

*MILFORD CITY COUNCIL  
MINUTES OF MEETING  
September 14, 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, September 14, 2009.

PRESIDING: Mayor Daniel Marabello

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

ALSO: Police Chief Keith Hudson and City Clerk/Recorder Terri Hudson

The Monthly Meeting commenced at 7:30 p.m.

INVOCATION AND PLEDGE

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

APPROVAL OF PREVIOUS MINUTES

Motion made by Mr. Brooks, seconded by Mr. Morrow to approve the minutes of the August 10, 24 and 31, 2009 meetings as presented. Motion carried.

RECOGNITION

*Tribute/Carroll B. Jester/30 Years of Service*

Mayor Marabello presented the following Tribute to Mr. Jester in recognition of this thirty years of service:

*Whereas, Carroll B. Jester began his career with the City of Milford at the Streets and Grounds Department on July 9, 1979; and*

*Whereas, Carroll Jester immediately proved his worth and was soon made Crew Chief; and*

*Whereas, after fourteen years with Streets and Grounds, the Parks and Recreation Department began expanding its operations and Mr. Jester was transferred to head of the Parks Division; and*

*Whereas, he was soon promoted to Parks Superintendent and since 1993, has overseen the expansion of park lands in the City of Milford from 60 acres to more than 120 acres; and*

*Whereas, during this time, he earned continuing education credits from the National Recreation and Parks Association in the area of Parks Management; and*

*Whereas, Carroll Jester has worked tirelessly improving and maintaining the public grounds, open space and park areas in the City; and*

*Whereas, under his management of the Milford Parks System, the Mispillion Riverwalk Greenway has become one of the greatest assets in the Milford area and a stellar urban park setting for all to enjoy; and*

*Whereas, during his 30-year tenure, Mr. Jester has earned the deep respect and esteem of his fellow co-workers and peers throughout the state.*

*NOW, THEREFORE, BE IT RESOLVED, that on this 14th day of September 2009, Mayor Daniel Marabello and the*

*City Council of the City of Milford do hereby congratulate Carroll B. Jester on his dedicated service to the citizens of the City of Milford over the past 30 years as he continues to provide dependability and excellent work in our Great City.*

Mr. Jester accepted the tribute along with his daughter, Olivia.

*Adoption of Proclamation 2009-12/Constitution Week*

Mayor Marabello presented the following proclamation to Norma Ruth Volkomer and Marlene Castelow in honor of Constitution Week:

*PROCLAMATION 2009-12  
TWO HUNDRED TWENTY-SECOND ANNIVERSARY OF THE  
DRAFTING OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA*

*WHEREAS, September 17, 2009 marks the Two Hundred Twenty-Second Anniversary of the drafting of the Constitution of the United States of America by the Constitutional Convention; and*

*WHEREAS, It is fitting and proper to accord official recognition to this magnificent document and its memorable anniversary, and to the patriotic celebrations which will commemorate the occasion; and*

*WHEREAS, Public Law 915 guarantees the issuing of a proclamation each year by the President of the United States of America designating September 17 through 23, 2009 as Constitution Week.*

*NOW, THEREFORE, I, Daniel Marabello, by virtue of the authority vested in me as Mayor of the City of Milford, Delaware, do hereby proclaim the week of September 17 through 23, 2009 as*

*CONSTITUTION WEEK*

*in the City of Milford and ask our citizens to reaffirm the ideals the Framers of the Constitution had in 1787 by vigilantly protecting the freedoms guaranteed to us through this guardian of our liberties, remembering that lost rights may never be regained.*

*IN WITNESS WHEREOF, I have hereunto set my hand and caused the Official Seal of the City of Milford to be affixed this 14th day of September in the Year of our Lord Two Thousand and Nine.*

*Adoption of Proclamation 2009-13/National Prostate Cancer Awareness Month*

Mayor Marabello presented the following proclamation to David Sauls, a four year prostate cancer survivor, recognizing Prostate Cancer Awareness Month.

*PROCLAMATION 2009-13  
PROSTATE CANCER AWARENESS MONTH*

*WHEREAS, among men, prostate cancer is the most commonly diagnosed non-skin cancer and the second leading cause of cancer-related deaths; and*

*WHEREAS, each day, countless physicians and researchers devote themselves to treating patients and finding a cure. Educating the public about the risks and treatment of prostate cancer is one of the strongest tools they have to increase early detection and save lives; and*

*WHEREAS, with early detection and treatment, prostate cancer can be cured and many deaths can be avoided; and*

*WHEREAS, the 2009 observance of National Prostate Cancer Awareness Month provides a unique opportunity for citizens throughout the City of Milford and the nation to join together to raise public awareness of the symptoms, prevention, and treatment of prostate cancer.*

*NOW, THEREFORE, I, Daniel Marabello, by virtue of the authority vested in me as Mayor of the City of Milford, Delaware, do hereby proclaim the month of September as*

*NATIONAL PROSTATE CANCER AWARENESS MONTH*

*IN WITNESS WHEREOF, I have hereunto set my hand and caused the Official Seal of the City of Milford to be affixed this 14th day of September in the Year of our Lord Two Thousand and Nine.*

Mr. Sauls then read a tribute from Representative George Carey and Representative Robert Walls on behalf of the Delaware House of Representatives acknowledging Milford City Council for its recognition of September as Prostrate Cancer Awareness Month.

A second tribute was read by Mr. Sauls from the Delaware Senate, sponsored by Senator Gary Simpson, proclaiming September as Prostrate Cancer Awareness Month in Delaware.

#### MONTHLY POLICE REPORT

Police Committee Chair Morrow noted that the police remains consistently busy as is noted in the increasing numbers reported by Chief Hudson. He expressed his appreciation for the hard work the officers do and acknowledged their assistance to Georgetown Police Department when Officer Chad Spicer was killed in the line of duty.

Ms. Wilson moved to accept Chief Hudson's report, seconded by Mr. Starling. Motion carried.

Mr. Workman congratulated the police officers for a job well done during throughout the Freedom Festival and thanked Chief Hudson for his communication during the event. He commended their presence throughout the two-day event and asked that information be relayed to his officers.

Mr. Morrow added there were two other special events occurring at the same time. With the assistance and cooperation of the police, all three events were very successful and without incident. Mayor Marabello concurred with Mr. Workman and Mr. Morrow emphasizing it was a busy time for Milford but things went extremely well.

#### CITY MANAGER'S REPORT

Mr. Baird advised his report was not included in the packet though a paper copy was distributed before the meeting.

He advised that some staff has been relocated back to city hall. Work continues on the lower level to address the water issue that continues. Some progress was made and though the water is not coming in as it was, there is still some entering the wall in the council chambers during periods of heavy rain. He is moving forward to rectify that situation with the contractor. He is reluctant to relocate any staff downstairs until the issue is completely resolved and has put anything on hold until after the problem has been investigated. Representatives from the contractor will be in early next week for further investigation and correction.

A meeting on Thursday, September 17<sup>th</sup> at 6:00 p.m. has been scheduled to address the Southeast Neighborhood Master Plan. More than 1,000 notices were sent to property owners in that area inviting them to participate in this community planning effort. Approximately 100 responses were received from people planning to attend so far.

Mr. Norris is working on a training session for planning commissioners with the University of Delaware's Institute for Public Administration which will also be made available to city council. The training sessions are scheduled prior to

the planning commission meetings on the third Tuesday of each month. They should begin in October or November and the dates will be later reported to council.

He reported that he and Mr. Portmann are working with USDA Representatives and the city's bond counsel on the FY2010 bond issue regarding funding for the water system improvements. There remain questions on how to finance these improvements. A determination will need to be made at the September 28<sup>th</sup> workshop/meeting to finalize how the city wants to proceed. A decision must be made by council on whether to take on the additional debt or utilize cash reserves for the additional work. Mr. Baird reported the finance committee recently met though a final recommendation is unable to be provided as a result of the 2-2 vote.

A Fall Clean Up Week is scheduled for the week of October 12<sup>th</sup> through October 16<sup>th</sup>. A resolution promoting the week will be prepared for adoption at the council meeting on September 28<sup>th</sup>.

Mr. Baird advised we are moving forward with correcting some of the issues at Hearthstone Manor as well as the dedication of the property that has been completed. He stated that many of the recent discussions focused on clarifying the easements and right of ways in Phase One and portions or possibly all of Phase Two. They are still discussing the development of a punch list for the utilities, roads and other improvements while the staff is working toward the proposed dedication. He stated that though they do not have a meeting this week, a meeting is scheduled next week. He will provide additional information following that meeting.

He advised a public meeting was scheduled two and a half weeks ago with property owners to discuss the North Shores Water and Sewer Project. Mr. Baird was very pleased with the large turnout from North Shore residents who expressed both support and concerns. There were questions about why the city was proposing the project in addition to concerns about the cost to those residents. He said that many expressed support for environmental issues especially since the area is adjacent to the lake. There was also some concern about the overall cost associated with the replacement of the wells and septic.

He added the majority of the residents were supportive though the support was based on financial incentives provided as part of the proposal. He said this will be presented to council at the September 28<sup>th</sup> meeting. Without the incentives, he is unsure if there will be enough support to proceed with the project. Mr. Baird will prepare a more detailed report in the coming days for council to consider prior to that next meeting.

Mr. Baird expressed his thanks to Gary Emory and the parks and recreation staff, both full and part-time, as well as Chief Hudson and his staff for a great event this weekend though we were plagued by bad weather two years in a row. Between the city staff and volunteers, he thought it was another successful event for those that attended.

Mr. Starling then asked Mr. Baird why Carlene Wilson was not in attendance this evening. Mr. Baird explained that based on tonight's agenda, he did not feel it was necessary. In addition, they continue to cut back wherever it is possible which he is addressing on a case by case basis. He explained that it would make more sense to have someone present to assist if he was expecting a large crowd.

Mr. Starling stated that she has always been in attendance and has done a great job assisting. He feels she is needed at council meetings. He does not believe it is appropriate to start cutting back with the lowest paid employee in the city.

He asked that from every meeting from this point forward, Ms. Wilson is able to attend her duties. He feels the little overtime she would be paid will not have a big impact though he plans to follow up later with Mr. Baird.

Mr. Spillane then recalled the Hearthstone report given in June 2009 that involved a number of issues that have been discussed since 2005. It was his impression from the report that many of the concerns were going to be addressed, particularly those that involved safety issues. He stated he has not seen any follow up.

Mr. Spillane noted that Mr. Baird discussed addressing items in Phases One and Two, though many of the concerns involved Phase Four. He asked why those matters that council acknowledged were wrong have not been dealt with.

Mr. Baird explained they are addressing issues not only in Phases One and Two, but throughout the neighborhood. When asked about phase four and the swales, Mr. Baird explained there have been discussions about improvements throughout the entire neighborhood as well as tie in points where the connections were made to state roads. He assured Mr. Spillane it is being addressed neighborhood-wide.

When asked by Mr. Spillane how soon the items addressed in June will be started, Mr. Baird said he does not have a specific date.

In reference to the city hall leak, Mr. Workman said that was an issue more than a month ago. He said there was thousands of dollars spent to have the basement waterproofed and renovated. He feels that each time we get to the point that some employees will move to the lower level, something prevents it from happening. He understands the importance of resolving the water issue, but does not understand why the contractor has taken so long to correct the problem.

Mr. Workman asked if there is some type of guarantee the basement would not leak even though it has occurred more than once. He believes we need to be more stern about having it corrected. He asked Mr. Baird to inform the contractor the work must be done and done correctly. He said the rest of the staff needs to relocate to the basement adding it is the desire of residents in the city to have the building up and running.

Mr. Baird advised the contractors have been responsive to these problems and have been back three to four times. The first time there was a significant leak and some sealing was done which appeared to have helped. The next time it rained, it was isolated to one small area. After the second rain at the end of last week, the leak was spread out over a larger portion of the floor again. This morning, they cut back a large portion of the drywall above the ceiling level and pulled some of the insulation out to determine exactly where the leak is. They felt some dampness though another significant rain event is needed to determine if we can visually determine where that penetration is.

Unfortunately, there may be a leak on one side, but it will not show until it is on the other side of the room, according to Mr. Baird. That is the dilemma the contractor has at this point.

Mr. Workman moved to accept the city manager's report, as presented verbally, seconded by Mr. Morrow. Motion carried.

#### COMMITTEE REPORT

*Annexation Committee: Annexation/Lands of W. Nelson Hall & W. Nelson Hall Substitute Trustee/Tax Parcel 3-30-11.00-06.00*

Ms. Wilson presented the following annexation report:

An Annexation Committee Hearing was held in the Council Chambers on August 19, 2009 to consider the annexation request for lands described as:

*Property owner: W. Nelson Hall & W. Nelson Hall Substitute Trustee  
Tax Map No. 3-30-11.00-06.00*

*Beginning at a point formed by the intersection of the easterly right-of-way line of Delaware Road #30, 60 feet wide, with the southeasterly line of lands, now or formerly, of James Wesley Thawley, as recorded in the Sussex County Office of the Recorder of Deeds, Deed Book 642, Page 238,*

*1) Thence, leaving said right-of-way of Delaware Road #30 and coincident with said Thawley lands, North 60 degrees 22 minutes 25 seconds East 225.72 feet to iron pipe found at a point along the southeasterly line of lands, now or formerly, David W. & Amanda L. White, as recorded in said Office of the Recorder of Deeds, Deed Book 1546, Page 226,*

- 2) Thence, leaving said Thawley lands and coincident with said White lands, North 57 degrees 04 minutes 42 seconds East 180.06 feet to an iron pipe found at a point along the southeasterly line of lands, now or formerly, Mulford W. & Joan L. Bittle, as recorded in the said Office of the Recorder of Deeds, Deed Book 1684, Page 41,
- 3) Thence, leaving said White lands and coincident with said Bittle lands, North 56 degrees 59 minutes 30 seconds East 190.20 feet to a concrete monument found at a point along the southeasterly line of lands, now or formerly, Otis J. & Beulah M. Penuel & Beronica E. Moore, as recorded in the said Office of the Recorder of Deeds, Deed Book 2036, Page 7,
- 4) Thence, leaving said Bittle lands and coincident with said Penuel & Moore lands, North 47 degrees 49 minutes 39 seconds East 149.92 feet to a concrete monument set at a point along the southwesterly right-of-way line of said Delaware Route 1,
- 5) Thence, leaving said Penuel & Moore lands and coincident with said right-of-way of Delaware Route 1, the following 2 courses and distances, South 42 degrees 09 minutes 11 seconds East 1626.52 feet to a point,
- 6) Thence, along a curve to the left, having a radius of 2421.84 feet, an arc length of 566.86 feet and a chord bearing and distance of South 48 degrees 51 minutes 30 seconds East 565.57 feet to a concrete monument set at a point on the northwesterly line of lands, now or formerly, The State of Delaware, as recorded in the said Office of the Recorder of Deeds, Deed Book 647, Page 455,
- 7) Thence, leaving said right-of-way of Delaware Route 1 and coincident with said State of Delaware lands, the following 2 courses and distances, South 50 degrees 00 minutes 01 seconds West 104.59 feet to a concrete monument set at a point,
- 8) Thence, South 42 degrees 27 minutes 17 seconds East 300.00 feet to a concrete monument set at a point along the northwesterly line of lands, now or formerly, Elmer J. Roberts,
- 9) Thence, leaving said State of Delaware lands and coincident with said Roberts lands, the following 3 courses and distances, South 45 degrees 42 minutes 43 seconds West 346.70 feet to a concrete monument set at a point,
- 10) Thence, South 47 degrees 12 minutes 43 seconds West 198.00 feet to a point,
- 11) Thence, South 57 degrees 07 minutes 43 seconds West 27.68 feet to a point along the northeasterly line of lands, now or formerly, Patrick J. & Judy Kay L. Emory, as recorded in the Office of the Recorder of Deeds, Deed Book 2310, Page 85,
- 12) Thence, leaving said Roberts lands and coincident with said Emory lands, the following 4 courses and distances, North 59 degrees 07 minutes 17 seconds West 804.67 feet to an iron pipe found at a point,
- 13) Thence, South 83 degrees 03 minutes 19 seconds West 436.09 feet to an iron pipe found at a point,
- 14) Thence, South 62 degrees 22 minutes 56 seconds West 234.84 feet to an iron pipe found at a point,
- 15) Thence, South 43 degrees 43 minutes 35 seconds West 221.38 feet to an iron pipe found at a point along the northerly line of lands, now or formerly, Robert W. & Carolyn M. McLaughlin,
- 16) Thence, leaving said Emory lands and coincident with said McLaughlin lands, South 86 degrees 55 minutes 49 seconds West 245.25 feet to an iron pipe found at a point along the easterly right-of-way line of Delaware Road #30,
- 17) Thence, leaving said McLaughlin lands and coincident with said right-of-way of Delaware Road #30, North 03 degrees 02 minutes 51 seconds West 832.00 feet to an iron pipe found along the southerly line of lands, now or formerly, Patrick F. & Jacquelyn A. Gorman, as recorded in the said Office of the Recorder of Deeds, Deed Book 1630, Page 62,
- 18) Thence, leaving said Delaware Road #30 and coincident with said Gorman lands, the following 3 courses and distances, North 86 degrees 58 minutes 45 minutes East 374.80 feet to an iron rod found at a point,
- 19) Thence, North 03 degrees 01 minutes 17 seconds West 249.99 feet to an iron pipe found,
- 20) Thence, South 86 degrees 58 minutes 14 seconds West 75.11 feet to an iron pipe found at a point along the easterly line of lands, now or formerly, Walter V., Jr. & Barbara L. Samuels, as recorded in the said Office of the Recorder of Deeds, Deed Book 1776, Page 123,
- 21) Thence, leaving said Gorman lands and coincident with said Samuels lands, and in part with lands, now or formerly, Frederick A. & Delema M. Duffy, as recorded in the Office of the Recorder of Deeds, Deed Book 2021, Page 73, and in part with lands, now or formerly, Albert T. & Beverly J. Coverdale, as recorded in the said Office of the Recorder of Deeds, Deed Book 2421, Page 89, and in part with lands, now or formerly, Barry W. & Karen Know, as recorded in the said Office of the Recorder of Deeds, Deed Book 2008, Page 284, the following 2 courses and distances, North 04 degrees 18 minutes 53 seconds West 613.36 feet to an iron pipe found at a point,
- 22) Thence, South 84 degrees 25 minutes 59 seconds West 300.00 feet to an iron pipe found at a point along the easterly line of said right-of-way Delaware Road #30,

23) Thence, leaving said Knox and coincident with said right-of-way Delaware Road #30, North 05 degrees 43 minutes 00 seconds West 87.80 feet to the point and place of beginning.

Tax map number: 3-30-11.00-06.00

Size: 59.309 +/- acres

Existing zoning: AR-1 Proposed zoning: C-3

The Annexation Committee of the City of Milford City Council recommends APPROVAL of the application, by a 4-0 vote, with the following comments:

-Annexation is consistent with the "Comprehensive Land Use Plan".

-Property is contiguous to existing City Limits.

-Any changes to the property would be subject to review by the City of Milford Planning Commission and/or City Council.

-Property will be served by City Electric, Sewer and Water.

-The City will benefit through additional revenues, including taxes and the sale of water, sewer and electric.

-Upon Council approval, a Municipal Annexation Plan of Services will be submitted to the Office of State Planning for their approval.

Advantages of Annexation:

- Availability of additional services such as electric, sewer, water and snow removal.

- Increased real estate values and marketability, as more improvements and urban utilities are made available.

- Provides suburban residents with a voice in the government of the larger community in which they live.

- Reduces utility rates, since utility surcharges to unincorporated territory, if applicable, would be lifted.

Disadvantages of Annexation:

- Increase in taxes due to an increase in services that some residents do not want.

- Greater urbanization and loss of "rural character".

- More restrictive ordinances, regulations, and licensing requirements.

The property should be annexed with the following zoning classification: C-3

Committee Chairman Katrina Wilson

Council Members Michael Spillane and John Workman

Planning Commission Chairman Charles Rini

Mr. Brooks questioned the comment in the report that the disadvantages of the annexation could be a potential increase in taxes because of an increase in services. City Planner Gary Norris advised that the charter requires the annexation committee report include both advantages of disadvantages of the annexation. He said there is the possibility that property taxes could increase to pay for new or additional services. He said that though that does not mean it would happen, it was added as a disadvantage only to comply with the charter requirement. However, Mr. Norris suggested that council does not have to agree and has the option of stating it is irrelevant.

Mr. Brooks said he is confused because he was always under the impression that any annexation pays for itself. Mr. Norris explained that he was referring to development costs such as water and sewer. His thought was if the land was developed, it could create additional police calls which would not be paid through an impact fee, for example.

Ms. Wilson added that was not discussed at the annexation committee meeting; Mr. Norris agreed and reiterated that was only added to satisfy the charter requirement.

Mr. Spillane asked that if once the land is annexed and rezoned, will the land be taxed at the appropriate rate. Mr. Norris explained that the rezoning will go before the planning commission for their zoning recommendation and will come back before council for their approval to be annexed and zoned. He feels that once that is finalized, it will be taxed at the appropriate zoning classification.

Mr. Workman said he was unable to make the last annexation committee meeting, but at that time, it needs to be discussed whether the annexation is positive or negative for the city. In addition, the zoning issue should also be included in the recommendation.

Mr. Spillane agrees that the charter requires the annexation committee report to include the advantages and disadvantages of the annexation.

Mr. Morrow moved to accept the annexation committee report and to proceed, seconded by Ms. Wilson. Motion carried by unanimous roll call vote.

#### *HOA Committee Report*

Chairman Spillane reported the committee has met three times and will meet on September 21<sup>st</sup> at 6:00 p.m. at which time the city solicitor will be speaking to the group.

Mayor Marabello advised Mr. Spillane he will meet with him to discuss the makeup of the committee to ensure it conforms to councils' wishes.

#### COMMUNICATIONS

Nothing new to report.

#### UNFINISHED BUSINESS

*Lynn & Karen McColley for a Change of Zone of 79.5 +/- Acres from R-2 (Residential) to C-3 (Commercial) west of Delaware Route 1, lying south of N.E. Tenth Street and north of N.E. Front Street, Milford, Delaware. Present Use Residential & Agricultural; Proposed Use Highway Commercial; Tax Map MD-16-174.19-01-01.00 (N.E. Side/N.E. Tenth Street); MD-16-174.19-01-01.01 (416 N.E. Tenth Street); MD-16-174.19-01-03.00 (N.W. Side/County Road 409); MD-16-174.19-01-04.00 (819 N.E. Front Street); MD-16-174.19-01-11.00 (N.W. Side/County Road 409); MD-16-174.19-01-13.00 (S.E. Side/County Road 407); MD-16-174.19-01-14.00 (600 N.E. Tenth Street)*

Mayor Marabello recalled council deferring action on this matter at the last council meeting.

City Solicitor Willard reminded council the presentation and public hearing was held at the August 24<sup>th</sup> meeting during which time the floor was open to public comment and then appropriately closed. Council only deferred action to this meeting.

Mr. Workman recalled that when council took action to defer the matter, additional information was to be obtained though he has seen nothing.

Mr. Adkins recalled that council postponed action so that an appropriate motion, with the correct wording, could be prepared.

Mr. Baird then read the following excerpt from the August 24<sup>th</sup> meeting:

*Mr. Willard said this appears to be a motion to deny the rezoning. He said this is a large project and council has discussed their authority in land use decisions. He said in other issues, council makes a zoning decision based on the health and welfare of the city and whether it adversely affects other neighbors and traffic, which is specifically mentioned in the general provisions. He said action can be deferred on something of this magnitude in order to prepare an appropriate motion whether it will be to deny or approve. He said it is important that the moving party has a motion that reflects their intent.*



*Mr. Willard said he is willing to work with any councilperson to draft a motion based on the facts they feel are relevant whether they are for or against it.*

*When asked if the motion on the floor was to deny the application and that the zone remain R-2 or defer action, Mr. Spillane said he will change his motion to defer. Mr. Workman seconded motion.*

Mr. Baird said he has spoken with several council members regarding this motion, most of whom were bouncing back and forth on the right way to proceed. From those conversations, he was unsure council was prepared to move forward. He is unsure if council should act until there is some direction provided on how to proceed. He feels it is nothing to rush into because there could be some ramifications. His impression was council was still in the process of doing its due diligence on how to proceed. He stated that we will be happy to facilitate that if someone wants to put something on the table, whether it is tonight or if council wants to continue the deferral and allow more time for consideration.

He added that further dialog may lead council into a motion.

Mr. Morrow asked if we had any additional information on the status of the overpass. Mr. Baird answered no but he did make contact with DELDOT who confirmed it is on their radar screen though it is not funded. They are noncommittal on the project at this time.

Mr. Adkins believes it is worth discussing the two aspects of the project; one being the change of zone and the second issue is the tax waiver that Mr. McColley requested. He feels voting on those issues should be separate.

Mr. Brooks explained that his concern remains with the traffic on Tenth Street. Until he is able to see some definite action being taken by the state to deal with the traffic problem, he will not support the project. He recalled Kent County Levy Court Commissioner Eric Buckson addressing council when the Silicato project was being considered. At that time, he stated the existing traffic volume put the traffic system on Tenth Street at barely passing. With the additional development, he felt it would fail. The addition of another seventy acres of commercial development will create more problems, particularly with the large crowds at the high school football games on Friday nights. He is convinced that Tenth Street will not handle a large retail area added to the mix. In addition, a lot of those vehicles will utilize Route 1, which is already congested on weekends with beach traffic and will cause major backups on Tenth Street.

Chief Hudson agreed with Mr. Brooks' concerns.

Mr. Brooks said that if the state comes through with a plan to address the increased number of vehicles with an overpass or some other alternative, he would consider it. At this point, he is very concerned about the student drivers at the high school in addition to traffic in general on Tenth Street.

Mr. Spillane agrees with Mr. Brooks noting he has observed the traffic on Tenth Street and Route 1 on several occasions. In particular, Friday night was extremely bad with the football game. He has also observed traffic backed up in both directions on Route 113. He recalled his concerns about the Silicato development and he is unable to support this change without a traffic plan in place from the state.

Mayor Marabello asked the city manager where the overpass is on the priority list. Mr. Baird said they did not provide specific information but only stated the project was well down the list.

Mr. Johnson emphasized councils' concern is the safety of our children which should be addressed before moving forward with changing a zone to allow for commercial use. His recommendation is to again postpone action.

Ms. Wilson stated that she was just discussing how difficult it is to get off her street and enter Route 113 every week from Thursday through Monday. She agrees there are major traffic concerns. She said there are times she has to bogart her way through traffic to cross the highway to go south. Traffic is an issue in Milford and safety is always a major concern of council and must be considered.

However, her other concern is what council previously approved and asked if it is fair to approve one development and deny another when they are asking for similar uses.

Ms. Wilson says she is very conscious not to discriminate. She noted that the city is always waiting on DELDOT and she does not believe they will ever catch up with everything. She believes the developers will try to do their best to make sure things are done correctly and this will most likely take a year or two to build. Hopefully, the overpass will have moved up the DELDOT chain by that time.

She concurs this is always the issue with annexations and developments. Council must be careful when they approve commercial properties to stay consistent. Ms. Wilson believes that the beautification and expansion of the mansion will be a bonus. But deferring the project for a length of time or denying the change of zone will be detrimental.

Mr. Workman agrees with Ms. Wilson that council needs to be fair to all applicants. He recalled that when the adjacent project was being considered, council was told by DELDOT that access would not be allowed off Route 1 which is a four-lane divided highway as is Route 113. However, Tenth Street is a normal town street and considered a cross street. According to the previous developer, studies were done as was required by DELDOT but only in relation to the one project. Once the other project is completed and up and running, there will be huge potential impact. Tenth Street is very narrow and highly impacted by school traffic let alone any commercial development. He said if the street was widened, it would affect the existing homes on Tenth Street and would take most of their front yards away. He feels council needs to take that into consideration as well.

Mr. Johnson stated that with all due respect of the work the planning commission puts into these projects, the final decision is made by council who must consider the pros and cons and especially the overall safety issues. He does not feel council is discriminating against anyone. He feels it is part of councils' job to consider each project. It is not a matter of 'not in my neighborhood' though each council member has roads in their wards with traffic concerns. Unfortunately, there are no funds that have been allotted for improving the roads. He is asking council to consider postponing the matter.

Mr. Brooks assured council he has no personal agenda in this matter. He informed Mr. McColley that he had no problem with the project. He only asked that he wait until the overpass went in before requesting the change of zone. However, Mr. McColley did not respond.

It was confirmed by Mr. Baird that if the project is denied, they cannot reapply for another year. Mr. Morrow asked if council can defer action for a year or two to prevent them from paying additional fees when they reapply. He added that he has traffic concerns because the overpass will not be built for some time. He agrees that deferring action is preferred with the idea it could be brought back in a year or two.

Mr. Workman said council can continue to defer action, but feels a motion could include some conditions of what council wants to accomplish. For example, approve the change of zone to be effective at the time the bypass is constructed. He agrees it is a good project, but noted that nothing is being built now so there should not be a problem postponing the matter unless there is a builder that has committed though Mr. McColley did not give that impression.

Mr. Adkins feels that after considering the project and the area and things going on around it, he believes this should be a commercial area. He said the infrastructure with the access road could be a factor, but we don't know that yet. He pointed out council is only considering the zone change at this time. He agrees Mr. McColley will have some major issues to address as far as the infrastructure, both externally and internally.

Ms. Spillane is sure the land will eventually be zoned C-3 with a retail shopping center and shops, but at this time he has concerns with safety and traffic. When the overpass is built, he feels that more commercial may eventually be developed along Route 1. However, at this time, it is not feasible.

Mr. Starling does not feel anything will change over the next twenty or so years. He informed council he has lived on the corner of Route 113 since 1972 and he can only shake his head as he watches the traffic. He said if it wasn't for the

police in town, the churches would not be able to get funerals across the highway. He referenced a recent problem getting a funeral procession across Route 113 to the Milford Community Cemetery. Another procession going to Ellendale needed the assistance of the police. He does not see the situation getting any better because traffic is going to increase.

Mr. Brooks pointed out that vehicles can force themselves onto Route 113 because of the traffic signals, but vehicles on Route 1 have no reason to slow down so it is impossible to enter the highways when traffic is heavy.

Mr. Baird then confirmed that if a proposal is denied, it is not eligible for reconsideration for a period of one year after final action by city council without a three-quarter favorable vote by the planning commission or city council.

Ms. Wilson confirmed that if the application is deferred, Mr. McColley will not have to pay the application fees again for council to reconsider; Mr. Baird agreed.

Ms. Wilson if there is a choice between denying or deferring, she prefers to defer the matter though she is unsure what time period should be considered.

Mr. Adkins said he would rather defer the actual plan to see what happens with the rest of the area. However, he does not think deferring the zoning makes sense. He pointed out Mr. Spillane agrees the area should be zoned C-3 and he feels that is the question before council. The actual safety and traffic concerns can be addressed once a better picture of the site can be provided with the service road in addition to the actual project or use.

Mayor Marabello asked for a consensus of council.

Mr. Johnson said definitely deferral.

Mr. Spillane said he prefers to pass.

Mr. Workman said he was confused why the mayor was asking the question.

The solicitor said he reviewed the zoning code for deferrals which appear to be silent though it exists in other codes. Typically, if action is not taken within a specific period of time, some zoning applications can be considered approved. However, he stated it cannot be arbitrarily hanging out there for a period of time. In his opinion, the applicant would prefer a deferral than a denial at this point.

Mr. Willard explained this is only a change of zone and there is no site plan before council. When they ask for a change of zone, there is no requirement to have a site plan though it makes the decision more difficult. He said the decision is whether or not it is appropriate and does it adversely affect neighbors, is it consistent with the comprehensive plan, are there similar properties next door and safety, health and welfare in regard to school, traffic, and similar issues.

He said that when he asked council to get their thoughts together at the last meeting, particularly if the decision was going to be to deny the application, council would need to provide the appropriate reasons based on the law. If it was deferred, a specific time should be added. Mr. Willard suggests council negotiate the time frame with the applicant if they do not object to the deferral. He wants to do more research on deferrals in the meantime.

Mr. Johnson moved to defer the application for a period of one year, subject to the review and determination by the city solicitor that a law would prohibit such a deferral, seconded by Ms. Wilson.

Mr. Willard explained that unless he and the applicant's attorney can come to an agreement on how to proceed, council will still have the ultimate decision.

Motion carried by the following 7-1 vote:

Yes-Johnson, Spillane, Workman, Brooks, Morrow, Starling, Wilson  
No-Adkins.

Mr. Adkins feels this is a zoning issue and believes the property should be commercial and the issues causing the vote for a delay are questions he would prefer addressed at a future time.

Mr. Brooks said he has no problem with the project but his problem is the traffic issues. Mr. McColley previously stated that two politicians informed him the overpass was coming and the money was in place for that project. He only wants to know how the traffic will be handled and which way it will be directed. If the overpass is built, he will agree to the C-3 zone.

Mr. Morrow confirmed that Mr. Willard would provide an answer at the next meeting on September 28<sup>th</sup>.

Ms. Wilson said she agrees with Mr. Adkins and prefers a final vote though she definitely does not want it denied. She feels that waiting for additional information is better than being denied and votes yes.

## NEW BUSINESS

### *Stratman Zoning Interpretation*

Mr. Spillane referred to a map showing the area of the Stratman property and the Watergate property off Marshall Street.

He explained that during the early stages of reviews and approvals of the Watergate subdivision, the applicant agreed that the entrance to the Stratman property would remain accessible as had always been done and an additional access would be provided to the Milford Mini Storage. Last year when a townhouse was being built, it appeared Ms. Stratman's current access was being eliminated. As a result, Mr. Spillane brought the matter before council who took formal action at that time for Ms. Stratman to continue to use the present access.

Mr. Spillane also noted the Watergate property was previously zoned light industrial, but in 2006, council approved a change of zone from I-I to R-3 (Residential). He advised the Milford Code requires a fifty-foot buffer between an I-I property that abuts a resident property. He referred to a partial fifty-foot buffer between the two properties behind the Milford Rental property (zoned I-1).

Since that time, the subdivision was sold. Mr. Spillane recommends the city contact the new owner to ensure Ms. Stratman access is adhered to as was agreed to by council. In addition to having a fifty-foot buffer added around the entire property to separate the Stratman property and adjacent City of Milford property.

Mr. Workman questioned if any conditions were placed on the PUD approval which may affect the buffer. City Solicitor Willard advised the R-3 was approved with a PUD overlay. He acknowledged the site plan was approved with two significant problems—the entrance and the fact the developer is building too close to her property.

Mr. Willard explained that a PUD allows some flexibility. One section allows the planning commission to determine the buffer and setbacks. He is unsure from reading the minutes if that was done. Mr. Spillane confirmed the planning commission did not reduce the fifty-foot buffer but approved the fifty-foot buffer around the surrounding properties.

Mr. Willard said that what was granted by the city was the final site plan which Mr. Spillane's feels was wrong and illegal. Mr. Spillane feels there was a mistake made because a fifty-foot buffer was required only on one side.

The solicitor is concerned the city could end up in some litigation that we may lose. He agrees the approach is a good one and the time is right for the city manager, city planner and Mr. Willard to approach the new owners and address the two issues to see if they are receptive.