

*MILFORD CITY COUNCIL*  
*MINUTES OF MEETING*  
*April 27, 2009*

The City Council of Milford met in Workshop Session on Monday, April 27, 2009 in the Joseph Ronnie Rogers Council Chambers of Milford City Hall, 201 South Walnut Street, Milford, Delaware.

PRESIDING: Mayor Daniel Marabello

IN ATTENDANCE: Councilpersons Irvin Ambrose, Michael Spillane, John Workman, James Oechsler, Jr. Owen Brooks, Jr., Douglas Morrow, Sr., 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 Marabello convened the Workshop Session of City Council at 8:42 p.m.

*Central Delaware Economic Development Council-Dan Wolfensberger*

The city manager advised that Mr. Wolfensberger indicated there may be a possible conflict with the date of this meeting; therefore, Mr. Baird will reschedule the matter for the May workshop.

*Hearthstone Site Inspection-Time Line*

Mr. Spillane confirmed that Davis, Bowen and Friedel was hired to inspect at Hearthstone and asked if they submitted any of their paperwork; Mr. Baird said the fact they had done the work had never been in question; we do not have the paperwork.

Mr. Spillane asked how much work was done by them; Mr. Baird said he is unsure as he has no record of it; Mr. Spillane asked if they were paid; Mr. Baird said he has not gone back into the financial records. Mr. Spillane asked if we can get back what we paid them because they do not have the files nor does the city; Mr. Baird said that would be a decision of the council whether to pursue that or not; Mr. Spillane said he does not know why we would pay them if we cannot find the files.

Mr. Workman then asked how long they are required to keep the paperwork before it can be destroyed. He is aware of documents in the billing department that must be kept for five years before they can be destroyed. He recommended the city manager check on that and determine whether it is within the time frame it must be kept. If it is something that must be kept by law, he feels we should have access to it because we paid for the services.

The city manager spoke with Randy Duplechain of Davis, Bowen and Friedel after the last meeting. According to Mr. Baird, he indicated some willingness on behalf of DBF to participate if there were going to be any modifications made, particularly in the Clearview Drive area. Because of that conversation, he is taking that as some acknowledgment they participated in some form in Hearthstone and are willing to consider discussions on working toward a resolution.

Mr. Spillane asked how far DBF inspected and when did the city take over; Mr. Baird reiterated he does not have those records and does not have an answer. Mr. Spillane asked if we did not know how long their contract was for and whether there was a void at some point; Mr. Baird said there could possibly have been a void though he does not have the answer to such questions. Mr. Spillane asked the city manager to check on those answers; Mr. Baird said he would if the information was available.

Mr. Spillane asked if we have put steps in place to prevent this from happening again because it is a big place. He can understand if a home or two was forgotten to be inspected because it is very large. Mr. Baird does not believe that was the situation but he will look back and if there is any documents that reflect that information, he will share that with city council.

Mr. Oechsler said there are many steps in getting something built and to the point of getting a certificate of occupancy. He asked if there is a step that says it is approved but the city does not have to keep a record of it. Mr. Baird said he is only able to work with the information he has. He does not have information that tells him what the steps were.

Mr. Spillane again asked if we have a sheet to check off the steps which should be kept as a follow thru. Mr. Baird said that as they discussed earlier, the city does not have a check off sheet though there are inspection records that take place on properties being developed or buildings being constructed today.

Mr. Spillane confirmed that from here back, the city does not have anything on any property as far as inspections of the condos, houses, etc. Mr. Baird said there are some records but he cannot say there is a complete file associated with the inspections out there. He added that is part of the reason behind this third party suggestion to come in and look at what happened out there. He feels there are so many missing links, we could spend both his time and a lump of staff's time just doing that, which is why it was agreed to have a third party come in and piece everything together. That would give the best case scenario about what has taken place out there over the last couple of years while trying to find out where some of the missteps were. He said whether intentional or unintentional, everyone was trying to keep up with the boom that was taking place. Right, wrong or indifferent, people were bouncing from one place to another regardless of if they were city employees or contracted staff.

Mr. Workman said that council already directed Mr. Baird to hire a third party in order to correct this problem. If we are unable to get the records from the firm we hired, and they are required to keep them on file, then the city needs to subpoena them. He feels there are a lot of records missing.

He also feels that we should make sure the city has the correct records before we pay an outside source for services in the future. If we don't have the records, either we lost them or we never received them.

Mr. Brooks said that either the city, the engineer or Mr. Fannin has these records. He asked if Mr. Baird contacted Mr. Fannin to ask for a copy. Mr. Baird said that was discussed during the meeting with Mr. Fannin, Mr. Griffin and the city solicitor back in January. He reported they were silent on that issue.

Mr. Oechsler asked if we are sure a final inspection was done since no one has a copy; Mr. Baird answered he cannot say that. Mr. Oechsler asked what the standard operating procedure is to approve a project and pay a bill. The city manager said at this time, we sign a proposal for engineering purposes and part of the discussion is what the deliverables are on the project. For both engineering and inspection services, the city moves forward and then looks at it from a standpoint of when we receive the invoices. We are then billed for x percentage of the project being complete and we must all agree with that. The city engineer reviews it and Mr. Baird must concur before any payment is made. He emphasized there are a number of checks in place today to ensure we are paying for completed work.

Mr. Oechsler said if we do not have a record of final approval and DBF does not have a record of final approval, we should send a letter to the developer asking him to provide the record of final approval. If he is unable to provide that, then we need to say the final approval was not given and we need to reinspect the property before final approval is given. Mr. Baird said that from an inspection standpoint, nothing has been turned over to the city yet. Prior to that being done, there will be future inspections because we are not going to accept anything that is substandard. Therefore, additional inspections will need to take place out there.

Mr. Oechsler said if memory is correct, this property is not bonded; Mr. Baird confirmed that is correct. Mr. Oechsler said we cannot tell if city council gave approval not to bond the project. He asked we know that council gave approval not to bond the project and feels we would not be discussing this if it was bonded. Mr. Baird said, that is correct and agrees there would be less discussions because some security would be in place.

Mr. Oechsler asked if we know that council gave approval not to bond; Mr. Baird said he has not seen anything where this body said there is no bonding necessary for this project. He does not have that in a file. He recalls seeing something at some point in time that the bond was not required, however, he is unable to put his hands on it. Mr. Oechsler said the people in the public are tired of hearing it, he is sure the developer is tired of hearing it, he is sure Councilman Spillane is tired of fighting for this as well as everyone else on council. However, the deeper they dig on this subject, the uglier

it is getting. Mr. Baird said that is precisely why we are looking at going the route we are. He said right now it is an endless pit and we need someone who can step back away from this and look at it with a neutral set of eyes which was the direction given by council at the last meeting.

Mr. Spillane asked how many other places in the city are in the same boat as Hearthstone with no one checking anything with inspections. He thinks we need to dig and added it is very scary when you think about it. He said we are either hiring these people or not hiring people.

Mr. Baird feels there are no other properties in the city where inspections are as questionable as they are in Hearthstone. He believes the issue is in every project out there and referred to what was happening at that time, not only in Milford, but up and down the state and around the country. He stated it was like the Wild West with things happening faster than anybody ever expected. There were i's not dotted and t's not crossed. He said we all recognize that and sometimes it takes a little bit of time for these things to come to the surface. He feels that is what we are seeing today. Now that things have slowed down, there is a lot of stuff rising to the surface and we will address it. At the same time, we need to be cautious and make sure the approach we take is correct. He wants someone with a neutral eye to look at it and tell us what happened and what appeared to take place. City council can then review it, the developer can review it and we can move forward from there.

Mr. Baird said that everything out there is not going to be perfect and that needs to be understood.

Mr. Workman said we always go back to the big housing boom and when this town was booming, if we had a standard checklist of what we had occurred before council made final approval, and the list was checked, we would not be in this situation. Most inspectors have a standard check list. If he is going to buy a house, there is a checklist. He can go through it and check things off. The housing boom is not an excuse to do things halfway. A standard has to be set and it must be done correctly. If it takes longer because of a housing boom, then those people will just have to wait because it must be done right.

He concluded by saying council said how they want this handled; he thinks the city manager needs to be able to do his job. After the next meeting, we can move forward.

#### *Tax Exempt Properties*

Mr. Baird referred to a report in the council packet showing a number of tax exempt properties on the city tax rolls as well as properties being taxed whose owners feel they should not be taxed. He explained the issue before council is tax status and whether they are exempt or not exempt. There are certain authorities we have administratively that are already established in our charter and state law and code as far as what is taxable and what is not. Through the period of discoveries, we have been able to address those types of questions. The list of properties presented still has questions.

He is presenting this to council because city council is the body that has the ability to say whether a property is taxable or not taxable if it is not covered under the law.

Mr. Baird recalled that an outside source was doing the assessments until approximately a year and a half ago when the city decided it was in our best interest to have direct city personnel handling our assessments because things were happening fast and furious. This allowed for someone to go in, look at it and have a good understanding of what has occurred. At the same time, we had requests from property owners asking why they were being taxed a certain way.

Mr. Baird explained that Mr. Darsney has been working on this the last couple of months though this is no different from what happens during a reassessment every ten years. New discoveries are made, building permits or additions are found that had to be added to the tax rolls, or something was over assessed, which means dollar wise it works both ways. Mr. Darsney has spent a lot of time trying to improve the overall accuracy of the assessment rolls to reflect what is happening. However, when we get into the exempt versus non exempt, that comes down to a policy decision based on city council. Council may feel there are cases where an exemption may be appropriate for one reason or another for a certain period of time. That is appropriate though that action must be taken by city council.

Mr. Workman said the public also knows the three reasons why a property can be tax exempt. Mr. Baird said there are more than three reasons and deferred to Mr. Darsney.

Mr. Darsney said that when he started his discoveries, he went to square one. He went to the total amount of exempt properties and wrote a report. He found 303 exempt properties. Those include charitable organizations, state and local government properties, annexed properties, properties under the farmland assessment act and properties under the farmland preservation act. He can pull that information out and know exactly which ones are exempt. He took the 303 properties and researched each property. The list was reduced to approximately 75 properties. At that point and time, he dug deeper into the records to find when they became exempt or what criteria was used. That reduced the number to 31 properties that are included in the list presented to council this evening. From that point, he sent out a letter stating the three most popular reasons why a property would be exempt which is state/local government ownership, charitable ownerships and the farmland assessment act. He then asked them to submit information or records about why they are exempt. If none of the three criteria fit, they were to contact Mr. Darsney to talk about other options. Four other properties were resolved when their owners provided the 501(c)3 which allows the charitable organization the tax exemption. A couple of individuals provided deeds where the land was conveyed by the city to them but were not actually in the city. They were removed and this is the balance of the list.

Mr. Baird explained that if there are still questions because they did not fit into the tax exempt status, they will be contacting Mr. Darsney to plead their case. That request will then be presented to city council for their consideration. Prior to the end of this fiscal year on June 30<sup>th</sup>, a special meeting will be held at which time these individuals will present their case. Mr. Baird does not believe all of the properties will be in a position to make a request. Some will be able to say we are exempt and provide the documentation. Mr. Darsney can accept that based on current law and note the exemption. Or they may have additional documentation explaining their exemption. The city manager said city council will see the cases that are completely unique. They may say their property was annexed in and part of the agreement was they would be exempt from property taxes until it was sold or for a certain amount of time, whatever the case may be. Neither himself nor Mr. Darsney has the authority to honor a claim made by the property owner in such cases. Instead that will need to be clarified by this body.

Mr. Baird wanted council to see the list of properties impacted. Any property owner who does not respond will be moved into a taxable status. Everything will be considered taxable until it is determined it is tax exempt for one reason or another.

Mr. Workman asked if there was a time line provided in the letter to get back with Mr. Darsney. In that manner, the property taxes can be billed appropriately which will impact the county's assessment as well. In addition to Milford, the county is losing money as well.

Mr. Darsney did not put a deadline in the letter, though most of the people have called or come in. When he talked to Mr. Baird, they decided if they did not hear back by the new tax year, those people will be billed. However, they can still appeal it at that point.

Mr. Baird recalled council sitting each year as the appeal board for property taxes. That is the annual opportunity for individuals to appeal their assessment, tax bills or their tax status. If we do not hear from them, they will be placed in a taxable status for the 2009-2010 tax year.

Mr. Oechsler asked if Mr. Darsney has contacted the counties to make sure the county has a record of all the lands that were annexed into the city. Mr. Darsney explained that annexations are different and he has been focusing mainly on exemptions right now though some involved annexed areas. The county records all annexed properties it is aware of. Every recorded plat comes back to the city with a recordation stamp and time. The county then goes to the mapping and reissues tax id numbers. When he gets the new tax parcel numbers, that assures they received the information.

Mr. Oechsler said Mr. Darsney stated that there was a farm preservation act and farm assessment act that were two legitimate reasons. He said if the land is zoned commercial, it is not part of that act. He asked if there are any properties on here in that situation. Mr. Darsney said that is his interpretation of the act. The act is administered by the county under Title 9; We have to follow the assessment under Title 22. He has identified properties that have been kicked out of that because of commercial zoning. He is working with the county counterparts to make that determination. As long as they

have some assessment, by law, he has to follow the assessment. He does not have the authority to pull it out though he can encourage them. If they agree, he will follow up from there.

Mr. Oechsler asked if all of these properties have an assessment or are they assessed at zero; Mr. Darsney answered the county assesses some at zero. He feels a lot of their information is suspect too and Mr. Darsney only uses it as a guide.

Mr. Oechsler feels that if a property is annexed into the city and we are only able to use Sussex County tax records; if they are at zero and only at 50% of the 1973 assessment and we are at 100% of a 2002 assessment, we are already taking the tax dollars down. If their assessment is zero, he asked how you get money from zero. Mr. Darsney said you cannot.

Mr. Oechsler pointed out that in these cases, the schools are not getting their tax dollars and the city is not getting their tax dollars and we are unable to pay for infrastructure. Mr. Oechsler said if a property has been zoned commercial and should be assessed taxes at a commercial rate and not an agricultural rate, then it should be taxed and not at zero. He agrees the school districts are losing money though that is on the county side. If the county recognizes that and changes it, then under Title 22, the city can assess the property at our rates and at our assessment.

Mr. Oechsler recognizes that Mr. Darsney is not the cause of these issues and has done an excellent job of getting the city to this point. He feels we need to figure out what the standard operating procedure is on every piece of property and that people are not just thinking they have tax exemptions unless they have followed the standard operating procedure.

Mr. Baird agreed noting those are in place today. These are just those last properties that need clarification from this body. As he has shared with council previously, Mr. Darsney has been working to develop a Memorandum of Understanding with both Kent and Sussex County so these things don't fall through the cracks in the future.

Mr. Oechsler said that Mr. Dugan discussed with him, as well as Mr. Baird, his claim the former mayor and former city manager told him this would be tax exempt. However, that is not the case, because it was not passed by this board though there may be other ways for him to be tax exempt. But the standard operating procedure was not followed, according to Mr. Oechsler, and now Mr. Dugan has a \$6,000 tax bill, though Mr. Dugan is farming his land and will continue to farm his land even though he is zoned R-2 which still has an agricultural use. Then there are other pieces of property zoned industrial and commercial with a much greater value that are not paying taxes. Mr. Oechsler said we are basically backhanding Mr. Dugan and allowing others to get away with a free ride.

Mr. Baird emphasized the free ride is what the city is working to end. Mr. Oechsler said the point is the standard operating procedure was not followed and there was a lot of 'we'll take care of you'. It wasn't followed that council, the state government or whoever voted on it nor did the municipality approve the deferment that was needed when the land was annexed into the city.

Mr. Baird agreed noting that just because the city does not have documentation, does not necessarily mean it is not exempt. He said that is why there may situations out there whose property owners who are in that position and can provide proof that city council took the appropriate action.

Mr. Oechsler advised that Mr. Dugan did not want to come into the city but came into the city because of two other properties that were not contiguous. The agreement was, in Mr. Dugan's opinion, that he would be tax exempt, but it was a handshake agreement. To Mr. Oechsler's knowledge, there is no paperwork on it. He said it did not follow the city charter and asked why there is a charter if we do not follow it. Mr. Oechsler said that is what is causing Mr. Dugan some serious heartache.

Mr. Baird said the comments that were just made by Mr. Oechsler and the comments made over the last six to twelve months have gotten us to this point. He confirmed there have been some discoveries and corrections that have been made for one reason or another. It has been recognized there are many inaccuracies that need to be fixed. We will move on from that point.

The city manager pointed out there is now a mechanism in place for better communication between the city and the two counties and much better communication from within when land use actions have occurred that impact our assessments.

Mr. Oechsler agrees that Mr. Darsney has done an excellent job to get to this point. He added the problem is, as Mr. Baird earlier referred our growth to as the 'The Wild, Wild West' and to him, we just threw the code book out and didn't care what was in it. He feels it clearly stated what needed to be done to exempt a piece of property though it was not done. He does not understand how a mayor and city manager (former mayor and former city manager) don't do that.

Mr. Baird said we can lay blame on whoever, but emphasized that here is where we are today and have a mechanism in place to move forward. That was then and here is where we are now.

Mr. Workman said that we do have a SOP that we can go by though we evidently did not have one in the past. He added that if we keep talking about things that happened in the past, and he hates to bring it up, but if we had a SOP in place, then each thing would be checked off and completed. Then when we get records in, the records are filed and extra copies are given to those people that need them. If planning and zoning needs those records, they should get a copy, but we need to have at least one complete file.

Mr. Baird said we are moving in that direction from the electronic file management system. It has been instituted for the past three or four months and is at approximately 50%. When asked when it would be 100%, Mr. Baird explained it is being implemented by individual departments right now. The planning office is on board, the city clerk has new software that is on board as well and most of the engineering is on board. We are looking at the billing department as the last department being implemented which is due to their large volume of paperwork. He emphasized that those steps are in place to make improvements in our policies and procedures.

Mr. Spillane asked how far are we able to go back and collect taxes from these developers because it seems as though we keep putting it off and have now missed the 2008 tax year. Mr. Baird answered in his opinion, yes. He stated he has sat in this chair many nights and in this situation when there is enough blame to go around on both the city and the property owners' ends. He asked to keep in mind, each year that there is an assessment and they receive a tax bill. It is the property owner's responsibility as well. If they feel something is incorrect, they have an opportunity to come in and challenge it.

Mr. Spillane said if they are not paying anything, the city is not going to hear from them. Mr. Baird agreed but noted there are also some on the list that are not exempt but claim they should be. They have not gone through that process either. He feels there is some responsibility on the city's behalf though that is being acknowledged. In his opinion and recommendation to council, these matters need to be corrected now, the record set straight and corrected from this day forward.

Mr. Spillane said the man that was contracted to do our taxes in the past was let go. He also did this work for other towns. He recalled him being sued by one or two other towns and in both cases the town won and they collected money. Mr. Baird said that is correct recalling the City of Seaford sued him.

Mr. Spillane asked if we can go back and collect our money because he perhaps did something wrong. Mr. Baird believes that if there is any financial gain associated with that, there is also going to be a great deal of time and expense needed. In Mr. Baird's opinion, we are better off saying here is where we are today and let's move forward.

Mr. Oechsler asked for assurance that by June 30<sup>th</sup> or July 1<sup>st</sup> when the new taxes are rolled out, will this software be up and running and this issue cleaned up by then. Mr. Baird feels we are in good shape from an assessment standpoint and where those records are. Once action is taken on the properties left over, he feels our assessment records will be accurate. However, there will always be problems we may find. For instance, someone may put an addition on their house three years ago that was never picked up. Those things will be discovered during the next reassessment which is the purpose of the reassessment. But right now, the focus is on the exempt versus nonexempt. He added there have been other discoveries made that do not favor the city. The tax records may say there is a house on a lot, but it has since been determined the home was demolished two years ago. As a result, that improvement must be removed.

Mr. Oechsler said he referred to the Dugan property, but the Emory property also states owners currently not exempt. Mr. Baird explained that was the same exact scenario. Mr. Oechsler confirmed they also needed to come into the city to allow other annexations; Mr. Baird said that is correct.

Mr. Oechsler asked if Mr. Darsney has been to these properties to take pictures and view them as there are some that may contain houses such Matlinds Way, 101 East Liberty Way. Mr. Darsney explained that Matlinds Estates had their subdivision annexed and part of the annexation was a 15-year tax abatement approved by city council. This involved a transfer of sale which removed the property from that exempt status. When a property is sold, the city receives the transfer tax information and the property is taken out of the exempt status.

*City of Milford Planning Commission Vacancy*

Mayor Marabello read the following letter into record:

For the past five and a half years, I have had the privilege of serving the City of Milford, Mayor and Council as Planning Commissioner and Chairman. I believe together we have risen to the challenges of planning and growth, and I am honored to be a small part of it.

However at this time, in my life, I feel the need to step down, as my focus needs to be in other areas.

Please accept this as my resignation effective May 1, 2009.

May God Bless our City.

Thank you,  
Brendon Warfel

The mayor explained that part of this decision was the tragic fatal accident involving the Peterman family members who were close to Mr. Warfel and his family. Mayor Marabello said he was present when Mr. Warfel announced his resignation and reluctantly accepted the letter.

As a result, Mr. Warfel will need to be replaced. He asked if council wished to review the current applications on file and whether they wished to choose from those applications or solicit more applicants.

Mr. Workman feels that those on file need to be considered, but new applications should be accepted as well.

The mayor will add this to the May 11<sup>th</sup> agenda though he must consider those commissioners whose terms expire in September.

Mr. Oechsler confirmed the commissioners select their own chairman and there are two commissioners from each ward. Because each ward still has two commissioners, another planning commissioner needs to be selected. He said Mr. Warfel's position needs to be filled though first if the ward needing another representative must be determined.

The mayor explained that there will always be one ward with three members. Mr. Oechsler feels the chairman position needs to be filled first and then a commissioner selected from the ward left with one representative.

The solicitor stated there is nothing in the code that addresses wards though the planning commission may choose their chair before council considers the next appointment. Mr. Oechsler agreed.

Planning Commission Vice Chair Chuck Rini then advised that he is serving as interim Chairman and at the May 19<sup>th</sup> meeting, the first item will be to elect a new chairman. Presently there is a Chairman, Vice Chairman and Secretary. If one of the existing officers is moved up to Chairman, voting would occur for that opening.

As a result, Mayor Marabello asked that this item be placed on the May 26<sup>th</sup> agenda noting new applications will be accepted in the meantime.

*City Hall Lower Level/Discussion of Next Step*

Committee Chair Workman recalled the numerous discussions about this issue. He recalled this body deciding to have his committee decide which direction to take so that city hall could be used. Then council chose another route, which is understandable, according to Mr. Workman, because of the many new issues involved. However, many options were considered over this period of time.

He asked that before his committee is able to move forward, he needs some solid direction on where council wants to go. Though he has not seen any invoices on how much was spent on the proposed plans, he does not expect them to exceed more than \$5,000 which in his opinion, was wasted money.

At the May 11<sup>th</sup> meeting, he wants input from council on what approach needs to be taken.

*Outgoing Council Members*

Mayor Marabello then recognized Councilman Irv Ambrose and James Oechsler whose terms will expire on May 5<sup>th</sup>. He commended Mr. Oechsler, who has served less than a year but has done a lot of good work. He then recognized Mr. Ambrose for his many years of service particularly in his leadership role on the finance committee.

He announced the two new members will be sworn in at the Organizational Meeting on May 5<sup>th</sup>.

With no further business, Mayor Marabello concluded the Workshop at 9:40 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Terri K. Hudson".

Terri K. Hudson, CMC  
City Clerk/Recorder



*MILFORD CITY COUNCIL*  
MINUTES OF MEETING  
*April 27, 2009*

A Meeting of Milford City Council was held in the Joseph Ronnie Rogers Council Chambers of Milford City Hall, 201 South Walnut Street, Milford, Delaware on Monday, April 27, 2009.

PRESIDING: Mayor Daniel Marabello

IN ATTENDANCE: Councilpersons Irvin Ambrose, Michael Spillane, John Workman, James Oechsler, Jr., Owen Brooks, Jr., Douglas Morrow, Sr., 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 Marabello called the Council Meeting to order at 8:37 p.m.

*Bid Award/Silicato Memorial Park Phase I/Parks & Recreation*

Scaled bids were received, publicly opened and read on April 9, 2009 for the Silicato Memorial Park Playground Phase #1. Bids ranged from \$87,813 to \$137,939 (with Alternate #1). A letter from Landscape Architectural Services LLC indicated they reviewed the low bidder's submittal and recommend awarding the bid to Road Site Construction, Incorporated, DBA/Clean Cut Interlocking Pavers, Incorporated for a base bid of \$79,029 and adding Alternate #1 (two picnic shelters, each with a 4' bench and 6' bench for a total bid amount of \$87,813.

Mr. Emory advised this is the last phase of the Tony Silicato Memorial Park. He recommends the \$8,784 alternate be added to the bid which was included in the budget though it should be contingent upon available funding due to the end of the budget year approaching. He advised the base bid of \$79,029 will be paid through an in-kind donation from Denise Silicato.

According to Mr. Emory, the park will be ready for public use in September with construction beginning immediately.

Ms. Wilson moved to award the bid for \$87,813 to Clean Cut Interlocking Pavers, seconded by Mr. Morrow. Motion carried.

*Introduction of Ordinance 2009-7/Chapter 230/Zoning Code/Source Water Protection District/Prohibited Uses*

The following ordinance was officially introduced.

*An Ordinance to Amend the Code of the City of Milford, Chapter 230, Zoning, Section 19.2 Source Water Protection District, by Adding Prohibited Uses.*

City Planner Gary Norris advised this is the final leg for certification of the City of Milford 2008 Comprehensive Plan. When the plan was submitted to the state for certification, DNREC asked that the source water protection ordinance be amended. The changes involved new construction, land use restrictions and the use of source water protection areas, particularly in zones 1, 2 and 3. All changes were noted in red.

Public hearings are scheduled before the planning commission and city council in May.

Once the amended ordinance becomes effective, it will be submitted to the state so that the 2008 Comprehensive Plan can be certified.

*Adjourn*

Mr. Oechsler moved to adjourn the council meeting, seconded by Mr. Workman. Motion carried.

The council meeting was adjourned by Mayor Marabello at 8:42 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Terri K. Hudson".

Terri K. Hudson, CMC  
City Clerk/Recorder

*MILFORD CITY COUNCIL*  
MINUTES OF MEETING  
*April 27, 2009*

The Milford City Council held Public Hearings on Monday, April 27, 2009 in the Joseph Ronnie Rogers Council Chambers at Milford City Hall, 201 South Walnut Street, Milford, Delaware.

PRESIDING:           Honorable Mayor Daniel Marabello

IN ATTENDANCE:    Councilpersons Irvin Ambrose, Michael Spillane, John Workman, James Oechsler, Sr., 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 Marabello called the Public Hearing to order at 7:01 p.m.

The City Council of the City of Milford held a hearing to take public comment and make a final determination on the following matter:

*Davis, Bowen and Friedel, Incorporated on behalf of Wilson Contracting, Incorporated & Richard K. Wilson, Sr.*  
*Final Review and Approval of a Minor Subdivision*  
*3.00 +/- Acres into three lots*  
*Elks Lodge Road at the Intersection of Elks Lodge Road and Johnson Road,*  
*Lands of Wilson Property, Lots 1 thru 4, Milford, Delaware corner of Johnson Road*  
*Tax Map 3-30-15.00-50.02; R-2 District*

*Waiver of Sidewalks & Curbs/Wilson Subdivision/Chapter 200 - Adoption of Resolution*

City Planner Gary Norris advised this is a four-lot subdivision of which three are residential and a residual lot. The three lots are approximately 3/4 acre with on-site septic and well systems. The planning commission reviewed and recommended approval of the application with the condition that sidewalks be installed along Elks Lodge Road in front of lots 1-3 before a Certificate of Occupancy was issued for each home constructed.

Zach Crouch of Davis, Bowen and Friedel, Incorporated presented the application. Contractor David Wilson was also present.

Mr. Crouch explained that approximately five years ago, Richard Wilson purchased the property. The plan came before council and was part of a subdivision. Since that time, the developer of the subdivision has backed out. Mr. Wilson is planning to build three lots with spec homes for potential sales on Elks Lodge Road.

Mr. Crouch noted that fire marshal, conservation district, DELDOT and DNREC approval for on-site systems have been obtained. A note on the plan states that when sewer and water are available within 200 feet, the on-site systems will be abandoned and connection made to the city system.

He explained the developer is only requesting a delay in the installation of sidewalks so they can be installed at a later date. The developer is not arguing the need for the sidewalks, but prefers they be planned and integrated into the future subdivision of the residual lands of Milford Housing Authority. Additionally, the DELDOT improvements have not been determined though there is enough room on the north side of the property for the entrance into the larger subdivision. The preliminary plan has expired; when it comes back before the planning commission and council, it will mirror the original plan previously approved. He stated that typically, DELDOT requires a multi-use path on all sides fronting any state-maintained road. Not knowing its exact location, a 30-foot easement was provided off the right-of-way. Until the ADT is determined, the exact amount of right-of-way needed will not be known.

Mr. Crouch reiterated the waiver is only to delay the construction of the sidewalks in order to avoid the potential of having

to remove them in the future because they were not constructed properly or not aligned with future multi-use paths. Mr. Crouch feels that installing sidewalks at this point, only to meet the code, is not in the best interest of the future homeowner, developer, city or state.

He further noted that the driveways will be 15-foot wide from the edge of the pavement on Elks Lodge Road to the rear of the house which is more than 100 feet and will basically serve the same purpose as the sidewalks. The front of the house will be set back between 60 and 75 feet. The front of the lots contain a 30-foot access easement for future DELDOT improvements.

Mr. Baird agrees with the request to defer the installation of the sidewalks. He said no one disagrees with the need for the pedestrian or bicycle access. From a coordination effort, it only makes sense to tie the sidewalk in with any bike or pedestrian paths of the surrounding subdivisions.

He referred to the note on the plan adding that council can require a specific time line, in addition to putting up a bond, should they become an issue down the road.

The city manager's recommendation is to defer the requirement for sidewalks at this time.

Mr. Workman said the sidewalk committee worked hard to ensure all houses would be built with sidewalks. He understands the possibility they may have to be removed because of the subdivision being planned behind this one, but if the sidewalks are already in place, he feels the new subdivision can design their site plan to coordinate with the existing sidewalks.

Mr. Crouch advised the plan submitted to council shows the entrance on the side of lot 1. DELDOT will want it as far away as possible from the Johnson and Elks Lodge Road intersection. From that perspective, a deceleration lane will run in front of these houses. Not knowing the exact start and ending point of that lane will make it difficult to place the sidewalks to prevent encroaching that area meaning they would need to be later removed.

Mr. Crouch reiterated the builder understands the need for sidewalks and this request will allow coordination of the sidewalk plans and take into consideration the DELDOT requirements. The note will be added to the record plan that sidewalks will be installed as council requires.

Mr. Oechsler said he wants sidewalks because he does not want to send the message the city is allowing waivers. He questioned why the developer is willing to put in a septic and well system, only to be later abandoned and money thrown away, when the connection is made to the city system. On the other hand, they are not willing to put in sidewalks, because they may have to be removed and money would be wasted. He personally travels that road a lot and sees the necessity of sidewalks because of safety issues.

Mr. Crouch explained the only reason the septic and wells are being installed is because the city currently does not have sewer and water service in that area. Mr. Oechsler understands, though he questions why that money is available though there is no money to spend on sidewalks.

Mr. Crouch explained this property has been annexed for five years and several plans have been considered for providing water and sewer. At this time, Mr. Wilson wants to build a couple of homes to pay for the land itself if nothing else.

Mr. Morrow confirmed that a bond can be required to ensure the city would later receive money should something occur that would prevent sidewalks from being constructed and a time line could be added; Mr. Baird agreed that could be done and suggested council make that a condition of the approval.

Mr. Brooks noted the city has annexed many areas in which the property is sitting vacant. In this case, the city does not need three houses without sidewalks so a time line needs to be established and a bond required.

Ms. Wilson asked when construction would begin on these homes; Mr. Crouch said approximately six months.

When asked the status of the subdivision behind the homes, Mr. Wilson explained he plans to build right away. He added the major subdivision behind this area is dependent on the availability of the city's water and sewer.

In regard to the water and sewer issue, Mr. Baird explained there are a number of properties proposed for development between where it ends currently off Elks Lodge Road near Hearthstone Manor, that would connect to the city system. The cost cannot be justified for one developer without the assistance of the other property owners. A proposal is in place on how to get it to this location, though the financing is the issue in today's environment.

Mr. Baird said that time line will depend on how quickly people react. The city is ready to go if there is a demand for the services. However, the city will not extend those utilities to this area because that is the responsibility of those property owners benefitting from the extension.

Mr. Spillane is concerned about potential sporadic growth in the area with nothing in between and does not like that concept.

Mr. Oechsler said he would have preferred to see a layout of the plan for the development to get a better picture even if it was the old subdivision plan.

Mr. Brooks asked when the last approval was granted to allow a well and septic system; Mr. Baird is unsure though there are some properties in the city limits still on wells and septic only because those utilities are not available. Mr. Brooks recalled the properties on Route 36 and Dupont Highway in that situation though that has since been rectified.

Ms. Wilson understands the problem with the installation of the sidewalks at this time and is comfortable with the waiver if a time line is added. A bond should be required to address any potential problems in case they cannot meet the deadline. In this case, she feels it is a benefit to the city to work with the developer. The problem with water and sewer was not caused by the developer either.

Mr. Workman agrees with Ms. Wilson but emphasized the need for the bond in case the sidewalks are not installed during the time frame. He will agree to two-years, but nothing longer.

Mr. Oechsler asked if the entire property would be bonded; Mr. Baird said it would be in accordance with the subdivision code which is required for the public improvements. Mr. Oechsler asked if there would be a separate bond for the sidewalks; Mr. Baird explained the sidewalks are the only public improvement that would require a bond.

Mr. Oechsler then asked if the sidewalks are deferred and houses are built and people purchase the homes, who is responsible for the costs of the sidewalks and the connection to the city water and sewer lines; Mr. Baird answered that will depend on who the owner is at the time they are required. The homeowner, in the eyes of the city, would be the property owner, if the home was sold. However, whoever is buying that property would need to know those issues in advance. The plan would be recorded with the notes or however council chooses this approval. Any title work should pick the requirement up.

City Solicitor Tim Willard then stated that in a performance bond to do the sidewalks, the builder should include a cost proposal. Our engineer and city planner would review that proposal, along with Mr. Willard. The developer would then provide the bond.

The solicitor advised the subdivision code does not allow any period longer than three years though it can be less. He said that regardless of whether the property is sold or not, if there are no sidewalks or they are unwilling to make connections, that would be actionable and the purpose of the performance bond. He explained that in other words, if they do not do it, we would have a bond providing the money needed to cover the costs of the sidewalks.

Mr. Workman verified that if he purchased one of these homes, and the developer did not hold up his end of the deal and did not install sidewalks, he, as the homeowner would not be responsible for the costs of the sidewalks.

Mr. Willard answered if the documents are done correctly and the performance bond is adequate. The solicitor said the