

MILFORD CITY COUNCIL

MINUTES OF MEETING

January 26, 2015

A Meeting of Milford City Council was held in the Joseph Ronnie Rogers Council Chambers at Milford City Hall on Monday, January 26, 2015.

PRESIDING: Mayor Bryan Shupe

IN ATTENDANCE: Councilpersons Chris Mergner, Garrett Grier III, S. Allen Pikus, Dirk Gleysteen, Owen Brooks, Jr., Douglas Morrow, Sr. and James Starling, Sr.

City Manager Hans Medlarz, Police Chief Keith Hudson and City Clerk/Recorder Terri Hudson

COUNSEL: City Solicitor David Rutt, Esquire

CALL TO ORDER

Mayor Shupe called the Council Meeting to order at 7:03 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

*Adoption/Ordinance 2014-16/Chapter 130 Amendment/Floodplain Management*

Mayor Shupe advised that FEMA began updating maps in Delaware last year. Because the City of Milford participates in the National Flood Insurance Program, we are required to adopt updated floodplain regulatory language to comply with NFIP requirements. Model ordinances were developed to assist communities adopt higher floodplain standards, which DNREC recommended as a way to reduce flood damage and lower flood insurance premiums. Building Inspector Don Williams has been working with FEMA, state agencies and a consultant firm to assist with the amendment need to our ordinances.

City Solicitor Rutt advised that he has reviewed the draft that was presented to council. Mr. Rutt made some comments that were sent to Mr. Medlarz and later reviewed at a meeting of staff. At that time, Mr. Medlarz presented the solicitor's comments to the FEMA representative via telephone. The appropriate changes were made and the final document being presented, is consistent with the Kent and Sussex County ordinances.

Mr. Pikus moved to adopt Ordinance 2015-16 as presented, seconded by Mr. Brooks:

ORDINANCE NO. 2014-16

*Chapter 130/Floodplain Management Code*

*AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF MILFORD, DELAWARE AMENDING THE CITY OF MILFORD CODE OF ORDINANCES TO REPEAL CHAPTER 130 FLOODPLAIN MANAGEMENT; TO ADOPT A NEW CHAPTER 130 FLOODPLAIN MANAGEMENT; TO ADOPT FLOOD HAZARD MAPS, TO DESIGNATE A FLOODPLAIN*

*ADMINISTRATOR, TO ADOPT ADMINISTRATIVE PROCEDURES, AND TO ADOPT CRITERIA FOR DEVELOPMENT IN FLOOD HAZARD AREAS, AND FOR OTHER PURPOSES; TO PROVIDE FOR APPLICABILITY; REPEALER; AND AN EFFECTIVE DATE.*

*WHEREAS, the City Council of the City of Milford has the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and*

*WHEREAS, the Federal Emergency Management Agency has identified special flood hazard areas within the boundaries of the City of Milford and such areas may be subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare, and*

*WHEREAS, the City of Milford was accepted for participation in the National Flood Insurance Program on June 1, 1977 and the City Council of the City of Milford desires to continue to meet the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60, necessary for such participation.*

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

*SECTION 1. This ordinance hereby repeals all provisions of Chapter 130 Floodplain Management of the Code of the City of Milford.*

*SECTION 2. Chapter 130 Floodplain Management, is hereby replaced with the language as follows:*

#### *ARTICLE I - GENERAL PROVISIONS*

##### *§ 130-1. Findings.*

*The Federal Emergency Management Agency (FEMA) has identified special flood hazard areas within the boundaries of the City of Milford. Special flood hazard areas are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare. Development that is inadequately elevated, improperly floodproofed, or otherwise unprotected from flood damage also contributes to the flood loss.*

*The City of Milford, by resolution, agreed to meet the requirements of the National Flood Insurance Program and was accepted for participation in the program on June 1, 1977. Subsequent to that date or the initial effective date of the City of Milford Flood Insurance Rate Map, all development and new construction as defined herein, are to be compliant with the City of Milford's floodplain management regulations in effect at the time of construction, and all development, new construction, and substantial improvements subsequent to the effective date of these regulations shall be compliant with these regulations.*

##### *§ 130-2. Statement of Purpose.*

*It is the purpose of these regulations to promote the public health, safety and general welfare, and to:*

- (A) Protect human life, health and welfare;*
- (B) Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future;*
- (C) Minimize flooding of water supply and sanitary sewage disposal systems;*
- (D) Maintain natural drainage;*
- (E) Reduce financial burdens imposed on the community, its governmental units and its residents, by discouraging unwise design and construction of development in areas subject to flooding;*
- (F) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;*
- (G) Minimize prolonged business interruptions;*
- (H) Minimize damage to public facilities and other utilities such as water and gas mains, electric, telephone and*

*sewer lines, streets and bridges;*

- (I) Reinforce that those who build in and occupy special flood hazard areas should assume responsibility for their actions;*
- (J) Minimize the impact of development on adjacent properties within and near flood prone areas;*
- (K) Provide that the flood storage and conveyance functions of the floodplain are maintained;*
- (L) Minimize the impact of development on the natural and beneficial functions of the floodplain;*
- (M) Prevent floodplain uses that are either hazardous or environmentally incompatible; and*
- (N) Meet community participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations at 44 C.F.R. Section 59.22.*

**§ 130-3. Areas to Which These Regulations Apply.**

*These regulations shall apply to all special flood hazard areas within the jurisdiction of the City of Milford, as identified in § 130-4.*

**§ 130-4. Basis for Establishing Special Flood Hazard Areas.**

*For the purposes of these regulations, the following are adopted by reference as a part of these regulations and serve as the basis for establishing special flood hazard areas:*

- (A) The FEMA Flood Insurance Study for Sussex County, Delaware and Incorporated Areas dated March 16, 2015 and all subsequent amendments and/or the most recent revision thereof.*
- (B) The FEMA Flood Insurance Rate Map for Sussex County, Delaware and Incorporated Areas dated March 16, 2015, and all subsequent amendments and/or the most recent revision thereof.*
- (C) Other hydrologic and hydraulic engineering studies and/or maps prepared pursuant to these regulations or for other purposes, and which establish base flood elevations, delineate 100-year floodplains, floodways or other areas of special flood hazard.*
- (D) The City of Milford may identify and regulate new local flood hazard or ponding areas. These areas should be delineated and adopted on a "Local Flood Hazard Map" using best available topographic data and locally derived information such as flood of record, historic high water marks or approximate study methodologies.*
- (E) Where field surveyed topography indicates that ground elevations are below the closest applicable base flood elevation, even in areas not delineated as a special flood hazard area on a flood hazard map, the area shall be considered as special flood hazard area.*

*Maps and studies that establish special flood hazard areas are on file at 210 South Walnut Street, Milford, Delaware 19963.*

**§ 130-5. Abrogation and Greater Restrictions.**

*These regulations are not intended to repeal or abrogate any existing ordinances including subdivision regulations, zoning ordinances or building codes. In the event of a conflict between these regulations and any other ordinance, the more restrictive shall govern. These regulations shall not impair any deed restriction, covenant or easement, but the land subject to such interests shall also be governed by these regulations.*

**§ 130-6. Interpretation.**

*In the interpretation and application of these regulations, all provisions shall be:*

- (A) Considered as minimum requirements;*
- (B) Liberally construed in favor of the governing body;*
- (C) Deemed neither to limit nor repeal any other powers granted under state statutes; and*
- (D) Where a provision of these regulations may be in conflict with a state or Federal law, such state or Federal law shall take precedence, where more restrictive.*

**§ 130-7. Warning and Disclaimer of Liability.**

*The degree of flood protection required by these regulations is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man made or natural causes. These regulations do not imply that land outside of the special flood hazard areas or uses that are permitted within such areas will be free from flooding or flood damage. These regulations shall not create liability on the part of the City of Milford, any officer or employee thereof, or the Federal Emergency Management Agency, for any flood damage that results from reliance on these regulations or any administrative decision lawfully made*

*thereunder.*

**§ 130-8. Severability.**

*Should any section or provision of these regulations be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the regulations as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.*

**ARTICLE II - DEFINITIONS**

**§ 130-9. Definitions.**

*Unless specifically defined below, words or phrases used in these regulations shall be interpreted so as to give them the meaning they have in common usage and to give these regulations the most reasonable application.*

*Accessory Structure: A structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal structure.*

*Area of Shallow Flooding: A designated Zone AO on a community's Flood Insurance Rate Map with a one percent annual chance or greater of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.*

*Base Flood: The flood having a one percent chance of being equaled or exceeded in any given year; the base flood also is referred to as the 100-year flood (or the 1%-annual-chance flood).*

*Base Flood Discharge: The volume of water resulting from a Base Flood as it passes a given location within a given time, usually expressed in cubic feet per second (cfs).*

*Base Flood Elevation: The water surface elevation of the base flood in relation to the datum specified on the community's Flood Insurance Rate Map. In areas of shallow flooding, the base flood elevation is the natural grade elevation plus the depth number specified in feet on the Flood Insurance Rate Map, or at least 2 feet if the depth number is not specified.*

*Basement: Any area of the building having its floor subgrade (below ground level) on all sides.*

*Development: Any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, placement of manufactured homes, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.*

*Dry Floodproofing: Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.*

*Elevation Certificate: The National Flood Insurance Program, Elevation Certificate (FEMA Form 086-0-33), used to document building elevations and other information about buildings. When required to be certified, the form shall be completed by a licensed professional land surveyor.*

*Enclosure Below the Lowest Floor: An unfinished or flood resistant enclosure usable solely for parking of vehicles, building access, or storage, in an area other than a basement.*

*Federal Emergency Management Agency (FEMA): The federal agency with the overall responsibility for administering the National Flood Insurance Program.*

*FEMA Technical Bulletin: A series of guidance documents published by FEMA to provide guidance concerning building performance standards of the National Flood Insurance Program. See sections where specific TBs are identified.*

*Flood or Flooding: A general and temporary condition of partial or complete inundation of normally dry land areas from:*

- (1) The overflow of inland or tidal waters, and/or*
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.*

*Flood Damage-Resistant Materials: Any construction material capable of withstanding direct and prolonged contact with floodwaters without sustaining any damage that requires more than cosmetic repair. See FEMA Technical Bulletin #2 - Flood Damage-Resistant Materials Requirements and FEMA Technical Bulletin #8 - Corrosion Protection for Metal Connectors in Coastal Areas.*

*Flood Insurance Rate Map (FIRM): An official map on which the Federal Emergency Management Agency has delineated special flood hazard areas to indicate the magnitude and nature of flood hazards, and to designate applicable flood zones.*

*Zone A: Special flood hazard areas inundated by the 1% annual chance flood; base flood elevations are not determined.*

*Zone AE: Special flood hazard areas subject to inundation by the 1% annual chance flood; base flood elevations are determined; floodways may or may not be determined.*

*Zone AO: Areas of shallow flooding, with or without a designated average flood depth.*

*Zone X (shaded): Areas subject to inundation by the 500-year flood (0.2% annual chance); areas subject to the 1% annual chance flood with average depths of less than 1 foot or with contributing drainage area less than 1 square mile; and areas protected by levees from the base flood.*

*Zone X (unshaded): Areas determined to be outside the 1% annual chance flood and outside the 500-year floodplain.*

*Zone VE: Special flood hazard areas subject to inundation by the 1% annual chance flood and subject to high velocity wave action (also referred to as coastal high hazard areas).*

*Limit of Moderate Wave Action (LiMWA): The inland limit of the area affected by waves greater than 1.5 feet during the base flood. Base flood conditions between the Zone VE and the LiMWA will be similar to, but less severe than, those in the Zone VE.*

*Flood Insurance Study: The official report in which the Federal Emergency Management Agency has provided flood profiles, floodway information, and the water surface elevations.*

*Floodplain: Any land area susceptible to being inundated by water from any source (see "Flood" or "Flooding").*

*Floodproofing Certificate: The National Flood Insurance Program, Floodproofing Certificate for Non-Residential Structures (FEMA Form 86-0-34), used by registered professional engineers and architects to certify dry floodproofing designs.*

*Floodway: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to pass the base flood discharge such that the cumulative increase in the water surface elevation of the base flood discharge is no more than a designated height.*

*Freeboard: A factor of safety usually expressed in feet above a flood elevation for the purposes of floodplain management. Freeboard tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, obstructed bridge openings, debris and ice jams, and the hydrologic effect of urbanization in a watershed.*

*Functionally Dependent Use: A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water; the term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.*

*Highest Adjacent Grade: The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.*

*Historic Structure: Any structure that is:*

- (1) *Individually listed in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; or*
- (2) *Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district.*

*Hydrologic and Hydraulic Engineering Analysis: An analysis performed by a professional engineer, licensed in the State of Delaware, in accordance with standard engineering practices as accepted by FEMA, used to determine the base flood, other frequency floods, flood elevations, floodway information and boundaries, and flood profiles.*

*Letter of Map Change: A Letter of Map Change is an official FEMA determination, by letter, to amend or revise an effective Flood Insurance Rate Map, Flood Boundary and Floodway Map, and Flood Insurance Study. Letters of Map Change include:*

*Letter of Map Amendment (LOMA): An amendment based on technical data showing that a property was inadvertently included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property is not located in a special flood hazard area.*

*Letter of Map Revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features. One common type of LOMR, a Letter of Map Revision Based on Fill (LOMR-F), is a determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer exposed to flooding associated with the base flood; in order to qualify for this determination, the fill must have been permitted and placed in accordance with these regulations.*

*Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed flood protection project complies with the minimum National Flood Insurance Program requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not amend or revise effective Flood*

*Insurance Rate Maps, Flood Boundary and Floodway Maps, or Flood Insurance Studies; upon submission to and approval of certified as-built documentation, a Letter of Map Revision may be issued.*

*Lowest Floor: The lowest floor of the lowest enclosed area (including basement) of a structure. This definition excludes an "enclosure below the lowest floor" which is an unfinished or flood resistant enclosure usable solely for parking of vehicles, building access or storage, in an area other than a basement area, provided that such enclosure is built in accordance with the applicable design requirements specified in these regulations for enclosures below the lowest floor.*

*Manufactured Home: A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".*

*New Construction: Buildings and structures for which the "start of construction" commenced on or after June 1, 1977, including any subsequent improvements to such structures.*

*Person: An individual or group of individuals, corporation, partnership, association, or any other entity, including state and local governments and agencies.*

*Recreational Vehicle: A vehicle which is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled or permanently towable by a light duty truck, and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.*

*Special Flood Hazard Area: The land in the floodplain subject to a one percent or greater chance of flooding in any given year. Special flood hazard areas are designated by the Federal Emergency Management Agency in Flood Insurance Studies and on Flood Insurance Rate Maps as Zones A, AE, AO, and Zone VE. The term includes areas shown on other flood hazard*

maps that are specifically listed or otherwise described in § 130-4.

*Start of Construction:* The date of issuance of permits for new construction and substantial improvements, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory structures, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

*Structure (or Building):* For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

*Substantial Damage:* Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

*Substantial Improvement:* Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified prior to the application for a development permit by the local code enforcement official and which are the minimum necessary to assure safe living conditions.

*Violation:* The failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the Elevation Certificate, other certifications, or other evidence of compliance required in these regulations is presumed to be in violation until such time that documentation is provided.

### ARTICLE III - ADMINISTRATION

#### § 130-10. Designation of the Floodplain Administrator.

The Building Inspector is hereby appointed to administer and implement these regulations and is referred to herein as the Floodplain Administrator. The Floodplain Administrator is authorized to: (A) Fulfill the duties and responsibilities set forth in these regulations, (B) Delegate duties and responsibilities set forth in these regulations to qualified technical personnel, plan examiners, inspectors, and other employees, or (C) Enter into a written agreement or written contract with another jurisdiction or agency, or private sector entity to administer specific provisions of these regulations. Administration of any part of these regulations by another entity shall not relieve the community of its responsibilities pursuant to the participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations at 44 C.F.R. Section 59.22.as may be hereafter amended.

#### § 130-11. Duties and Responsibilities of the Floodplain Administrator.

The duties and responsibilities of the Floodplain Administrator shall include but are not limited to:

- (A) Review applications for permits to determine whether proposed activities will be located in special flood hazard areas.
- (B) Interpret floodplain boundaries and provide flood elevation and flood hazard information.
- (C) Review applications to determine whether proposed activities will be reasonably safe from flooding.
- (D) Review applications to determine whether all necessary permits have been obtained from those Federal, state or local agencies from which prior or concurrent approval is required.
- (E) Verify that applicants proposing to alter or relocate a watercourse have notified adjacent communities and the

*Delaware Department of Natural Resources and Environmental Control (Division of Watershed Stewardship), and have submitted copies of such notifications to the Federal Emergency Management Agency.*

- (F) Issue permits to develop in special flood hazard areas when the provisions of these regulations have been met, or disapprove the same in the event of noncompliance.*
- (G) Inspect buildings and lands to determine compliance with these regulations or to determine if noncompliance has occurred or violations have been committed.*
- (H) Review submitted Elevation Certificates for completeness.*
- (I) Submit to FEMA data and information necessary to maintain flood hazard maps, including hydrologic and hydraulic engineering analyses prepared by or for the City of Milford, corrections to labeling or planimetric details, etc.*
- (J) Maintain and permanently keep all records for public inspection that are necessary for the administration of these regulations including Flood Insurance Rate Maps, Letters of Map Amendment and Revision, records of issuance and denial of permits, determinations of whether development is in or out of special flood hazard areas for the purpose of issuing permits, elevation certificates, other required certifications, variances, and records of enforcement actions taken for violations of these regulations.*
- (K) Enforce the provisions of these regulations.*
- (L) Assist with and coordinate flood hazard map maintenance activities.*
- (M) Conduct determinations as to whether existing buildings and structures damaged by any cause and located in special flood hazard areas, have been substantially damaged.*
- (N) Make reasonable efforts to notify owners of substantially damaged buildings and structures of the need to obtain a permit prior to repair, rehabilitation, or reconstruction, and to prohibit the non-compliant repair of substantially-damaged buildings except for temporary emergency protective measures necessary to secure a property or stabilize a structure to prevent additional damage.*
- (O) Undertake, as determined appropriate by the Floodplain Administrator due to the circumstances, other actions which may include but are not limited to: issuing press releases, public service announcements, and other public information materials related to permit requests and repair of damaged structures; coordinating with other Federal, state, and local agencies to assist with substantial damage determinations; providing owners of damaged structures materials and other information related to the proper repair of damaged structures in special flood hazard areas; and assisting owners with National Flood Insurance Program claims for Increased Cost of Compliance payments.*
- (P) Notify the Federal Emergency Management Agency when the corporate boundaries of the City of Milford have been modified.*

**§ 130-12. Permits Required.**

*It shall be unlawful for any person or entity to begin construction or other development which is wholly within, partially within, or in contact with any identified special flood hazard area, as established in § 130-4, including but not limited to: subdivision of land, filling, grading, or other site improvements and utility installations; construction, alteration, remodeling, improvement, replacement, reconstruction, repair, relocation, or expansion of any building or structure; placement or replacement of a manufactured home; recreational vehicles; installation or replacement of storage tanks; or alteration of any watercourse, until a permit is obtained from the City of Milford. No such permit shall be issued until the requirements of these regulations have been met.*

**§ 130-13. Application Required.**

*Application for a permit shall be made by the owner of the property or his/her authorized agent, herein referred to as the applicant, prior to the actual start of construction. The application shall be on a form furnished for that purpose.*

**(A) Application Contents.**

*At a minimum, applications shall include:*

- (1) Site plans drawn to scale showing the nature, location, dimensions, existing and proposed topography of the area in question, the limits of any portion of the site that was previously filled, and the location of existing and proposed structures, excavation, filling, storage of materials, drainage facilities, and other proposed activities.*
- (2) Elevation of the existing natural ground where structures are proposed, referenced to the datum on the Flood Insurance Rate Map, and an Elevation Certificate that shows the ground elevation and proposed*

- building elevations (identified in Section C of the Elevation Certificate as "Construction Drawings").*
- (3) *Delineation of special flood hazard areas, floodway boundaries, flood zones, and base flood elevations. Where surveyed natural ground elevations are lower than the base flood elevations, base flood elevations shall be used to delineate the boundary of special flood hazard areas. If proposed, changes in the delineation of special flood hazard areas shall be submitted to and approved by FEMA in accordance with Section § 130-13(B). Where special flood hazard areas are not delineated or base flood elevations are not shown on the flood hazard maps, the Floodplain Administrator has the authority to require the applicant to use information provided by the Floodplain Administrator, information that is available from other sources, or to determine such information using accepted engineering practices.*
  - (4) *For subdivision proposals and development proposals containing at least 50 lots or at least 5 acres, whichever is the lesser, and where base flood elevations are not shown on Flood Insurance Rate Maps, hydrologic and hydraulic engineering analyses and studies as required by § 130-19(D).*
  - (5) *Such other material and information as may be requested by the Floodplain Administrator necessary to determine conformance with these regulations.*
  - (6) *For work on an existing structure, including any improvement, addition, repairs, alterations, rehabilitation, or reconstruction, sufficient information to determine if the work constitutes substantial improvement, including:*
    - (a) *Documentation of the market value of the structure before the improvement is started or before the damage occurred.*
    - (b) *Documentation of the actual cash value of all proposed improvement work, or the actual cash value of all work necessary to repair and restore damage to the before damaged condition, regardless of the amount of work that will be performed.*
  - (7) *Certifications and/or technical analyses prepared or conducted by an appropriate design professional licensed in the State of Delaware, as appropriate to the type of development activity proposed and required by these regulations:*
    - (a) *Floodproofing Certificate for dry floodproofed non-residential structures, as required in § 130-28.*
    - (b) *Certification that flood openings that do not meet the minimum requirements of § 130-27(B)(3)(b) are designed to automatically equalize hydrostatic flood forces.*
    - (c) *Technical analyses to document that the flood carrying capacity of any watercourse alteration or relocation will not be diminished and documentation of maintenance assurances as required in § 130-30(C).*
    - (d) *Hydrologic and hydraulic engineering analyses demonstrating that the cumulative effect of proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood by more than one foot in special flood hazard areas where the Federal Emergency Management Agency has provided base flood elevations but has not delineated a floodway, as required by § 130-30(B).*
    - (e) *Hydrologic and hydraulic engineering analyses of any development proposed to be located in an identified floodway, as required by § 130-30(A).*
    - (f) *Hydrologic and hydraulic engineering analyses to develop base flood elevations for subdivisions and large-lot developments, as required by § 130-19(D) or otherwise required by the Floodplain Administrator.*
- (B) *Right to Submit New Technical Data.*  
*The applicant has the right to seek a Letter of Map Change and to submit new technical data to FEMA regarding base maps, topography, special flood hazard area boundaries, floodway boundaries, and base flood elevations. Such submissions shall be prepared in a format acceptable by FEMA and the Floodplain Administrator shall be notified of such submittal. Submittal requirements and processing fees shall be the responsibility of the applicant.*
- (C) *Requirement to Submit New Technical Data.*  
*The Floodplain Administrator shall notify FEMA of physical changes affecting flood hazard areas and flooding conditions by submitting technical or scientific data as soon as practicable, but not later than six (6) months after the date such information becomes available. The Floodplain Administrator has the authority to require applicants to submit technical data to FEMA for Letters of Map Change.*

(A) Review

*The Floodplain Administrator shall:*

- (1) *Review applications for development in special flood hazard areas to determine the completeness of information submitted. The applicant shall be notified of incompleteness or additional information required to support the application.*
  - (2) *Review applications for compliance with these regulations after all information required in § 130-13 or identified and required by the Floodplain Administrator has been received.*
  - (3) *Review all permit applications to assure that all necessary permits have been received from those federal, state or local governmental agencies from which prior approval is required. The applicant shall be responsible for obtaining such permits, including but not limited to:*
    - (a) *Permits issued by the U.S. Army Corps of Engineers under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act, and the Delaware Environmental Protection Agency under Section 401 of the Clean Water Act.*
    - (b) *Permits required by the State of Delaware.*
- (B) *Approval or Disapproval.*  
*The Floodplain Administrator shall approve applications that comply with the applicable requirements of these regulations. The Floodplain Administrator shall disapprove applications for proposed development that do not comply with the applicable provisions of these regulations and shall notify the applicant of such disapproval, in writing, stating the reasons for disapproval.*
- (C) *Expiration of Permit.*  
*A permit is valid provided the actual start of construction occurs within 180 days of the date of permit issuance. If the actual start of construction is not within 180 days of the date of permit issuance, requests for extensions shall be submitted in writing. Upon reviewing the request and the permit for continued compliance with these regulations, the Floodplain Administrator may grant, in writing, one or more extensions of time, for periods not more than 180 days each.*

§ 130-15. *Inspections.*

*The Floodplain Administrator shall make periodic inspections of development permitted in special flood hazard areas, at appropriate times throughout the period of construction in order to monitor compliance. Such inspections may include:*

- (A) *Stake-out inspection, to determine location on the site relative to the special flood hazard area and floodway.*
- (B) *Foundation inspection, upon placement of the lowest floor and prior to further vertical construction, to collect information or certification of the elevation of the lowest floor.*
- (C) *Enclosure inspection, including crawlspaces, to determine compliance with applicable provisions.*
- (D) *Utility inspection, upon installation of specified equipment and appliances, to determine appropriate location with respect to the base flood elevation.*
- (E) *Storage of materials.*

§ 130-16. *Submissions Required Prior to Issuance of a Certificate of Occupancy.*

*The following certifications are required to be submitted by the permittee for development that is permitted in special flood hazard areas prior to the issuance of a Certificate of Occupancy:*

- (A) *For new or substantially improved residential structures or nonresidential structures that have been elevated, an Elevation Certificate that shows the ground elevation and finished elevations (identified in Section C of the Elevation Certificate as "Finished Construction").*
- (B) *For nonresidential structures that have been dry floodproofed, a Floodproofing Certificate based on "Finished Construction" (identified in Section II).*
- (C) *For all development activities subject to the requirements of § 130-13(B), a Letter of Map Revision shall be provided.*

§ 130-17. *Flood Insurance Rate Map Use and Interpretation.*

*The Floodplain Administrator shall make interpretations, where needed, as to the exact location of special flood hazard areas, floodplain boundaries, and floodway boundaries. The following shall apply to the use and interpretation of special flood hazard maps and data:*

- (A) *In FEMA-identified special flood hazard areas where base flood elevation and floodway data have not been identified and in areas where FEMA has not identified special flood hazard areas, any other flood hazard data*

available from a federal, state, or other source shall be reviewed and reasonably used. When a Preliminary Flood Insurance Rate Map has been provided by FEMA to identify base flood elevation where such elevations were not previously shown, the base flood elevations on the Preliminary Flood Insurance Rate Map shall be used.

- (B) Special flood hazard area delineations, base flood elevations, and floodway boundaries on FEMA maps and in FEMA studies shall take precedence over delineations, base flood elevations, and floodway boundaries by any other source that reflect a reduced special flood hazard area, reduced floodway width and/or lower base flood elevations.
- (C) Other sources of data shall be reasonably used, with the approval of the Floodplain Administrator, if they show increased base flood elevations and/or larger floodway areas than are shown on FEMA flood maps and studies.
- (D) Where field surveyed topography indicates that ground elevations are below the base flood elevation, even in areas not delineated as a special flood hazard on a flood hazard map, the area shall be considered as special flood hazard area.

#### ARTICLE IV - REQUIREMENTS IN ALL SPECIAL FLOOD HAZARD AREAS

##### § 130-18. Application of Requirements.

The general requirements of this section apply to all development proposed within special flood hazard areas identified in § 130-4.

##### § 130-19. Subdivisions and Developments.

- (A) All subdivision and development proposals shall be consistent with the need to minimize flood damage and are subject to all applicable standards in these regulations.
- (B) All subdivision and development proposals shall have utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (C) All subdivision and developments proposals shall have adequate drainage provided to reduce exposure to flood damage.
- (D) All subdivision proposals and development proposals containing at least 50 lots or at least 5 acres, whichever is the lesser, in FEMA-delineated special flood hazard areas where base flood elevation data are not available, shall be supported by hydrologic and hydraulic engineering analyses that determine base flood elevations and floodway delineations. The analyses shall be prepared by a licensed professional engineer in a format required by FEMA for a Conditional Letter of Map Revision or Letter of Map Revision. Submittal requirements and processing fees shall be the responsibility of the applicant.

##### § 130-20. Protection of Water Supply and Sanitary Sewage Systems.

- (A) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems.
- (B) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into systems and discharges from systems into floodwaters.
- (C) On-site waste disposal systems shall be located to avoid impairment to or contamination from them during conditions of flooding.

##### § 130-21. Buildings and Structures.

All new construction of buildings and structures, including placement of manufactured homes and substantial improvements to existing buildings and structures, that are to be located, in whole or in part, in special flood hazard areas shall meet the following requirements.

- (A) Be designed (or modified) and constructed to safely resist flood loads. The construction shall provide a complete load path capable of transferring all loads from their point of origin through the load-resisting elements to the foundation. Buildings and structures shall be designed, connected and anchored to resist flotation, collapse or permanent lateral movement due to structural loads and stresses from flooding equal to the base flood elevation, including hydrodynamic and hydrostatic loads and the effects of buoyancy.
- (B) Be constructed by methods and practices that minimize flood damage.
- (C) Use flood damage-resistant materials below the elevation of the lowest floor. See FEMA Technical Bulletin #2 - Flood Damage-Resistant Materials Requirements and FEMA Technical Bulletin #8 - Corrosion Protection for

*Metal Connectors in Coastal Areas.*

- (D) *Have electrical systems, equipment and components, and heating, ventilating, air conditioning, and plumbing appliances, plumbing fixtures, duct systems, and other service equipment located at or above the base flood elevation. Electrical wiring systems are permitted to be located below the elevation of the lowest floor provided they conform to the provisions of the electrical part of this code for wet locations. If replaced as part of a substantial improvement, electrical systems, equipment and components, and heating, ventilation, air conditioning, and plumbing appliances, plumbing fixtures, duct systems, and other service equipment shall meet the requirements of this section. See FEMA Technical Bulletin #4 - Elevator Installation.*
- (E) *As an alternative to § 130-21(D), electrical systems, equipment and components, and heating, ventilating, air conditioning, and plumbing appliances, plumbing fixtures, duct systems, and other service equipment are permitted to be located below the elevation of the lowest floor provided that they are designed and installed to prevent water from entering or accumulating within the components and to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during the occurrence of the base flood.*
- (F) *Meet the specific requirements of Article V.*
- (G) *In a special flood hazard area with more than one designation (Zones A, AE, and AO, floodway), meet the requirements of the most restrictive designation.*

*§ 130-22. Fill.*

- (A) *Disposal of fill, including but not limited to rubble, construction debris, woody debris, and trash, shall not be permitted in special flood hazard areas.*
- (B) *Where permitted by Article V (Zones A, AE, and AO), fill placed for the purpose of raising the ground level and to support a building or structure shall meet the following requirements:*
  - (1) *Extend laterally from the building footprint to provide for adequate access, as a function of use; the Floodplain Administrator may seek advice from the State Fire Marshal's Office and/or the local fire services agency.*
  - (2) *Placed and compacted to provide for stability under conditions of rising and falling floodwaters and resistance to erosion, scour, and settling.*
  - (3) *Consist of soil or rock materials only.*
  - (4) *Sloped no steeper than one (1) vertical on two (2) horizontal, unless approved by the Floodplain Administrator.*
  - (5) *Designed with provisions for adequate drainage and no adverse effect on adjacent properties.*
- (C) *Fill placed for a purpose other than to support a building or structure shall meet the requirements of § 130-22(B)(2) through (B)(5).*

*§ 130-23. Historic Structures.*

*Repair, alteration, or rehabilitation of historic structures shall be subject to the requirements of these regulations unless a determination is made that compliance with these regulations will preclude the structure's continued designation as a historic structure and a variance is granted in accordance with Article VI and such variance is the minimum necessary to preserve the historic character and design of the structure.*

*§ 130-24. Recreational Vehicles.*

- (A) *Recreational vehicles in special flood hazard areas shall be fully licensed and ready for highway use, and shall be placed on a site for less than 180 consecutive days.*
- (B) *Recreational vehicles that are not fully licensed and ready for highway use, or that are to be placed on a site for more than 180 consecutive days, shall meet the requirements of § 130-27(C) for manufactured homes.*

*§ 130-25. Gas or Liquid Storage Tanks.*

- (A) *Underground tanks in special flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the base flood.*
- (B) *Above-ground tanks in special flood hazard areas shall be elevated and anchored to or above the base flood elevation or shall be anchored at-grade and designed and constructed to prevent flotation, collapse, or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the base flood.*
- (C) *In special flood hazard areas, tank inlets, fill openings, outlets and vents shall be:*
  - (1) *At or above the base flood elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the base flood.*

- (2) *Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the base flood.*

#### *ARTICLE V - SPECIFIC REQUIREMENTS IN SPECIAL FLOOD HAZARD AREAS*

##### *§ 130-26. General Requirements.*

*In addition to the general requirements of Article IV, the requirements of this section apply to all development proposed in special flood hazard areas.*

##### *§ 130-27. Residential Structures and Residential Portions of Mixed Use Structures.*

###### *(A) Elevation Requirements*

- (1) *The lowest floor (including basement) shall be elevated to or above the base flood elevation.*
- (2) *In areas of shallow flooding (Zone AO), the lowest floor (including basement) shall be elevated at least as high above the highest adjacent grade as the depth number specified in feet on the Flood Insurance Rate Map or at least 2 feet if a depth number is not specified; adequate drainage paths shall be provided to guide floodwaters around and away from the structure.*
- (3) *Enclosures below the lowest floor shall meet the requirements of § 130-27(B).*

###### *(B) Enclosures Below the Lowest Floor*

- (1) *Enclosures below the lowest floor shall be used solely for parking of vehicles, building access, crawlspaces, or limited storage.*
- (2) *Enclosures below the lowest floor shall be constructed using flood damage-resistant materials. See FEMA Technical Bulletin #2 - Flood Damage-Resistant Materials Requirements.*
- (3) *Enclosures below the lowest floor (including crawlspaces) shall be provided with flood openings which shall meet the following criteria (see FEMA Technical Bulletin #1 - Openings in Foundation Walls and Walls of Enclosures):*
  - (a) *There shall be a minimum of two openings on different sides of each enclosed area; if a building has more than one enclosed area below the base flood elevation, each area shall have openings on exterior walls.*
  - (b) *The total net area of all openings shall be at least 1 square inch for each square foot of enclosed area, or the openings shall be designed and certified by a registered engineer or architect to provide for equalization of hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwaters.*
  - (c) *The bottom of each opening shall be 1 foot or less above the adjacent ground level.*
  - (d) *Any louvers, screens or other opening covers shall allow the automatic flow of floodwaters into and out of the enclosed area.*
  - (e) *Where installed in doors and windows, openings that meet requirements of § 130-27(B)(3)(a) through (d), are acceptable; however, doors and windows without installed openings do not meet the requirements of this section.*
- (4) *Crawlspaces shall have the finished interior ground level equal to or higher than the outside finished ground level on at least one entire side of the foundation wall.*

###### *(C) Manufactured Homes*

*New or replacement manufactured homes, including substantial improvement of existing manufactured homes, shall:*

- (1) *Be elevated on a permanent, reinforced foundation that raises the lowest floor to or above the base flood elevation and is otherwise in accordance with § 130-27(A).*
- (2) *Be installed in accordance with the anchor and tie-down requirements of the building code or the manufacturer's written installation instructions and specifications.*
- (3) *Have enclosures below the elevated manufactured home, if any, meet the requirements of § 130-27(B). For the purpose of this requirement, the lowest floor of a manufactured home is the bottom of the lowest horizontal supporting member of the lowest floor.*

##### *§ 130-28. Nonresidential Structures and Nonresidential Portions of Mixed Use Structures.*

###### *(A) Elevation Requirements*

- (1) *The lowest floor (including basement) shall be elevated to or above the base flood elevation or the*

- structure shall be dry floodproofed in accordance with § 130-28(B).*
- (2) *In areas of shallow flooding (Zone AO), if not dry floodproofed, the lowest floor (including basement) shall be elevated at least as high above the highest adjacent grade as the depth number specified in feet on the Flood Insurance Rate Map or at least 2 feet if a depth number is not specified; adequate drainage paths shall be provided to guide floodwaters around and away from the structure.*
  - (3) *Enclosures below the lowest floor, if not dry floodproofed, shall meet the requirements of § 130-27(B).*

*(B) Dry Floodproofing Requirements*

*Dry floodproofed structures, together with attendant utility and sanitary facilities, shall:*

- (1) *Be designed to be dry floodproofed such that the structure is watertight with walls and floors substantially impermeable to the passage of water to the level of the base flood elevation. In areas of shallow flooding (Zone AO), the structure shall be dry floodproofed at least as high above the highest adjacent grade as the depth number specified in feet on the Flood Insurance Rate Map or at least 2 feet if a depth number is not specified.*
- (2) *Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.*
- (3) *Be certified by a licensed professional engineer or licensed professional architect with a Floodproofing Certificate, that the design and methods of construction meet the requirements of this section. Refer to FEMA Technical Bulletin #3 - Non-Residential Floodproofing - Requirements and Certification for guidance.*

*§ 130-29. Accessory Structures.*

*Accessory structures shall meet the requirements of these regulations. Accessory structures that have a footprint of no more than 200 square feet may be allowed without requiring elevation or floodproofing provided such structures meet all of the following requirements:*

- (A) *Useable only for parking or limited storage;*
- (B) *Constructed with flood damage-resistant materials below the base flood elevation;*
- (C) *Constructed and placed to offer the minimum resistance to the flow of flood waters;*
- (D) *Firmly anchored to prevent flotation, collapse, and lateral movement;*
- (E) *Electrical service and mechanical equipment elevated to or above the level of the base flood elevation; and*
- (F) *Equipped with flood openings that meet the requirements of § 130-27(B).*
- (G) *For guidance, see FEMA Technical Bulletin #7 - Wet Floodproofing Requirements.*

*§ 130-30. Protection of Flood-Carrying Capacity.*

*(A) Development in Floodways*

*Within any floodway area designated on the Flood Insurance Rate Map, no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic engineering analysis that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge. Such technical data shall be submitted to the Floodplain Administrator and to FEMA. The analyses shall be prepared by a licensed professional engineer in a format required by FEMA for a Conditional Letter of Map Revision or Letter of Map Revision. Submittal requirements and processing fees shall be the responsibility of the applicant.*

*The proposed development activity may be permitted if the analyses demonstrate that the activity:*

- (1) *Will not result in any increase in the base flood elevation; or*
- (2) *Will result in an increase in the base flood elevation, provided a Conditional Letter of Map Revision has been issued by FEMA and the applicant completes all of the following:*
  - (a) *Submits technical data required in § 130-13(A)(8)(d);*
  - (b) *Evaluates alternatives which would not result in increased base flood elevations and an explanation why these alternatives are not feasible;*
  - (c) *Certifies that no structures are located in areas which would be impacted by the increased base flood elevation;*
  - (d) *Documents that individual legal notices have been delivered to all impacted property owners to explain the impact of the proposed action on their properties;*

- (e) Requests and receives concurrence of the Mayor of the City of Milford and the Chief Executive Officer of any other community impacted by the proposed actions; and
- (f) Notifies the Delaware Department of Natural Resources and Environmental Control (Division of Watershed Stewardship).

*(B) Development in Areas with Base Flood Elevations but No Floodways*

For development activities in a special flood hazard area with base flood elevations but no designated floodways, the applicant shall develop hydrologic and hydraulic engineering analyses and technical data reflecting the proposed activity and shall submit such analyses and data to the Floodplain Administrator and to FEMA. The analyses shall be prepared by a licensed professional engineer in a format required by FEMA for a Conditional Letter of Map Revision or Letter of Map Revision. Submittal requirements and processing fees shall be the responsibility of the applicant. The proposed development activity may be permitted if the analyses demonstrate that the cumulative effect of the proposed development activity, when combined with all other existing and potential special flood hazard area encroachments will not increase the base flood elevation more than 1.0 (one) foot at any point.

*(C) Deliberate Alterations of a Watercourse*

For the purpose of these regulations, a watercourse is deliberately altered when a person causes a change to occur within its banks. Deliberate changes to a watercourse include, but are not limited to: widening, deepening or relocating of the channel; installation of culverts; construction of bridges, and excavation or filling of the channel or watercourse banks.

For any proposed deliberate alteration of a watercourse, the applicant shall develop hydrologic and hydraulic engineering analyses and technical data reflecting such changes and submit such technical data to the Floodplain Administrator and to FEMA. The analyses shall be prepared by a licensed professional engineer in a format required by FEMA for a Conditional Letter of Map Revision or Letter of Map Revision. Submittal requirements and processing fees shall be the responsibility of the applicant.

The proposed alteration of a watercourse may be permitted upon submission, by the applicant, of the following:

- (1) Documentation of compliance with § 130-30(A) if the alteration is in a floodway or § 130-30(B) if the alteration is in a watercourse with base flood elevations but no floodway.
- (2) A description of the extent to which the watercourse will be altered or relocated as a result of the proposed development.
- (3) A certification by a licensed professional engineer that the bankful flood-carrying capacity of the watercourse will not be diminished.
- (4) Evidence that adjacent communities, the U.S. Army Corps of Engineers, and the Delaware Department of Natural Resources and Environmental Control (Division of Watershed Stewardship) have been notified of the proposal and evidence that such notifications have been submitted to the Federal Emergency Management Agency.
- (5) Evidence that the applicant shall be responsible for providing the necessary maintenance for the altered or relocated portion of the watercourse so that the flood carrying capacity will not be diminished. The Floodplain Administrator may require the permit holder to enter into an agreement with City of Milford specifying the maintenance responsibilities; if an agreement is required, the permit shall be conditioned to require that the agreement be recorded on the deed of the property which shall be binding on future owners.

## ARTICLE VI - VARIANCES

### § 130-31. Variances.

The City of Milford's Board of Adjustment shall have the power to authorize, in specific cases, such variances from the requirements of these regulations, not inconsistent with Federal regulations, as will not be contrary to the public interest where, owing to special conditions of the lot or parcel, a literal enforcement of the provisions of these regulations would result in unnecessary hardship.

*(A) Application for a Variance*

- (1) Any owner, or agent thereof, of property for which a variance is sought shall submit an application for a variance to the Floodplain Administrator.
- (2) At a minimum, such application shall contain the following information: Name, address, and telephone number of the applicant; legal description of the property; parcel map; description of the existing use; description of the proposed use; location of the floodplain; description of the variance sought; and reason

for the variance request. Each variance application shall specifically address each of the considerations in § 130-31(B) and the limitations and conditions of § 130-31(C).

(B) *Considerations for Variances*

In considering variance applications, the Board of Adjustment shall consider and make findings of fact on all evaluations, all relevant factors, requirements specified in other sections of these regulations, and the following factors:

- (1) The danger that materials may be swept onto other lands to the injury of others.
- (2) The danger to life and property due to flooding or erosion damage.
- (3) The susceptibility of the proposed development and its contents (if applicable) to flood damage and the effect of such damage on the individual owner.
- (4) The importance of the services provided by the proposed development to the community.
- (5) The availability of alternative locations for the proposed use which are not subject to, or are subject to less, flooding or erosion damage.
- (6) The necessity to the facility of a waterfront location, where applicable, or if the facility is a functionally dependent use.
- (7) The compatibility of the proposed use with existing and anticipated development.
- (8) The relationship of the proposed use to the comprehensive plan for that area.
- (9) The safety of access to the property in times of flood for ordinary and emergency vehicles.
- (10) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site.
- (11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(C) *Limitations for Variances*

- (1) An affirmative decision on a variance request shall only be issued upon:
  - (a) A showing of good and sufficient cause. A "good and sufficient" cause is one that deals solely with the physical characteristics of the property and cannot be based on the character of the planned construction or substantial improvement, the personal characteristics of the owner or inhabitants, or local provisions that regulate standards other than health and public safety standards.
  - (b) A determination that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the property.
  - (c) Increased cost or inconvenience of meeting the requirements of these regulations does not constitute an exceptional hardship to the applicant.
  - (d) A determination that the granting of a variance for development within any designated floodway, or special flood hazard area with base flood elevations but no floodway, will not result in increased flood heights beyond that which is allowed in these regulations.
  - (e) A determination that the granting of a variance will not result in additional threats to public safety; extraordinary public expense, nuisances, fraud on or victimization of the public, or conflict with existing local laws.
  - (f) A determination that the structure or other development is protected by methods to minimize flood damages.
  - (g) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (2) Upon consideration of the individual circumstances, the limitations and conditions, and the purposes of these regulations, the Board of Adjustment may attach such conditions to variances as it deems necessary to further the purposes of these regulations.
- (3) The Board of Adjustment shall notify, in writing, any applicant to whom a variance is granted for a building or structure with a lowest floor elevation below the base flood elevation that the variance is to the floodplain management requirements of these regulations only, and that the cost of federal flood insurance will be commensurate with the increased risk.

ARTICLE VII - ENFORCEMENT

§ 130-32. Compliance Required.

- (A) No structure or land development shall hereafter be located, erected, constructed, reconstructed, repaired,

*extended, converted, enlarged or altered without full compliance with these regulations and all other applicable regulations which apply to uses within the jurisdiction of these regulations.*

- (B) *Failure to obtain a permit shall be a violation of these regulations and shall be punishable in accordance with § 130-34.*
- (C) *Permits issued on the basis of plans and applications approved by the Floodplain Administrator authorize only the specific activities set forth in such approved plans and applications or amendments thereto. Use, arrangement, or construction of such specific activities that is contrary to that authorized shall be deemed a violation of these regulations.*

*§ 130-33. Notice of Violation.*

*Notices of violation shall be issued in accordance with the requirement of the Building Code Chapter 88.*

*§ 130-34. Violations and Penalties.*

*Violations and penalties shall be administered in accordance with the requirement of the Building Code Chapter 88.*

*SECTION 3. APPLICABILITY.*

*For the purposes of jurisdictional applicability, this ordinance shall apply in the City of Milford. This ordinance shall apply to all applications for development, including building permit applications and subdivision proposals, submitted on or after the effective date of this ordinance.*

*SECTION 4. REPEALER.*

*Any and all ordinances and regulations in conflict herewith are hereby repealed to the extent of any conflict. This ordinance specifically repeals and replaces Chapter 130, Floodplain Management.*

*SECTION 5. INCLUSION INTO THE CODE OF ORDINANCES.*

*It is the intent of the City Council of the City of Milford that the provisions of this ordinance shall become and be made a part of the City of Milford Code of Ordinances, and that the sections of this ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," "regulation," or such other appropriate word or phrase in order to accomplish such intentions.*

*SECTION 6. DATES.*

*Introduction: November 10, 2014*

*Adoption: January 26, 2015*

*Effective: February 5, 2015*

Motion carried.

*Adoption/Ordinance 2014-17/Chapter 88 Amendment/Building Construction*

Mayor Shupe informed council an amendment to the building construction ordinance was also needed as a result of the new floodplain regulations. To prevent amending this chapter each time a floodplain map was required, a cross reference was added to the building permit and structural design sections of the ordinance.

Mr. Pikus moved to adopt Ordinance 2014-17, seconded by Mr. Starling:

*ORDINANCE 2014-17  
Chapter 88-Building Construction*

*WHEREAS, the City of Milford deems it necessary to regulate and govern the conditions and maintenance of all property, buildings and structures; and*

*WHEREAS, the City stipulates the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use; and*

WHEREAS, the City requires the condemnation of buildings and structures unfit for human occupancy and use and the demolition of such structures are herein provided; and

WHEREAS, the City calls for the issuance of permits and collection of fees.

NOW, THEREFORE, THE CITY OF MILFORD HEREBY ORDAINS:

Section 1.

An Ordinance to Amend the Code of the City of Milford by Amending Chapter 88 entitled Building Construction.

Section 2. Article 1-International Residential Code, 88-2-Additions, Insertions and Changes is hereby amended as follows:

C. Chapter 3 Building Planning

(1) TABLE R301.2(1)

Climatic and Geographic Design Criteria

GROUND SNOW LOAD	WIND SPEED	SEISMIC DESIGN CATEGORY	SUBJECT TO DAMAGE FROM			WINTER DESIGN TEMP	ICE BARRIER UNDER-LAYMENT REQUIRED	FLOOD HAZARDS	AIR FREEZING INDEX	MEAN ANNUAL TEMP
			WEATHERING	FROST LINE DEPTH	TERMITE					
25	100	A	SEVERE	24 Inches	MOD-HEAVY	14	NO	SEE CHAPTER 130 Floodplain Management	368	55.7F

Section 3. Article II-International Building Code, 88-4-Additions, Insertions and Changes is hereby amended as follows:

P. Chapter 16, Structural Design.

1612.3. Establishment of flood hazard areas. Flood hazard areas are established by Chapter 130, Floodplain Management.

Section 4. Dates.

Introduction: November 10, 2014

Adoption: January 26, 2015

Effective: February 5, 2015

Motion carried.

Brewgrass Festival/Amendment to Approval

Mayor Shupe recalled this event being discussed on two previous occasions. The organizers of the Brewgrass Festival, previously approved by council, are asking to expand the site to include Memorial Park. The original approval was only for Bicentennial Park. The intent is for participants to be able to use the bridge and enjoy and experience the Mispillion River. Projected are 500 people.

The organizer, Sara Pletcher emphasized they will strictly adhere to ordinance regulations and specifically, fence in the areas where alcohol will be consumed.

The area map was included in the packet and now includes an entrance on both sides of the river where designated drivers will be stationed and provided if needed.

The mayor talked to Ms. Pletcher and shared some concerns that the neighbors on the Memorial Park side of the river may

have a problem with the noise. She agreed to install some type of acoustics to block the noise from the homes in that area. Live music will remain solely on the Bicentennial Park side.

Mr. Mergner asked the cut off time for the bands; Ms. Hudson confirmed the event would begin at noon and end at 6:00 p.m. Mr. Pikus pointed out they had originally wanted to start the event at 11:00 in the morning, but he received a number of complaints from the area churches and they agreed to move it to noon.

Chief Hudson asked if this event is co-sponsored by the city; Mayor Shupe stated no, it is solely sponsored by Downtown Milford, Incorporated.

Mr. Grier moved to expand the site for the Brewgrass Festival to include Memorial Park, seconded by Mr. Gleysteen. Motion carried.

#### NEW BUSINESS

##### *Adoption of Resolution 2015-01/Acceptance of Public Improvements/Fork Landing Farms*

Mr. Medlarz explained this is a three-step process. Once a subdivision receives final approval, the developer installs streets, utilities and associated improvements. Once the improvements are in place and inspected, the subdivision is built. The developer can then make a request for the city to take over those improvements.

In this case, the developer has completed all improvements, the punch list has been completed and the public works department is ready to accept them. He explained this is a preliminary acceptance for one year and should any contingencies occur, final acceptance will not be granted. If no contingencies occur, the maintenance bond will expire and final acceptance will be granted.

Should issues arise, we will use the maintenance bond available to the city and extend the preliminary approval period until such items are corrected.

Mr. Morrow moved to adopt Resolution 2015-01, seconded by Mr. Brooks:

##### *ACCEPTING PUBLIC IMPROVEMENTS FOR FORK LANDING SUBDIVISION*

*WHEREAS, Chapter 200 provides that public roads and public utilities shall be accepted into the City of Milford's street system and public utility system by resolution of City Council; and*

*WHEREAS, Former Public Works Director Brad Dennehy has determined that all required improvement for the Fork Landing Subdivision have been completed;*

*WHEREAS, The Fork Landing Subdivision has provided the City of Milford with a maintenance bond for the public improvements and public utilities guarantying the improvements for one year from the date of acceptance of the improvements; and*

*WHEREAS, the water distribution system, sewer system, sewer pumping station and all public streets in the subdivision known as Fork Landing, including Camberly Way, Drummond Drive and Knotts Court are dedicated for public use, as shown on the final map for Fork Landing Subdivision; and*

*NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Milford during a regular session of Council, by a favorable majority vote, accepts the water distribution system, sewer system, sewer pumping station and all public streets and easements in the Fork Landing Subdivision that are to be dedicated for public use into the City of Milford's street system and public utility system;*

*BE IT FURTHER RESOLVED, that the City of Milford assume responsibility for the future maintenance and repair of all*

*streets, easements and public utility systems in Fork Landing Subdivision as noted in this resolution.*

*s/Mayor Bryan Shupe*

Motion carried.

*Approval/SE Front Street Improvements Project/Additional Sidewalk Installation*

Mr. Medlarz explained that the improvements planned in the original contract have been completed. A property that should have been included in the project scope was omitted. It was brought to the attention of the engineers mid way through the project. They felt it was inappropriate to include by change order but instead opted to address it separately in conjunction with the public works and parks and recreation crews.

Mr. Williams and Mr. Medlarz met with the property owners who are anxious to get this project completed. There is a section that is their responsibility which Mr. Medlarz made clear. The owners understand and those repairs were also arranged through our contractor. The city will do some prep work and parks and recreation will remove the bricks. Public works will make the utility adjustments and handle some rough grading.

City crews will then work with Shea Concrete to complete the work which reduces the project costs by several thousand dollars. However, the price quoted for the anticipated scope is very competitive and has Mr. Medlarz's support.

Mr. Brooks moved to pay the Shea Concrete Invoice in the amount of \$8,700, for the city portion of this project, to be funded from the Municipal Street Aid account, seconded by Mr. Morrow. Motion carried.

*Approval/FY 2014-2015 Budget Adjustment/Maple Avenue Culvert Repair*

As previously mentioned in the January City Manager report, the city-owned culvert under Maple Avenue connecting Silver Lake with the millpond has been compromised and the road surface has started to settle. Mr. Medlarz feels there is a need for the repairs to be done as quickly as possible though no need for immediate alarm at this point in time.

Mr. Medlarz explained that a design has been developed, with the assistance of our public works staff, to make the repair at a reasonable cost. Our staff will assist with the sandbags, stone and dewatering. There is a chance our crews could complete the work and if not, Shea Concrete will assist though they would be limited to one day. The proposal was structured with both scenarios.

When asked if there should be a weight limit, Mr. Medlarz does not feel that is necessary. However, a heavy vehicle, such as a tractor trailer, should be prevented from parking over it though that would be an unlikely situation.

He added that once it is fixed, the public works crew will do some minor repairs to get the patch up to the appropriate level. This should then last another twenty years or so.

Mr. Medlarz pointed out that if the project had been addressed in this year's budget, a complete repair could have been done versus this type repair.

Mr. Pikus moved to approve a FY 2014-15 budget adjustment in the amount of \$17,658 to complete the Maple Avenue culvert repairs, funded from the Municipal Street Aid account, seconded by Mr. Brooks. Motion carried.

Mr. Medlarz advised the street will need to be closed to do the repairs.

*Approval/FY 2014-2015 Budget Adjustment/Truitt Avenue Sidewalk Urgent Repairs*

Mr. Medlarz stated that the sidewalk leading to the bridge on Front Street and Truitt Avenue is undermined by an approximate one square foot tunnel beneath. A complete void has formed and there is the potential for an imminent collapse should we incur a major rainfall event. The city's responsibility begins at the back curb on both sides from the right-of-way.

The second issue involves a heavily-used pedestrian walkway between the shopping center and the fourth ward. A major utility pole was placed on the walkway on the north end of Truitt Avenue where its guy-wire is preventing proper clearance.

The repairs are on the opposite ends of Truitt Avenue and will cost a total of \$6,000.

The city manager spoke with the owner of Shea Concrete who agrees with our concerns and understands this was not included in this year's budget. Because this is the slow time of the year, Mr. Shea provided a very reasonable cost for the repairs.

Mr. Medlarz reported there is approximately \$1 million in the Municipal Street Aid fund. However, there is also an urgent need to repair Airport Road. He has authorized core borings on Airport Road to get an idea of what is needed and how it can be done in the most economical manner. He feels we cannot continue to deplete funds from either the Municipal Street Aid Fund or other similar accounts without taking into consideration major improvements that are needed.

Mr. Starling moved to approve a FY 2014-15 budget adjustment in the amount of \$6,865 for two sidewalk repairs on Truitt Avenue, seconded by Mr. Pikus.

Mr. Pikus then recalled money being set aside in the current budget for repairs to Airport Road; Mr. Medlarz confirmed that he checked with the finance department and there was nothing specifically earmarked for that project.

Motion carried.

Mr. Starling then recalled the extension planned from the original Truitt Avenue to Truitt Avenue Extended off West Street and US Route 113 discussed many years ago. Mr. Medlarz remembered the plans though Mr. Pikus said he believes that right-of-way was given to the church. The city manager is unaware if that occurred.

*Approval/FY 2014-2015 Budget Adjustment/Preliminary Engineering Expenses/2015 Sewer System Project*

The sewer department is requesting funds from sewer reserves to pay for the USDA application work being done by DBF. The city has accrued \$21,353 in DBF bills toward this application which Mr. Medlarz confirmed is the final cost. The funds need to be approved so the invoices can be paid.

Mr. Medlarz recalled city council authorizing the engineers and staff to prepare a funding application for the 2015 sewer system improvements which was completed last year. He confirmed we have received the funding offer obligating documents for phase I which were executed by the mayor.

He noted that USDA's Program Specialist Lisa Fitzgerald is present to comment on the status of the second phase of the funding packet.

Mr. Medlarz and Mr. Portmann agree that when city council authorizes such items, there is a need to authorize a cost center and possibly a project number. Council should consider a 'not to exceed amount' in such cases.

In this situation, all bills were paid with the exception of the last one. He was going to code it to the cost center and found out there was none; Mr. Portmann agreed that should be done.

Mr. Medlarz asked council to correct the issue so that they are aware of the applications and preliminary expenses. The process is not as simple as requesting the money and USDA sends the obligating documents as a result. He pointed out there are a number of steps that must be followed. Environmental assessments must be considered and engineering comparisons prepared which comes at a cost.

He said he is putting a motion before council to make sure it is in the right category and to give a 'not to exceed number'. In addition, once the second obligating package is presented and it goes public (1) the expenses incurred need to be outlined,

(2) council agrees this is where we want to go and (3) after the public hearings and referendum occurs, council would then execute the bond document.

Mr. Medlarz feels it is important that council understand how this works and that they are comfortable paying the last bill before he approves it.

He further explained there could be some associated costs depending on the complexity of the application. If the project does not move forward, those costs will need to be appropriately accounted for so that the auditors know council was aware and authorized the expense. The preliminary expense from an accounting standpoint will be rolled over to become an eligible project expense. However, if the project never moves forward it becomes a city expense which must be properly accounted for and authorized.

If it moves forward, it will be subject to a single audit. If it does not move forward, the auditors question the expense and if the proper authorizations are not in place, the auditors will add a 'finding' to the next audit which means we are not in accordance with the government accounting standards.

Mr. Pikus said council is aware of that process now. Mr. Medlarz assumes council is aware of the project and has properly authorized it to proceed and are now waiting Ms. Fitzgerald's update once the expenditure is approved.

Mr. Pikus moved that sewer reserves in the amount of \$21,353 be transferred into a special account to pay for the costs associated with DBF preparing the USDA grant for the 2015 sewer repairs, seconded by Mr. Brooks. Motion carried.

Ms. Fitzgerald then addressed council reporting that Milford received the first approval of the first phase of the funding obligated in September 2014. This involved a \$600,000 loan and a \$1 million grant that required the city to contribute \$400,000. Currently, the city is in the application process for phase two, which according to Ms. Fitzgerald, was applied for at the same time she was working on the application with DBF. Therefore, there is nothing else to do at this time except refresh some of the financials as they become stale.

She explained her review is complete and had made her recommendation to her supervisor. The full allocation for the state is expected by mid February. At that point, USDA will make an offer of assistance to the city. Prior to that, it is too early in their fiscal year and no money is available. Last year the city applied late in the fiscal year when the allocation was available.

Any of the costs paid out of pocket can be reimbursed through this loan which is typically done at the time the loan closes.

Mr. Pikus asked if all the bills incurred on the project will be paid; Ms. Fitzgerald stated as long as the receipts and account summaries are provided, the money will be reimbursed. This would follow the same process as was done on the Southeast Milford Water Expansion.

She added that normally there is one bond closing at the end of the project and the loan portion would be closed at the same time. Grant draws would then be done every thirty days.

*Approval/FY 2014-2015 Budget Adjustment/DBF Contract Amendment/Seabury Avenue Test Well*

The following letter was submitted by DBF's Erik Retzlaff:

*RE: PROPOSAL ADJUSTMENT*

*Test Well Services*

*Groundwater Investigation*

*Seabury Avenue WTF*

*Project No. 0052A165.C02*

*Per our recent discussions, Davis, Bowen & Friedel, Inc. (DBF) is pleased to present this proposal adjustment for*

*engineering services related to the installation of a test/production well at the Seabury Avenue Water Treatment Facility site. As you are aware, the City previously approved the attached proposal for the installation of a 4" test well at the site. Based on DNREC's recent policy adjustment preventing the reclassification of a test well to a production well, we are recommending the City install a 6" production well that could be utilized as a production well should the production capacity be available.*

*Increasing from a 4" Well to a 6" Well will cost \$12,500.00 in materials and additional drilling time needed. Additionally, in order to utilize the well as a Production Well, access tubes must be installed for level measurement.*

*Costs for the access tube are estimated at \$7,500.00. In total, the cost increase to go to a 6" Production Well is approximately \$20,000.00.*

*All terms as listed in the previous Proposal dated September 15, 2014 attached will remain.*

Mr. Medlarz recalled when he and Mayor Shupe discussed the goals for the city what rose to the top is the city's continued effort to provide adequate water supplies to our residents and industries. In this effort, the city already worked with City Engineer Erik Retzlaff in exploring the available aquifers at the Seabury Avenue facility which was authorized through an engineering contract.

When Mayor Shupe asked the city manager his comfort level with this, he stated that working with the city engineer, as well as reviewing the electric logs, CAMA logs, cuttings and sieve analysis, etc. he feels reasonably comfortable we do have a source of water available. However, there is always a risk associated with drilling wells. Though no guarantee, if the well was upsized from four to six inches, and we were correct in our assumptions and are able to obtain the yield we expect, we would have the opportunity to go back to DNREC and reclassify it from a test to a production well. That would save significant funds in the future.

The city manger feels this is a relatively small investment. After a discussion about the cost, Mr. Retzlaff is proposing a 'not to exceed cost' of which he will pass any and all incurred costs through a 'no markup' which Mr. Medlarz feels is a great offer adding the success rate will be well above 75%.

Mr. Mergner asked if it is more a financial risk in the way we want to use it; Mr. Medlarz explained that the test well will have to be drilled regardless. The upsizing and associated cost provides the likely opportunity to use it as a production well which will save the same amount because a four-inch well was just drilled that cannot be used as a production well.

The city manager feels this is a calculated risk with a significant upside.

Mr. Medlarz confirmed there are three wells left at the Seabury Avenue facility and two are marginal producing wells.

He explained it is a budgeted expense and there is money available through the Redner's fund.

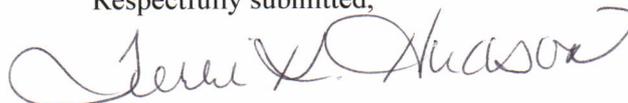
Mr. Grier moved to approve the Proposal Amendment to increase the test well from four inches to six inches and the associated work at the Seabury Avenue Water Treatment Facility dated January 23, 2015, seconded by Mr. Starling. Motion carried.

ADJOURN

With no further business, Mr. Pikus moved to adjourn the Council Meeting, seconded by Mr. Grier. Motion carried.

Meeting adjourned at 7:58 p.m.

Respectfully submitted,



Terri K. Hudson, MMC  
City Clerk/Recorder

MILFORD CITY COUNCIL  
MINUTES OF MEETING  
January 26, 2015

The City Council of the City of Milford met in Workshop Session on Monday, January 26, 2015 in the Joseph Ronnie Rogers Council Chambers of Milford City Hall, 201 South Walnut Street, Milford, Delaware.

PRESIDING: Mayor Bryan W. Shupe

IN ATTENDANCE: Councilpersons Christopher Mergner, Garrett Grier III, S. Allen Pikus, Dirk Gleysteen, Owen Brooks, Jr., Douglas Morrow and James Starling, Sr.

City Manager Hans Medlarz, Police Chief Keith Hudson and City Clerk/  
Recorder Terri Hudson

COUNSEL: City Solicitor David Rutt, Esquire

The Workshop Session convened at 7:58 p.m.

*Ordinance 2014-18/Chapter 204/Taxation/Supplemental Bills and Appeal Deadlines*

Mayor Shupe recalled the following ordinance being discussed at the previous meeting:

*WHEREAS, the taxation of real property constitutes a significant portion of the annual municipal revenues necessary to facilitate governmental operations; and*

*WHEREAS, it is in the best interest of the City of Milford, as well as its residents, to ensure that all properties are fairly and properly assessed for the purposes of taxation; and*

*WHEREAS, rules are hereby established regarding exemptions, dates, deadlines, appeals and annual and supplemental bills.*

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

*Section 1.*

*Article II, entitled Exemption of New Improvements Added to Property, Sections 204-6 thru Section 204-11, is hereby rescinded:*

~~*ARTICLE II - Exemption of New Improvements Added to Property*~~

~~*§ 204-6. - Eligibility for new improvement exemption of real property taxes:*~~

~~*The exemption shall only apply to the increase in assessed value resulting from substantial rehabilitation, renovation or improvements of existing properties (residential, commercial, industrial, etc.) located within the city limits. New construction does not qualify.*~~

~~*The building permit for the said improvements must be issued prior to June 30, 2013 and shall be valid for a period of one year. The exemption shall be based on the change in the improvement assessment value only. The land assessment is not eligible for exemption under this article.*~~

~~*§ 204-7. - Amount of the exemption:*~~

~~*The amount of the exemption shall be determined by subtracting the value of construction per the building permit from the improvement assessment value following the new construction.*~~

~~*§ 204-8. - Application of the exemption and limitations:*~~

~~The dollar amount of the exemption shall be multiplied by the property tax rate in the first full tax year following the issuance of a certificate of occupancy by the City. The dollar amount of the exemption shall be limited to a maximum of \$1,000 for residential properties and limited to a maximum of \$5,000 for all other properties. The exemption shall only be good for one year immediately following the~~

~~§ 204-9. - Appeals.~~

~~An aggrieved taxpayer may appeal from the disposition of an exemption claim in the same manner as is provided for appeals from assessments generally.~~

~~§ 204-10. - Due date for payment of property taxes.~~

~~Property taxes shall be payable on or before September 30th of each year.~~

~~§ 204-11. - Penalties.~~

~~To every tax not paid after the said date established in § 204-10, there shall be added and collected a penalty, for each month that the said tax remains unpaid. A penalty of one percent per month, or fraction thereof, shall be charged on all unpaid property taxes. City Council, by resolution, may impose a date later than that established in § 204-10 for the addition and collection of penalties.~~

Section 2. A new Article II, entitled Authority to Exempt Real Property from Taxation, is hereby added to read as follows:

ARTICLE II – Authority to exempt real property from taxation.

§ 204-6. The city council shall have the power to exempt real property located within the city from municipal property taxes when, in the opinion of the tax assessor, the same will best promote the public welfare. The city assessor shall be empowered to grant tax exemptions pursuant to 9 Del. C. § 8105 and 8110, upon receipt of an application to the City of Milford filed by the organization to establish its entitlement to such exemptions.

§ 204-7. No assessment shall be made against that portion of a parcel during the period in which the portion qualifies for agricultural, horticultural or forest uses as more fully defined by 9 Del. C. § 8330 through 8337, inclusive.

Section 3. A new Article III, entitled Annual Tax Bill, is hereby added to read as follows:

ARTICLE III – Annual Tax Bill.

§204-8. The tax year shall run from October 1st through September 30th each year based on assessed values as of June 30th.

§ 204-9. Property taxes shall be payable on or before September 30th of each year.

§ 204-10. To every tax not paid after the said date established in 204-9, there shall be added and collected a penalty, for each month that said tax remains unpaid. A penalty of one percent per month, or fraction thereof, shall be charged on all unpaid property taxes. City Council, by resolution, may impose a date later than that established in 204-9 for the addition and collection of penalties.

Section 4. A new Article IV, entitled Supplemental Assessments and Tax Bills, is hereby added to read as follows:

ARTICLE IV- Supplemental Assessments and Tax Bills

§204-11. Supplemental Assessment Required.

A. Changes, including zoning and construction, shall require reassessment of the property at its fair market value as of the date of the last City-wide revaluation. A supplemental assessment will be determined for the amount of difference between the value stated on the regular assessment roll(s) and the new fair market value.

*B. Supplemental tax bills shall be issued when there is an increase in taxable value caused by any change as stated in 204-11. More than one tax year may be affected by the increase in value, causing more than one supplemental bill to be issued. Even when a property has been sold, the original owner may be billed for any change in value relating to the dates of their ownership.*

*C. The increase in assessed value resulting from the reassessment is reflected in a prorated assessment that covers the period from the first day of the month following the supplemental event to the end of the fiscal year.*

*§204-12. - Assessment Appeals.*

*A. Appeal date deadlines*

*Appeal filing deadline (Annual billing) August 31st*

*Appeal filing deadline (October billing) November 30th*

*Appeal filing deadline (January billing) February 28th*

*Appeal filing deadline (April billing) May 31st*

*B. Right to appeal is lost if appellant has missed the designated appeal date.*

*C. Appeals/refunds for errors or opinions of value from appellants will not be heard for prior years.*

*D. The assessment as revised and adjusted by the board of assessment appeals shall be the listed value for the year under appeal and shall be the basis for the levy and collection of taxes for the city.*

*Section 5. Dates.*

*Introduction 01-12-2015*

*Ordinance will be effective ten days following its adoption.*

Mayor Shupe advised this ordinance has been developed to address some taxation rules and specifically supplemental bills, appeals and deadlines. Article VII of the city charter has jurisdiction over city taxation, assessment, rates, etc. This will address some problems encountered with supplemental bills, appeals and deadlines. Those items were discussed and created after several meetings of the staff involved in the process. They have now been added to Chapter 204 which is the code that presently governs the senior citizens relief program and other miscellaneous tax issues. This is a housecleaning ordinance and is being presented for review this evening.

Mr. Rutt suggests that some additional language be added to Section 204(6). In the second sentence, it reads the city assessor shall be empowered to grant tax exemptions pursuant to 9 Del. C. § 8105 and 8110. He explained that Title 9 of the Delaware Code relates specifically to counties and his concern is someone could challenge it by stating the city assessor does not have jurisdiction under Title 9.

The solicitor suggests it state the city assessor shall be empowered to grant tax exemptions in the same fashion as a county exemption pursuant to 9 Del. C. § 8105 and 8110.

He said home rule and the charter grant the right to access taxes and that would be the power by which the city assessor could grant the exemption but in the same manner as the county.

With no further comments, Mayor Shupe advised it would be formally introduced at the next council meeting.

City Manager Medlarz then noted that our code does not require public hearings in most cases. He asked if council has the right to post a public hearing in the case of ordinance amendments in general.

Solicitor Rutt explained that council has the right but a public hearing is not required. In this case, the charter gives council the authority to enact taxes by ordinance.

*Ordinance 2015-01/Chapter 193/Solid Waste Amendments*

Mayor Shupe advised that city staff, along with City Manager Medlarz, has been reviewing the solid waste code since the previous meeting.

Mr. Medlarz reported that he met with the solid waste crews this morning. He has also met with the city employees involved in this process on numerous occasions as he informed council at the last meeting.

He recalled when Mayor Shupe had contacted him with some trash concerns the first day he was city manager. There were two other council members who had received complaints on the same day so he knew the solid waste ordinance needed some attention.

The city manager provided some highlights of the changes at the last meeting. All of the changes have been added with one exception. The city's customer service supervisor made some very valid points against adding the solid waste fee to the water and sewer bill. The problems dealt with servicing as much as collection. After considerable discussions, they believe a deposit is warranted. The city requires an electric deposit for renters but a solid waste deposit was never implemented.

Should a tenant walk away from the electric bill, they lose the deposit; if they walk away from the solid waste obligation, the city is stuck with the bill. Mr. Medlarz believes that \$100 is a fair amount considering a customer could get away with not paying their trash bill for at least a couple of months. In addition, a large quantity of items could be left at the time they move out.

The city will pick up loose items such as bags, boxes, cartons, etc. with no addition fee. However, should this occur two consecutive times or three times in six months will trigger a second container at a discounted rate. It will be tracked by the public works crews and administrative staff. A customer putting out excessive trash two times in a row will trigger a form letter from the public works department stating they have exceeded the allowance two times in a row and in accordance with the ordinance, will be issued an additional container due to their needs.

The city manager feels the staff is agreeable to this approach. He believes the trigger points are fair and would still allow someone to have a large party or a big Christmas which would result in excess trash. He reiterated the customer would not be penalized because it is a one-time occurrence.

He referenced Mr. Brooks' previous concerns that a customer who generates the waste should pay the costs which involves removal, collection, disposal, etc. He feels this addresses that concern.

The other issues is that bulk and additional items were not picked up unless the customer called. It became very unmanageable because most people would not call. If three sofas were left curbside and they had not called in, a tag would be placed on the door to call public works and make arrangements. The previous charge for that pickup was \$10.

Currently, we have to notify the customer, come back, pick the item up, dispose of the item, bill the customer and collect the additional fee. Before this change was made to the ordinance, we only picked the item up. Mr. Medlarz pointed out there is now an enormous administrative effort which adds administrative costs to the collection and disposal fees. In most of these cases, it becomes an uncollected fee.

He feels the intent was good, but after speaking with the street superintendent, public works administrative assistant and customer service supervisor, a minimum of \$50 should cover the city's expenses. For that amount, up to five bulk items will be picked up. After the fifth item, an additional \$10 will be charged for each additional item because the crews and truck are already on site, so there is some economy of scale in that situation.

Mr. Medlarz asked council to inform him if they believe these amendments are too harsh or not harsh enough. He welcomes any opinions on these matters.

The city manager then noted that Mr. Brooks expressed appreciation for how we now handle the holidays and will provide service on certain holidays. The solid waste crews told Mr. Medlarz they believe it actually enhances the service and they are more than willing to continue doing that.

Mr. Medlarz also pointed out that our crews absolutely needs some holidays off so the holidays were structured

accordingly. In addition, each time there are two holidays in one week, one would be worked otherwise it becomes unmanageable for our crews to catch up.

Mr. Medlarz pointed out there has been a lot of discussion between a number of staff members to come up with something that will satisfy our customers and give our staff something to work with. He is hoping this will reduce the number of calls to the mayor and council.

Mr. Pikus asked how we deal with apartment complexes if the owner supplies his eighty units with dumpsters though the city still picks up the trash. Mr. Medlarz explained that the containers have to first be approved to ensure they are not larger than three cubic yards to ensure we can pick them up. If the apartment complex has the room, they also have the ability to have individual containers such as Hearthstone Manor.

Mr. Pikus said he is referring to Silver Hill/Parson Thorne Apartments. Mr. Medlarz emphasized it is the owner's option to choose city services or a private collector. In the past, the city required mandatory service across the board.

Mr. Pikus said in this case, the owner purchased his own containers at our city specifications. He asked how each apartment is billed for trash; Mr. Medlarz said they pay the residential rate. Mr. Pikus said in this case, they are using the owner's container so there should be no deposit. Mr. Medlarz explained that a complex that uses a dumpster does not have individual trash pickup. Therefore, it is not an issue.

Mr. Pikus asked if any residential customer has an option to use another trash company. Mr. Medlarz explained the ordinance clearly states there is a mandatory residential requirement. If you live in an apartment complex, the owner has the opportunity to use its own contractor. Mr. Rutt agreed noting that the lease should contain a section explaining the tenant must use the apartment complex' trash service.

Mr. Pikus said he had two large apartment owners call him with concerns. He asked that one owner, who has ninety units, to write down questions.

Mr. Medlarz asked if they currently have containers/dumpsters, private service or individual containers. Mr. Pikus said they are using city services but own the containers/dumpsters.

Mr. Medlarz explained that one of the apartment complexes in town has individual accounts. He read one of the questions that asked why a \$100 deposit is required for new rental accounts because if terminated after only two months, they would have only owed \$47. The city manager explained as an example, a new renter moves in and only stays two months but pays no bills during that time. However, the renter has left everything they had in the apartment or on the curb and leaves town. If the landlord agrees to pick up all the items left, then the deposit would not be required. However, that is unlikely and in most cases, picks up the phone and calls the city to come get it. Because of that, we need something in place to cover our costs. He feels it would warrant the deposit though council has the right to reduce or increase it.

Mr. Pikus said that makes sense to him.

Mr. Medlarz then read a question that asked if city council has the desire to stop collection services from rental units altogether. The city manager pointed out the city has a significantly high number of rental units and said he hopes councils' answer is no. For our staff to attempt to track the rentals and owner-occupied units will be difficult.

The city manager explained the reason this was even brought up is because collections and liens is a much simpler task when it involves an owner-occupied unit. That would only work in a predominantly owner-occupied community which is not the case in Milford.

Mr. Pikus agreed adding that Randy Marvel was the person that wrote the questions.

Mayor Shupe thanked Mr. Medlarz for providing the information so that council has a better concept of the problems

we are experiencing . At the next level, he suggests we consider the dollar amounts and is willing to accept public input.

Mr. Medlarz stated that he would like some idea of whether council feels what is being proposed is totally off base so that it can be amended. Mr. Pikus agrees there is a problem in the city and we are losing money in that department so something needs to be done. He feels the steps we are taking is a positive step. In concept, he feels council will agree we are moving in the right direction though he said there are still some questions that may need to be answered.

Mr. Medlarz asked what other questions or concerns he has; Mr. Pikus said he has no other questions or concerns. Mr. Medlarz reiterated that he needs council input and encourages comments.

Mr. Mergner referenced the establishments who have private haulers. He asked where they fall in keeping their establishments free and clear of waste on curbs, etc. He asked if this is addressed in this ordinance because even though the city does not pick up their trash, there should be some type of accountability for those businesses to prevent that waste from sitting there until it can be picked up.

Mr. Medlarz explained that falls under the building code/property maintenance ordinances. He explained the solid waste code addresses our customers and rules related to containers, fees, etc. He pointed out that Councilman Mergner is referencing the same issues that Councilman Brooks and he are working on which is a code enforcement issue. He encouraged council to inform him of any related code enforcement issues. For example, if the business has a private hauler but it does not meet the requirements of the city code, then steps need to be taken to alleviate the problem though it would not fall under this ordinance.

The city manager reiterated that if a commercial entity cannot be accommodated with the individual containers or the maximum three-cubic yard for multi-family (only) units, that business would need to contract through a private hauler. Commercial service in Milford is only provided to a small trash generating establishment and they are provided the residential-sized container(s) only.

Mayor Shupe thanked the city crews noting they have responded quickly after he and some other council members reported several problems to Mr. Medlarz. He has already heard from those residents that whatever we are doing now needs to continue because it has worked.

#### *Potential Procurement of Hourly Labor and Equipment Purchases Under Kent County Contract*

Article 3 of the City Charter addresses the city's procurement and contract requirements for personal service and purchase of supplies and work for municipal purposes. It states that bidding is not required in some situations including contracts for any service rendered by the State of Delaware or any political subdivision thereof.

Mr. Medlarz explained that currently, the city has the right to procure goods and services under state contract. He said if other subdivisions/jurisdictions have competitively advertised and bid services and/or goods, does our charter and state law allow Milford to procure under their contracts or do we have to seek that authorization.

Mr. Medlarz advised that the Kent County general labor and equipment contract is a multi-million dollar contract. These multi-million dollar contracts have a hundred different labor categories, equipment pieces and services. They involved competitive pricing for projects which were two small by themselves to go through the engineering design and bidding process. Those contractors may not be willing to extend the same unit price which would make this a non-issue. However, if they are willing, the city would get some economy of scale we would not achieve otherwise.

Right now, there are several projects on the books that City Manager Medlarz considers to be a somewhat urgent nature while city staff feels it is beyond their capabilities. These items are being postponed which is creating larger problems and will cost more money if we wait to do the work.

For those reasons, Mr. Medlarz feels we need to come up with a way to resolve the issues in a competitive manner so council is satisfied and the city does not overpay. It would have been advantageous if we could procure services through

other subdivisions/entities of the state.

If not, he would recommend we do a companion advertisement with a companion award or whatever our solicitor advises we can do.

City Solicitor Rutt confirmed that Mr. Medlarz is asking whether the city can piggyback with Kent or Sussex County when bidding for vehicles, supplies or some type of work; Mr. Medlarz stated yes.

Mr. Rutt said he will look at that and also consider the city doing it jointly with another municipality.

Mr. Pikus feels this is a great idea and would result in a substantial savings for the city. Piggybacking a bid with another municipality would definitely be an advantage and a savings to the city.

Mr. Medlarz pointed out that none of the other municipalities have this with the exception of the City of Newark. Both Kent and Sussex County have it though Sussex to a smaller degree than Kent County.

Mr. Medlarz noted that in addition to the economic savings, it is also speeds up the process, cuts out the middle man and eliminates a design need where in most cases, the design is not needed.

He stated that the city charter gives the city manager tremendous leeway when it comes to procurement of services which is a great benefit.

If council agrees, Mr. Medlarz will work with Mr. Rutt to come up with a suggestion of how to structure this. It could be as simple as procure services under a contract of a subdivision of the state or council could feel it is not doable at all. If the only way it can be done is as a charter amendment, it may be easier to do our own advertising and contract. In the meantime, they will discuss it.

The consensus of council is for Mr. Medlarz to proceed as he is recommending.

#### *City of Milford Southeast Master Plan Amendment*

Some zoning amendments to the Master Plans are needed to accommodate the development of the new Bayhealth Facility on Wilkins Road and State Route 30.

The city manager recalled that in 2011, city council approved an overlay amendment to the Comprehensive Plan for the southeast area. He explained that is a planning document on record that governs the area.

He referenced the associated land use map in question. The property targeted by Bayhealth for their new facility is identified as commercial. Though in the broadest sense, a hospital could be considered a commercial enterprise, the most appropriate designation would be institutional or employment center which is only on the east side of Route 1. The planning office considers the hospital an employment center with many different zoning applications happening within the entity.

From a land use planning standpoint, this is a very complex issue and a number of things depend on it.

Mr. Medlarz explained that if the state planning office did not allow the change unless a change is made to this Southeast Master Plan, it would set this project back by several months.

He pointed out there is another trigger built in the comprehensive plan which states if a building exceeds a certain size, it must go through the State of Delaware PLUS process. We would go through the PLUS process for no other reason but to change the master plan. The change of zone could then occur.

The same process would then need to be repeated for the hospital. When the conditional site plan is submitted, it will

contain a building that exceeds the size and therefore, requires that process.

Mr. Medlarz is trying to convince the state planning office this would be a complete duplication with a detrimental effect on the hospital's time line. As a result, the city will make one final attempt to get this done at minimum, in a parallel manner.

Mr. Pikus asked the zoning of the Hall property and the triangular piece owned by Elmer Fannin; Mr. Medlarz confirmed it is all commercial zoning.

Mr. Brooks recalled the properties on the east side of Route 1 being zoned institutional; Mr. Medlarz said it is designated employment center. Either of those two would be appropriate. However, Mr. Medlarz is asking the state planning office to proceed in a parallel manner. The city is making a commitment to go through the plan amendment with the hope the planning office will allow the zoning process to occur and the conditional use site plan to be submitted at the same time.

He is hoping the city can resolve this before the hospital steps in which is why he felt council needs to be aware of the situation.

When asked how long this will take to occur, Mr. Medlarz explained that a map amendment with an underlying master plan amendment would take three months at a minimum. Mr. Brooks recalled the hospital's intent was to break ground later this year.

The consensus of council was to proceed with the plans as the city manager recommends

#### *Clarification of Intent/Milford Code Chapter 230-62(D)*

Mr. Medlarz pointed out the current city code states:

*No zoning permits, certificates of occupancy, licenses or building permits shall be issued nor shall any applications for changes of zoning, conditional uses, variances or special exceptions be accepted unless all taxes, assessments, sewer, water, electric, trash charges and any other fees due the City are paid and in good standing.*

Mr. Medlarz interprets this if any services, taxes, fees, etc. and in particular entities and legal names, are unpaid, the city will not provide any additional licenses, permits, etc.

There was a related issue that occurred the first week he was city manager. The city's customer service superintendent contacted Mr. Medlar and explained that someone was requesting utility services be put in a tenant's name, but the property owner needed a rental license before that could be done. Before issuing a permit or license, her staff confirms the property taxes, sewer, water, electric, trash charges and any other fees are paid up and current. The request is then honored.

In this case, there were outstanding property taxes owed.

Mr. Rutt then explained this is called a 'clean hand ordinance' which is found in most municipality, county and state codes that issue permits. The Milford ordinance states that no permits, licenses, etc. SHALL be issued. Under Delaware law, the word 'shall' is mandatory. He explained that this section states specifically that all taxes and any other fees are paid and in good standing.

If an owner of a property comes in for a building permit on a specific property, but also owns other properties, the fees and taxes on those properties must also be considered.

Mr. Rutt said the interpretation of this ordinance means the property owner would not be entitled to the permit until the owner has paid all other fees, assessments and taxes and anything else owed the city. That is the purpose of this type of ordinance. It prevents someone from running up bills on a property in southern Milford when they own another

property in northern Milford and are seeking a permit.

Mr. Pikus asked if that is the intent; Mr. Medlarz reiterated that the customer service supervisor contacted him the first week with this question. His interpretation is the same as Mr. Rutt's interpretation. He feels this should be done across the board, even though he understands there may have been some underlying political issues that affected our past practice.

Mr. Rutt and Mr. Medlarz agreed that the law on the books is very clear and it needs to be enforced as it is written. If not, council has the right to change it.

Mr. Grier also agrees that it needs to be handled just as it reads; Mr. Morrow and Mr. Brooks agreed. Mr. Pikus stated it should be followed as stated.

Mr. Medlarz noted this is standard language and he has seen some laws that address overlapping ownerships in LLC (limited liability corporations) that tries to capture multiple ownerships. In those cases, it becomes difficult and Mr. Rutt would need to do a great deal of research on the state website to determine every partner. Mr. Rutt agreed stating that is difficult because usually only the certificate is available which states when it was formed and the principal or registered officer listed as the agent. The certificate does not list all the members.

The city manager agreed this is the standard language; beyond that it is difficult though some people have mastered the art of creating the entities to get around these clean hands ordinances.

Mr. Grier asked if it is appropriate to ask for the members of an LLC; Mr. Rutt said that somewhat defeats the purpose of an LLC. He said the city could ask though he feels there would be some resistance.

Mr. Medlarz said if someone comes in and requests a service for an LLC and signs as the managing partner, our billing staff runs the individual's name to determine what he owes.

Mr. Rutt said another way to do that is to use the billing address. Many times an LLC may have different names but the same billing address.

Mr. Pikus said it needs to be enforced appropriately.

*Adjourn*

With no further business, the Workshop was adjourned by Mayor Shupe at 8:52 p.m.

Respectfully submitted,



Terri K. Hudson, MMC  
City Clerk/Recorder