

MILFORD CITY COUNCIL
MINUTES OF MEETING
October 13, 2008

On October 13, 2008, the City Council of the City of Milford held a Public Comment Session prior to the commencement of the official City of Milford Council Meeting to allow the public to comment about issues of interest that impact the City of Milford.

PRESIDING: Mayor Daniel Marabello

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

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

COUNSEL: City Solicitor Timothy Willard

Mayor Marabello declared the Public Comment Session open at 7:05 p.m.

Paul Goldstein of 15 West Thrush Drive, Meadows at Shawnee stated the city has a bond issue for electric and sewer up for approval this week. Upon review of the bond issue, he stated 20 percent of the \$10 million dollar issue which is \$2 million, can be spent by the bond issuer for stabilization and blending purposes and other expenses. He said we are paying up to \$80,000 for bond paper work and up to \$50,000 for stabilization in addition to the regular expenses and insurance.

Mr. Goldstein recommends the term reimbursement bond issuance be removed because it gives the bond issuer the chance to spend up to \$2 million.

He also claims we are paying for bond insurance to help sell the bonds and guarantee payments if Milford defaults. He asked how much it will cost and asked what guarantee we have the insurance company is solvent with a triple A rating or if we need this insurance.

He said the taxpayers approved a maximum rate of interest not to exceed 5%. According to Mr. Goldstein, the blending allows the bond to be issued at over 5% for portions which will average out at 5%. He says that violates the law because taxpayers are paying more than they approved. The blending means that over 5% is paid for many years and is contrary to the bond proposition. He feels we lose out by not having the use of the money for the full term of the bond issue. The blending allows portions at different percentages but average out to 5%.

Covering the stabilization and blending process is how the bond issuer can spend up to \$2 million if approved.

Mr. Goldstein stated that earlier in the year we could have borrowed at 4% and now rates are much higher so we have to wait until they decrease.

He suggests an ad hoc committee be approved by Mayor Marabello to give a different outlook to the \$10 million bond issue so the city can pay competitive rates at a lower cost.

Mr. Goldstein reported that section 4 says preliminary expenses shall not exceed 20% of the total aggregate price of the \$10 million which means \$2 million. Perhaps the money can be spent for prior expenditures but if that were the case, it says preliminary expenditures are reimbursements for bond issuance.

He said that means the bond issuer will take our money to stabilize the price to bring it down to 5% which is a travesty.

Andy Coleman of 14 Clearview Drive, Hearthstone Manor asked if the swale on Clearview Drive is within code and if not, he asked that it be repaired. He said that for three years, he has been living with a ditch. He has spoken with surveyors who have surveyed the land who confirmed it was not within code.

Mr. Coleman understands the town tried to correct the swale and actually purchased the piping. Because the developer did not want it corrected, he made the town employees leave without repairing it.

He said he is unable to mow the swale. If his mower goes into the swale, he uses his car to pull the mower back up the hill. As a result, he does not mow the swale though that is against the homeowners policy. He said it is not a swale and is 4, 4.5 or 5 feet deep and a V that cannot be mowed.

All other swales in Hearthstone look legit with the exception of those on Clearview Drive. The landscaping contractor for Country Life Homes use power mowers to cut their swales.

He concluded by asking whether or not these swales are up to code.

Joe Palermo of 5 Misty Vale Court, Meadows at Shawnee, stated the price of a barrel of oil is down to \$78. He recommends additional bulk electrical power be purchased now so our taxpayers will not incur the costs of future increases.

With no other persons signed up, Mayor Marabello closed the Public Comment Session at 7:24 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Terri K. Hudson".

Terri K. Hudson, CMC
City Clerk/Recorder

MILFORD CITY COUNCIL
MINUTES OF MEETING
October 13, 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, October 13, 2008.

PRESIDING: Mayor Daniel Marabello

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

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

COUNSEL: City Solicitor Timothy Willard

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

INVOCATION & PLEDGE OF ALLEGIANCE

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

APPROVAL OF MINUTES

Mr. Brooks moved for approval of the September 8, 12, 22 and 29, 2008 minutes as submitted with Mr. Morrow seconding.

When asked for questions, Mr. Spillane said that at the last meeting council voted to approve a convenience store with gas pumps. He said the vote was only for a convenience store with gas pumps and he did not see anything about a car wash.

Solicitor Willard advised that a car wash is a conditional use under the C-3 and Mr. Spillane is questioning if that was permitted based on the application. He will need to follow up on the original application in addition to the notice that was advertised. He explained to Mr. Spillane that council is addressing the minutes at this point and the issue before the council is whether or not they accurately reflect what occurred during those meetings. This is a separate issue that Mr. Willard will look into.

Mr. Spillane said if council approves the minutes, that means we will only allow a store with pumps. Mr. Willard said that is not correct and the approval of the minutes means they accurately reflect what was said at the previous meetings. The Two Farms/Royal Farms issue will be discussed later in the meeting when the definition of gasoline station is considered. He explained Mr. Spillane is referring to a substantive separate issue that has absolutely nothing to do with the minutes. The minutes should reflect what occurred at a previous meeting(s).

Mr. Spillane said that does not confirm any votes taken at the last meeting. Mr. Willard reiterated no, council is approving the minutes which reflect what occurred at the previous meeting, regardless of whether you voted against something that passed even though you disagree and feel it should not have passed.

Mr. Spillane then stated that the vote is not solidly in place now. Council members and Mr. Willard all responded by saying the vote at the meeting that passed by a 4 to 3 vote was to approve a convenience store with gas pumps. However, no car wash was discussed and that is not in the minutes.

Mr. Willard said that without the full record, he is unable to give an opinion. However, what Mr. Spillane is discussing is a separate issue from the minutes being approved.

Motion carried by a 7-1 vote. Mr. Spillane said he votes no because he is opposed. There was no explanation of any proposed changes in the minutes.

RECOGNITION

Swearing in of 2nd Ward Councilman-James A. Oechsler, Jr./The Honorable John D. McKenzie

With his hand on the bible and his family by his side, newly appointed Councilman James Oechsler, Jr. was administered the Oath of Office by State Magistrate John D. McKenzie.

After its conclusion, the newly appointed Second Ward Council Member signed his Oath of Office.

Gary Emory 30 Years of Service

Mayor Marabello then presented Parks and Recreation Director Gary Emory with the following tribute for thirty years of service with the City of Milford:

Whereas, Gary Emory began a productive and challenging career with the City of Milford as a Program Supervisor in the newly created Parks and Recreation Department on September 11, 1978;

Whereas, Gary Emory was very successful in advancing his career and within three years, was named Director of Milford Parks and Recreation;

Whereas, During the past three decades, he has overseen the development of a broad spectrum of programs and activities for all ages;

Whereas, Under his direction, over 100 acres of parkland has been created to provide recreational facilities and services for the residents of the City of Milford;

Whereas, Supported mainly through grant funding, he has planned, developed and seen the Mispillion Riverwalk and Greenway come to fruition;

Whereas, Gary Emory's vision and guidance have made the Mispillion Greenway and the City of Milford one of the most impressive urban areas in the State of Delaware.

Now, Therefore, Be It Resolved, that on this 13th day of October, 2008, Mayor Daniel Marabello and the City Council of the City of Milford do hereby congratulate Gary Emory on his many accomplishments and recognize his thirty years of distinguished service to our community.

Be It Further Resolved, that we express our appreciation for his leadership and commitment and encourage him to continue to use his gifts and talents to improving and beautifying this community thereby making it a better place for future generations.

The council and audience then gave Mr. Emory a standing ovation. Mr. Emory introduced his wife, Cindy, and attributed a great deal of success to the support of his staff over the past thirty years.

MONTHLY POLICE REPORT

Mr. Morrow moved for acceptance of the monthly police report submitted by Chief Hudson, seconded by Mr. Workman. Motion carried.

CITY MANAGER'S REPORT

City Manager Baird read the following report into record:

City Hall

The majority of the furnishings were delivered on Monday, October 13th. The majority of the final repairs have been completed and we anticipate holding the October 27th City Council meeting at city hall. I have asked Richard Carmean to coordinate the rededication of city hall and the dedication of the Council Chambers. This is tentatively being scheduled for the November 24th or December 8th Council meeting. Options continue to be evaluated for the best use of the lower level of the building. I am requesting the Mayor appoint a council committee to assist in the evaluation of the available options.

Sewer I&I Project

The city interviewed four engineering firms to conduct the I&I study on the city's sewer system. Those interviewed were George, Miles and Buhr (GMB), Davis, Bowen & Friedel (DBF), URS, and Cabe. Following the interviews, URS was selected and we will now negotiate a contract with URS. Once the contract is developed, it will be forwarded to City Council for consideration.

Electric System Improvements

Rick Carmean and I have been meeting with Delmarva Power in an effort to finalize the terms associated with providing a new interconnect for the new substation. In addition, we are working to develop a partnership with Delaware Electric Cooperative for them to participate in the improvements as they are looking to make improvements to a DEC substation on Holly Hill Road. Current discussions have the city and Delaware Electric Cooperative purchasing land for the connection and constructing the new transmission line from the area of the DSWA facility on Rt. 113 to the location of the new substation. DP&L will be constructing the infrastructure for the interconnection with the current transmission line.

S.E. Front Street Improvements

City staff has been working with DelDOT regarding improvements on S.E. Front Street. DelDOT is considering providing construction funding to the city to complete the DelDOT portion of the project and have the entire project (paving, curbing, ADA ramps, and sidewalks) completed as a city project. The City Engineer is working with DBF to determine if this would be an option for the city to consider. From a construction coordination standpoint, it does pose many benefits including streamlining the construction process. We want to make sure enough funding is provided to complete the project. Once the options have been fully evaluated, a recommendation will be forwarded to City Council.

Identity Theft

The city is required to comply with the Federal Trade Commission's (FTC) Identity Theft Red Flag Rule. The rule requires utilities to develop an "Identity Theft Prevention Program." The program consists of selecting methods to detect red flags when accounts are fraudulent, procedures to prevent the establishment of false accounts, procedures to ensure existing accounts are not being manipulated, and procedures to respond to identity theft. The city is working with the National Rural Water Association (NRWA) and DEMEC to develop a policy for adoption. I anticipate having a policy ready by the October 27th meeting but at the latest the first meeting in November.

Initially the FTC said that public utilities would be exempt from these regulations. However, in the past sixty to ninety days that position has been changed and we are now required to adhere to that policy.

Comprehensive Land Use Plan Meeting

On Monday, October 20th, City Planner Gary Norris and I will be holding a public workshop to discuss the open space proposal East of Route 1 in the city's draft of the comprehensive plan. The purpose of the meeting is to provide an opportunity for residents of the area to provide input as it relates to the proposed land use requirements for the designated open space area east of Route 1. Notice has been sent to property owners in the impacted areas and a copy posted on the city's website. The meeting will be held at the Milford Public Library and will begin at 6:00 p.m.

A public hearing will also be held during the Planning Commission Meeting on Tuesday, October 21st at the Delaware Rural Water Association facility.

The city manager then reported on the status of the Bond property at the corner of Front and Church Streets. Because the two properties are connected, there is the potential of possible damage to the neighboring property which is occupied and

owned by another person. The city has asked for a structural engineer to provide a report detailing how the building will be demolished so that every measure of safety is taken to minimize any damage to the adjoining property.

Mr. Baird said that according to Dan Bond, the report was in the process of being prepared and was expected to be completed in two weeks. After two weeks passed with no response, a new structural engineer was hired with the intent to have the report within the next week to ten days.

He advised a chain link fence is being installed around the property to provide more security.

Mr. Workman recommended that besides installing the fence, the materials and other debris on the property be removed including the commode on the second floor which is an eyesore when coming into town.

Mr. Baird then advised that he, along with former City Manager Richard Carmean, will attend a DEMEC meeting on Wednesday at which time rates and contracts will be discussed. He agrees this is a good time to purchase power. He will have some additional information following that meeting.

It is Mr. Ambrose' impression that energy prices will not have a big impact because we mainly purchase power from plants that use natural gas. Mr. Baird explained it is a variety and includes both natural gas and coal and expects decreasing energy costs as a result.

Mr. Brooks referred to the Southeast Front Street improvements between McColley and Marshall. He explained that coming in town, there is a curb, an area of dirt and then sidewalks on the right side. He asked if the curbing will be placed directly next to the sidewalk.

Mr. Baird believes the current proposal was to extend the sidewalk to the current curb. However, the road will not be widened.

Mr. Brooks reported there are five to six cars that park on the curb in that area that should not park on the new curb. He asked if there is any way to extend the road to allow more spacing for parking. Mr. Baird does not think the curb line can be moved.

Mr. Ambrose asked the status of exploring the possibility of underground utilities in this area. Mr. Baird advised that the phone company provided an estimate of \$6 million to bury phone lines on Southeast Front Street from Church Street to Rehoboth Boulevard.

In an attempt to determine the best use of the lower level of city hall, Mayor Marabello appointed Mr. Workman as Chairman and Ms. Wilson, Mr. Spillane and himself as members.

Mr. Workman moved to accept the City Manager report and the appointment of the City Hall Review Committee, seconded by Mr. Spillane. Motion carried.

Mayor Marabello then reported the recycling program saved the city \$2,555.72 for the month of August.

COMMITTEE REPORTS

Nothing reported.

COMMUNICATIONS

Nothing reported.

UNFINISHED BUSINESS

Adoption of Ordinance 2008-17/City of Milford 2008 Bonds

AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES OF 2008 (THE "2008 BONDS"), TO PROVIDE FUNDS FOR AND TOWARD A CAPITAL PROGRAM; COVENANTING TO BUDGET, APPROPRIATE AND PAY DEBT SERVICE ON THE 2008 BONDS AND PLEDGING THE FULL FAITH, CREDIT AND TAXING POWER OF THE CITY FOR PAYMENT OF THE 2008 BONDS; SETTING FORTH THE SUBSTANTIAL FORM OF THE 2008 BONDS; SETTING FORTH THE MAXIMUM PRINCIPAL AMOUNT OF AND INTEREST RATE ON, AND OTHER DETAILS OF THE 2008 BONDS; PROVIDING FOR THE SALE OF THE 2008 BONDS AND AUTHORIZING THE ACCEPTANCE OF A PROPOSAL FOR THE PURCHASE OF THE 2008 BONDS; AUTHORIZING THE APPOINTMENT OF A PAYING AGENT; AND AUTHORIZING OTHER NECESSARY ACTION.

WHEREAS, the City of Milford, Delaware (the "City") is granted the power by its charter, as adopted by the Delaware General Assembly, as amended (the "Charter"), to incur indebtedness and to issue bonds within certain limitations and for certain specified purposes, including capital projects; and

WHEREAS, the City has determined to undertake a capital program (the "2008 Capital Program") consisting of: (i) replacing the Fisher Avenue pumping station, removal and flow diversion from the Washington Street pumping station (PS No. 1), infiltration and inflow study and removal projects, and extension of sewer to areas currently not served by public sewer and the acquisition of land and construction of a new electric substation, and associated transmission line and distribution system improvements (ii) payment of costs associated with the issuance of the 2008 Bonds (as defined below); and

WHEREAS, the City is granted the power by its Charter to borrow money, and to secure the payment of the same by pledging the faith and credit of the City for purposes of financing the 2008 Capital Program; and

WHEREAS, the City may borrow money for the 2008 Capital Project through the incurrence of debt and issue bonds within certain limitations with the approval of the qualified voters of the City for the issuance of any such bonds; and

WHEREAS, on November 26, 2007, the City adopted a resolution (the "Resolution") proposing the approval of the 2008 Capital Program, which also included a statement of the time and place for a public hearing; and

WHEREAS, the City caused to be timely published in The Delaware State News, a notice of the public hearing and to further post advertisements as required by the Charter; and

WHEREAS, on January 14, 2008, the City held the duly advertised public hearing, adopted a resolution directing that a special election be held on February 23, 2008 for the qualified voters of the City to vote for or against the proposed borrowing and adopted a resolution finally authorizing the incurrence of debt evidenced by the 2008 Bonds pending the results of the special election; and

WHEREAS, at such special election held on February 23, 2008, the qualified voters of the City approved such borrowing by a majority vote; and

WHEREAS, the City intends to issue its 2008 Bonds as general obligations, in an aggregate principal amount not to exceed \$10,000,000 proceeds of which will be used to finance the 2008 Capital Program; and

WHEREAS, the City will receive a proposal for the purchase of the 2008 Bonds at a private negotiated sale and appoint the underwriter (the "Underwriter") and award the sale of the 2008 Bonds in accordance with the terms of this Ordinance; and

WHEREAS, the City, in reliance on advice of Public Financing Management Inc., the City's financial advisor and the Underwriter, may determine that it is in the City's financial interest to obtain a municipal bond insurance policy insuring prompt payment of principal and interest on the 2008 Bonds; and

WHEREAS, the City now desires to authorize the issuance of the 2008 Bonds, to set forth the form of the 2008 Bonds, maximum final maturity dates and certain other terms and provisions relating to the 2008 Bonds, to authorize the sale of the 2008 Bonds pursuant to a Bond Purchase Agreement between the City and the Underwriter (the "Bond Purchase Agreement") and to authorize the acceptance of a municipal bond insurance policy, if appropriate.

Dates:

Adopted: October 13, 2008

Effective: October 23, 2008

Attorney Tim Anderson of Pepper Hamilton Law Firm, Bond Counsel for the City of Milford was present. He advised the ordinance being presented for final approval authorizes the issuance of General Obligation Bond Series of 2008 to provide funds for and toward a capital program. The ordinance is known as a perimeter ordinance and the issuance of the bond can only be effectuated provided a bond purchase contract is executed. It contains business terms, one of which is

if the bond issue itself is less than \$10 million, the final maturity on the bonds being no later than 2033 and the average rate of interest on the debt being 5%.

It was confirmed that the rates cannot exceed 5%. Mr. Anderson explained the only type of bond purchase contract required is one that will require interest rates to be 5% or less. If the rates exceed 5% there is no legal authority to execute the contract.

Mr. Anderson further explained that bond insurance is only obtained when the purchase of the bond insurance, including the premium, allows for an overall lower debt service than if you would not have the bond insurance. He said that even if you end up paying more in the beginning, if you are going to have a lower amount of interest on the bonds over the course of twenty-five years, it is thought you will save well above whatever the initial premium was. Those type studies are conducted by the financial advisor as well as the business team prior to purchasing the bond insurance.

When asked about the possibility of being self insured, Mr. Anderson advised there is no way to self insure bonds. There is a bond market with and certain bond insurers are recognized FSA and MBIA. The established financial institutions are chosen to insure the bonds.

He explained that if an insurance policy is obtained on the bonds, the bond holder will obtain at least their principal amount. If it is a \$100,000 investment, they will get that. If there is a problem with the bonds, the bond insurer will step in, pay off the bond holders and then try to obtain the best deal they can for themselves.

In regard to a previous concern expressed that 20% or \$2 million can be spent by the bond issuer for stabilization, blending purposes and other expenses, Finance Chair Ambrose explained that presently, the rates are unfavorable to issue the bonds. Therefore, Finance Director Jeff Portmann is proposing the initial costs incurred on these projects be spent out of the reserve accounts. If more than 20% is spent, we cannot reimburse ourselves anything over the 20%. We need to make sure we did not spend over \$2 million of the city's money in order to be reimbursed the entire amount.

Mr. Anderson said there is a concept in the tax laws which in order that bonds be issued at a lower tax exempt rate, the proceeds of the tax exempt bonds must be used to pay for current and future costs, and not for payment of prior costs absent the approval of a reimbursement resolution.

However, the costs of certain projects may be unknown or there is a wait for the market to change in order to issue the bonds. They provided a provision that if you approve or reimburse a resolution which names a specific project you plan to reimburse with proceeds of a specific bond issue in the next eighteen months, then you can go back to those costs. Those involve specific costs such as preliminary expenditures, engineering costs, architectural studies and some brick and mortar costs.

It was then pointed out the land costs for the electric project has been allocated from the city reserve funds.

Mr. Anderson also said that the proceeds for tax exempt bonds on a project need to be spent within three years of their issue date. As a result, a project cannot be started too early especially if you expect your project will take longer than that time frame.

Mr. Ambrose then referred to a previous statement regarding the possibility of a lower rate if handled earlier and pointed out the city had not reached an agreement with Delmarva Power at that time. If we had borrowed that money and the city was unable to work out a deal with Delmarva Power for a long period of time, we could easily be beyond that three year limit.

Mr. Spillane confirmed that if the city uses its funds, we have the right to collect that back out of this 20%. He asked if the buyers who have additional costs are able to take those costs out of the 20% as well. Mr. Anderson stated no and referred back to the type of costs that can be reimbursed. Closing costs, bond insurance, legal fees, financial fees and related costs do come out of bond proceeds. However, those are typically in the range of one to two percent. Mr. Ambrose also explained that those costs are agreed up front and not part of an open ended contract.

Mr. Anderson added that establishing those costs early makes it able to determine down to \$5,000 increments how many bonds will need to be issued to cover the costs of the contract.

Mr. Spillane verified that once the final costs come in and we don't like it, we have the right to turn it down. Mr. Anderson explained that until the bond purchase contract is executed, there is no legal obligation to issue the bonds. Once the contract is executed, they are issued.

Mr. Ambrose noted that incremental increases have been in place over the past three years in our enterprise accounts to cover the bond costs. The current rates will cost more than we have coming in and the reason the bonds have not yet been issued.

Mayor Marabello confirmed the closing costs for \$10,000 are not \$2 million as was previously claimed, but is expected to be around \$200,000. Mr. Anderson reiterated that the \$2 million are for reimbursement for project costs as has been previously explained.

Mr. Anderson added that the rate is an average rate of interest obviously weighted to the various maturities.

Mr. Spillane then asked if because we have money in the bank do we need to borrow the full \$10 million or spend some of our own money. Mr. Baird explained we have actually limited our borrowing request approved by the voters in February based on the cash on hand. We are proposing using the bulk of that cash in addition to the \$10 million for sewer and electric improvements along with the \$5 million for the water improvements. That would be in addition to our cash on hand. Therefore, it will be a combination of both.

Mr. Ambrose advised the cost of the project will be more than \$10 million.

Mr. Ambrose moved to adopt Ordinance 2008-17 as presented, seconded by Mr. Morrow. Motion carried by unanimous roll call vote.

Review of Amended Ordinance 2008-12/Subdivision Code/Chapter 200

City Planner Norris recalled this ordinance being reviewed by council on July 28, 2008, August 25, 2008, September 8, 2008 and on September 22, 2008.

At the last meeting, he referred to Mr. Brooks suggestion to compare the ordinance requirements in other towns. He reported that Seaford includes water bodies as passive or action recreation. Smyrna, New Castle and Middletown are mute on the subject and Lewes' calculation for net development acreage subtracts existing streets, stormwater facilities including swales, retentions, basins and wetlands.

The minor changes approved at the September 22nd meeting have been incorporated into the amended ordinance being presented this night.

Mr. Spillane stated he talked about topsoil issues that night which he addressed after he had gone to a couple of colleges to obtain the information. He was concerned about the proper term of topsoil and how much should be put down. However, he does not see that in the ordinance though the city manager said it would be included.

Mr. Baird referred to the top soil information in the council packet. He read 'no topsoil shall be removed from the site or used as fill. Topsoil moved during the course of construction shall be redistributed to provide adequate cover as determined by the city engineer to all areas of the subdivision and shall be stabilized by seeding and planting.'

Mr. Baird said he has discussed this with Mr. Spillane and followed up with the city planner and city engineer. They decided it was best to include the technical detail of the topsoil requirements in the Standards Specifications for Construction in New Subdivisions. That is where the technical details for construction are contained. Topsoil protection is referenced and needs to be provided in adequate cover as determined by the city engineer. An amendment will be done to the technical specifications to include some language to address Councilman Spillane's concern.

Mr. Spillane said he is concerned because the code is on the internet and then he learned there was another construction code in the planning section. He said he did not realize there are other codes in other places. He wants the topsoil issue made part of the subdivision code in addition to the construction code.

He said that the USDA helped him write this and believes it is an adequate meaning of topsoil.

Mr. Baird reiterated it would be more appropriate in the standard specifications which is referenced in the subdivision code. He explained those specifications include more detailed information. Developers are aware of that document and refer to it for specific information.

Mr. Workman asked if it is possible for a developer to get around it because of the way it is worded; Mr. Baird does not believe so because the subdivision code references it must be constructed to city specifications.

When the plans are submitted for review by the city engineer, he is comparing the specifications submitted to both the subdivision ordinance and standard specifications.

Ms. Wilson asked why Mr. Spillane would not be satisfied with it becoming part of the standard specifications which is an official document used by the contractors and city staff. Mr. Spillane said he personally looked at the code for three years and was unaware of another document that contractors used. Ms. Wilson explained that is why we have a city manager, city engineer and city planner and other staff members who are aware of these requirements and checklists.

It was then confirmed that Mr. Baird intended to add more detailed information regarding topsoil in the standard specification document because it was a much better fit than to add those details to the subdivision code.

Mr. Spillane then asked it be sent back to the planning commission for their review and to include the top soil specifications. Mr. Baird then read a section from the subdivision code that requires utility and street improvements to be in accordance with standard specifications issued by the city engineer and that all construction drawings must be submitted to the city engineer.

Though it was agreed that contractors or developers are aware of these specifications, Mr. Spillane wants to make sure our private citizens know all the codes and not just what is in the general code.

The ordinance will be presented for final adoption after the planning commission reviews the changes approved by council.

Marshall Pond Ownership Dispute

Mayor Marabello advised that because of potential litigation involved in this matter, it will be discussed in executive session.

City Solicitor Willard noted that Steve Billings is in the audience and advised he had submitted a memo to council with his legal opinion. He agrees that because it is a pending legal matter, it is appropriate for executive session. Council will then decide how to proceed.

NEW BUSINESS

Homestead/Extension Request #2/Preliminary Major Subdivision and Conditional Use (PUD) Tax Map MD-16-173.00-01-01.00.000

Ring Lardner of Davis, Bowen and Friedel, Incorporated, representing the equitable owner Bolis Properties submitted the following request dated August 29, 2008:

On behalf of our client, Bolis Properties, we request a second twelve-month extension of the preliminary approval for the Homestead Subdivision project (Tax Map # MD-16173.00-01-01.00). The first extension was granted by City Council on October 8, 2007.

We have received Fire Marshal and City Engineer approval for the project. We have received two reviews from the Kent Conservation District. The second review has four minor comments which have been addressed. The only reason plans have not been resubmitted to Kent Conservation District for final approval, is to be sure no changes are needed for storm drainage based upon DelDOT's ongoing review.

The extent of off-site improvements roadway improvements result in an involved DelDOT review process. We have received four review letters from DelDOT and have received numerous email comments. We have submitted one round of revisions in the process thus far. We have also been in discussions with DelDOT regarding the construction of a roundabout on Canterbury Road at Church Hill Road in addition to the one proposed for Canterbury Road and Airport Road. The original developer has decided not to pursue this project any further. The Owners have decided to enter into a new agreement with Bolis Properties.

Bolis Properties has discussed with the Planning Department potential uses for the property and is currently pursuing market studies and other due diligence. We are requesting this extension as an option for Bolis Properties that if other land uses are not feasible, then Bolis Properties can finalize all other approvals within the next year.

Mr. Lardner followed up stating they are requesting a second 12-month extension on the subdivision originally approved back in 2006. The project has received fire marshal and city engineer approval for the internal portion of the subdivision. Two reviews were received from Kent Conservation District with four minor comments that will be addressed. They are still working with DELDOT regarding off site improvements on Route 14, Canterbury Road and parts of Church Hill Road.

He explained the original developer, Lacrosse Homes of Delaware is no longer involved in the project. Gary Bolis of Bolis Properties has since entered into an agreement with the legal owner contingent on the approved preliminary plan being presented for a 12-month extension.

Mr. Lardner advised that Mr. Bolis met with city staff to pursue one possibility of extending the business park onto the Fry property along with some commercial and residential uses. A portion would need to be rezoned if that occurred. A request was submitted for a change in the land use zoning of the comp plan that will go to public hearings with the planning commission and council in October and November.

Mr. Bolis has asked for extension of the preliminary plan as option one. Another option is to expand the business park and do some commercial and residential. The third option would be this project no longer exist at the end of this next extension.

It was confirmed that the previously approved plans are still in place because the land has never changed ownership. While Lacrosse Homes had a contractual interest in the property, in August 2008, Bolis Properties purchased Lacrosse interests and part of that agreement included the approvals and plans already completed.

When asked what the hardship is, Mr. Lardner explained that three-quarters of a million dollars worth of work has been completed on this project. If this project does not go forward, that money is completely lost and any new developer would have to start from the beginning which could take another two to three years.

It was confirmed that Lacrosse Homes had requested only one extension though several public hearings took place when revisions were made to the original plan. The current zoning is residential and commercial. The rezoning is part of the subdivision of the 186 acres where approximately 40 commercial acres will be rezoned to 2 acres. Those 2 acres would remain commercial outparcels to serve the subdivision and surrounding residential areas.

Mr. Lardner said this will be the last request for an extension.

When asked if because they would fall under the new codes adopted since their original approval. Mr. Baird said they would proceed under the code in place at the time of their approval noting the new subdivision code has not yet been adopted. Mr. Spillane suggested a condition of the extension be added that they fall under any new code.

Mr. Ambrose moved to grant the request for a 12-month extension of the preliminary major subdivision plan, seconded by Mr. Starling. Motion carried by a 6-2 roll call vote.

Mr. Spillane voted no because he wants them to fall under the new code.

Mr. Workman votes yes because of the hardship of the amount of potential money that could be lost as a result of the work already completed.

Mr. Oechsler votes no because he would like to see a revised plan showing how many houses are planned and prefers the industrial park be extended to this area.

Introduction of Ordinance 2008-8/Residential Rental Operating License/Chapter 180

Mr. Baird presented the amended Residential Rental License for introduction. This ordinance repeals the current ordinance and replaces it with the following new ordinance:

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF MILFORD, CHAPTER 180 THEREOF, ENTITLED RESIDENTIAL RENTAL OPERATING LICENSE, FOR THE PURPOSE OF AMENDING THE LICENSE FEE

NOW, THEREFORE, THE CITY OF MILFORD HEREBY ORDAINS:

Section 1. *The Code of the City of Milford is hereby amended by deleting and repealing Chapter 180, Residential Rental Operating License, in its entirety.*

Section 2. *The Code of the City of Milford is hereby amended by adding thereto a new chapter, to replace Chapter 180, hereinabove repealed, to be Chapter 180, Residential Rental Operating License, to read as follows:*

Section 3.

§ 180-1. Title.

This chapter shall be known as the "Residential Rental Operating License Ordinance."

§ 180-2. Purpose.

This chapter is adopted to protect the health, safety and welfare of the City residents and to prevent deterioration of the housing stock in the City.

§ 180 3. Definitions.

For purposes of this chapter, the following terms, phrases, words and their derivations shall have the meanings given herein:

CITY — The City of Milford, Delaware.

CODE OFFICIAL — The Building Inspector and/or Code Enforcement Official.

LANDLORD — A person and/or an authorized representative, heir, successor or assignee of a person who leases or otherwise permits another person to occupy a rental unit for money or other consideration.

PERSON — An individual, proprietorship, partnership, corporation, association, or other legal entity.

RENTAL UNIT — Any building or any portion of a building in which a person resides in consideration of which money or other goods or services are paid or provided to the owner of such building, the owner's authorized representative or another tenant.

TENANT—A person who occupies a rental unit for which said person pays money or gives other consideration.

§180-4. Rental operating license required.

No landlord shall operate a rental unit in the City unless an application has been filed and a current rental operating license has been issued for the specified rental unit for the current year.

§ 180-5. *Application for rental operating license and agreement to comply.*

- A. *Every landlord shall apply for a rental operating license and shall agree to comply with all provisions of this and any other applicable City ordinance.*
- B. *The application shall be in the form provided by the Code Enforcement Department and shall be accompanied by a check or money order payable to the City of Milford in the amount set forth by City Council.*
- C. *It shall be unlawful for any person to operate any rental dwelling without obtaining a license from the licensing division of the department of planning and inspections in order to determine compliance. The license shall expire annually on December 31. The fee for the annual license shall be \$75.00 for each unit.*
- D. *In the event that the license fee set forth herein is not paid on the date due then the licensee shall incur a penalty fee in the amount of \$25.00 per month per unit until the license fee is paid*
- E. *An owner whose license has been suspended shall pay a \$100.00 reinstatement fee.*
- F. *The owner or occupant of any rental shall not be entitled to receive utilities until the license fee required is paid in full and City personnel shall refuse to provide sewage, water and electric to the property until satisfactory proof is furnished that such fee has been paid.*

§180-6. *Contents of Applications.*

- A. *Every landlord shall supply the following information to the City as part of the annual application for a rental operating license and agreement to comply:*
 - 1) *The mailing and street address of the rental units.*
 - 2) *Name of responsible party leasing the unit and telephone number at time of application.*
 - 3) *The total number of persons living in the rental unit at time of application.*
 - 4) *Landlord's name, mailing address and telephone number.*

§180-7. *Regulations for the issuance of licenses.*

- A. *If violations are found that pose a health or safety risk to the tenants, the unit may be judged as unfit for occupancy by the Code Official.*
- B. *Expiration of permits. Each rental operating license shall expire on December 31 of the year in which it was issued. No prorating, rebate or refund shall not be made because of nonuse of the permit.*
- C. *Timing for reapplication.*
 - 1) *Application to renew a rental operating license shall be made at least 60 days prior to the expiration date of the current license.*
 - 2) *When reapplication is made fewer than 30 days before the expiration date, the pendency of the application will not prevent the expiration of the license.*
- D. *Every rental unit owned shall have a "caretaker" designated by the owner.*
 - 1) *The caretaker may be the property owner if residing within a 10-mile radius of Milford, Delaware.*
 - 2) *The caretaker shall be an adult person(s) 18 years or older, specifically identified in writing by the owner on the rental license application (stating name, address and telephone numbers) and reside in such proximity to the City as to allow him or her to meet with the Code Enforcement Official at the rental unit within 24 hours of receipt of notice from the Code Enforcement Official.*
 - 3) *The caretaker shall be charged, by the owner, with responsibility and authority to deal with occupants of the premises on behalf of the owner, to make repairs to the rental unit, to maintain the premises and the common areas thereof, and to accept service of process on behalf of the owner.*
 - 4) *Once notified of a defective condition and unless circumstances are beyond the caretaker's control, the caretaker will be given an amount of time to make repairs as deemed reasonable by the Code Official.*
 - 5) *The owner shall notify the City in writing of any changes in the name, address, and/or telephone number of the caretaker.*
- E. *The owner is subject to penalties as defined in § 180-9 for failure to comply.*

§180-8. *Inspections.*

- A. *The Code Enforcement Official reserves the right to inspect property at any time to insure compliance with all property maintenance (Chapter 174), zoning (Chapter 230), and codes.*
- B. *When such inspections are deemed necessary, the Code Enforcement Official will provide 24 hours' notice to the owner or caretaker.*

- 1) *Exceptions to this rule will apply when health or safety conditions exist that require immediate inspection.*
- C. *A rental unit shall be deemed to be not in substantial compliance if:*
- 1) *There are one or more violations that pose a serious and substantial threat to the health, safety or welfare of the occupants.*
 - 2) *There are an extensive number of minor violations that, cumulatively, pose a significant threat to the health, safety, and welfare of the occupants.*
- D. *When the Code Enforcement Official schedules an inspection, it is the responsibility of the property owner to make sure the structure/property is ready by the time the inspector arrives on site.*
- 1) *If an inspection needs to be cancelled or rescheduled the Code Enforcer Officer must be notified by 8:30 a.m. the day of the inspection.*
 - 2) *If an inspector arrives onsite and the structure/property is not ready and the inspection was not cancelled or rescheduled, a fee of \$100 must be paid at City Hall before the inspection can be rescheduled.*
- E. *When conditions of a property are such that cause more than one follow up inspection, for the purpose of ensuring compliance, a fee of \$50 per inspection will be imposed. §*

§180-9. Violations and penalties; enforcement.

- A. *Penalty for violation.*
- 1) *Any property owner who shall violate any provisions of this chapter or who fails to comply with any notice or order issued by a Code Enforcement Official pursuant to the provisions of this chapter shall be guilty of violating the provisions of this chapter and, upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000. The minimum fine is not subject to suspension or reduction.*
 - 2) *Except where an appeal is taken, each day of a separate and continuing violation shall be deemed a separate offense.*
- B. *Should the aforesaid penalties not be paid within 30 days of being assessed, and after notice of said failure is served, then the property covered by this chapter will be assessed for the unpaid penalties, which shall be collected in the same manner and at the same time as City taxes.*
- C. *If any of the cited violations are not remedied, the Code Enforcement Official shall revoke the residential rental operating license.*
- D. *The remedies contained within this section shall further not be exclusive, but shall be in addition to any other remedy provided by law, so long as not inconsistent herewith, nor shall the invoking of any remedy or procedure contained within this section preclude the pursuit of any and all other remedies, and the same are intended to be cumulative.*

Mr. Morrow asked if the city will be able to enforce this ordinance. Mr. Baird believes it will be enforced but recalls the possibility of hiring a second code official who can handle the inspections proposed which these fees could help cover.

It was confirmed there was an error in the last definition which will be corrected.

Mr. Ambrose recalled the last ordinance did not require this fee from the large apartment complexes. Mr. Baird advised that all apartment complexes will be required to pay this fee. A fee will be charged per rental unit.

Mr. Ambrose was also under the impression that when this was initially discussed, it was recommended a \$50 fee per unit would be assessed, but the proposed fee is \$75. Mr. Baird explained that at that time, commercial units were also being considered but the ordinance will only cover residential units which is the reason the \$75 fee was proposed.

Mr. Spillane said that Hearthstone has not been approved as part of the city and asked if this will be enforced there. He pointed out that Hearthstone has a lot of condos and other buildings that are being rented. There are a number of things not enforced out there because it is private property and it has not been turned over to the city and asked if that is the case with this ordinance.

Mr. Baird explained that this ordinance will apply regardless of whether or not the land is private property.

Mr. Workman asked if the city pulls a landlord's permit, will the renters be given enough time to find another rental unit.

He would not want to see these people on the street because the landlord is not doing something correctly.

Mr. Baird said that would be guided by the property maintenance code and determined by the violation. If there was an imminent public safety issue, the residents of that property would need to be relocated though that falls under the landlord-tenant code. The city comes in as a third party to enforce our regulations. The landlord is responsible to keep the property up to code as is required by state code.

It was confirmed the landlord will be fined between \$500 and \$1,000 for not having a rental license. Mr. Baird added there is also a penalty of \$25 per month fee if not paid by the due date.

With its introduction at this meeting, final adoption is scheduled for October 27th.

Washington Street Bridge Inspection Contract Proposal

Mr. Baird alluded to the following memo prepared by City Engineer Mark Mallamo dated October 1, 2008:

The Washington Street Bridge, one of three bridges maintained by The City of Milford, is in poor condition and in need of structural repairs. I solicited a proposal for engineering services to determine the extent of structural deterioration, calculate a load rating based on those findings, and prepare a report with recommendations to repair or possibly replace the bridge.

Pennoni Associates was chosen for this work based on their previous experience inspecting this bridge and their extensive bridge experience with DeIDOT. Pennoni Associates proposed not to exceed lump sum price of \$11,000.00 to complete the needed work. Account 431-60-74 in the streets budget for bridges has \$15,000.00 to cover this work. The work can be completed in four weeks after acceptance of the proposal.

Mr. Baird advised this is one of three bridges owned by the City of Milford. The other two are on Northwest Front Street and Church Street. The bridge on Church Street was evaluated a few years ago and is in good shape. However, there are issues regarding the Northwest Front Street and Washington Street bridge with the Washington Street bridge being the biggest concern.

Depending on the extent of the work that needs to be done, there is a possibility the city can qualify for some matching funds through a federal highway program administered through the Delaware Department of Transportation.

Ms. Wilson moved to approve the proposal from Pennoni Associates not to exceed \$11,000, to be paid from Account 431-60-74, to complete the engineering work on the Washington Street Bridge, seconded by Mr. Ambrose. Motion carried by unanimous roll call vote.

The current budget has \$15,000 allocated for bridge repairs.

Interpretation of Two Farms/Royal Farms Conditional Use

Mr. Baird advised that he had received some correspondence from Councilman Spillane addressed to Mayor Marabello in regard to the vote taken on the Two Farms Conditional Use application. He referenced the long debate at that meeting about whether it was a gasoline service station or convenience store with gas pumps. Mr. Spillane provided some additional information which was included in the council packets as well as a legal opinion from Mr. Willard.

Mr. Baird explained the root of the issue is we have a councilman who is attempting to appeal a decision made by city council. There have been a number of conversations that followed with Mr. Spillane. As a result, Mr. Baird discussed the matter with City Solicitor Tim Willard which lead to his response also included in the packet.

Mr. Baird is unsure how to proceed because city council had taken action on the matter which was, in his opinion, a done deal. However, we are now revisiting the decision made two weeks ago which appears to be an appeal that council made by a council member who voted against it.

Mr. Morrow recalled the vote taken last month and at that time, the city solicitor gave his legal opinion though the mayor also asked for a written opinion which was included in the packet. The vote was a democratic vote which passed by majority vote.

Mr. Brooks does not feel it is done because it still goes before the planning commission and city council for final subdivision approval. Mr. Morrow agrees but feels the conditional use issue that was addressed at the last meeting did have a vote taken which passed by majority vote. If it comes back with another application, he feels that would be a separate issue.

Mr. Workman then advised the applicant filled out the application which did not include a car wash which is a conditional use in that zone. Council voted on the gas station or service station or convenience store with gas pumps which is another conditional use in the C-3 zone. Therefore, in his opinion, council did not vote on the carwash which also requires a conditional use vote and was not presented to council though it was included in the site plan.

Mr. Willard explained this issue is on the agenda tonight though the city manager is unsure what is expected by Mr. Spillane. It is placed on the agenda for an interpretation of the first vote that was discussed in length by a number of council members including Mr. Spillane at the September 22nd hearing. He agrees a vote was taken which passed by a majority vote at that time. Mr. Willard added there is a section in the code that says if the application is denied, council can bring it back for another vote. However, if an application is approved, and someone wants to appeal, it needs to go to court. The decision is then reviewed by either Chancery Court or Superior Court.

The solicitor asked if council would be willing to allow him to review the record regarding the car wash issue with City Planner Norris though he does not recall it being brought up at the council meeting. When they bring in the final site plan which involves a lot more detail and more engineering, there may be a legitimate reason to re-notice the conditional use if a car wash should be included.

When asked if state law trumps Milford's local ordinances, Mr. Willard stated that he received Mr. Spillane's memo. The night of the conditional use, Mayor Marabello suggested that council table the issue though the majority of council indicated they understood the issue and requested a vote be taken. He referred to the New Castle County case which he feels is similar to the Milford case.

Mr. Workman again asked if state code overrides the city codes; Mr. Willard said it depends whether there is a direct contradiction or not. Often they do not apply. The state has a number of regulations as the federal government does on gas stations. In this case, much of that will need to be abided by. In this case, council was applying the conditional use and how it fits in relation to this application.

Mr. Spillane brought up the section of the code that states under service stations that no equipment for the service, gas or oil shall be placed closer to any street or property than 20 feet; it also states that no portion of such structure of its equipment shall be located within 500 feet of the premises of any school. Mr. Spillane asked if gas pumps are part of the equipment for the service.

Mr. Baird said it appears that Mr. Spillane is attempting to open up debate that was decided upon by council's vote three weeks ago. If council wants to undo its decision, then council needs to specifically address that by majority vote. However, there appears to be a number of council members that do not want it re-opened based on the vote taken at the September 22nd issue.

Mr. Workman said that beyond that issue, will council need to address the conditional use of a carwash which was not addressed at that time.

Mr. Willard again reiterated that he needs to review the records and take into consideration the carwash issue which he does not recall being addressed with regard to the application and notice.

Mr. Workman feels there is a loophole in our zoning code that this developer was able to get around. Council made the

decision and though he is not in agreement with the decision, it is a done deal and council needs to move forward with the decision made. However, council will need to look at this loophole and address it in a proper manner so it does not happen again.

Mr. Morrow pointed out the amount of gasoline in the vehicles in the parking lot that could be considered unsafe. The gas pumps are highly regulated and include many current day safeguards.

Mayor Marabello concluded by saying the city solicitor has given an opinion and any alleged loophole needs to be addressed by council as a separate issue. He feels that at this point, council needs to move forward.

Following a great deal of debate, the city manager said that to move this issue along, the decision needs to be based on the vote taken three weeks ago on the conditional use for the application on the convenience store with gas pumps. That decision was made by a majority vote which needs to be the end of that application. City council is in agreement that, from a staff standpoint, he and Mr. Norris can put together a proposal to address the loophole and bring a proposal back to city council for future consideration.

He said the decision made three weeks ago stands and the city will move forward based on that decision.

Mr. Willard will work on an ordinance which addresses the loophole. He will work on an ordinance that applies to the 500 feet that Mr. Spillane feels needs to apply to gasoline pumps and schools.

Mr. Spillane said he still has a problem with the equipment. Mr. Baird reiterated that he, along with Mr. Norris and Mr. Willard will put some language together to bring it back to council. At that time, it can be debated. However, the decision made three weeks ago needs to move forward.

MONTHLY FINANCE REPORT

Through the second month of Fiscal Year 2008-2009 with 16.6% of the fiscal year having passed, 25.28% of revenues have been received and 17.93% of the operating budget expended.

Mr. Ambrose referred to the added page in the finance report that shows the four interdepartmental departments funded by other departments listed on pages three to five. The expenses reported on page six are also included by departments on pages three to five.

Following the review of the report, Mr. Workman moved to accept the monthly finance report, seconded by Mr. Morrow. Motion carried.

There was a tentative finance committee meeting scheduled at the finance building to discuss some proposed budget cuts. However, Mr. Baird explained that meeting originally involved the finance director, finance committee chairman and himself. He explained that a committee meeting falls under FOIA and must be recorded and minutes taken.

Mr. Ambrose confirmed that council was comfortable with allowing him to handle it with the city manager and finance director and report back to council.

Mr. Ambrose said he will meet as originally planned on October 20th at 11:00 a.m. and those wishing to attend are welcome.

Mayor Marabello then asked for a change in the order of business and temporarily adjourn the regular meeting and go into a workshop session in order to discuss the swale issue requested by Councilman Spillane. There were no objections.

Recess of Monthly Meeting

Mr. Workman moved to recess the monthly meeting and go into a workshop session, seconded by Mr. Spillane. Motion

carried.

At 9:23 p.m., Mayor Marabello recessed the monthly meeting of council for a short break.

Return to Monthly Meeting

Mayor Marabello reconvened the monthly meeting at 9:55 p.m.

Executive Session

Motion made by Mr. Workman to go into executive session reference a land ownership issue and personnel matter, seconded by Mr. Brooks. Motion carried.

Mayor Marabello recessed the council meeting at 9:55 p.m. to go into executive session to conduct a discussion with our attorney regarding potential litigation (land acquisition) and a personnel matter.

Return to Open Session

City Council returned to open session at 10:30 p.m.

No formal action was needed on the items discussed in executive session.

ADJOURN

Motion to adjourn the Monthly Council Meeting at 10:31 p.m. made by Mr. Morrow, seconded by Mr. Starling. Motion carried.

Respectfully submitted,



Terri K. Hudson, CMC
City Clerk/Recorder

MILFORD CITY COUNCIL
MINUTES OF MEETING
October 13, 2008

The City Council of Milford met in Workshop Session on Monday, October 13, 2008 in the Meeting Room of the Delaware Rural Water Association Facility at 210 Vickers Drive, Milford, Delaware.

PRESIDING: Honorable Mayor Daniel Marabello

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

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

COUNSEL: City Solicitor Timothy Willard

Mayor Marabello convened the Workshop Session at 9:23 p.m.

Swale Issue at Hearthstone/Councilman Michael Spillane

City Solicitor Tim Willard advised that Councilman Spillane has asked the swales matter at Hearthstone be revisited by council. Mr. Spillane then distributed pictures of swales on Clearview Drive that he indicated were not in compliance with Milford's Code. Several years ago when this was addressed, Mr. Willard said he reviewed the recorded site plan which showed a swale depth different than the code requirement though it did not appear to be in violation. Mr. Willard is unsure if that was a mistake or not. He advised the subdivision code allows a variance from specific requirements. He further explained that if you look at the variation and variance section, it requires they provide reasons and he is unsure whether the developer did or not.

The solicitor said the question is can or should the city try to take some legal action to force Hearthstone's swale to conform with the code or is it a private action that should be pursued by the homeowners. Mr. Willard alluded to the previous statement made by Mr. Coleman during the open comment session that he was unable to cut his grass in the swales.

Mr. Ambrose recalled when Mr. Spillane requested he and former Councilman John Kramlich go out to his home and look at the swales. They agreed that from what they understood, it was not really a swale. They worked with the former city manager who thought he had an agreement with the developer to allow the city to install pipes. He explained there is a section at the house next to Mr. Spillane's house down to the end of that street that is particularly deep. The plan was to install pipe in the swale, connect the pipes that ran beneath the driveway and then cover the pipe. If it was going to be a porous pipe, it would be covered with stone, dirt and some topsoil. It would not be completely level but would improve it and allow a softer curvature. They had installed three or four links of pipe when they were told the city did not own the land and were asked to remove it and leave. The developer's concern was the impact on his retention ponds.

Mr. Ambrose said the city still has the pipe and he would prefer to have the pipe installed with the agreement that if it does not work and there is a problem with the retention ponds, the pipe would be removed.

He believes it is a relatively easy fix and the residents in Hearthstone would be happy and everyone could move on. He then asked City Engineer Mark Mallamo if the swales do or do not meet the code. Mr. Ambrose also asked for verification that soil conservation approved it.

Mr. Mallamo confirmed that Sussex Conservation accepted it. He reported the side slopes do not meet the 4:1 requirement though they meet the plan submitted as Mr. Willard alluded to. He agrees they are steeper than the code allows. There is no depth issue contrary to what has been said. The depth is correct which is three feet and meets the code. The problem is the pitch because ideally they should be flatter. He agrees it is not an easy fix though it could be changed with the pipe as was proposed. Another way is to flatten the swale further back into the yards which would take away most of the yard. Currently, it is ten feet off the edge of the pavement and to go three feet deep would require twenty-eight feet or thereabouts.

Mr. Ambrose asked for Mr. Mallamo's opinion that if these pipes were installed, it would not affect the retention ponds. Mr. Mallamo said there could be minimal effect though he is unable to say they would not affect them at all. There would still be a grass swale on top of this pipe so the water running off the road would still hit grass, slow down and percolate through the soil and eventually into the pipe. Once it is in the pipe, it would travel faster to the pond. He added it is a very small length of pipe in the scheme of things for the entire acreage there.

When asked how many houses this involves, Mr. Spillane said approximately twelve houses.

Mr. Spillane said in our code this is a safety issue. He reported that Mr. Mallamo has been out there several times and has observed the man cutting his grass with a rope tied around him, pulling the mower back and forth to cut the grass down the slope. He said that our whole concern at Hearthstone is the safety issue and that someone is going to get hurt.

Mr. Spillane also said that there are no shoulders on the road and the code requires five foot wide shoulders. He continued to explain that the swale is more of a 'V' and the gentleness of the slope is not there. The bottom of the swales is supposed to be two feet even which goes up into the sides of the slopes.

Mr. Spillane said his other question is if our code says a max of 4:1 and the plans say a min of 4:1. All of the other swales in Hearthstone are 4:1 max, which is right. He asked if we should tear up all the other swales and make them 4:1 min like it says on these plans. He thinks there was a mistake made there because it was done correctly in other areas of Hearthstone. He said we have a 4:1 min on the plans and the swales on Clearview Drive are correct on the site plan.

He asked Mr. Mallamo if he agrees that throughout Hearthstone there are swales that meet the code. Mr. Mallamo agreed that all swales in Hearthstone except for the ones on Clearview Drive meet the code.

Mr. Spillane asked if there was a mistake made on the site plan. Mr. Mallamo said it is his opinion it was done intentionally to make the design easier. The designer probably said he wanted to put the pipes across the driveways ten feet away from the edge of the pavement and set a standard of ten feet off the edge of the pavement. Then they had to make slopes steeper to get to the ponds. Holding to that ten feet is where the problem occurred. To be three feet deep, ten feet off the edge of the pavement, you cannot go 4:1, so it was changed to keep that ten feet offset. If they went by the code and the 4:1, each of those driveway crossings would go a different span from the edge of the road. The first one is one foot deep and ten feet off the edge of the road. When it is two feet deep, it is eight more feet off the road or eighteen feet. At three feet deep, it is approximately twenty-four feet off the edge of the road. He agrees it is very difficult to design. The water is running down the slopes, ten feet at one, eighteen feet at another, etc.

Mr. Mallamo pointed out that it would look very odd. When he spoke to the design engineer about it, he indicated he would not have done that thought that is how it appears to Mr. Mallamo.

Mayor Marabello said when they originally installed the pipes, the water was going to percolate down to the stone. Mr. Mallamo explained they are not french drain pipes. The plan was to put in a yard basin which is basically a catch basin as is seen along the road with the steel grates where the water runs into the street vertically down. They were not going to use big cast iron grates because there is very little runoff. They were going to put in a plastic green yard basin at the property boundary between each property. There would be a basin in the middle of two driveways. It would run down the swale further to the pipe and then flow down more.

The mayor said that was done in his yard which worked out beautifully. They had a problem with water but it now works like a charm. He asked why this can't be done.

Ms. Wilson said this has been discussed and discussed. Council has spent a great deal of time on this over the past several years. She asked if this is irrelevant because the developer has said no. If this property remains under his ownership including the streets, she is unsure what legal rights the city has. She wants to know if we are rehashing something again that the city has no control over.

Mr. Morrow agrees with Ms. Wilson and feels we need an action plan to approach the developer to get these things fixed.

Rather than spending a lot more time discussing it because it is already on record. He feels we need to come to a consensus and get this fixed.

Mr. Ambrose suggested council direct the city manager to write the developer a letter offering our assistance by installing the pipe in these swales as the city engineer discussed. Then monitor the retention pond to make sure it works. If it does not work, we will do something else.

Mr. Willard said he finds the city engineer's statement that he felt it was intentionally done to fit the swales in the development very interesting. Soil conservation approved this plan and it was inspected by the city engineer at the time, right or wrong. It is on the recorded site plan so all of the homeowners who bought these properties are not going to look at it and say the swales are a minimum 4:1 though Councilman Spillane is on this now. If the developer says to stay off his property, he asked if the city has any rights. Mr. Willard feels it is a little dicey. However, he agrees with Mr. Morrow that we need to present an option to the developer and get his response.

Mr. Workman said we already have gone out there with the pipe and the intent to install it, but the owner said to get off the property because the city had no right there. He asked why would we go to a developer and offer to spend taxpayers' money on it and at what point will an inspection be done so that the city takes it over. Once it is determined it is not standard, the developer will need to fix it so it can be accepted by the town.

Mr. Baird agreed that until it is fixed properly, it will not be accepted by the city; Mr. Workman said then Mr. Fannin needs to fix it.

Mr. Ambrose said it is his understanding that Mr. Fannin does not have to ask the city to take it over until it is 100% built out. What he is suggesting is providing immediate relief to those Hearthstone residents even though it will cost the city some money. It seems to be an easy fix and these homeowners have been dealing with this for over three years. Though we tried it and it did not work, he is recommending we try it again.

Mr. Oechsler confirmed this is in the city and asked why they are not being made to make these swales conform to city code. In his opinion, it is no different if he has a rental property and the roof is falling down. What he is hearing is that because the developer owns the property, the city is unable to tell him what to do. One of the interview questions he was given was to provide an opinion on enforcing city codes. He feels it is code, it needs to be enforced and a letter sent telling him what must be done. However, he is also hearing this was done. He feels the developer needs to be given a drop dead date for it to be repaired. If it is not done, the fines will be enforced.

Mr. Willard explained that in a subdivision, there is a variance provision which allows many requirements to be different from what the code calls for, if it is approved. In this case, there is an approved plot that shows a minimum. After listening to the city's engineer, it makes sense because they had less space. With that recorded document and this still being private property, if we go to Chancery Court and try to get a specific performance, the city could lose on the fact that soil conservation approved it in addition to the town approving the site plan. Therefore, it is not just a matter of enforcing something because there are a number of factors involved.

Mayor Marabello feels that council agrees this was not done properly and people are hurting. He said there are two special families on both sides of Mr. Spillane, and he is taking Mr. Spillane out of the equation, who have members of their family that need to be watched. If someone fell in the swale and got hurt, they would come to the city. He does not think we have to wait. We need to go to the developer and say this must be done. We need to do this because it is the right thing to do. We are willing to spend the city's money and if the system being proposed will work, he asked why there is a problem. He is willing to be part of that.

Mr. Spillane said he is again hearing that this is private property. If the city cannot enforce things on private property, then how are we going to enforce ordinances like the rental ordinance. We are saying we will enforce the laws in the city, but there are certain laws we cannot enforce because it involves private property. Hearthstone has never been turned over to the city.

Mr. Spillane added that if council says we will change it in this area, it says that things will not be made or changed to be unsafe. This is unsafe.

The solicitor explained that the same section Mr. Spillane is referring to also states the applicant can establish reasons why they are deviating. The private property issue is not a threshold issue. There are ordinances enforced on private property throughout the city. The issues are the facts of this approval and he agrees that the recommendation to again approach this in a reasonable manner to try to resolve it. Then the city will know where to go from that point.

Mr. Morrow added that at least the city will be on record as attempting to resolve this should something happen.

Mayor Marabello said he is willing to go and speak with Mr. Fannin about this and believes we can get this done. It is not costing him any money because it is his impression the city is willing to put up this money to correct this situation.

Mr. Oechsler asked if we can add a definite date to respond by otherwise the city will take other action.

Mr. Baird said he prefers the approach of sitting down with Mr. Fannin and his attorney, Mr. Griffin along with the city engineer, city solicitor and himself and explain what the situation is and where the city is at this point. Then follow up that conversation in writing and give a time frame.

He will then keep city council apprised of this situation.

Mr. Spillane asked for confirmation that we are going to have a time table to get this done. He asked if it would be better to write to him and tell him the code is not being enforced and he has ten days to fix it. Mr. Baird feels that if it is handled in that manner, a wall will be put up and that will be the end of it.

Mr. Willard informed Mr. Spillane as a property owner in the area, Mr. Baird needs to take the forefront because there is a possible conflict. Once we get an answer, council can decide what approach to take after he gives his opinion.

Mr. Baird confirmed this is the direction council wants to take; council stated yes.

Mr. Oechsler asked how long Mr. Baird expects to have the meeting and obtain a response; the city manager said within a week.

With no further discussion, the Workshop Session concluded at 9:50 p.m.

Respectfully submitted,



Terri K. Hudson, CMC
City Clerk/Recorder