

*MILFORD CITY COUNCIL*  
 MINUTES OF MEETING  
 November 24, 2008

The City of Milford held Public Hearings on Monday, November 24, 2008 in the Joseph Ronnie Rogers Council Chambers at Milford City Hall, 201 South Walnut Street, Milford, Delaware on the following matters:

The City of Milford, Delaware, in cooperation with the Sussex County Council, the Levy Court of Kent County, Delaware and Delaware State Housing Authority (DSHA) for the purpose of providing interested citizens the opportunity to comment on the municipality's application for funds under the Delaware Community Development Block Grant (CDBG) Program. This Federally funded program will provide grants amounting to \$2,000,000 to support Community Development Activities in eligible local governments in Kent & Sussex Counties.

- PRESIDING:                   Honorable Mayor Daniel Marabello
- IN ATTENDANCE:       Councilpersons Irvin Ambrose, Michael Spillane, John Workman, James Oechsler, Sr., Owen Brooks, Jr., Douglas Morrow and James Starling, Sr.
- ALSO:                         City Manager David Baird, Police Chief Keith Hudson and City Clerk/Recorder Terri Hudson
- COUNSEL:                 City Solicitor Timothy Willard

Mayor Marabello called the Public Hearing to order at 7:00 p.m.

Albert Biddle, Housing and Community Development Coordinator of Kent County and William Lecates, Director of Community Development Housing for Sussex County were present. Mr. Biddle advised this is the annual and duly advertised public hearing for the Community Development Block Grant program, which is federally funded and administered through Kent and Sussex County. Funds are distributed for major activities, including housing rehabilitation for low and moderate-income Delawareans. The state receives approximately \$2 million per year from the Federal Government for this program. There is a long waiting list for these funds and it is in high demand.

He informed council Delaware State Housing Authority has set housing rehabilitation as the number one priority. Milford has been consistent on both sides in receiving past funding. In the current FY08, the Kent side received \$95,000 which is being spent for housing rehabs to eligible owner-occupied households.

Because Milford is in two counties, the following two income limits apply, effective 02/01/08:

	30% OF MEDIAN	Kent County		30% OF MEDIAN	Sussex County	
		LOW	MODERATE		LOW	MODERATE
1 Person	12,300	20,550	32,850	11,600	19,300	30,900
2 Person	14,100	23,500	37,550	13,250	22,100	35,300
3 Person	15,850	26,400	42,250	14,900	24,850	39,750
4 Person	17,600	29,350	46,950	16,550	27,600	44,150
5 Person	19,000	31,700	50,700	17,850	29,800	47,700
6 Person	20,400	34,050	54,450	19,200	32,000	51,200
7 Person	21,800	36,400	58,200	20,500	34,200	54,750
8 Person	23,250	38,750	61,950	21,850	36,450	58,300

Those numbers are derived from the federal government.

Demolitions and infrastructure projects including sidewalks, street improvements, drainage, etc. that have been funded in the past would receive a lower probability of funding. Emergency shelters are also eligible as is a current project that is near completion.

They are presently closing out the FY06-07 years and have just begun FY08. Between Kent and Sussex counties, Milford has been fortunate in receiving funding for housing rehabs and demos in the past. There are several names on the waiting list though he encouraged anyone eligible that may need housing repairs to alleviate substandard conditions to contact the city office for additional information.

Funds are approximately \$2 million for all of Sussex and the balance of Kent which makes the awards very competitive.

Mr. Lecates then explained the applicants must be permanent homeowners who are typically unable to do the repairs themselves. Taxes must be current in the town and in the county. The home must be insured or insurable and a ten-year lien will be placed against all properties rehabilitated owned and operated by a person 62 and under and a five-year lien for persons aged 62 years and older. In Sussex County, the applicant is unable to have more than \$15,000 in liquid assets.

Over approximately 15 years, 37 rehab jobs totaling \$536,000 have been done on the Sussex County side. The last infrastructure project was done in 2004 with the priority on rehabs and a few demos. Funding is available through legislators and street aid for infrastructure projects.

Mr. Lecates advised there are presently 30 applicants on the rehab waiting list for Sussex County.

The deadline for receipt of completed FY09 CDBG applications at the Delaware State Housing Authority in Dover is 4:00 p.m. on February 12, 2009.

When asked about the availability of homeless shelters in Milford, Mr. Biddle advised that Peoples Place operates various shelters throughout the area and asked that any inquires be referred to them.

Mayor Marabello then opened the floor for public comment. There being no public comments, he closed the public hearing and opened it for action from city council.

Mr. Ambrose moved for adoption of the following resolutions, seconded by Mr. Workman:

RESOLUTION  
Sussex County

ENDORISING PROJECT TO BE SUBMITTED TO THE DELAWARE STATE HOUSING AUTHORITY FOR FUNDING FROM THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AUTHORIZING DAVID B. BAKER, SUSSEX COUNTY ADMINISTRATOR TO SUBMIT APPLICATION.

WHEREAS, the City of Milford resolves to apply for Community Development funds from the Delaware State Housing Authority in accordance with appropriate regulations governing Community Development Block Grants State of Delaware Program for Block Grants as contained in Sections 570.488-499 24 CFR U.S. Department of Housing and Urban Development; and

WHEREAS, the City of Milford has met the application requirements of (Attachment E Delaware Community Block Grant Program Policies and Procedures) Citizen Participation requirements; and

WHEREAS, Sussex County plans on accomplishing the requested projects with CDBG funds; and

WHEREAS, the City of Milford hereby agrees to allow Sussex County to accomplish the projects in the targeted areas of Milford; and

WHEREAS, the City of Milford and Sussex County are in agreement with this activity.

NOW, THEREFORE, BE IT RESOLVED by the City of Milford and Sussex County that they endorse and grant permission for the following activity:

APPLICATION: Rehabilitation/Infrastructure/Demolition

Total Infrastructure project cost is \$\_\_\_\_\_, total CDBG grant request is \$\_\_\_\_\_. Matching funds in the amount of \$\_\_\_\_\_ will be provided by the City of Milford general funds. NOTE: To be used for Infrastructure projects only.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF A RESOLUTION PASSED BY THE CITY OF MILFORD, SUSSEX COUNTY, ON THE 24th DAY OF NOVEMBER 2008.

*Council Members*

Irvin Ambrose	Owen Brooks, Jr.
Michael Spillane	Douglas Morrow
John Workman	James Starling, Sr.
James Oechsler, Jr.	Katrina Wilson

\_\_\_\_\_  
 Daniel Marabello  
 Mayor

CITIZEN PARTICIPATION  
 CERTIFICATE OF ASSURANCE  
 Sussex County

It is hereby assured and certified to the Delaware State Housing Authority that Sussex County, Delaware, has met application requirements of (Attachment E Delaware Community Development Block Grant Program Policies and procedures) citizen participation requirements, and that Sussex County has:

- 1) made available information concerning the amount of funds that may be applied for;
- 2) made known the range of activities that may be undertaken with these funds;
- 3) made known the fact that more applications will be submitted to the State of Delaware than can be funded;
- 4) outlined the processes to be followed in soliciting and responding to the views and proposals of citizens, communities, nonprofit agencies and others in a timely manner; and
- 5) provided a summary of other important program requirements.

The City of Milford has held a Public Hearing on November 24, 2008 with required notice for all citizens, including low and moderate income persons, to have an opportunity to present their views and proposals.

The City of Milford has by resolution and after one Public Hearing, endorsed this application.

Mayor Daniel Marabello

RESOLUTION  
 Requirement for Fair Housing-Sussex County

WHEREAS, the City of Milford recognizes the importance of fair housing for the citizens of Milford; and

WHEREAS, the City of Milford supports the goals of the Federal Fair Housing Law.

NOW, THEREFORE, BE IT RESOLVED, that the City of Milford heartily encourages all parties involved in the renting, selling or financing of housing in the City of Milford to insure that no person shall, on the grounds of race, color, national origin or sex, be discriminated against or denied a fair and equal opportunity for housing; and

BE IT FURTHER RESOLVED, that the City of Milford, when acting as administrator of a Community Block Grant, is hereby authorized to take such actions as deemed necessary to affirmatively further fair housing in connection with the said Community Development Block Grant.

This RESOLUTION was passed by a majority of the Council of the City of Milford on November 24, 2008.

Mayor Daniel Marabello

RESOLUTION  
Authorizes Levy Court of Kent County to Submit Application

The City Council of Milford, Delaware, hereby authorizes its Mayor, Daniel Marabello, to submit the Fiscal Year 2009 Community Development Block Grant (CDBG) application and all understandings and assurances therein contained, and furthermore authorizes the Levy Court of Kent County to Act as the official representative of the City of Milford in connection with the submission of the Fiscal Year 2009 CDBG applicant and to provide such additional information as may be required. In the event the City of Milford's application is funded, the Levy Court of Kent County is hereby authorized to administer the funded application on behalf of the City of Milford.

This resolution was passed by a majority of the Council of the City of Milford on November 24, 2008.

Mayor Daniel Marabello

RESOLUTION  
Requirement for Fair Housing-Kent County

WHEREAS, the City of Milford recognizes the importance of fair housing for the citizens of Milford; and

WHEREAS, the City of Milford supports the goals of the Federal Fair Housing Law.

NOW, THEREFORE, BE IT RESOLVED, that the City of Milford heartily encourages all parties involved in the renting, selling or financing of housing in the City of Milford to insure that no person shall, on the grounds of race, color, national origin or sex be discriminated against or denied a fair and equal opportunity for housing; and

BE IT FURTHER RESOLVED, that the Kent County Levy Court, when acting as administrators of a Community Block Grant for the City of Milford, is hereby authorized to take such actions as deemed necessary to affirmatively further fair housing in connection with the said Community Development Block Grant.

This RESOLUTION was passed by a majority of the Council of the City of Milford on November 24, 2008.

Mayor Daniel Marabello

Motion carried by unanimous roll call vote.

The City Council of the City of Milford held a Public Hearing to take public comment and make a final determination on the following matter:

**Charles Murphy Associates on behalf of Brett R. Hamstead and Torianne M. Weiss for Final Approval of a Minor Subdivision of .517 +/- acres into two lots in an R-2 District at 531 South Washington Street, Milford, Delaware. Tax Map 3-30-10.08-080.00.**

Robert Nash of Charles Murphy Associates stated the site is approximately 150 north of East Clarke Street Extended on the east side of the railroad tracks. The lot was originally two lots (lots 3 and 4 of a subdivision) and combined. The new owners wish to resubdivide them into two lots.

Mr. Nash advised that at the DAC meeting, City Engineer Mark Mallamo pointed out that if 75 feet was used for both lots, there would be less than an 8-foot sideyard setback. Therefore, one was increased to 76 feet and the other to 74 feet to meet the R-2 zone requirements. An access easement has been created between the two lots.

Comments at the DAC meeting from the Fire Marshal's Office and City Electric Department have been satisfied.

City Manager Baird advised the planning commission recommended approval by a vote of 5 to 1. A copy of their resolution was included in the council packet.

Mr. Brooks pointed out there are many older properties in the city that are 60 feet wide including his property.

Mr. Oechsler asked if the shared driveway meets the city code. Mr. Nash explained the house will be slightly set back though the house can be built up against the easement.

With no one from the public wishing to comment, Mayor Marabello closed the public hearing.

Mr. Brooks moved for approval of the minor subdivision, seconded by Mr. Morrow. Motion carried by unanimous roll call vote.

The City Council of the City of Milford held a Public Hearing to take public comment and make a final determination on the following matter:

**MG Development on behalf of Elmer & Mary Ann Fannin for Phase I of the Final Major Subdivision of 36.22 +/- acres into 40-Lots (240-Units) to be known as Hearthstone Manor II. Site is located in R-2 and R-3 Districts on Elks Lodge Road adjacent to Eastman Heights in Milford, Delaware. Tax Map 3-30-15.00-022.00.**

Esquire Jim Griffin of Griffin & Hackett and Greg Fusco, of Key Engineers, were present to represent the application. He advised that on October 27<sup>th</sup>, council granted a one-year extension of the preliminary approval. Since that time, the fire marshal granted final approval as a result of DELDOT requiring the relocation of an entrance and redesign of a cul-de-sac. The city has received a copy of that approval.

On November 17<sup>th</sup>, the planning commission voted 6 to 1 to recommend approval of the final site plan for Phase I which was subject to the following five conditions:

- 1) \$400 will be paid to Parks and Recreation Fund at the time of the building permit issuance.
- 2) A note will be added to the plat specifying a 1:4 maximum ratio on all swales.
- 3) Parking will be provided with no less than 2.3 spaces per unit.
- 4) A tot lot be provided as presented on the plan shown on 11/17/08.
- 5) Sidewalks will be installed to city specifications as presented on the plan presented on 11/17/08.

A copy of the revised plan was included in the council packet as verified by City Manager Baird.

Mr. Griffin concluded by saying his client is willing to comply with all five of those conditions.

Mr. Brooks asked if the sidewalks were being installed on the main road and major streets. Mr. Griffin explained that sidewalks shown on the plan are four-foot wide concrete sidewalks as designated by a bold black line. The intermittent bold-black dash line denotes five-foot wide concrete sidewalks; the bold dash with spaces represents five-foot wide bituminous walking trails which extend through the tot lot area that consists of 1.9 acres of open space, then down the perimeter, around the wetlands and along the frontage of the property.

Mr. Griffin said that when the preliminary was approved on July 10, 2006, the parking was shown at the rate of 2.2 parking spaces per unit. The condition of the commission was for an increase to 2.3 spaces as agreed by his client. He emphasized that the preliminary plan approved July 10, 2006, had no sidewalks and instead was approved with swales. There has been much more included in the plan approved by the planning commission last week with the sidewalks added.

He noted the preliminary plan approved in 2006 contained 33% open space; his client was to contribute \$400 per unit to make up for the open space deficiency.

Though Mr. Griffin pointed out that some people may not feel that is a good trade, the R-2 zone in the City of Milford Code does not specify any open space requirement. Of the 36 acres, 31 acres is zoned R-2 where no open space percentage requirements. Six acres is R-3 which requires 40% open space. Considering 40% of the 6 acres and no percentage of the 30 acres, Mr. Griffin believes his client has gone far and above what was required of the ordinance at the time. Not only have they agreed to overlook the fact there was no open space required for R-2, it was agreed to make up the difference to the full 40% which appears only in the R-3 zone. As a result, they feel they have shown more than good faith and have never considered changing the offer to pay the extra \$400. At the time the application was filed, he was asked by the city if he would be willing to do that. At that time, the contribution to parks and recreation was requested and willingly accepted as was done with the original Hearthstone Manor project.

Additionally, all three areas--parking, sidewalks and open space have been provided as was asked with more on two of the three issues. On the third issue, more was given than the code required.

Mr. Oechsler said that on July 10, 2006, it was stated the applicant requested relief from the parking requirement of 2.5 spaces to 2 spaces per unit and agreed to pay \$500,000 into the parks and recreation fund. He asked if that still applies and when it would be paid.

Mr. Griffin explained the conditions recommended were \$400 per unit. Mr. Oechsler feels this is a totally separate issue and does not involve the open space. He read a sentence from page 71 of the council packet (Memo from City Planner Gary Norris to City Manager David Baird dated July 2, 2008) that he said does not mention open space or \$400 per unit.

It was noted there has never been a requirement by the city to pay for an exchange for parking spaces. Mr. Ambrose agrees the sentence is confusing though the \$500,000 was for the number of units at \$400 per unit which is on record.

Mr. Workman advised that when you look at the drawing, he does not believe it addresses what council wanted when this was originally presented. The purpose was to have the trails that everyone could use. He agrees there is one area with a trail, a small one in the middle where the tot lot is located, etc. Council wanted them placed in locations where everyone could use them. He appreciates that some sidewalks were added, but emphasized their importance and why all new developments are now required to have them.

He stated that he originally voted against this project because it lacked sidewalks. If this was presented today with the trails shown, but without sidewalks, it is still not what council wanted.

Mr. Griffin recalled that when the preliminary approval was granted, there were no sidewalks at all. They have since included sidewalks and are now being told it is not enough. He advised there was an existing ordinance on the books at that time of the approval that required sidewalks, however, this subdivision was approved with swales instead. He is asking council to remember what was previously approved without sidewalks and acknowledge the fact that the developer has shown good will in offering to install sidewalks in certain areas. He believes that when council approves a preliminary plan, the builder designs his project based on that plan, and when amendments are made to a final plan, it makes it very difficult for the developer. In this case, his client has exceeded what was accepted at the time of the preliminary review more than two years ago.

Mr. Workman asked how much open space is shown; Mr. Griffin said approximately 33%. Mr. Workman asked what the code requires; Mr. Griffin explained that approximately 30 to 31 acres are R-2. He then referred to Section 230-10 (R-2) which only mentions the language percentage in paragraph G-1(B) which states maximum lot coverage shall be 30%.

However, at the time of preliminary, he recalled the planner at that time, Liz Brown indicated that R-2 required 30% open space and R-3 required 40%.

Mr. Griffin then referred to 230-11 for R-3, B-2 (G) states a minimum of 40% of the total area developed for garden apartments shall be designated as open space. This application involves townhomes which was referred to in B-3 (J) that states a minimum of 40% of the total area developed for townhouses shall be designated open space.

Mr. Workman said that this property includes the R-2 and R-3 and it appears that the total development is being combined though there are two zoning districts involved. Mr. Griffin explained that is how a PUD works. Mr. Workman said if R-3 requires 40% open space and the R-2 does not require any open space, the project still only contains 33% and not 40%.

The city manager explained that the R-2 district only addresses lot coverage on a single family lot. In the single family area, the lots cannot exceed the 30% lot coverage. Mr. Griffin verified they will comply with the 30% lot coverage in both districts.

When asked what type of open space percentage is in the R-3 area, Mr. Griffin explained that overall it is more than 33% which includes both zoning districts. He is unsure of the percentage in the R-3 area specifically. He said regardless of whether they are at 33 or 40%, they have agreed to pay the \$400 premium to make up the difference. This is an unclear area of the Milford Code though his client has agreed to meet the higher standard.

Mr. Workman recalled that not long ago, council stopped the option to pay the \$400 per unit for a reason. Mr. Brooks agreed explaining it was stopped because council preferred the open space. Mr. Workman noted that in this case, the 40% required has not been met.

Mr. Workman added that council felt open space was important for residents to have recreational and open space. Mr. Oechsler is in agreement that council stopped the open space option. However, he feels it similar to a code. If you approve something back in 2003, you are under that 2003 code as long as you get extensions. Therefore, you are still bound or held to those regulations even if they are no longer permitted.

Mr. Oechsler referred to pages 71 and 72 of the packet which he believes are the city solicitor's words from a meeting on June 27, 2008. He indicated that Mr. Willard said there are issues on both sides and that he would like to see the

entire development with all phases to be reviewed by the planning commission prior to the current application for final approval moving forward. He thinks that some of the hangup is we are only seeing phase one and not seeing the entire project. Therefore, it is hard to understand these different phases though he understands a PUD allows a developer to put all of that together.

Mr. Willard said that when this preliminary was approved, it was approved as a preliminary subdivision and as a conditional use. The conditional use is the PUD. The PUD gives council some flexibility. Mr. Workman asked how two different districts can be applied to a PUD. Mr. Willard explained you calculate the density by determining the density for each district, which is then applied to the overall PUD. The applicant tried to apply that logic to the open space requirement because the PUD does not address open space.

Mr. Griffin then referred to Section 230-48.1(c):

*Density. A planned unit residential development is not intended to increase density, but to allow flexibility in the design of the number of dwelling units permitted. If a parcel or parcels have more than one zoning classification, the total permitted density may be located throughout the parcel or parcels. The total permitted density shall be determined by dividing the net development area by the minimum lot area per dwelling unit required by the zoning district in which the land is located. Net development area shall be determined by subtracting 25% of the gross area. Gross area shall not include any wetlands, floodway or similar area not suitable for building as determined by the Planning Commission.*

Mr. Griffin said that in this case, the 25% is taken from the gross acreage and the wetlands are deducted which he feels are approximately four acres, then the adjusted gross is divided by the calculations called for herein. When you take out the 25%, the wetlands and the areas of the dwellings, everything else is open space.

Mr. Willard agrees it is clear on density, but was referring to open space which is not clear. Mr. Griffin feels that what is left is open space. Mr. Willard pointed out there is no section that specifically identifies open space which is why Mr. Griffin looked at R-2, R-3 and R-4.

Mr. Willard said he needed to see the entire PUD that was approved so he can get a big picture of the open space. Mr. Griffin advised this was required to come in by phases which the developer is doing.

Mr. Baird agrees with Mr. Griffin stating the overall project has received preliminary approval. As each phase is developed, it will be brought in for final approval.

Mr. Brooks asked for definition of new development. He stated that when it was annexed in 2003, a clubhouse, country club and golf course was part of the plan. In 2006, they came back and asked for 1,138 units. At that time, the clubhouse and golf course had been removed.

He asked if a developer comes back annually for ten years with an extension, is it still considered a new development. Mr. Griffin feels the die is cast once the process is started. When they went before the planning commission in 2006, it was denied. But council overturned that recommendation and approved the project with 1,138 units with no sidewalks, roughly 33.8% of open space and 2.2 parking spaces per unit. They are now returning with more parking spaces, they are making up the difference in open space and are providing some sidewalks where none were required before.

Mr. Brooks recalled asking for sidewalks originally but a waiver was requested. Then DNREC was contacted by the applicant who came before council and asked that swales be considered. Mr. Griffin recalled that in the PLUS process, they commented they liked swales because there was less pervious cover. The process also requires Sussex Conservation District to address sediment and stormwater management and their approval was with the swales.

Mr. Brooks recalled that back in 2006, Mr. Crouch and Mr. Brooks were on a sidewalk committee. Mr. Crouch said at that time, any future development should be required to have sidewalks with no exceptions. Mr. Griffin reiterated that was not what was approved on July 10, 2006. Mr. Brooks agreed the committee met on August 4, 2006.

Mr. Spillane asked the size of this phase; Key Property Engineer Fusco answered 36.2 acres. Mr. Spillane said he keeps reading that somewhere they are supposed to show a full plan and he doesn't feel we are seeing the concept because they are saying phase one. He asked if they are coming back with each phase to get approval.

Mr. Griffin stated the plans provided for this phase were 44 pages. At the time council approved the preliminary approval, the entire project was presented. However, they were required to come back with each phase for a separate approval.

Mr. Spillane said that in 2006, they did parking spaces at 2.5 but all of a sudden it was reduced to 2.3 even though they said they had land to get 2.5 parking spaces.

Mr. Griffin repeated the preliminary plan council approved in July of 2006 was with 2.2 parking spaces. The plan was never approved with 2.5 spaces. The condition of the planning commission was to increase it to 2.3 which has been done.

Mr. Spillane said it was stated in here that they could give 2.5 spaces and he does not understand why that was changed if they had the land. Mr. Griffin said there may have been some sort of reference in the minutes, but 2.2 spaces were approved.

Mr. Brooks referred to Mr. Workman's earlier statement that there is no longer a \$400 per unit option. He asked Mr. Baird where that leaves this application. Mr. Baird said if city council wanted to impose that, it would need to be listed as a condition of the approval and voted on.

Mr. Brooks said his understanding from what Mr. Griffin has said is that everything effective in 2006 is still in effect. He asked if council is still able to impose the \$400 fee or is it no longer in effect. Mr. Baird said that considering the fact that there is no longer an ordinance on the books today, his recommendation is if council deviates from an existing ordinance, it needs to be specified.

Mr. Willard explained that what makes this unique is this involves a conditional use which allows more latitude to impose conditions that may not be specifically spelled out. The code only says that conditions may be imposed which make the conditional use fit into the area or compensate for open space. The only way he disagrees with Mr. Baird is when there is a conditional use, there is more room to invent conditions which can include payments as well as a number of other things.

Mr. Griffin says that the parks and recreation contribution policy was in effect when this was approved in 2006 though later council decided not to accept that as a trade off. However, that never applied to this particular project. His client was not informed he would need to design his project differently. He was given preliminary approval with the understanding he would make up the difference with the contribution. The planning commission even noted that in their recommendations.

Mr. Oechsler asked if there is a 25-foot utility easement that was requested by Electric Department Superintendent Rick Carmean. Key Properties Engineer Greg Fusco confirmed it has been provided. Mr. Oechsler then asked if it is an open swale or curbs. Mr. Fusco responded open swales and confirmed there were no curbs.

Mr. Spillane referred to a note from City Engineer Mark Mallamo that stated we require sidewalks. He says he has to support Mr. Mallamo on this.

Mr. Griffin pointed out that Mr. Mallamo did not take into account that when this development was approved back in 2006, there were no sidewalks included in the plan. He does not think this is the meeting where the developer's project is redesigned if that is what council has in mind. If so, council is departing from its own rules because when the developer is given preliminary, he has his marching orders to move forward with the rest of his design which he provides to all of the agencies who, in turn, have given their approval. It has been before the planning commission which approved it with a 6-1 vote and they are here for the final step.

Mr. Workman asked where the \$400 was written or where it is shown as part of an ordinance. He questioned if it was something that someone said they were doing and then decided not to do it. He is unsure how we can say he is entitled to this option because it was never in the codes or part of an ordinance.

Mr. Willard said he previously referenced sort of a general authority to impose conditions on conditional uses. They can be for business hours of operations, etc. He does not know if the idea came up in 2006 or where it came from. If it is not in the code and the question is can council impose this, the authority is in the conditional use section of the code that allows council to place conditions.

Mr. Griffin noted that was explained when they came for preliminary in 2006. The same contribution had been made in Hearthstone I. This was presented as a mirror image of Hearthstone I. As far as he knows, the source of the \$400 per unit was a policy the city had. Whether it is written or not, he is not privy to that.

Mr. Willard added that these parcels were annexed originally. The state has recognized annexation agreements which may cause for compensation of infrastructure though he did not see that in the minutes. That is the place a condition may be applied in the form of a contract based on negotiating to get into the city.

Mr. Spillane asked the city solicitor why we don't have to address the codes as they are right now. Mr. Willard said as Mr. Griffin has stated, when you have a two-step process which in this case is a preliminary and final subdivision approval, the requirement the applicant must abide by is what was approved at preliminary. Therefore, they do not have to change their final to adapt to any code ordinances that changed in the interim unless it is expressly said or agreed to which is Mr. Griffin's point.

Mr. Griffin does not believe new conditions can be imposed such as sidewalks. He again reminded council there was a sidewalk ordinance in effect in 2006 that required sidewalks though this development was approved without them. His client was entitled to rely on that. His client has even gone beyond that and provided some sidewalks though the first plan had zero sidewalks. Mr. Griffin does not believe that council can now say forget what was approved at preliminary because we now have a new set of rules to go by.

Because there were no sidewalks, Mr. Workman recalled council stressing the importance of having trails throughout the development. He said if you look at the plans, the trails are basically in the front with one small trail in the middle around the tot lot. Council said if there were no sidewalks, trails were needed to connect so everyone had a place to walk or ride their bikes. However, he does not see that.

Mr. Willard says that all he has in his packet is a plot that shows phase one. Mr. Griffin indicated the multi-page plot with the engineering drawings was submitted for final. He has not personally reviewed the engineering drawings. The final process requires multiple engineering drawings that deal with cross sections of streets and similar items. He asked Mr. Fusco if they were submitted for this final or did they rely on the one submitted at the preliminary.

Mr. Fusco, said the plans before council regarding the final submission for phase one included the information given at the time of the preliminary which was used as guidance to prepare those documents. Mr. Willard confirmed they were prepared with the Milford Subdivision Code in mind. He added the subdivision code specifically says for improvements

in major subdivisions the following improvements are required:

Utility easements shall be required to be granted and recorded by the subdivider to allow extension of utilities to neighboring properties.

The solicitor said in the previous Hearthstone One, there were some problems with that. He noted that Eastman Heights is next to this property and asked if the engineer was familiar with the necessity to connect to any neighboring properties or any easements recorded on these final plots indicating easements.

The engineer explained the Eastman Heights subdivision has been there for years. There is no area on that property that would allow for an easement midway for this development to do any type of interconnection. They provided the trail along the entire length of the site on Elks Lodge Road that would interconnect with the Eastman Heights development. He added that more importantly, there is a right of way that allows for future connection on the adjoining Wilkins Farm in the event that is ever developed.

Mr. Willard asked if those easements are contingent upon anything in the developer's control. The engineer said he is unable to answer that though he knows the right of way is shown on the plan.

Mr. Griffin said he personally has not reviewed the 44 pages of drawings Mr. Fusco is referring to though we are getting into issues that have nothing to do with tonight's hearing. Mr. Willard said that a final site plan is when council has to approve the detailed drawings and must rely on their engineers and their attorney.

Mr. Griffin said that even if it were approved tonight, the plans will still have to be stamped and approved before it is recorded.

Mr. Oechsler referred to the area for future development listed in the front and asked if that is considered open space and do they have any idea of what is being proposed to go there. Mr. Griffin explained it was originally shown as a potential area for commercial, but that could not be done without coming back for further approval.

Mr. Oechsler asked if it was considered part of the 33% open space originally referenced; after speaking with the project engineer, Mr. Griffin answered it is included in the open space.

Mr. Spillane said that on the open space area talked about, they are now claiming it as open space. He said when this gets approved, will it be left open space or do they plan to come back for some other type of homes or stores or something later on.

Mr. Griffin recalled there may have been some previous discussion on this though he does not recall if it was before the planning commission or council. He recalled that at the time this project was approved in 2006, conditions were somewhat different. Since then, his client is promoting on another site a regional commercial area with shopping. But the Lifestyle Mall is dependent from DELDOT's perspective on revisions being made to the intersection of Route 1 and Wilkins Road. His client has indicated the likelihood of putting commercial here is not as high as it was in 2006 because of the other idea. He advised that though Mr. Spillane was not in office when this project first started, the city indicated it liked the idea of at least a small amount of commercial for convenience type items. That is why this was shown for potential future development for commercial purposes though he stressed that would require another approval.

Mr. Spillane said that if that is being claimed as open space in phase one, and then they come back and build on that, he asked where is the open space that is being taken from here and it is being counted two or three times.

Mr. Griffin then advised that their engineer, Mr. Fusco, who spoke with Mr. Fannin, said that contrary to what he thought

when he responded a moment ago, the four acres is not counted in the open space. Mr. Spillane again confirmed it was not counted right now. He said it is shown in phase one and it scares him.

Mr. Griffin again noted that council has control over that because it could not be developed commercially without councils' approval.

Mayor Marabello then asked if the public has any questions.

Paul Goldstein of 15 West Thrush Drive, Meadows at Shawnee said that the City of Milford has a code and we should abide by the code because this is how we are governed. If we change the code from one thing to another, we pass it by putting it in the newspaper, then we have public hearings and it is passed. If we said people have to have copper wiring and someone comes along and says they are putting in aluminum wiring, it would be against the code. He said twenty years ago I was allowed to put in aluminum but you are not allowed to do it today. So the code says it is effective as of the date it has passed. So then I look at this thing and I say they should all come before the City of Milford for compliance of all codes that are the current codes and any codes that we change in the future. And until such time that they have their site approval. The preliminary approval, which is how many houses he is going to have, where the site will be and zoning, that is fine. The reason we have the final site approval is because years later, he comes before you and says this is what I'm going to do. The reason you are voting is because you want to look at it and make sure it has everything in our code. Suppose they put in the preliminary or the paperwork they turn in that they are going to build a seven-story building and the code says three stories. Obviously you can only build three stories. So what you approve today should be everything in our code according to law. If you want to make exceptions, great! Have an exception. He would like to quote Mr. Mallamo's letter and some points in it. He is the city engineer. He wrote in 2008 to Mr. Fannin that the code of the City of Milford Chapter 200 Subdivision of Land 200-6 General Requirements and Design Standards (B) requires sidewalks in all subdivisions.

Mr. Goldstein stated that he was informed to put in sidewalks. The applicant elected not to proceed, not to provide a sidewalk within the streets and roadways within the development. A walk path was proposed. He said that he then talks about a parking allocation that does not meet the city code which is 2 spaces versus 2.5 spaces. If the city code requires 2.5 spaces per unit and the city engineer tells you this and tells this to the applicant, then you need to change it. He said pass what he suggests which is a waiver or a variance. Suppose the next builder comes in next week and says that builder didn't put in a sidewalk, he put in a swale. He says I don't care if your code says you have to have a sidewalk. I'm putting in a swale because the other builder got it. Look where you are at. Are we a city of law that says this is our code? If you don't like the code ladies and gentlemen, change the code, change the requirements. I beg you as leaders of the City of Milford to enforce our code.

Spyro Stamat of 10284 Webb Farm Road, Lincoln, advised that Mr. Willard said this is a preliminary, our distinguished expert or applicant says that they are trying to help. He said the point is the electrical permit wasn't granted until now because it had to be brought up to code. They just got that approval. So why do we need sidewalks? He answered because it is a safety issue. It is a safety issue that needs to be brought up to code also. It is not just a matter of spending money. Mr. Workman brought up the fact that there is no \$400 for the premium, there is no written code you have to pay the \$400 but they are willing to pay a premium. So since there is no written code for the \$400, make it a thousand dollars since there is no set fee and nothing that states \$400. Make it high enough that the sidewalks will be paid out of that premium. They are willing to pay it so one way or another if the electrical or fire department said they had to wait for the fire department, they had to wait for the electrical, sidewalks are a safety issue and bring it up to code. If it is a safety issue, then he does not know why council is even debating it. It is a conditional use and if Mr. Willard is correct, he seems to think council has the upper hand.

Howard Webb of Cedar Neck Road said that as a nonresident of Milford but living close to town, he wants to point out that much of what happens in Milford affects him as a nonresident as much as it affects the residents. It is in everyone's

best interest, whether they live in town or outside of town, that Milford can be the best quality community possible. Assuming the city code is the minimum standard of excellence in Milford brings him to two questions. He said if quality is all important, why are we considering Hearthstone II with the reduced open space, lack of sidewalks and lack of parking. If quality is not important, why do we bother having a city code. More importantly, Milford is going to be whatever standard council sets and it will be best if it is high.

Joseph Palermo of 5 Misty Vale Court, said he lives in Meadows at Shawnee and they do not have sidewalks. They have approximately 183 homes and 50 plus children. The reason they do not have sidewalks is because they were waived. During the summer months, they have small children playing in the street and it bothers him because someday he believes there will be a problem. Sidewalks are important.

Mayor Marabello asked twice if anyone else from the public wished to comment, but no one responded. Therefore, he closed the public hearing.

The mayor then referred to the plan showing four-story apartments. He said the code restricts buildings to three stories with a maximum of 35 feet.

Mr. Willard referred to 230-48.1(D) which is the section that allows the planning commission to set certain standards when dealing with PUD's. The last sentence states that maximum height shall not exceed 48 feet and four-stories maximum.

It was agreed it conforms and that it was below 48 feet.

Mr. Willard asked who drafted the HOA documents which were included in the packet. He asked if Mr. Griffin is familiar with the homeowners' association rules.

Mr. Willard said it seems somewhat unusual that the owner has the number of votes that they own lots though sometimes they will put in a super majority for turning over control that is 75%. In this homeowners' association, paragraph 3.6 says as long as the declarant (owner) Mr. Fannin has one lot, he will have control of the board.

Mr. Griffin responded that is not a subject the Milford ordinances speak to even though he has seen restrictions that say that turnover will occur when all lots are sold. Many say when two-thirds of the lots are sold, but generally it is the percentage the developer wants to maintain in terms of turning over. That is usually in the applications he has seen before the county but not something the government mandates but instead something the developer has the right to specify. If someone disagrees, they would not have to buy a lot.

Mr. Willard agrees with Mr. Griffin

Mr. Oechsler then referred to page 75, paragraph 3, Minutes from the April 21, 2003 Annexation Committee Minutes and asked for an interpretation about the billboard and if the city has a code for billboards. Mr. Baird assumed that at some point, there was a discussion about locating a billboard on that site. It says they would not be approved.

Mr. Oechsler asked if the city has an ordinance on the size of signs or billboards. Mr. Baird explained that the zoning code states that billboards are prohibited as is noted in the appendix in the rear of the code. There is no specific definition in the zoning ordinance itself, however, the definition refers to the dictionary's definition and does not denote size but spells out intent which is a large display.

Mr. Brooks asked if that would be required to go through the Board of Adjustment. Mr. Baird answered that any request for a variance or special exception would have to go before the Board of Adjustment. However, a billboard application

does not stand on its own.

Mr. Spillane recalled previous discussions about a tower being put on this property. He said it also said the contractor would actually give the city space for that tower in this area. He does not see it on the map or on the plans.

Mr. Griffin said he respectfully disagrees that it would be a gift. At the time the planning was started for this project, his client was asked whether he would consider providing a location for a water tower and a substation for the fire department. He believes that discussion centered more on the parcel where the Lifestyle Mall is planned. He does not recall the city coming forward and saying we would positively explore locating either a water tower or fire station on the parcel we are dealing with tonight. He recalled his client being asked the same question by Mr. Spillane when they were here for the extension. At that time, he said that if the city was still interested, he would be willing to talk to the city about that.

Mr. Spillane referred to a page of the minutes which he indicated reflects the water tower placement.

Mr. Griffin stated that the city water department has not indicated they want to place a water tower there noting there are several more phases of this development to be done. Phase one is only being considered tonight. If the city wants to put a water tower on this site and wishes to identify that need, he is confident he will consider and respond to that. However, he must still come back for future phases. They were not expecting to be told they were required to put a water tower on the 36 acres and is unsure the city would want a water tower on this site considering its location. If the city is interested in acquiring land for a water tower, they are willing to discuss that.

Mr. Spillane said that in a couple of areas depending on where the water would go and if this land was approved and some other land of Mr. Fannin's was approved, it could go on either property and the builder would give the land to the city for this and the substation.

Mr. Griffin reiterated that when preliminary approval was granted in July 2006 for the entire development, that was not a condition. With all due respect to members of the public who stated that whatever the code says should be enforced, he feels they should have attended the hearing in 2006 to make those comments. It is a few years later and there is a preliminary plan that was approved by this body by a super majority over the recommendation of the planning commission. Therefore, he would ask council to keep in mind what was approved in 2006. He hopes there is only a minority on council who want to re-engineer the project tonight and impose conditions not imposed in connection with the preliminary. He hopes council understands this is a phase one approval which is an improved plan over what was approved in 2006.

He added that if the majority of council votes to turn the plan down, then he feels all bets are off in terms of any agreement with the developer. Mr. Griffin said with all due respect, that would be completely wiped out though he does not believe that is something that is permitted. That matter has been litigated in other cases and decided that when there is preliminary approval and the developer relies on that planning in his project, when it comes back for final, it cannot be turned down because of a water tower or a billboard on Route 1.

Mr. Baird said that he wanted to comment on the utility proposals, specifically the water tower. He recalled that voters approved borrowing in February for water system improvements and part of that work is the development of a new storage tower, new wells and new treatment at some location in the southeast area of the city. A final location has not been determined until some additional modeling is done. Once that is done, they will talk with the property owners about where to best locate that tower. It could be on this site, though not necessarily in phase one. On other areas of Hearthstone II, it could be further to the south or further to the east on some additional properties. He wanted to clarify where we are from a city management perspective with regard to water tower improvements.

Mr. Oechsler then asked if final approval is granted, when construction would start. Mr. Griffin indicated that Mr. Fannin said that he would have to obtain the actual entrance permit from DELDOT which involves a process where the developer has to post a bond and enter into an agreement with DELDOT. That must be in place before he was in a position to begin. He added that he is sure market forces have some effect. Depending on how far they get, there could be a point in where they would have to come back for an extension.

Mr. Oechsler referred to pages 92 and 93 of the council packet (April 26, 2006 DAC minutes) that state Mr. Mallamo said the sewer connection will require some additional work in this area for a pumping station upgrades, etc. and will need to be resolved in a utility agreement. There is not an adequate sewer pumping station in this area to serve this development.

He asked the city manager if there is adequate sewer and water to serve this development. Mr. Baird said yes, the applicant has made provisions to accommodate some upgrades to the pump station which will handle the flow that will come from this development. Mr. Oechsler referred to the letter indicating an estimated cost of \$6,900 as stated in Mr. Mallamo's letter.

Mayor Marabello again asked for further comments from council. When no one responded, Mr. Ambrose moved for approval of the final approval of Phase I of the Final Major Subdivision of Hearthstone Manor II with the following five conditions as recommended by the Planning Commission:

1. \$400 per unit will be paid to the Parks & Recreation fund at time of building permit issuance.
2. A note will be added to the plat specifying a 1:4 maximum ratio on all swales.
3. Parking will be provided at no less than 2.3 spaces per unit.
4. A Tot Lot will be provided, as presented on the plan shown on 11/17/08.
5. Sidewalks will be installed to City Specifications, as presented on the plan shown on 11/17/08.

Motion seconded by Mr. Starling, but failed by the following 3-4 roll call vote:

Yes-Mr. Ambrose said he believes that when applicants come before this body and are given approval with certain conditions and the applicant carries those things out, he feels it is councils' responsibility to honor the commitment made at the time of the preliminary approval so he is voting yes.

No-Mr. Spillane said he thinks the current code should be followed.

No-Mr. Workman said as he stated before when he voted against this project, how he felt about this project in reference to what happened, even with what was said by council when council approved that phase. However, with the discussion tonight based on other comments, his attorney comments, the discussion here with council, it seems to him there is a lot out there that has not yet been addressed. He cannot vote yes on this project so he is voting no.

No-Mr. Oechsler said he does agree with Mr. Ambrose' statement to a point. He will say that he believes as he has stated before, there should be a \$500,000 fee for the reduced parking fee that did not have anything to do with open space. He is also very concerned about the area for future development so his vote is no.

No-Mr. Brooks said he is very concerned about sidewalks. He served on the sidewalk committee and feels sidewalks should be in these residential areas also and votes no.

Yes-Mr. Morrow also echoes Mr. Ambrose' opinions and concerns. He said it also should be noted that the planning and zoning commission approved it with a 6-1 vote and votes yes.

Yes-Mr. Starling votes yes.

Mayor Marabello advised the application has been denied by a vote of 4-3. It was questioned whether a super majority of council was needed to overturn the planning commission recommendation as has been previously discussed.

Solicitor Willard said that in any event, four affirmative votes are needed. The application was not denied though it was not approved. Mr. Willard then referred to section 230-58 (F) of the zoning code which states if, after due consideration, a proposal is denied, such proposal shall not be eligible for reconsideration for a period of one year after final action by the City Council, except upon the favorable vote of three-fourths of the Planning Commission or City Council.

He explained that in the case of an unfavorable report or recommendation for denial by the planning commission, such amendment or change shall not become effective except for a three-fourths vote. They gave a favorable report. If it was not to pass this, a super majority was needed.

Mr. Willard clarified the motion to approve the final site plan for Phase I of Hearthstone II did not receive approval.

When asked the procedure to come back to this body by Mr. Griffin, Mr. Willard explained the application was denied. He explained that in some instances you can bring back some applications if there are super majorities as noted in the zoning code, though he is unsure if that applies to a subdivision. He offered to confer with Mr. Griffin tomorrow on how to proceed in order to verify the rules. Currently, the vote stands that it did not pass.

Mr. Baird said he feels the applicant will pursue any options and asked Mr. Willard to inform council of the outcome of any conversations.

*Ordinance 2008-8 CHAPTER 180 Residential Rental Operation License*

The City Council of the City of Milford held a Public Hearing on the following amendment to the City of Milford Zoning Code:

*Following the hearing, Ordinance 2008-8 may be adopted, with or without amendments.*

*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.*

#### Section 4.

*Dates.*

*Introduction: October 13, 2008*

*Effective Date: Ten Days Following Adoption by City Council*

The city manager then read portions of the ordinance into record. Mr. Workman asked for assurance the code enforcement official will enforce this ordinance if adopted because he feels this is primarily part of his job duties.

Mr. Baird feels the proposal will be labor intensive from a manpower standpoint. Should council want to proceed, another code enforcement official would be hired though that would take some time. They will be doing a bit of everything and one person will not handle only licensing issues. However, if adopted, he agrees it will be part of their job function to adhere to the requirements set forth in this ordinance.

Mr. Workman asked how many rental units are in the city; Mr. Baird said it is an estimate based on the fact that all rental units are not licensed in the city. He thinks there is approximately 1,300 to 1,500 units.

Mr. Workman then asked how this code official will have time to do other things with that number of units. Mr. Baird advised we have one full time official and this could help that department with the costs of a second. Presently, our building inspector is able to assist the code official with his duties because of the slowdown in construction.

Mr. Oechsler verified that the fees generated by this ordinance will be used toward the salary and benefits costs of the new code official.

Mr. Ambrose then confirmed this includes the large apartment complexes noting they were excluded from the original ordinance. Mr. Baird emphasized this will apply to all residential rental units in the city. Mr. Oechsler asked if it is possible to reduce the fee considering the 1,300 to 1,500 units. Mr. Baird advised the fee is up for debate though he does not recommend anything lower than \$50 because of the issuance costs that need to be factored in.

Mr. Morrow asked what costs are involved in hiring a code official; Mr. Baird said total costs will be between \$60,000 and \$70,000. Mr. Brooks verified the increase will cover the costs of salary, benefits, training and a vehicle; Mr. Baird stated yes.

Mr. Ambrose noted that 1,300 units at \$50 calculates to \$65,000 and recalled the \$50 fee is what was originally discussed during the budget hearings. He recommends we decrease that fee from \$75 to \$50. Mr. Brooks stated that in 2004, the ordinance started with a \$25 per unit and was reduced to a \$25 fee per landlord. At that time, it was agreed that fee would cover the costs of putting things in place. Now there is a need to hire someone to actively enforce the ordinance.

Mr. Baird feels that if the fees do not cover all the costs of the new employee, there is still a community wide value which could easily be supported by the general tax base.

The mayor then opened the floor for public comment.

Joe Palermo of 5 Misty Vale Court, Meadows at Shawnee, said that if council decides to hire an additional code enforcement officer, he would recommend it be done in-house. He said there are a number of people in the building department and with the market flat, it would be prudent to use someone already familiar with the codes and ordinances which would save the city the added costs of a salary. He said if it is decided to hire a new city code agent, let it be in house.

Emmett Venett of 810 N.E. Tenth Street, advised he has six units in Milford. He would like to reiterate what Mr. Ambrose had stated about deferring the initial costs to his tenants the first year. But, ultimately the costs will be transmitted to 1,300 families or residents and not the whole population. He believes that should be taken into consideration. Most of the people renting are not an affluent class of people so we are burdening them ultimately with these costs although it seems like the landlord initially. He thinks that most businesspeople will eventually transmit that cost to the 1,300 residents.

He said he is unfamiliar with what has driven the code enforcement interest by council though he has heard various members talk about their concerns. Because Mr. Venett has one Section 8 housing, he must make sure the inspector comes around in order to meet their requirements. From his own perspective, he is unsure what has prompted the interest in this particular segment of the population.

Mr. Workman explained that since he has been involved with council, he has walked around his ward and other areas of town. He has come to the conclusion that many homes and some landlords do not care about what their properties look like. His concern is if it does not look good from the outside, he cannot imagine how it looks inside, though he could be wrong. Something like this is put in place to help with this type of rental unit. However, he also understands the landlords who take care of their properties may feel like this is a slap in the face.

Mr. Venett said that he would like to conclude by saying that decisions are really good in government. He spent thirty years in government and his approach to problems was always to try to look at a database decision. If data is kept which says this is when the public needs to have this service, but perhaps at some point they don't. He is thinking that in the future, the revenues will be somewhat less, just like other communities who are struggling during these hard times. He would say that 1,300 units times \$50 is \$65,000 out of the city budget. If a code enforcement official is established, then look at what data or measurements can be used to determine whether it is meeting the objectives the city has, then only sustain that to the extent it is needed. He thinks that is in the best public interests and certainly would be a win-win for everyone.

Joe Wiley of 202 Lakeview Avenue advised he has operated businesses in Milford for 25 years which include Milford Rental, Milford Mini Storage and a rental company called JRW Rentals. They rent about 35 houses in the City of Milford. He sent e-mails out to city council and the mayor. His concern is the status of the proposal.

Mr. Baird explained that council asked for a public hearing on the matter. Anytime after an ordinance is introduced, council has the right to take action on it. It will be a decision of council this evening or can be addressed at a later date.

Mr. Wiley then quoted some statistics he obtained off Google though he is unable to vouch for their reliability. He reported that according to Google in 2007, there were 8,200 people that lived in Milford. There were approximately 3,000 houses in Milford. Approximately 48% of those houses are owner-occupied. It stated that 14% of the people live below the poverty level so those people are restricted on the amount of money they have to spend.

Mr. Wiley said that when the rental license was first passed a few years ago, there was a great deal of discussion about the ordinance and the idea was to raise fees. The city council basically said it wasn't to raise fees and instead indicated

it was about keeping a database on absentee landlords so they could contact them about violations, etc. To prove that, the city assessed only one fee per landlord. At that time, it was \$25 regardless of if the landlord had one unit or one hundred. Today, the ordinance will assess a landlord \$75 per rental unit. His fee would go from \$25 to \$2,550. That is a 9,000% increase. Like most landlords, he will pass that increase along to his tenants. A lot of his tenants have already been affected by the strain of the economy at the present time.

In regard to hiring a code official to do this job, he said Milford just went through the largest housing boom ever. During that period of time, there were two officers. One was a code enforcement officer and one was a building inspector. Today, we still have those same two people. According to Google in 2003, there were 92 houses built in Milford; in 2004, there were 193; in 2005, there was 191; in 2006, there was 108; in 2007 there was 57. He asked if anyone knows how many were built this year. He asked if it was even 10.

Mr. Wiley said if we had two inspectors that handled 153 units, today we may be building 10 or less. He asked what they are doing with the rest of their time. He said the point is we are all in stressed times and his businesses are in stressed times.

He said he is not really opposed to the rental ordinance because he thinks it is a good idea that rental houses need be maintained. However, when someone walks around, not all of the homes that are in bad condition are rental houses. There are houses within walking distance of city hall in this condition that are owners occupied.

Mr. Wiley said he cares about his properties and maintains them. His point is if the fee increases to \$75, there will be an inspection of the property, and someone, whether it is himself or someone from his office will need to be present for the inspection. Therefore, there are other costs involved. He asked if those costs need to be passed along and should it be \$25 a month. He has to live within a budget, but thinks it is a burden on the taxpayers and residents of the City of Milford to actually be passing an ordinance at this particular time which causes the cost of living in Milford to increase. He feels the cost to live in Milford is already very expensive compared to the other four towns he operates properties in.

His suggestion is because there are two inspectors that basically have ten houses to inspect right now, why not pass the ordinance and not have a fee increase until the economy improves and there is more work to do. When the amount of work increases, then go ahead and hire an inspector who could be needed at that time. He does not agree with hiring another city employee and burdening the taxpayer and users in Milford with unnecessary expenses.

Mr. Oechsler asked if Mr. Wiley has raised the rent in any of his rental properties over the past five years. Mr. Wiley said he has not raised rent in the last two years, however, during the housing boom, his rent did increase some.

Shirley Renzi of Harrington ERA Realty said she is a rental management agent for that company. She handles eighteen rental units in Hearthstone Manor and five in the City of Milford. She first learned about this ordinance when another landlord contacted her when the city first started charging the \$25 fee. He was very concerned and enraged that he had to pay that kind of money.

Ms. Renzi contacted the city's inspection department and spoke with them. Her understanding was the purpose was to identify the owner of the proper who was referred to as an absentee owner. If it was becoming dilapidated and the city needed to contact someone nearby, they would have that information. She does not enforce this fee because she leaves it to the city. The city has IT people who can run a list of property owners, who is being billed for property taxes and who is paying the electric bill. If it is not the same person, it is obviously a rental. None of her owners have been contacted by the city about the fee.

Ms. Renzi said that of the eighteen, fifteen live out of state. The Hearthstone owners pay city taxes and county taxes and also pay two fees at Hearthstone. They are already burdened with a lot of costs and raising it to \$75 is unfair. Especially

considering that in the beginning it was not to raise revenue, but to have the \$25 fee to identify the owners which the city is capable of doing through their own records.

Ms. Renzi recalled the big fire downtown a few years ago. She had the building for sale where the fire started. Several realtors that showed the property called city hall and complained about the horrible conditions of that property. Ms. Renzi also complained. She is aware of three other real estate agents that complained to the building inspector but he never walked into that building. The fire started with candles because there was no electricity. There were electric wires running down the hall, there were no lights in the hallway and no lights in the stairwells. The city had a building inspection department that could have walked in there and shut that owner down. The apartment had 2x4's with paneling and a door which became the wall between the apartments.

She said they were horrible conditions and she is not surprised a fire started there that ruined all the downtown properties and put the city through a nightmare. But no one did anything about it. Whether it is raised to \$75 or \$100 will not address those things unless they are inspected.

Spyro Stamat of 10284 Webb Farm Road, Lincoln, stated he is opposed as he said before. He said he actually received a registered letter at his house though he is unsure if anyone else has heard about the registered letters from Milford. They contain a digital photograph of either a garbage can or a piece of furniture. This involved a small wooden desk and a chair and the letter said it was interior furniture.

Mr. Stamat went to the house and looked at the furniture. He thought if he got some white paint and painted it, he could argue the point that it was exterior furniture, but he didn't. Instead he knocked on the door and told the tenant to remove it because he does not want to play a game like that.

But he has actually heard from people who get digital photographs of a garbage can because their garage is facing differently on the side of the street and their garbage can needs to be moved to the back of the property. But if your garage is facing sideways, your garbage can stay there. He said this is what he hears about one of the inspectors who is driving around.

Mr. Stamat said we don't need an extra person doing that especially since the housing boom is no longer in play. He feels it is easy to think of landlords as piggybanks, but the economy needs to be considered and the tenants.

Mr. Stamat said that though Mr. Ambrose seems to be a really nice landlord and is willing to absorb all of these costs and maybe he will extend it to the rest of us, they will then let this ordinance pass. But he does not think that will happen.

He also heard that a survey was taken about what other towns charged such as Dover and Seaford. The result was that \$75 was a fair price. Mr. Stamat would accept that except when the town raised sewer, water and electric rates, there was no survey taken so it nullifies that angle.

Mr. Stamat said that Peoples Place was here and testified earlier. He hears they have housing and rentals. He wants to know if they will fall under this ordinance.

Also, he was talking to a realtor from Dover who has a spec house in Milford that is a vacant lot and they get a lot of calls because it is one of the cheapest houses listed. Because of the price, people call up and say they are interested in this house. When they ask where it is and he tells them it is in Milford, they ask where in Milford and he tells them the downtown area. They then answer that because of Milford's electric, sewer and water—no thank you. He said he is not making that story up. Milford has a bad reputation and if they keep adding fees on and keep coming to the well, the city is going to tap it out and make it dry. This is just another burden to put on the people. Milford does not have that great a reputation. He said it is hard economic times and the town is saying lets do it again and nail them with another one.

He referred to Mr. Workman's statement about driving around. He wishes that fellow with the digital camera would go see where those big piles of garbage are. That is a big indication there are too many people there or they are not taking care of it. Things can be done with the present personnel the city has now.

Randy Marvel of Marvel Agency advised that his agency manages about a hundred rental units in Milford. He reiterated that if something looks bad, that does not mean it is a rental unit because there are plenty of homes in town that are owner occupied that the same rules apply. He said if you read the violations, it says that if violations are found, that poses safety risks to tenants. If you substitute owners there, he would hope the city feels the same way about wanting to shut them down.

He said he is willing to pay his fair share of anything that is decided as long as everyone has to pay it. He had written a letter to the city manager in October and thanked council for addressing three of those issues in those letters.

Mr. Marvel explained the fourth issue was the language and definitions were unclear. He is sure someone will say it does not apply to them. The definition of rental unit remains very vague. If he reads it in a broad fashion, it could include motels, hotels, extended stay units, bed and breakfast units, boarding houses and incidents where a parent owns a home and allows their child to live there and pay the mortgage. He asked if all of those groups will be included.

Mr. Baird said that hotels and motels will not be included. The city solicitor added that is not councils' intention and something should be added to exclude them. Mr. Marvel feels the definition needs to be made clearer.

Mr. Baird answered that if the definition needs to be tightened up, that will certainly be considered.

Jay Donovan of 16425 Fitzgeralds Road, Lincoln, Delaware says he has been here all of his life. He added he also has a house at 1020 S.E. Second Street on Marshall's Pond where he has his home office, a store and an office behind Wilmington Trust Store on 18 N.W. Second Street. His friend Spyro asked why hotels and motels would be excluded and he wants to know why also. He called today and asked them if he was going to rent a room in a hotel or a motel how long could he stay and how much is the rent and could he rent it by the week or the month and they all said yes. According to the description, they are a landlord and a renter. Therefore, they should have to pay for each and every rental unit in their hotel or motel. Peoples Place was in here earlier and they mentioned that they had places to stay for their women in transition. He said there are people that pay for those rooms. He has rented to Peoples Place and supplied them with homes for their women in transition. There are other houses that are not listed as landlords because of the houses they acquire are through other people.

Mr. Donovan said those people should also have to pay this fee to be fair to all of the landlords. He knows all of the landlords in here. Everyone here tonight keeps their properties up very well. He has done a lot of work for many of these people because he was a contractor here all of his life. He knows everybody on a personal basis. He has done work for them. He knows Mr. Ambrose and is familiar with his houses and he always keeps them up. He has done work for him. He said that Mr. Ambrose knows he has houses in Milford and that his houses are kept up very well.

Mr. Donovan does not think there is a problem with houses being kept up as far as landlords go. He brought this up before when he came before council. If the house next door to his house is in disrepair, then why doesn't he have the same fee just because he is a homeowner. He said why should he be subject to this when a homeowner isn't. He does not think it is right.

He wants to know if there has been any code violations since this has been passed. Mayor Marabello said the code enforcement official is not here to respond. Mr. Donovan said he has not heard of any safety issues. He did not know it was a major problem in Milford like they are being led to believe.

Mr. Donovan said he has a problem with some of the language. The fees they charge for the inspections. His friend wrote a letter to one of his tenants, giving a 48-hour notice required by law to do an inspection. His friend gave this guy the 48-hour notice by law and when he got to the house that morning, he notified the person he was there for the inspection. The tenant said he did not want him to do that today. He showed him a copy of the letter and proceeded to go into the house. The tenant called Milford Police to have him arrested. The police took him off the property and he has to go to court at a later date. He went to the court to get the tenant out of the property. The tenant was still living in the house and then sued him for double his deposit while still living on the man's property. He was found guilty for entering the property because the tenant asked him to leave. All because he didn't want him to inspect the property that day.

According to the description, Mr. Donovan said that if for any reason, they don't show up or cancel without giving the proper notice to the inspector, they are charged a \$100 fee. Because the law says in Delaware the person has the right to deny entry into the property for inspection that day, he asked how the inspection can be done with the code official. He thinks that is going to be a problem.

Mr. Donovan did not know this law existed until his friend told him about it. He also has a problem with the \$500 fine if there is a violation on his property that does not get fixed. He does all the work on his properties himself and does not hire somebody. He is working on such a tight budget with some of these properties, and he cannot afford to hire someone to do all of this work. There is not as much money as people think that is made on these rental properties.

He said that renters do not take care of these houses like the property owners do. They seem to wear them out a lot faster. He had a tenant move out last month and twenty years ago, it would have cost \$300 to \$500 to get the house ready to rent again. This house last month cost him \$4,000 so he did not make much money off the rent that year because of the \$4,000 reinvestment back into that property. He was collecting \$650 a month rent which does not allow much overhead.

Mr. Donovan feels that if the city keeps adding fees on, he will pass them onto his tenants. He did that a few years ago when the city enacted a new fee. The tenant moved because she couldn't afford it anymore. A lot of the renters are single parents. The rents that have to be charged to live in Milford need more than one family to afford them. The rents are now up to \$800, \$900 and \$1,000 a month. He requires proof of income for the last three to six months. From what he sees in the pay statements, Walmart and Perdue are the best paying jobs around other than a few construction jobs that are not doing very much work right now. All the tenants he had that were in construction have all moved because they couldn't afford to rent here anymore.

He explained that with people averaging \$600 every two weeks clear, he requires the family to make in one week what the rent is. Mr. Donovan does not know many people in Milford that make \$800 to \$900 a week clear unless there are at least two good jobs in that family. It is stretched to the point that nobody can afford it anymore. Times are tough.

Mr. Donovan sold quite a few of the houses because of the last ordinance council adopted. He had to sell some of his properties because he was overcharging the people that were living in the City of Milford. When they started moving out, the houses got harder and harder to rent to quality people because of downtown situations. The only people who can afford those type properties at \$800 a month are usually someone on government assistance. Someone that works at a good job will not want to work in town and are usually seeking something out of town or something of a higher quality like a newer home. Most of the homes in downtown Milford are older homes. He fixed his up to modernize them and bring them all up to code. They are all efficient as far as heating. But he is at the limit that he cannot raise the rents anymore. If this is passed and puts more stress on it, he will probably end up getting rid of the rest of his houses. He said who knows what they will turn into after he lets them go because he takes good care of his properties.

Mr. Donovan said no one has ever had a hard time finding him if there was something wrong with one of his rental properties. He usually takes care of them as soon as he gets the phone calls as the other landlords he knows do. They all take good care of their properties.

He asked that council reconsider the fee for a new building inspector. Mr. Donovan does not think it is something that Milford can afford right now. The fee is sufficient and covers the paperwork which was the reason for the ordinance and \$25 fee. It covers the cost of the town keeping up with caretakers and those records. He asked that everything be kept the same and the fee not raised.

Martha Pileggi of 607 S.E. Second Street said she has a rental property on one side of her home and an owner-occupied property on the other side. She has had problems with the condition of both properties. Although she has noticed that a lot of rentals, particularly in the summer, are really left unkept. She feels that if the city has a code officer, he should enforce the codes. She also believes he has the time to do so. There are a lot of codes in this town and she has read them all. She feels that most of them are not enforced. She believes that if they were all enforced, the city would have enough money to cover his salary.

Mayor Marbello then closed the public hearing and opened the floor to further comment from the council.

Mr. Spillane asked Mr. Baird if the ordinance says if someone is out of town that owns the house and they don't pay the fee on time, you can shut everything down on the house. He has a problem with that because if an owner doesn't live in town and is out of state, he may get a bill in the mail and not pay it on time. Then the city would have the right to turn the power off and it is not the person's fault who is living in the house.

Mr. Ambrose explained that if they live out of town, there is supposed to be a property manager on record who lives within ten miles of the city. That person would be contacted before anything would be done.

Mr. Baird added the occupant would also be made aware in advance as well.

Mr. Workman clarified his previous statement earlier. When he walks around and sees a violation, he gets the address and takes it to the code official. That is when he learns whether it is a rental or owner-occupied home. When he goes in the code official's office, that information is provided immediately.

Mr. Workman confirmed that the annual fee would be a tax write-off for the landlord. Mr. Ambrose reiterated that the \$50 annual fee calculates to a \$4.16 a month increase.

The mayor announced that this does not have to be voted on this evening.

City Manager Baird then reviewed the four proposed amendments to this ordinance:

- 1) The first would be a change in the fee from \$75 to \$50 (highlighted).
- 2) Add that the caretaker can also be a management company (corporation, LLC and/or partnership) though a contact person must be assigned (highlighted).
- 3) The third amendment would be changing the notification time to 48 hours (highlighted).
- 4) Clarification of the rental unit definition so intentions are clearly stated.

Mr. Oechsler moved to postpone action on this ordinance in order to have these four items addressed in the ordinance before it is brought back before council. He said his other concern is the \$100 fine because if there is proof the landlord has sent a letter to that person and that person is unwilling to allow the landlord and code official to enter, he does not believe the landlord should be charged. It also needs to be cleared up about whoever else has to get involved to get an inspection of the property. Mr. Workman seconded the motion.

Because of the lengthy discussions on this matter, it was agreed that once the amendments are made, action would be taken without rehashing what has been considered tonight and during the previous meetings. In addition, no further public comment would be taken. Mr. Workman added the only discussion considered would be if council had another problem.

Motion carried by a unanimous roll call vote.

Mr. Ambrose moved to adjourn the Public Hearing, seconded by Mr. Spillane. Motion carried.

Mayor Marabello then adjourned the Public Hearing at 9:35 p.m.

Respectfully submitted,



Terri K. Hudson, CMC  
City Clerk/Recorder

*MILFORD CITY COUNCIL*  
MINUTES OF MEETING  
*November 24, 2008*

On November 24, 2008, the City Council of the City of Milford held a Public Comment Session in the Joseph Ronnie Rogers Council Chambers of Milford City Hall at 201 South Walnut Street, Milford, Delaware, prior to the commencement of the official City of Milford Council Meeting in order to allow the public to comment about issues of interest that impact the City of Milford.

PRESIDING: Mayor Daniel Marabello

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

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 9:36 p.m.

Joe Palermo of 5 Misty Vale Court, Meadows at Shawnee, advised that on Tuesday, November 18, 2008, a special meeting was held concerning the possible uses of city hall. He commended council and the past city manager for a job well done. He also thanked John Workman for giving tours of the building. His opinion is the fullest use and intent of the building should be city business on a daily basis in regard to its residents, citizens and taxpayers. He said whether it is to pay a bill or speak to a department head or get information. This building is the rock or anchor of downtown and the facility should be used to its fullest extent.

He said that DMI President Scott Angelluci and Dan Bond made a proposal which has merit and should be seriously considered.

Spiro Stamat had signed up to speak, but was no longer present.

With no other persons signed up, Mayor Marabello closed the Public Comment Session at 9:39 p.m.

Respectfully submitted,



Terri K. Hudson, CMC  
City Clerk/Recorder

*MILFORD CITY COUNCIL*  
*MINUTES OF MEETING*  
November 24, 2008

The City Council of Milford met in Workshop Session on Monday, November 24, 2008 in the Joseph Ronnie Rogers Council Chambers of Milford City Hall, 201 South Walnut Street, Milford, Delaware.

PRESIDING: Mayor Daniel Marabello

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

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

COUNSEL: City Solicitor Timothy Willard

Mayor Marabello convened the workshop at 9:39 p.m.

*Draft/Ordinance 2008-18/Zoning Code Amendment/Chapter 230/C-1 & C-2 Density*

The following ordinance as presented for review at the workshop:

ORDINANCE 2008-18

AN ORDINANCE TO AMEND Chapter 230, Zoning, of the Code of the City of Milford Relating to Residential Density in Commercial Districts.

*The City of Milford hereby ordains:*

*Section 1. Section 230-12 C-1 Community (Neighborhood) Commercial District.  
Amend Section 230-12 D. by inserting a new subparagraph (11) therein as follows:*

*§230-12 C-1 Community (Neighborhood) Commercial District.*

*In a C-1 District no building or premises shall be used and no building shall be erected or altered which is arranged, intended or designed to be used except for one or more of the following uses and complying with the requirements so indicated.*

*D. Area regulations.*

*ADD: (11) Maximum density for multifamily dwellings shall be 12 per acre.*

*Section 2. Section 230-13 C-2 Central Business District.*

*Amend Section 230-13 B. subparagraph (2) by adding the following language:*

*§230-13 C-2 Central Business District.*

*In a C-2 District no building or premises shall be used and no building shall be erected or altered which is arranged, intended or designed to be used except for one or more of the following uses and complying with the requirements so indicated.*

*B. Permitted uses. Permitted uses for the C-2 District shall be as follows:*

*(1) Those uses permitted in the C-1 District.*

*(2) Residence apartments in conjunction with any nonresidential use. ADD: Notwithstanding (1) herein, all multifamily dwellings in C-2 shall be in conjunction with nonresidential use. Maximum density for multi family dwellings shall be 12 per acre. Whenever a structure of multifamily residential use is built in conjunction with a commercial use, the residential square footage shall not exceed two times the commercial square footage.*

*Section 3. Synopsis. This ordinance clarifies that residential density in C1 and C-2 districts could not exceed 12 units per acres.*

City Solicitor Willard explained that C-1, C-2 and C-3 allow residential zoning. The C-3 zone allows any uses permitted in the C-2; the C-2 allows those uses permitted in the C-1. The ordinance changes the C-1 and C-2 zones. It provides for a maximum density which neither zone currently has.

He advised that an application came before the planning commission with a C-3 zone. There was no way to determine the density. Mr. Norris referred to R-3 which allows the highest level of sixteen units per acre. They determined the lot size requirements and open space did not make sense. This ordinance states that for multi-family units in C-3, Highway Commercial or C-2, Central Business District (Downtown), there will be a maximum of twelve units.

Mr. Willard said the intent of residential for multi-family apartments in the C-2/Downtown should be in conjunction with commercial. When making it clear the maximum density for multi-family dwellings is twelve units, they also added a ratio that the residential square footage would not exceed two times the commercial square footage. The idea is to have store fronts with apartments above.

The planning commission determined that twelve units were reasonable.

Mr. Willard said he worked with former solicitor Jim Fuqua on how to determine density on multi-families. The R-3 addresses multi-families, but they do not apply with the lot requirements. The planning commission felt the simplest way to handle was to add a maximum density of twelve units.

The ordinance is ready to be officially presented to council, though he will review it one more time particularly because of the language that addresses the ratio in the downtown area. He advised that council will see it two more times before a final vote is taken.

The solicitor confirmed that in a C-3 zone, multi-family units can be built though the land may need to be subdivided. In the C-2, it must be used in conjunction with a commercial use.

With no further business, the Workshop Session of Council concluded at 9:44 p.m.

Respectfully submitted,



Terri K. Hudson, CMC  
City Clerk/Recorder

*MILFORD CITY COUNCIL  
MINUTES OF MEETING  
November 24, 2008*

A Council Meeting of Milford City Council was held in the Joseph Ronnie Rogers Council Chambers of Milford City Hall, 201 South Walnut Street, Milford, Delaware on Monday, November 24, 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 Council Meeting to order at 9:44 p.m.

*City of Milford Employees Life/AD&D Insurance Revision*

Mr. Baird presented the following information to council:

*Fort Dearborn has given the City of Milford a proposal to Increase Life and AD&D Maximum benefits to \$250,000 @ no increase in Cost of Coverage and Revise the Age Reduction Schedule to reduce by 35% of the original amount at age 65, and further reduce to 50% at age 70.*

*Life/AD&D Revision Request*

*Effective June 1, 1997 the City of Milford entered into a contract with AllNation Life Insurance Company, now known as Fort Dearborn Life Insurance Company to provide Life Insurance/AD&D Benefits as a 100% employer paid benefit to the City of Milford full time employees as follows:*

*Basic Life Insurance: 2 x Basic Annual Salary, rounded to the next higher \$1,000, unless already a multiple of \$1,000. Maximum benefit is \$150,000.*

*Cost of Coverage: \$.25/\$1,000*

*Basic Accidental Death and Dismemberment (AD&D): 2 x Basic Annual Salary, rounded to the next higher \$1,000, unless already a multiple of \$1,000. Maximum benefit is \$150,000.*

*Cost of Coverage: \$.05/\$1,000*

*The following Age Reduction Schedule applies, in accordance with the Age Discrimination in Employment Act (ADEA):*

*Under 65 100%*

*65-69 65%*

*70-74 45%*

*75-79 30%*

*80-99 20%*

*All benefits terminate at retirement.*

Mr. Morrow reported the Age Reduction Schedule is standard with insurance policies and complies with federal law.

Mr. Brooks moved for approval of the City Employees Life/AD&D Insurance Proposal as submitted, seconded by Mr. Ambrose. Motion carried by unanimous roll call vote.

*Executive Session-Legal Advice Land Issue, Collective Bargaining, Personnel Matter & Competency*

A motion to go into Executive Session to discuss individual citizen qualifications to hold a position was made by Mr. Ambrose, seconded by Mr. Morrow. Motion carried by unanimous roll call vote.

Mayor Marabello recessed the Council Meeting at 9:55 p.m. to go into a closed session to interview candidates and discuss their qualifications to fill the 2<sup>nd</sup> Ward Vacancy.

*Return to Open Session*

City Council returned to Open Session at 10:29 p.m.

*Appointment of City of Milford Planning Commissioner/Representative/for 2<sup>nd</sup> Ward*

Mr. Workman moved for the appointment of James Burk as the second ward representative of City of Milford Planning Commission, seconded by Mr. Oechsler. Motion carried by unanimous roll call vote.

*Adjourn*

Mr. Workman moved to adjourn the Council Meeting, seconded by Mr. Brooks. Council meeting adjourned at 10:29 p.m.

Respectfully submitted,



Terri K. Hudson, CMC  
City Clerk/Recorder