

MILFORD CITY COUNCIL
MINUTES OF MEETING
June 8, 2009

The Regular Monthly 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, June 8, 2009.

PRESIDING: Mayor Daniel Marabello

IN ATTENDANCE: Councilpersons Steve Johnson, Michael Spillane, John Workman, Jason Adkins, Owen Brooks, Jr., Douglas Morrow and James Starling, Sr.

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

COUNSEL: City Solicitor Timothy Willard

CALL TO ORDER

Mayor Marabello called the Monthly Meeting to order at 8:35 p.m.

INVOCATION AND PLEDGE

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

APPROVAL OF PREVIOUS MINUTES

Motion made by Mr. Morrow, seconded by Mr. Adkins to approve the minutes of the May 11 and May 26, 2009 meetings as presented. Motion carried.

Mr. Workman asked Mayor Marabello to appoint a member of the Planning Commission to the Annexation Committee as is required in the charter.

RECOGNITION

No one was present to be recognized.

POLICE REPORT

Police Committee Chair Morrow noted that the police continue to be extremely busy as is noted in the report. Mr. Morrow moved to accept Chief Hudson's report, seconded by Mr. Workman. Motion carried.

CITY MANAGER REPORT

Mr. Baird presented the following report:

Energy Efficiency & Conservation Block Grant (EECBG)-

I am submitting an application to Department of Energy for the EECBG award in the amount of \$50,000 to install LED street lighting along the N.E. Front Street Streetscaping Project and to retrofit much of the lighting in the downtown area with LED lights. This is a pilot program with plans to expand that project as funds become available if cost effective.

N.E. Front Street Streetscaping Project-

Plans have been finalized including the utility design and the comments from Downtown Milford, Inc. The next steps are for DMI to review final cost estimates and have DMI review the design. Upon completion of these steps, the project will be presented to City Council followed by the bid and award process by City Council.

City Hall Lower Level/Vickers Drive Billing Office Security-

Work continues on the lower level of City Hall. Quotes for the office systems, electrical and communications wiring and hookup, and plan modifications for Fire Marshall approval have all been received. We are awaiting figures from the alarm company on modifications to the alarm system that are required by City Council. We are well within the budget of \$150,000 established by City Council for this project. Additionally, estimates have been received for the demolition of 209 South Washington Street.

Work on the Billing Office security is moving forward with the understanding the City's billing operation will be at Vickers Drive for at least another two years. There are four areas of focus with security being the priority. Other areas include lighting, heating and ventilation and modification of the counter. We are developing a scope and budget for modifications for billing at Vickers Drive.

Washington Street Water Plant-

Efforts are underway to revamp the Washington Street Water plant as a means to improve production from the facility and to address the degradation of the water plant building and the storage buildings on the property. We are working to develop the most cost effective approach to address this issue and to identify sources of funding. Preliminary estimates could have a total project cost of between \$2.1 to \$2.4 million. He is working with Davis, Bowen and Friedel to finalize those numbers. A presentation will be made to the Public Works Committee in relation to this project.

Mr. Workman moved to accept the City Manager's report, seconded by Mr. Brooks. Motion carried.

COMMITTEE REPORTS

Fourth Ward Report

Ms. Wilson invited council to the Fourth Ward meeting tomorrow evening at 7:00 p.m. in the council chambers. Mr. Starling advised that he is unable to attend the Fourth Ward meeting due to a family commitment.

City Hall Committee

Mr. Workman reported that he has been receiving regular updates on the progress of the lower level. There are a couple issues still pending that he will bring to council in the near future. However, the project is ready to be publicly bid. Once the bids have been received and reviewed, a recommendation will be made to council for the bid award.

Charter Review Committee

Mr. Spillane advised a final draft of the proposed changes to the charter is being prepared. Upon its completion, it will be presented to the city solicitor for his review and recommendations.

COMMUNICATIONS

Nothing new to report.

UNFINISHED BUSINESS

Extension Request/Preliminary Major Subdivision/Cypress Hall Commercial

Tim Metzner of Davis, Bowen and Friedel, representing Shawnee Farms LLC, requested a one year extension of the Preliminary Major Subdivision for the Cypress Hall Commercial Project.

Mr. Metzner recalled the approval received from council on June 9, 2008. The reason for the extension request is the delay in agency approvals and in particular, DelDOT.

Mr. Workman moved for approval of the one year extension for the Cypress Hall Commercial project, seconded by Ms. Wilson. Motion carried.

Hearthstone Review Report/City Engineer Mark Mallamo

City Engineer Mallamo prepared the following report beginning with annexation process of the Hearthstone Manor site in 2000:

In light of recently recovered documentation and as directed by Council I have reviewed all available information on the history of annexation, approvals and construction inspection/review concerning Hearthstone Manor. The reviewed documentation includes meeting notes, letters, drawings, and inspection records dating from annexation approval in early 2000 through recent correspondence in 2009. Some issues now have a trail of how we got from concept to as-built conditions, but there are still some gaps. It is clear that all parties involved, including City leaders and staff, consultants, designers and the developers were struggling with many issues during this very busy period of growth and development in Milford.

During the time period of annexation, design and permitting for Hearthstone, the City had been updating and changing City Code concerning zoning and subdivision of land. These changes were prompted by a variety of needs and/or requests both internal and external to City Government. Many parcels of land contiguous to the City but outside city limits had developed plans to subdivide under county regulations. City council chose annexation of these properties as the best option to protect Milford from potential negative impacts this growth could have on the citizens and resources of the City.

Hearthstone, Orchard Hill, and the Meadows at Shawnee subdivisions were all part of this master plan to control growth along the south east border of Milford. The City designed and built water and sewer systems to support these three projects and negotiated cost sharing for this work with the three developers to recover City funds. This cost sharing with the developers was intended to eliminate any financial burden on the current residents of Milford, yet promote diversity in housing opportunities available to our current and future citizens. Coincidentally all three of these projects were granted waivers to the City's sidewalk requirements. No performance bonds were collected for these projects but the record does not clarify if there was a waiver or not for this requirement.

Country Life Homes, the developer of Hearthstone, requested specific zoning during annexation and also wanted to design and develop utilizing the County's Planned Unit Residential Development procedure which provides flexibility in mixing housing densities from various zones into a supposedly more harmonious living environment. Hearthstone annexation was approved by City Council April 24, 2000. A utility agreement was signed the same day which specified certain conditions such as no sidewalks except in multi-family sections, rolled curbing would be used, and it addressed impact fees and cost sharing for sewer and water improvements.

At this time considering the recent surge in annexation activity and Country Life Homes request to develop Hearthstone in accord with Sussex County zoning, City leaders believed it was in the best interest of all parties to update the codes of the City to modern standards that more closely resemble what Kent and Sussex Counties permit for development. Therefore Chapter 230 Zoning was modified, effective June 21, 2001 to allow Planned Unit Development or PUD's. The subdivision code, Chapter 200, was modified at the prompting of State environmental agencies and Hearthstone's developer to allow open swale drainage systems. This change was adopted by City Council on December 10, 2001.

These changes were not easy for City leaders to accept and much discussion and research was conducted before finally adopting these changes to code. The record shows that Chapter 200 changes permitting open swale drainage were particularly difficult to implement. For example it was determined the City should require curbs at intersections in open swale designs. That requirement was included in the revised code. However, the language is vague at best and without review of the meeting minutes leading up to this code change, I would suspect that designers would not incorporate the curb design feature in their plans. The record also shows design detail drawings were created to clarify the curb requirements of the code. But apparently these drawings were never approved and incorporated into the City's Standard Specifications. The record indicates that the City Engineer developed a set of standard specifications for utility construction projects and subdivisions that were approved by Council in 1992. These specifications become an item of

contention during the construction phase of Hearthstone that continue to this day.

The Hearthstone developer and their engineer were actively changing the site plans and corresponding with the City Planner during these code changes and attempting to fast track the project's approval. The result was back to back denials of the plans with open swales by City Council in July and August of 2001. These plans were submitted prior to adoption of Chapter 200 revisions that allowed swales. The project finally received final approval of Phase I on April 29, 2002. This approved plan had open swale drainage and no curbs (in conflict with utility agreement) except at the main entrance. A pre-construction meeting was held July 9, 2002 and the notes from that meeting state that there were dust complaints from residents near the construction site.

Therefore, it seems some construction had begun prior to the pre-construction meeting. During this time the record indicates that multiple versions of plans with various revisions were in circulation. I feel it is highly likely that changes to plans requested by the City never made it to the construction site. The record is not clear on this issue because no notice to proceed was issued and no single set of "approved" construction plans for Phase I can be clearly identified. The pace of design, review, approval and construction clearly had a negative impact on the quality of the project. It also seems that the City's lack of experience with multiple projects of this scale and the developer's zeal to build as rapidly as possible without an approved sequence of construction and approvals contributed to the construction problems.

As a result of all these code changes and the speed of design reviews and considering the extreme complexity of a subdivision, it is not surprising that the final approved design drawings had flaws or missing details that would only show up during construction. During construction the City met with the developer, contractors and engineers at least monthly and often twice a month to resolve conflicts. These conflicts often concerned the drainage system and sediment and erosion control issues. One particular detail requiring headwalls on all drainage pipes was eventually waived by the City Engineer and replaced by a flared end section requirement. However the flared end sections on the pipes have not been installed, with possibly one driveway exception and some pipes in ponds.

One major issue of contention during construction was the dedication of utilities and streets. The developer wanted relief of maintenance and repair responsibility as soon as possible but the City Engineer was not willing to accept the project piecemeal. City Code Chapter 200 subpart 200-4 (B) 7 (effective 12-10-2001) states "When all improvements are completed to the satisfaction of the City Engineer and when the subdivider makes application for dedication or cession of streets and other public areas and easements, such application shall be accompanied by a maintenance bond in the amount determined by the Planning Commission, upon the advice of the City Engineer, to be adequate to assure the satisfactory condition of the initial improvements for a period of one year following their completion. Such bond shall be satisfactory to the City Solicitor as to form, sufficiency, manner of execution and surety." This code required process for bonding has not been followed to date for any phase or section of Hearthstone.

The developer placed detailed notes on the construction drawings that conflict with the above mentioned City Code. One note states the dedication of Homestead Boulevard would be accomplished upon approval of Phase I with no mention of the required maintenance bonds as required by the City. Another note on the plans restricts the City's use of planned utility easements that were to provide access to adjacent development. This note is in direct conflict with review comments by the City Engineer stating that all easements must be dedicated in their entirety upon recordation. There is other correspondence in the record that clearly states the developer's intentions concerning these easements, but there appears to be no follow up by the City to approve or deny these developer "suggestions". Despite what the note about Homestead Blvd says it now seems clear that no dedication of streets or utilities has occurred. I suspect the developer may disagree with that statement, but it is clear no other areas have been dedicated when we consider that city crews were ordered removed from the property when attempting to work on the Clearview Drive swale and also ordered from the easement connecting to West Shores subdivision.

Concerning the drainage swale on Clearview drive the construction inspection records do not address the severity of the side slope. The inspection reports and the progress meeting notes addressed problems associated with sediment and erosion issues, interference with utilities such as water meters and electric transformers, lack of stabilization and poor performance i.e. water ponding. There were also discussions concerning the depth or elevation of some catch basins and the possibility of water surcharging back from the ponds into the catch basins and swales. But even the deepest catch

basin in the development meets the code and design required maximum depth from the road surface.

This side slope problem became truly apparent during the occupancy phase on this street the developer defended the construction by stating that the swale was built according to the approved plan and was inspected and accepted by the City. It is true it was built in accord with the approved plans and an inspector was on site but there is no record to indicate acceptance by the City. It is also clear that the developer has made no attempt to dedicate this phase to the City. The developer has also refused in writing to make any changes or allow changes to be made by the City to improve the swale conditions.

It is my opinion that the swale side slope issue was partly created by the design engineers need to establish some sort of control point or fixed reference to design and establish the location of the swales, driveway crossing pipes and catch basins within the right of way (ROW) and drainage easement. That resulted in the submitted design allowing a minimum side slope of 4: 1 instead of the intended maximum of 4:1. This steeper slope allowed the designer to set all these pipes and drainage structures at a predetermined offset from the edge of pavement. If the required 4:1 maximum had been utilized in the design these structures (driveway pipes) would fall at varying offsets dependent upon the depth. With the increased offset from the road to meet the slope requirement these pipes and catch basins would encroach into the front yards of the homes and in some cases outside the ROW and easements.

I have discussed this issue with the design engineer and he does not admit to intentionally changing the side slope requirement, but does concede that this was a challenging design effort that may have resulted in the change. It is clear that the code required 4: 1 maximum open swale design would be more difficult to build, particularly in a dense subdivision such as Hearthstone. However if the grade of the swales followed the grade of the road the depth of the swale could be minimized and much of this problem could have been avoided. In summary there are design methods that could work with open swales, but I suggest modifying City code to restrict the use of open swales to subdivisions with larger lots such as one-half acre or only use swales on access roads with no driveways. We should also decrease the maximum depth and possibly the swale bottom width to assure the drainage system will fit within the ROW.

Some issues of concern do not show up in inspection reports or construction progress meeting notes, such as inadequate shoulder width along the road and the driveway crossing pipes that are shorter than the detail on the approved construction plans. This driveway plan detail does not provide a headwall or flared end section. Now considering that the City Engineer waived the required headwalls and substituted flared end sections on the driveway crossings, it is not clear why the detail does not require either. It now seems that an appropriate headwall could add width or shoulder to some of the short driveway crossings, but the flared end sections will provide little to no relief in most circumstances. Pipe replacement or extension may be required to solve this deficiency. Correcting the shoulder width will require re-grading the swales and raising any deep catch basins as well as raising the bottom of the swale. It is unlikely that we can expect to build a 5-foot shoulder throughout the community, there will be areas where we cannot meet the standard detail dimension.

Water ponding in the Wilkins Road entrance to Hearthstone was first documented May 20, 2003 in a letter from the City Engineer to the developer. The problem continues to this day and there have been meetings and correspondence to determine what can be done and why the condition exists. It seems the drainage swales along Wilkins Road do not have an outlet sufficient to accept the storm water discharge from this project and none of the review agencies that approved this project, including DNREC, DelDOT and Sussex Conservation can provide a solution at this time. I have contacted DelDOT representatives involved in the Route 1 and Route 30 interchange project to see if they could extend the scope of that project to drain this water from the road, but the initial response was it is outside the limits of that project.

There is also a drainage problem on Elks Lodge Road adjacent to the Hearthstone entrance. Storm water from Hearthstone is discharged into the roadside swale on Elks Lodge Road and runs north toward the stream near the Shawnee Acres entrance. A pipe culvert in that swale that provides access to a City of Milford electric utility easement is undersized for the flow so some water spills over from the swale into the road. The City should increase the pipe culvert size or add another culvert in this location.

There is also correspondence in the file from the Milford School District concerning bus stops with shelters in the

development. There are no shelters currently in use and no plans for future placement of such shelters. It seems this issue has been dropped by the school board either because of a policy change or changes in staff that review such issues through the DAC committee. It could also be a lack of demand for bus pick-ups in this community. No action is recommended at this time.

On June 28, 2004, City Council approved a revised plan for future phases of Hearthstone. This revision changed the sequence of phasing and increased the density from 782 units to 1130 units. During the review the City Engineer stated that this density increase would exceed the existing sewer pump station capacity and require a developer funded upgrade to the pumping system. To date no amendments to the utility agreement or separate agreements have been signed to cover this future expansion need. Considering that the development is far from the 1130 unit stage there is time to resolve this issue, but I recommend no work be permitted outside the current phases of utility and road construction until this issue and bonding requirements are agreed to.

In summary it is clear that the Hearthstone project has its shortcomings and flaws. Some can be corrected some probably cannot be corrected to meet the expected standards. Regardless of the cause of the flaws I feel we can project a clear path forward to solve many outstanding issues and prevent others from occurring in the next construction phase. The City of Milford should negotiate an amended utility agreement that clarifies the sewer upgrade issues and establishes the bonding and construction management procedures to be used in all future phases. The City should also amend Chapter 200 keeping the open swale option for developers but restricting or modifying it based on the experience gained from this project and Lighthouse Estates. The developer should commit to dedicating phases of the project that are built out at least 75% in their entirety, i.e., streets and utilities.

This should include making needed changes to bring the construction up to the standards in place when approved and provide maintenance bonds and deeds or maps of cession that clearly state what areas will become City maintained and what will remain under developer control. The developer should also consider amending the Home Owners Association and/or condominium requirements to allow some sort of phased change of power. When you consider that seven years after start up the project is only about one-third complete it is unlikely to be built out the high percentage required for turnover in the foreseeable future. It is possible that many current residents would never have a voice in the HOA.

In reviewing the reams and reams of documents, Mr. Mallamo feels a number of things were corrected though in many cases there was no documentation saying exactly how it was corrected. There are some items found to be a problem and a description of how it was solved. There are other areas that remain problems today. The water meters on Clearview Drive are still an issue because the meters were set at a certain location and the swale drops down and caused drainage issues; they cut a little more and now the meter sticks up and you cannot mow over it. However, it is not an easy fix and the water lines cannot be dug up and relocated because it will not necessarily make it better.

He feels another problem is there was no construction sequence that made sense. The sequence seemed to be how fast the houses could be built; can we start with this section and do something in another area and keep everyone busy at the same time. It was difficult to manage a project as complex as this subdivision. Keeping all the subcontractors working sometimes leads to problems when the right hand is not watching what the left hand is doing. Sometimes the meter ends up in the wrong place or is put in a place that will be affected by the next phase of construction; not necessarily the wrong place at that time, but when they come back to put the swale in, it no longer fits. These problems were compounded by the speed of construction and speed of inspectors trying to keep up with the review. There is no clear documentation of which set of plans were the true, set of plans. The notes indicate what was resolved in phase two and a set of plans signed off by a city representative saying these are the construction plans. Prior to that, there was so much change occurring so quickly that workers were using different documents. Though this is his opinion, he has seen this when developers are in a hurry to get a subdivision started. They expect to get approval from council on Monday night and are getting bids by Friday. In such a case, the documents may be changed. If you don't catch it, it does not get changed and the issues remain.

Mr. Mallamo feels we should not concentrate on the past as much as how to fix what can be fixed and get a clear path forward for this subdivision and other planned subdivisions. Hearthstone II is planning to come back again with open swales. He feels the designers can take care of the issues to make a better project. Lighthouse Estates also has open

swales. There is one model home constructed there and the swale has an issue.

Though it cannot be corrected, the issues remain; Mr. Mallamo feels we need to get a handle on the process. He feels we have started by requiring very detailed utility agreements that all the developers are required to sign. The city now has a process in place to get performance and maintenance bonds. We are presently in the process of taking possession of the streets in Orchard Hill or letting the developer dedicate those streets to the city.

He reported that project also came in with no performance bond. When Mr. Mallamo told the developer he needed a maintenance bond and a map showing the streets will become the city's in addition to some other documents, they complied well because they understand it is standard business for most developers to follow these procedures. He has no reason to think the Hearthstone builders will not do the same thing. However, he does not doubt there may be some disagreements when it gets to the construction phase though that is typical.

Mr. Mallamo also believes there are some issues out of the city's control. He noted there are drainage issues at both entrances. The one on Wilkins Road he believes is out of the city's control. The water, after heavy rains, builds up at the entrance and runs onto Wilkins Road and half of the lane is flooded with water which can create some serious conditions. There is a lot of water at the swale that the drainage system on the state road cannot handle. They have had meetings with DNREC, DelDOT and State Representatives to attempt to address this issue with no resolution or corrected action taken or recommended. DelDOT said they will try to make the water run over to a pond by the interchange but he believes it is too far for the water to run.

Mr. Mallamo has contacted DelDOT and asked them to consider including that intersection in their design for the new proposed overpass at the Route 30 flashing light. He asked that they extend their scope out to reach this subdivision because the water cannot get out fast enough. He was told by the project manager that it was beyond the scope of his work. He is still hoping that different departments of DelDOT will look at it and try to come up with the money to get that water in a drainage system to be released into the environment instead of onto the road. From an engineer's standpoint, he feels it can be done, though how to come up with the money and how to get it done will be the problem.

There are other issues that need to be addressed now. One is the density of Hearthstone which increased from 782 units to 1,130 units. It was mentioned at that time by the city engineer that the city would need an agreement to upgrade the sewer pump station at Shawnee Acres. There is nothing in writing except the minutes from the meeting. Currently, houses are not being built fast enough to hit the capacity though he feels we will approach it at some point. He feels the city should send an amendment as is noted in the summary portion of his report.

Mr. Mallamo feels the city can address the dedication of phase one. We can approach the builder and say the streets are done, you are built out and we want to have it dedicated in its entirety meaning we want the streets, water and sewer systems clearly dedicated with a map and some documentation saying that on this date, the official dedication took place. The city is currently following through with those types of procedures like Orchard Hill.

In the past, once the houses were done, the city would accept it though no official documentation was done. It needs to say that as of this date, the streets, water and sewer belong to the city and now the police can enforce the speed limit and the water department should locate and fix the water lines.

Mr. Mallamo said his recommendation is to put the past behind us and move forward. There are things that need to be fixed and the developer has a responsibility and the city has a responsibility to follow thru and get those things done.

It was confirmed by Mr. Mallamo there has been no official dedication of anything in Hearthstone including roads, stormwater, etc. He explained there is a note on a plan that says Homestead Boulevard will be dedicated upon its completion. In his opinion, that note is not legally binding for the city to accept the roads. The City of Milford Code requires the road to pass inspections, the developer to submit a maintenance bond and a map or deed of dedication. That was never followed up. He knows they have asked the city to plow snow on that road defending the request by saying the road is done so the city needs to plow snow. However, they have refused to let the city attach through easements for water and sewer. Therefore, nothing falls under the city.

Mr. Spillane commended Mr. Mallamo on the review noting he covered quite a bit. However, there are some other odds and ends that will need discussing later.

Mr. Spillane recalled the contract that was signed for Hearthstone to have curbing and gutter. He asked what right the city had to void the contract or did we follow some terms on the contract and not others. Mr. Baird feels that is a question the solicitor should answer. Mr. Willard said he will need to review the contract before he can answer that.

Mr. Spillane then provided a copy of the contract. Mr. Mallamo said there were some specifics outlined such as the curbing that were later changed as previously noted.

Mr. Spillane said the contract cannot be changed without another vote. He asked if all the people that signed the contract should now re-sign it and how valid can it be when only a portion of the contract was fulfilled. Mr. Willard reiterated that he will need to review it.

Mr. Mallamo explained that is one of the items highlighted in his report and mentioned earlier. When the developer came back for approval of the open swales, that voided the curb because the two cannot be installed together. Therefore, the city agreed and the developer implemented the open swale system because both parties agreed though there is nothing amending that document in the record. The development was designed with open swales, presented it with swales and the city approved it. Although he is unable to find an amendment to the agreement, it does conflict with the agreement.

Mr. Spillane said he thought we agreed not to accept anything at Hearthstone. Mr. Mallamo explained the city did not accept the dedication of anything. Mr. Spillane said though we were out there inspecting does not mean we accepted anything. Mr. Mallamo advised that during the dedication process, there are a number of things that need to be addressed. In his opinion, that is not one of them. Mr. Spillane feels the shoulders at Hearthstone need to be addressed throughout the development. Mr. Mallamo feels we can do better on the shoulders though he does not believe that in all cases they can be made five feet which is the standard. He feels there will be areas where it will be less, though he feels it can be made better.

Mr. Spillane said that when people drive in, the piping on either side should be repaired and asked for confirmation. Mr. Mallamo thinks it can be fixed though he is unsure how the city can require the builder to make these repairs. He believes it is more of a private issue between the homeowner and the builder and not a city/street nor city/pipe per say. Mr. Spillane said that even though our code requires certain things to be done with the piping in the driveways. Mr. Mallamo said there were other exceptions to the plans that were submitted and approved are not 100% in line with the code. Regardless, they were approved. He agrees there are issues that we will not be able to get full resolution to.

Mr. Spillane said Mr. Mallamo indicated he had seen some plans that were approved and some that were not. There were also several plans submitted to the city. Mr. Spillane went to Sussex County and the last construction drawing he saw was dated 2008. He does not know if there is something more current, but it looks like some of the areas were not built as the plan required. For example, there is supposed to be a pond behind Clearview Drive which was never built. He wonders how council goes about approving a plan and then making sure it is the one being followed.

Mr. Mallamo then explained the process he plans to use on future phases of Hearthstone as well as any other subdivision. Once council approves a set of plans, the letter goes out to the developer stating the plans were approved as dated, reviewed and approved by city council with revision(s) 1, 2, 3, 4. He will then require those plans be submitted to his office for the official stamping. All copies being used in the field must have that official stamp.

Mr. Spillane asked how many changes can be made to a plan after it is approved by council before it must be sent back to council. For example, if they are showing five or six ponds in an area and council approves it. Then the next day the plan is changed without any ponds. Mr. Mallamo explained the city does not approve the ponds as they are under the control of the Soil Conservation District or DNREC. The city defers that approval process to the state or county agencies. If those plans are changed by the conservation district, it is a decision of those agencies and not up to the city to enforce.

Mr. Spillane then provided a different scenario. He said if single family homes were planned for an area and approved

by council today, then tomorrow the plan is changed to build three-story buildings. Mr. Mallamo said that the plan could not be changed from single family homes to a three-story building. That would require a change in the zone, site plan or subdivision plan and would have to go back through the system. However, something that could be change is an 8-inch water line that needs to be a 6-inch water line and is an engineering review issue.

Mr. Mallamo said that once the location of the roads and the size of the lots are approved and recorded, that does not change. Those changes would need to be handled through another application. The subdivision itself is generally approved by council that shows streets, sizes of lots, setback requirements, etc. Those are the issues council should consider in their vote and decision to approve or deny. Manholes change, water line change and similar issues are all engineering-based decisions and adjustments are often needed.

Mr. Workman appreciates the report though it is not what he expected. He expected it to say whether it was the city's fault, the developer's fault and how we can accept or deny it and where to go from that point. He thinks Mr. Mallamo did a great report with a lot of information though he expected a better breakdown.

Mr. Mallamo said we have tested all the water and sewer lines and they all meet our code and could be accepted though they have not been formally dedicated. And though the city provides water and sewer service, we will need to decide whether the city should maintain it or the developer will continue to maintain it. As far as pointing fingers, Mr. Mallamo agrees that all parties involved have some fault in the process. As an example, the city is at fault because the contract says Hearthstone will have curbs though council approved swales and no curbs. It would be the city's obligation to say if the plans are changed, an amendment must be made to the agreement. He does not feel it is the developer's obligation because it is the easier way out. It should have been documented officially at the time it was approved.

He feels the construction issues are the result of the people working for the city calling it one way and the developer's contractors being too eager to build things and not being concerned about its quality. They did not phase things correctly so that things came together better such as the water meter problems in the swales. Someone was putting in water while another contractor was digging a swale and the projects were not coordinated with one another.

Mr. Workman again asked if the city accepted any infrastructure at Hearthstone; Mr. Mallamo reiterated no and referred to the memo which clearly states no.

Mr. Workman referred to the plans recorded in 2008. He feels if we sign off on those plans, that is what the development should look like. Mr. Mallamo agreed.

Mr. Mallamo said that his recommendation is to modify the code and the swale section of Chapter 200. He agrees there are problems that will lead to additional problems in the future. Swales need to be restricted to larger lots and not used in small areas. He feels we should eliminate the three-foot depth because it does not fit in the right of way. With a three-foot depth, there is 24 feet of slope with only a 50-foot right of way. So most of it is being used for a swale.

The things needed to change the code can be ready to submit in a few weeks or a month. Amendments to Chapter 200 are being addressed and were on the agenda this evening. But he is recommending other changes be made. The procedures Mr. Mallamo implemented include obtaining the redlines, the performance bonds and making sure everyone is working off the same set of plans. Unfortunately, the first phases of Hearthstone are unable to be changed and are what they are today.

Mr. Mallamo explained that Mr. Workman's concerns that the construction was not according to the plans is not the case; the catch basin on Clearview Drive is where it is supposed to be located and is at the elevation as noted on the plan. The slope on the swale is per approved plan. Though no one likes it, it is what it is.

When asked about the curbing, Mr. Mallamo stated if there is curbing on the plan, it is out there.

The mayor again asked how to resolve this situation. Mr. Mallamo referred to the memo and suggested we present the issues in phases 1, 2, 3 and 4 to the developer. We should then ask for dedication of the streets, sewers, water system

and easements. He also recommends we advise them there will be no building until these issues are resolved. He withheld permits for a short period of time but according to legal counsel he was not permitted to do that. If Mr. Willard agrees, Mr. Mallamo believes council can make that decision because the code does not give him that power. If council authorizes stoppage until these issues are addressed, it will give Mr. Mallamo the support he needs. However, he said it is important that Mr. Spillane understand that he is unable to promise everything will be changed to Mr. Spillane's satisfaction. Nor can he promise sidewalks because Mr. Mallamo does not feel sidewalks are needed. That was a clear issue from the very beginning of the planning of this development and he feels that needs to be put to rest.

Mr. Spillane responded by saying that no one has ever said they wanted sidewalks in Hearthstone. They only want a safe place to walk on the shoulder of the road. He became involved in this when his mother bought a home there. She asked him about it and he told her it looked good with all the grass as he personally does not like a lot of concrete if it were built correctly. Mr. Mallamo is now saying his street was built correctly by the 4:1 min, so he can agree with that.

Mr. Spillane then asked about the other places in Hearthstone that were built wrong. He asked if the city should go with the same thing on Clearview and other areas.

Mr. Mallamo emphasized that we need to correct the things that can be corrected, but we also need to acknowledge the deficiencies like the five foot shoulders. He feels it can be made better but does not believe it will fit everywhere. It will run into a catch basin or a drainage structure that will restrict it so it is going to be less than five feet. He also added that he must contradict Mr. Spillane's statement that no one wants sidewalks and referred to sidewalks being mentioned twice this evening by Hearthstone residents during the public comment session.

Mr. Baird stated that Mr. Mallamo has gone through a great deal of effort to provide council with more detail than has been available for many years. In addition, his summary paragraph clearly states his recommendations. At this point in time, based on the information provided, as well as the questions and comments made this evening, city council should endorse the effort to move forward based upon Mr. Mallamo's recommendation.

City Solicitor Willard agrees that Mr. Mallamo's approach is a good one. He added that because there are other phases, including a related commercial project from the same property owner, they may legally play into what the city wants and what they a legal right to. He believes that something can be worked out. In addition, council has the power to approve future phases and if that is part of an overall plan, the shortcomings already discovered could be presented with our punch list. He says to require those items be taken care of and then move forward.

Mr. Willard believes it is the best allocation of resources because we are dealing with a businessman who has not wanted to play with us recently just to connect the easements. He referred to some notes in Mr. Mallamo's report that were not necessarily discussed though it is a difficult situation to deal with when something has been in the ground for four years. His suggestion is to let the city manager and city engineer condense this to the punch list for the phases that exist. However, he agrees there are things that need to be let go for the reasons previously stated. There are other projects that still need approval so he suggests we go to the developer with a plan.

Mr. Workman agrees and disagrees because it needs to be stronger. He said that Hearthstone needs to be made one of the best communities because there are many people who bought homes there because they liked it. He likes some of it but does not like all of it. However, that is why he did not choose to live in that type development though he agrees it is a very nice development. He feels the developer is capable of building high quality homes and communities and these issues simply need to be taken care of. He agrees with Mr. Mallamo's suggestion to stop future permits in this development until these problems are taken care of as long as it can be done legally.

Mr. Willard said that depends on the stage of the permit and whether there is a contract owner. He will need to review the stages of those permits but agrees it needs to be explored aggressively. If there is a building permit, a CO cannot be withheld. He dealt with it in Milton adding that case ended up in court. The court ruled it cannot be done though that was particular to their statute. He stated that what is unique about Hearthstone is that it is a huge overall development that is all inner connected. Therefore, he is unsure if phases can be isolated for purposes of approval.