

MILFORD CITY COUNCIL
MINUTES OF MEETING
April 24, 2017

Milford City Council held a Public Hearing on Monday, April 24, 2017 in the Joseph Ronnie Rogers Council Chambers at Milford City Hall, 201 South Walnut Street, Milford, Delaware.

PRESIDING: Mayor Bryan Shupe

IN ATTENDANCE: Councilpersons Christopher Mergner, Arthur Campbell, Lisa Peel,
James Burk, Owen Brooks Jr. and James Starling Sr.

City Manager Eric Norenberg, Police Chief Kenneth Brown and
City Clerk/Recorder Terri Hudson

COUNSEL: City Solicitor David Rutt, Esquire

Mayor Shupe called the Public Hearing to order at 7:14 p.m.

City Planning Coordinator Rob Pierce was also present.

Virginia Short on behalf of RVS, LLC

Final Minor Subdivision

.352 +/- acres in an R2 (Residential District) Zoning District

304 & 306 Claude Street, Milford, Delaware

Present Use: Two Single Family Dwellings on One Parcel

Proposed Use: Two Single Family Dwellings on Two Parcels

Tax Map 3-30-11.05-046.00

Planning Coordinator Pierce reviewed the application noting that the property contains two existing homes at 304 and 306 Claude Street. A variance was required because the minor subdivision does not meet the minimum lot area and lot width requirements for the R-2 (Residential District). The applicant applied for a variance to allow the minimum interior lot area to be 7,705 square feet and 7,711 square feet and the minimum interior lot width to be 65 feet and 65.33 feet. This was needed for the purpose of subdividing the parcel.

The Board of Adjustment granted the relief on April 13, 2017 contingent upon the minor subdivision's approval by City Council.

On April 18, 2017, the Planning Commission reviewed the application after which they recommended approval with a 7-0 vote.

This subdivision will allow the property owner to re-establish a boundary line and sell the homes individually.

Mr. Pierce confirmed there were no written or verbal comments received in relation to the request though property owners were notified and a public notice published in the local newspaper.

Virginia Short then stated, for the record, she is a member of the RVS, LLC. She is requesting the two homes that are currently on one deed, be separated, for the purpose of selling the homes individually or re-renting.

Solicitor Rutt asked Ms. Short if at the time she purchased the property, both homes were on the same deed; she stated that is correct.

Solicitor Rutt asked if each home has separate utility accounts; Ms. Short stated yes.

Mayor Shupe then opened the floor to public comment; no one responded. He then closed the public comment portion of

the hearing.

Councilwoman Peel moved to approve the Final Major Subdivision by Virginia Short on behalf of RVS, LLC of .352 +/- acres at 304 & 306 Claude Street, Milford, Delaware, Tax Map 3-30-11.05-046.00, seconded by Councilman Mergner.

Motion carried by the following 6-0 vote:

Councilmember Mergner votes yes based on the review and recommendation of the Planning Commission.

Councilmember Campbell votes yes based on the Planning Commission recommendation.

Councilmember Peel votes yes based on the unanimous vote of the Planning Commission for recommendation.

Councilmember Burk votes yes based on the Planning Commission recommendation.

Councilmember Brooks votes yes the same as the Council people.

Councilmember Starling votes yes based on the recommendation as was stated.

There being no further business, Mayor Shupe adjourned the Public Hearing at 7:22 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Terri K. Hudson". The signature is fluid and cursive, with a large initial "T" and "H".

Terri K. Hudson, MMC
City Clerk/Recorder

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PRESIDING: Mayor Bryan W. Shupe

IN ATTENDANCE: Councilpersons Christopher Mergner, Arthur Campbell, Lisa Ingram Peel, James Burk, Owen Brooks Jr., Douglas Morrow and James Starling Sr.

City Manager Eric Norenberg, Police Chief Kenneth Brown and City Clerk Terri Hudson

COUNSEL: City Solicitor David Rutt, Esquire

CALL TO ORDER

Mayor Shupe called the Council Meeting to order at 7:22 p.m.

INVOCATION AND PLEDGE

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

COMMUNICATIONS & CORRESPONDENCE

City Manager Norenberg reminded Council of the Organization Meeting next Monday night, May 1st at 7:00 p.m. at which time the recently elected Councilmembers will be sworn in.

UNFINISHED BUSINESS

*Adoption/Ordinance 2017-11/Chapter/168/Ordinance 2017-11
Amendment/Peddling, Soliciting and Transient Merchants Chapter*

City Manager Norenberg recalled that last fall Council updated Chapter 168 which added some language regarding food trucks as well as a couple other housekeeping items. At that time, there was an intent to make it easier for a vendor at a special event, including food trucks or someone selling items from a table at a festival or a farmer's market. As a result they would be exempt from the licensing requirement in the City. Their only requirement was to have any associated State License such as the Delaware Division of Public Health Permit or any permit required by the Department of Transportation.

The intent of the amendment is to prevent an additional step to apply for a City license.

There is a current need to correct some conflicting language.

There were also some background check requirements added to the code at time. Chief Brown and the City Manager found another unintended consequence that involved food truck vendors who are typically at a fixed location such as a business or a special event. The background check requirement was intended to apply to peddlers and transient vendors going door to door in neighborhoods. For example, an ice cream truck who may be playing music to encourage children to come out. Those type of vendors were the concern of the Police Department and will now be required to have proper background checks.

An amendment is needed to clarify which type of vendors would need those background checks.

When consulting with the City Solicitor on the ordinance amendment, Mr. Rutt directed Mr. Norenberg to the section of the Smyrna code that he recommends adding regarding Freedom of Speech. As a result, an amendment is proposed to exempt

persons from attempting to enlist support, for or against a particular religion, political party, candidate, cause or issue that would relate to the First Amendment. And, given the stricter background check requirement, it is proposed that solicitation by charitable organizations would also be exempt as described in the proposed ordinance.

The final amendment will exempt charitable organizations like girl scouts or public schools who solicit for their sports team or sell cookies.

Councilman Brooks recalled that Milford Community Parade organizer Jim Gray was upset last year about the \$50 fee and how some food vendors paid and some did not. Mr. Norenberg explained that if the food vendor is registered as part of the special event, then organizations like the Community Parade Committee can select and identify whom they want at their event. The difficulty comes with enforcing it because the parade is spread out over a long area which provides a number of parking lots and other sites which he understands is a challenge for them. The intent of this ordinance is to prevent having all of the parade's vendors register separately with the City and instead allow the event organizer to handle it.

Councilman Campbell asked if a permit is needed for a fundraising event involving several food trucks; Mr. Norenberg explained if it is determined to be a special event, that will depend on the location and whether there are traffic impacts or public safety implications.

Mayor Shupe confirmed the intent is to proceed with the background requirements for anyone going door to door or street by street attracting customers; however, a food truck hired by a business for a particular event is not required to obtain a second license. Mr. Norenberg stated that is correct and the revised language would state 'upon application the person has to get name, address, age' and identify the business they are working with while providing some basic facts and information. Additionally those solicitors and peddlers would have to undergo the background check.

The City Manager further explained that based on the definitions in the code, solicitors or peddlers are the type of vendors who go door to door selling an item. Mobile food vendors are not identified as a solicitor/peddler.

Mr. Norenberg further clarified that a food truck operating in the City would need to have an annual permit from the City. A driver of a food truck parked at a particular location would not be required to have a background check.

Councilwoman Peel asked how people will understand if it is this confusing for Council.

Solicitor Rutt explained that simply put, they are separated into two categories. If you are associated with a special event, such as the Bug and Bud or Freedom Festival, they are the clearinghouse. Those vendors would fall under the umbrella of the special event and not need an individual permit.

Mr. Rutt continued by explaining that a food truck that is not at a special event would be required to apply for the permit.

Any person doing door-to-door solicitation, regardless, would be required to have a license and a background check.

Councilman Burk recalled his concerns about the 28-page special event application. He asked how we ended up with a 28-page form for Milford. He tried to figure out where it came from. He looked at Wilmington and found their application is 19 pages. Dover's application is three pages, Lewes' application is one page, Milton's application is three pages to use the park and two pages for a parade and a public assembly, Rehoboth's application is three pages and a map, Middletown has a four-page application to use their pavilion, one page for a parade or a public assembly and one page for a 5K.

Councilman Burk said he then found the following information on the first page of Oberlin's application:

A street fair, circus, farmer's market, street market, art and craft show, exhibition (i.e., car show, air show), carnival, festival, indoor or outdoor musical concert, or other social event or gathering that takes place on a city street, sidewalk, alley or other street right-of-way, city park or city facility and/or:

- a. That is likely to obstruct, delay or interfere with the normal flow of vehicular or pedestrian traffic;

- b. Whose participants are likely not to comply with traffic laws and controls;
- c. That involves the use of, or impacts upon other public property or facilities and the provision of public safety services in the response thereto.

He compared that to Milford's application and found that Milford's added the language "and/or an event or gathering on private property". He feels that may have come from the department heads but that wording is what has jumped out at people. He found that this form was brought up in July 2016 at the Parks and Recreation Committee. He asked the Parks and Recreation Committee members explain how we got to where we are today.

Councilman Burk pointed out that we are now cleaning up the code to prevent any conflict that was caused as a result of the form.

Solicitor Rutt pointed out the amendment has nothing to do with the application. Mr. Norenberg agreed the two items are completely separate in terms of the ordinance that is front of Council tonight.

Councilman Burk asked when we are going to talk about the form. He did not recall any press release about it.

Solicitor Rutt emphasized the agenda item is the amendment to the code and has nothing to do with the special event application. Therefore, this conversation is off the agenda. He said if Councilman Burk feels that is an issue, he should have it put on a future agenda.

Councilman Burk said that is the feedback he keeps getting and wants it added to the agenda for the next meeting.

Councilman Starling recalled an event that has been held behind Banneker School for the past several years. They have always gone through the Parks and Recreation Department. He asked if they will still go to them or if something different needs to be done.

Mr. Norenberg explained that any events that are strictly in the parks, such as a family gathering or a church group, who may be renting the park for a day, do not have any adverse effect on public safety or traffic. They will still require a park permit as has been the case in the past.

Councilwoman Peel asked if those type of special events would only need a park form or some other form. She feels we need to determine if anything else may be needed.

Mr. Norenberg responded by stating the park permit is something that is strictly attached to the parkland. He reiterated that the ordinance on the agenda tonight was created to clean up some of the language that was added in the fall. It had nothing to do with the special event permit that was just released.

However, the creation and development of that application was well underway at the time the ordinance was being written. There was some language added that relates to special events because they wanted to eliminate any perception as to the duplication of efforts. For example, the code needed to be clear there was never an attempt for two permits or to require every vendor at a special event (Bug and Bud for example) to get a separate permit. Unfortunately, a number of those sections existed before any changes were made to the code. As a result, some of the events were happening with vendors and other merchants coming to those events without any permits. He did not want to require one of our employees to be there on Saturday just to verify the vendors are compliant with the ordinance. He would rather simplify the process by allowing the vendors to fall under the umbrella of the special event permit and allow the event organizers to determine which vendors are legal and properly permitted by the State of Delaware.

He felt this was a way for the City to be more busy-friendly and allow the event organizers to handle the vendors as Councilman Brooks alluded to when the Community Parade organizers learned there were vendors at their parade who had not registered through them.

Mayor Shupe asked if there is a way for private businesses within our community who has food trucks to not require those

food trucks to register through the City. Instead make it the business owners' responsibility to assure the other non-City licenses are in place.

Councilwoman Peel asked what qualifies as a special event and how the vendors will know if they are exempt from the permit process; Councilman Mergner then asked what would happen if a business was having a one-night grand opening or similar event. Mr. Norenberg stated that in terms of the approved special event, the organizer would have completed the form which requires a review by all impacted City departments. He stressed that he is referring to major events like the Bug and Bud Festival where vendors would fall under their umbrella.

Councilman Morrow arrived at this time.

Mr. Norenberg continued by explaining that if a small businessperson asked to park a couple of food trucks in their parking lot would not qualify as a special event. However, Mayor Shupe is asking to consider the idea of creating another exemption within the ordinance. At this point, the code already restricts food trucks from operating on certain properties without a permit. The property would need to be properly zoned as well.

Mayor Shupe feels it is important that the police have the background checks of people who are going down every street and especially those that are playing music and enticing children to come out to their truck. However, if it is occurring at a private business who may be holding a grand opening with food trucks should not be required to get a City permit.

Councilman Campbell asked if a permit would be required if a church decided to have an event on a Sunday with food trucks.

Mr. Norenberg reiterated that this chapter was established to register peddlers, vendors and transient merchants before food trucks were in the picture many years ago. Last year there was language added specific to food trucks. When that was added, some language needed to be clarified or simplified in other areas of the code. If the City does not want any regulations, that is a different story. However, there have been problems with them locating on various properties throughout the City. We have even received complaints about them parking on public property without permission and simply showing up and parking somewhere which was exactly the Parade Committee's complaint that Councilman Brooks alluded to earlier.

Councilman Burk asked how many times that happened; he is only aware of the coffee truck on Walnut Street. Mr. Brooks stated that he had one parked next to the 7-11 store during the Halloween Parade. Councilman Morrow agreed that he had the store owner call him and Councilman Brooks to complain about it. Because it wasn't registered, the City had no information on it so nothing could be done.

Councilman Burk then made a motion to postpone any further action until we can do more research. Councilwoman Peel said she has concerns because it has special events in it that cannot be defined.

Solicitor Rutt said it appears there are two different items. One is the definition of what a special event is and the second is the definition of a private party. He said that typically that would be where someone who owns or leases property that has a food truck on their property that is completely under their control. The other is a commercial site such as a drug store who is having a grand opening and tells their food truck to park in the lot across the street. In that case, they would need a permit.

Mr. Rutt feels if those two things are defined, it will help.

Councilwoman Peel seconded the motion to postpone action. Motion carried.

NEW BUSINESS

Bid Award/Airport Road Improvements Project

Public Works Director Mark Whitfield reported that sealed bids were opened on April 13, 2017 at City Hall. Five bids were received and low bidder was Diamond Materials, LLC of Newport, Delaware that came in with a total base bid of \$1,655,177.50. The bid was approximately \$168,000 less than the engineer's estimate and under the budgeted amount as

a result.

The Public Works Director referred to a recommendation from DBF's P.E. Jason Loar, who reviewed the bid and recommends the bid be awarded to Diamond Material LLC, which Mr. Whitfield concurs with.

Mr. Whitfield reported that Mr. Loar did check references, in addition to obtaining feedback from DeIDOT. All responses were very favorable with no reservations about recommending the contractor.

He reminded Council there are a lot of unknowns with the project because of the way the roadway was originally built. However, there is some cushion with regard to change orders because of the anticipated unforeseen situations.

Councilman Morrow asked if the \$168,000 could be used toward sidewalks on Airport Road to the Boys and Girls Club; it was noted that would only cover a very small percentage of those costs.

The City Manager added that we will also have some expenses associated with the inspection and monitoring of the project which Mr. Whitfield will be bringing to Council in the near future.

Councilman Burk moved to award the Airport Road Construction Project to Diamond Materials, LLC of Newport, Delaware in the amount of \$1,655,177.50, seconded by Councilman Brooks. Motion carried with no one opposed.

Introduction/Ordinance 2017-12/City of Milford Electric Tariff Appendix B/Rate Amendment

City Manager Norenberg referred to the ordinance in the packet which will be discussed at the May 8th Council Meeting following the Cost of Service Rate Design Study presentation by UFS.

The amendment incorporates the new rates which will hopefully be considered for adoption at that time.

Adoption/Resolution 2017-03/Annexation Committee Investigation/Patrick & Jacqueline Gorman

Planning Coordinator Rob Pierce asked for authorization to proceed with the annexation of a two-acre parcel of land located at 7255 Cedar Creek Road, Lincoln on the east side of the road adjacent to the hospital site.

Councilman Morrow moved to forward the request to the Annexation Committee by adopting Resolution 2017-03, seconded by Councilman Starling:

City of Milford
RESOLUTION 2017-03

Annexation/Lands belonging to Patrick F. & Jacquelyn A. Gorman
7255 Cedar Creek Road, Lincoln, DE 19960
Tax Parcel No. 3-30-15.00-72.00
2.095 +/- Acres
Current Zone A-R/Proposed Zone C-3

COMMITTEE DIRECTED TO INVESTIGATE ANNEXATION

Whereas, a Petition, signed by the legal property owner and duly witnessed, requesting annexation into the City of Milford, situated approximately 870 +/- feet south of the intersection of Cedar Creek Road (SR 30) and Wilkins Road (CR 206) along the east side of Cedar Creek Road, in Cedar Creek Hundred, legally described as:

Tax Parcel No. 3-30-15.00-72.00

Beginning at a rebar set on the northeasterly right of way line of Cedar Creek Road, at 80 feet wide, a common corner of the

lands of, now or formerly, Walter V. Samuels, Jr. & Barbara L. Samuels, point being located 870 feet more or less from the southerly right of way line of Wilkins Road;

Thence leaving Cedar Creek Road and following said lands of Samuels North 87°07'00" East, 365.00 feet, to a set rebar, passing over a found iron pipe at 290.00 feet, a corner of lands, now or formerly, of Nelson W. Hall Trustee;

Thence along the lands of Nelson W. Hall Trustee, the following two (2) courses;

1. South 02°53'00" East, 250.00 feet, to a found rebar;
2. South 87°07'00" West 365.00 feet, to a rebar set on the northeasterly side of Cedar Creek Road;

Thence along said Cedar Creek Road North 02°53'00" West, 250.00 feet to the first mentioned point and place of beginning,

CONTAINING within the said described metes and bounds 2.095 acres of land, more or less,

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

Now, Therefore, a Committee, composed of three (3) elected members of City Council and one (1) member of the Planning Commission has been appointed by the Mayor to investigate the possibility of annexing said property, said Committee to be comprised of Chair Katrina Wilson, Douglas Morrow, Arthur Campbell and Planning Commission Chairman Marvin Sharp.

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

NOW, THEREFORE, I, Teresa K. Hudson, City Clerk of the City of Milford, do hereby certify that the foregoing resolution was duly and regularly adopted by the City Council of the City of Milford at a Council Meeting held the 24th day of April 2017 by a majority vote.

Motion carried.

EXECUTIVE SESSION

Councilmember Mergner moved to go into Executive Session reference below statutes, seconded by Councilmember Starling:

{Pursuant to 29 Del. C. §10004(b)(4)} Collective Bargaining Matters

Motion carried.

Mayor Shupe recessed the Council Meeting at 7:55 p.m. for the purpose as permitted by the Delaware Freedom of Information Act.

Return to Open Session

Councilmember Peel moved to return to the Regular Session, seconded by Councilmember Mergner. Motion carried.

City Council returned to Open Session at 8:04 p.m.

Mayor Shupe announced that no action is needed as a result of the discussion in Executive Session.

ADJOURN

There being no further business, Councilmember Mergner moved to adjourn the Council Meeting, seconded by Councilmember Morrow. Motion carried.

The Council Meeting adjourned at 8:05 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Terri K. Hudson". The signature is fluid and cursive, with a large initial "T" and "H".

Terri K. Hudson, MMC
City Clerk/Recorder