial "T" and "H".

Terri K. Hudson, CMC
City Clerk/Recorder

MILFORD CITY COUNCIL
MINUTES OF MEETING
March 24, 2008

A Public Hearing on the following matter had been rescheduled for March 24, 2008 in the Meeting Room of the Delaware Rural Water Association Facility, 210 Vickers Drive, Milford, Delaware, for final action by City Council:

The request of Tutse Tonwe, M.D. for a Conditional Use at 1011 North Walnut Street, Milford, Delaware in an R-2 District; Tax Map MD-16-174.14-01-31.00; Present Use Single Family Dwelling; Proposed Use Doctor's Office.

PRESIDING: Honorable Mayor Joseph R. Rogers

IN ATTENDANCE: Councilpersons Irvin Ambrose, John Kramlich, John Workman, Clifford Crouch,
Douglas Morrow and Owen Brooks, Jr.

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

Mayor Rogers called the Public Hearing to order at 8:50 p.m.

City Planner Gary Norris advised council the planning commission had reviewed Doctor Tonwe's request for a conditional use to allow a professional home occupation. He reported that Doctor Tonwe was present at the first meeting and the planning commission was very judicious in their time allotted to Doctor Tonwe. However, by a vote of 8-0, the request was denied.

Planning Chairman Brendon Warfel was present. He confirmed the main reason the application was denied was because Doctor Tonwe did not attend the last hearing. He advised council that at either the second or third hearing, Dr. Tonwe was asked to present a site plan and agreed at that time to accommodate that request. At the last meeting, a site plan had still not been submitted though it is a requirement of the code. Instead of tabling the application again, the application was denied though Chairman Warfel advised he can reapply if he is still interested.

Mayor Rogers agreed that an applicant is required to abide by the rules and the city code.

Mr. Kramlich moved for denial of the Tonwe request, seconded by Mr. Workman.

Motion carried by the following unanimous 6-0 roll call vote:

Mr. Ambrose stated he votes yes based on the recommendation of the planning commission.

Mr. Kramlich votes yes pointing out that Doctor Tonwe was given ample notice but never provided the site plan as is required by the ordinance which was needed to support the application. He is also upholding the recommendation of the planning commission.

Mr. Workman votes yes noting that when an application is submitted, the applicant needs to be present at each hearing to ensure the applicant is sincere about the project.

Mr. Brooks votes yes and supports the planning commission. However, he said he is confused because the former property owner used it for five years for the same thing Doctor Tonwe wanted to do but the city did not require anything at that time.

Mr. Morrow votes yes pointing out that Doctor Tonwe is able to return with another application but needs to submit the appropriate paperwork to support the conditional use.

Ms. Wilson said she is also concerned and spoke with Dr. Tonwe. It was her impression that he was concerned and confused as well. He indicated that when he initially came to the city, he did not get enough information about how to walk through this process. He paid additional fees, though he was also confused because there was a medical facility

operating out of the building when he purchased it for the same use. However, he was required to go through an application process. The doctor was confused about what he needed to provide the city and questioned why it was handled in a different manner in comparison to the previous use.

Ms. Wilson understands the need for a site plan though that term never came up in this conversation. She asked when he reapplies if he will have to pay an additional fee to get a new application.

The city manager advised he will have to reapply and pay an additional fee because the entire process will start from the beginning and will again include advertising, notification, etc.

There appeared to be some confusion about who Doctor Tonwe had spoken to. City Planner Norris advised that he spoke with him on several occasions. The planner explained that he based his decision for Doctor Tonwe to go through the application process on the zoning ordinance requirements. In his case, this is considered a professional occupation restricted to an owner/occupant which is comparable to a professional home occupation. The code requires the applicant to go through the conditional use procedure. He agrees there was a prior owner that appeared to have a similar use, however, that was a nonprofessional home occupation or a customary home occupation. Doctor Tonwe is clearly a professional and must be classified as a professional home occupation.

Ms. Wilson pointed out the former owner was a nurse-practitioner who treated outpatients which is a similar use and the reason she is confused.

Mr. Norris explained the former owner did not have the proper documentation to establish that use. In discussing this with Doctor Tonwe, he was asked to obtain whatever documents the former owner had, but apparently she had nothing. Ms. Wilson agreed she simply opened the business.

Mr. Ambrose thought that when the property changed hands, the conditional use is no longer valid and must be again applied for. Mr. Brooks reiterated that she never had any approvals. Mr. Ambrose felt that even if the prior owner had an approval, the conditional use would not carry over to Doctor Tonwe.

Mr. Carmean explained that she was operating as a normal home occupation similar to a seamstress. It was not being presented as a professional occupation.

Mr. Kramlich asked if Doctor Tonwe was provided another notice to be present tonight. Ms. Hudson advised that notices are mailed out at the time of the initial hearings. However, when an application is tabled or action is deferred, the applicant is informed they are to attend the next meeting as the application proceeds. He was provided notices for both the planning commission and council hearings for the initial date and time. His first hearing before council was scheduled in February though he did not appear at that time because he was aware it had been postponed until the planning commission made a final recommendation.

Ms. Wilson said that because a site plan was requested, she cannot vote no but instead votes yes though she still has questions and concerns.

With no further business, Mayor Rogers declared the Public Hearing adjourned at 9:00 p.m.

Respectfully submitted,



Terri K. Hudson, CMC
City Clerk/Recorder

MILFORD CITY COUNCIL
MINUTES OF MEETING
March 24, 2008

A Meeting of Milford City Council was held in the Meeting Room of the Delaware Rural Water Association Facility at 210 Vickers Drive, Milford, Delaware on Monday, March 24, 2008.

PRESIDING: Honorable Mayor Joseph R. Rogers

IN ATTENDANCE: Councilpersons Irvin Ambrose, John Kramlich, John Workman, Owen Brooks, Jr., Douglas Morrow and Katrina Wilson

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

Mayor Rogers called the City Council Meeting to order at 9:00 p.m.

Appointment of 2008 Milford Election Board/Judges

Mr. Workman moved for approval of Election Officers/Judges for the April 26, 2008 City of Milford Election, seconded by Mr. Ambrose:

Tamela Mallamo	320 Lakelawn Drive
Phyllis Fox	200 E. Clarke Avenue
Patricia Bailey	999 S. DuPont Boulevard
Janet Lardner	228 S. Landing Drive
Teresa Franklin	5 Lucia Circle

Motion carried.

Mr. Workman moved for approval of Election Officers/Clerks for the April 26, 2008 City of Milford Election, seconded by Mr. Ambrose:

1st Ward - Donna Merchant	108 Franklin Street
2nd, 3rd, 4 th Wards - Joanne Leuthauser	509 Ashley Way

Motion carried.

In response to a question of why there was one clerk for the first ward and only one other clerk for the remaining wards, Ms. Hudson explained we are only required to have a clerk for the wards in which there is a contest. At this point, there is only a contest in the first ward, but another clerk will be needed because of the mayor's race.

Mayor Rogers said that he will consider redistricting of the wards following the election.

Adoption of Ordinance 2008-3/Electric Tariff Amendment/Medical Priority Regulations

Section 1.

An Ordinance to amend the Code of the City of Milford, Chapter 119, thereof, entitled Electrical Standards, for the Purpose of Establishing Regulations for Medical Priority Customers.

Now, Therefore, the City of Milford hereby ordains:

Section 2.

*Chapter 119, Section 15, City's Right to Discontinue Service, Subsection B, is hereby amended read as follows:
§119-15 B. Service Disconnection During the Heating Season Heating Season is defined as that portion of the calendar*

year extending from November 15th to March 31st. A Dwelling Unit is defined as one or more rooms arranged for the use of one or more individuals as a single housekeeping unit, with cooking, living, sanitary, and sleeping facilities. No Dwelling Unit shall have service disconnected if the temperature is 32 degrees Fahrenheit or less at 10:00 A.M. on the day the service is to be terminated. Service may be terminated, when in the sole judgment of the City, an emergency situation exists which requires the termination of service. During the heating season, no service shall be disconnected for nonpayment of past charges without a minimum notice of seventy-two (72) hours being given to the occupant informing them of the intention to terminate electric services. In no event shall such termination occur between 12:00 Noon on any Friday and 10:00 A.M. on the succeeding Monday. Should Friday be a legal City holiday, the last preceding business day shall be substituted for Friday. Should Monday be a City holiday, the next succeeding business day shall be substituted for Monday.

Section 3.

Chapter 119, Section 15, City's Right to Discontinue Service, Subsection B, is hereby amended by adding a new subparagraph to read as follows:

§119-15 B (1). Medical Priority Policy

The City shall have a policy relating to customers with a medical priority status. The policy shall address the qualifications, terms and conditions of the medical priority program and the responsibilities of the City and the Customer. This policy shall be an administrative policy and may be amended by the City Manager.

Section 4.

Adoption Date: March 24, 2008

Effective Date: April 3, 2008

Mr. Baird recalled this ordinance being introduced at the last meeting. The ordinance amends the current regulations which prohibit the city from disconnecting anyone for a medical priority status. As a result, some customers have continued to accumulate bills and have not attempted to make payments which have resulted in large past due balances.

In an effort to get some control, this ordinance was proposed. It establishes a priority and the right of responsibilities. The customers will still be permitted to apply for the program and the meter tagged indicating they are a medical priority. The transformer serving their property will also be tagged to inform electric personnel that if there is an outage in the area, there are some customers who are potentially at risk and have priority equipment on hand.

Mr. Baird further explained this goes a step further and as the person enrolls, they will acknowledge the fact that being a medical case or priority in the city, they are still under obligation to stay current with their electric bills. The ordinance clarifies and establishes the process for notification should they become delinquent. In addition, the city will provide a list of social service agencies that may be able to assist them should they experience problems as a result of their medical bills. The city provides another 30 to 60 days above and beyond what our regular customers receive before being disconnected. If someone is delinquent in their bills for sixty days or more which by that time, is actually about 90 days out, the city has the ability to install a load limiting device on their meter which only allows enough amperage to operate the necessary equipment in their house, but keeps their bills from getting further out of hand. However, it does not permit that customer to use excessive amounts of electricity.

Mr. Baird advised that once a customer enrolls in the program, the city will contact them in the eleventh month or so advising them it is time to renew. At that time, they will be required to submit another statement from the doctor confirming this necessity.

Mr. Carmean noted this is a policy change that we have been considering but never had the ability to disconnect because of the possible ramifications. He reported that one of these individuals moved out of their rental property this past week owing the city between \$12,000 and \$14,000. He stated that when a tenant leaves, they are gone and in most cases, the city can never recoup the money they owe. The city manager emphasized this has become a serious problem and affects every electric customer in the city.

In many cases, Mr. Carmean does not feel the medical priority is bonafide or justified and because we are not doctors, it is difficult for the city to fight. This will provide the rules to address these situations and protect the city at the same time.

Mr. Baird emphasized the current ordinance states that the city cannot disconnect these customers.

Mr. Workman added that this ordinance protects the city legally should anyone attempt to take action against the city.

Ms. Wilson moved to adopt Ordinance 2003-8 as presented, seconded by Mr. Workman. Motion carried by unanimous roll call vote.

Five-Year Capital Budget

Mr. Baird advised that council was provided with a copy of each department's five year capital budget request. The charter requires this be presented to council by the end of March of each year. He asked that council review the requests which will be discussed in further detail once we move forward with budget deliberations over the next six weeks.

Adoption of Resolution/Reimbursement of Advanced Costs of Capital Project/2008 Bond Issue

BE IT RESOLVED by the City Council of the City of Milford, Delaware (the "City"), as follows:

Section 1. The City has determined to undertake capital projects consisting of the acquisition, construction and equipping of the capital assets and improvements more particularly described in Exhibit A hereto (collectively, the "Capital Project").

Section 2. The City has advanced, and may in the future advance, its own funds for the payment of certain costs of the Capital Project.

Section 3. The City anticipates that it will issue tax-exempt bonds in the maximum principal amount of \$10,000,000 (the "Bonds"), the proceeds of which will be used by the city to pay costs of the Capital Project. has advanced, and may in the future advance, its own funds for the payment of certain costs of the Capital Project.

Section 4. The City intends to requisition funds from the proceeds of the Bonds in reimbursement for advances made for costs of the Capital Project, as referenced above, but only for (i) expenditures paid no earlier than 60 days before the date hereof; (ii) costs of issuing the Bonds and a de minimis amount not in excess of the lesser of \$100,000 or 5% of the proceeds of the Bonds, regardless of when paid; and (iii) preliminary expenditures for the Capital Project, regardless of when paid, to the extent the total of such preliminary expenditures does not exceed 20% of the aggregate issue price of the Bonds; provided that, except for expenditures described in clauses (ii) and (iii), no reimbursement of an original expenditure shall be made more than 18 months after the later of (a) the date of such expenditure, or (b) the date the portion of the Capital Project for which such expenditure was made is placed in service, and in no event more than three years after the date of such expenditure. For purposes of the foregoing, the term "preliminary expenditures" includes architectural, engineering, surveying, soil testing, reimbursement bond issuance, and similar costs incurred prior to commencement of the acquisition, construction or rehabilitation of the Capital Project but does not include land acquisition, site preparation and similar costs incident to commencement of construction.

Section 5. All prior resolutions and parts thereof, to the extent inconsistent herewith, are hereby rescinded and repealed.

Mayor Joseph R. Rogers

Mr. Baird said this is in relation to the bond issue passed by the public last month and allows the city to move forward with some of these projects using existing city funds. This authorization permits the city to be reimbursed for those expenses related to the projects approved as part of the referendum. By doing this now, we are identifying those projects we are going to be using city funds for and once those bonds close, which is anticipated in either the Fall of 2008 or January of 2009, the city would be reimbursed for associated costs.

Paul Goldstein of 15 West Thrush Drive stated that we already approved the bond issue. He said interest rates are at the lowest they will probably ever be. We can issue that bond now and the sooner we issue the bond, the less the interest rate, the less it will cost the people of the City of Milford. To delay it for six months or until January of 2009, when interest

rates will go up after the election, they could easily go up 2% higher. He does not know how high interest will go after the election. So he finds it strange that the city council would entertain using city funds at this time when we can issue the bonds. The money has been put aside for it from the public and we have been paying for it for many months. He recommends council approve the \$15 million immediately, pay interest on it, put the money in the bank, invest it and use it as needed. Protect the people of Milford who will pay a lot more money for these bonds the longer it is delayed.

Mr. Baird responded that the portion for the water projects is from the Federal Department of Agriculture. Those rates have a sealing on them at 4.15%. They are anticipating formal notification coming in either April or September and until that time, we are not eligible to close on the USDA loan.

He said the second issue is the general bond issue that will combine the sewer portion and the electric portion. It is best to move as quickly as possible, which is the intention. The one dilemma is that we are unable to finalize our exact costs until we reach an agreement with Delmarva Power, which the city has been pushing for more than two years. It seems as if it is moving forward and we are closer than ever, but we still do not have a resolution at this moment. They spoke with Delmarva Power last week and have another conference call scheduled. At that time, we should know better from a time frame standpoint on when the project will proceed. From the date we close on the bonds, we have two years to use the funds that were approved as part of that closing. He agrees we need to close as soon as possible, but on the other hand, we do not want to close too early because of the two-year window particularly if Delmarva Power says late 2010 or even 2011, which preliminary indications have indicated. He agrees that is not what the city wants, but it is very important to be cognizant of what their plans are because we are in this together and need to feed off one another.

He pointed out it is not an issue of trying to time the market in order to get the best rates; the concern is the window for the utilization of the funding.

Mr. Kramlich moved for adoption of the Reimbursement of Advanced Costs of Capital Project/2008 Bond Issue Resolution, seconded by Mr. Ambrose. Motion carried by unanimous roll call vote.

Adoption of Resolution/Spring Clean Up Week

Mr. Workman moved for approval of the following resolution, seconded by Mr. Morrow:

Now, Therefore, Be It Resolved by the Mayor and Council of the City of Milford, in Council met:

WHEREAS, it is desirable to promote the general cleaning of the City of Milford and improve its overall beauty to the maximum enjoyment and benefit of all citizens and visitors; and

WHEREAS, we are fortunate to live in a community so abundantly blessed with natural assets that we have a continuing responsibility to preserve our environment by keeping it clean, healthy and in order by organizing and carrying out clean-up and fix-up projects which will enhance, restore and maintain the beauty of all properties; and

WHEREAS, all maintenance and clean-up debris, including large and bulk items, shall be placed for curbside pickup in order to exemplify cleanliness and beauty.

NOW, THEREFORE, I, Joseph R. Rogers, Mayor of the City of Milford, by the power vested in me, do hereby proclaim the week of April 21 to April 25, 2008 "Spring Clean-Up Week" in the City of Milford.

IN WITNESS WHEREOF, I hereunto set my hand and caused the Seal of the City of Milford to be affixed this 24th day of March 2008.

Mayor Joseph R. Rogers

Motion carried.

Mr. Carmean advised the Spring Clean Up date is being added to the memo section of the utility bills.

With no further business, Mayor Rogers declared the Council Meeting adjourned at 9:15 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Terri K. Hudson". The signature is fluid and cursive, with a long horizontal flourish at the end.

Terri K. Hudson, CMC
City Clerk/Recorder

MILFORD CITY COUNCIL
MINUTES OF MEETING
March 24, 2008

The City Council of Milford met in Workshop Session on Monday, March 24, 2008 in the Meeting Room of the Delaware Rural Water Association Facility at 210 Vickers Drive, Milford, Delaware.

PRESIDING: Honorable Mayor Joseph R. Rogers

IN ATTENDANCE: Councilpersons Irvin Ambrose, John Kramlich, John Workman, Owen Brooks, Jr., Douglas Morrow and Katrina Wilson

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

Mayor Rogers convened the Workshop Session at 9:16 p.m.

Recycle Bank Presentation/Robert Milligan

A presentation was given by Bob Milligan of Recycle Bank. He explained that Recycle Bank is a company formed three years ago in Philadelphia by Ron Gonen and Patrick Fitzgerald whose goal was to increase recycling in the United States. They set up programs in communities by offering residents incentives for recycling. The object is to reach out to their customers and reward them for recycling.

He explained the rewards program is supported by corporate American through national, regional and local businesses. Its aim is to increase municipalities' recycling rates and lower their landfill costs by enticing constituents with discounts and coupons. Recycle Bank measures the amount of material recycled and converts the amount into Recycle Bank Points that can be used at hundreds of Recycle Bank Reward Partners. Everybody wins in the long run.

Recycle Bank provides Delaware Solid Waste Authority (DSWA) containers with radio frequency identification tags that correspond to each household address. Scanners on sanitation trucks record the weight of each pickup in Recycle Bank's database. Each household gets an account number which can be used to track their recycling points either through a computer or through a toll free customer service line.

When a community comes on board, area businesses are signed up as partners in the program where residents can earn points locally.

In Delaware, Recycle Bank started in Wilmington. At that time, the city had zero curbside recycling when this began as a pilot program when they rolled out approximately 7,000 carts. It quickly became a success and officials decided it should be citywide. Approximately ten months ago, it became a citywide program. Wilmington's diversion is currently running between 30 and 35%. Mr. Milligan explained that diversion is the reduction of waste disposed at landfills by recycling. As a result, the city receives the benefit of lower landfill fees and at the same time, residents receive awards.

On an average, a single person in Wilmington earns about \$280 a year in rewards that have been redeemed while a family of four is between \$300 and \$315 range. The amount a person recycles and how often they recycle will determine how much they earn in the way of rewards. They cap their rewards at \$420 a year. That formula works with regular participation and weight and if a person is truly recycling everything possible, they can hit that cap without taking trying other unnecessary means.

Clayton, New Jersey was a city with an existing recycling program. However, adding this incentive program increased their recycling by 73% over what they were previously doing.

When asked how the company makes money, Mr. Milligan stated that some of their profits come from the savings at the disposal site. If they have a 50/50 arrangement with the city, the city receives 50% and Recycle Bank receives 50% of the savings. This is money that would have been spent with DSWA for landfill fees. DSWA is 100% supportive of the program and will continue to provide their pick up service.

Mr. Milligan explained that Milford is currently paying \$51.50 a ton to take solid waste to the landfill. One pound equals 2.5 cents. He said the question is how many additional pounds will Milford be able to get from existing customers and new customers who sign up as a result of this incentive. Conservatively, he estimates existing customers will add another five pounds per week. Milford already exceeds 22 pounds for existing customers as was determined from the numbers provided by DSWA. This estimate could result in another \$2.36 in disposal savings on a monthly basis.

He reiterated that the revenues Recycle Bank receives are shared savings; after they receive 50%, Milford would end up with an average of 22 pounds per week at \$14.30 savings per home per year. However, the real savings depends on the number of new homes that sign up. If only 200 more homes sign up, the city has lost nothing because this program is based on a percentage basis and not a flat fee. If 1,000 new homes sign up, the city will save \$14,000 a year after paying Recycle Bank.

Mr. Milligan emphasized that their profits are based on the number of homes they feel they can incentivize. Prior to Recycle Bank in Cherry Hill, New Jersey, they were at 12.1 pounds. Afterwards, it increased the first three months to 22.7 pounds though they feel an even higher number can be achieved. He said most of their communities are running at 20 pounds plus for set out rates.

Mr. Mulligan said that in regard to Milford's current customers, Recycle Bank only gets a percentage of the 'better job' but nothing that has been done to date. If they can drive existing customers up five additional pounds, Recycle Bank would ask for half of that 5-pound disposal savings.

He reiterated that whatever the threshold number is today would be subtracted from the annual number. The difference would then apply to the Recycle Bank percentage. The city continues to save on the disposal side though Recycle Bank feels they can get more from our existing customers in addition to acquiring new customers.

Mr. Milligan pointed out that recycling is a relatively popular, easy way to reach out to the public to benefit the environment. The environment has a particular savings when it comes to the environmental carbon footprint. But it will also help save environmental pollution which is a big economic savings.

He believes this program is a win/win situation for residents who can earn hundreds of dollars in savings every year in products in addition to considering the cost of savings the city is charged for landfill fees.

He said the other way Recycle Bank makes money is through advertising by commercial establishments, particularly on a national basis, on their website. They have a marketing group working with Recycle Bank who promotes that side of the revenue. They feel that as their website becomes more active, that part of their revenue will eventually become the majority.

Assistant City Manager David Baird asked if rewards for existing customers are based on an incremental increase or total recycling; Mr. Milligan advised total recycling numbers.

Mr. Baird then asked how often the baseline is reevaluated the city pays Recycle Bank as part of the savings, which is presently at 22 pounds. Mr. Milligan said that is based on the length of the contract which he is hoping will be three to five years. They intend to get the city to a certain point; when they get to that point, they would like that baseline to hold, with the exception of new customers. If the customers who recycle x amount today will recycle x amount more over the next three to five years, they would prefer to have the baseline remain where it is today.

Mr. Carmean pointed out Recycle Bank will reach out to local commerce to get them involved in this program. Mr. Milligan stated that those businesses pay nothing back, but only pay to entice people to their door with whatever discount they are willing to offer. However, that is entirely their call with no pressure from his company. He emphasized that local establishments are not charged for advertising.

The city manager feels the city has somewhat stabilized in the number of recycling customers. Starting with the July contract, DSWA will be going from weekly to biweekly recycling at \$2 a month versus the current fee of \$4 a month. If a customer has a problem waiting two weeks to recycle, DSWA will provide a larger cart at no extra cost.

Mr. Carmean said there are still customers who believe their service was decreased when we went to once a week pickup. He stressed the city still picks up all the residential trash though it is only one time a week now. If council decides to go back to twice a week pickup, it will cost more than \$22 a month. There is no company that can provide twice a week pickup for \$22 particularly considering the continual increase of diesel fuel. Of the thousands of trash customers Milford has, there have been very few complaints that once a week is not enough.

He feels that anyone who is continuing to experience problems with trash should concentrate more on recycling. He does not think it should be made mandatory, but feels that Recycle Bank may give other customers an incentive to get on board and to recycle more.

Mr. Baird will provide some future facts and figures on the city's solid waste program in the near future. He added that before DSWA went from the sorted recycling to the single stream recycling in August, we were averaging approximately 20 tons of recycling. After that change in August, it increased to more than 60 tons though that has somewhat fallen off.

Additional information will be provided to council at a later date.

Announcements

Mayor Rogers informed council of the following upcoming events:

Mayor's Community Prayer Breakfast will be held Saturday, March 29th at Milford Senior Center beginning at 7:30 a.m.

SCAT Monthly Meeting at Mango's in Bethany Beach on Wednesday, April 2nd at 6:00 p.m.

Downtown Milford's Celebration of their Main Street Community designation on Thursday, April 3rd at 9:00 a.m. at the Causey Mansion.

Guiding Eyes for Blind Opening on Saturday, April 4th at 1:30 p.m. in the Bicentennial Park.

Adjourn

With no further business, the Workshop Session of City Council concluded at 9:53 p.m.

Respectfully submitted,



Terri K. Hudson, CMC
City of Milford