

# City of Milford



## AGENDA

Council Meeting

September 26, 2011

*Milford City Hall - Joseph Ronnie Rogers Council Chambers - 201 South Walnut Street, Milford, Delaware*

7:00 p.m.

### PUBLIC HEARING-POSTPONED\*

Morris and Ritchie Associates, Incorporated on behalf of Griffin Realty, LLC  
(formerly known as Central Parke at Milford/Milford Ponds)  
Modification of Conditional Use/PUD  
Adoption of Ordinance 2011-12

### WORKSHOP

*Call to Order - Mayor Joseph Ronnie Rogers*  
Comcast Issues/Tom Worley  
*Adjourn*

### COUNCIL MEETING

*Call to Order - Mayor Joseph Ronnie Rogers*

*Invocation*

*Pledge of Allegiance*

*Recognition*

*Communications*

*Unfinished Business*

Adoption of Ordinance 2011-22/Building Construction/Chapter 88

Adoption of Ordinance 2011-23/Property Maintenance/Chapter 174

Adoption of Ordinance 2011-24/Outdoor Burning Code/Chapter 92

*New Business*

Introduction of Ordinance 2011-25/Bob Nash/Bob Nash Associates on behalf of Patricia Arost/Change of Zone

FY2011-2012 Budget/Wawa Sale Expenses/Account Payment

Bid Award/Streetscape Project/Tree and Grate Project

Reversal/Open Range Cell Tower Agreement

*Executive Session\**

Pursuant to 29 Del. C. §10004(b)(9) Personnel matters in which the names, competency and abilities of individual employees or students are discussed

*Adjourn*

**SUPPORTING DOCUMENTS MUST BE SUBMITTED TO THE CITY CLERK IN ELECTRONIC FORMAT NO LATER THAN ONE WEEK PRIOR TO MEETING; NO PAPER DOCUMENTS WILL BE ACCEPTED OR DISTRIBUTED AFTER PACKET HAS BEEN POSTED ON THE CITY OF MILFORD WEBSITE.**

This agenda shall be subject to change to include additional items including executive sessions or the deletion of items including executive sessions which arise at the time of the public body's meeting.



# *The Chamber of Commerce for Greater Milford*

invites you to an After Hours Business Mixer

Hosted by



## **Carlisle Fire Company**

615 N.W. Front St. Milford

**Thursday September 29th, 2011 • 5 to 7 p.m.**

Enjoy hors d'oeuvres & Adult Beverages.

Door Prizes

**Come learn about Milford's Local First Responders!**

Please RSVP by Monday- September 26, 2011 by email: [milford@milfordchamber.com](mailto:milford@milfordchamber.com) or Fax: 302-422-7503

Organization/Business \_\_\_\_\_

Name (s) of Attendees \_\_\_\_\_

\_\_\_\_\_ Yes – I will bring a door prize for this mixer.



# Sussex County Association of Towns

P.O. Box 589 Georgetown, DE 19947

*Town of Bethany Beach*  
*Town of Bethel*  
*Town of Blades*  
*Town of Bridgeville*  
*Town of Dagsboro*  
*Town of Delmar*  
*Town of Dewey Beach*  
*Town of Ellendale*  
*Town of Fenwick Island*  
*Town of Frankford*  
*Town of Georgetown*  
*Town of Greenwood*  
*Town of Henlopen Acres*  
*Town of Laurel*  
*City of Lewes*  
*City of Milford*  
*Town of Millsboro*  
*Town of Millville*  
*Town of Milton*  
*Town of Ocean View*  
*City of Rehoboth Beach*  
*City of Seaford*  
*Town of Selbyville*  
*Town of Slaughter Beach*  
*Town of South Bethany*  
*Sussex County Council*

## MEETING NOTICE

**LOCATION:** Irish Eyes Pub & Restaurant  
 Anglers Road, Lewes

**DATE:** October 5, 2011

**TIME:** 6:00 p.m. – Social  
 6:30 p.m. – Dinner  
 7:00 p.m. – Speaker/Program

**HOST:** City of Lewes

**SPEAKER:** Nick Lambrow, Regional President  
 M&T Bank

**COST:** \$30.00

**MENU:** Baked Swai (flaky white fish)  
 Roast Beef Top Round  
 Roasted Red Potatoes  
 Green Beans  
 Mixed Green Salad  
 Assorted Desserts

For reservations, please call Alice Erickson at Lewes City Hall at 645-7777 ext. 108 or by email at [aerickson@ci.lewes.de.us](mailto:aerickson@ci.lewes.de.us). Please RSVP no later than Wednesday, September 28th at 4:00 p.m.

Please make checks payable to the City of Lewes.

### \*\*\*NOTICE \*\*\*

The Steering Committee will meet on Friday, October 7, 2011 at 9:00 a.m. at the Lighthouse Restaurant at the Sussex County Airport.

RSVP to Robin at 855-7743 or [rgriffith@sussexcountyde.gov](mailto:rgriffith@sussexcountyde.gov).

The cost of breakfast is \$9.00. Checks can be made payable to Lighthouse Landing Restaurant.

**CITY OF MILFORD**  
DELAWARE



COMMISSION OF LANDMARKS  
AND MUSEUMS

121 S. WALNUT STREET  
MILFORD, DELAWARE 19963

September 12, 2011

Dear Mayor Rogers & City Council members:

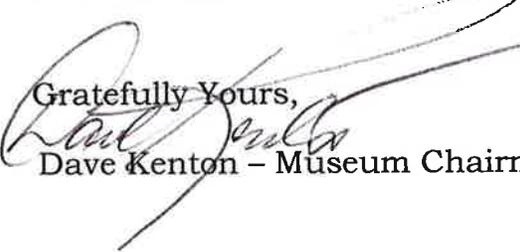
The Milford Museum and Mispillion Art League are partners in the **Historic Mural Project** nearing completion at the Salvation Army building on S.E. Front street in Milford. This project was started in 2008 and will be completed on September 30, 2011.

Mayor Rogers and all members of the City Council are cordially invited to attend the ribbon-cutting ceremony planned for **Friday afternoon, October 7, 2011 at 4:30 p.m. at the Mural site on S.E. Front Street.** Our 30-minute ceremony will highlight the Mispillion Art League artists and members who invested hundreds of hours to complete this new Milford landmark.

Sara Gallagher, project leader, will introduce her team of mural artists and invite Mayor Rogers to assist her in the ribbon-cutting ceremony. Short remarks will be encouraged by the Mayor and City Council members who have supported the Milford Museum, sponsor for this civic project.

Please ask Carlene Wilson to call me if this date and time suit your schedule. We appreciate your support and consideration for this ceremony to congratulate the Art League for their talents and dedication to complete the mural project.

Gratefully Yours,

  
Dave Kenton - Museum Chairman

Dwk/dwk

Sara Gallagher-Mispillion Art League

**OLIVIA 'LIBBY' SCHMIDT**  
Grand Regent 2010-2011  
4 Clearview Drive  
Milford, DE 19963-4185  
Phone: 302-422-7553  
E-mail: olschmidt@comcast.net

*The Family Fraternity*  
**Moose**  
*Women of the Moose*

September 8, 2011

Dear Mayor Ronnie Rogers & Council Members,

This is a little late, but it has been a whirlwind this past year and a half, with conferences, meetings and travels.

I do want to take this opportunity to thank you for the invitation to attend your City Council Meeting on June 27th and presenting me with a Proclamation and the Key to the City. It was a nice gesture having City Councilman Garrett Greer and Steve Johnson participate, since they represent the 1st Ward. What an honor! And, a time that will always be a reminder of how proud I am to be a resident in the City of Milford.

Since the early part of 1980 we always vacationed in Rehoboth, and eventually had a second home in Oak Orchard and Long Neck areas. During those years, we always came to Milford to shop at your unique downtown stores. Being a member of the Moose Organization since 1973, we were always being invited to the Moose Lodge and Chapter for special functions and events and/or teaching training classes for the Women of the Moose Officers of Milford Chapter.

So, when we retired in 2005, we decided Milford was where we wanted to live. We have been here six years now, have met alot of residents, along with prospective runners in upcoming elections, and we love our City. Thanks to all of you for all you do to make our City a wonderful place to live.

Thank you Mr. Mayor for being a member of our organization and supporting our beloved cities - Mooseheart & Moosehaven and our love for our community. Thanks again for your thoughtfulness and for accepting the invitation to attend my reception. It was a joy to have you and your lovely wife be a part of my special day!

More importantly, thank you so much for making me feel more of a part of our City by presenting me with the Key. And for your info, yes, in our free time we have tried to find out where the Key fits! Carl & I have decided, even though we haven't been there, it must be the City Jail!

Sincerely,



Olivia "Libby" Schmidt

TO  
Thank  
You



Thank you so much  
for the beautiful  
flowers for Cliff's  
services!

Lola, Keith, Donna +  
Trevor Knotts

To thank you for  
your kindness and  
sympathy at a time  
when they were deeply  
appreciated

## Ordinance 2011-22

AN ORDINANCE TO AMEND the Code of the City of Milford by amending Chapter 88, thereof, Building Construction, for the purpose of amending the Board of Appeals.

**The City of Milford hereby ordains:**

**Chapter 88, Article I-International Residential Code, Section 2-Additions, insertions and changes.**

Section 1. Amend §88-2 A (4) by inserting the following:

*§88-2 A (4) Section R112, Board of Appeals.*

*Appeals of orders, decisions, or determination made by the Building and/or Code Official relative to the application and interpretation of this code, shall proceed as described in Article III of this Chapter.*

Section 2. Amend §88-2 A (4) by repealing Sections R112.1, R112.2, R112.2.1, R112.2.2, R112.3, R112.4, R112.5, R112.6, R112.7, R112.8, R112.9, R112.10, R112.11, R112.12, R112.13, R112.14, R112.15, R112.16, R112.17.

~~(DELETE) R112.1 General. In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals. The building official shall be an ex officio member of said board but shall have no vote on any matter before the board. The board of appeals shall be appointed by the governing body and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business, and shall render all decisions and findings in writing to the appellant with a duplicate copy to the building official.~~

~~(DELETE) R112.2 Limitations on authority. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provision of this code do not fully apply, or an equally good or better form of construction is proposed. The board shall have no authority to waive requirements of this code.~~

~~(DELETE) R112.2.1 Determination of substantial improvement in areas prone to flooding. When the building official provides a finding required in Section R105.3.1.1, the board of appeals shall determine whether the value of the proposed work constitutes a substantial improvement. A substantial improvement means any repair, reconstruction, rehabilitation, addition or improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the building or structure before the improvement or repair is started. If the building or structure has sustained substantial damage, all repairs are considered substantial improvement regardless of the actual repair work performed. The term does not include:~~

- ~~1. Improvements of a building or structure required to correct existing health, sanitary or safety code violations identified by the building official and which are the minimum necessary to assure safe living conditions; or~~

2. ~~Any alteration of an historic building or structure, provided that the alteration will not preclude the continued designation as an historic building or structure. For the purpose of this exclusion, an historic building is:
  - a. ~~Listed or preliminarily determined to be eligible for listing in the National Register of Historic Places; or~~
  - b. ~~Determined by the Secretary of the U.S. Department of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined to qualify as an historic district; or~~
  - c. ~~Designated as historic under a state or local historic preservation program that is approved by the Department of Interior.~~~~

~~(DELETE) R112.2.2 Criteria for issuance of a variance for areas prone to flooding. A variance shall only be issued upon:~~

1. ~~A showing of good and sufficient cause that the unique characteristics of the size, configuration or topography of the site render the elevation standards in Section R324 inappropriate.~~
2. ~~A determination that failure to grant the variance would result in exceptional hardship by rendering the lot undevelopable.~~
3. ~~A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.~~
4. ~~A determination that the variance is the minimum necessary to afford relief, considering the flood hazard.~~
5. ~~Submission to the applicant of written notice specifying the difference between the design flood elevation and the elevation to which the building is to be built, stating that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced floor elevation, and stating that construction below the design flood elevation increases risks to life and property.~~

~~(DELETE) R112.3 Qualifications. The board of appeals shall consist of members who are qualified by experience and training to pass on matters pertaining to building construction and are not employees of the jurisdiction.~~

~~(DELETE) R112.4 Administration. The building official shall take immediate action in accordance with the decision of the board.~~

~~(DELETE) R112.5 Application for appeal. Any person shall have the right to appeal a decision of the Code Enforcement Official to the Board of Appeals. An application for appeal shall be based on a claim that the true intent of the code or the rules legally adopted thereunder have been incorrectly interpreted, that the provisions of this code do not apply or that an equivalent form of construction is to be used. The hearing fee shall be \$300.~~

~~(DELETE) R112.6 Membership of Board. The Board of Appeals shall consist of three members: the City Manager or his designate, a design professional (architect or engineer), and a representative of the contracting industry. The City Manager or his designate will be a standing~~

member of the Board of Appeals. The initial term of the design professional shall be two years and the initial term of the representative of the contracting industry shall be for one year. The term of all subsequent appointments shall be two years.

~~(DELETE) R112.7 Alternate members. The chief appointing authority shall appoint an individual of his choice to be an alternate during those times where one of the permanent members is unable to attend an appeals hearing or in cases where a conflict of interest may exist. Said appointment shall be made for a two-year term and shall not extend beyond the political term limit of the appointing authority.~~

~~(DELETE) R112.8 Compensation of members. Compensation of members shall be determined by law.~~

~~(DELETE) R112.9. Secretary. The chief administrative officer shall designate a qualified clerk or staff as Secretary to the Board. The Secretary shall file a detailed record of all proceedings with the office of the City Manager.~~

~~(DELETE) R112.10. Notice of meeting. The Board shall meet upon notice from the Chairman. The meeting date and time shall be scheduled in accordance with the state guidelines for public hearings. Surrounding property owners within 200 feet of the property or building in question shall be notified by mail.~~

~~(DELETE) R112.11. Open hearing. All hearings before the Board shall be open to the public. The appellant's representative, the Code Official and any other person or persons that may be deemed necessary as witnesses and all other persons whose interests are affected shall be given an opportunity to be heard.~~

~~(DELETE) R112.12 Postponed hearing. When there are fewer than two members of the Board available and the authorized or appointed alternate is unavailable, notification shall be given to the interested parties.~~

~~(DELETE) R112.13 Procedure. The hearing shall address only those issues or items that may be deemed relevant to the case being heard. The Board shall adopt and publish, for public information, the procedures under which the hearing will be conducted.~~

~~(DELETE) R112.14 Board decision. The Board shall modify or reverse the decision of the Code Official by means of a simple majority.~~

~~(DELETE) R112.15 Resolution. The decision of the Board shall be by resolution. Certified copies shall be furnished to the appellant and the Code Official.~~

~~(DELETE) R112.16 Administration. The Code Official shall take immediate action in accordance with the decision of the Board.~~

~~(DELETE) R112.17. Court review. Any person, whether or not a previous party of the appeal, shall have the right to apply to the appropriate court for a writ of certiorari to correct errors of~~

law. Application for review shall be made in the manner and time required by law, following the filing of the Board's decision in the office of the City Manager.

Section 3. Amend §88-4 A (5) by inserting the following:

**§88-4 A (5) Section 112, Board of Appeals.**

*Appeals of orders, decisions, or determination made by the Building and/or Code Official relative to the application and interpretation of this code, shall proceed as described in Article III of this Chapter.*

Section 4. Amend §88-4 A (5) by repealing Sections R112.1, R112.2, R112.3, R112.4, R112.5, R112.6, R112.7, R112.8, R112.9, R112.10, R112.11, R112.12, R112.13, R112.14, R112.15, R112.16.

~~(DELETE) 112.1 General. In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals. The board of appeals shall be appointed by the governing body and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business.~~

~~(DELETE) 112.2 Limitations on authority. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or an equally good or better form of construction is proposed. The board shall have no authority to waive requirements of this code.~~

~~(DELETE) 112.3 Qualifications. The board of appeals shall consist of members who are qualified by experience and training to pass on matters pertaining to building construction and are not employees of the jurisdiction.~~

~~(DELETE) 112.4 Application for appeal. Any person shall have the right to appeal a decision of the Code Enforcement Official to the Board of Appeals. An application for appeal shall be based on a claim that the true intent of the code or the rules legally adopted thereunder have been incorrectly interpreted, that the provisions of this code do not apply or that an equivalent form of construction is to be used. The hearing fee shall be \$1,000.~~

~~(DELETE) 112.5 Membership of Board. The Board of Appeals shall consist of three members: The City Manager or his designate, a design professional (architect or engineer), and a representative of the contracting industry. The City Manager or his designate will be a standing member of the Board of Appeals. The initial term of the design professional shall be two years and the initial term of the representative of the contracting industry shall be for one year. The term of all subsequent appointments shall be two years.~~

~~(DELETE) 112.6 Alternate members. The chief appointing authority shall appoint an individual of his choice to be an alternate during those times where one of the permanent members is unable to attend an appeals hearing or in cases where a conflict of interest may exist. Said~~

~~appointment shall be made for a two-year term and shall not extend beyond the political term limit of the appointing authority.~~

~~(DELETE) 112.7 Compensation of members. Compensation of members shall be determined by law.~~

~~(DELETE) 112.8 Secretary. The chief administrative officer shall designate a qualified clerk or staff as Secretary to the Board. The Secretary shall file a detailed record of all proceedings with the office of the City Manager.~~

~~(DELETE) 112.9 Notice of meeting. The Board shall meet upon notice from the Chairman. Meeting date and time shall be scheduled in accordance with the state guidelines for public hearings. Surrounding property owners within 200 feet of the property or building in question shall be notified by mail.~~

~~(DELETE) 112.10 Open hearing. All hearings before the Board shall be open to the public. The appellant's representative, the Code Official and any other person or persons that may be deemed necessary as witnesses and all other persons whose interests are affected shall be given an opportunity to be heard.~~

~~(DELETE) 112.11 Postponed hearing. When there are fewer than two members of the Board available and the authorized or appointed alternate is unavailable, notification shall be given to the interested parties.~~

~~(DELETE) 112.12 Procedure. The hearing shall address only those issues or items that may be deemed relevant to the case being heard. The Board shall adopt and publish, for public information, the procedures under which the hearing will be conducted.~~

~~(DELETE) 112.13 Board decision. The Board shall modify or reverse the decision of the Code Official by means of a simple majority.~~

~~(DELETE) 112.14 Resolution. The decision of the Board shall be by resolution. Certified copies shall be furnished to the appellant and the Code Official.~~

~~(DELETE) 112.15 Administration. The Code Official shall take immediate action in accordance with the decision of the Board.~~

~~(DELETE) 112.16 Court Review. Any person, whether or not a previous party of the appeal, shall have the right to apply to the appropriate court for a writ of certiorari to correct errors of law. Application for review shall be made in the manner and time required by law, following the filing of the Board's decision in the office of the City Manager.~~

**Section 5. Chapter 88 is hereby amended by adding a new Article III, Board of Appeals, to read as follows:**

*ARTICLE III-Board of Appeals*

*§88-6 General.*

*In order to hear and decide appeals of orders, decisions, or determinations made by the building or code official relative to the application and interpretation of the code, there shall be and is hereby created a board of appeals.*

*§88-7 Limitations on Authority.*

*An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an equally good or better form of construction is proposed. The board shall have no authority to waive requirements of this code.*

*§88-8 Membership of the Board.*

*The Board of Appeals shall consist of three members: the City Manager or his designate, a design professional (architect or engineer), and a representative of the contracting industry. The City Manager or his designate will be a standing member of the Board of Appeals. City Council shall appoint the design professional and the representative from the contracting industry. The initial term of the design professional shall be two years and the initial term of the representative of the contracting industry shall be for one year. The term of all subsequent appointments shall be two years.*

*§88-8.1 Alternate Members.*

*City Council shall appoint an individual of its choice to be an alternate during those times where one of the permanent members is unable to attend an appeals hearing or in cases where a conflict of interest may exist. Said appointment shall be made for a two-year term.*

*§88-8.2 Chairman.*

*The Board shall annually select one of its members to serve as chairman.*

*§88-8.3 Disqualification of member.*

*A member shall not hear an appeal in which that member has a personal, professional or financial interest.*

*§88-8.4 Secretary.*

*The City Manager shall designate a qualified clerk or staff as Secretary to the Board. The Secretary shall file a detailed record of all proceedings with the office of the City Clerk. Secretary shall have no right to vote on matters coming before the board.*

*§88-8.5 Compensation of members.*

*Compensation of members shall be determined by ordinance of City Council.*

*§88-9 Application for appeal.*

*Any person directly affected by a decision of the Code Official or an notice or order issued under this code shall have the right to appeal a decision of the Code Enforcement and/or Building Official to the Board of Appeals provided the application is filed within twenty (20) days of the*

*day the decision, notice, or order was served. An application for appeal shall be based on a claim that the true intent of the code or the rules legally adopted thereunder have been incorrectly interpreted, that the provisions of this code do not apply or that an equivalent form of construction is to be used.*

*§88-9.1 Hearing fee.*

*The following fee schedule shall apply for hearings of the Board of Appeals:*

<i>International Residential Code:</i>	<i>\$ 300.00</i>
<i>International Building Code:</i>	<i>\$1,000.00</i>
<i>International Property Maintenance Code:</i>	<i>\$ 300.00</i>

*§88-10 Notice of meeting.*

*The Board shall meet upon notice from the Chairman. The meeting date and time shall be scheduled in accordance with the state guidelines for public hearings. Surrounding property owners within 200 feet of the property or building in question shall be notified by mail.*

*§88-11 Open hearing.*

*All hearings before the Board shall be open to the public. The appellant's representative, the Code Official and any other person or persons that may be deemed necessary as witnesses and all other persons whose interests are affected shall be given an opportunity to be heard.*

*§88-11.1 Procedure.*

*The hearing shall address only those issues or items that may be deemed relevant to the case being heard. The Board shall adopt and publish, for public information, the procedures under which the hearing will be conducted.*

*§88-12 Postponed hearing.*

*When there are fewer than two members of the Board available and the authorized or appointed alternate is unavailable, notification shall be given to the interested parties.*

*§88-13 Board decision.*

*The Board shall affirm, modify or reverse the decision of the Code Official by means of a simple majority.*

*§88-13.1 Records and copies.*

*The decision of the board shall be recorded. Copies shall be furnished to the appellant and to the appropriate Building or Code Official.*

*§88-13.2 Administration.*

*The appropriate Building or Code Official shall take immediate action in accordance with the decision of the Board.*

*§88-14 Court review.*

*Any person, whether or not a previous party of the appeal, shall have the right to apply to the Superior Court of the State of Delaware in the applicable county for a writ of certiorari to*

*correct errors of law. Application for review shall be made in the manner and time required by law, following the filing of the Board's decision in the Office of the City Clerk.*

*§88-15 Stays of enforcement. Appeals of notices and orders (other than Imminent Danger Notices) shall stay the enforcement of the notice and order until the appeal is complete or the stay is lifted by the Superior Court.*

**Section 6. Dates**

Introduction Date:	September 12, 2011
Projected Adoption Date:	September 26, 2011
Projected Effective Date:	October 7, 2011

## *Ordinance 2011-23*

AN ORDINANCE TO AMEND the Code of the City of Milford by amending Chapter 174, thereof, Property Maintenance, for the purpose of amending the Board of Appeals.

**The City of Milford hereby ordains:**

**Section 1. Amend Chapter 174-2 F by repealing Section PM 111.1.**

~~(DELETE) F. Section PM 111.1. Delete in its entirety and replace with: Application for appeal. Any person directly affected by a decision of the Code Official or a notice or order issued under this code shall have the right to appeal to the City Manager at no charge. If further clarification or appeal is desired, the applicant has the right to go before the Board of Appeals, provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or the requirements of this code are adequately satisfied by other means. A fee of \$300 (nonrefundable) is due upon the submission of the application.~~

**Section 2. Amend Chapter 174-2 F by adding a new Section PM 111.1 to read as follows:**

*F. Section PM 111.1 Application for Appeal. Appeals of orders, decisions, or determination made by the Building and/or Code Official relative to the application and interpretation of this code, shall proceed as described in Chapter 88, Article III of the Code of the City of Milford.*

**Section 3. Amend Chapter 174-2 F by repealing Sections PM 111.2, PM 111.2.1, PM 11.2.2, PM 111.2.3, PM 111.2.4, PM 111.2.5, PM 111.3, PM 111.4, PM 111.4.1, PM 111.5, PM 111.6, PM 111.6.1, PM 111.6.2, PM 111.7, PM 111.8.**

~~(DELETE) G. Section PM 111.2. Delete in its entirety and replace with: Membership of Board. The Board of Appeals shall be established as per Section 112.6, set forth in Chapter 88 of the City Code, adopting the International Residential and Building Codes. The Code Official shall be an ex officio member but shall have no vote on any matter before the Board.~~

~~(DELETE) PM 111.2.1 Alternate members. The chief appointing authority shall appoint two or more alternate members who shall be called by the board chairman to hear appeals during the absence or disqualification of a member. Alternate members shall possess the qualifications required for board membership.~~

~~(DELETE) PM 111.2.2 Chairman. The board shall annually select one of its members to serve as chairman.~~

~~(DELETE) PM 111.2.3 Disqualification of member. A member shall not hear an appeal in which that member has a personal, professional or financial interest.~~

~~(DELETE) PM 111.2.4 Secretary. The chief administrative officer shall designate a qualified person to serve as secretary to the board. The secretary shall file a detailed record of all proceedings in the office of the chief administrative officer.~~

~~(DELETE) PM 111.2.5 Compensation of members. Compensation of members shall be determined by law.~~

~~(DELETE) PM 111.3 Notice of meeting. The board shall meet upon notice from the chairman, within 20 days of the filing of an appeal, or at stated periodic meetings.~~

~~(DELETE) PM 111.4 Open hearing. All hearings before the board shall be open to the public. The appellant, the appellant's representative, the code official and any person whose interest are affected shall be given an opportunity to be heard. A quorum shall consist of not less than two-thirds of the board membership.~~

~~(DELETE) PM 111.4.1 Procedure. The board shall adopt and make available to the public through the secretary procedures under which a hearing will be conducted. The procedures shall not require compliance with strict rules of evidence, but shall mandate that only relevant information be received.~~

~~(DELETE) PM 111.5 Postponed hearing. When the full board is not present to hear an appeal, either the appellant or the appellant's representative shall have the right to request a postponement of the hearing.~~

~~(DELETE) PM 111.6 Board decision. The board shall modify or reverse the decision of the code official only by a concurring vote of a majority of the total number of appointed board members.~~

~~(DELETE) PM 111.6.1 Records and copies. The decision of the board shall be recorded. Copies shall be furnished to the appellant and to the code official.~~

~~(DELETE) PM 111.6.2 Administration. The code official shall take immediate action in accordance with the decision of the board.~~

~~(DELETE) PM 111.7 Court review. Any person, whether or not a previous party of the appeal, shall have the right to apply to the appropriate court for a writ of certiorari to correct errors of the law. Application for review shall be made in the manner and time required by law following the filing of the decision in the office of the chief administrative officer.~~

~~(DELETE) PM 111.8 Stays of enforcement. Appeals of notice and orders (other than Imminent Danger notices) shall stay the enforcement of the notice and order until the appeal is heard by the appeals board.~~

#### **Section 4. Dates**

Introduction Date:	September 12, 2011
Projected Adoption Date:	September 26, 2011
Projected Effective Date:	October 7, 2011

**ORDINANCE NO. 2011-24**

**AN ORDINANCE TO AMEND THE CODE OF THE CITY OF MILFORD, BY REPEALING CHAPTER 96, IN ITS ENTIRETY, AND REPLACE IT WITH A NEW CHAPTER 96 ENTITLED OUTDOOR BURNING TO PROVIDE FOR UPDATED OUTDOOR BURNING REGULATIONS**

**WHEREAS, the City of Milford has determined it necessary to update and clarify its regulations regarding outdoor burning.**

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

Section 1. The Code of the City of Milford is hereby amended by repealing Chapter 96, Burning, Outdoor.

~~§ 96 1. Authorization required.~~

~~There shall be no outdoor burning of any sort within the City of Milford unless authorized by the Delaware Department of Natural Resources and Environmental Control.~~

~~§ 96 2. Notification and permission of City Manager.~~

~~When authorization is granted from DNREC, the responsible party must then notify and obtain final permission from the City Manager.~~

~~§ 96 3. Violations and penalties.~~

~~For violation of this chapter, the penalties as set forth in Chapter 1, General Provisions, Article II, General Penalty, shall apply.~~

Section 2. The Code of the City of Milford is hereby amended by adding thereto a new Chapter 96 to be titled Outdoor Burning, to read as follows:

***§96-1 Purpose and Intent***

*It is recognized and found that smoke from leaves, grass clippings, stumps, unsplit logs, garbage, trash, waste lumber and other combustible materials is hazardous to an individual's health and may affect the health of the general public when they are involuntarily exposed to the presence of such smoke.*

***§96-2 Prohibition of Outdoor Burning***

*It shall be unlawful for any person to engage in any of the following activities:*

- (a) The burning of materials wherein products of the combustion are emitted directly into the open air, including burning in burn barrels.*
- (b) The burning of waste or garbage.*
- (c) The burning of leaves or grass clippings.*
- (d) The burning of land clearing debris.*

- (e) *The burning of waste lumber, unsplit logs or stumps.*
- (f) *The burning of any combustible material in outdoor wood burning boilers or furnaces, or any other equipment or apparatus or any part thereof, whether open or enclosed, that is designed, intended or used for the purpose of providing a component of a heating system or providing heated water to another structure even if attached to such structure.*
- (g) *The burning of plastics, rubber, fiberglass, insulation, or other materials that may contain carcinogenic compounds.*

### **§96-3 Exceptions**

*The following outdoor burning activities shall be exceptions to the outdoor burning prohibitions of this Chapter.*

- (a) *Barbeque grills, gas or charcoal, used for cooking food.*
- (b) *Campfires or fire rings less than twenty-four (24) inches in diameter.*
- (c) *Patio fire pits or chimenea, provided such fire pits or chimenea are not operated continually for more than six (6) hours.*
- (d) *Outdoor fireplaces provided such outdoor fireplaces are not operated continually for more than six (6) hours.*
- (e) *Indoor fireplaces where the smoke is discharged through a chimney or other means in accordance with the Code of the City of Milford, Chapter 88, Building Construction.*

### **§96-4 Bonfires**

*Ceremonial bonfires conducted by established groups or organizations such as schools, service clubs or churches, will be permitted provided:*

- (a) *Notification is provided to City Hall at least three (3) days in advance.*
- (b) *Advance notification is made to the Fire Board in the county the bonfire is to occur.*
- (c) *Such bonfires are not burning continually for more than six (6) hours.*

### **§96-5 Burning By Fire Department Or With Permission of State Fire Marshall**

*Nothing in this Chapter shall prohibit controlled burning of grass or brush on any lot or of any structure by the Carlisle Volunteer Fire Department or by any other fire department authorized to conduct such burns by the Delaware State Fire Marshall.*

**§96-6 Ban on Open Burning**

*Any burning ban issued by the State Fire Marshal shall supersede applicable provisions of this ordinance.*

**§96-7 Penalties for Violation:**

- (a) Failure to comply with any of the provisions of this Chapter shall be a violation and, upon conviction thereof, shall be punishable by a fine of not more than \$500 for the first offense.*
- (b) Any subsequent offense shall be punishable by a fine of not more than \$1,000.*
- (c) Each day that a violation occurs shall constitute a separate offense. The owners of premises upon which prohibited acts occur shall be jointly and severally liable for violations of this Chapter.*
- (d) Any fine imposed hereunder shall constitute a lien upon the real property where the violation occurred.*

**Section 3. Dates**

Introduction Date:	September 12, 2011
Projected Adoption Date:	September 26, 2011
Projected Effective Date:	October 7, 2011

## PUBLIC NOTICE

Notice is hereby given the following ordinance is under review by the Milford Planning Commission and Milford City Council as indicated below:

### Ordinance 2011-25

Bob Nash of Bob Nash Associates, Incorporated on behalf of Patricia Arost  
for a Change of Zone

AN ORDINANCE OF THE CITY OF MILFORD, DELAWARE to amend the zoning map of the City of Milford by rezoning 1.76 +/- acres of real property from C-1 (Community/Neighborhood Commercial) to C-3 (Highway Commercial). Property is identified as Tax Parcel 1-30-3.15-11.00 and is located at 837 S. DuPont Boulevard, Milford, Delaware. Present Use and Proposed Use: Music Center.

Whereas, the City of Milford Planning Commission reviewed the application at a Public Hearing on October 18, 2011 and has presented item for consideration by City Council; and

Whereas, Milford City Council held an advertised Public Hearing on November 28, 2011 to allow for public comment on the application; and

Whereas, it is deemed in the best interest of the City of Milford to allow the change of zone as described herein.

Now, therefore, the City of Milford hereby ordains as follows:

Section 1. Upon the adoption of this ordinance, Tax Parcel 1-30-3.15-11.00, located at 837 S. DuPont Boulevard and owned by Patricia Arost, is hereby zoned C-3.

Section 2. Dates.

Introduction to City Council: 09-26-11

Planning Commission Review & Public Hearing: 10-18-11

City Council Review & Public Hearing 11-28-11

This ordinance shall take effect and be in force ten days after its adoption.

Ordinance 2011-25 is scheduled for adoption, with or without amendments, at the Council Meeting on Monday, November 28, 2011. Anyone with questions should contact the City of Milford Planning Department at 302-424-3712 Extension 308.

By: Terri K. Hudson, CMC

City Clerk

**FY2011-2012 Budget Request:**

Request that expenses, up to \$15,000, related to the Wawa Land Sale be paid in advance (of settlement) from:

General Fund Reserve Account 101-1110-413-95-10

(Proceeds of sale will be placed in same account)



**LANDSCAPE ARCHITECTURAL SERVICES, L.L.C.**

Matthew T. Spong, R.L.A., ASLA  
Trisha Sawicki, ASLA

City of Milford  
201 South Walnut St.  
Milford, DE 19963  
Attn: Mr. David Baird, City Manager

September 22, 2011

**RE: Milford Streetscape Improvements  
N. West Front St. and S. Walnut St.**

Dear David,

On 8/26/11 an advertisement for bid was placed in the Delaware State News Public Notices, additionally, advertisement for bids were e-mailed to 6-contractors. On 9/6/11 we held a non-mandatory pre-bid meeting, 5-potential bidders attended that meeting. As of Tuesday 9/12/11 we were under the impression we would have 3-bidders, since 3-contractors e-mailed Landscape Architectural Services, LLC questions to be answered in the addendums. On Friday 9/16/11, one bid was received from Road Site Construction Inc., DBA Clean Cut Interlocking Pavers.

BASE Bid: .....	\$144,468.
ADD alternate #1: parking authority lot new trees, add .....	7,740.
ADD Alternate #2: new plantings in island between Causey Ave. S.W. Front.....	4,780.
ADD Alternate #3: new flagpole and up-lights add .....	3,517.
ADD Alternate #4: provide and install 8-bike rack add .....	1,000.
ADD Alternate #5: repair brick paving at 35 locations add .....	14,000.
 Total Base Bid and all alternates.....	 \$175,505.

Per your budget analysis the estimated construction cost was \$156,950. accordingly the bid was 11% higher then estimated.

After discussion with D.M.I. and the City Staff it was determined that Add Alternate #1 should be removed from the contract since the parking lot is in need of resurfacing and the new trees should not be planted until that time. Deduct \$7,740.

P.O. Box 293, Dover, DE 19903  
e-mail: [matt@las-llc.net](mailto:matt@las-llc.net)

phone: 302-284-4578 fax: 302-284-0301  
website: [www.las-llc.net](http://www.las-llc.net)

Additional deducts / adjustments to bid per meeting of 9/20/11:

Deducts from bid per unit price list attached to bid.

1. we will deduct 2-tree grates at \$1,100. + \$2,200. (these were for the 2-trees to remain NW front across from the parking authority. Since the existing Crape Myrtle's across the street were not to have grates it makes sense.
2. Deduct 6-tree guards @ \$760. each = \$4,560. (for 2-trees mentioned above and 4-large existing Cherries on S. Walnut to remain these trees range in size from 6" and 3 - 10/12" in diameter. The guard opening is 10" so they would not fit the 3 and would soon to be removed).

Since Clean Cut Interlocking Pavers was agreeable to a total of \$6760. deducts, we feel they should add the following items they missed;

1. New trash receptacle N. side N.W. Front St., shown on the plans. Add \$1,320.
2. (1) Swamp White oak (shown on the plan but not on plant list , contractor is required to verify, but as mentioned above we want to be fair.

Total add to contract \$1845.

Net bid changes of 9/20/11 minus or decrease \$4,915.

Revised contract amount: \$175,505. less Add Alternate #1 \$7740. – less \$4915. = \$162,850.

I spoke to the Brick Doctor Inc. since I was curious about why they did not bid, after they had submitted questions for the addendums'. They were notified on Thursday that an open contract in New Castle County was pushed up to start later this month and had a 60-day deadline, so they could not meet our schedule. I was disappointed that the bids did not come in 20% under budget as they did on the Chaney Wilmont Greenway. However, I think due to the time frame we are working with I would recommend awarding the bid to Road Site Construction Inc., DBA Clean Cut Interlocking Pavers for the revised contract amount of \$162,850. Please contact me if you have any questions.



Matthew T. Spong, R.L.A., A.S.L.A., Principal

## Downtown Tree & Grate Project

Revenues:

DMI Project Transfer (previously approved)	\$175,000
Municipal Street Aid (to be approved)	\$14,000
<b>TOTAL:</b>	<b>\$189,000</b>

Estimate vs Bid Costs:

	<u>Estimate</u>	<u>Bid</u>	<u>Recommendation</u>
Base Bid	\$121,000	\$144,468	\$144,468
Alt 1 (Remove & Replace Parking Authority Trees)	\$8,000	\$7,740	\$0
Alt 2 (Island-Jesus Love Temple/PNC)	\$6,600	\$4,780	\$4,780
Alt 3 (Flagpole & Uplights)	\$6,600	\$3,517	\$3,517
Alt 4 (Bike Rack)	\$1,250	\$1,000	\$1,000
Alt 5 (Additional Pavers)	\$13,500	\$14,000	\$14,000
Adjustments	<u>\$0</u>	<u>\$0</u>	<u>-\$4,915</u>
Subtotal:	\$156,950	<b>\$175,505</b>	<b>\$162,850</b>
Landscape Architectural Fees		\$16,905	\$16,905
Contract Admin, Inspections		\$4,400	\$4,400
Contingency		\$4,845	\$4,845
Subtotal:		<u>\$26,150</u>	<u>\$26,150</u>
<b>TOTAL:</b>		<b>\$201,655</b>	<b>\$189,000</b>
 <b>Difference:</b>		 <b>-\$12,655</b>	 <b>\$0</b>

Options:

1. Award bid and authorize additional funds
2. Re-bid-Changes timeline to spring construction
3. Scale back project to bring within budget
4. Negotiate with bidder to reduce project scope/budget

Recommendation:

Award the bid without alternate 1 as the removal and replacement of the trees in the parking lot can be completed when the parking lot is resurfaced at a later date.

# INDEPENDENT NEWSPAPERS

P. O. Box 7001 • Dover, Delaware • 19903 • 1-800-282-

State of Delaware:

County of Kent:

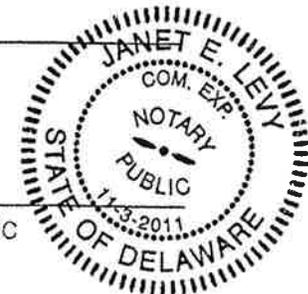
Before me, a Notary Public, for the County and State aforesaid, Ed [Signature] to me to be such, who being sworn according to law deposes and swears that [Signature] President of Independent Newspapers, Inc. / Delmarva, the publisher of **State News**, a daily newspaper published at Dover, County of Kent, Delaware, and that the notice, a copy of which is hereto attached, as **Delaware State News** in its issue of August 26, 2011

[Signature]

President  
Independent Newspapers, Inc. / Delmarva

Sworn to and subscribed before me this 26th  
Day of August A.D. 2011

[Signature]  
Notary Public



### ADVERTISEMENT FOR BIDS

Sealed bids for the **Milford Streetscape Improvements: Walnut Street, Northeast Front Street and Southeast Front Street**, remove street trees, trash receptacles and benches; repair and replace brick paving and tree pits; provide and install street trees, tree grates and guards, trash receptacles, benches, bike rack, flagpole and up-lights, located in Milford, Delaware, will be received by the **City of Milford, Department of Parks & Recreation, at the City Hall Council Room 201 South Walnut Street, Milford, Delaware, 19963, until 11:00 a.m. on 9/16/2011.**

A non-mandatory pre-bid meeting will be held at the Milford Parks & Recreation Building, 207 Franklin Street, Milford, Delaware at 11:00 a.m. on 9/6/2011, for the purpose of establishing the listings of subcontractors and to answer question. **Attendance of this meeting is non-mandatory, but advised, for bidding on this contract.**

3 copies of the sealed bids shall be addressed to the City of Milford, Department of Parks & Recreation, Attn: Mr. Gary Emory, Director and delivered to the **City of Milford, City Hall, 201 South Walnut St., Milford, DE 19963**

The outer envelope should be clearly labeled: "Sealed Bids: Milford Streetscape Improvements, do not open".

Contract Documents may be obtained from the Landscape Architect upon receipt of a non refundable \$50. per set, plus \$20 non-refundable mailing charge, if a contractor requested them to be mailed. Checks should be made out to Landscape Architectural Services, LLC and the Landscape Architect can be reached at 302-284-4578. The documents will be made available starting 8/29/2011.

Each bid must be accompanied by a bid security equivalent to ten percent of the bid amount and all additive alternates. A 100% Performance Labor & Materials Payment Bond shall be submitted by the successful bidder. The City of Milford reserves the right to reject any and all bids and to waive any informalities therein. The City of Milford may extend the time and place for the opening of the bids from that described in the advertisement, of not less than five calendar days notice by certified mail, facsimile or email to those bidders receiving plans. 396085 DSN 8/26/2011

*MILFORD CITY COUNCIL*  
MINUTES OF MEETING  
*November 22, 2010*

A Meeting of Milford City Council was held in the Joseph Ronnie Rogers Council Chambers at Milford City Hall on Monday, November 22, 2010.

PRESIDING:           Honorable Mayor Joseph Ronnie Rogers

IN ATTENDANCE:   Councilpersons Steve Johnson, Garrett Grier III, S. Allen Pikus, Jason Adkins, Owen Brooks, Jr., Douglas Morrow and James Starling, Sr.

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

COUNSEL:           City Solicitor Timothy Willard

PAGE 5--

*Cell Tower Lease/Open Range Communications, Incorporated*

Mr. Baird referenced the proposed lease and accompanying site agreement for a cell tower lease between the city and Open Range Communications. He said they are proposing to lease space on the Washington Street Water Tower.

The terms are very standard and in accordance with the other cell leases currently in effect. The agreement is for five years, with five, five-year renewals for a total of thirty years. The rental is \$1,500 per month with a 2% annual escalator.

Mr. Brooks suggested the lease money be considered for water tower maintenance; Mr. Baird advised the tower leases are considered General Fund Revenues though he suggests that be debated during the annual budget process.

Mr. Pikus moved for approval of the Open Range Communications, Incorporated lease and site plan agreement, seconded by Mr. Atkins. Motion carried by unanimous roll call vote.

## SITE AGREEMENT

Site Name: City of Milford

Site ID #: DE0030

This Site Agreement ("Agreement") is entered into as of \_\_\_\_\_ by Open Range Communications, Inc., a Delaware corporation ("Tenant") and The City of Milford ("Owner"). Owner acknowledges receiving good and valuable consideration for entering into this Agreement.

**1. Premises and Use.** Owner owns the property described on **Exhibit A** attached ("Owner's Property"). Subject to the provisions of Section 2 below regarding the Due Diligence Period, Owner leases to Tenant the site (consisting of a portion of Owner's Property) described below [**Check all appropriate boxes**]:

- Land consisting of approximately 100 square feet for construction of:
- shelters and/or base station equipment and
  - antenna support structure;
  - Building interior space consisting of approximately \_\_\_\_\_ square feet for placement of shelters and/or base station equipment;
  - Building exterior space consisting of approximately \_\_\_\_\_ square feet for placement of shelters and/or base station equipment;
  - Building exterior space for attachment of antennas;
  - Tower space between the 110 foot level on the tower for attachment of antennas;

generally in the location(s) shown on **Exhibit B** attached, as well as riser, conduit and other space required for cable runs to connect its equipment and antennas, and together with all necessary non-exclusive easements for vehicular and pedestrian access thereto, for placement of an underground grounding system, and for access to the appropriate source of electric, telephone and other utilities, in the discretion of Tenant (the "Site"). The Site may be used by Tenant (and/or any of its affiliated entities) for the purpose of installing, removing, replacing, modifying, maintaining and operating, at its expense, communications service facilities, including, without limitation, antennas and microwave dishes, air conditioned base station equipment cabinets, cable, wiring, power sources (including permanent generators and fuel storage tanks), related equipment and structures and, if applicable to the Site, an antenna support structure (the "Facilities"). All of the Facilities will remain Tenant's personal property and are not fixtures. Any visual or textual representation of the Facilities on **Exhibit B** is illustrative only, and does not limit the rights of Tenant as provided for in this Agreement. Tenant will use the Site in a manner which will not unreasonably disturb the occupancy of Owner's other tenants, if any. Tenant will have unrestricted access to the Site and the Facilities 24 hours per day, 7 days per week.

**2. Term.** This Agreement becomes effective on the date that both Owner and Tenant have executed this Agreement ("Effective Date"). Tenant's lease term shall commence, if at all, at the end of the Due Diligence Period on the Term Commencement Date. The term of Tenant's lease and tenancy, if any, (the "Term") is 5 years, commencing on the "Term Commencement Date" which is defined as the earlier to occur of: (a) the date that Tenant commences construction of the Facilities; or (b) 18 months after the Effective Date. The Term will be automatically renewed for 5 additional terms of 5 years each (each a "Renewal Term"), unless Tenant provides Owner with notice of its intention not to renew prior to the expiration of the initial Term or any Renewal Term. The Due Diligence Period is defined as the time between the Effective Date and the Term Commencement Date. During the Due Diligence Period, Tenant will be permitted to enter Owner's Property to perform surveys, inspections, investigations and tests, including, without limitation, signal, topographical, geotechnical, structural and environmental tests, in Tenant's discretion to determine the physical condition, suitability and feasibility of the Site. If Tenant determines, in its discretion, that the Site is not appropriate for Tenant's intended use (or if Tenant otherwise decides, for any reason or no reason, not to commence the lease Term), then Tenant may terminate this Agreement upon notice to Owner at any time prior to the end of the Due Diligence Period. Owner acknowledges that, prior to the Term Commencement Date, Tenant has limited access to, but no ownership or control of, any portion of Owner's Property and that Tenant's access during the Due Diligence Period shall not cause Tenant to be considered an owner or operator of Owner's Property or the Site for purposes of environmental laws or otherwise.

**3. Rent.** Starting on the date that is 30 days after the Term Commencement Date and on the first day of every month thereafter, Tenant will pay rent in advance in equal monthly installments of ~~\$1200~~1500.00. Rent for any partial months will be prorated based upon a 30-day month. Notwithstanding anything contained in this Section, Tenant's obligation to pay rent is contingent upon Tenant's receipt of an IRS approved W-9 form setting forth the tax identification number of Owner or of the person or entity to whom rent checks are to be made payable as directed in writing by Owner. ~~The Rent for each Renewal Term Beginning with the first anniversary of the Commencement Date, and each anniversary thereafter, rent shall be increased by ten-two percent (42%) of the monthly or annual installment of rent payable during the previous Term-12 moth~~

~~period or Renewal Term.~~ If the ~~Renewal Term Anniversary commences-falls~~ on any day other than the first day of a calendar month, then the rent will not be increased until the first day of the first calendar month following the ~~commencement of each Renewal Term Anniversary.~~ The Rent will be sent to the address shown underneath Owner's signature.

**4. Title and Quiet Possession.** Owner represents and warrants to Tenant and further agrees that: (a) it is the owner of Owner's Property; (b) it has rights of pedestrian and vehicular access from the nearest public roadway to the Site, which Tenant is permitted to use; (c) it has the right to enter into this Agreement; (d) the person signing this Agreement has the authority to sign; (e) Tenant is entitled to access the Site at all times and to quiet possession of the Site throughout the initial Term and each Renewal Term, so long as Tenant is not in default beyond the expiration of any notice or cure period; and (f) Owner will not have unsupervised access to the Site or to the Facilities.

**5. Assignment/Subletting.** Tenant has the right to sublease (or otherwise transfer or allow the use of) all or any portion of the Site or assign its rights under this Agreement ~~without consent, without notice to or consent of upon written notice to~~ Owner.

**6. Notices.** All notices must be in writing and are effective only when deposited in the U.S. mail, certified mail, return receipt requested and postage prepaid or when sent via overnight delivery service. Notices to Tenant are to be sent to:

Open Range Communications, Inc.  
8100 E. Maplewood Ave 6430 South Fiddlers Green.  
Suite 200500  
Greenwood Village, CO 80111

or to such other address as Tenant may notify Owner pursuant to this section.

Notices to Owner must be sent to the address shown underneath Owner's signature.

**7. Improvements.** Tenant may, at its expense, make improvements on and to the Site as it deems necessary or desirable from time to time for the operation of the Facilities. Owner agrees to cooperate with Tenant with respect to obtaining any required zoning or other governmental approvals for the Site, the Facilities and contemplated use thereof. Upon termination or expiration of this Agreement, Tenant will remove the above-ground Facilities.

**8. Compliance with Laws.** Owner represents and warrants to Tenant that Owner's Property (including the Site) and all improvements located thereon, are in substantial compliance with building, life/safety, disability and other laws, codes and regulations of applicable governmental authorities. Tenant will substantially comply with all applicable laws relating to its possession and use of the Site.

**9. Interference.** Tenant will resolve technical interference problems that the Facilities might cause (i) with other equipment located at the Site on the Effective Date, or (ii) when Tenant desires to add additional Facilities to the Site, any equipment that became attached to the Site between the Effective Date and such future date. Likewise, Owner will not permit or suffer the installation of any equipment on Owner's Property after the Effective Date that: (a) results in technical interference problems with the Facilities, or (b) encroaches onto the Site.

**10. Utilities.** Owner represents and warrants to Tenant that all utilities adequate for Tenant's intended use of the Site are available at or near the Site. Tenant will pay for all utilities used by it at the Site. Owner grants to Tenant and the local utility companies (as appropriate) any easement(s) reasonably required by Tenant or the utility companies in order to provide utility service required by Tenant for its intended use of the Site throughout the initial Term and each Renewal Term, and Owner will execute, at no cost to Tenant or the utility companies, any instrument(s) reasonably necessary to evidence such rights. If there is a loss of electrical service at the Site, Tenant may, at its expense, install and maintain a temporary generator and temporary fuel storage tank at the Site or on Owner's Property adjacent to the Site.

**11. Sub-metering.** In the event Tenant cannot secure its own metered electrical supply, Tenant will have the right, at its own cost and expense, to submeter from the Landlord. When submetering is required under this Agreement, Landlord will read the meter and provide Tenant with an invoice and usage data on a monthly basis. Landlord agrees that it will not include a markup on the utility charges. Landlord further agrees to provide the usage data and invoice on forms provided by Tenant and to send such forms to such address and/or agent designated by Tenant. Tenant will remit payment within thirty days of receipt of the usage data

Site Name: Milford I

and required forms. Failure by Landlord to perform this function will limit utility fee recovery by Landlord to a 12-month period. If Tenant submeters electricity from Landlord, Landlord agrees to give Tenant at least 24 hours advanced notice of any planned interruptions of said electricity. Landlord acknowledges that Tenant provides a communication service which requires electrical power to operate and must operate twenty-four (24) hour per day, seven (7) day per week.

**12. Termination.** Notwithstanding any provision contained in this Agreement to the contrary, Tenant may, in Tenant's sole and absolute discretion and at any time and for any or no reason, terminate this Agreement without further liability by delivering thirty (30) days prior written notice to Owner.

**13. Default.** If either party is in default under this Agreement for a period of 30 days following receipt of written notice from the non-defaulting party, the non-defaulting party may pursue any remedies available to it against the defaulting party at law and in equity, including, but not limited to, the right to terminate this Agreement. If a non-monetary default cannot reasonably be cured within a 30-day period, this Agreement may not be terminated if the defaulting party commences action to cure the default within the 30-day period and proceeds with due diligence to fully cure the default.

**14. Indemnity.** Except with respect to Hazardous Substances, which are defined and provided for in Section 14 below, Owner and Tenant each indemnifies and agrees to defend the other against and holds the other harmless from any and all costs (including reasonable attorneys' fees), damages, claims of liability and losses (collectively, "Claims") which arise out of the negligence or intentional misconduct of the indemnifying party, its agents or contractors. This indemnity is subject to the waiver of recovery in Section 17 below, and does not apply to any claims arising from the negligence or intentional misconduct of the indemnified party, its agents or contractors. The indemnity obligations under this Section will survive termination of this Agreement.

**15. Hazardous Substances.** Owner represents and warrants to Tenant that it has no knowledge of any substance, chemical or waste on or affecting Owner's Property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation (collectively, "Hazardous Substance"). Notwithstanding any provision contained in this Agreement to the contrary, Owner will have sole responsibility for the identification, investigation, monitoring and remediation and cleanup of any Hazardous Substance discovered on Owner's Property. Owner agrees to indemnify, defend and hold harmless Tenant from any and all Claims relating to any Hazardous Substance present on or affecting Owner's Property prior to or on the Term Commencement Date, unless the presence or release of the Hazardous Substance is caused by the activities of Tenant. Tenant will not introduce or use any Hazardous Substance on the Site in violation of any applicable law, and Tenant will indemnify, defend and hold harmless Owner from and against all Claims arising out of Tenant's breach of this sentence. Owner will not introduce or use any Hazardous Substance on Owner's Property in violation of any applicable law, and Owner will indemnify, defend and hold harmless Tenant from and against all Claims arising out of Owner's breach of this sentence. The provisions of this Section will apply as of the Effective Date. The indemnity obligations under this Section will survive termination of this Agreement.

**16. Subordination and Non-Disturbance.** This Agreement is subordinate to any mortgage or deed of trust of record against the Site as of the Effective Date. Promptly after this Agreement is fully executed, however, Owner will obtain a non-disturbance agreement in a form reasonably acceptable to Tenant from the holder of any mortgage or deed of trust.

**17. Property Taxes.** Tenant will pay Owner any increase in Owner's real property taxes that is directly and solely attributable to improvements to the Site made by Tenant. Owner must pay prior to delinquency, all property taxes and assessments attributable to Owner's Property. Within 60 days after receipt of evidence of Owner's payment and documentation detailing any tax increase, Tenant will pay to Owner any increase in Owner's real property taxes which Owner demonstrates, to Tenant's satisfaction, is directly and solely attributable to any improvements to the Site made by Tenant. Tenant shall pay when due any personal property taxes assessed directly against the Facilities.

**18. Insurance.** During the initial Term and all Renewal Terms, each party will procure and maintain commercial general liability insurance, with limits of not less than \$1,000,000 combined single limit per occurrence, and \$2,000,000 aggregate, and will make the other party an additional insured on such policy. Within 30 days after receipt of a written request from the other party, each party will provide the requesting party with a Certificate of Insurance evidencing the required coverage. Alternatively, each party will have the option of providing the requesting party with evidence of such coverage electronically, by providing the requesting party with a Uniform Resource Locator ("URL") link to access such party's Memorandum of Insurance website. Each party will cause each insurance policy obtained by it to provide that the insurance company waives all

rights of recovery by subrogation against the other party in connection with any damage covered by the policy. Each party waives its right of recovery against the other for any loss or damage covered by any property insurance policies maintained by the waiving party.

**19. Maintenance.** Tenant will be responsible for repairing and maintaining the Facilities and any other improvements installed by Tenant at the Site in a proper operating and reasonably safe condition; provided, however, if any repair or maintenance is required due to the acts or omissions of Owner, its agents, contractors or employees, Owner will promptly reimburse Tenant for the reasonable costs incurred by Tenant to restore the damaged areas to the condition which existed immediately prior thereto. Owner will maintain and repair all other portions of Owner's Property in a proper operating and reasonably safe condition.

Tenant understands that Owner may find it necessary from time to time to interrupt Tenant's use of the Premises for maintenance of the water tank. Landlord shall provide Tenant with at least sixty (60) days prior written notice for non-emergency maintenance, "Maintenance Period", and, if necessary, Tenant agrees to temporarily remove its antennas or coax from the water tank. A schedule of all anticipated routine maintenance shall be provided prior to full execution of this agreement. Tenant, at its sole cost and expense, may use a temporary transmission site or cell on wheels ("COW") on Landlord's Property at an available location sufficient to meet Tenant's coverage or engineering needs.

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**20. Miscellaneous.** (a) This Agreement applies to and binds the heirs, successors, executors, administrators and assigns of the parties to this Agreement; (b) this Agreement is governed by the laws of the state in which the Site is located; (c) Owner agrees to promptly execute and deliver to Tenant a recordable Memorandum of Agreement in the form of **Exhibit C**, attached; (d) each party will execute, within 20 days after written request, an estoppel certificate or statement certifying that this Agreement is unmodified and in full force and effect or, if modified, describing such modification(s), and that the other party is not in default (beyond applicable cure periods), except as specified in the statement. The estoppel certificate may also certify the current rent amount and whether any rent has been paid in advance; (e) this Agreement (including the Exhibits and Riders) constitutes the entire agreement between the parties and supersedes all prior written and verbal agreements, representations, promises or understandings between the parties. Any amendments to this Agreement must be in writing and executed by both parties; (f) if any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of the provision to persons other than those as to whom it is held invalid or unenforceable, will not be affected and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law; and (g) the prevailing party in any action or proceeding in court or mutually agreed upon arbitration proceeding to enforce the terms of this Agreement is entitled to receive its reasonable attorneys' fees and other reasonable enforcement costs and expenses from the non-prevailing party.

**21. Non-Binding Until Fully Executed.** This Agreement is not and will not be binding on either party until and unless it is fully executed by both parties.

The following Exhibits and Riders are attached to and made a part of this Agreement: Exhibits A, B, and C.

Site Name: Milford 1

**OWNER:**

*The City of Milford,*

a(n) \_\_\_\_\_

By: \_\_\_\_\_

Name: Joseph R. Rogers

Title: Mavor

Date: \_\_\_\_\_

Taxpayer ID: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Contact Phone Number: \_\_\_\_\_

Email address: \_\_\_\_\_

See Addendum to Site Agreement for continuation of Owner signatures

**TENANT:**

**Open Range Communications, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

*Attach Exhibit A – Legal Description of Owner’s Property*

*Attach Exhibit B – Site Plan*

*Attach Exhibit C - Memorandum of Agreement Form*

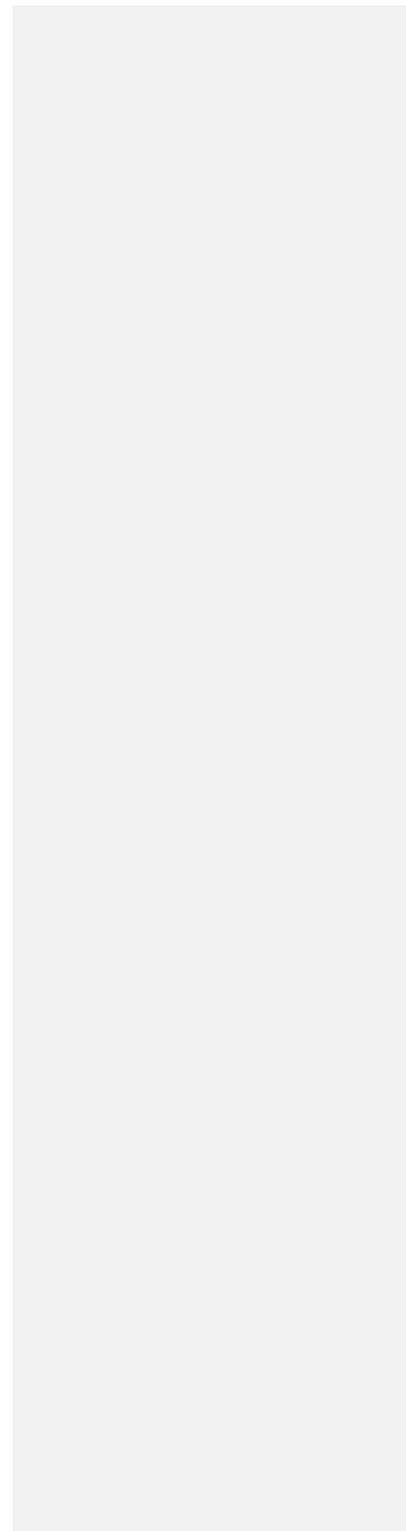
| Site Name: \_\_\_\_\_Milford 1

**EXHIBIT A  
TO SITE AGREEMENT**

**Legal Description of Owner's Property**

The Owner's Property is located at 106 South Washington Street, situated in the City of Milford, County of Sussex , State of Delaware commonly described as follows:

**Insert Legal Description:**



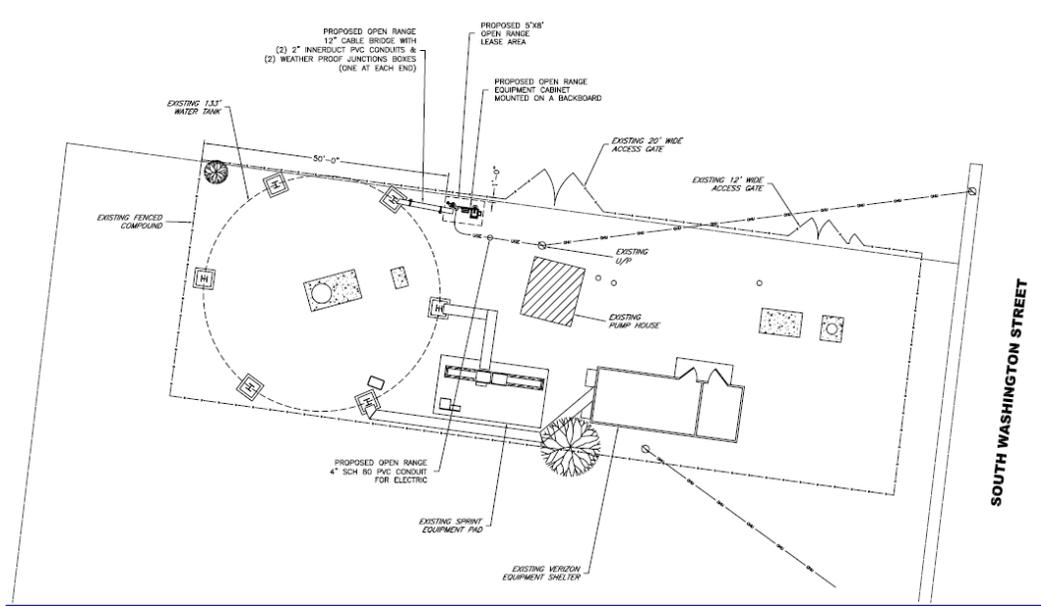
Site Name: Milford 1

### EXHIBIT B TO SITE AGREEMENT

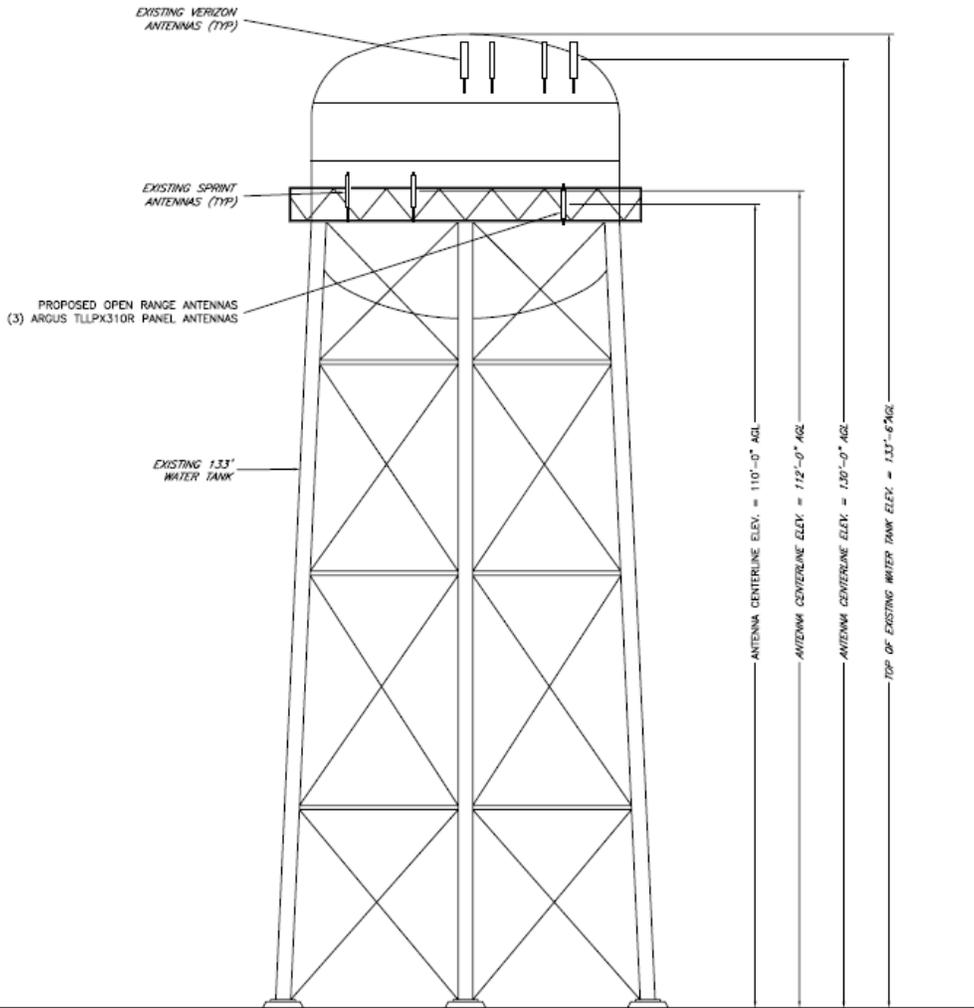
#### Site Plan

The Site is described as follows:

**Insert Site Plan:**



Site Name: Milford 1



**Note:** Owner and Tenant may, at Tenant's option, replace this Exhibit with an exhibit setting forth the legal description of the Site, or an as-built drawing depicting the Site. Any visual or textual representation of the Facilities is illustrative only, and does not limit the rights of Tenant as provided for in the Agreement. Without limiting the generality of the foregoing:

| Site Name: \_\_\_\_\_Milford I

1. The Site may be setback from the boundaries of Owner's Property as required by the applicable governmental authorities.
2. The access road's width may be modified as required by governmental authorities, including police and fire departments.
3. The locations of any access and utility easements are illustrative only. Actual locations may be determined by Tenant and/or the servicing utility company in compliance with local laws and regulations.

Site Name: \_\_\_\_\_ Milford 1

**EXHIBIT C  
TO SITE AGREEMENT**

**Memorandum of Agreement**

This Memorandum of Agreement ("Memorandum") dated \_\_\_\_\_, 2010, evidences that a Site Agreement (the "Agreement") dated \_\_\_\_\_, 2010 (the "Effective Date"), was made and entered into between The City of Milford ("Owner") and Open Range Communications, Inc. ("Tenant").

The Agreement provides in part that Tenant has the right to enter upon certain real property owned by Owner and located at \_\_\_\_\_, City of Milford, County of Sussex, State of Delaware, as further described in the Agreement (the "Site") for the purpose of performing investigations and tests and, upon finding the Site appropriate, to lease the Site for the purpose of installing, operating and maintaining a communications facility and other improvements. The Site is further described in Exhibit A attached hereto.

The term of Tenant's lease and tenancy under the Agreement is 5 years commencing on the earlier to occur of start of construction of the Facilities (as defined in the Agreement) or eighteen (18) months following the Effective Date, whichever first occurs ("Term Commencement Date"), and is subject to 5 renewal terms of 5 years each that may be exercised by Tenant.

The parties have executed this Memorandum as of the day and year first above written.

**OWNER**

**The City of Milford**

a(n) \_\_\_\_\_

By: \_\_\_\_\_

Name: Joseph R. Rogers

Title: Mayor

Address: \_\_\_\_\_

\_\_\_\_\_

Contact Phone Number: \_\_\_\_\_

**TENANT**

**Open Range Communications, Inc.**

a Delaware corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Email Address: \_\_\_\_\_

*Attach Exhibit A - Site Description*

Site Name: \_\_\_\_\_ Milford 1

**OWNER NOTARY BLOCK:**

STATE OF

COUNTY OF

The foregoing instrument was (choose one)  attested or  acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by (choose one)  \_\_\_\_\_ as an individual,  \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation, on behalf of the corporation, or  \_\_\_\_\_, partner or agent on behalf of \_\_\_\_\_, a \_\_\_\_\_ partnership.

(AFFIX NOTARIAL SEAL)

\_\_\_\_\_  
(OFFICIAL NOTARY SIGNATURE)  
NOTARY PUBLIC STATE OF

My commission expires:

\_\_\_\_\_  
(PRINTED, TYPED OR STAMPED NAME OF NOTARY)  
COMMISSION NUMBER:

**TENANT NOTARY BLOCK:**

STATE OF

COUNTY OF

The foregoing instrument was (choose one)  attested or  acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by (choose one)  \_\_\_\_\_ as an individual,  \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation, on behalf of the corporation, or  \_\_\_\_\_, partner or agent on behalf of \_\_\_\_\_, a \_\_\_\_\_ partnership.

(AFFIX NOTARIAL SEAL)

\_\_\_\_\_  
(OFFICIAL NOTARY SIGNATURE)  
NOTARY PUBLIC STATE OF

My commission expires:

\_\_\_\_\_  
(PRINTED, TYPED OR STAMPED NAME OF NOTARY)  
COMMISSION NUMBER:







OFFICE OF THE CITY MANAGER  
302.424.3712, FAX 302.424.3558

201 SOUTH WALNUT STREET  
MILFORD, DE 19963

[www.cityofmilford.com](http://www.cityofmilford.com)

September 13, 2011

Mr. Tom Worley  
Comcast  
5729 West Denney's Road  
Dover, Delaware 19904

RE: Comcast Signal Issues

Dear Mr. Worley:

As a follow-up to our previous conversations, I write to you today to inform you the City continues to hear from residents regarding the "picture freezing" and periodic sound disruptions in the cable television signal. I cannot determine if the issue is getting worse, however, it is a consistent problem and it does not appear it is being resolved.

With this said, Milford City Council is requesting your appearance at its meeting on **Monday, September 26, 2011 at 7:00 p.m. in Milford City Hall** to update the Council and the public on measures being taken to address this issue and to address any questions regarding Comcast's service that may arise from this discussion. Recognizing that you may not be the technical expert on some of these issues, I would also strongly suggest you bring someone with technical expertise along with you that may be able to address specific questions so that answers can be provided during this meeting.

On behalf of the Mayor and City Council, I thank you for your cooperation as we work toward a solution to this issue. Please contact myself or Terri Hudson, City Clerk ([thudson@milford-de.gov](mailto:thudson@milford-de.gov)) to confirm your attendance. In the meantime, please feel free to contact me at anytime should you wish to further discuss this matter before September 26.

Sincerely,

A handwritten signature in blue ink that reads "David W. Baird".

David W. Baird  
City Manager

**From:** Worley, Tom [Tom\_Worley@cable.comcast.com]  
**Sent:** Tuesday, September 13, 2011 7:57 PM  
**To:** David W. Baird  
**Cc:** Terri Hudson; Vinton, Christopher; Lawson, Jim  
**Subject:** RE: Signal Issues-Milford

David:

I can be at the Sept 26 Meeting. However before I commit to being on the agenda I would like to get the addresses if possible of those customers who have complained so that we can run a service call (free) to their homes. Let me explain.

Last Spring we converted our signals to digital from analog. Digital signals are **not** as tolerant of cable plant weak points (i.e. loose connections) as was the analog signal. For that reason, we spent over a year systematically checking our Sussex plant including Milford to make it as tight as possible before we made the conversion. A loose connection creates the sort of problem you described – “picture freezing” and loss of audio.

I have checked with our cable plant engineering folks and all their signal monitoring systems show that there are no issues with the Milford cable plant.

While we feel confident our plant is in top shape the one part of our system we were not able to check in our pre-digital plant maintenance work was in home wiring. Following my discussion with our engineering group I spoke to our daily operation section. This section houses our field technicians. They have seven technicians that service the Milford area. In looking at their work for the past several months they were able to see complaints about “picture freezing”. However is almost every instance when we did a service call we found a loose connection in the home that was causing the problem.

We fully expected to have this internal wiring problem with some homes when our service switched to digital. We have experienced in it all of our communities. In home wiring is frequently a do it yourself project especially second and third outlets and the wiring sometimes dates to the seventies. For such systems to have weak points is not unusual.

Now I am not saying our plant is perfect or that our monitoring systems can not miss anything or that in home wiring is always the problem. But the only way we are going to know the source of the problem is to investigate the complaints. If I can do this before the meeting, I will be able to give a much better response to the Council.

Tom

R. Thomas Worley  
Senior Director Government Regulatory Affairs  
Comcast  
5729 West Denneys Road  
Dover, Delaware 19904  
Office: 302-672-5936  
Fax: 302-674-3453

*Tune in and Watch Comcast Newsmakers, a Comcast Public Service, at .25 and .55 after the hour on CNN Headline News for important information about your community!*

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**From:** David W. Baird [<mailto:dbaird@milford-de.gov>]  
**Sent:** Tuesday, September 13, 2011 10:13 AM  
**To:** Worley, Tom

**Cc:** Terri Hudson

**Subject:** Signal Issues-Milford

Tom:

Please see the attached letter regarding continuing issues regarding the cable television signal in Milford. The City continues to hear concerns from our residents regarding "picture freezing" and loss of sound. With this said, City Council is requesting representatives from Comcast appear at the September 26, 2011 City Council meeting to further discuss this issue. Please contact either myself or Terri Hudson, City Clerk to confirm your attendance. Additionally, please feel free to contact me in advance of the meeting to further discuss this matter as you prepare for your attendance on Sept. 26.

Thanks for your help and I look forward to hearing from you.

David

David W. Baird  
City Manager  
City of Milford  
201 S. Walnut Street  
Milford, Delaware 19963

302-424-3712

[dbaird@milford-de.gov](mailto:dbaird@milford-de.gov)

