

*MILFORD CITY COUNCIL
MINUTES OF MEETING
July 26, 2010*

The Milford City Council held Public Hearings on Monday, July 26, 2010 in the Joseph Ronnie Rogers Council Chambers at Milford City Hall, 201 South Walnut Street, Milford, Delaware.

PRESIDING: Mayor Joseph Ronnie Rogers

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

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

COUNSEL: City Solicitor Timothy Willard

Mayor Rogers called the Public Hearing to order at 7:03 p.m.

Public Hearings were scheduled for the purpose of taking public comment and to make final determinations on the following matters:

ORDINANCE NO. 2009-10

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF MILFORD BY ADDING A NEW CHAPTER ENTITLED LIGHTING STANDARDS.

NOW, THEREFORE, THE CITY OF MILFORD HEREBY ORDAINS:

Section 1. Amend the Milford Code by adding a new Chapter entitled Lighting Standards to read as follows:

*Chapter _____
Lighting Standards*

§ -1 Statement of Need and Purpose

The City of Milford recognizes the following:

- 1. Improperly located lighting can cause unsafe and unpleasant condition;*
- 2. Excessive lighting can cause unsafe, unhealthful and unpleasant conditions, waste electricity and threaten the natural environment;*
- 3. Obtrusive lighting and light trespass can cause unsafe and unpleasant conditions;*
- 4. Proper lighting can enhance safety and enjoyment of the built environment;*
- 5. Illumination levels should be appropriate to the visual task.*

§ -2 Ordinance Establishment

This ordinance is established to promote the public health, safety, and welfare and is intended to accomplish the following purposes:

- 1. Allow appropriate lighting levels to preserve safety, security, and the nighttime use and enjoyment of property;*
- 2. Reduce light pollution, light trespass, glare, and offensive lighting;*
- 3. Promote energy conservation;*
- 4. Allow people in residential areas to view the stars against a dark sky;*
- 5. Enhance the aesthetics of the built environment; and*
- 6. Protect the character of the natural environment and preserve ecological values.*

§ -3 Lighting Definitions

For the purpose of this chapter, certain words and phrases shall be interpreted or defined as follows:

Glare: Intense and blinding light. Causes visual discomfort or disability.

Landscape lighting: Luminaries mounted in or at grade (but not more than 3 feet above grade) and used solely for landscape rather than any area lighting.

Obtrusive light: Spill light that causes glare, annoyance, discomfort, or loss of visual ability.

Light Pollution.

Luminary (light fixture): A complete lighting unit consisting of one or more electric lamps, the lamp holder, any reflector or lens, ballast (if any), and any other components and accessories.

Fully shielded (full cutoff) luminary: A luminary emitting no light above the horizontal plane.

Spill light: Light from a lighting installation that falls outside of the boundaries of the property on which it is located. Usually results in obtrusive light.

Light trespass: Light falling where it is not wanted or needed. Light trespass is intrusive lighting.

Spill light (also called stray light) is light falling outside of the intended area, and it can result in light trespass. Light coming into a yard or bedroom window at night from streetlights, the nearby car dealer or mall, or from a neighbor's security light is light trespass. This type of light pollution usually has glare and always wastes both light and energy.

§ -4 Maximum Lamp Wattage and Required Luminaries or Lamp Shielding

All lighting installations shall be designed and installed to be fully shielded (full cutoff), except as in exceptions below, and shall have a maximum lamp wattage of 250 watts for commercial lighting, 100 watts incandescent, and 26 watts compact fluorescent for residential lighting. In residential areas, light should be shielded such that the lamp itself or the lamp image is not directly visible outside the property perimeter.

§ -5 Applicability

1. *New construction/uses. The provisions of this ordinance shall apply to parking lots, buildings, structures, and land uses established after the effective date of this ordinance.*
2. *Expansion and redevelopment. The provisions of this ordinance shall apply to the entire building/structure, parking area, or use, as appropriate, under the following conditions:*
 - a. *When a building or structure is expanded in size by 25 percent or more;*
 - b. *When the area of a parking area is expanded by 25 percent or more;*
 - c. *If existing lighting is shown to be a safety hazard;*
 - d. *When an outdoor use (e.g., outdoor storage, vehicle sales) is expanded by 25 percent or more; and*
 - e. *Any other activity subject to site plan or subdivision review, and*
 - f. *During the course of natural upgrades and maintenance so all lighting in the city will comply by January 2025.*
3. *Exemptions. The following are exempt:*
 - a. *Lighting in swimming pools and other water features governed by Article 680 of the National Electrical Code.*
 - b. *Exit signs and other illumination required by building codes.*
 - c. *Lighting for stairs and ramps, as required by the building code.*
 - d. *Signs are regulated by the sign code, but all signs are to be fully shielded.*
 - e. *Holiday and temporary lighting (less than forty-five days use in any one year).*
 - f. *Football, baseball, softball and other sport field lighting utilizing sensible curfews (not past 10 p.m. unless in conjunction with an event already started and continuing before that time).*

- g. Low voltage landscape lighting, but such lighting should be shielded in such a way as to eliminate glare and light trespass.*
- 4. Severability and conflicts with other ordinances*
 - a. Validity and Severability: Should any section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.*
 - b. Conflict with Other Ordinances: Should any section or provision of this Ordinance be found to be in conflict with any other municipal ordinance or regulation, the more stringent section or provision shall prevail.*

§ -6 Additional Requirements:

- 1. Residential Outdoor lighting. Lighting attached to single-family home structures should not exceed the height of the eave and should be shielded such that the lamp image is not directly visible outside the property perimeter.*
- 2. Pole-mounted luminaries. Luminaries shall not be taller than 15 feet in residential and downtown zoning districts or when placed within 50 feet of a residential zoning district. In all other zoning districts, luminaries shall not be taller than 30 feet;*
- 3. Building-mounted luminaries. In non-residential zoning districts, building-mounted luminaries shall not be attached to a sloped roof and shall not be taller than 30 feet or the height of the principal building, whichever is less. The use of wall-pack luminaries is discouraged;*
- 4. Overhead electrical lines prohibited. For new installations, electrical lines for luminaries mounted on freestanding poles shall be placed underground between poles.*
- 5. Material for light poles. Light poles shall be anodized, painted or otherwise coated so as to minimize glare from the light source;*
- 6. Continued maintenance. Lighting installations shall be maintained in good repair to meet the provisions of this ordinance on an on-going basis;*
- 7. Lighting curfew. For parcels with non-residential uses, lighting in vehicle parking areas containing 20 parking spaces or more shall be reduced to 50 percent one hour after the business closing to one hour before the business opens;*
- 8. Luminaire types. Full-cutoff luminaries shall be used in parking areas, along internal streets, and along pedestrian ways. The City/town may allow cutoff luminaries or semi cutoff luminaries in these locations when the overall uplight would be less than for full cutoff luminaries. To promote a unified development theme, post top luminaries (also referred to as period lighting) may be used as an alternate if they have built-in reflectors that effectively eliminate uplight. Except as provided in this ordinance, all other luminaries shall be directed downward and the light source shall be shielded so that it is not visible from any adjacent property;*

§ -7 Other Guidelines

- 1. Flag poles, statues and similar monuments. A flag pole bearing a state flag, a flag of the United States or a flag of a foreign nation may be illuminated provided the following standards are met:*
 - a. The luminaries shall be fully shielded.*
 - b. Upward aiming luminaries shall be placed as close to the base as possible.*
 - c. The luminaries shall not collectively exceed 40,000 mean lumens.*
 - d. Public statues, memorials or other similar monuments may also be lighted upon approval by the planning board, provided the above standards are met.*
- 2. Building façade lighting. The exterior of a building may be lighted provided the following standards are met:*
 - a. The lighting is done to accentuate an architectural or aesthetic element of the building, not the entire building.*
 - b. The light shall only be directed onto the building façade and not spillover beyond the plane of the building.*

- c. Upward aimed lighting shall not exceed 4,000 mean lumens per accent feature, shall be fully shielded, and mounted as flush to the wall as possible.*
- d. Lighting exceeding 4,000 mean lumens per accent feature shall be aimed downward, fully shielded, and mounted as flush to the wall as possible.*

Section 2. Dates.

Introduction to City Council: June 22, 2009

Planning Commission: July 21, 2009, August 18, 2009

City Council Hearing & Adoption Date: July 26, 2010

Effective Date: August 5, 2010

City Planner Gary Norris reported this ordinance addresses lighting standards the planning commission had worked on to minimize residential and commercial lighting from shining skyward or into adjacent right of ways or private properties. It is a response to complaints about lights shining into homes and private properties that can keep people awake at night or destroy their sense of privacy.

He said the planning commission held several public hearings and at one of those hearings, Rick Carmean, Electric Superintendent was present and gave his approval of the proposed standards.

Mr. Brooks expressed concern about its impact on safety referencing his home's proximity to Milford High School and the benefit of additional lighting. He also pointed out the abundance of lighting at Walmart which he feels is an advantage. Mr. Norris explained that he does not want this to be misinterpreted as restricting the amount of lighting that is necessary for safe and efficient operations emphasizing the minimum standards for safety would still need to be met.

Mr. Pikus asked if there is any place in Milford that currently violates the ordinance. Mr. Norris said this will only apply to new construction and any existing sites would be grandfathered. New developments would be required to meet these lighting standards.

When asked who would make that determination, Mr. Norris responded the planning commission in conjunction with the electric superintendent. They would review the lighting plans for any large commercial or residential development.

Mr. Pikus then asked what course of action a business would have should they install improper lighting. Mr. Norris referenced the subdivision ordinance that contains language which states that applicants may request, at the time of application submission, the varying or waiving of requirements of Chapter 200. He feels that if someone wanted a waiver, it would be indicated on the application and a recommendation made by the planning commission, after which council would make the final decision.

Mr. Brooks asked what happens if it is later discovered the lighting does not meet these standards, Mr. Norris stated that Mr. Carmean would use his expertise to review the plan ahead of time to ensure it meets the standards.

Planning Chairman Chuck Rini then addressed council stating the planning commission looked at this as a national dark sky agenda that will not impede lighting needed for safety and visibility. Instead, it addresses light that is poorly designed and throwing increasing quantities of light up into the night sky. This would bring Milford's codes up to what is considered state of the art lighting standards while addressing light pollution.

Mr. Rini added that dark sky awareness has become more prominent over the past few years in various parts of our country with many programs in place to protect the environment.

Jim Higgins of 20 Meadow Lake Drive, Meadows at Shawnee, then explained the dark sky initiative is very serious. He pointed out its interference with satellites, airplanes and impact on bird migration along the east coast. Many cities are considering it and the Franklin Institute is studying how to reduce lighting in the City of Philadelphia. He suggests

Milford take the lead by showing we care about this matter and the migration in our area.

City Manager Baird asked why this was included in the subdivision code and asked how we will capture it for large commercial projects; Mr. Willard said the document was designed to be a separate ordinance and will apply to more than residential subdivisions. This creates a new chapter that deals with lighting standards for all site plans. He feels the ordinance needs some additional work and a decision made on where it should be placed. His advice is to make it a separate chapter, similar to the streets and sidewalk ordinances. Whether it is for a subdivision or a simple site plan, the developer/builder will have to abide by the law and enforcement would be clear.

The solicitor agrees the intent is to prevent light pollution by restricting things that light up the entire sky.

When asked for additional comments from the public, no one responded.

Ms. Wilson moved to defer action on this ordinance so the ordinance can be re-reviewed, seconded by Mr. Pikus. Motion carried.

ORDINANCE 2009-22

AN ORDINANCE TO AMEND CHAPTER 230 OF THE MILFORD CODE RELATING TO BILLBOARDS.

The City of Milford hereby ordains as follows:

Section 1.

An Ordinance to amend the Code of the City of Milford, Chapter 230, thereof, entitled Zoning Code.

Section 2.

Amends §230-4, Definitions and Word Usage, by adding 'Billboards' and the following definition:

BILLBOARDS – A sign directing attention to a business, commodity, service or entertainment conducted, sold or offered elsewhere than upon the premises where the sign is maintained.

Section 3.

Amends §230-26, General Standards, by adding:

(E), Billboards as a Conditional Use in C-3 Zoning District.

BILLBOARDS are permitted in the C-3 Zoning District as a Conditional Use provided they meet any State of Delaware requirements as well as the following requirements:

- (1) Height: Billboards shall be no greater than 32 feet in height.*
- (2) Size: Billboards shall be no smaller than 200 square feet or no larger than 400 square feet in area and only one advertisement per side shall be permitted.*
- (3) Location: All measurements shall be made parallel to the roadway between perpendiculars extended from the billboard locations in question.*
 - (a) No billboard shall be closer than a fifteen hundred (1500) foot radius from another billboard.*
 - (b) The leading edge of all billboards must be set back 50 feet from the street right of way.*
 - (c) No billboard shall be constructed within two thousand (2000) feet of any residential unit within the City of Milford.*
 - (d) No billboard shall be placed to face abutting residential property within the City of Milford.*
- (5) Lighting: Floodlighting shall be arranged so that the source of light is not visible from any point off the lot and that only the sign is directly illuminated thereby.*
 - (a) Flashing lights are expressly prohibited; flashing means any method of conveyance produces or creates the illusion of motion or revolves in a manner to create the illusion of being on or off.*

- (2) *Maintenance: Billboards shall be constructed of durable material and kept in good condition and repair. Any billboard which is allowed to become dilapidated and considered by the City of Milford Code Enforcement Officer to constitute a nuisance shall be removed at the expense of the owner or lessee of the property on which it is located.*

Section 4.

Amends §230-26, General standards, Sign Chart, as follows:

SEE ATTACHED SIGN CHART

Section 5.

Introduction to City Council: 11-23-09

Planning Commission Public Hearing: 12-15-09

City Council Public Hearing & (Projected) Adoption Date:

Projected Effective Date:

Mr. Norris recalled that in the past, the city's interpretation of the zoning ordinance was that billboards were not permitted. However, it was noted as "N/A" in the code. He recalled the court case the city initiated against a property owner with a billboard. That case ended up in Chancery Court in Georgetown where the judge determined billboards were not adequately defined in the code. Since that time, the planning commission has considered and reviewed several options over a period of time. The ordinance proposed is a culmination of their work.

This ordinance only permits billboards in a C3 zone as a conditional use and read aloud the definition and restrictions being proposed. The city planner informed council the planning commission held several public hearings on the matter and solicited input from a variety of sources.

Mr. Pikus referenced the State of Delaware law that regulates outdoor advertising or billboards. He asked if the city spells out the difference between signs and billboards. Mr. Norris reiterated the proposed ordinance specifically defines billboards. The zoning ordinance addresses signs including advertising signs, business signs, gross surface area of signs, etc.

Mr. Pikus asked how state law differs from this proposed ordinance. Mr. Norris explained the control criteria for size, spacing and lighting differs from the state code. The state allows the maximum area for any signs to be 1,200 square feet with a maximum height of 25 and maximum length of 60 feet. This ordinance requires them to be 2,000 feet from a residential area.

As an example, Mr. Pikus referenced the number of homes in the area of Route 1 or Route 30. He recalled a number of comments at the (proposed) overpass hearing from residents who suggested a large sign be erected welcoming people to Milford. He suggested a sign be sponsored by different businesses or entities in Milford such as Parks and Recreation or Milford Library that may be considered a billboard.

Mr. Pikus asked if 2,000 feet could become a burden. Mr. Norris believes that would be a judgment call noting the planning commission considered several distances though this was their final recommendation. He emphasized that anyone wishing to install a billboard less than the 2,000 feet being proposed would have the right to appeal to the Board of Adjustment.

He emphasized the old ordinance, as was interpreted, did not permit any billboards. The new proposal allows billboards in the C-3 district with criteria.

Mr. Pikus agreed that a great deal of work and research was done and commended the city planner and planning commission.

Mr. Rini advised that state law falls under the sign section of Title 17-Highways. He explained the 500 foot distance applies to all signs controlled by the state. He reiterated the planning commission was tasked by city council to provide a definition for billboards after the city lost the billboard case. The ordinance has a specific definition and asked that not be confused with state law.

According to Mr. Rini, the planning commission previously received a recommended definition for a sign that advertises an activity or business on a different tax parcel. The current sign chart implied they were prohibited in all zoning classifications. He understands the city did not want to prohibit billboards which is why the ordinance was developed.

When asked about existing signs located at the site of the business being advertised, Mr. Rini explained the main criteria for a billboard is that it is on a site other than the business/activity it is advertising.

Mr. Brooks asked Mr. Norris to clarify the difference between a billboard and a sign. He said in a recent trip to Missouri, he observed a number of signs welcoming visitors to their community. He feels they were signs and not billboards. Mr. Norris agreed noting a billboard advertises something commercial in nature where a service is offered in another location and not at the site of the billboard. Simply put, he explained it is outdoor advertising for something not on the same parcel.

Ms. Wilson questioned the 2,000 foot restriction from any residential unit. She said that a billboard being placed off one of our major highways could be impacted by a number of the newly proposed developments. Mr. Norris advised that many of those subdivisions would be zoned residential and this is only permitted as a conditional use in the C-3 zone.

Ms. Wilson asked if there were other considerations besides the 2,000 foot restriction considered. Mr. Norris responded by saying there were several options considered, but the planning commission felt this was the most appropriate. It was even suggested that the commissioners actually observe the various spacing possibilities when traveling down the highway.

Mayor Rogers said he has dealt with billboards in the past as a member of the Board of Adjustment. He noted that Milford has very few billboards and asked where one could be placed in a C-3 district. He considers them a way to attract visitors, new residents and businesses to Milford.

The mayor commended the work the planning commission has put into this but feels this could send the wrong message to someone wanting to develop here. Ms. Wilson agrees that 2,000 feet may be too restrictive considering the size of Milford and lack of billboards.

Mr. Baird said he considers this to be about a half a mile from a residential unit. When he met with Mr. Norris and Mr. Rini, he also asked where a billboard could be placed in the C-3 zone. Mr. Norris stated along Route 1, south of the existing billboards on Route 1 and in some areas along Route 113.

Mr. Norris noted they were scaled off and a couple of potential spots found, though it was minimal.

Mr. Rini pointed out that when this was presented to the planning commission, the feeling of council was to limit the scope for billboards. Personally, he agrees with Mayor Rogers that this may be too restrictive. He does not want something that would prevent anything from being put up. He agrees that 2,000 feet is a concern and he would have no problem adopting the ordinance with an amendment reducing the spacing to 1,000 feet. Some other areas would then become eligible including the area where the new overpass is proposed south of Milford.

Mr. Pikus agreed noting the northern end of Milford seems to be appropriate.

Mr. Grier then asked what other municipalities allow; Mr. Rini said they researched other towns for a definition of billboards in addition to other states. Mr. Norris explained that what is being presented to council is a pared-down version. The original ordinance was two to three times larger. The planning commission removed a number of items they did not feel were necessary. Other municipalities were considered and a representative from the City of Dover attended one meeting to explain how Dover handled it. It was his understanding the City of Dover does not permit billboards.

Mr. Rini advised a subcommittee was assigned to address this issue. They met with Downtown Milford and the Chamber of Commerce for their input. He emphasized this ordinance requires a conditional use in addition to meeting the State of Delaware standards along highways.

Mr. Willard agreed the State of Delaware regulations apply within the City of Milford and all outdoor advertising intended to be viewed from a state road is within their jurisdiction. They cannot be in derogation to them nor can state regulations take away the city's power though council has the ability to make them more restrictive.

Jim Higgins of 20 Meadow Lark Drive, Meadows at Shawnee, stated that his lives just off Route 1. He said it appears that council feels advertising on billboards will only be for Milford. A number of council members then indicated that was not their opinion.

Mr. Higgins disagrees that billboards are advertising Milford. Instead, he said billboards advertise Rehoboth Beach and they will not create new jobs in Milford. Reducing this to 500 feet will put these billboards in this backyard because across Route 1 from his house is the C-3 zone. He does not understand why Milford needs any billboards at all and suggests the ordinance state that billboards are prohibited as was originally thought. He feels this will provide more pollution, whether it is visual or light pollution.

Mr. Higgins feels they will affect the value of his home. He said the planning commission has come up with some regulations, but in his opinion, they simply should not be allowed.

Mr. Brooks said that in the past, the Board of Adjustment heard the cases and it worked well. He asked the mayor how many billboard requests went before the Board of Adjustment in the past 28 years; Mayor Rogers stated two. Mr. Brooks agreed there were two hearings though there are four currently in the city. Two came in when the land they were on was annexed.

Mayor Rogers agreed there were no problems with that process noting that billboards were never permitted in the backyard of a residence. He feels that 2,000 feet of separation is too much and favors state law. He is also unsure where billboards could be put in the city.

Joe Palermo of 5 Misty Vale Court recalled that when this went before the Board of Adjustment, Dennis Silicato wanted to install a billboard and move one or two existing billboards. The Board voted unanimously to reject it. At that time, the board included the mayor, city manager and city solicitor. Mr. Palermo wants businesses to come to Milford, but feels that Mr. Higgins made some valid points. Though some people may think that 2,000 feet is excessive, he also feels that 500 feet is extremely low.

Ms. Wilson said there is a need for something in writing so the efforts and work of the planning commission were not in vain. She believes written guidelines are necessary to protect the city. With the projected growth that Milford will hopefully experience, she feels an ordinance is needed. Having to go before the Board of Adjustment is costly and having an ordinance in place prevents that. Because of the recent court ruling, an ordinance should be developed. In her opinion, the separation restriction can be changed and the ordinance adopted as amended.

Bob Connelly of 107 Barksdale Court, Hearthstone Manor, said the first time he spoke before council was on this issue after which he followed up with a packet showing billboards in town. He said that council is thinking about this backwards and it appears that billboards are going to drive business into Milford. He believes billboards are driving

businesses out of here. He lived here more than two years and did not know what Pot Nets was until he accidentally drove there. Any developer in Milford should say no more billboards because they are driving business out of here. Until Grotto gets here, they are driving pizza buyers to the other Grottos and taking them away from local pizza restaurants. He is unsure how billboards will encourage business in Milford.

Mr. Connelly said as a home buyer, he would prefer a neighborhood with no billboards. Council wants to approve billboards every 500 feet and he will not move there because it would be ugly. He would not want to live there and believes this is driving the wrong kind of residents here. This will attract people who are looking for low-incoming housing and not upscale housing. He feels council is thinking about this backwards and does not understand the conversation about getting them closer together and closer to residential areas. This will destroy the fabric of the neighborhoods, quality of the community and quality of the developments we have. He said he is unsure how council feels this will improve the neighborhoods.

Mr. Connelly agrees that an ordinance is needed but also agrees with Mr. Higgins that the ordinance should say we want a better community and not one that is full of litter.

Mr. Pikus reiterated this is the result of recent legal action in which the ordinance was not clear in relation to billboards. Milford lost the case based on not having clarity in the ordinance.

Mr. Willard explained Milford's sign chart in its code has the word 'billboard' in it. For every zoning district, it states 'not applicable'. The code also has a definition of signs which is something advertising what is occurring there. In the sign chart, it indicates that billboards are not applicable. The city argued that a billboard is something advertising off site. Milford has a 'no billboard prohibition' ordinance which is what the judge in this case based their opinion on. There is a section in the code that clearly states certain signs are prohibited but it does not include billboards.

The solicitor also explained there is a section of Title 11, which is the criminal code in Delaware, that says if you are going to charge someone with a criminal code, it has to be explicit and expressed for obvious reasons. The code has a specific section listing prohibited signs which does not state billboards. Therefore, billboards were excluded in every section of the code by table and there was a definition of signs but nothing specific for billboards. In a criminal case, it was simply not enough.

He added that as this process evolved, the planning commission defined billboards as something that was off premises. Dimensions were added which allowed it to be permitted as a conditional use in a specific district as is being presented in this ordinance.

Mr. Pikus asked if the city were to adopt state law and limit it as a conditional C-3, would we be protected; he does not want to end up in court time after time which will only cost the city more money. He asked if an ordinance that piggybacks state law in the C-3 zoning would that protect us.

Mr. Willard explained it would be allowed anywhere in C-3 and not just along the highway. Mr. Willard further explained that Title 17 does not specifically define billboards. It defines outdoor advertising which means all signs. He said we will still need to define them and in this ordinance, the planning commission went one step further by including dimensions. He does not believe it will be that easy because there is no clear billboard law in the state.

Mr. Pikus said he is trying to come up with a compromise that will protect the city. He cannot relate to other states and wants to concentrate in the Delaware area. He believes we should protect ourselves but does not want to discourage business at the same time. He also does not want to continue to lose cases and continue spending taxpayers' money.

Mr. Baird explained the definition of billboard, with a conditional use in the C-3 zone, as part of the review, would include some criteria that either the Board of Adjustment or City Council could consider. This could include size, height, location, lighting, etc. This would address the needs of the city by having a regulation on the books. It could

still comply with DelDOT restrictions along state highways, but a conditional use would be required before a DelDOT permit could be issued.

Mr. Higgins then asked why the city cannot have an ordinance that states no billboards and asked if that is an option. He has heard a lot of discussion about the various feet, adding that if one is put across the street from his house, his home will be put up for sale immediately. He does not want that pollution in his backyard noting that he already gets pollution from Route 1 though he was aware of that when he bought his house. He does not understand why the city cannot say 'no billboards' and include the definition which is all that is required.

Mr. Higgins stated emphatically that the current signs do not promote Milford but instead promote other communities where those businesses are located.

Mr. Connelly then added there was some discussion about allowing council some leeway to deny one billboard but approve another. He feels that is going back to where we are now and if it is that vague, we will end up back in court. The first time someone is denied after another has been approved, the city will be sued.

Mr. Baird said that is where the criteria, including height, size, location, lighting, etc., comes into play. He said there will be some subjectivity now as the Board of Adjustment exercised in the past. Under the conditional use process, city council has the right to impose conditions.

Mayor Rogers asked the pleasure of city council. He noted the planning commission has done a great deal of work though he has some concerns. He does not feel Milford has a problem with billboards adding the city only approved the Geyer billboard as well as the one north of Milford. The other two were approved through the county and came in through annexations. Though he understands the concern that a billboard could end up in someone's rear yard, he does not feel council will all that to happen.

Ms. Wilson recommended approving Ordinance 2009-22 and amending the 2,000 feet to 500 feet. After a brief discussion, Mr. Wilson moved to amend the 2,000 feet to 500 feet, seconded by Mr. Starling.

Mr. Baird then clarified the motion reduces the separation from any residential unit from 2,000 to 500 feet.

Ms. Wilson then withdrew her motion. She then changed the motion by reducing the distance of 2,000 feet to 1,000 feet from any residential unit, seconded by Mr. Starling.

Motion failed by the following 2-5 vote:

No-Johnson, Grier, Pikus, Brooks, Morrow

Yes- Starling, Wilson

Mr. Brooks voted no and recalled the former city manager stating in November of 2006 that no more billboards would be permitted in the City of Milford.

Noting the failed motion, Mayor Rogers then asked for action on the proposed ordinance.

Mr. Pikus moved to defer action on Ordinance 2009-22 asking for more clarification on state law and an opinion from the city solicitor to piggyback that law and allow appeals through the Board of Adjustment. Mr. Grier seconded the motion.

Mayor Rogers restated the motion to defer action to allow time to allow for clarification and implementation of the state law by the city solicitor.

Mr. Pikus added that with due respect to Chairman Rini and the planning commission, he feels we need to adopt an ordinance with a clearer explanation of the state law which will protect the city and the public which is the basis for the deferral.

Mr. Brooks said he prefers addressing these ordinances in a workshop session before it is presented for adoption by city council.

Motion carried by the following vote:

Yes-Johnson, Grier, Pikus, Brooks, Morrow, Starling
No-Wilson

Mr. Morrow votes yes but asks that we not linger too long noting the time spent already on this matter.

Ms. Wilson votes no stating there is no use deferring action to spend another two-hours discussing it and not making a decision. She prefers an amendment to the ordinance and finalizing it now.

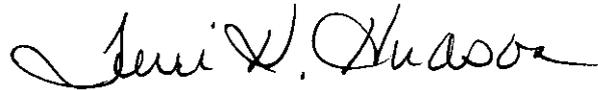
Mayor Rogers asked if council prefers meeting in workshop session to discuss this matter. Mr. Brooks feels that is the purpose of a workshop.

Mayor Rogers recommended it be discussed at the August workshop.

City Solicitor Willard stated he is willing to work with Mr. Pikus before it is added to another agenda. Mr. Pikus feels there are other council members who would also like some input.

With no further business, Mayor Rogers adjourned the Public Hearings at 8:13 p.m.

Respectfully submitted,



Terri K. Hudson, CMC
City Clerk/Recorder

Attachment-Sign Chart

Zoning Dist	Wall or Mailbox (residence/occupant ID)		Freestanding (mounted on posts(s))		Fascia: Commercial (wall, roof edge, etc) (of wall square feet)	Hanging/ Projecting (extended from wall) (square feet)	Marquee (movable letters)		Illuminated (non flashing)		EMB Sq Ft	Mobile (mounted, trailer, etc.)	Billboard (outdoor advertisement)	PROPOSED: Billboard	
	Ht	Sq Feet	Ht	Sq Feet			Ht	Sq Feet	Ht	Sq Feet				Ht	Sq Feet
	R-1	42"	2	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Prohibited	N/A	N/A	Prohibited
R-2	42"	2	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Prohibited	N/A	N/A	Prohibited	
R-3	42"	2	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Prohibited	N/A	N/A	Prohibited	
C-1	42"	2	48"	4	10%	15	48"	9	48"	4	Prohibited	N/A	N/A	Prohibited	
C-2	N/A	N/A	48"	4	10%	20	48"	9	48"	4	Prohibited	N/A	N/A	Prohibited	
C-3	N/A	N/A	28'	225	10%	20	10'	48	28'	225	32 and ratio of 4-8	N/A	N/A	32'	200 up to 400
H-1	N/A	N/A	25'	70	5%	N/A	N/A	N/A	25'	70	Prohibited	N/A	N/A	Prohibited	
OC-1	N/A	N/A	28'	225	5%	N/A	10'	48	28'	225	Prohibited	N/A	N/A	Prohibited	
I-1	N/A	N/A	28'	200	5%	N/A	10'	48	28'	200	Prohibited	N/A	N/A	Prohibited	
I-2	N/A	N/A	28'	200	5%	N/A	10'	48	28'	200	Prohibited	N/A	N/A	Prohibited	

MILFORD CITY COUNCIL
MINUTES OF MEETING
July 26, 2010

The Milford City Council met in Workshop Session on Monday, July 26, 2010 in the Joseph Ronnie Rogers Council Chambers of Milford City Hall, 201 South Walnut Street, Milford, Delaware.

PRESIDING: Mayor Joseph Ronnie Rogers

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

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

COUNSEL: City Solicitor Timothy Willard

The Workshop Session then convened at 8:13 p.m.

Recognition of Marine Lance Corporal Lee R. Folke

Mayor Rogers recalled a letter presented to council asking for recognition of U.S. Marine Lance Corporal Lee Folke who died last year. He asked council for suggestions.

It was asked what the protocol is in such cases. Mayor Rogers stated that he felt it would be appropriate to recognize him during the fall fling because it is a community event. He has discussed it with the VFW Commander who was willing to provide an honor guard and help plan a ceremony.

The mayor agrees the young marine deserves to be recognized noting he died at Camp Lejeune in North Carolina after returning from a tour of duty in Iraq.

Council agreed he should be recognized by the city and directed Mayor Rogers to continue with his plans. He will report back to council once everything is finalized.

Ward Redistricting Update

City Manager Baird recalled when the Charter Review Committee discovered an error in the ward placement of some land within the city.

Mr. Baird then read the following section from the City of Milford Charter:

Each district shall be formed of compact, contiguous territory, as nearly as rectangular as possible, and its boundary lines shall follow the center lines of streets or other natural boundaries or survey lines as required.

He explained this is the case with the exception of a territory in the city that involves properties on the southeast side of town beginning with Milford Moose Lodge, Meadows at Shawnee Subdivision, McColley, Dugan, Isaacs and Mills properties. All are shown in the third ward though they are not contiguous with the remainder of that district.

Mr. Baird explained we are trying to determine how best to correct this. He said it is not as simple as moving it into the correct ward because the wards need to be balanced as well. Therefore, consideration is being given to the number of registered voters and the number of parcels within each ward. He said we do not have accurate population counts because the census data is old and the new numbers are not yet available.

Options will be presented in August. We currently have a map showing registered voters in addition to a parcel count which will result in a couple of options on how to redraw the boundary lines.

The city manager then read into record the following procedure:

Procedure. The procedure for council's consideration of the report shall be the same as for other ordinances provided that the summary, including both the map and descriptions of the recommended districts, must be published in two newspapers of general circulation in the City of Milford no less than one month prior to its adoption.

The commission may, but is not required to establish five wards instead of four, with two councilpersons to be elected from each ward.

Enact Ordinance. Council shall adopt the ordinance at least six months before the next regular city election.

Mr. Baird announced the next city election is scheduled for Saturday, April 23, 2011. He said if council wishes to complete the redistricting before that election, the deadline to adopt the ordinance will be October 23, 2010.

He then continued to read:

Effect of Enactment. The new council district and boundaries, as of the date of enactment, shall supersede previous council districts and boundaries for all the purposes of the next regular city election, including nominations. The new districts and boundaries shall supersede previous districts and boundaries for all other purposes as of the date on which all councilpersons elected at the regular city election take office.

Mr. Baird then asked council to consider the process and suggested council discuss this among themselves and decide whether this should be completed before the 2011 election or if they prefer waiting until 2012. He said right now, he is moving forward under the auspice it be effective this year.

Mayor Rogers advised that because it has been determined this is not legal, it should be changed as soon as possible and asked why we would wait another year. Mr. Baird said he only wanted a consensus from city council to ensure everyone is moving on the same time schedule.

It was pointed out the committee reported this error prior to the last election and nothing was done at that time which could have created some potential problems during the election.

Mayor Rogers directed the city manager to proceed and realign the wards to ensure they are contiguous and legal. Solicitor Willard added that once the new census numbers are provided, the wards can again be addressed to ensure they are as balanced as possible.

Council agreed the redistricting work needs to continue and the realignment completed in time for the 2011 election.

With no further business, the Workshop Session concluded at 8:21 p.m.

Respectfully submitted,



Terri K. Hudson, CMC
City Clerk/Recorder

MILFORD CITY COUNCIL
MINUTES OF MEETING
July 26, 2010

A Meeting of Milford City Council was held in the Joseph Ronnie Rogers Council Chambers at Milford City Hall on Monday, July 26, 2010.

PRESIDING: Mayor Joseph Ronnie Rogers

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

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

Call to Order

Mayor Rogers called the Council Meeting to order at 8:21 p.m.

INVOCATION AND PLEDGE

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

Adoption of Resolution 2010-11/DEMEC Power Sales Contract/Generation Contract

Mayor Rogers recalled the July 12th meeting where DEMEC President and CEO Patrick McCullar presented a plan for a second generator at the Beasley Power Station in Smyrna. Mr. Baird explained this resolution will authorize DEMEC to proceed with the project and the mayor and him to exercise any authority on behalf of the city. Any modifications to the documents, as were presented by Mr. McCullar, will need to be brought back before council.

Mr. Pikus asked for clarification that if any of the members drop out, the contract would become null and void because the percentages would change. Mr. Baird answered there are seven municipality/members (with the exception of Lewes and Dover who do not purchase power through DEMEC) and each has been asked if they are interested in the second generator. Those seven charter members have first priority. If Lewes is added, some minor modifications will be made to the ownership ratio. The same will apply to Dover though they are not expected to participate because they have their own generating asset. Either scenario would change the plan considerably.

Mr. Brooks asked for an update on the status of the other seven members; Mr. Baird said he is unsure though they are proceeding with councils meeting and addressing the matter. The last count was that three or four of the seven were taking action with some decisions being made this week. However, his opinion is that all seven members will support the project.

Mr. Pikus moved for adoption of Resolution 2010-11, seconded by Mr. Morrow:

CITY OF MILFORD ("Project Participant")
2010-11
CONTRACT RESOLUTION

A RESOLUTION APPROVING A PROJECT TO BE UNDERTAKEN BY THE DELAWARE MUNICIPAL ELECTRIC CORPORATION; AUTHORIZING THE EXECUTION OF A POWER SALES CONTRACT BETWEEN THE CITY OF MILFORD AND THE DELAWARE MUNICIPAL ELECTRIC CORPORATION; AUTHORIZING THE REFUNDING BY THE DELAWARE MUNICIPAL ELECTRIC CORPORATION OF CERTAIN BONDS; AND AUTHORIZING OTHER MATTERS RELATED THERETO.

WHEREAS, the City of Milford (the "Project Participant") is a duly organized and validly existing political subdivision under the laws of the State of Delaware (the "State"), and particularly pursuant to its Charter, 57 Del. Laws Ch. 726, as amended (the "Charter"); and WHEREAS, the Delaware Municipal Electric Corporation ("DEMEC") is a municipal electric company incorporated in the State, established by certain cities and towns, and formed pursuant to Chapter 13 of Title 22 of the Delaware Code (the "Act"); and

WHEREAS, the Project Participant is a member of DEMEC, and by a resolution heretofore duly adopted by the Council, the Project Participant has duly authorized, executed and delivered the Agreement and Articles of Incorporation, dated as of July 9, 1979 forming DEMEC, and all amendments thereof and supplements thereto (the "DEMEC Joint Action Agreement"); and

WHEREAS, DEMEC is authorized and empowered under the Act and the DEMEC Joint Action Agreement, among other things, (i) to plan, develop, acquire, construct, reconstruct, operate, manage, dispose of, participate in, maintain, repair, extend or improve one or more electric projects (as defined in the Act); (ii) to issue its bonds, notes or other evidences of indebtedness to pay all or part of the costs of acquiring and developing such projects; and (iii) to exercise all other powers which may be necessary and convenient to effectuate the purposes of DEMEC; and

WHEREAS, DEMEC has previously undertaken a project consisting of the acquisition, development, construction and equipping of a peak power generating station in Smyrna, Delaware (the "Initial Project"); and

WHEREAS, DEMEC and the Project Participant have previously entered into a Power Sales Contract dated May 1, 2001 (the "Initial Power Sales Contract") whereby DEMEC agreed to sell and the Project Participant agreed to purchase the Project Participant's share of the electric energy and electric capacity of the Initial Project; and

WHEREAS, in order to finance the Initial Project, DEMEC issued its Electric Revenue Bonds, Series 2001, dated September 1, 2001, in the initial principal amount of \$34,790,000 (the "2001 Bonds") and pledged its right to receive payments from the Project Participant under the Initial Power Sales Contract to the trustee for the 2001 Bonds to secure payment on the 2001 Bonds; and

WHEREAS, DEMEC has determined to undertake a new project (the "New Project") consisting of the development, engineering, design and installation of a second generator at DEMEC's existing power generation station in Smyrna, Delaware, and all ancillary equipment necessary for the generation of up to an additional 67MW of nameplate capacity and certain other related capital improvements to benefit the Project Participant and certain other participating members of DEMEC (collectively, the "Project Participants"), all as more fully described in the Independent Engineer's Report (the "Engineer's Report"); and

WHEREAS, DEMEC will undertake and operate the New Project in order to supply Electric Capacity and Electric Energy (each as defined in the hereinafter mentioned New Power Sales Contract) to the Project Participant and to the other Project Participants contracting with DEMEC therefor, and will sell the Electric Capacity and Electric Energy of the New Project to the Project Participant pursuant to a New Power Sales Contract between DEMEC and the Project Participant (the "New Power Sales Contract") and pursuant to contracts substantially similar to the New Power Sales Contract with such other Project Participants (all such contracts are hereinafter referred to collectively as the "New Power Sales Contracts"). A draft of the New Power Sales Contract is attached hereto as Exhibit A; and

WHEREAS, in order to enable DEMEC to issue its electric revenue bonds, or bond anticipation notes (such bonds and notes are hereinafter referred to as the "Bonds"), to pay the cost of acquiring and constructing the New Project, it is necessary for DEMEC to have entered into the New Power Sales Contracts with the Project Participant and the other Project Participants, and to pledge such contracts and the payments required to be made in accordance with such contracts as security for the payment of such Bonds; and

WHEREAS, pursuant to Section 2.01 of the Charter and Section 1307(a) of the Act, the Project Participant has the authority to enter into the New Power Sales Contract, and by the adoption of this Resolution desires to authorize the execution of the New Power Sales Contract.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Project Participant as follows:

Section 1. Approval of New Project. The Project Participant hereby approves the New Project as described in the Engineer's Report, and requests DEMEC to undertake the New Project for the benefit of the Project Participants. A copy of the Engineer's Report has been reviewed by the appropriate officials of the Project Participant, including those sections of the Engineer's Report analyzing the capital and operating costs of the New Project.

Section 2. Authorization of New Power Sales Contract. The Project Participant hereby authorizes the execution of the New Power Sales Contract, and authorizes and directs the Mayor and the Clerk of the Project Participant to execute and acknowledge the New Power Sales Contract on behalf of the Project Participant. The New Power Sales Contract shall be substantially in the form presented to this meeting, which is hereby approved, subject to such changes and modifications as counsel may recommend and the Mayor of the Project Participant may approve, such approval to be conclusively evidenced by his/her execution thereof.

The Project Participant acknowledges that under the terms of the New Power Sales Contract, the Project Participant is obligated to make payments (the "Payments") for its share of all of DEMEC's Monthly Power Costs (including debt service on the Bonds, reserves for debt service, operating and maintenance expenses of the New Project and reserves therefor, the requirements of any rate covenant with respect to debt service coverage for the Bonds, and other amounts as set forth in the New Power Sales Contract) and all Monthly Transmission Costs of DEMEC properly allocable to the Project Participant irrespective of whether energy is produced or delivered to the Project Participant or whether the New Project is completed, operable or operating, and notwithstanding suspension, interruption, interference, reduction or curtailment of the output of the New Project, and shall not be subject to any reduction, whether by offset, counterclaim, or otherwise, and shall not be otherwise conditioned upon performance by DEMEC under the New Power Sales Contract or any other agreement or instrument or the validity or enforceability of any other New Power Sales Contract, or any other agreement between DEMEC and any other Project Participant. The Project Participant acknowledges that DEMEC's ability to issue the Bonds and finance the New Project depends on the inclusion of the above-described provisions in the New Power Sales Contracts. The obligation of the Project Participant to make Payments under the New Power Sales Contract shall not constitute a debt of the Project Participant or a general obligation of or pledge of the full faith and credit of the Project Participant, and the Project Participant shall not be obligated or compelled to levy ad valorem taxes to make the Payments provided for in the New Power Sales Contract.

The obligation to make Payments shall constitute an operating expense of the Project Participant's electric utility system payable solely from the revenues and other available funds of the electric utility system.

The Project Participant also acknowledges that under the terms of the New Power Sales Contract, if one or more of the Project Participants defaults in its payment of its obligations under its New Power Sales Contract, the Project Participant, together with all the other non-defaulting Project Participants, shall be required to accept and pay for the capacity and energy which was the obligation of the defaulting Project Participant.

Section 3. Authorization of Refunding of 2001 Bonds. The Project Participant hereby authorizes DEMEC to refund the 2001 Bonds if it can be demonstrated that debt service savings can be achieved by refunding the 2001 Bonds, after taking into account any necessary costs associated with refunding the 2001 Bonds. If the determination is made by DEMEC to refund the 2001 Bonds, the Project Participant acknowledges the refunding bonds (the "Refunding Bonds") will be considered "Bonds" under either the Initial Power Sales Contract or the New Power Sales Contract, and agrees to include payments for debt service on the Refunding Bonds in its required payments under either the Initial Power Sales Contract or the New Power Sales Contract, as the case may be.

Section 4. Certificate of Project Participant. Attached hereto as Exhibit B is a Certificate of the Project Participant which must be executed and delivered to DEMEC upon the execution of the New Power Sales Contract. The Council hereby finds that the information set forth in said Certificate is true and correct and authorizes and directs the Mayor and the Clerk to execute said Certificate and deliver it to DEMEC upon execution of the New Power Sales Contract, and any "bring-down" certificate required upon the issuance of the Bonds. A similar certificate is authorized in the event Refunding Bonds are issued.

Section 5. Authorize Other Action. The Project Participant hereby authorizes the Mayor and the Clerk to take all other action and sign any other documents or agreements necessary or appropriate to cause the New Project to be completed, the Bonds to be issued, and the 2001 Bonds to be redeemed and the Refunding Bonds to be issued (if so determined), all as contemplated by this Resolution.

Section 6. Confirm Appointment to DEMEC Board of Directors. The Project Participant hereby confirms the appointment of David Baird as the Project Participant's member on the Board of Directors of DEMEC.

Section 7. Effective Date. This Resolution shall go into effect immediately upon its adoption by Council.

Dated July 26, 2010

Motion carried by unanimous roll call vote.

Mr. Baird confirmed the City of Milford electric rates remain the third lowest residential rate in the State of Delaware.

Executive Session

Mr. Morrow moved to go into Executive Session pursuant to 29 Del. C. §10004(b)(2) preliminary discussions on site acquisitions for publicly funded capital improvements, seconded by Mr. Pikus. Motion carried.

Mayor Rogers recessed the Council Meeting at 8:29 p.m. to go into a closed session.

Return to Open Session

Council returned to open session at 8:40 p.m.

No action required.

ADJOURN

Mr. Pikus moved to adjourn the Council Meeting, seconded by Mr. Grier. Motion carried.

Mayor Rogers adjourned the Monthly Council Meeting at 8:41 p.m.

Respectfully submitted,



Terri K. Hudson, CMC
City Clerk/Recorder