

MILFORD CITY COUNCIL  
MINUTES OF MEETING  
June 9, 2008

The Regular Monthly 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, June 9, 2008.

PRESIDING: Mayor Daniel Marabello

IN ATTENDANCE: Councilpersons Irvin Ambrose, Michael Spillane, John Workman, Clifford Crouch, Owen Brooks, Jr., Douglas Morrow, James Starling, Sr. and Katrina Wilson

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

COUNSEL: City Solicitor Timothy Willard

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

#### INVOCATION

Following the Pledge of Allegiance, Councilman Starling gave the invocation.

#### APPROVAL OF MINUTES

Mr. Workman moved for approval of the May 12, 2008 and May 27, 2008 minutes as submitted with Mr. Crouch seconding.

When called for questions, Mr. Spillane referred to the minutes regarding the pole work behind Hearthstone. His impression was there was no service coming off the poles to serve Hearthstone though the minutes reflect there is some power being provided. His concern is the city should not be paying for something that is the responsible of the owner or developer.

Mr. Baird explained the work is part of the 5<sup>th</sup> circuit extension and improvements and is not benefitting any new development. It is system wide throughout the circuit and is not providing primary services but could be tied into the connecting service. Most of Hearthstone is served directly at the substation with underground service.

Motion carried with no one opposed.

#### RECOGNITION

None.

#### MONTHLY POLICE REPORT

Mr. Morrow moved for approval of the monthly police report submitted by Chief Hudson. Mr. Morrow commended Chief Hudson and his officers for the manner in which they handled the bomb incident on May 28<sup>th</sup> and in particular the neighboring residents. Mr. Brooks seconded motion.

Mr. Brooks noted that 32 felony charges were made in May of 2007 compared to 164 were made in May of 2008.

Chief Hudson explained the large number this past month is the reflection of two major cases in which an unusually high number of multiple felony charges were placed against two different defendants.

Mr. Workman asked if the complaints can be broken down in different categories and asked if these were police complaints or dog barking type complaints Chief Hudson explained the complaints are a combination of police reported, victim reported, nuisance type complaints and public assists. The numbers also include city related complaints when

phone calls are forwarded to the police department after city hall closes.

He explained that at this time, the complaints would have to be sorted manually. The department is in the process of obtaining a new software program which will provide this type of information and can be generated into various reports.

He believes the increase in traffic arrests is a result of increased summer traffic.

Chief Hudson reported the department is currently testing for two police vacancies, though the department will be down four officers as a result of two officers being out on family medical leave.

#### CITY MANAGER REPORT

The following report was submitted by City Manager Carmean:

##### *ADMINISTRATION*

*City Hall is progressing at the scheduled pace and we may possibly hold our June Workshop in the new chambers. I believe everyone will be extremely pleased with the results. We will enjoy many years of use from the location which will again become a center of activity for our downtown area.*

##### *SEWER AND WATER*

*The new pump station has been installed and is in service at the Cascades subdivision on Airport Road. This is giving us much needed capacity for service to the Veterans Home and the Hospice facility. We have prepared our Request for Proposals to bid the engineering for our Inflow and Infiltration study. This is important to help locate areas where our pipe transmission and collection systems are allowing ground water or rain water to enter. We are spending considerable monies on the treatment of this water and will save our customers real dollars when we locate and correct the problems. We will never be able to find and repair all areas, but can certainly make improvements that will have a positive impact.*

##### *STREETS AND SOLID WASTE*

*DELDOT has begun work on Route 36 within our corporate limits. Street crews are assisting with some of the repairs; further assistance will be provided while repairs and upgrades are made on the railroad crossing on Lakeview Avenue. That work is scheduled between June 16th and June 20<sup>th</sup>. With the assistance of DELDOT crews, we will repair a washout that occurred in the vicinity of the Georgia House on Main Street.*

##### *ELECTRIC*

*Our crews are continuing work on the 5th circuit out of our substation by placing overhead wire above our right-of-way at the rear of Shawnee Acres. This was considered one of the more difficult construction tasks in the building of the circuit. Crews also did an outstanding job during recent thunder and lightning storms to get service back to our customers after several serious lightning strikes on our system.*

Mr. Workman asked how long the railroad track repairs will take that will begin June 16<sup>th</sup>. Mr. Carmean said the work will be completed by June 19<sup>th</sup>.

Ms. Wilson moved to accept the city manager's report, seconded by Mr. Crouch. Motion carried.

#### COMMITTEE REPORTS

##### *Mayor Joseph Ronnie Rogers Banquet*

Mr. Workman advised that tickets are still being sold for Mayor Roger's Banquet on July 9<sup>th</sup>. Tickets are \$30 and are available at city hall and the chamber of commerce. Anyone with a suggestion of where a poster can be placed should

contact him.

## COMMUNICATIONS

The mayor announced the Board of Adjustment will hold Public Hearings on Thursday, June 12, 2008 at 10:00 a.m. in regard to some signage issues.

A parade permit was issued for the Milford Community Parade on Wednesday, October 22, 2008 from 6:30 p.m. to 9:00 p.m. When asked why it was longer than two hours, Chief Hudson explained that the Parade Committee requested an additional half hour and it was mutually agreed it would begin at 6:30 p.m. and still conclude by 9:00 p.m.

Family Outreach Multipurpose Community Center, Incorporated will sponsor a Take it to the Street Community Event on July 18-19, 2008 at Banneker School.

## UNFINISHED BUSINESS

### *Change of Street Name/Games Drive*

Jason and Pamela James submitted a request that their street name be changed from Games Drive to James Drive. Presently, they have the only existing residence on the street. A letter of no objection from Ronald Bowhall of Interstate Builders was included. Interstate Builders owns four undeveloped parcels on the street.

Mayor Marabello asked if this will cost the city any funds. Mr. Carmean spoke with Mr. James sometime ago and advised him that any new street signs would be at their expense.

It was confirmed that Kent County had been contacted.

Mr. Crouch moved for approval that the street name be changed to James Drive with the stipulation that any costs associated with the change be borne by Mr. and Mrs. James, seconded by Mr. Workman. Motion carried.

### *Planning Commission/Liaison & Commissioner Terms*

This matter was deferred from the May 12, 2008 meeting. Mr. Carmean explained that assignments and recommendations for terms for the planning commissioners had been previously planned for May. Mr. Carmean advised that commissioners appointed through the month of May were Paul Hayes and Karen McColley.

Mr. Workman said the discussion involved the term of office which needs to be consistent with our charter and ordinance. Council wants to make sure the planning commission follows the regulations which he thought was being accomplished this evening.

Mr. Spillane agreed the code and ordinance conflict with one another in regard to term of office and the charter needs to be revised.

Mayor Marabello asked the matter to be tabled.

Mr. Workman asked for assurance it would be addressed by next month noting that it was deferred to this meeting for some type of action.

Mr. Willard agreed that the terms of the current commissioners need to be addressed and either two, three and four year terms be assigned so there is a schedule on record. He agrees there appears to be a contradiction between the code and charter.

Mr. Brooks pointed out that we have the commissioners' appointment dates, but does not recall any reappointments made by Mayor Rogers. Mr. Willard agreed there has never been a formal recognition of their terms and they have simply rolled

over.

Mr. Willard suggested that he, Mr. Baird and Planning Commission Chairman Warfel meet to review the appointments and the ordinance and charter in order to make some recommendations. Assistant City Manager Baird agrees it must be determined whether to follow the language in the charter or the ordinance. Mr. Willard advised the charter must be followed because it trumps any ordinances.

Ms. Wilson said it is important that when their terms expires, council either reappoint or appoint a new commissioner at that time. Mr. Crouch agreed and asked that some criteria be considered such as attendance.

Mayor Marabello then appointed Mr. Willard, Mr. Warfel, Mr. Baird and Mr. Spillane to a subcommittee to review the matter and make a recommendation to council at the June 23<sup>rd</sup> workshop.

Mr. Workman asked the recommendation be presented at the June 23<sup>rd</sup> workshop so it can be voted on at the July monthly meeting.

#### *Out of School Christian Block Party/Windows of Heaven Ministries*

A letter from C. L. Harris was resubmitted regarding a block party on June 21<sup>st</sup>. After discussing the matter with the pastor's wife, Chief Hudson advised the location was changed from Northeast Front Street to 125 N.W. Second Street. Mrs. Harris reported that she contacted all neighbors on the street and no one had any objection.

Ms. Wilson moved for approval of the Windows of Heaven Ministries Block Party on June 21<sup>st</sup> at 125 N.W. Second Street, seconded by Mr. Starling. Motion carried.

It was confirmed there is no ordinance requiring a permit for a block party. Chief Hudson advised the only requirement is that the applicant receive permission from anyone in the area who would be affected.

#### *Authorization/Purchase of Property & Funding/South Washington Street Property*

Mr. Carmean explained this land would be used as a possible expansion site for city hall. The property was appraised at \$117,000 but purchased for \$90,000.

Ms. Wilson moved for approval of the purchase of 209 South Washington Street in the amount of \$90,000 to be paid from the General Fund Capital Reserve Account 101-1110-413-95-10, to be reimbursed after Milford School District purchases the city lands adjacent to the high school, seconded by Mr. Crouch. Motion carried with no one opposed.

#### *Funding Authorization-Milford Public Library, Boys & Girls Club, City Hall Change Orders*

Mr. Carmean advised our finance director is recommending the following funds be paid from the general fund balance account as has been previously discussed by council:

City Hall Renovations \$1,500,000

Architect City Hall \$15,000

IT Costs to Move Equipment \$15,000

Business Park Sign \$7,500

Boys and Girls Club \$447,600 Paid Over Five Years-Year One \$26,000/Year Two to Four \$105,400

Change Orders for City Hall \$250,000 Estimate-Brings Project to \$1,750,000

Milford Library Donation \$300,000 (\$75,000 Per Year for Four Years)

Green Acres Reserve \$55,000 (\$100,000 Per Year-\$45,000 This Year to be paid from Sale of Property to Milford School District)

Mr. Ambrose moved for approval of the funding of the above items and authorization to include in the upcoming budgets, to be paid from the General Fund Balance Account, seconded by Ms. Wilson. Motion carried.

#### NEW BUSINESS

##### *Adoption of Resolution/Scheduling Board of Revision & Appeal/General Assessment*

Mayor Marabello read the following resolution into record:

WHEREAS, the provisions of Article X, Section 10.05 of the Charter of the City of Milford state that Council shall cause a copy of the General Assessment to be hung in two public places in the City of Milford and there to remain for the space of ten days for public information; and

WHEREAS, attached to said copies shall be notice of the day, hour and place that Council will sit as a Board of Revision and Appeal for said General Assessment.

NOW, THEREFORE, BE IT RESOLVED, that on Monday, the 14th day of July 2008 at 7:00 p.m., the City Council of the City of Milford will sit as a Board of Revision and Appeal for the 2008-2009 General Assessment.

Mayor Daniel Marabello

The deadline for filing an appeal is Friday, July 3, 2008 at noon.

Ms. Wilson moved for adoption of the resolution, seconded by Mr. Starling. Motion carried.

##### *Adoption of Resolution/McColley Annexation Request*

The city manager advised we have received a request for annexation from Lynn and Karen McColley. This is the first step to start the process. The annexation committee will schedule a meeting at which time the petition will be reviewed.

Lynn McColley was present and advised this property is in the area where NKS was just annexed west of Route 1.

Mr. Workman moved for adoption of the following resolution, seconded by Mr. Brooks:

Annexation/Land of Lynn A. And Karen K. McColley

Tax Map MD-00-174.00-02-51.00-000 (10 +/-Acres) Requested Zoning: C-3

Tax Map MD-00-174.00-02-53.00-000 (1 +/- Acre) Requested Zoning C-3

Tax Map MD-00-174.00-02-49.01-000 (1 +/-Acre) Requested Zoning R-2

Tax Map MD-00-174.00-02-49.00-000 (14 +/- Acres) Requested Zoning R-2

##### *COMMITTEE DIRECTED TO INVESTIGATE ANNEXATION*

Whereas, a Petition, signed by the legal property owner and duly witnessed, requesting the annexation into the City of Milford, lands containing 22.367 acres of land, more or less, legally described as follows:

Tax Map No. MD-00-174.00-02-49.01

Beginning at a point, said point being situated on the southerly right-of-way line of North East Tenth Street (30' Wide), being a corner of this parcel and other lands of McColley (D/464/039) (Tax map No. MD-00-174.00-02-49.00), and being distant S 68°36'22" W, 712.35', from the center line of the Southbound lane of Delaware Route 1, thence with said right-

of-way line N 68°36'22" E a distance of 210.00' to a found concrete monument at a corner of lands of Silicato-Wood Partnership, LLC (D/3212/210, D/3210/100, D/3210/134); thence with said Silicato-Wood Partnership, LLC, S 35°17'00" E, a distance of 239.43' to a point in line of other lands of McColley (Tax Map No. MD-00-174.00-02-49.00); thence with said McColley the following two courses and distances: 1) S 68°36'22" W a distance of 210.00' to a point, 2) N 35°17'00" W a distance of 239.43' to the point of beginning. Contained within these metes and bounds are 1.121 acres of land more or less.

Tax Map No. MD-00-174.00-02-49.00

Beginning at a point, said point being situated on the southerly right-of-way line of North East Tenth Street (30' Wide), being a corner of this parcel and other lands of McColley (D/464/039) and also being a point on the Milford City limits line and being distant S 68°36'22" W, 973.47' from the centerline of the Southbound lane of Delaware Route 1, thence with said right-of-way line N 68°36'22" E a distance of 261.12' to a corner of other lands of McColley (D/605/195) (tax map No. MD-00-174.00-02-49.01); thence with said McColley the following two courses and distances: 1) S 35°17'00" E a distance of 239.43' to a point, 2) N 68°36'22" E a distance of 210.00' to a point in line of lands of Silicato-Wood Partnership, LLC (D/3212/210, D/3210/100, D/3210/134), thence with said Silicato-Wood Partnership, LLC, S 35°17'00" E a distance of 1236.37' to a found concrete monument in line of lands of NKS Distributors Inc. (D/2788/271); thence with said NKS Distributors Inc. S 11°41'58" W a distance of 100.74' to a set iron pipe at a corner of other lands of McColley (D/631/171) (Tax Map No. MD-00-174.00-02-51.00) thence continuing with other lands of McColley S 11°41'58" W a distance of 238.10' to a point on the Milford City limits line and a corner of other lands of McColley (D/464/039) (Tax Map No. MD-00-174.19-01-01.00); thence with other lands of McColley and the Milford City limits line N 41°51'11" W a distance of 1832.08' to the point of beginning. Contained within these metes and bounds are 12.359 acres of land more or less.

Tax Map No. MD-00-174.00-02-51.00

Beginning at a found iron pipe situated on the Northerly right-of-way line of North East Front Street, said point being a corner of these lands and lands of NKS Distributors Inc. (D/2788/271) and being distant S 41°07'48" W 440.24' from the centerline of the Southbound lane of Delaware Route 1 and distant 75' from the centerline of North East Front Street; thence with said right-of-way line S 41°07'48" W a distance of 420.23' to a found iron pipe at a corner of other lands of McColley (D/695/040) (Tax Map No. MD-00-174.00-02-53.00); thence with other lands of McColley the following two courses and distances: 1) N 57°03'08" W a distance of 157.45' to a found concrete monument, 2) N 56°40'23" W a distance of 83.64' to a point on the Milford City limits line at a corner of other lands of McColley (D/631/171) (Tax Map No. MD-00-174.19-01-02.00); thence with other lands of McColley and the Milford City limits line N 41°51'11" W a distance of 827.50' to a point at a corner of other lands of McColley (D/464/039) (Tax Map No. MD-00-174.00-02-49.00); thence with other lands of McColley N 11°41'58" E a distance of 238.10' to a set iron pipe at a corner of aforesaid NKS Distributors Inc.; thence with said NKS Distributors Inc. S 55°55'07" E a distance of 1185.98' to the point of beginning. Contained within these metes and bounds are 8.706 acres of land more or less.

Tax Map No. MD-00-174.00-02-53.00

Beginning at a found iron pipe situated on the Northerly right-of-way line of North East Front Street, said point being a corner of these lands and other lands of McColley (D/631/171) (Tax Map No. MD-00-174.00-02-51.00) and being distant S 41°07'48" W 860.47' from the centerline of the Southbound lane of Delaware Route 1, and being distant 65' from the centerline of North East Front Street; thence with said right-of-way line S 30°35'26" W a distance of 65.74' to a point on the Milford City limits line and a corner of other lands of McColley (D/695/040) (Tax Map No. MD-00-174.19-01-03.00); thence N 41°51'11" W a distance of 252.63' to a point in lines of other lands of McColley (D/631/171) (Tax Map No. MD-00-174.00-02-51.00); thence with other lands of McColley the following two courses and distances: 1) S 56°40'23" E a distance of 83.64' to a found concrete monument, 2) S 57°03'08" E a distance of 157.45' to the point of beginning. Contained within these metes and bounds are 7,873 square feet of land more or less.

has been submitted to the City Council of the City of Milford.

Now, Therefore, a Committee, composed of three (3) elected members of the City Council and one (1) member of the Planning Commission has been appointed by the Mayor to investigate the possibility of annexing said property, said Committee to be comprised of Chairman Clifford Crouch, Councilwoman Katrina Wilson, Councilman John Workman and Planning Commission Chairman Brendon Warfel.

Be It Further Resolved, that said Committee shall submit a written report containing its findings and conclusions, including the advantages and disadvantages of the proposed annexation both to the City and to the property proposed to be annexed and said report shall further contain the committees' recommendations whether or not to proceed with the proposed annexation and the reasons therefor.

Mayor Daniel Marabello

Motion carried.

*National League of Cities Annual Dues*

Ms. Wilson moved for approval of the National League of Cities dues for the period of August 1, 2008 through July 31, 2009 in the amount of \$1,074.00, seconded by Mr. Morrow. Motion carried.

*Agreement/Connolly, Bove, Lodge & Hutz, Law Firm/Bankruptcy Matters*

Mr. Carmean explained that the city is often involved in bankruptcy matters mainly involving utility and tax accounts. This firm is well known as a bankruptcy law firm and would be engaged as the city's counsel in such cases. The retainer has been waived and the city would only be charged an hourly wage.

Mr. Willard explained that attorneys with this speciality are able to handle these cases more efficiently and productively. The city currently has a \$13,000 debt owed in one such case. He advised that one of his senior partners recommended the attorney from this firm who is very reputable. Each case needs to be reviewed individually to compare the amount of the debt versus the \$455 hourly rate to ensure it is worth pursuing. The idea is to participate in the creditors meeting so that when any money is divided, Milford would be in line to receive their share.

Besides the attorney fee, there are different costs associated with paralegals and other staff. He feels it may be worthwhile to have a conversation with the attorneys with regard to fees, etc. He agrees that if the attorney fees outweigh the amount owed, an attorney would not be involved.

Mr. Crouch agrees the amount owed to the city needs to be considered before we engage an attorney. However, if a large company goes bankrupt owing a substantial amount of money for utilities, then an attorney should represent us. But for \$500 or \$600 claims, we need to take our chances. Each case should be considered on an individual basis.

Mayor Marabello asked for a motion; Mr. Crouch moved for approval in order to put the matter to a vote. Motion failed for lack of a second.

Mayor Marabello suggested postponing the matter for another month so it can be studied for further discussion.

Mr. Crouch moved that this matter be deferred, seconded by Mr. Workman. Mr. Workman asked that everything be presented at the time of the vote to prevent prolonging the matter again.

Motion carried.

*Extension of Site Plan Approval/Key Properties Group, Wilkins Road w/o Cedar Creek Road-Commercial/Residential Towne Center-Tax Map 3-30-15-58.*

Attorney Jim Griffin advised that on May 15, 2007, the planning commission granted preliminary site plan approval for the Towne Center which is a 105-acre tract previously known as the Vreeland Farm. At the time of annexation, it was zoned C-3. A conceptual plan was presented for council to view.

Mr. Griffin advised that one of the requirements of the PLUS committee, was that the applicant perform a traffic impact study. The perimeters of the study as laid down by DELDOT required the applicant to study a number of intersections.

One of those intersections is Wilkins Road and Cedar Creek Road. Wilkins Road is proposed to be completely realigned and is much different today than it will be once it is realigned.

As a result, the traffic impact study has not been done because of the state of change with respect to the intersection. It will be sometime before the intersection is completed and could be as far out as 2011 or 2012. That does not mean they will be held up doing the traffic impact study that long, but until a firm commitment is made by DELDOT to construct what is now proposed, they cannot study the intersection because they will be asked to show the impact of the crossover.

Under Milford's Code, Mr. Griffin is unsure whether they are required to ask for the extension, but are on the agenda and want to pursue the approval. The planning commission gave preliminary site approval and this did not come before council. He was unable to find any reference in the code about preliminary site plan approvals having time limitations. The next step would be final site plan approval. He referred to Section 230-61 which states that any construction must be underway within a year for any application approved by council or any land rezoned by council. That is not the case with a site plan.

Mr. Griffin said because it is unclear in the code, it was recommended to take a precautionary measure and a letter was written by Mr. Fannin asking for the extension.

Mr. Willard then explained that when there is a subdivision approval, there is a time requirement before it expires. However, this is not a subdivision. Section 230-61 of the code refers to a change of zone. When this came in, it was not part of the city so it was not zoned at that time. The 230-61 extension language refers to the change of zone and within a certain amount of time of inactivity it will revert. However, this will not revert because it never had any other zone.

He would need to review the minutes to determine exactly what happened in May. He has a recollection of the annexation and zone. The applicant recognizes they will have to come back for final site plan approval which will be much more detailed. He agrees with Mr. Griffin that this extension request may not be appropriate.

Mr. Griffin asked that they either be told they do not need the approval or if there is any uncertainty, award the extension to prevent any later questions. He recalled that when Commissioner James moved for approval of the preliminary site plan approval, it was contingent on square footage and uses, as well as the number of units remaining being the same as is being presented tonight. He recalled that at the planning commission meeting, Commissioner Johnson seconded and the motion passed unanimously by a poll vote.

When asked for Mr. Willard's opinion, he stated that he does not see the downside of a vote-precedent wise. The worst case scenario is they are back in another year asking for another extension which allows council to keep an eye on the project.

Mr. Workman agrees with Mr. Willard as he does not want to wait until 2011 before they see this again. Mr. Griffin explained that was a completion date. Mr. Workman prefers the applicant come back every year so that council stays updated on its status.

Mr. Ambrose moved for approval of a one year preliminary site plan extension for the Towne Center, seconded Mr. Starling. Motion carried with no one opposed.

#### *Discussion on Citizen Comment Period*

Mayor Marabello explained that though the council meetings need to flow quickly, he still wants the public to have an opportunity to speak. He has looked at other townships and cities and has obtained some information from the city clerk. He is proposing that a 15-minute discussion be allowed. Comments will be focused about items we are talking about at that meeting or a prior meeting. Comments should be specific and to the point. People will be allowed to speak in the order they signed up with an overall time limit of 10-15 minutes. They will be required to sign up on a sheet and it will not be necessary they sign up before noon that day. They will be allowed to speak in the order they signed up.

He asked for a motion to accept the proposal.

Mr. Crouch asked if this will be part of the official council meeting and what type of discussions will be allowed. He feels there is a problem if items are discussed during a council meeting that are not on the agenda.

Mr. Willard stated this was done in the Town of Milton. He said it must be part of the agenda if a quorum is present pursuant to FOIA regardless of whether any action is taken. If a meeting is scheduled to begin at 7:00 p.m., there would be a time before the regular meeting to allow 15 minutes of public comment. He explained this is more of a town hall type atmosphere with some structure. If ten people show up, and ten minutes are allotted, the mayor would divide the time among those ten people. Each person would then have one minute for example. If there were one hundred people, each person would have ten seconds. This allows people to address items on the agenda that do not have a public comment period allotted.

Mr. Crouch said he is only asking about FOIA and anything discussed at a council meeting is required to be part of the agenda. Mr. Willard said it would be listed on the agenda as a public comment period. What is discussed would need to be controlled.

Mr. Workman feels anyone that wishes to speak need to be signed in before the start of the open forum. He does not agree that people should be able to walk in after it has started and be allowed to speak. It is important we know in advance how many people want to speak. Mayor Marabello agreed that we would have to know how many people wanted to speak to determine the amount of time each person is allotted. Mr. Workman added that if a person speaks and are only allowed one minute, that would have to be strictly adhered to.

Mayor Marabello agreed and again pointed out that the people will be permitted to speak in the order in which they sign up in a first come, first serve basis.

Ms. Wilson suggested that when they sign up, they also write down the topic they are speaking about to prevent it from becoming a shoot from the hip situation. The mayor said he will monitor it carefully to make sure it is appropriate and controlled.

Mr. Morrow would feel more comfortable if the procedure was made into a written document. He agrees with the concept, but feels it needs to be clear so everyone understands the rules. He did not see anything in the packet and wants to prevent a misinterpretation of the rules.

Mr. Willard said he would draft a format for the mayor to review. It can then be tweaked if council felt it should be changed.

Mr. Brooks asked if they are allowed to speak 15 minutes before the meeting and then not allowed to speak during the meeting. Mayor Marabello said he wants controlled comments at this point. He will endeavor to make sure the meeting keeps moving.

Mr. Willard stressed that this will not take the place of public hearings. Mr. Brooks understands that but asked if no one would be permitted to speak during the regular meeting. The mayor explained this will give the public an opportunity to voice their opinions on items on the agenda.

Mr. Willard said that in a situation where there is no public hearing but an item that requires the input of someone such as the city planner in relation to the comprehensive plan, council has the right to question that person. Or in the recent cases of block party requests, the applicant can address council on those issues. The idea of this is to provide some order to a person who wants to comment on an item on the agenda.

Mayor Marabello explained the purpose is to have control. When the 10 to 15 minutes is designated, the comments will focus on the current agenda or the previous agenda. However, it will not be a free-for-all. He will handle through strict control of his gavel.

Mr. Crouch said it is his understanding this is a time for people to make comments and it is not a time for council to engage in discussions or give opinions to them and Mayor Marabello agreed.

Mr. Crouch feels that once the meeting begins, it is a time for city council to do business without comments from the floor. This disrupts the meeting. There are public meetings when public comment is appropriate. But once the meeting begins, council needs to conduct business. There are specific periods of time designated for public comment. Council will take any statements into consideration and address them accordingly. If public comment is permitted throughout the meeting, once a person is allowed to comment, then every other person must be treated equally and each would have the ability to speak.

The city manager recommends the mayor be particularly cognizant of a person who wants to come in and complain about an employee. Mayor Marabello responded that will be prohibited.

Mr. Willard said he will add that as a rule to the sign in sheet.

Mr. Spillane asked if the mayor could still have control but allow everyone to speak about each item. He would like to hear the opinion of the people present. Mayor Marabello said he prefers starting with an open session to see how that works out. This will allow people to be part of the meetings and will be the first step.

Mr. Workman agrees that if this is something we want to do, we can try it. It can always be changed later. There may be topics that council is addressing that public comment should be taken. But those things need to be decided in advance. But council always has the right to change something if it does not work.

Mr. Crouch pointed out there are public hearings for many of those issues such as the one earlier this evening for the purpose of taking public comment. He emphasized those comments need to be taken during a public hearing and not during a business meeting of council.

Mr. Workman again requested that the format be presented in writing to council. Mayor Marabello directed Mr. Willard to draft a document to send to him which can be presented to council for a vote at the June 23<sup>rd</sup> council meeting.

#### FINANCE REPORT

Mr. Ambrose advised that through the tenth month of Fiscal Year 2007-2008 with 83% of the fiscal year having passed, 87.7% of revenues have been received and 77.4% of the operating budget expended.

Following a brief review of the revenues, Mr. Ambrose advised there are a number of line items that are significantly below the 83% for various reasons though we are still in very good shape overall in revenues. Expenditures are below the anticipated level for this time of the year.

Mr. Ambrose moved for acceptance of the April 2008 finance report, seconded by Mr. Starling. Motion carried.

#### ADJOURN

With no further business, Mr. Crouch moved that the meeting be adjourned, seconded by Mr. Morrow. Motion carried.

The Monthly Meeting of Council was adjourned at 9:30 p.m.

Respectfully submitted,



Terri K. Hudson, CMC  
City Clerk/Recorder

*MILFORD CITY COUNCIL*  
MINUTES OF MEETING  
*June 9, 2008*

The City Council of Milford met in Workshop Session on Monday, June 9, 2008 in the Meeting Room of the Delaware Rural Water Association Facility at 210 Vickers Drive, Milford, Delaware.

PRESIDING: Mayor Daniel Marabello

IN ATTENDANCE: Councilpersons Irvin Ambrose, Michael Spillane, John Workman, Clifford Crouch, Owen Brooks, Jr., Douglas Morrow, James Starling, Sr. and Katrina Wilson

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

COUNSEL: City Solicitor Timothy Willard

Mayor Rogers convened the Workshop Session at 7:44 p.m.

*Comprehensive Plan Update/Visions, Goals, Objectives and Strategies Presentation/City Planner Gary Norris*

The Planning Commission of the City of Milford is currently in the process of updating the 2003 Comprehensive Plan. The Comprehensive Plan sets forth in graphic and textual form policies to govern the future physical development of the City every five years. Such plan may cover the entire City as well as areas delineated as the Greater Milford Area (2003 Milford Comprehensive Land Use Plan-Revised) and all of its functions and services and/or a combination of plans governing specific functions and services of specific geographic areas. This plan shall serve as a guide to all future action concerning land use and development regulations, urban renewal programs and expenditures for capital improvements. The enactment of the comprehensive plan is through final adoption by City Council. Reviews will take place in either the Meeting Room of Delaware Rural Water Association Meeting Room, 210 Vickers Drive, Greater Milford Business Park, Milford, Delaware or the Council Chambers of Milford City Hall, 201 South Walnut Street, Milford, Delaware during the following times:

Monday, June 9, 2008 7:00 p.m. City Council–Presentation Only  
Tuesday, June 17, 2008 7:00 p.m. Planning Commission  
Tuesday, July 15, 2008 7:00 p.m. Planning Commission  
Tuesday, August 19, 2008 7:00 p.m. Planning Commission

City Planner Gary Norris advised council this presentation had also been provided to the planning commission.

*The Vision for Milford*

According to Planner Norris, this section of the comprehensive plan is meant to be a working document that results in concrete changes to the way the City of Milford manages itself – as well as creates a stronger climate for encouraging redevelopment and reinvestment in the city. It represents a blueprint for action that provides direction and assists decision making over the next five years. The intent is to fulfill the goals, objectives and strategies that embody the civic contract that is a result of this effort. Implementation will involve a host of city departments, boards and commissions, other local public entities, state agencies, nonprofits, businesses and citizens.

The comprehensive plan is intended to be used on a daily basis as public and private decisions are made concerning development, redevelopment, capital improvements and other matters affecting the city's environment – built and natural – and Milford's outstanding quality of life. In addition, the plan provides guidance to city departments regarding public services and programs.

The following section of the comprehensive plan represents how Milford will achieve its comprehensive plan. This section addresses various visions, goals, and objectives. It is important that we define these terms in order to understand how the

City of Milford will accomplish the comprehensive plan.

A Vision defines where the organization such as the City of Milford wants to be in the future. It reflects the optimistic view of the city's future.

Goals are statements that provide the overall context for what the city trying to accomplish in the next five years. The achievement of goals helps the city move closer to its vision.

Objectives are specific statements describing what the city is trying to achieve and when it will be achieved.

Strategies are the action plans that help the city achieves the objectives.

The State of Delaware requires that the comprehensive plan be updated every five years. The last terms in the Vision section are participants and the time frame for completion. The major participants are listed in order to achieve the strategy, objective, goal, and vision it takes more that just the City of Milford, but a multiplicity of organizations.

The time frame section has been broken down into short term which hopefully will be achieved in the next year, mid term which involves a time frame of approximately two to three years, long term which may take the full five years to accomplish, and on going which means the activity in continuing throughout the five-year period.

### *Neighborhoods*

#### *Characteristics of Neighborhoods*

In an effort to further identify development and characteristics of the city, the City of Milford was sectioned into four neighborhoods. These neighborhoods include the town center, the southeast section, the northwest section and the southwest section. This is the opinion of the planning department and is based on some geographical and some physical barriers or restrictions. Discussion remains open on the validity and the options regarding the selection of these neighborhoods, but this is intended to be a starting point for further inquiry and dialogue regarding the selection of these neighborhoods as well as providing a more in depth study of these particular study areas.

Some characteristics of neighborhoods in general include reference to a small group of houses in the immediate vicinity of one's house or to a larger area with similar housing types and market values.

Neighborhood is used to describe an area surrounding a local institution patronized by residents, such as a church, school, business district, or social agency. It can also be defined by a political ward or precinct. The concept of neighborhood includes both geographic (place-oriented) and social (people-oriented) components.

Another characteristic of neighborhoods is based on a low-tech idea: a neighborhood is only about a 15-minute walk wide. It's everywhere we can get to and bring stuff home, before our feet get too tired. It's roughly a quarter to half a mile in radius depending on the change in elevation and the availability of pedestrian walkways and direct connectivity with a variety of neighborhood commercial and residential opportunities. The potential exists that this 15 minute walk may be expanded in the future due to the rising cost of energy, as more people hopefully abandon local short trips in their automobiles and opt to walk.

#### *Town Center*

The Town Center is roughly composed of seventy-five city blocks. The heart and soul of this neighborhood is the Riverwalk, along the Mispillion River. It combines the water experience in an urban environment, with its wide pedestrian pathways and closeness to the retail shopping opportunities in the downtown. Other major characteristics of this neighborhood include the three Historical Districts which give this neighborhood added character and charm. It includes the two Elementary Schools, the City of Milford's city park, Bay Health Medical Hospital and ancillary medical facilities located adjacent to this medical facility.

The Town Center also has major employers consisting of the Dentspy/Caulk Company and additional employment and commercial development. The focal point of this neighborhood is the Riverwalk along the Mispillion River. Following are Opportunities and Challenges for this neighborhood.

#### Opportunities and Challenges

- \* Expansion of the Riverwalk and additional proposed residential development along the Mispillion River
- \* Reuse of the existing BayHealth Medical facility if it is ever vacated
- \* Expansion of the existing three Historical Districts
- \* Development of pedestrian/bicycle connection with the existing Riverwalk connecting other neighborhoods with this valuable resource.
- \* Maintaining the existing residential neighborhoods in stable condition

#### *Southwest Neighborhood*

The Southwest neighborhood consists of Route 113 acting as the spine of the neighborhood. To the south and east of route 113 there is a large master planned community called Central Park at Milford Ponds which has received both preliminary and final approval for various sections and the developers expect to start construction on several housing types in the future. A major housing development called Simpsons Cross to the north of Central Park is still unresolved which would have provided additional housing to residents of Milford.

On the west side of Route 113 is a proposed commercial and residential development called Cypress Hall. Other residential proposed residential neighborhoods include Brookstone Trace, a restricted age community and Walnut Village. Additional facilities include the Milford Middle School, several smaller residential developments, and the transfer station. The focal point at this time seems to consist of the Middle School, which provides the needed recreational space and the proposed commercial/residential development which will provide shopping and business opportunities to residents in the southwest section of the City instead of driving further north along Route 113.

The following are the Opportunities and Challenges of this neighborhood.

#### Opportunities and Challenges

- \* The reuse of the BayHealth Medical facility
- \* The development of the Simpson Crossing parcel.
- \* Additional development to the south and west placing transportation demands on the existing roads
- \* Additional commercial and residential development along Route 113

#### *Northwest Neighborhood*

The Northwest section is primarily an employment and commercial neighborhood with several residential areas. These residential areas include Knotts Landing, Light House Christian development a residential community near the intersection of Route 113 and Delaware 1, Wexford a proposed Traditional Neighborhood Residential Development just north of Route 114, Forrest Hills a proposed townhouse residential development off of Holly Hill Road as well as land designated for single family development south of the railroad line. Major employers in this district include Grow Mark, Southern States, the Greater Milford Business Park, Independence Commons which has the Delaware Veterans Home, Hospice of Delaware, and under construction the Boys and Girls Club of Milford.

It supports a large commercial area with the Wal Mart shopping complex, several out parcels accommodating a variety of eating establishments and small commercial enterprises. Major employers occupy the Masten Circle compound. An additional employer and provider of open space is the Milford High School. The outstanding parcel to the west commonly referred to the Fry property like the Simpson property remains undeveloped at this time.

#### Challenges and Opportunities

- \* The development of the Fry property for additional small industries similar to what was developed in the Greater Milford Business Park and Independence Commons
- \* Future residential development to the west and north
- \* Commercial development along the west side of Route 113
- \* Commercial development along the west side of Delaware 1

### *Southeast Neighborhood*

The Southeast Neighborhood is the newest neighborhood with several areas recently being annexed into the City of Milford within the last two years. This neighborhood has unique gerrymandering appendages in several directions. The area is comprised of several residential areas including Hearthstone Manor I, which provides a variety of housing options consisting of single family detached dwellings, villas, and condos and the proposed Hearthstone Manor II as well as single family developments called Orchard Hill and the Meadows at Shawnee.

Other developments include West Haven to the south along Delaware 1 and the former Emory property which was granted preliminary approval and named Wickersham. The major open space includes the Shawnee Country Club. Areas undeveloped include the Red Cedar Farms area which is zoned for single family and duplexes, the Isaacs Farm which is zoned Institutional Medical and the Mills property which is zoned single family residential. A major commercial and retail area is planned near the intersection of Delaware 1 and Rout 30. At this time the focal point appears to be the proposed large commercial development which would provide the needed retail outlets for this part of the City.

### Challenges and Opportunities

- \* The intersection improvements to Delaware 1 and route 30 by the construction of an overpass at this intersection
- \* Future residential development to the south and east of Delaware 1
- \* The need for additional public utilities to serve this neighborhood
- \* The need for additional public services such as police and fire protection to serve this neighborhood
- \* The need to provide additional recreational opportunities in this neighborhood.

Mr. Norris then presented a power point presentation (see attached).

The city planner explained that since the planning commission and council have discussed the urban growth boundary, there have been considerable requests from potential land owners adjacent to the urban growth boundary as well as property owners within the urban growth boundary for annexation and consideration of zoning.

Mr. Norris advised the planning commission in early January had a vision meeting where they discussed the vision of Milford and identified some pluses and minuses. That sparked interest with various groups who provided input from their organization's view. That included the hospital, Downtown Milford, Chamber of Commerce along with several other organizations.

In workshop meetings of the commission, visions, goals and objections for the city were discussed. In addition, implementation strategies for the city and these organizations were also discussed. They have also met with both counties who have reviewed the urban growth boundaries and related topics.

He reported that approximately one hundred residential surveys were sent out to citizens randomly selected from the voter registration lists. Twenty-five were sent to each of the four wards. A lot of valuable input was obtained in regard to how these residents would like to see the city developed and what opportunities they felt Milford offered.

Since the year 2000, the City of Milford has seen a 17% increase in population or 1,120 new residents. The population estimate for 2006 is 7,862 residents which is an annual increase of approximately 2.8% per year. This is expected to continue with another 200 persons per year added over the next five years.

Between 2000 and 2006, housing increased 23% or 664 residential units. Since 2004, there has been an increase of 1,133 jobs or 32% employment increase.

The median age has increased from 35.1 to 37 years which is a reflection of retirees moving to the Milford area.

This comprehensive plan will cover the time frame of 2008 to 2013.

Council needs to make some land use decisions that will be applicable in the future. Mr. Norris explained that council should consider how much of an urban growth boundary is acceptable. In addition, the location of a new medical facility will also need to be reviewed. The annexed land east of Route 1 should be considered as well as other sites in the city. In addition, the reuse of the existing medical facility must be taken into account and how that fits into the existing neighborhood.

In the 2003 comprehensive plan amendment, the conditional uses required for medical offices in residential neighborhoods was debated. Mr. Norris believes we should continue to require a conditional use for that purpose as well as develop some criteria for those type offices.

Other land use decisions in the comprehensive plan are the continuation of the riverwalk, as development occurs on the Mispillion River, and the connection of the riverwalk in a north-side direction with pedestrian or bicycle paths so that existing neighborhoods can have access.

The possible expansion of the city center district with mixed uses should also be considered. Residential development in the central city should be encouraged and opportunities for mixed uses including residential and commercial uses.

The continuation of new land for business park expansions and connectivity with proposed and existing developments are other land use issues that must be addressed. It is important that residential developments are connected to commercial developments to prevent people from having to get into their cars to access commercial uses.

Mr. Norris then presented the breakdown of the city into four neighborhoods—city central, north, southeast and southwest. He briefly reviewed each of the areas noting zoning districts, potential annexation areas, open space areas and pedestrian and bike connectors.

When the land east of Route 1 was annexed, one of the requirements of the state was for a master plan to be developed before final plans for construction could begin. That will be handled through a Memorandum of Understanding with State Planning.

Mr. Norris advised that he and Mr. Baird met with representatives of State Planning, the Department of Agriculture and DELDOT. The first step was to provide them with a map showing the intended land uses for the area east of Route 1. The Office of State Planning will coordinate each of those steps.

Mr. Crouch asked about the possibility of annexing additional land east of Route 1. Mr. Norris advised that the Department of Agriculture would prefer to see nothing but farming and open space in those areas. He explained that has been identified in preliminary stages as open space. With regard to transfer development rights, it has been identified as a sending area to other areas in the county or in the city of Milford which density could be increased. They got a strong signal from the Department of Agriculture that they are not interested in any development east of Route 1 in that area.

Mr. Baird agreed the main obstacle east of Route 1 will be the Department of Agriculture. The basis for that is the number of ag preservation lands that are on the southeast side of Milford and wrap around the entire east side particularly on the Sussex County portion of the river. One of the things talked about is if the city is going to get involved with a transfer of development rights program, and if that could be an area considered as a sending zone. That would mean that density could be purchased off those properties and transferred and resold to other parcels within the city.

He said it could also create a green belt on the east side of the city. This would start on Route 1 to the north and wrap around to Route 1 on the south east side of the city. That concept goes along with the concept discussed at the budget hearing of starting the green acres program to preserve some property. If done properly, it could become recreational areas that would become valuable assets to the city.

Mr. Crouch asked that if the Ag Department is against anything but farming being there, would that affect the decisions of those property owners who want to be annexed and would that impact the decision about annexing these lands.

Mr. Norris advised that his personal opinion is that annexation is a political process determined by the government. But input from the state through the Department of Agriculture is they do not want any development. Mr. Baird said that their decision is based on the fact there are certain things out of their control and currently the property is in Sussex County. There are certain rights through development those properties have today that the Department of Agriculture has no say. In one respect, they would like to see it stay in Sussex County and be valued as farm land. However, if the city can show we have some preservation program that will help meet the intent of what the Department of Agriculture is trying to do, as well as meet the intent of what the city is trying to accomplish through a land use program, we may be able to come together through some agreement.

Mr. Crouch pointed out that Livable Delaware says growth should occur in the city and the Department of Agriculture is part of state government. This opinion seems to conflict with Livable Delaware. Mr. Baird said the easy response is to fill up what you have and then address the development east of Route 1.

Mr. Ambrose said that what needs to be highly considered is if the city were to deny development, the council must also deny it. We cannot get caught when the city says no and the county turns around and says yes and it is then built. Then we have a number of developments that affect Milford though they are not contributing to the city's coffer.

Mr. Norris said that is why the urban growth boundary is so important so we know where to consider annexation and the comp plan can always be referred to.

Mr. Ambrose then complimented Mr. Norris and the planning commission on what appears to be a very good plan.

Mr. Norris encouraged anyone to submit questions or comments on the plan. The plan includes seven chapters and will be added to the website as soon as possible.

Mr. Brooks asked that the information obtained through the residential survey be shared with council. Mr. Norris noted it may be somewhat skewed because approximately 95% of those who responded were retirees and were 65 years or older though it was sent to random residents.

The Workshop Session concluded at 8:16 p.m.

Respectfully submitted,



Terri K. Hudson, CMC  
City of Milford

Attachment

CITY OF MILFORD

2008 COMPREHENSIVE PLAN

UPDATE  
MAY 12, 2008

# MAJOR TOPICS

- Public Input
- Statistics
- Vision, Goals, Objectives, Implementation Strategies, Time Frame
- Urban Growth Boundary & Potential Future Annexations
- Land Use Decisions

## PUBLIC INPUT

- Planning Commission had a Vision Meeting
- Topical meeting with a variety of groups and organizations
- Planning Commission has had Workshop Meetings
- Met with both adjoining Counties
- Residential survey
- Continue to have meetings in the future

# STATISTICS

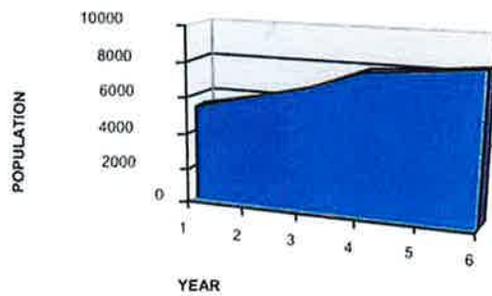
- 17 % Increase in population by 1120 residents for an estimate of 7862 in 2006 (2.8% Annual Increase)
- Using State mandated projections, this should continue for the next five years, adding approx 200 persons/year

## STATISTICS (con't)

- 23% Housing increase of 664 units from 2000 to 2006
- Since 2004, there has been an increase in employment of 1133 jobs. This represents a 32% increase
- Increase in the Median Age from 35.1 to 37 years

# STATISTICS (con't)

POPULATION PROJECTIONS  
FOR MILFORD 1980-2015



## VISION, GOALS, OBJECTIVES, IMPLEMENTATION STRATEGIES, AND TIME FRAME

- Visions for the City of Milford
- Goals for the City of Milford
- Objectives for the City of Milford
- Implementation strategies for the City and participants
- Time frame for completion

## URBAN GROWTH BOUNDARY AND POTENTIAL ANNEXATIONS

- Requests from several property owners to be included in the Future Urban Growth Boundary
- Areas to the Southeast
- Areas to the North
- Requests for new zoning

# LAND USE DECISIONS

- How much of an “Urban Growth Boundary” is acceptable?
- The potential location of a new medical facility
- The reuse of the existing medical facility
- Conditional uses for medical offices in residential neighborhoods

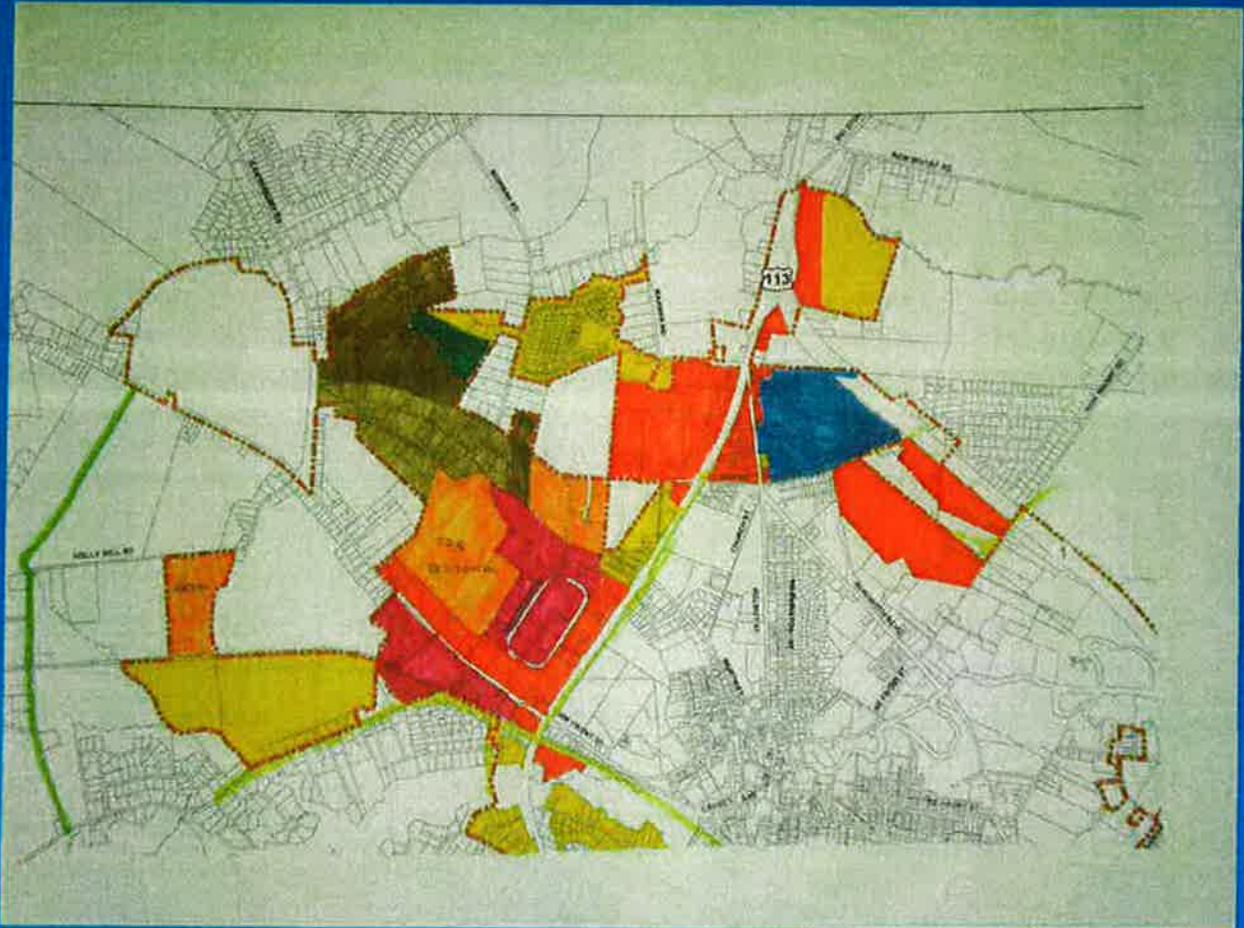
## LAND USE DECISIONS (con't)

- Continuation of the Riverwalk
- Possible expansion of the city center district with mixed uses and residential development
- Continuation of new land for business park expansion
- Connectivity with proposed and existing development

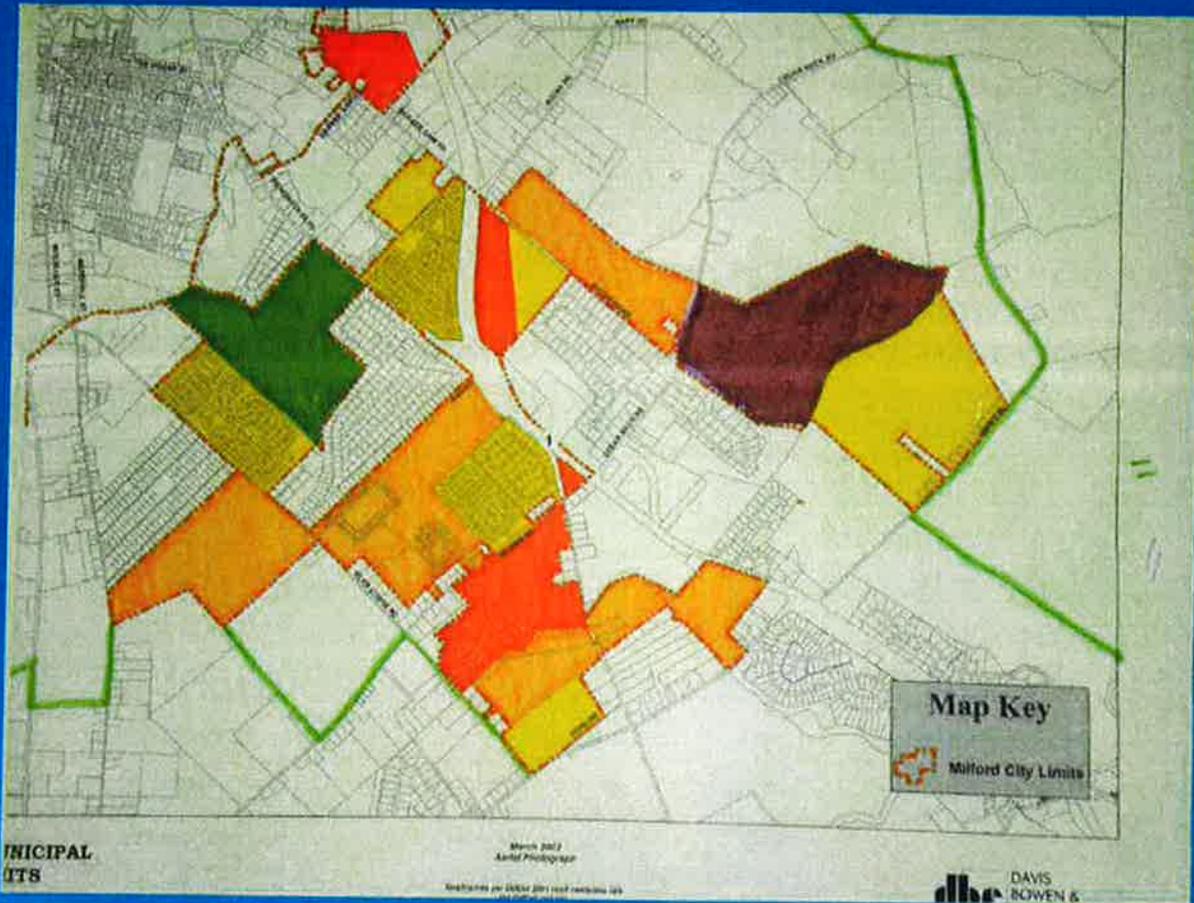
# City Center



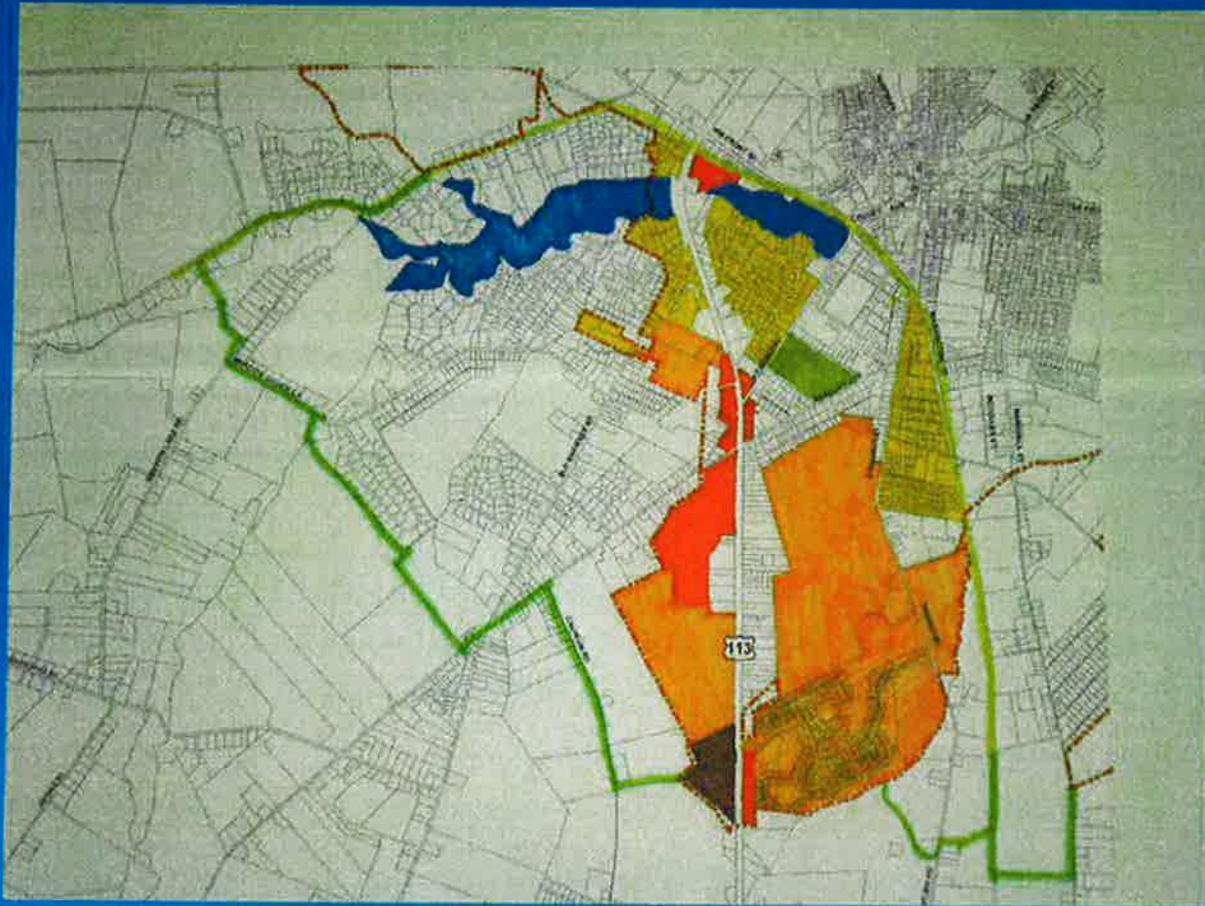
# North



# Southeast



# Southwest



*MILFORD CITY COUNCIL*  
*MINUTES OF MEETING*  
*June 9, 2008*

A Public Hearing was held before Milford City Council on Monday, June 9, 2008 in the Meeting Room of the Delaware Rural Water Association Facility at 210 Vickers Drive, Milford, Delaware to take final action upon the following matter:

Davis, Bowen and Friedel, Incorporated on behalf of Shawnee Farm LLC for a Conditional Use to allow a Shopping Center and the 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 the intersection of Shawnee Road/Route 36. Tax Map No. 1-30-3.00-261.00.

PRESIDING: Mayor Daniel Marabello

IN ATTENDANCE: Councilpersons Irvin Ambrose, Michael Spillane, John Workman, Clifford Crouch, Owen Brooks, Jr., Douglas Morrow, James Starling, Sr. and Katrina Wilson

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

COUNSEL: City Solicitor Timothy Willard

The Public Hearing was called to order at 6:29 p.m. by Mayor Marabello who followed with a reading of the public notice.

Mayor Marabello announced that after receiving a request from the property owner, this application is being reconsidered based on a decision made by council on April 28, 2008. The hearing was properly advertised and notification provided to property owners within 200 feet of the site.

Attorney Robert Gibbs of Wilson, Halbrook and Bayard introduced himself on behalf of the property owner. Mr. Gibbs prepared and presented the following Proposed Findings of Fact with Conditions the developer has agreed to. After a complete review of the record, it was forwarded to City Solicitor Timothy Willard.

Randy Duplechain of DBF, Incorporated presented the application and a site plan of the site. He advised this is the same footprint as was previously seen. The only difference is the home improvement store is downsizing the store from the original plan by approximately 14,000 square feet which will shorten the southern end of the store. Instead of a 117 prototype which is 117,000 square feet, this will be a 103 prototype which is about 103,000 square feet of retail area.

They are proposing four entrances. One from Route 36, one fully signalized intersection on Route 113 which is the main entrance into the development, to the south will be a rights in/rights out and left in entrance and a future extension to the south into the residential portion.

Mr. Duplechain recalled the last presentation and the concerns related to the left in on Route 36. That was discussed with DELDOT who provided a letter stating they would consider eliminating the left in. What is now proposed at the Route 36 entrance is a rights out, a rights in and a left out with no left in into the project. That will be islanded off and extended down. Seabury Avenue Extended will become a cul-de-sac that will provide an access point to the city's water plant. He referred to the 60-foot right of way which they will request DELDOT turn over to the city and be narrowed to 50 feet since it compares to the city's minor streets.

With approval from DELDOT and the city, the additional ten feet can then be offered to the residents along Seabury Avenue.

In regard to buffering, they are proposing a privacy fence on the north side which would be within this ten-foot area. A landscape buffer will be provided on the south side of the site.

Mr. Duplechain offered to work with Danny Fox to buffer the entrance from their property. However, DELDOT will not allow buffering in the right of way. If he is willing to permit buffering on their property, they are willing to purchase the buffering and provide either fencing or landscaping.

On the stormwater management, an off site stormwater management evaluation will be performed to make sure the downstream channel can handle not only the flow from the development but also the entire watershed as was requested by soil conservation. Where possible, they will also implement some bio-filtration, bio-retention water quality type aspects to meet the water quality standards. A number of agencies asked if the paving could be reduced and they are willing to come before the Board of Adjustment and request a reduction in the amount of required paving for the shopping center. Presently there are 5.5 spaces per thousand which is well in excess of what is needed. They will probably request a reduction to either 5 or 4.5 spaces per thousand. That will allow less paving and more green space.

He added the size of the structures are the same with the exception of the home improvement store.

When asked about the cul-de-sac and who would make those changes, Mr. Duplechain explained that the paving thickness is adequate, but a cul-de-sac will be added and the connection to the highway will be closed off with a stub street to the water plant whose costs will be paid by the developer.

Mr. Duplechain pointed to the site plan noting the residential parcel on the corner is very small and if they agree to accept the additional property, it will almost double their lot size.

Mayor Marabello then opened the hearing for public comment.

Dan Fox of 17794 Oak Hill Drive, states he lives across the road from the proposed Route 36 entrance. He referred to the letter of reconsideration from Bruce Geyer. He stated in the letter that city council had asked to with Sussex Conservation and DELDOT to see what could be done to alleviate concerns of the neighbors. Mr. Fox said they got a letter from them and never saw them. Mr. Fox said he actually had to call the people to find out exactly what it stated which was only the minimum code for the stormwater. DELDOT did not give a stamp of approval but it was said DELDOT gave them the approval and stormwater gave them the stamp of approval. Mr. Geyer also brought up in the letter that this would resolve Mr. Fox's issues.

Mr. Fox said he brought up the underground infiltration at the previous meeting which is still part of stormwater management. He was trying to give more options to alleviate some of the stormwater running across his property because his biggest concern was his livestock.

The letter stated that he brought up new issues. Mr. Fox explained it all still pertained to the runoff.

He spoke to Mr. Elliott, who is the assistant manager for stormwater of Sussex County. Mr. Fox explained that each county has a code they have to follow. In speaking with the people in Kent County, they said each county is a little different. He asked Mr. Elliott if he ever had stormwater running across any property that had livestock. He could not remember this ever happening and stated Mr. Fox is the first one with this concern and agreed it could affect his livestock. No one else has that problem.

He also asked if the wet ponds will overflow. Mr. Elliott responded by saying no, they are technically designed.

Mr. Fox said to look at the Walmart in Seaford which is built to Sussex County code. That pond is built to the edge of the blacktop and anytime they have a little rain it is flooding the parking lot. With a two or three-inch rain, it is halfway to the building. They claim it will hold all the water but it does not.

He stated in the last three and a half weeks, since the weekend before Memorial Day weekend, we have had 8.9 inches of rain with 3.7 inches in one day. We had another 2 inches on race weekend and another inch and a half the other day. To break it down, you need 27,154 gallons of water to make one inch of rain on one acre. He got that statistic from two or three irrigation companies.

Mr. Fox said multiply that 8.9 inches out, per one acre, is 241,671 gallons of water. This proposal has approximately 40 acres of blacktop which comes out to 9.6 million gallons these retention ponds must hold which we got in the 3.5 weeks.

Mr. Elliott told him that a ten-year rain is approximately 4.5 inches of rain. From three straight days of rain, we had almost

6 inches of rain. Then we got another 2 inches not two weeks later which is classified as a five-year rain. Mr. Fox said these retention ponds are supposed to hold all of the water. His biggest concern is the fact they say supposed to. He has watched the one at Walmart in Seaford which is built to the Sussex County Code which this developer is supposed to follow. It will breach and come across his property. His livestock will drink the water and if any of his livestock gets sick and he has a vet bill or one dies, he asked who is paying the bill. He asked if anyone here is willing to sign a paper, have it notarized saying they will pay this bill for the rest of his life as long as the developer is across from him. He wonders if Mr. Duplechain or Mr. Geyer would be willing to do that.

He said that Mr. Duplechain made a comment at the meeting they had at Representative Walls' business with DELDOT that he would sign it, but he has not seen it yet. No one has stepped forward and provided a piece of paper from a lawyer that will stand up in a court of law saying they will pay for his livestock if they get sick from drinking this water. He will have to foot the bill and he is the one that will suffer from lost production. He cannot afford that. There was a drought last year that hurt him and he had to sell quite a bit of his livestock. He has about twenty cattle with calves. He just had another calf born yesterday and he does not want to lose it. He enjoys watching it and his neighbors enjoy watching it along with other people sitting in this room. It is the last country thing people see before they come into city limits. It is also the first thing they see when they are heading home. It is a nice country scene with a little pond.

With the runoff, Mr. Fox also asked Mr. Elliott about the pond and what would happen if it was frozen during the winter. He has about a half acre pond in front of his pond which is L-shaped. Three years ago it froze. We then had a three-inch rain that froze over top of it which made a sheet of ice. He said it looked like white water rapids going across his pasture. His neighbor can contest to it because it was half way up to their property.

Mr. Fox advised these retention ponds will not hold any water back when it is frozen. The water will run across the ice. They also said it was designed to hold it technically, but when it is frozen it will not hold anything and will run across his property and contaminate his property. He has grass as a buffer to try to slow the water and collect the excess nutrients so it does not run down into the lake and into the Mispillion and on out to the bay. Part of his nutrient management plan is that he provide a buffer so it does not contaminate downstream.

He referred to Mr. Workman's comment about Silver Lake being somewhat polluted but we are trying to keep it clean. It is easier to take care of the problem before it starts because down the road it will cost big bucks to fix. That money will have to come from the city because Silver Lake is inside city limits. DNREC will probably foot a lot of the bill because they will be taking care of it.

Mr. Fox said during the planning commission hearing Mr. Duplechain made a statement that they had to have a left in off Route 36 because the four houses at the point have entrances on the back of their properties. He pointed out they need to get into their property. He tried to work with Mr. Duplechain and asked about a rights in only so allow vehicles leaving to go out to the highway come back around.

He does not have a problem with people going in but the problem is coming out because they will shine their lights into his house. If there is an accident, the police will be called. He will also be out there at two or three o'clock in the morning trying to round up his cattle which could involve a 1,500 pound bull that wants to cruise the neighborhood. It is different from a dog and you are not just going to put a lease on him and walk him back home. It will be difficult and require a number of people to steer him in the right direction toward his home.

If there is an accident there, it will tear his fence up. At three o'clock in the morning, it is hard to put a new fence up along with new posts to keep his cattle in.

Mr. Fox feels the wildlife and the citizens of Milford and people traveling to and from Milford need to be protected. He is concerned that if a cow gets out on the road and is hurt or hurts someone and hopes they will not be killed as has happened in similar cases.

He cannot imagine how traffic will increase because he cannot get out on the roadway now. When he goes out with a piece of equipment, it takes a half mile to get to its top speed of 16 miles an hour. There are a lot of tractor trailers and trucks because they are taking barley off and are getting ready to take wheat off. Milford Granary is a big company for

neighboring farmers. There is a lot of traffic and a lot of big farm trucks coming through this area at slower speeds. When a car pulls out in front of them, a tractor trailer with a thousand bushels of grain is unable to stop on a dime and instead will plow them down.

Karen Colletti of 6681 Shawnee Road then reported she has an LPP system on her property line which is 50 feet from the large water retention pond and causes her concern. She has a lot of clay on her ground so she does not have a lot of drainage and that is the only place her septic can go. Ms. Colletti is also concerned with the rain we have had with water backing up. Ms. Colletti stated that Sam Powell put her septic in and he said it will ruin her septic. There is no where else on her ground it can be placed. She is also concerned about the snakes and mosquitos that come with the drainage system. She said the buffer they are adding along the residential lots goes along the foot of the retaining pond and not the back where her property is. That buffer is meant to protect the neighbors.

Ms. Colletti also has concerns about the traffic. Her kids grew up there and went up and down the road many times but kids can no longer do that. She has grandchildren now who can't do that. She sees kids on bicycles. There is no protection for them from the traffic. No sidewalks exist and there is no way to make the road wider. There is no room for a safety walk. She does not want traffic encouraged to use Route 36 to keep everything away from the intersection at Route 113 and 36. Nothing has changed and she questions why we are here again. There is still no bypass and this will still create the same amount of problems and concerns for the residents. She understands the group opposing this is only a small group of people, but noted that Milford is made up of different groups of people.

Ms. Colletti feels their concerns are legitimate and asked that council should consider them.

Trish Marvel of 6525 Shawnee Road stated that Seabury runs behind her house and she is one of the four houses at that point. She said she has the same concerns she had before. She understands that we have to move forward and progress is important and Milford wants to grow and prosper. It will create jobs and there are a lot of wonderful things that will happen by bringing in this type of business. However, it is not the most logical place to put it. The infrastructure next to Walmart is typical of where a box building should go. That is a pattern with Seaford and Dover. She asked why is Milford putting a box building in a residential area. She asked if any consideration was given to placing a box building in an area already conducive to the traffic with lights and entrances, roads and property. Ms. Marvel emphasized she is not opposed to residential going into that area.

She asked if consideration has been given to putting this box store somewhere other than where they are proposing. Ms. Marvel asked specifically about the Walmart area where the infrastructure exists for a large building and a huge parking lot. She said council needs to answer that.

Ms. Marvel said this location is a total destruction for livestock, safety and traffic reasons. She feels Route 1 is considered a commercial piece of land but when you bring all of that traffic into the residential, what does that do to their residential area. She noted that these people have lived in this area for twenty and thirty years.

She understands it is a small group and only represents a small portion of Milford but their concerns are very valid. She asked if consideration could be made to have it somewhere else in Milford. She does not disagree that Milford does not need a Lowes or a Home Depot, but this location is not conducive to what is proposed. They can put barriers up and fences up but it will not eliminate the traffic and everything else that goes along with it.

Councilwoman Wilson responded by saying the first thing that comes to mind is that when individuals come to Milford and are interested in specific land, they do not come to council first. A developer purchases or contracts the land and until it gets to the point when the plans are in place and they must come before the city is when council gets involved. Neither the city nor council goes to these developers and tells them they want a home improvement business or any other type business on a specific piece of property.

Ms. Marvel feels that because part of this project is residential, she feels the scope of the project should be changed and the entire piece made residential. All the things that go with this from a residential perspective make sense to her. But the box building and traffic, runoff and rerouting roads, adding lights and putting an entrance off Route 36 that is related to this type business does not make sense.

She feels there are industrial areas for this type of business. Ms. Marvel said cutting the size of the building is not that much when you think about it because it is really not being reduced that dramatically. She said her husband spoke to DELDOT today and they were told things that are not valid. They have alluded to the fact they have received DELDOT approval. She believes they may have had a conversation with DELDOT and verbally got some direction, but her husband talked to someone today specifically for this area and there is nothing that has been officially approved. She thinks that some of this has been done underhanded and is trying to be shoved down the residents' throats without them knowing all the facts. Ms. Marvel ended by saying there is a lot at stake.

David Marvel of 6525 Shawnee Road said he is the husband Ms. Marvel was referring to. He stated that he talked with Derek Sapp who works for DELDOT. Mr. Marvel said that Mr. Sapp indicated he knows nothing about getting this piece of land from the developer. He indicated that nothing has been given or nothing received and this is all basically a pipe dream. He gave Mr. Marvel permission to use his name (Derek Sapp-telephone number is 760-4803).

Councilman Workman asked Mr. Marvel what Mr. Sapp's position is with DELDOT and if he is in a position to make decisions on this type of development. Mr. Marvel said he is the head of the development area and after talking with three different people, someone gave him Derek Sapp's name. He is in charge of this area and would know if anyone does. He said that he knows nothing about receiving anything about this dream.

Mr. Duplechain stated a number of those present attended the meeting that was held at Walls Farm and Garden Center. He advised that Derek Sapp (Subdivision Manager for Western Sussex County) was one of the individuals there along with DELDOT Engineer Supervisor Marc Cote'. Mr. Duplechain explained that Mr. Sapp is very familiar with this project. A traffic impact study was done through DELDOT which included the Simpson Crossing, Milford Ponds, some of the traffic from Hearthstone Manor, Meadows at Shawnee, Fitzgerald's Industrial Park, Knollac Acres and the Solid Waste Authority. Full build out of all those developments was part of the study along with the full build of this project.

Mr. Duplechain added that Mr. Sapp has been intimately involved with the discussions related to the entrances and is actually the person who wrote the letter related to the Route 36 entrance. He and/or Mr. Cote', who is Mr. Sapp's boss, have been part of these discussions.

He also explained that the approvals will not be granted until the conditional use is approved and the construction documents are submitted for review. This will also be done with the other agencies as well. The design approval process is not started until the preliminary and conditional use approvals are granted by council. Mr. Sapp may have been referred to the construction plans only because they are not in a position to submit them yet. But they are familiar with the entrances and DELDOT is the one who made those recommendations.

Attorney Rob Gibbs then referred to the statement made by Mr. Marvel regarding DELDOT not knowing anything about the change at the Route 36 intersection of lands being added to the properties, etc. He said that in fairness to Mr. Marvel, he does not think DELDOT is on the same wavelength on that proposal by the developer. That came about as a result of the meeting where this body asked for additional information on the Route 36 intersection. As a result, there has been a supplement to the record. Mr. Gibbs said it is not a pipe dream and is actually part of the record. He referred to the April 15<sup>th</sup> letter which was provided to the council that explained the changes requested to Route 36 that were discussed with DELDOT. DELDOT responded by talking about the left in and some changes to Route 36.

He then referred to Mr. Duplechain's earlier statement about one of the conditions they are proposing which is item B on the list of conditions they propose to be attached to this approval. *"At the request of the city hereafter, applicant will request that DELDOT eliminate the left-in access to Cypress Hall from Route 36"*. He explained that depends on whether the city wants this. He reiterated that DELDOT owns the right of way and they would have to give the right of way in order for the developer to create the buffer and the ten-foot strip along the back of those lots that back up to Seabury Avenue Extended. That would have to be asked for by the city. If the city agrees that it can be done, the developer will request DELDOT abandon that 60-foot right of way to the city for management. The city would then ask the developer to go ahead and make their application. If that can be done and right of way reduced to 50 feet, then the additional ten feet can be dedicated to the property owners. The developer would then, again at his cost, undertake the fencing and buffering proposed in writing as one of the conditions. He agrees DELDOT would not know about that specifically because at this point, it is being submitted in writing as a condition of this approval first. He hopes that will clarify that issue.

Kathy Weldon of 6494 Shawnee Road explained she is directly across Route 36 and one of the major impacted properties. She said she received no notification about the proposed changes to Route 36. Neither has any of her other neighbors on the north side of Route 36. She feels that is why the original meetings and public hearings for this development received less response from the residents because they were not told how badly the congestion was going to be or how restricted the ingress and egress from their own homes was going to be. The congestion on Route 36 has been building over the years. This is not going to improve it.

Ms. Weldon agrees with Ms. Marvel that disrupting an established neighborhood is detrimental to the community. She has also suffered severe flooding and her property abuts the property of Mr. Fox. A previous rainfall has caused loss vegetation and she does not see how this will improve that. She has been flooded before.

Chuck Rini of 119 Ginger Lane stated he is a member of the planning and zoning commission. However, he is speaking as a proud citizen of the City of Milford. He heard a couple of people mention the Walmart area and he lives behind the Walmart area in a residential community. He has no problem with the Walmart setup or the traffic flow. As a private citizen, he feels very strongly in favor of this project mainly because it will be very good, through his eyes, for the city. He believes it has the potential to create several hundred much-needed jobs that would go to the people in Milford. He also believes it will create a new found tax base for the City of Milford and numbers may be in the several hundreds of thousands of dollars.

Mr. Rini explained that box stores are now offering a larger selection of merchandise. He remembers sitting in this room listening to one of the heads of a medical center facility when he was questioned about the lack of doctors coming to the Milford area. The gentleman spoke and said that one of the first questions asked by any candidate coming to the Milford area as a doctor or medical professional, is what type of shopping is available for their families. He feels we need to improve the shopping in Milford in order to receive more professional people here.

Also as a personal note, Mr. Rini stated he is not a farmer and he will not suggest he knows anything about farming. But he believes that from an economic basis, if you become anti-development and developers do not want to come into the Milford area, if you are a farmer and you want to sell your farm, you eliminate the possibility of selling it to a developer. In the past, farms were handed down from family to family, generation to generation, though that is basically fading from the American scene. He said all you have to do is go to the Department of Agriculture to see how much farm land this country is losing on a daily basis which he thinks is a critical situation.

Being a citizen of Milford, he wants to say that he strongly supports this project and believes it would be a tremendous asset to the city and the people of Milford.

Ms. Marvel again spoke stating she is not opposed to progress. She thinks having a box store in Milford would be great, but it is this location that is her concern. She is not against progress and creating jobs and all those wonderful things along with taxes, but this location is her problem.

Butch Comstock stated he has a business at 6706 Shawnee Road. He says he respects all the neighbors' thoughts about water and those issues. Where he is located, there is a lot of rain that comes down Route 36. He is not disagreeing with the neighbors, but there is already a water problem and it does come down Route 36 by his shop and may not have anything to do with the box store. He stated that before everyone gets upset about water, it may not be an issue if there is a culvert under the road. It could be coming from the right side of the road and having nothing to do with it. He is somewhat in favor of this, but respects the neighbors' concerns. It would be nice to have this in Milford. He agrees traffic is heavy to begin with and he is unsure whether a box store would make it worse. His question was about the water issue if that is the main concern.

Mayor Marabello asked whether anyone else wished to speak; there was no response. Seeing no response, the mayor declared the public comment period closed at 7:16 p.m.

Mr. Duplechain asked to respond to a number of items discussed. One is in regard to the comment about the water coming down Route 36 which he understands is a substantial amount of water that comes down Route 36 and ends up in this same location. The study required by soil conservation is not just on this property and the surrounding properties. They are

actually looking at the entire watershed which would include the water coming down Route 36. That will be taken into account when we look at the downstream affect of not only this shopping center but that whole area. Depending on what is found, they may be able to make improvements downstream that would address some of the flooding issues they currently have.

Their requirement is they cannot discharge any more than is already being discharged. It is a soil conservation requirement. He is hoping the study will reveal some improvements that will benefit everyone in the area.

Mr. Duplechain said there was a discussion related to why this is occurring on this site and not next to the Walmart. He explained there is not enough property at the Walmart location. There is only one piece left with some size to it. It has been looked at previously for a potential home improvement store but not deep enough to handle it. Additionally, the adjacent property owner was not willing to sell his property. As a result, that location would not fit a home improvement store.

He noted that this property is zoned C-3 and has been zoned C-3 for sometime. They have gone through the public hearing process to have it annexed and zoned. It is a use that allows highway commercial. If this project is turned down, the likelihood of something being commercial on that property still exists without needing a public hearing for a conditional use. It has been shown as a location that can handle commercial in addition to the traffic. According to DELDOT, the studies show it can handle this development.

There were no questions or comments from council for Mr. Duplechain.

Mr. Workman asked to comment about the four residences on the end of Seabury Avenue Extended and the rights in and rights out. He feels that is something that can happen because when they first came up here, they said they would be able to do that. Tonight they said they would not be able to make that left. He went to this location but no one was home. He agrees they use their backyard to access their properties and he thinks that may be something we should consider in reference to putting in a cal-de-sac in and their right in and right out.

Mr. Workman said in regard to the retention pond, he understands where Mr. Fox is coming from but we also have experts and procedures and policies to make sure the regulations, not only for the city but also for the state, are met. If something occurs as did in Seaford, he feels we can address it then. But if they have met all standards, that is what is required.

He stated that council is here tonight to decide if we want this development. The majority of people in Milford want this development. Ms. Marvel asked why not put residential in there instead of the box store. Route 113 is zoned commercial. The whole idea was this stretch be commercial development. If it was made all residential, Mr. Workman feels that would generate even more traffic than this box store. This box store opens and closes at specific times. Residents would come in and out twenty-four hours a day and each home would have two to three cars.

Mr. Workman said we are also trying to bring businesses into Milford. He understands the residents concerns who live there, but Mr. Workman feels the developer will work with them in reference to the buffer because they understand it is a concern. He pointed out that council needs to look at the future of Milford as well. He feels all the questions have been answered by DELDOT and water conservation.

Mr. Workman will ask that the rights in/rights out be considered because the residents are affected by this development. He agrees they need to get in and out of their properties and there was a change made tonight from the initial plan presented.

Ms. Wilson asked if the engineer can address the right in and right out issue again and how it will affect this plan and Mr. Workman's reference to the change in the plan.

Mr. Duplechain referred to the drawing of the area, noting that DELDOT was very adamant about people going through the Route 36 intersection to make a right. They felt they would be doing a cut-through using Seabury Avenue Extended which would generate additional traffic. The rights-in from Route 113 is another access point that would bring more traffic behind the residences. He would be more concerned if he were a resident along Seabury Avenue Extended with leaving Seabury Avenue Extended rights in/rights out connected to Route 113. He thinks DELDOT eliminated the left-in at Route 36 because council asked the developer to come back. He believes they felt they could eliminate it because the movement

could occur at Route 113 and Lakeview Avenue and the left into the site at the main entrance. He thinks that DelDOT would prefer to keep the left-in at Route 36 but because of the residents' concerns related to the amount of traffic using Route 36, DelDOT agreed the left-in could probably be eliminated.

Mr. Crouch said he was under the impression there was a left in being eliminated off Route 36.

Mr. Duplechain agreed and pointed out that in the original plan, there was a left turn coming into the site from Route 36. This movement was eliminated to stop some of the traffic using Route 36 to get to the site. The reason DelDOT want to keep the left out is because if it were eliminated someone heading west from the shopping center would have to use the main Route 113 intersection, make a left out onto the highway, and then make another left to get onto Route 36. Keeping the left out is an easier connection when going in westerly direction.

Ms. Wilson asked how the change was made to eliminate the left in. Mr. Duplechain explained the change was made based on the concession by DELDOT who said there was concern related to the amount of traffic coming into that area. To help reduce the traffic, they were willing to allow the left in to be removed. They also discussed the possibility of eliminating the left out and doing a rights in/rights out. They felt it was important to keep the left out and were willing to remove the left in.

DelDOT was not keen about leaving the rights in/rights out because of the amount of traffic it would generate behind the homes on Seabury Avenue Extended.

Mr. Spillane said that because the store is being downsized, he asked if the storm pond can be increased.

Mr. Duplechain explained that the stormwater pond will be made as large as possible and if it can be oversized, they will do that. But they have to meet their requirements. He explained the store is shortening the one side by 45 or 50 feet. That strip of area will be used as a bio-retention area. This will allow stormwater to be sent from the parking lot to the bio-retention area which will connect to the stormwater management pond. They are also hoping to reduce the amount of parking spaces which by nature itself will reduce the amount of impervious surface and in turn, reduce the amount of stormwater management that would be necessary.

Depending on if it can be reduced, they would be doing some bio-filtration along the front for a water pond purpose. In essence, Mr. Duplechain feels they are expanding stormwater management where possible. He believes they are sized properly and if it is found it is not enough, they may do something in the area near the discharge pipe. It should be adequate considering the size of the ponds and the fact that the majority of the water will be directed to the stormwater ponds. The two ponds will be interconnected and will basically act as one. The discharge point would be at that location.

In regard to the concern about the water coming down Route 36, they will review the entire area in this study and will do an off site analysis.

Mr. Spillane referred to the road going out of the shopping center and asked if there is anyway to put something, such as a steel barricade, across the other side of the road to prevent that vehicle from hitting Mr. Fox' fence. Mr. Duplechain said that would have to be a decision of DELDOT though they may consider a guardrail of some sort particularly considering the steep drop off. DELDOT could possibly allow a guardrail as opposed to landscaping. He reiterated they will definitely consider that.

No one else from the council commented.

Mr. Crouch moved for approval of the major subdivision of 69.23 +/- acres into 8 lots, in a C-3 Zone, to be known as Cypress Hall, seconded by Ms. Wilson.

Mr. Willard directed council to state their reason for their vote.

When asked for questions, Mr. Spillane mentioned the possible addition of another storm pond, Solicitor Willard explained that they will have to come back for finals, including a final site plan, which will be much more detailed. As the applicant

already indicated, they will receive final Sussex Conservation District approval based on many of the items discussed this evening. In addition, other approvals will be required including a final approval from DELDOT.

Motion carried by the following unanimous roll call vote:

Mr. Ambrose stated that gasoline officially hit \$4.04 a gallon today across the United States. Any elimination of driving on behalf of the citizens should be taken into account and he votes yes.

Mr. Spillane votes yes and states he believes the contractor will try to work with the people in the surrounding area and will keep an eye on the storm drainage problem.

Mr. Workman wants the developer to know that he believes they want to work with the residents and because their lives are being uprooted because of the construction. This is important and a lot of his constituents have called him in favor of this and only a couple have said no. Most of the people that called him were in favor of this. He got his answer from DELDOT and he knows the retention pond must be by code and votes yes.

Mr. Crouch votes yes because it will bring jobs to Milford. Also in doing some research, the bypass is not dead though he would feel much more comfortable if it were on the drawing board but votes yes.

Mr. Brooks votes yes taking into consideration a couple hundred new jobs. The main reason he voted no last time was because of traffic. But he has since met with DELDOT at Representative Walls' business when this was discussed. DELDOT was going to try to improve it and he has always been told that no project can be approved unless it receives approval from DELDOT.

Mr. Morrow also votes yes and he has supported it mainly because the planning commission supports it.

Mr. Starling votes yes because it will bring more jobs to Milford. He, too, feels that DELDOT will continue to work to improve the roadways and the developer is willing to work with the neighbors.

Ms. Wilson votes yes based on the planning commission recommendation who have already done a majority of the leg work. The engineer and developers have complied with all the previous requests of council in addition to DELDOT's support and work on the project.

Solicitor Willard then read the following conditions submitted by the developer this morning and recommended that if the conditional use is approved, they be included in the approval:

1. Applicant will work with DELDOT to determine the amount of right-of-way dedication that will be required and will obtain entrance approvals prior to entrance construction.
2. At the request of the city, the applicant will request the DELDOT eliminate the left in access to Cypress from Route 36. At the request of the city, the applicant will request that DELDOT abandon the right-of-way of Seabury Avenue Extended to the City of Milford for maintenance. If the city thereafter approves the reduction of the right-of-way to 50 feet, and the dedication of the northernmost 10 foot residual to the property owners along Seabury Avenue Extended, the Applicant will undertake the 'Fencing/Additional Buffering'; i.e., applicant will construct a 6-foot residual to the property owners along Seabury Avenue Extended property owners' properties, and will install a landscaped buffer with plantings along the northern side of Seabury Avenue Extended ("Fencing/Additional Buffering").
3. Applicant will construct a shared use path in the DELDOT right-of-way along the development frontage along U.S. Route 113, as approved by DELDOT.
4. Applicant will seek approval of the City of Milford Board of Adjustment to reduce the number of parking spaces to meet actual or anticipated demand in order to reduce impervious surfaces.
5. Applicant will comply with Sussex Conservation District's requirements as set forth in its letter to DB&F dated April 22, 2008.

Ms. Wilson moved the conditional use be approved, subject to the above five conditions, as read into the record by City Solicitor Willard as outlined in the Proposed Findings of Facts and Conditions dated June 9, 2008 for Shawnee Farm, LLC and Cedar-Ironwood Cypress Hall, LLC. Motion seconded by Mr. Crouch.

Mr. Workman suggests that in the future, any document submitted for a council meeting be provided in time to be included in the council packet which is finalized the Wednesday prior to the meeting. It is important that council have sufficient time to review any paperwork and that it not be allowed once the packet is done.

Mr. Willard then reviewed and read into record, the following criteria for evaluation for a conditional use per Section 230-48 of the city code:

The presence of adjoining similar uses.

An adjoining district in which the use is permitted.

There is a need for the use in the area proposed as established by the Comprehensive Plan.

There is sufficient area to screen the conditional use from adjacent different uses.

The use will not detract from permitted uses in the district.

Sufficient safeguards, such as traffic control, parking, screening and setbacks, can be implemented to remove potential adverse influences on adjoining uses.

Mayor Marabello then asked council to state their reasons for their vote.

Mr. Ambrose votes yes stating this is a conditional use in the C-3 zone.

Mr. Spillane votes yes for the same reasons stated by Mr. Ambrose.

Mr. Workman states that everything is in black and white and is on record so the developer is aware of what needs to be done and votes yes.

Mr. Crouch votes yes because it is an approved use of the property through a conditional use and it is a commercial property that adjoins additional commercial property.

Mr. Brooks votes yes based on the conditions that Solicitor Willard read into record.

Mr. Morrow votes yes as he did during the initial vote because it meets the criteria of a conditional use.

Mr. Starling votes yes for the same reasons stated by Mr. Morrow.

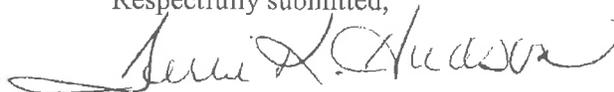
Ms. Wilson votes yes based on the application meeting the criteria in our code as was read by Solicitor Willard.

Motion carried by unanimous vote.

Mr. Crouch moved for adjournment of the Public Hearing, seconded by Mr. Workman. Motion carried.

The Public Hearing adjourned at 7:43 p.m.

Respectfully submitted,



Terri K. Hudson, CMC  
City of Milford

CITY COUNCIL OF THE CITY OF MILFORD

PUBLIC HEARING

Shawnee Farm, LLC and Cedar-Ironwood Cypress Hall, LLC

Application for Conditional Use to Allow a Shopping Center  
and

Preliminary Review of the Major Subdivision of 59.64 +/- acres into 8 Lots, C-3 Zone

Sussex County Tax Map Parcel No. 1-30-3.00-261.00; 1-30-3.15-25.00, 26.00 & 30.00

June 9, 2008

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**PROPOSED FINDINGS OF FACTS AND CONDITIONS**

1. This matter comes before the Mayor and City Council of the City of Milford upon application of Shawnee Farm, LLC, Owner and Cedar-Ironwood Cypress Hall, LLC, Developer (collectively "Applicant"), the owners of a development located on the West side of US Route 113, South of Route 36 in the City of Milford. The development, known as Cypress Hall, consists of +/- 87.70 acres of residential lands (zoned R-3, Garden Apartment and Townhouse District) and +/- 59.64 acres of commercial lands (zoned C-3, Highway Commercial District). The Applicant is seeking to subdivide the commercial lands into eight (8) lots:

- 6 outparcel lots totaling 9.61 acres;
- a +/- 29.91 acre lot for a shopping center;
- +/- 4.25 acres of public right of way; and
- residual lands containing +/- 15.83 acres.

The application includes a request for approval of a Conditional Use to allow the shopping center. The application, a combined application for: Preliminary Site Plan Review; the afore-described Major Subdivision; and the afore-described Conditional Use for a shopping center, is hereafter referred to as the "Application".

2. The Applicant proposes 237,200 sq. ft. of commercial space in the shopping center (excluding a garden center adjacent to one of the buildings), to include a 139,000 sq. ft. home improvement store (only 117,000 sq. ft. of which is actual retail; the balance is to be used for offices, loading and storage); a 65,000 sq. ft. grocery store and miscellaneous additional retail space totaling 55,000 sq. ft. The Applicant's preliminary plan, submitted with the Application, consists of 6 pages (the "Preliminary Plan"). The site plan page shows the proposed location of the buildings, the retail space of the buildings and the required/provided parking. The Preliminary Plan also includes: a cover page; a preliminary record plan, including boundary and topographic survey data; a

preliminary drainage plan; a preliminary utility plan; and a preliminary landscape plan. This Preliminary Plan<sup>1</sup> was presented to the City of Milford Development Advisory Committee (“DAC”), which provided its comments, and identified contact persons for the various departments of the City of Milford, the Sussex Conservation District and the State Fire Marshall’s office, as reflected in Meeting Minutes of January 18, 2008. These DAC Minutes are incorporated into the record for this project.

3. The Application was presented to the Planning Commission in a duly noticed Public Hearing on February 19, 2008. The Planning Commission preliminarily approved the Major Subdivision as presented and the Conditional Use for a shopping center as presented.

4. The Application was first presented to this City Council at a duly noticed Public Hearing on March 24, 2008. This Council tabled the Application and requested additional information regarding: i) the proposed Route 36 entrance to the Development; ii) storm water run off from the development; and iii) and fencing and/or buffering for the benefit of property owners along Seabury Avenue.

5. The Application again came before this Council at its regularly scheduled meeting on April 28, 2008. The Applicant, through its engineer, Davis Bowen & Friedel (“DB&F”), reported to the Council additional findings and information requested in the March 24, 2008 meeting. Regarding the proposed Route 36 entrance, Applicant provided the Council a letter from DelDOT dated April 15, 2008, addressing the Route 36 entrance to the development. This letter is now a part of the record pertaining to this development. Regarding the storm water storm water management and the water quality issues, the Applicant provided the Council a letter from the Sussex Conservation District, dated April 22, 2008, that is also a part of the record pertaining to this development, and which is discussed further below. After discussion and additional public comment, the Council denied a motion to approve the conditional use and preliminary major subdivision. Thereafter, by letter dated April 30, 2008, the Applicant filed a request for reconsideration under § 230-58 (F) of the Zoning Code. This Council considered that request for reconsideration in its regularly scheduled meeting on May 12, 2008, and unanimously approved the request. Upon recommendation of the City’s counsel, the Application was scheduled for consideration at another public hearing before this Council.

6. The Applicant initiated the PLUS Review procedure for this development, in 2005. The PLUS Application Submission of 6/30/2005, the PLUS Comments of 8/16/2005 (from PLUS Meeting 7/27/2005), the PLUS Response from Applicant’s engineer, DB&F, of 10/17/2005, and the PLUS request to City of Milford to consider PLUS Recommendations, dated 11/7/2005, are already part of the record pertaining to this development. All of these submissions predated the expansion of the acreage of the

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<sup>1</sup> The preliminary plan before this Council at this Public Hearing of June 9, 2008 has been updated from the plan submitted with the original Application, as previously presented to the DAC, the Planning Commission and the Council, to reflect modifications to Seabury Avenue, as described in Section 6A, below.

C-3 commercial lands (from +/- 34.24 acres of C-3 to +/- 59.64 acres), resulting from Applicant's change of zone application of 9/08/2006, requesting rezoning +/- 24.74 acres of R-3 lands to C-3. The change of zone request was approved by the Planning Commission after Public Hearing on 8/21/2007 and approved by this Council after public hearing on 9/24/2007. The Applicant initiated a second PLUS Review after the expansion of the C-3 commercial acreage, through its Commercial Plan Review Submission of 12/31/2007. This submission, together with the PLUS Comments of 2/20/2008 (from PLUS Meeting 1/23/2008), and the PLUS Response from DB&F of 3/18/2008 are also part of the record pertaining to this development. Several of the recommendations from State agencies, and the responses of the Applicant (through DB&F), are summarized here, as they will for the bases of conditions (proposed conditions are shown in *italics* ) of approval of this Application:

A. DelDOT.

1. Traffic flow is a primary concern of the City Council and the citizens of the City of Milford. A traffic impact study was completed March 14, 2006; the report is a part of the record pertaining to this development. The letter from DelDOT dated April 15, 2008, addressing the Route 36 entrance to the development, mentioned above, and a letter of April 17, 2008, relating to the U.S. Route 113 residential access to the development, are also a part of the record pertaining to this development. *Applicant will work with DelDOT to determine the amount of right-of-way dedication that will be required and will obtain entrance approvals prior to entrance construction.*

2. DelDOT recommended, and the Preliminary Plan now reflects the construction of a cul-de-sac with access to the City's water plant, and the elimination of direct access from Seabury Avenue Extended to U.S. Route 113. *At the request of the City, the Applicant will request that DelDOT eliminate the left-in access to Cypress Hall from Route 36. At the request of the City, Applicant will request that DelDOT abandon the right-of-way of Seabury Avenue Extended to the City of Milford for maintenance. If the City thereafter approves the reduction of the right-of-way to 50 feet, and the dedication of the northernmost 10 foot residual to the property owners along Seabury Avenue Extended, Applicant will undertake the "Fencing/Additional Buffering", described hereafter.*

3. *Applicant will construct a shared-use path in the DelDOT right-of-way along the development frontage along U.S. Route 113, as approved by DelDOT.*

B. Department of Natural Resources and Environmental Control ("DNREC"). A matter of State Strategy, generally, and a DNREC recommendation, specifically, is that the Applicant work with the City of Milford to reduce the amount of parking required in order to reduce impervious surfaces. *Applicant will seek approval of the City of Milford Board of Adjustment to reduce the number of parking spaces to meet actual or anticipated demand, to reduce impervious surfaces.*

C. Sussex Conservation District (“SCD”). The PLUS Comments of 2/20/2008 requested that the Applicant “contact the Sediment & Stormwater Program of the Sussex Conservation District to discuss the possibility of a downstream analysis of this project”. The Applicant did so and by its letter of April 22, 2008, SCD noted five items to be addressed in the “detail plan submittal”, including providing a downstream analysis. *Applicant will comply with SCD’s requirements as set forth in its letter to DB&F dated April 22, 2008.*

7. The remaining item this Council requested that the Applicant address following the Public Hearing on March 24, 2008 related to fencing and/or buffering for the benefit of property owners along Seabury Avenue Extended. *Applicant will construct a 6 foot fence along the southern edge of the Seabury Avenue Extended property owners’ properties, and will install a landscaped buffer with plantings along the northern side of Seabury Avenue Extended (“Fencing/Additional Buffering”), subject to the requirements relating to the abandonment of the Seabury Avenue Extended right-of-way by DelDOT, etc., described in Finding 6A, above.*

8. As provided in §230-14 of the Zoning Code, the purpose of the C-3 Highway Commercial District is stated as follows: **“The purpose of the C-3 District is to provide for larger-scale commercial uses that may require large amounts of parking space or have a high traffic impact. These uses generally require locations on major arterial routes and serve both local and regional customers.”** The Application before the Council represents an appropriate large-scale commercial use of this property located along U.S. Route 113, a major arterial route serving both local and regional customers.

9. A shopping center is a permitted conditional use in the C-3 Highway Commercial District, subject to special requirements under Chapter 230-14 (C)(11) of the Zoning Code. The Application and the Preliminary Plan have been reviewed by the City of Milford’s Building Inspector, and meet the special requirements of Chapter 230-14 (C)(11) of the Zoning Code.

10. The Planning Commission preliminarily approved the Major Subdivision as presented and the Conditional Use for a shopping center, as presented at the Public Meeting of February 19, 2008.

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Applicant respectfully requests that the Council follow the Planning Commission’s recommendation and preliminarily approve the Application for Major Subdivision as presented and for the Conditional Use for a shopping center as presented, and as reflected in the Preliminary Plan, specifically, the 6 page plan set entitled “Cypress Hall Commercial, Preliminary Plan, Conditional Use/Site Plan Submission, City of Milford, Sussex County, Delaware, DBF Project No.1423A001 January, 2008” (Printed May 9, 2008) subject to the following conditions (“Conditions”):

A. Applicant will work with DelDOT to determine the amount of right-of-way dedication that will be required and will obtain entrance approvals prior to entrance construction.

B. At the request of the City hereafter, Applicant will request that DelDOT eliminate the left-in access to Cypress Hall from Route 36. At the request of the City hereafter, the Applicant will request that DelDOT abandon the right-of-way of Seabury Avenue Extended to the City of Milford for maintenance. If the City thereafter approves the reduction of the right-of-way to 50 feet, and the dedication of the northernmost 10 foot residual to the property owners along Seabury Avenue Extended, the Applicant will undertake the "Fencing/Additional Buffering", i.e: Applicant will construct a 6 foot high privacy fence along the southern edge of the Seabury Avenue Extended property owners' properties, and will install a landscaped buffer with plantings along the northern side of Seabury Avenue Extended ("Fencing/Additional Buffering").

C. Applicant will construct a shared-use path in the DelDOT right-of-way along the development frontage along U.S. Route 113, as approved by DelDOT.

D. Applicant will seek approval of the City of Milford Board of Adjustment to reduce the number of parking spaces to meet actual or anticipated demand, to reduce impervious surfaces.

E. Applicant will comply with Sussex Conservation District's requirements as set forth in its letter to DB&F dated April 22, 2008.

Proposed Motion:

I hereby move:

That the Council follow the Planning Commission's recommendation and preliminarily approve the Application of Shawnee Farm, LLC and Cedar-Ironwood Cypress Hall, LLC, the Applicant, for Major Subdivision of 59.64 +/- acres of C-3 zoned property in the development known as Cypress Hall, into 8 Lots; and approve a Conditional Use to Allow a Shopping Center, all as presented and depicted upon Applicant's 6 page plan set entitled "Cypress Hall Commercial, Preliminary Plan, Conditional Use/Site Plan Submission, City of Milford, Sussex County, Delaware, DBF Project No.1423A001, January, 2008" (Printed May 9, 2008);

That the Council adopt the Proposed Findings of Fact and Conditions submitted to this Council, and that the Council's approval be made subject to the Conditions (Items A through E) appearing at the end of the document; and

That the Proposed Findings of Fact and Conditions be incorporated into the Minutes of this Public Hearing held June 9, 2008.