

MILFORD CITY COUNCIL
MINUTES OF MEETING
July 22, 2013

Milford City Council held Public Hearings on Monday, July 22, 2013 in the Joseph Ronnie Rogers Council Chambers at Milford City Hall, 201 South Walnut Street, Milford, Delaware.

PRESIDING: Mayor Joseph Ronnie Rogers

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

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

COUNSEL: Assistant City Solicitor James Sharp, Esquire

Mayor Rogers called the hearing to order at 7:02 p.m.

*Wes Cromer on behalf of Harriet S. Miller
Minor Subdivision
23 McCoy Street/25 McCoy Street/800 Dixie Avenue
Tax Map 3-30-10.12-54.00*

City Planner Norris explained this subdivision involves one parcel with three houses that were built prior to the adoption of the zoning ordinance. The subdivision will allow three separate parcels.

An application was submitted to the Board of Adjustment and a hearing held on June 13th to decide on the following variances:

Minimum interior lot area shall be 10,000 square feet; minimum corner lot area shall be 13,000 square feet. Request is to decrease interior lot size to 6,337 square feet; decrease corner lot size to 11,315 square feet; Minimum lot width shall be 80 feet. Request is to decrease lot width to 60.12 feet; Lots shall have two side yards with a minimum of 12 feet each. Request is to decrease side yards to 4.2 feet.

The Board of Adjustment recommended the planning commission consider the subdivision; the subdivision went to the planning commission who recommended approval. Mr. Norris agreed with the recommendation.

It was noted that a similar minor subdivision was approved for the applicant's sister, though it only involved two homes. All of these homes were previously owned by Benjamin Orkin.

No one from the public commented.

Mr. Morrow moved for approval of the minor subdivision, seconded by Mr. Brooks. Motion carried with Mr. Pikus abstaining for personal reasons.

*Shore Speed LLC on behalf of Legal Owner Milford Associates
Conditional Use to allow an Indoor Recreational Facility
971 East Masten Circle
Tax Map MD-16-183.00-01-04.00*

*Adoption/Ordinance 2013-04
Shore Speed LLC on behalf of Legal Owner Milford Associates for a Conditional Use*

City Planner Norris advised the zoning of the location is I-1 that requires conditional use approval for an indoor recreation

facility.

He reported that the City Planning Commission discussed this at length on June 18th. The matter was resolved by a vote of 4-3 to recommend the conditional use with the following conditions:

1. Alcohol is prohibited on site.
2. Audio and visual security camera footage must be kept on file for six weeks.
3. The use must remain compliant with the Code of the City of Milford §230-18 D (4).
4. Fire Marshal occupancy load approval is received prior to building permit issuance.
5. Striped parking for 120 vehicles is provided.
6. Security personnel will patrol the outside of the facility between 4:00 p.m. and close of business.
7. The hours of operation are 10:00 a.m. until 11:00 p.m..

Mr. Clarence Edgens, owner of Shore Speed stated they have complied with all recommendations of the planning commission. They have been in touch with the fire marshal through Kent County and are having everything inspected and addressed.

Mr. Grier asked if Mr. Edgens feels the conditions are fair and reasonable; Mr. Edgens stated yes adding the fire marshal rated their building for a little over than 300 occupancy. He told him if they ever had 300 people, he was willing to do whatever they wanted. He said parking will be close though they have an area out back to park. He said the owners of his building also own the property across the street. If they ever had a big event, he could lease their property.

They had planned on cameras in their original plans. The cameras will allow him to keep in touch with everyone and everything that is occurring.

Mr. Edgens said they are strictly against any alcohol on the property. His intent is to make this a family-oriented business. He does not want it to appeal to only one group of people and encourages family entertainment.

Ms. Wilson asked what audio security means; Mr. Edgens said he is unsure if they really need the audio. The planning commission recommended recording what was being said outside. He is not totally committed to that though he will abide by their requirements. He does feel it may be a little intrusive.

Mr. Norris explained that at the planning commission hearing, a representative of Dentsply Caulk was in attendance. Dentsply Caulk owns the adjoining property. They were extremely concerned about a variety of things because Dentsply Caulk stores hazardous chemicals at their facility. The concern is the possibility of patrons from this business trespassing onto their property.

Mr. Grier said they were concerned about people's conversation; he feels that may be too much.

It was agreed it would take some sophisticated equipment to pick up the audio in an outside setting. Mr. Carmean said he and Chief Hudson discussed the matter and are sure IT Manager Wes Banasan would agree.

Mr. Pikus said he believes the Caulk building is completely secured; Mr. Norris said it is fenced but the representative explained the gates are open for deliveries at various times in the evening. He reiterated her concern was the possibility of patrons walking onto their property especially at night.

Mr. Pikus asked if hazardous material is required to be secured.

Planning Commission Chairman Jamie Burk was present and said he asked the same question. He explained the commission actually had to come to two votes because it was split down the middle. He had to make the deciding vote to move forward because he did not want the matter tabled.

Mr. Burk further explained that Caulk has had problems with past, disgruntled employees which does not have anything

to do with the applicant. The Director of Business and New Product Development stated they have gates they can keep closed though that is not always the case especially when expecting deliveries.

The planning commission chairman agreed with the city planner that Caulk did have concerns over the possibility of teenagers congregating or flowing over and into the Caulk parking lot. Some commissioners wanted the police involved to determine if they had any objection.

Mr. Burk thought they had the ability at the time to take it to a vote which is how it ended up a 4-3 vote.

He is also unsure how they could place boom mics shooting out into the parking lot. Mr. Burk said it will be difficult to hear and someone would need to constantly monitor it. That is the concern though he voted in favor of it.

When asked if that was the only concern, Mr. Burk stated he did not think there would be any concerns until a representative from Caulk came in and discussed the volatile chemicals and problems with security. He asked if they had amended their security after having internal problems and they had not.

Mr. Burk said the building is across the street and a person would have to walk around the chainlink fence to the front entrance. He feels for teenagers to run around the building and come in the front is unlikely in his opinion. He added there is already a hotel and Popeye's up front. He was unable to get them to admit there are problems other than internal problems with that property.

Mr. Edgens reported they met with the engineer from Caulk. Once they explained they will keep a close eye on things, he had no problems.

Mr. Grier made a motion to approve the conditional use for Speed Shore LLC on behalf of Milford Associates with the following conditions eliminating the audio security requirement, seconded by Ms. Wilson:

1. Alcohol is prohibited on site.
2. Visual security camera footage must be kept on file for six weeks.
3. The use must remain compliant with the Code of the City of Milford §230-18 D (4).
4. Fire Marshal occupancy load approval is received prior to building permit issuance.
5. Striped parking for 120 vehicles is provided.
6. Security personnel will patrol the outside of the facility between 4:00 p.m. and close of business.
7. The hours of operation are 10:00 a.m. until 11:00 p.m..

Motion carried.

Mr. Grier then moved to adopt Ordinance 2013-04, as amended, seconded by Mr. Pikus:

Ordinance 2013-04

Shore Speed LLC on behalf of Legal Owner Milford Associates for a Conditional Use

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILFORD, DELAWARE APPROVING A CONDITIONAL USE TO ALLOW AN INDOOR RECREATIONAL FACILITY (VIDEO GAMES, ROCK CLIMBING WALL AND INDOOR ELECTRIC GO KART TRACK) IN AN I-1 DISTRICT AT 971 EAST MASTEN CIRCLE, MILFORD, DELAWARE. TAX PARCEL MD-16-183.00-01-04.00

Whereas, the City of Milford Planning Commission reviewed the application at a Public Hearing on June 18, 2013 and has presented item to be considered by the City Council; and

Whereas, Milford City Council held an advertised Public Hearing on July 22, 2013 to allow for public comment and review of the application; and

Whereas, it is deemed in the best interest of the City of Milford to allow a Conditional Use for an Indoor Recreational Facility as herein described.

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

Section 1. Upon the adoption of this ordinance, Shore Speed LLC on behalf of Legal Owner Milford Associates is hereby granted a Conditional Use Permit in accordance with the application, approved plans and conditions set forth.

Section 2. Construction or operation shall be commenced within one year of the date of issuance or the conditional use permit becomes void.

Section 3. Dates.

Adopted 07-22-13

Effective 08-01-13

Motion carried.

With no further business, the hearing portion of the meeting was adjourned by Mayor Rogers at 7:17 p.m.

Respectfully submitted,

A handwritten signature in black ink that reads "Terri K. Hudson". The signature is written in a cursive style with a large, looping initial "T".

Terri K. Hudson, MMC
City Clerk/Recorder

MILFORD CITY COUNCIL
MINUTES OF MEETING
July 22, 2013

A Meeting of Milford City Council was held in the Joseph Ronnie Rogers Council Chambers at Milford City Hall on Monday, July 22, 2013.

PRESIDING: Mayor Joseph Ronnie Rogers

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

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

COUNSEL: Assistant City Solicitor James Sharp, Esquire

CALL TO ORDER

Mayor Rogers called the Council Meeting to order at 7:17 p.m.

INVOCATION AND PLEDGE

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

RECOGNITION

No special guests were in attendance.

COMMUNICATIONS & CORRESPONDENCE

Assistant City Solicitor James Sharp/FOIA Concerns

Assistant Solicitor Sharp referenced an e-mail that was circulated regarding a meeting on July 31st. He reminded council that if there are any possibilities of a potential quorum of city council, committee, board of anything similar, that is considered a public body in which the public meeting requirements apply under the Freedom of Information Act (FOIA).

He explained that in a small town like Milford it is common for people to run into each and talk. However, council needs to be very careful of that going forward. There have been recent decisions from the state attorney general's office regarding incidents in other towns where the attorney general has taken a strong stance and has become much more interested and vested in FOIA issues. He asked this be considered in councils' service because it could invalidate decisions that are made or not done in the proper setting.

Mr. Sharp noted that the FOIA statute excludes the general assembly. County councils and municipal councils, including any committees, ad hoc, etc. has to operate differently than the general assembly. Because of that, everything must needs to be out in the open.

He emphasized that the attorney general's office has recently come down very hard on a few towns.

Mr. Pikus asked what is required under FOIA; Mr. Sharp explained that if a meeting is planned and there ends up being a quorum of any group (committee, subcommittee), that will trigger FOIA. Council needs to be extremely caution. The law states that a meeting applies to a formal or "informal" gathering of the members of any public body where something will be or has been discussed or voting occurred. He stressed that even if there is an informal meeting and there is the potential for a quorum of a public body, which does not necessarily mean a quorum of the entire council, that triggers

notice requirements and record keeping. He also warned council that discussions involving public business must be on record to allow public awareness.

Mr. Pikus asked if an agenda must be made. For example, a councilperson cannot just have a meeting to talk about anything. Ms. Hudson clarified that the topics being discussed must be listed. Mr. Sharp agreed and cited examples such as improvements to the water system, sewer upgrade, etc. The items being discussed need to be itemized. He said we must be very vigilant about that because that is one of the things the attorney general's office is addressing on a regular basis. The specificity of the discussion needs to be on the agenda.

He had talked about this with City Solicitor Rutt and they had considered holding a workshop where this can really be explored to educate council along with any other city boards, the general public and whoever else would like to attend.

Mr. Brooks recalled in the past he and other council members used to hold ward meetings on a regular basis. It then got to the point that an agenda had to be prepared and minutes taken. Mr. Pikus agreed that an agenda is needed listing only the items being discussed.

Ms. Wilson asked about the upcoming meeting.

Mr. Shupe explained that this was his idea. He agrees a lot of people don't come to the meetings on Monday night or have a chance to talk to their city council representative. He wanted to move the meeting to the public and the upcoming topic is the review of the Route 1 and Route 30 Overpass. DeIDOT officials will be in attendance. There is nothing for council to decide or vote on but instead is providing public information.

Assistant Solicitor Sharp advised that though no action will be taken, it still falls under FOIA. He reiterated the law defines a meeting as a formal or informal gathering of a public body for discussions.

He confirmed that a meeting with one councilperson does not fall under FOIA.

Mr. Pikus asked if DeIDOT is exempt from FOIA; Mr. Sharp explained that DeIDOT is not a legislative body.

Ms. Wilson confirmed that Mr. Shupe is the facilitator at the meeting. Mr. Grier pointed that with Mr. Shupe hosting the meeting, there is the potential for a quorum of some committees. He also plans to attend. Ms. Wilson and Mr. Starling were both unaware of the meeting.

Mr. Sharp emphasized there could be an issue with both ward representatives attending, the possibility of a quorum of a committee and the possibility the discussion could eventually end up on the council floor. It is slippery slope and at some point you cross the line where it becomes a public meeting. There are many potentials and he would rather be safe than later sorry. He said that something with a well intention can often leads to FOIA problems.

Ms. Wilson pointed out that council was always advised not to make a comment if they attended a planning commission public hearing because it would then come before council.

Mr. Shupe said it is discouraging that he is unable to reach out to his constituents noting that Mr. Brooks had to stop having ward meetings because of the requirements. Ms. Wilson said they continued to have meetings but had the city clerk always post an agenda. The meetings were always recorded and minutes were taken.

Mr. Brooks asked how FOIA applies to Delaware League meetings, SCAT meetings and other events where a quorum of council members could attend. Mr. Sharp asked if a public matter is being discussed; Mr. Brooks said most times yes.

Mr. Sharp said that could be questioned. In this case, the meeting is being hosted by a council person where discussions will take place that could impact the constituents in this city. He said at what point does something fit or not fit within

FOIA; he said it sometimes depends on interpretation. He is on an e-mail server with other municipal attorneys where they discuss various cases and potential effects on municipalities. There are always a variety of opinions. However, that does not mean the attorney general or a judge will agree. He emphasized there are opinions out there that must be taken seriously because the attorney general's office would be the one prosecuting the matter.

Mr. Sharp said he feels a lot of these questions can be answered at a workshop. In that manner, council would have a clearer understanding of what the law involves.

Mr. Shupe asked what Mr. Sharp recommends to 'keep ourselves safe' until council is able to review the matter. Mr. Sharp stressed to council that they always err on the side of caution whenever a 'gathering' is planned. Treat it as though it is a public meeting with the proper notice, record keeping, etc. He emphasized that FOIA is not only enforced when action or voting takes place, but specifically states it applies to discussions. In regard to a quorum, if both ward representatives or a quorum of any committee shows up, that is considered a public body.

It was confirmed that the July 31, 2013 meeting does fall under FOIA with a notice and record keeping required.

Mr. Shupe said his thought is we always see the people that show up for the meeting, but council also needs to go to the people instead of making them always coming to council.

UNFINISHED BUSINESS

Lease Agreement/Milford Boys and Girls Club/Parks & Recreation

The city manager reported that Parks and Recreation Director Gary Emory called and asked if he had to attend the meeting tonight or if Mr. Carmean could handle. Mr. Carmean agreed to handle the matter.

It was noted that the agreement contains some minor changes in the prices. Mr. Carmean said that though this agreement assists the Boys and Girls Club with their expenses, we also have the ability to have gymnasium type activities for our children. This is the only venue available at this time.

He recommends we sign the new agreement.

Mr. Pikus confirmed that the funding to pay this will come out of the enterprise account which pays for itself; Mr. Carmean stated yes.

Mr. Brooks moved for approval of the Boys and Girls Club lease as presented, seconded by Mr. Starling. Motion carried by unanimous roll call vote with Mr. Shupe abstaining due to his position as President of the Boys and Girls Club.

Abandonment of W. Clarke Avenue Right-of-Way (Everett Roberts)/Adoption of Resolution 2013-15 Abandonment of Evans Street Extended Right-of-Way (Seawatch)/Adoption of Resolution 2013-16

Mr. Carmean reminded council that Everett (Harold) Roberts had requested the city turn over what appears to be his driveway though it is actually an extension of Clarke Avenue. At one point, it appears there were plans to extend West Clarke Avenue into the Lakelawn Estates subdivision.

The city manager told Mr. Roberts that in the past, adjoining property owners had the ability to take a portion of the property. He asked him to speak with Henry Saunders who is the adjoining property owner on the other side. Mr. Saunders provided a letter of no objection.

In addition, the Seawatch abandonment involves Evans Street, which extends from Route 36 East to Rehoboth Boulevard. The portion being vacated jumps over Rehoboth Boulevard and actually extends into the Seawatch' property. Seawatch owns all lands surrounding the property.

Mr. Carmean said that because the city had no ordinance in place to address abandonments, City Solicitor Rutt petitioned the court for both streets.

Assistant Solicitor Sharp explained that the petition has not yet been filed, but will be once these formal resolutions are adopted by city council. He said they will proceed with filing the petition in court to abandon the roadways.

He briefly explained that process, noting after the petitions are filed and the advertising and posting requirements are accomplished, there will be a Show of Cause hearing scheduled where anyone against the vacation will have an opportunity to voice that objection. If that does not occur, he believes the order will be entered and the petitioners can move forward with the process.

Mr. Pikus moved to adopt Resolution 2013-15, seconded by Mr. Gleysteen:

A RESOLUTION TO VACATE OR ABANDON THE WEST CLARKE AVENUE RIGHT OF WAY AND STREET BED ON THE NORTHWEST SIDE OF LAKEVIEW AVENUE, BEING IN THE CITY OF MILFORD, SUSSEX COUNTY, DELAWARE

WHEREAS, the City of Milford owns and maintains the right of way and street bed of West Clarke Avenue as it lies between 501 and 409 Lakeview Avenue; and

WHEREAS, said West Clarke Avenue was intended to connect Lakeview Avenue to future development; and

WHEREAS, when the area of the City of Milford known as Lakelawn Estates was developed there were no through or connector streets to West Clarke Avenue; and

WHEREAS, West Clarke Avenue now is an unimproved street that serves no public purpose and is used exclusively by the owners of 409 Lakeview Avenue, to wit, Harold E. and Mary L. Roberts, for ingress and egress, and by the owner of 314 Lakelawn Drive, to wit, Jean Chodkowski, for a shed; and

WHEREAS, the owner of the remainder of the property adjacent to West Clarke Avenue, to wit, Henry S. Saunders, Jr., has no objection to the vacation or abandonment of said street and has agreed to relinquish any ownership rights he may have to said Roberts and Chodkowski; and

WHEREAS, said Harold E. and Mary L. Roberts, and said Jean Chodkowski desire to have the City of Milford declare West Clarke Avenue vacated or abandoned and to have title thereafter to said area encompassed by the abandoned street vested in them respectively.

NOW, THEREFORE, BE IT RESOLVED that upon approval of the vacation or abandonment of said West Clarke Avenue, and the payment of all fees and costs thereof, the Mayor of the City of Milford shall be authorized to execute any instruments of conveyance necessary to transfer title to the property.

BE IT FURTHER RESOLVED that the City of Milford, by and through its City Council and Mayor, hereby authorize the City Manager and City Solicitor to proceed with the process of vacation or abandonment of the portion of West Clarke Avenue herein described pursuant to 17 Del.C., Chapter 13.

BE IT FURTHER RESOLVED that the cost of this vacation or abandonment of West Clarke Avenue shall be borne by the adjacent property owners who shall acquire title proportionately to the interest in the property received.

Motion carried.

Mr. Pikus moved to adopt Resolution 2013-16, seconded by Mr. Brooks:

A RESOLUTION TO VACATE OR ABANDON THE EVANS STREET RIGHT OF WAY AND STREET BED ON THE WEST SIDE OF SOUTH REHOBOTH BOULEVARD, BEING IN THE CITY OF MILFORD, SUSSEX COUNTY, DELAWARE

WHEREAS, the City of Milford is the designated owner of the right of way and street bed of Evans Street as it lies on the west side of South Rehoboth Boulevard; and

WHEREAS, said Evans Street is used exclusively by Sea Watch International Ltd. for ingress and egress to its commercial facility from South Rehoboth Boulevard; and

WHEREAS, Evans Street is not a through street and is surrounded on all sides by property owned in fee by Sea Watch International Ltd. but for its connection with South Rehoboth Boulevard; and

WHEREAS, Sea Watch International Ltd. had exclusive use by its own right or through predecessors in interest to its property for more than twenty (20) years and has had at all times maintained said Evans Street; and

WHEREAS, Evans Street serves no public purpose and is unimproved but for improvements made by Sea Watch International Ltd.; and

WHEREAS, Sea Watch International Ltd. desires to have the City of Milford declare Evans Street vacated or abandoned and to have title thereafter to the area encompassed by Evans Street on the west side of South Rehoboth Boulevard vested in Sea Watch International Ltd.

NOW, THEREFORE, BE IT RESOLVED that upon approval of the vacation or abandonment of said Evans Street, and the payment of all fees and costs thereof, the Mayor of the City of Milford shall be authorized to execute any instruments of conveyance necessary to transfer title to the property.

BE IT FURTHER RESOLVED that the City of Milford, by and through its City Council and Mayor, hereby authorize the City Manager and City Solicitor to proceed with the process of vacation or abandonment of the portion of Evans Street herein described pursuant to 17 Del.C., Chapter 13.

BE IT FURTHER RESOLVED that the cost of this vacation or abandonment of Evans Street shall be borne by Sea Watch International Ltd. which shall acquire title to the property.

Motion carried with Mr. Morrow abstaining due to being employed by Sea Watch International Ltd.

NEW BUSINESS

No new business to discuss.

ADJOURN

Motion to adjourn the meeting was made by Mr. Pikus, seconded by Mr. Grier. Motion carried.

The Council Meeting adjourned at 7:43 p.m.

Respectfully submitted,



Terri K. Hudson, MMC
City Clerk/Recorder

MILFORD CITY COUNCIL
MINUTES OF MEETING
July 22, 2013

The City Council of the City of Milford met in Workshop Session on Monday, July 22, 2013 in the Joseph Ronnie Rogers Council Chambers of Milford City Hall, 201 South Walnut Street, Milford, Delaware.

PRESIDING: Mayor Joseph Ronnie Rogers

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

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

COUNSEL: Assistant City Solicitor James Sharp, Esquire

The Workshop Session convened at 7:43 p.m.

The following proposed fee change was presented for a determination by council on whether or not to proceed:

Amendment to Planning & Zoning Fee Schedule (Proposed)

- A. Planning, Zoning and Engineering Fees:
1. Site Plan: \$700.
 - a. Amendments to a Site Plan: \$100
 2. Subdivision:
 - a. Minor residential: \$300 plus \$50 per unit
 - b. Minor commercial or industrial, less than four acres: \$500 plus \$100 per lot
 - c. Major residential: \$1,000 plus \$10 per unit
 - d. Major commercial or industrial, in excess of four acres: \$1,000 plus \$100 per lot
 3. Conditional Use: \$700
 - a. Amendment to a Conditional Use: \$700
 4. Variance/Board of Adjustment Hearing:
 - a. Residential: \$300.
 - b. Commercial/industrial: \$1,000.
 5. Change of Zone: \$1,000 plus \$100 per acre.
 6. Commercial Maintenance Agreement: \$500.
 7. Interpretations of Subdivision or Zoning Code: \$300.
 8. Application Resubmission or Rescheduling Fee (required with each resubmission as a result of a revised design or a request for change in public hearing date): ~~\$100~~: \$200.
 9. Annexation.
 - a. Residential, less than one acre: \$350
 - b. Residential, one acre to five acres: \$2,500
 - c. Residential, in excess of five acres: \$2,500 plus \$100 per acre
 - d. Commercial: \$2,500 plus \$500 per acre
 10. Zoning Inspection.
 - a. Proposed use: \$200.
 - b. Violation of use: \$200 for first visit; \$500 for each subsequent visit.
- B. Land Use Planning Review Fees:
Owner/Applicant shall be responsible for any and all professional service costs associated with their project, if deemed necessary, plus an additional 10% to cover city administration costs. These costs will be billed as encumbered.
- C. Engineering Review Fees:

1. Preliminary Major Subdivision: \$500.
2. Final Major Subdivision: \$1,500.
3. Final Minor Subdivision: \$500.
4. Final Site Plan, 0 to 5,000 square foot building: \$250.
5. Final Site Plan, over 5,000 square foot building, add \$250 for each additional 5,000 square feet.
6. Sewage Pump Station: \$1,500.
7. Revisions: \$100/sheet per revision.

Owner/Applicant shall be responsible for any and all professional service costs associated with their project, if deemed necessary, plus an additional 10% to cover City administration. These costs will be billed as encumbered.

- D. Project Management and Infrastructure Inspection Fee: ~~Four percent of any infrastructure improvement construction costs to include stormwater management, drainage, sanitary sewer and water systems, roads, curb, gutter and sidewalks, and other related systems shall be paid by the owner/developer.~~ Owner/Developer shall be responsible for any and all direct costs for construction phase services related to construction of any infrastructure improvements including but not limited to stormwater management, drainage, sanitary sewer and water systems, roads, curb, gutter and sidewalks and other systems that are to be dedicated to the City and/or impact the City's infrastructure.
- E. Construction Fees:
Any constructions fees (i.e., grading, curbing, gutter, subbase, traveling surface, sidewalks, etc.) incurred by the City relative to the development of any property shall be paid by the owner/developer.
- F. Subdivision Agreement: \$2,500 per agreement.
- G. Alley or Street Closing Petition: ~~\$300.~~ \$750.
- H. Subdivision and Specifications Manual: \$30.
- (O). ~~Zoning Code Manual: \$30.~~

Mr. Carmean explained that operationally, the city is taking a big hit on the fees on subdivisions and development. There has been very little occurring in recent years, so it was not necessary to look at. But in the last year things are picking up. He feels that developers should have to pay for inspections and other associated fees, whether it is engineering, planning or any other related service.

We just had a recent experience where the fee was \$300 and the overall costs were more than \$1,500.

The recommended changes are in red. The fees cover anything from annexation to zoning inspections, major and minor subdivisions and the costs of the reviews.

Mr. Retzlaff then explained that because the fees were adopted in 2008, he recommended they be reviewed. His main concern is the reduction in city staff, and in particular, there is no longer an in-house utility inspector or city engineer. The resolution is being changed to protect the city's interest by recouping fees that the city is currently paying.

He explained that if something needs to be inspected, this makes the builder/developer responsible for those inspection fees. When plans are submitted that need to be reviewed, the builder/developer pays for those review fees. If multiple plans are submitted, Mr. Retzlaff feels that should no longer be at the city's expense. Overall, this is covering any direct costs being incurred by the city.

Mr. Carmean referenced the 10% surcharge that was added. At first he questioned it and felt they should just be charged what it costs the city. Then Mr. Retzlaff pointed out that other communities have similar requirements. Mr. Carmean then agreed that both the public works director and himself spend a lot of times on applications. For example, Mr. Carmean is very involved in annexations. As a result, he feels the 10% fee is appropriate.

Mr. Gleysteen asked that because the fee structure itself is not changing, when does it become an overrun and the developer would begin to pay those costs. Mr. Carmean explained the developer will be told they will be billed and invoiced at the cost of the listed items. For example, if the cost is \$350 and the bills are over that amount, we will bill

the difference. The inspector will be on the clock and the developer will cover those costs. In some cases it could be less though that rarely happens.

Mr. Gleysteen then referenced the site plan cost of \$700 and asked what would make the cost overrun to the point we would bill the developer for the difference. Mr. Carmean said the developer will know there is a cost of \$50 per unit for a subdivision; however, there can be unexpected land use review fees involving professional services, and in particular engineering. The developer would then be billed for those costs.

Mr. Pikus asked if that is over and above the initial fee; Mr. Carmean said yes. Mr. Pikus agrees the city needs to recover its costs. We cannot continue providing services that are more than the amount we are taking in.

Mr. Carmean referenced the annexation fee stating those type fees are not the problem. It occurs when we have large site plans and engineering is required. Their engineers bring the plans to us and because we do not have a city engineer, we get DBF to review the developer's engineering to ensure it meets our requirements.

He explained we do not know at the time of the application what that fee will be and how much time will have to be put into the application.

Mr. Retzlaff reported that the primary concern is that the majority of engineering plans received do not meet Milford's design standards. When the comments are issued stating the plan does not meet the code, they resubmit the plan and may only address half of the comments. They only pay for one submission and many times, there are multiple engineering reviews that the city pays for. The developer is saving on their engineering costs by using a lesser quality engineer while there is still a need for a review by the city engineer.

Mr. Carmean agreed the real problem is the engineering review fees. He reiterated that annexation fees are no problem nor are minor subdivision fees. Those fees will stay the same. The issue involves the costs outlined in items C, D and E which are typically hourly fees. For example, the subdivision fee of \$2,500 will remain the same because that is not something that requires anything other than an administrative look and check. The whole subdivision issue is where we are having this problem. For example, the review fee for \$500 for a preliminary major subdivision is not even close to being accurate most of the time. That is where our concerns are. He said the fees in the beginning of the resolution will stay as they are now.

Mr. Pikus referenced the \$300 fee for an alley/street closing petition; he asked if that is the cost of a developer who petitions the city to close a street. Mr. Carmean said the \$300 fee is charged to anyone who requests a street/alley be abandoned or taken over. Mr. Pikus said he does not believe that \$300 would come close to covering the associated fees particularly after listening to the procedure that Assistant City Solicitor Sharp earlier described. By the time you pay your attorney fees and court costs, it will not even come close.

Mr. Carmean said this gives us the right to bill the additional costs and 10%.

Mr. Retzlaff emphasized that this change addresses the specific items outlined though it does not affect item G.

Mr. Retzlaff continued by stating the big changes in item B gives the city the authority to collect any fees that exceed the dollar amounts received up front.

Mr. Grier pointed out this is an incentive to get everything done correctly with the first submittal. Ms. Wilson agreed but noted that if their engineer completes things haphazardly, they would have to pay the additional costs.

Mr. Grier said that when someone picks up an application, they need to be warned that the plan needs to be done right the first time to prevent any additional costs.

Mr. Carmean agreed, stating if someone comes in with a site plan, there is an initial cost of \$700. If more time is involved

on the site plan, we will bill the additional costs.

In reference to items C and D, we are not going to take a review fee of \$500, but instead will bill the cost of real time and money. The city manager further noted that the fees listed in items 1-10 will cover those costs for the most part.

He asked council to contact him with any additional questions.

Assistant Solicitor Sharp said this will require a slight change to the zoning ordinance due to the title change referenced in that code.

Mr. Retzlaff questioned whether this was a change to the code; he said the code only refers to a resolution that is kept on file with the city clerk. He explained the zoning code states the planning and zoning fees are established through a resolution that is kept on file with the city clerk. That allows an easy adjustment to the fees without going through an ordinance amendment.

Mr. Sharp read the section that states the planning and zoning fees shall be set by resolution by city council and are maintained by the city clerk's office. He advised that what is proposed is we keep this in place and do a resolution which will amend the ordinance from 2008. He said the benefit by handling in that manner is that when the fees become outdated, the resolutions can be updated versus the entire code.

Mr. Carmean said we will follow up on this in the near future.

Public Works Committee Meeting

It was confirmed that Mr. Brooks, Mr. Gleysteen and Mr. Shupe are members of the committee. The members then scheduled a Public Works Committee meeting for Monday, August 5, 2013 at 7:00 p.m.

When asked the items on the agenda, Mr. Carmean said he wants to discuss with the committee the revolving water fund and whether to move forward with the borrowing. That is the main topic though a few other projects maybe added. Any member that wants an item added, should let him know.

Mr. Brooks said one of the reasons he asked for this meeting is because Mr. Shupe is a new councilman and he would like for him to understand what the Public Works Committee does. He said that Mr. Gleysteen was on the committee two years, though he believes he may have only attended a couple meetings.

Adjourn

With no further business, the Workshop Session concluded at 8:11 p.m.

Respectfully submitted,



Terri K. Hudson, MMC
City Clerk/Recorder