

MILFORD CITY COUNCIL  
MINUTES OF MEETING  
February 24, 2014

Milford City Council held a Public Hearing on Monday, February 24, 2014 in the Joseph Ronnie Rogers Council Chambers at Milford City Hall, 201 South Walnut Street, Milford, Delaware.

PRESIDING: Mayor Joseph Ronnie Rogers

IN ATTENDANCE: Councilpersons Bryan Shupe, Garrett Grier III, S. Allen Pikus, Dirk Gleysteen, Owen Brooks, Jr., Douglas Morrow, Sr., James Starling, Sr. and Katrina Wilson  
  
City Manager Richard Carmean, Police Chief Keith Hudson and City Clerk/  
Recorder Terri Hudson

COUNSEL: City Solicitor David Rutt, Esquire

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

*Eric Dunn of Dunn Development LLC on behalf of Walter N. Thomas, II  
Preliminary Major Subdivision to be known as Hickory Glen  
1335 Milford-Harrington Highway/Zoning R-8  
Tax Map MD-16-173.00-01-21.00; Tax Map MD-16-173.00-01-22.00*

City Solicitor David Rutt clarified the purpose of the hearing before council. He explained the planning commission reviewed both the subdivision and site plan. Council only reviews the subdivision and emphasized they do not have jurisdiction over the preliminary site plan so it should not be considered.

He then provided some background stating the planning commission, under Chapter 200, of the Milford City Code, has the right to make a preliminary recommendation of approval, with or without conditions, or a recommendation of denial. They can also table the application. If there is a recommendation of approval with or without conditions, it is then reviewed by city council who has the authority under the code to grant preliminary approval of the application, with or without conditions, or deny or table the application.

Mr. Rutt referenced the criteria set forth in Chapter 200 of the City Code regarding the review of a subdivision. He wants it made clear we are here only to review the subdivision and not the site plan.

Phil Tolliver of Morris and Ritchie Associates, 18 Boulden Circle, New Castle, was present on behalf of the applicant. Also present was Eric Dunn, equitable owner, PJ Thomas, fee simple owner, and John Paradee, Esquire of Prickett, Jones and Elliott, Legal Council.

He advised the property is approximately 72 acres off Route 14/Milford-Harrington Highway near the Holly Hill intersection.

Mr. Tolliver advised the project has been around for quite some time, starting with the annexation and R-8 zoning in November 2010. The zoning is consistent with the city comprehensive plan. He said the Milford Zoning Code refers to the R-8 designation as a townhouse/garden apartment district.

Several applications for conditional uses, subdivisions and site plans have been before the Planning Commission and City Council. The previous plan was somewhat similar though they were considering 24 units per building in the apartments; however, council only wanted 12 units. A new plan has been submitted that reflects 12 units per building.

Mr. Tolliver recalled that at one point, they considered an assisted living facility. That was done due to the need in the community and the city comprehensive plan. A questionnaire was included in the 2008 Comprehensive Plan where citizens were polled. One of the responses to what they wanted in Milford was an assisted living facility, multi-family

homes, more affordable housing and similar items. He emphasized that this project addresses the information received from the questionnaire.

During each presentation, Mr. Tolliver noted that comments and concerns were addressed. The last rendition was submitted and comments were received back from the city's engineer firm, Davis, Bowen and Friedel, as well as City Planner Gary Norris. All comments were straightforward and easy to address according to Mr. Tolliver. The August 16<sup>th</sup> letter from Gary Norris stated that the applicant can either submit a new conditional use/PUD application or address the comments and submit a by-right application. They chose to address all comments and resubmit the package and plans as a by-right permitted use application which is what is being presented tonight.

Mr. Tolliver then outlined the changes in the subdivision plan. He noted that in the townhouse section, some of the comments were to make the radiuses larger on the streets and the block lengths larger (point of intersection to point of intersection). The city engineering firm wanted that length a little longer so block lengths were extended.

Some other comments were to bring the plan to code. One of the comments was to make sure the apartments had 12 units versus 24 units which were also addressed.

The package was resubmitted to Davis, Bowen and Friedel. They reviewed it with the city planner and public works director. A letter was written by them on December 10, 2013 saying they had no additional comments and all concerns were addressed.

A presentation was made to the planning commission last week. He said that at that time, the city engineer indicated that the project is code compliant and all rules and regulations of the city had been met. The planning commission reviewed the application and voted to recommend approval of the application.

Mr. Tolliver then explained what convinced them to do a mix of townhouses and apartments. They considered the current market, then met with many local builders and apartment developers. They believe this fills one of Milford's biggest needs. He said it is in alignment and consistent with Milford's comprehensive plan. The 2008 plan says Milford is looking for diversity in housing types and more affordable housing. In addition, the citizens' questionnaire results agreed this is the type of housing that appeals to the citizens. The same theme and goals are also found in the draft version of the 2013 comprehensive plan.

Mr. Tolliver reiterated the plan is consistent with the comprehensive plan and zoning code. From a planning and engineering standpoint, the project will be served by public utilities (water, sewer). Stormwater management will be designed in accordance with the prevailing stormwater management ordinances. Referenced was the approximate locations of the stormwater facilities.

From an overall layout standpoint, they made sure this was a very walkable community. Included are extensive green areas and a centrally located clubhouse. He said there is nothing too lavish or expensive though it is tastefully done with the community in mind. Included is a multipurpose game court and a swimming pool centrally located so that everyone can walk to it. Their intent is to prevent people from getting in cars and having to drive to a point of interest within the community they reside. Locating those facilities in the middle of the project allows walking from any direction.

Mr. Tolliver noted the inner-connected pathways throughout the community and a boardwalk that meanders through the wooded area and wetland area. He also noted there are zero wetland impacts associated with the project. It is extremely environmentally sensitive but walkable and community-oriented at the same time.

He then pointed out the garage units in the apartment area.

Mr. Tolliver explained the desire for a successful project and that they want to move forward as fast as possible. They want to find a way to make this different from the competitors. When comparing apartment projects in the area, Mr. Tolliver said there are no other apartment projects with garage units. This provides a competitive edge and sets this development apart.

Mr. Dunn and Mr. Tolliver met with Contractor Brendon Warfel on a similar project in Elkton, Maryland. It had 12 units per (apartment) building and integral garages. Mr. Tolliver said they had a zero vacancy rate stressing that they sell and rent very quickly.

Mr. Tolliver then referenced the townhouse section of the subdivision. The townhouses come standard with a one-car garage or an optional two-car garage. Each group of townhouses is surrounded by open space. He believes that when a townhouse project is designed, the end unit lot line should not butt up against another end unit lot line. There should always be some open space completely around the townhouses to allow an area for people to walk and not be on another person's property.

He then pointed out the two access points. One is on Route 14 and one is on Holly Hill Road with a bifurcated road that meanders through the community. He also noted the large grassy, landscaped area in the center which will have the appearance of a beautiful, main boulevard.

The subdivision will also have three-dimensional meandering berms similar to those at the Rookery South in Milton along Route 1.

Mr. Tolliver believes they have implemented a lot of key ingredients successful in other projects. They believe this, along with several other amenities will make them different from other projects and give that competitive edge.

He reported there will be 159 twenty-two foot wide townhouse units. The trash receptacles will be stored in the garage unit and brought out curbside for pickup. All utilities are located in the streets.

From an open space perspective, Milford code (apartment section) requires 12.98 acres of open space. This will have 16.93 acres which does not include stormwater management or wetlands. Adding them in, the open space area increases even more.

Mr. Tolliver advised that in the townhouse area, the code requires 10.68 acres of open space. This will have 12.56 acres which again does not include the ponds or wetland areas.

He said the project is not only consistent with the comp plan and zoning code, it is also consistent with what the questionnaire reflected in the 2008 comp plan requested by the citizens. This comes with a recommendation of approval from the planning commission. The city engineer indicated at the planning commission meeting that all comments have been addressed.

Mr. Tolliver recalled the number of times they have been before the planning commission and city council. In addition, he has met with City Manager Richard Carmean on several occasions. He also met with Mayor Rogers and the planners and engineers on a number of occasions.

The project has been a work in progress and a compromise throughout the process. He emphasized that they have done everything that has been asked as far as plan revisions. They respectfully ask for preliminary plan approval in order to move forward with the next step.

Mr. Tolliver explained there are three steps in the approval process—preliminary plan, final engineering and the record plat step.

Mayor Rogers asked for questions from council.

Mr. Grier asked for DelDOT comments regarding the entrances and exits; Mr. Tolliver reported that preliminarily everything looks fine. They had no concerns about the entrances. A detailed traffic impact analysis is being planned which will need approval as part of the final review and before the plat is recorded.

Mr. Pikus asked if alleys are included in the plan. Mr. Tolliver confirmed that alleys are not included in the townhouse section. There is enough room for alleys but the city engineer recommended alleys not be required. He agrees and believes they are not needed.

Mr. Pikus asked how someone would get a lawnmower to the rear of the property; Mr. Tolliver said that lawnmowers would be stored in the back of the property. They prefer not having detached sheds though an attached shed would be permitted which is more common for townhouses. However, the mower would be stored in the rear yard where the resident would cut the grass and then walk around to the front yard. An open space strip allows clean access all the way around.

When asked if sheds are prohibited, Mr. Tolliver explained that currently they do not want sheds in the backyards though they will permit an attached shed. It would have the same siding and look more natural. He stated that a detached shed can block drainage and become unsightly if not maintained. An attached shed, which is part of the house, can be attractive.

Mr. Pikus confirmed the trash containers will be stored in the garage. He said if detached sheds are not permitted and something is built next to the house, the resident will have to walk completely around to take care of their property. Mr. Tolliver said that typically a townhouse resident walks to cut their grass. He pointed out there are millions of townhouses all over the country and that is the way it is done.

Mr. Pikus asked if Milford's code requires alleys; Mr. Tolliver responded by stating the code states that alleys are only provided if required by the city engineer. He referenced the comment letter from the city engineer dated July 16, 2013 that states: the city has no objection to not including alleys within the townhouse portion of the project as long as the utilities are relocated from Shagbark Boulevard right of way. They were citing one road as an example and were saying they did not want utilities in the back of the project. Instead, all utilities had to be in the front of the project. They will go to the property line in the right of way.

Mr. Tolliver explained there were also concerns regarding trash collection and alleys. Originally, they did not have garage units. They felt it was important for the excellent recharge area not to have the additional impervious coverage that alleys would create. He said the addition of alleys would cause the price of the units to increase \$6,000 to \$8,000. Unfortunately, that cost would be borne by the homeowner. He feels with this being the worst housing market of our lifetime, it is not a good idea to increase the cost of a house.

He referenced the Hill property adding that he does not want to put an alley next to their driveway and house. He would rather have landscaping and allow the open space to remain there.

Mr. Tolliver said this is an excellent recharge area and the comp plan refers to minimizing impervious coverage in the excellent recharge area.

The alley also takes away the last vestige of privacy one has in a townhouse according to Mr. Tolliver. A townhouse has a road in the front so the rear of the property is the only private area. Without the garages, there could be a situation with the trash and this solves that problem.

Mr. Gleysteen then asked if a light is anticipated at the northern entrance on Route 14; Mr. Tolliver said they do not expect a light will be required. However, if DeIDOT comes back and says one is needed, they will take care of it. DeIDOT does not like traffic lights unless they are warranted.

Mr. Pikus asked if there are common areas included in the 161 lots or are they separate; Mr. Tolliver said there are two separate open space areas. He then explained there will be two homeowner associations (HOA)—one for the apartment area and another for the townhouse area. Everyone in the community will pay HOA dues and is able to use the clubhouse, pool, multi-use court and walking trails.

They are also considering stocking the ponds with fish which Fish and Wildlife often do for free.

Mr. Pikus asked if this will be built in phases; Mr. Tolliver said they have not decided yet. A project of this size cannot be built at once. However, they do not want this to become an undeveloped site containing sewer stacks with no activity. They will build in a smart way and in response to what the market is looking for at the time.

Mr. Tolliver does not expect to develop the entire project at one time and anticipates it will most likely be broken into smaller phases.

Mr. Pikus asked if fences are permitted in the townhouse areas; Mr. Tolliver said that is open for discussion. If council does not want fences, they could regulate that through the homeowners' association conditions and restrictions. Mr. Tolliver said he lived in a townhouse for ten years and fences were very important and worked well with pets. However, detached sheds become a problem and will be regulated through the homeowners' association declaration of covenants. That still has to be prepared as part of the final engineering package.

Mr. Pikus said he is still concerned about the lack of access to the rear property. The homeowner may have to walk around several other private properties to get to their rear property. It could end up being an entire block just to get the lawnmower or something else to the rear of the townhouse. He feels that with no access, that could create a major problem.

Mr. Tolliver said you would simply walk out the rear of the house.

He added that depending on the water table, they may try basements. Residents would then have a walk up in many cases. Walkouts bring huge premiums but a walkout in a relatively flat part of the state is often challenging to get. The typography must allow a person to walkout a basement door onto the ground level.

Mr. Brooks asked about a designated area for buses to pick up school children. Mr. Tolliver reported they are currently working with the Board of Education as part of the final engineering process. The school district will determine the location of the pickup. A bus shelter will be provided if requested.

Mayor Rogers then opened the floor for public comment.

Joe Palermo of 5 Misty Vale Court, Meadows at Shawnee, stated he is an officer in his homeowners' association. He said that typically the city issues three pails—garbage, agriculture and recyclables. He said this is a single car garage. The pails will be required to be in the garage according to the HOA rules. A car and three pails will need to fit.

His other comment is whether or not the streets are large enough to accommodate sanitation vehicles, emergency vehicles and fire trucks.

Mr. Tolliver responded by stating they are very familiar with recycling, yard waste and domestic waste. They met with Milford's Public Works Director on several occasions. They have also met with DBF regarding the same issue. He explained that if you know going into a project that something is required, you account for it. The garages will be big enough to accommodate the necessary receptacles. Everything will be stored in the garage.

There will be three corrals per dumpster location in the apartment area. Domestic waste, recycled waste and yard waste has been factored into the plan.

Mr. Tolliver also confirmed the roadways will accommodate all large vehicles. They have met with the fire marshal and turning templates have been used to ensure the turning radius' are met. In this case, the roads are well over what is required for sanitation, fire and other emergency vehicles.

Bob Southard of 1539 Milford-Harrington Highway, stated he lives adjacent to the land being developed.

Mr. Southard stated that throughout this whole process, the adjoining property owners received letters from the city advising of the public hearing before the planning commission and city council. There was no letter sent informing the

property owners of the last meeting before the planning commission which is when this was approved. They felt as though they were left out of that process.

He said in the past, the city has done a very good job keeping the neighbors informed, but that was not the case with this last meeting. As a result, the adjoining neighbors were uninformed and therefore, did not attend. There were one or two that happened to find out at the last minute the hearing was scheduled.

Mr. Southard said they are extremely upset over this. He does not know what council can do in retrospect concerning this. However, they feel they were not fairly informed.

Another issue involves alleyways. According to the engineer, it seems the plan has been approved without consideration of the alleys and needs. He asked if the ordinance has changed in regard to alleyways. If not, they feel that needs to be pursued further.

The neighbors still have major concerns regarding traffic coming in from Holly Hill Road. The vehicles and trucks associated with Baltimore Air Coil are a concern. The access for the equipment and trash collection should all be considered before it is agreed to go ahead with the project. He feels it is important to find out who is going to take care of widening the roads and ensuring proper access. Instead of approving the project and then later learning there is a problem, it needs to be addressed up front. He then asked who is financially responsible for those changes.

The other big concern Mr. Southard expressed related to the apartments and the trash containers. He asked where they will be stored and if each apartment has three different containers; he does not believe each apartment will have the a garage.

He also asked if the City of Milford is prepared to expand the police force to accommodate the extra activity at this complex. Mr. Southard believes the calls for police services escalates at apartment complexes.

He asked council to take his comments into consideration before they vote.

City Solicitor Rutt then responded stating it is not a requirement that notices be sent. Instead it is more of an accommodation. He referenced 29 Del Code Section 10000(E)(4) that states the public notice required shall include, but is not limited to, conspicuous posting of the notice at the principal office of the public body holding the meeting.

He stated that it can also be posted electronically.

Mr. Rutt reported that the Planning Commission agenda for February was posted at city hall and on the website on February 4<sup>th</sup>. As a result, the notice met the law. He said the fact the letters were not sent may have been an oversight, but in terms of the law, it was followed and proper notice given.

The solicitor then referenced Mr. Southard's other comments regarding traffic, trash and expansion of services which are all addressed at the preliminary site plan approval and are not affiliated with the subdivision review. The site plan approval will go back to the Planning Commission and at that time, the public will have the opportunity to address those issues again.

City Manager Carmean agreed that we recently discovered that letters did not go out for the postponed meeting. He apologizes for that and assured the property owners that would not occur again.

Mr. Southard informed the city manager it looked very suspicious.

Representing the City of Milford, DBF Engineer Erik Retzlaff, reported the subdivision was first submitted to DBF last April. There were comments related to the alleys at that time. They had multiple meetings with the developer and his engineer. At that time, the primary consideration was the removal of the alleys. The inclusion of the alleys was specifically for utilities and trash. He felt that if the utilities can be accommodated from the front of the buildings and collection areas created, residents could collect their trash internally and haul it to a centralized collection area.

Mr. Retzlaff noted that supplementary plans were submitted that addressed all issues. As a result, the need for the alleys was eliminated.

He said there were some other issues that were not specifically code compliant. Those revisions have been made and the subdivision as presented, meets all requirements of the preliminary site plan and preliminary subdivision as dictated by Milford's codes.

Mr. Retzlaff said there are some other concerns that need to be addressed at the final but not at this stage. Specifically, he is referring to the details of the expansion of utilities and some issues related to the traffic created by this subdivision. However, that is not appropriate at the preliminary stage and not part of the requirements.

Another item that needed to be addressed was the separate parcel being shown as commercial. Mr. Retzlaff explained that cannot be subdivided unless we receive a letter from DelDOT approving a second access off the street. If not, the layout will need to be changed and access provided internally.

He concluded by stating they have met all the requirements of preliminary approval per the city code.

Mr. Pikus reiterated that the alleys concern him. He said that five or six years into the future, he can see the public coming back to city hall with citations from our building inspector because the rear of these properties have not been maintained. Complaints could come from surrounding neighbors who do take care of their properties. He feels accessibility to the rear of the property is a problem even though Mr. Tolliver stated he has no problem walking long distances to get to the rear of his property. However, this could involve a senior citizen who is unable to walk or is only able to walk a short distance. He hopes there will be a mixture of ages living in this project and expects some people who may be unable to push their equipment a long distance. This could be a hindrance.

Mr. Pikus also understands this takes up valuable space to the developer.

He does not believe the garage will not be twenty feet wide and assumes they will be the normal width of a single car garage. When three trash containers are stored inside, there will not be much room. Mr. Pikus said he is unfamiliar with the size of the garage and is concerned. Mr. Retzlaff said that information is not provided at this stage.

Mr. Pikus said it appears to be a beautiful project, but anticipates the residents of Hickory Glen will come back to city hall complaining they are unable to store their containers in the garage because there is not enough room even though the HOA requires it. At that point, it is not the city's problem but the problem of the property owner and the HOA.

Mr. Retzlaff agreed the concerns were discussed, however, there is not a lot of information that is required at the preliminary stage. The language in their comment letter basically says we have no objection to the removal of the alleys though it is not written in stone. He said the preliminary site plan/subdivision will be approved as long as accommodations for utilities and the trash can be met.

Mr. Pikus verified that Mr. Retzlaff's response is he has 'no objections' but that he did not say he did not have to do it. He clarified that as the city engineer for the city, Mr. Retzlaff has no objections. Mr. Retzlaff stated yes, the need can be met by doing other things. Those other things do not have to be delineated at this point. Based on what was submitted, it appears they could accommodate it so he had no objection as long as it has been noted they will incorporate it into the design when they come back for final.

Ms. Wilson asked for clarification. She said Mr. Pikus keeps stating the resident will have to walk all the way around and asked if there is a rear door. Mr. Retzlaff stated that is correct. As Mr. Pikus sees it, there is no rear door which would allow access for the lawnmower. Steps would add to the difficulty of getting a lawnmower onto the ground.

Ms. Wilson feels that a person would have to understand the style of living in a townhouse versus living in a single family home. She noted that most of the people present have been privileged enough to only live in a single family home versus apartments or townhouses. It is a different type of living even though all can be very comfortable. She pointed out these

are all options and choices. She feels it is councils' duties to provide options and choices for our residents. People will go in with open minds and be aware of that style living.

She has seen the attached sheds Mr. Tolliver was referring to and believes that is a bonus. In addition, lawnmowers can be stored in those attached sheds.

Ms. Wilson said that typically the size of the yard for a townhouse is small.

She emphasized this is just another option for the citizens of Milford.

Mr. Tolliver reiterated that he has provided a number of reasons why it would not be a good idea to have alleys. He noted that it is inconsistent on many levels with the comp plan and adds more impervious coverage in the excellent recharge area. Also, builders do not want it nor does the market. It also increases the cost of the house by \$8,000 which is not a good thing in today's market.

He does not see the benefit of any alley to someone mowing the front or back yard.

Mr. Tolliver said if there is a concern about people having to walk from an internal unit to the outside and if council wishes, they can incorporate into the covenants and declarations that the HOA maintenance corporation cut the front lawns. In that manner, they will only be responsible for their rear lawns which is an easy fix for almost no money. In that manner, in addition to cutting all the open space, they would also cut the front lawns.

He lived in a townhouse for ten years and that was his slice of the American pie. He liked having a rake, a shovel and working on his land. However, they are willing to require the HOA to cut the front yards.

Mr. Carmean said if it works out the alleys are not needed, what happens if the people at the third house in have to take a lawnmower around and must go through their neighbor's yard to do so; Mr. Tolliver said they do not have to walk through someone else's yard. In his humble opinion and based on his 28 years of experience, the city should be requiring open space between the two end units. In this community, no two lot lines abut one another. This allows the residents to walk around the rear and sides of all the buildings without trespassing on someone's private property.

Mr. Gleysteen then stated that he is against the project. He said that when you look at this, the zoning should be complimentary to the neighboring properties. This is not. Everything surrounding this is A-R or R-1 and this is R-8. He said this is on the outskirts of town and asked why the city is putting moderate to high density developments on the outskirts of town. If he was one of the landowners and a resident of Milford, he would feel betrayed by the city allowing this to move forward.

Mr. Gleysteen said if he lived out there, he would be accustomed to the R-1 type of development around him. He would not expect to wake up one morning and have apartments behind his house. He thinks this is taking the city in a different direction than where we have been before. Milford is a rural town. He thinks we should be focusing on quality of life.

He asked if this is the type of development we have looked at in the past or whether this was something new.

Mayor Rogers then closed the floor to public comment.

Ms. Wilson moved to accept the preliminary subdivision as presented.

Mr. Shupe pointed out we are voting on the subdivision and not the finalized plan and believes it would be helpful to the audience if someone could explain what the subdivision means to the overall plan. City Solicitor Rutt explained that the subdivision is a 75-acre parcel and the application is to divide it into 161 separate parcels. He asked if it meets the general requirements and design standards under the subdivision code which is Chapter 200. That talks about the streets and layout and whether it meets sidewalks, curbs, easement and lot requirements. That has been reviewed by Davis, Bowen and Friedel on behalf of the city.

Mr. Rutt then referenced Mr. Retzlaff's comments.

Mr. Rutt explained that council is not voting on trash cans, the width of the garage or the depth of the lot or the style of the buildings. Those were all site plan issues and things the planning commission reviewed. He said that what council should be looking at is the map without all the buildings. They are supposed to look at it only in terms of the 161 lots.

Mr. Shupe said he is also very concerned that this is zoned an R-8 and it appears to not fit the surrounding area. The R-8 was established by council years ago. He asked if that is a valid vote against this recommendation; Mr. Rutt advised that when this was annexed into the city, the request was for an R-8 zone and that is what was approved. Council has to consider it under an R-8 and there is no consideration for an amendment to the zoning. It makes no difference whether it is in the center of the town or outskirts. It is designated R-8 and must be evaluated as such.

Mr. Brooks questioned the number of individual lots. Mr. Rutt said there are 161 lots. On the south end, there are 159 townhouses. The apartment area is one larger lot. In the northeast corner, there is a separate lot which at this point has nothing shown on it. Any development would require a plan and would need to come back.

Mr. Rutt reiterated that council is only voting on the 161 lots. The Planning Commission voted at their last meeting to recommend approval of the preliminary site plan and preliminary subdivision. The process requires the developer to get all of its approvals from DelDOT, DNREC, Soil Conservation, Fire Marshal and any other required agency. That would then come back for a review by the engineers and the planning commission to ensure it meets the criteria of the R-8 zone. If it does, it is a by-right approval which means that as long as they meet the criteria of the Milford Zoning Code, they are entitled to approval as a matter of law.

Motion carried by the following 5-3 roll call vote:

Mr. Shupe votes yes noting that it meets all the requirements of the code.

Mr. Grier votes yes based on the same thing adding this is only a preliminary subdivision and it will be back for further review. At that time, it will be determined whether or not it meets all the requirements.

Mr. Pikus noted that several questions that were asked and answered to the best of their ability. He said he has a problem with whether it meets all the requirements of the zoning code. There was a letter submitted saying there was no objection to one part of it. The area where it is located he has a concern with and he is voting no.

Mr. Gleysteen votes no because he does not think the subdivision will compliment the surrounding zoning and for Mr. Pikus' reasons as well.

Mr. Brooks agrees and votes no.

Mr. Morrow votes yes for the reasons already stated for a yes vote.

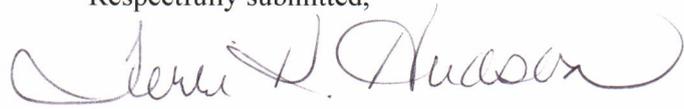
Mr. Starling votes yes.

Ms. Wilson votes yes based on the annexation committee's recommendation of zoning. That was based on everything being in order at the time the landowners came to the city. To go against the application because of the zoning would be going backwards. She thinks that all logistics can be worked out as far as the site plan. In addition, council still has an opportunity to put their heads together and make comments if we are not comfortable with it. She votes yes based on all that information.

Mr. Pikus then asked Mr. Rutt if this project comes back before council; Mr. Rutt stated no that it will only go back before the planning commission\*.

With no further business, the hearing was adjourned at 8:15 p.m.

Respectfully submitted,

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

Terri K. Hudson, MMC  
City Clerk/Recorder

\*Final Subdivision Plan requires City Council review.

MILFORD CITY COUNCIL  
MINUTES OF MEETING  
February 24, 2014

A Meeting of Milford City Council was held in the Joseph Ronnie Rogers Council Chambers at Milford City Hall on Monday, February 24, 2014.

PRESIDING: Mayor Joseph Ronnie Rogers

IN ATTENDANCE: Councilpersons Bryan Shupe, Garrett Grier III, S. Allen Pikus, Dirk Gleysteen, Owen Brooks, Jr., Douglas Morrow, Sr., James Starling, Sr. and Katrina Wilson

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

COUNSEL: City Solicitor David Rutt, Esquire

CALL TO ORDER

Mayor Rogers called the Council Meeting to order at 8:17 p.m.

INVOCATION AND PLEDGE

The Pledge of Allegiance followed the invocation given by Councilman Starling.

RECOGNITION

No special guests in attendance.

COMMUNICATIONS

Included in packet.

UNFINISHED BUSINESS

*FY2013-2014 Budget Adjustment/Can-Do Playground/Contract Increase*

DBF Associate Erik Retzlaff submitted the following proposal amendment to the Can-Do Playground Original Contract:

*The City of Milford previously signed our proposal for engineering services related to the Can-Do Playground project. Although the fees were all presented as estimated amounts, the City Council approved the attached proposal with a not-to-exceed amount of \$28,000.00. During the construction of the project, it became necessary for our office to provide additional services for stakeout and other construction phase services to complete the project. These services were identified as additional services in the original proposal and, as such, were not included in the original estimate.*

*Our office was requested to perform said additional services noting that additional funds were available within the grant from the Delaware Land Water Conservation Trust Fund and the fundraising budget from the Milford Rotary Club. At the conclusion of the construction of the project, the fees for services rendered reached \$42,872.75. Per an agreement with the Milford Rotary Club, Davis, Bowen & Friedel credited \$7,789.50 of those fees as a contribution to the project, thus reducing the total fee for engineering services to \$35,083.25.*

*The costs for the additional services beyond the originally estimated amount of \$28,000.00 can be paid out of the grant from the Delaware Land Water Conservation Trust Fund and contributions from the Milford Rotary Club, without any further contribution from the City of Milford. However, as the engineering proposal was between the City of Milford and Davis, Bowen & Friedel, Inc., the City Council must approve the increase from \$28,000.00 to \$35,083.25.*

Mr. Carmean explained that additional work was needed at the site which resulted in the project exceeding almost \$15,000 the amount approved by city council. To date we have paid \$28,038.00. Approval is needed to increase the contract another \$7,083.25. State funds and the Rotary Clubs are sharing the remaining half owed.

Ms. Wilson moved to approve the increase in the Can-Do Playground agreement of \$7,083.25, seconded by Mr. Starling. Motion carried.

#### NEW BUSINESS

##### *Permission to Convey Original City Seal/Milford Museum*

City Clerk Hudson reported that Milford Museum has asked if the city would be willing to turn the original city seal, created in 1937, over to them.

A lot of recent research has been done on the city seal and flag by the museum. During several conversations with Barbara Jones of the museum, the city clerk did confirm the original seal had been kept at city hall. Ms. Jones asked if we be willing to turn the seal over to them. Though it was agreed that would be appropriate, the city manager and clerk felt it should be presented to city council for a decision to be made.

Mr. Starling moved that the original City of Milford seal be conveyed to Milford Museum for permanent storage, seconded by Mr. Morrow. Motion carried.

##### *Introduction of Ordinance 2014-02/Abolishing Metering Department*

Mr. Carmean introduced Ordinance 2014-02 noting that he established the Meter Department in 2005.

#### AN ORDINANCE ABOLISHING THE METER DEPARTMENT OF THE CITY OF MILFORD, DELAWARE

NOW, THEREFORE, THE CITY OF MILFORD HEREBY ORDAINS:

Section 1. Acting pursuant to Article IV Section 4.09 of the City of Milford Code, Action Requiring an Ordinance, the Meter Department of the City of Milford, is hereby abolished.

Section 2. All previous functions, obligation and duties of the City of Milford Meter Department are hereby transferred and conveyed to the City of Milford Water/Wastewater Departments and Electric Department, to be overseen by the Director of Public Works for the City of Milford.

Section 3. No contracts or liabilities in force shall be affected by such abolition, but the Public Works Department shall in all respects be the lawful successor of the department so abolished.

Section 4. Employees of the abolished departments are hereby transferred to the service of the Water/Wastewater Departments and Electric Department without impairment of their retirement, leave or seniority rights and benefits.

## Section 5. Dates.

Introduction February 24, 2014

Adoption March 10, 2014

Effective March 20, 2014

He recalled that when the meter department was created, we had gone from 12 units to 350 units a year being built. We were setting a number of meters and there was a need to expand the number of metering personnel.

He said at one time, there were six employees in the department. Since then, things have slowed down and through attrition, we are now down to two meter readers. We have since acquired radio read meters which also eliminate the need for additional personnel.

As a result, he has decided to put the remaining two employees back into the departments they were in prior to the creation of a separate department in 2005. The actual readers will report to the billing supervisor as they did previously. The meter tech will report to Electric Superintendent Rick Carmean. One of the two meter techs does part-time reading when needed.

Mr. Pikus asked the status of electronic metering; Mr. Carmean said he met with representatives from Siemens. They are working on a proposal for Smart Metering. That could cut costs on our end and we will no longer need to send our employees out in the field to disconnect and reconnect. Instead it will be handled from a computer either in the office or from someone's home if after hours.

He believes that our policy that we will not turn utilities on until someone pays can also be eliminated. If we are able to turn it on electronically at night, there will not be much electricity generated between that time and the next morning. The customer will be required to pay their bill by 8:30 a.m. or disconnected again.

The ordinance is scheduled for adoption at the March 10, 2014 meeting.

*Introduction of Ordinance 2014-03/Sewer Code/Amends Chapter 185*

*Introduction of Ordinance 2014-04/Water Code/Amend Chapter 222*

*Introduction of Ordinance 2014-05/Electric Tariff/Amends City Code Appendix B/Electric Rules & Regulations*

City Manager Carmean introduced the following ordinances:

*Ordinance 2014-03/Sewer Code*

WHEREAS, the City of Milford is encouraging the redevelopment of underused buildings and sites by increasing rehabilitations, upgrades and reuses of existing buildings; and

WHEREAS, the waiver of impact fees authorized by Ordinance 2010-8, Ordinance 2010-17, 2011-16, 2012-19 and 2013-10 led to more projects being launched; and

WHEREAS, City Council has learned that building permit values increased in 2010, 2011, 2012 and 2013 when compared to the same period in 2009; and

WHEREAS, it is the City of Milford's desire to extend the waiver of sewer impact fees for an indefinite period of time; and

WHEREAS, as a result of decreasing construction activity on older buildings and to assist new commercial entities, the City Manager is requesting the prohibition of the waiver of sewer impact fees for new commercial construction be removed; and

WHEREAS, City Council hereby grants the city manager permission to exempt sewer impact fees for new commercial construction beginning March 20, 2014.

NOW, THEREFORE, THE CITY OF MILFORD HEREBY ORDAINS:

Section 1. Chapter 185 of the Code of the City of Milford, entitled Sewers, Article III §24 Impact Fee Established, §185-24-D shall be amended by indefinitely extending the deadline with the following conditions:

D. ~~The sewer impact fee described in Subsection C shall be waived for permits issued for repairs and rehabilitation of existing structures.~~ The sewer impact fee described in Subsection C shall be waived for permits issued for COMMERCIAL repairs, rehabilitation and NEW CONSTRUCTION beginning MARCH 20, 2014. The waiver shall be for a maximum of 5 EDUs per project. The city will continue to collect the impact fee charged by Kent County. ~~Waiver does not apply to new construction.~~

Section 2. Chapter 185 of the Code of the City of Milford, §185-24-D(1) and §185-24-D(2) shall remain in effect.

~~§185-24 D (1) To qualify for the impact fee waiver, construction must be completed and a certificate of occupancy received in accordance with the following schedule:~~

Single Family Residential	_____	6 Months
Multi Family Residential	_____	12 Months
Commercial	_____	12 Months

§185-24 D (1) To qualify for the impact fee waiver, the commercial construction must be completed and a certificate of occupancy received within a twelve-month period.

(a) Waiver of Sewer Impact Fees for Commercial Entities:

To further encourage new business and the expansion of existing businesses, the business must create a minimum of five (5) jobs to employ five (5) full-time employees in the City of Milford in accordance with the following criteria:

Creation of 5-9 new jobs to last at least 3 years:	Exemption of Impact Fee Waiver (1 EDU)
Creation of 10-14 new jobs to last at least 3 years:	Exemption of Impact Fee Waiver (2 EDU's)
Creation of 15-19 new jobs to last at least 3 years:	Exemption of Impact Fee Waiver (3 EDU's)
Creation of 20-24 new jobs to last at least 3 years:	Exemption of Impact Fee Waiver (4 EDU's)
Creation of 25+ new jobs to last at least 3 years:	Exemption of Impact Fee Waiver (5 EDU's)

b) Agreement shall be executed by the commercial customer relative to the creation and retention of jobs.

c) Annual certification to assure the commercial customer remains compliant with the written agreement.

d) If the criteria is not met, the city may require the incentive to be repaid in full, or in part, as provided in the written agreement.

§185-24 D (2) Any commercial structure that does not receive a certificate of occupancy in accordance with ~~this schedule~~ §185-24 D (1) shall be ineligible for the impact fee waiver and shall pay the required impact fee in full prior to the issuance of a certificate of occupancy.

Section 3. Dates

Introduction February 24, 2014

Adoption March 10, 2014

Effective March 20, 2014

*Ordinance 2014-04/Water Code*

WHEREAS, the City of Milford is encouraging the redevelopment of underused buildings and sites by increasing rehabilitations, upgrades and reuses of existing buildings; and

WHEREAS, the waiver of impact fees authorized by Ordinance 2010-9, Ordinance 2010-18, Ordinance 2011-17, Ordinance 2012-20 and 2013-11 led to more projects being launched; and

WHEREAS, City Council has learned that building permit values increased in 2010, 2011, 2012 and 2013 when compared to the same period in 2009; and

WHEREAS, to further stimulate the local economy, it is the City of Milford's desire to extend the waiver of water impact fees for an indefinite period of time; and

WHEREAS, as a result of decreasing construction activity on older buildings and to assist new commercial entities, the City Manager is requesting the prohibition of the waiver of water impact fees for new commercial construction be removed; and

WHEREAS, City Council hereby grants the city manager permission to exempt water impact fees for new commercial construction beginning March 20, 2014.

NOW, THEREFORE, THE CITY OF MILFORD HEREBY ORDAINS:

Section 1. Chapter 222 §31 of the Code of the City of Milford, entitled Water, shall be amended by indefinitely extending the deadline with the following conditions:

§222-31 I. ~~The water impact fee described in §222-31H shall be waived for permits issued for repairs or rehabilitation of existing structures.~~ The water impact fee described in §222-31H shall be waived for permits issued for COMMERCIAL repairs, rehabilitation and NEW CONSTRUCTION beginning MARCH 20, 2014. The waiver shall be for a maximum of 5 EDUs per project. ~~Waiver does not apply to new construction.~~

Section 2. Chapter 222 of the Code of the City of Milford, §222-31-I (1) and §222-31-I (2) shall remain in effect.

~~§222-31 I. (1) To qualify for the impact fee waiver, construction must be completed and a certificate of occupancy received in accordance with the following schedule:~~

Single Family Residential	6 Months
Multi Family Residential	12 Months
Commercial	12 Months

§222-31 I. (1) To qualify for the impact fee waiver, the commercial construction must be completed and a certificate of occupancy received within a twelve-month period.

(a) Waiver of Water Impact Fees for Commercial Entities:

To encourage new business and the expansion of existing businesses, the business must create a minimum of five (5) jobs to employ five (5) full-time employees in the City of Milford in accordance with the following criteria:

Creation of 5-9 new jobs to last at least 3 years:	Exemption of Impact Fee Waiver (1 EDU)
Creation of 10-14 new jobs to last at least 3 years:	Exemption of Impact Fee Waiver (2 EDU's)
Creation of 15-19 new jobs to last at least 3 years:	Exemption of Impact Fee Waiver (3 EDU's)
Creation of 20-24 new jobs to last at least 3 years:	Exemption of Impact Fee Waiver (4 EDU's)
Creation of 25+ new jobs to last at least 3 years:	Exemption of Impact Fee Waiver (5 EDU's)

b) Agreement shall be executed by the commercial customer relative to the creation and retention of jobs.

c) Annual certification to assure the commercial customer remains compliant with the written agreement.

d) If the criteria is not met, the city may require the incentive to be repaid in full, or in part, as provided in the written agreement.

§222-31 I. (2) Any commercial structure that does not receive a certificate of occupancy in accordance with ~~this schedule~~ §222-31 I. (1) shall be ineligible for the impact fee waiver and shall pay the required impact fee in full prior to the issuance of a certificate of occupancy.

Section 3. Dates

Introduction February 24, 2014  
Adoption March 10, 2014  
Effective March 20, 2014

*Ordinance 2014-05/Electric Tariff/Appendix B*

WHEREAS, the City of Milford is encouraging the redevelopment of underused buildings and sites by increasing rehabilitations, upgrades and reuses of existing buildings; and

WHEREAS, the waiver of impact fees authorized by Ordinance 2010-10, Ordinance 2010-19, Ordinance 2011-18, Ordinance 2012-21 and 2013-12 led to more projects being launched; and

WHEREAS, City Council has learned that building permit values increased in 2010, 2011, 2012 and 2013 when compared to the same period in 2009; and

WHEREAS, to further stimulate the local economy, it is the City of Milford's desire to extend the waiver of electric impact fees for an indefinite period; and

WHEREAS, as a result of decreasing construction activity on older buildings and to assist new commercial entities, the City Manager is requesting the prohibition of the waiver of electric impact fees for new commercial construction be removed; and

WHEREAS, City Council hereby grants the city manager permission to exempt electric impact fees for new commercial construction beginning March 20, 2014.

NOW, THEREFORE, THE CITY OF MILFORD HEREBY ORDAINS:

Section 1. Appendix B-Electric Tariff-Rules and Regulations shall be amended by indefinitely the deadline for the waiver of Electric Impact Fees.

Section 2. Rules and Regulations, Section 3-Customer Advance Usage/Impact Fees and Deposits, Subsection E(1) is hereby amended as follows:

E. ~~The electric impact fee established under this Appendix shall be waived for permits issued for repairs or rehabilitation of existing structures.~~

The electric impact fee established under this Appendix shall be waived for permits issued for COMMERCIAL repairs, rehabilitation and NEW CONSTRUCTION beginning MARCH 20, 2014.

~~Waiver does not apply to new construction.~~

~~(1) To qualify for the impact fee waiver, construction must be completed and a certificate of occupancy received in accordance with the following schedule:~~

Single Family Residential	6 Months
Multi Family Residential	12 Months
Commercial	12 Months

(1) To qualify for the impact fee waiver, the commercial construction must be completed and a certificate of occupancy received within a twelve-month period.

(a) Waiver of Electric Impact Fees for Commercial Entities:

To encourage new business and the expansion of existing businesses, the business must create a minimum of five (5) jobs to employ five (5) full-time employees in the City of Milford in accordance with the following criteria:

Creation of 5-9 new jobs to last at least 3 years:	Exemption of Impact Fee Waiver (1 ESU)
Creation of 10-14 new jobs to last at least 3 years:	Exemption of Impact Fee Waiver (2 ESU's)
Creation of 15-19 new jobs to last at least 3 years:	Exemption of Impact Fee Waiver (3 ESU's)
Creation of 20-24 new jobs to last at least 3 years:	Exemption of Impact Fee Waiver (4 ESU's)
Creation of 25+ new jobs to last at least 3 years:	Exemption of Impact Fee Waiver (5 ESU's)

b) Agreement shall be executed by the commercial customer relative to the creation and retention of jobs.

c) Annual certification to assure the commercial customer remains compliant with the written agreement.

d) If the criteria is not met, the city may require the incentive to be repaid in full, or in part, as provided in the written agreement.

(2) Any commercial structure that does not receive a certificate of occupancy in accordance with ~~this schedule~~ Subsection E(1) shall be ineligible for the impact fee waiver and shall pay the required impact fee in full prior to the issuance of a

certificate of occupancy.

Section 3. Dates

Introduction February 24, 2014

Adoption March 10, 2014

Effective March 20, 2014

Mr. Carmean recalled asking council to waive some additional impact fees for new development. Currently the ordinance only permits impact fees be waived on rehabs, upgrades and/or reuses of existing buildings.

The city manager referenced an earlier statement made by Planner Debbie Pfeil that if something new is built, the building or developer is responsible for the costs to expand utilities. He said the impact fees can only be granted when new jobs are created. If there is a cost for additional treatment or to build an additional sewage station/well, those costs will be paid by the developer. In most cases, Mr. Carmean explained that a small restaurant or business will not impact our utility system.

The city manager feels that waiving one impact fee for the creation of five to nine new jobs is appropriate. It maxes out at five impact fees so no one can receive any higher waiver.

He said he has been asked about the policing of this ordinance and the three-year agreement. Mr. Carmean feels there needs to be some trust between the applicant and the city. He said we do not have the staff to check the records of each business to ensure compliance.

Mr. Carmean is willing to work with the city solicitor to come up with some type of form to verify these businesses meet the criteria. If there appears to be a problem, we will send someone out to check it out.

Mr. Grier recommends a form be used adding that he filled one out for DEDO (Delaware Economic Development Office) for a similar program. It was a simple form asking for the number of employees anticipated for the upcoming year. The business owner then signs off and returns the form.

Mr. Carmean said he has used the waiver to get businesses to build now versus waiting a few years. A dentist recently built in the business park though she had not planned to construct her facility for some time. Because of the impact fee waiver, she proceeded with her construction plans and her office is up and running. She brought in another practitioner and together they have created multiple medical jobs.

He said the developer of Chick Fil-A has continued to ask about the waivers. Though they may have developed anyway, Mr. Carmean has no problem granting them some free EDUs.

Ms. Wilson pointed out it is a nice welcoming to our town.

Mr. Pikus asked how many jobs they will bring; Mr. Carmean said he is unsure and had to get this through before he talks to their representative.

*Authorized City of Milford Bond Issue/\$3.5 Million Water Improvements*

*Reconsideration/ Resolution 2014-04 Authorizing Borrowing (Approved 02-10-14)*

*Reconsideration/Resolution 2014-05 Scheduling Special Election (Approved 02-10-14)*

Public Works Committee Chairman Brooks advised the city manager spoke to him and a Public Works Committee meeting was then scheduled last Wednesday. At that time, Mr. Carmean reviewed the water projects and the \$3.5 million bond issue that will be voted on by residents at a referendum on March 29, 2014. Mr. Brooks then referenced the minutes

in the packet for council to review.

Mr. Carmean then explained the city was offered a good interest rate on the \$3.5 million from the Delaware Water State Revolving Fund. He said it was a good opportunity to borrow money to complete a big project. Since then, there has been some concern expressed about impact fees. He talked with Finance Director Portmann about the amount that was waived. They believe there was \$500,000 or \$600,000 lost on impact fees though he does not believe it is that high. In order to come up with an exact number, Mr. Portmann informed him would need to pull every building permit during that period. At the same time, he learned we have a \$1.2 million in the impact fee line. This coincided with Councilman Shupe calling a meeting with him to discuss several issues. At that time, he expressed concern about raising rates because of the school referendum scheduled in March.

Mr. Carmean said that is when he called Public Works Committee Chairman Brooks and a meeting was scheduled. Mr. Carmean said there have been some conspiracy theories in the last couple weeks that the city has secret funds though we do not. He explained that though the monthly finance report is simplistic, it contains every account including revenues, bank accounts and expenditures. He then referenced the December 2013 Finance Report pointing out the following numbers:

Cash Balance - Water Fund Bank Balance \$1,997,716  
Ending Cash Balance - Water Capital Reserves \$5,085,166  
Ending Cash Balance - Water Impact Fees \$1,125,880

The city manager said when you add those up, you have to ask yourself why there is so much in the impact fees. He would like to see the impact fees left alone because we always planned for those funds to pay for some expansion or some work associated with providing more of a service.

He explained the reserve account contains \$5 million and recalled the policy established by council in 2003 or 2004 that we would keep a \$1 million in water and sewer reserves for emergencies. Mr. Carmean feels that it should be higher considering today's dollar but does not believe it should be \$5 million.

He said that in 2006, we started discussing a referendum to borrow money to build a water tower and treatment plan for the southeast area of Milford. At that time, water fees were raised to cover the debt service.

Mr. Carmean said that Mr. Portmann was surprised as time passed that the water tower had not been built. He agrees it has taken seven years to get to the bidding stage but the water tower will now be built. He said it was not necessary to spend the fees on debt service so Mr. Portmann kept the money in the bank balance (checking account) for a while. To receive some interest, he would move the extra money at the end of each fiscal year into our reserves in order to earn interest.

Mr. Carmean said he and Mr. Portmann always agreed that when the tower was done, we would be ready to sign with the USDA to start repaying the debt service. We did start the debt payment and began drawing on the mains. At that time, we could have made a case this would have been debt that we would have paid for seven years if the tower had been built. We were going to give council the option of taking a reasonable portion of what was collected and begin paying on the USDA principal instead of borrowing the whole amount during the final phase.

The city manager then referenced the following document:

*WATER REVENUES AND RESERVES*

*Water Fund Bank Balance \$1,997, 716.00*

*Water Capital Reserves \$5,088,281.00*

*Water Impact Fees \$1,125,823.00*

*The Water Fund Bank Balance is basically a checking account from which we draw monies for small capital projects, vehicles, and equipment for the operations of the Water Department. From time to time the Finance Director will move excess funds from this account, which pays no interest, into our Reserves in order to get some interest on the money. Expected expenditures in 2013-2014:*

- \$305,000.00 *infrastructure*
- \$220,000.00 *equipment*
- \$200,000.00 *+/- debt service*

*Water Capital Reserves are for large capital projects with a long life expectancy. These projects are expected to provide infrastructure or equipment which will be utilized for 20-40 years. Reserves are to be maintained at a \$1,000,000.00 balance for any unexpected emergencies. Expected expenditures in 2013-2014:*

- *S.E. Front St. Infrastructure \$480,000.00*
- *Well 9 \$200,000.00*

*This will leave about \$4.3 million in reserves. Subtract the needed \$3.5 million required for stated projects and we will have \$800,000.00 in reserves. However, by using our own funds for the work needed we will save about 20% by not having to pay prevailing wages. That could mean a savings of \$600,000.00. The interest not paid on the \$3.5 million loan would amount to \$500,000.00.*

He noted the amounts in the water revenues account and water fund bank balance. Of that, Mr. Carmean said that this year, there are \$725,000 in expenditures locked in. After we determine what else needs to be paid this year, Mr. Portmann would move the balances, for the most part, into the reserves. As a result, we will end up with approximately \$800,000. That can also be put in reserves and used for the water project.

Mr. Carmean reported that we would have paid approximately \$500,000 over the twenty years in interest.

The city manager is asking council to revisit the matter and consider voting not to proceed with the referendum. Mr. Morrow added that it was his understanding the city would save approximately \$1 million by not borrowing the money; Mr. Carmean stated yes, probably.

Mr. Carmean said if asked why this was not done to begin with, most of the money was somewhat earmarked for those items. Whether we paid on the principal of the new tower or as was discussed at the last budget hearings in April or May of 2013, a tower will be needed in the northwest section of town. We do not have great pressure in that area. But in projects like this, a developer or builder will have to pick up some of those costs.

The city manager has been in conversation with Baltimore Air Coil (BAC) about their water supply problem. The city is considering running a main to BAC though they will pay the majority of the costs. In the future we will need a water tower so we could borrow \$3.5 million to do these projects in lieu of spending reserves. Then we could spend the reserves on the water tower. Rethinking the whole thing, it was agreed to go to referendum on the tower. That would add another 27 or 29 cents to a thousand.

Mr. Pikus asked if there is a chance of borrowing at the 1.5% interest rate again; Mr. Carmean said he is unsure and doubts it.

The city manager emphasized we had plans for the reserves and now reconsidering those projects.

Mr. Brooks confirmed it was a 29-cent increase per thousand; the average residential customer would have seen an

increase of \$1.18 per month. He also realized that the large industrial users would be hit very hard.

Mr. Carmean agreed stating that we discussed how we were going to work with businesses and getting new jobs to Milford. He realized that some of our water-dependent industries such as Perdue buy a quarter of a billion gallons of water each year. Adding this increase to their costs is a big hit to an industry like Perdue.

Ms. Wilson said this would hinder those industries; Mr. Carmean said yes adding it is ok if the city has to do this. However, if we can get by, he sees no reason to jeopardize ourselves as far as reserves. There was nothing wrong with the other plan because we will at some point need these projects in the northwest area of Milford.

He pointed out that the tower being built in the southeastern area of Milford has taken seven years. Fortunately, everyone has had water and there has not been a major fire or drought.

Mr. Carmean noted that the Public Works Committee consists of Councilman Gleysteen, Councilman Shupe and Chairman Brooks. Mr. Carmean asked for Mr. Brooks to make a motion.

Mr. Brooks stated that in lieu of the comments heard tonight and the conversation at the public works committee meeting, he moved to rescind Resolution 2014-04 granting final approval to borrow the \$3.5 million originally approved, seconded by Mr. Shupe:

#### RESOLUTION 2014-04

RESOLUTION GIVING FINAL AUTHORIZATION FOR THE BORROWING OF FUNDS THROUGH THE ISSUANCE OF UP TO \$3,500,000 MAXIMUM PRINCIPAL AMOUNT OF A GENERAL OBLIGATION BOND TO FINANCE COSTS ASSOCIATED WITH IMPROVEMENTS TO THE WATER DISTRIBUTION SYSTEM OF THE CITY OF MILFORD.

Motion carried by an 8-0 unanimous roll call vote with the following statements:

Mr. Shupe votes yes stating that if we can do this with reserves, we should not put this on the backs of the taxpayers. He said it is our duty, even after we have made a decision to look for a better option.

Mr. Grier votes yes for similar reasons stated by Mr. Shupe. He said we have the money in reserves and if we need the money for future projects, we can consider a referendum at that time. Right now instead of raising rates, we can use the money we have.

Mr. Pikus said he provides a finance report every month. Our reserves are important and our borrowing power is based on the amount of reserves. He recalled at one meeting the city manager said we are one of the healthiest cities in the State of Delaware. Mr. Pikus agreed we are extremely healthy and in good shape financially. He said there is \$5 million in reserves and council just approved a subdivision off the Milford-Harrington Highway this evening that will add many new houses and require more water. Therefore, we cannot wait another six or seven years down the road to build another tower because water lines will then cost almost \$4 million.

Mr. Pikus said he is stickler, along with the city finance director, of maintaining good reserves. He feels we need good reserves and using those monies will not require any increases. He wants good reserves but also wants to support our taxpayers and not place any more burdens on our senior citizens who cannot afford what they are paying now. He will vote yes but is reluctant. He would prefer seeing our reserves remain healthy.

He always states that 'we are healthy, not wealthy' and he prefers to 'stay healthy'. He believes that using those reserves will hit us if we have any emergencies and will reduce our reserves to less than \$2 million. A major project would burn those reserves up in no time.

Mr. Pikus said we would then have to go to referendum. He feels we will not be able to borrow at this rate again as we were told. He feels the city engineer will back him up that we will not see the 1.5% rate again. To him, that is almost a gift.

Mr. Gleysteen stated he votes yes and he has no reservations. He thinks we are very fortunate to be in the position we are in where we can do this the old-fashioned way from our savings. The 1.5% interest is attractive but when you take into account we will not have to be pay the prevailing wage will save a great deal of money on this project.

Mr. Gleysteen said also finding out about this fund alleviates a big concern he had when we initially voted for this project. Our rates will remain as they are and we can continue to upgrade our infrastructure and at the same time use incentives to attract new businesses by granting waivers. It appears we are in a good position and votes yes.

Mr. Brooks votes yes. He felt from the beginning was we had the money to pay for the upgrades. He agrees this will help the citizens, the city and especially help our large industries.

Mr. Morrow votes yes stating he voted yes for it and will vote to rescind that vote. Anytime we have the opportunity to save the citizens in Milford a million dollars we should take that chance. In this case, we have the money in the bank. To him that is a good way to go.

Mr. Starling votes yes and agrees with everyone's comments.

Ms. Wilson votes yes. She likes being transparent to the public. Our residents appreciate when we show them what we do and how it is done. To her that is really important. Because of ongoing questions and the proper format, this came about. She trusts the committee and emphasized the years of experience that Mr. Brooks has. She trusts his recommendations knowing that he crosses every T and dots every I. He keeps every report and evaluates what has been done over the years. She very much appreciates that. She knows it is not easy for some people to acknowledge that we did not initially make the right decision. However, she likes the idea of backing up and reevaluating the situation. She also feels if we have the money, we certainly want to spend it the right way. No one wants more debt and having not to borrow money is even better.

Mr. Brooks then moved to rescind Resolution 2014-05 proposing the issuance of bonds of up to \$3.5 million and ordering a special election for our citizens to make that determination, seconded by Mr. Shupe:

#### RESOLUTION 2014-05

RESOLUTION PROPOSING THE ISSUANCE BY THE CITY OF MILFORD, DELAWARE, OF UP TO \$3,500,000 MAXIMUM PRINCIPAL AMOUNT OF A GENERAL OBLIGATION BOND TO FINANCE COSTS ASSOCIATED WITH IMPROVEMENTS TO THE WATER DISTRIBUTION SYSTEM OF THE CITY OF MILFORD AND ORDERING A SPECIAL ELECTION IN CONNECTION THEREWITH.

Motion carried by a unanimous vote.

Mr. Brooks then thanked the city manager and the public works committee for reconsidering this matter. He also thanked council for their action this evening.

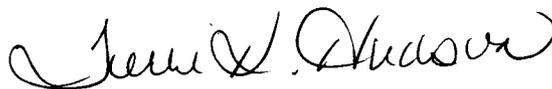
Mr. Carmean then reported that we will start work with the USDA funds in the amount of \$5 million approved by a referendum to do the Southeast Milford Water Project. That project includes the water tower and treatment facilities. He said the present rates increased in 2006 cover the cost of that debt. The rates will not need to be increased again to cover those costs.

ADJOURN

With no further business, Ms. Wilson moved to adjourn the council meeting, seconded by Mr. Starling. Motion carried.

The Council Meeting adjourned at 8:54 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Terri K. Hudson". The signature is written in a cursive, flowing style.

Terri K. Hudson, MMC  
City Clerk/Recorder

MILFORD CITY COUNCIL  
MINUTES OF MEETING  
February 24, 2014

The City Council of the City of Milford met in Workshop Session on Monday, February 24, 2014 in the Joseph Ronnie Rogers Council Chambers of Milford City Hall, 201 South Walnut Street, Milford, Delaware.

PRESIDING: Mayor Joseph Ronnie Rogers

IN ATTENDANCE: Councilpersons Bryan Shupe, Garrett Grier III, S. Allen Pikus, Dirk Gleysteen, Owen Brooks, Jr., Douglas Morrow, Sr., James Starling, Sr. and Katrina Wilson

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

COUNSEL: City Solicitor David Rutt, Esquire

The Workshop Session convened at 8:52 p.m.

*False Alarm Ordinance Options*

Solicitor Rutt recalled the conversation regarding false alarms and the concerns expressed by Paul Mills of Mills Brothers and Kevin Reading of Abbotts Grill. Mr. Rutt believes the current alarm ordinance is a criminal code which makes it difficult to have a fine imposed and ultimately ends up in the Justice of the Peace Court.

He has reviewed some other false alarm ordinances/laws that exist. He explained there are numerous municipalities in Delaware that have a false alarm ordinance. The State of Delaware and the Town of Milton basically have the same ordinance. Each addresses the number of false alarms permitted before any type of penalty is assessed.

See below for options:

OPTION #1 (Milton, State)

§75-1 Definitions

FALSE ALARM - The activation of an alarm system without cause that forces the police, fire company or other emergency personnel to respond. "Without cause" does not include, for example, alarms caused by hurricanes, tornadoes, earthquakes, mechanical failures, malfunctions, or improper installations. However, during the course of the calendar year, an alarm user is [permitted to have three false alarms without the assessment of a civil penalty]. Beginning with the fourth [false] alarm [any false alarm shall be assessed a penalty according to the schedule identified in §75-4(A)].

§75-4 Violations and Civil Penalties

A. Any alarm user violating any provision of this article shall be subject to a civil penalty as set forth below for false alarms responded to by the Milford Police Department and/or the Carlisle Volunteer Fire Company within a calendar year.

Number of False Alarms	Civil Penalty per False Alarm
4-5	\$50
6-9	\$100
10-15	\$200
16 and over	\$250

B. Notice of Violation:

A notice of violation [shall/may] be sent by [Milford Police Department] to the alarm user for each false alarm. The notice shall contain the number of false alarm violations by that alarm user for the calendar year and the corresponding civil penalty being assessed, if any. The notice of violation may be issued by mailing such notice to the alarm user at the address where the alarm system is located [or registered].

C. Payment:

Persons electing to pay a civil penalty executed under this article shall make payments to the City of Milford within \_\_\_ days from the date the notice of violation was mailed.

[All penalties received by the City of Milford shall be transferred to the Milford Police Department].

[Any person agreeing to voluntarily pay the civil penalty under this provision thereby admits to the false alarm violation and waives any right to contest or appeal the validity of the violation or charge].

D. Procedure to Contest a Violation:

An alarm user receiving a notice of violation pursuant to this article may request a hearing to contest the violation by notifying, in writing, the [Milford Police Department/City of Milford/ \_\_\_\_\_] within \_\_\_ days of the date of the mailing of the notice. Upon receipt of a timely request for a hearing, a hearing shall be scheduled and the alarm user shall be notified of the hearing by first-class mail. The administrative hearing will be performed by [Board of Adjustment/ City Manager, Chief of Police, Mayor, Director, Mayor, other]. The hearing [will/will not] be informal.

E. Appeal of Administrative Hearing:

An alarm user [either party] may elect to appeal an administrative decision to the Justice of the Peace Court, which shall have exclusive jurisdiction to hear the appeal. An appeal to the Justice of the Peace Court shall be the final right of appeal.

F. Failure to Pay Civil Penalty or Successfully Contest the Violation:

If the alarm user fails to pay the civil penalty and/or to successfully appeal the civil penalty under the terms of this article, the City of Milford may enforce the civil penalty by civil action in the Justice of the Peace Court, including seeking judgment and execution on a judgment against the alarm user [note - a lien on the property may be an option, however many "alarm users" are tenants and not the owners].

OPTION #2

§75-1 Definitions (Same as Option 1)

§75-4 Violations and Civil Penalties

A. Any alarm user violating any provision of this article shall be subject to a civil penalty as set forth below for false alarms responded to by the Milford Police Department and/or the Carlisle Volunteer Fire Company within a calendar year.

Number of False Alarms	Civil Penalty per False Alarm
4-5	\$50
6-9	\$100
10-15	\$200
16 and over	\$250

B. Notice of Violation:

A notice of violation [shall/may] be sent by [Milford Police Department?] to the alarm user for each false alarm. The notice shall contain the number of false alarm violations by that alarm user for the calendar year and the corresponding civil penalty being assessed, if any. The notice of violation may be issued by mailing such notice to the alarm user at the address where the alarm system is located [or registered].

C. Payment:

Alarm users being issued a civil penalty with the notice of violation shall send payment to the [City of Milford] within [30] days from the date the notice was mailed.

[All payments for civil penalties that are received under this article shall be delivered to the Milford Police Department within \_\_\_ days after receipt].

D. Procedure to Contest a Violation

An alarm user who wishes to contest the validity of the false alarm violation under this article may contest the violation by appealing the decision to the Justice of the Peace Court, which shall have exclusive jurisdiction to hear the appeal.

E. Failure to Pay Civil Penalty or Successfully Contest the Violation

If the alarm user fails to pay the civil penalty within \_\_\_\_\_ days from the time the notice of violation was mailed, the City of Milford may enforce the civil penalty by any means available in law or equity, including but not limited to civil action in the Justice of the Peace Court, including seeking judgment and execution on a judgment against the alarm user.

## REGISTRATION REQUIREMENT

(Optional)

### §75-5 Alarm System Registration

(a) An alarm user shall not operate, or cause to be operated, an alarm system without first registering the alarm system. A separate alarm system registration is required for each alarm system site.

(b) The alarm system registration application form must be submitted to [person/MPD/City of Milford] within 30 days after the alarm system at a particular site has been activated or within 30 days after a transfer in possession of the alarm system. Failure to submit a timely application will result in a nonregistered alarm system. Use of a nonregistered alarm system shall [consider the first false alarm in a calendar year to be the fourth violation, with the civil penalty being assessed accordingly].

(c) Each alarm system application must include the following information:

- (1) The name, complete address (including apartment/suite number) and telephone numbers of the person who will be the registration holder and be responsible for the proper maintenance and operation of the alarm system;
- (2) The name and complete address of the alarm system site, the classification of the alarm system site as either residential (includes apartment, condominium, mobile home, etc.) or commercial, and the name, address and telephone number of the person responsible for that alarm system site;
- (3) For each alarm system located at the alarm system site, the classification of the alarm system (i.e. burglary, holdup, duress, panic alarms, etc.) and for each classification whether such alarm is audible or silent;
- (4) The mailing address, if different from the address of the alarm system site;
- (5) Any dangerous or special conditions present at the alarm system site;
- (6) The names and addresses of at least 2 individuals who are able to, and have agreed to:
  - a. Receive notification of an alarm system activation at any time and who can respond to the alarm system site and, upon request, gain access to the alarm system site and deactivate the alarm system if necessary; or,
  - b. Receive notification of an alarm system activation at any time and who has access to the alarm system user for purposes of deactivating the alarm system, if necessary.
- (7) Type of business conducted at a commercial alarm system site;
- (8) Signed certification from the alarm system user stating the following:
  - a. The date of installation, conversion or transfer of the alarm system, whichever is applicable;
  - b. The name, address and telephone number of the alarm system inspection company or companies performing the alarm system installation; conversion or takeover of the alarm system installation company responsible for providing repair service to the alarm system;
  - c. The name, address and telephone number of the monitoring company if different from the alarm system installation company;
  - d. That a set of written operating instructions for the alarm system, including written guidelines on how to avoid false alarms, has been left with the applicant by the alarm system installation company; and,

e. That the alarm installation company has trained the applicant in proper use of the alarm system, including instructions on how to avoid false alarms.

(9) Acknowledgment that any delay in law-enforcement authority response time may be influenced by factors including, but not limited to priority of calls, weather conditions, traffic conditions, emergency conditions, staffing levels, etc.

(d) Any false statement of material fact made by an applicant for the purpose of obtaining an alarm system registration shall be sufficient cause for refusal to issue a registration.

(e) An alarm system registration shall not be transferable to another person or alarm system site. An alarm system user shall inform the alarm system administrator of any change that alters any of the information listed on the alarm system registration application within \_\_ days of such change.

Mr. Rutt said the ordinance also addresses the number of false alarms where a penalty would apply. In option one, the terms were changed to civil penalties. That allows a direct assessment by the city and eliminates the justice of the peace involvement.

The civil penalties mirror those of our current ordinance in terms of amounts.

He explained that the police department has been sending notices. The notice states the violation shall or may and Mr. Rutt assumes the ordinance should be worded 'shall be sent by'. He said that could be the police department or city hall though he the police department seems more appropriate because they receive the calls and track them.

Mr. Rutt further explained there are a couple of options for the payment of the penalty. The penalty could be paid directly to city hall in which case it would go into the general fund; or it could be paid to city hall and transferred to the police department. Council could decide which option is preferred.

It would then say that any person who pays the penalty admits to the violation.

Mr. Rutt said there is also a process in the ordinances on how to contest a violation. He noted the difference in the two alternatives (option 1 and option 2). One ordinance allows you to contest the violation to the city and the other allows you to contest the violation to the Justice of the Peace Court as is done with other violations.

If someone is notified they are in violation and has the right to pay the penalty within a certain number of days or ask in writing for an administrative appeal. The appeal could be to the police chief or city manager, or whoever the composition is of the administrative board. There would be a hearing to determine if the violation should not have a penalty because of a city power failure or if someone struck a pole that caused the electric to go out and set the alarm off. However, that cause would need to be something completely out of their ability to control. The board would then determine the outcome. If the alarm user is found guilty and they still wished to appeal, they could then file an administrative appeal to the Justice of the Peace Court.

Mr. Rutt feels that by the time it gets to that point, most people would pay the \$50 fine because that action requires a filing fee.

Mr. Rutt said there would also be a process that if the fine is not paid, it could become a lien on the property just like grass cutting, demolition and similar criteria that are not paid.

He advised that option 2 is the same without the appeal to a city board. Any appeal would go directly to the justice of the peace.

He is presenting two options that appear to be the ones most prevalent within the municipalities in the State of Delaware.

Once it is determined how to handle, he will proceed with the change.

Mr. Pikus asked if the alarm user appeals to the city, would it come before the entire council or just a committee. Mr. Carmean said it would be an appeal board and council could decide who sits on the board. Mr. Pikus suggested the board could consist of the police committee.

Mr. Brooks asked if the alarms have decreased since the representatives from Mills Brothers and Abbotts Grill came before council; Chief Hudson stated no, the number of alarms have not declined. However, there have been improvements with those two businesses.

The solicitor said another option that some municipal ordinances have is a registration requirement. Some municipalities require all alarm systems be registered though some only require commercial establishments to register. This would provide the police department with some applicable information. It also lets them keep track of any particular business whose alarm continuously goes off. It would allow the city to keep track of where the alarm systems are within the municipality. If the alarm user does not register and the alarm goes off, there are no 'free' false alarms (currently Milford has three) because it is an unregistered alarm. In this case, it would skip the first three free false alarms and go directly to the penalty phase.

Ms. Wilson confirmed the alarm companies notify the police department; Chief Hudson added that the police department has not received alarm signals directly for many years. Instead, the alarm user contracts through a private company who contacts the police department.

Ms. Wilson asked if the alarm company notifies the alarm user before the police are contacted as she believes that is a typical procedure in most cases. Chief Hudson agreed but pointed out that some alarm companies are set up to call the police department directly.

Mr. Rutt agreed that his alarm company calls him or the contact and informs them there is a problem. They then ask if the police should be dispatched.

The city manager said that Chief Hudson and he discussed this after he talked with Mr. Mills and Mr. Reading. According to Mr. Carmean, neither of them believe that eliminating the ordinance is an option. They understand the intent and agree it needs to be in place.

Mr. Grier stated there must be an incentive to correct an alarm problem. Eliminating the ordinance would do the opposite. Chief Hudson agrees the ordinance is needed as a deterrent and encourages maintenance and upkeep of the alarm system.

Mr. Gleysteen asked the average cost of responding to these false alarms; Chief Hudson said he does not recall the number this evening but does have the information. Mr. Gleysteen said when this is discussed again, will the fee schedule be considered or is the plan to only change the way we are administering the ordinance. He expressed concern about the cost of the alarms to the police department.

Mr. Rutt recommends changing the entire ordinance. He said if there is a need to tie the fine to the cost, the penalties could be higher. Mr. Gleysteen said we certainly want to recover our costs.

Mr. Carmean agrees the police are responding in a full out mode to an alarm which could result in a police officer getting hurt or the public pulling out in front of a police car in this situation. Chief Hudson agreed that responding to alarms is a dangerous task for the police. They respond assuming the alarm is real and a crime is in progress. The city manager agrees that is as much a problem as the cost of responding. Chief Hudson said that was the reason for the ordinance when it was first implemented.

Mayor Rogers directed Chief Hudson and the city manager to review the ordinance and bring a recommendation back to council.

With no further business, the Council Workshop concluded at 9:07 p.m.

Respectfully submitted,

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

Terri K. Hudson, MMC  
City Clerk/Recorder