

MILFORD CITY COUNCIL
MINUTES OF MEETING
October 12, 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, October 12, 2009.

PRESIDING: Mayor Daniel Marabello

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

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

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

Mayor Marabello announced the absences of Councilwoman Wilson due to a sick relative and Councilman Morrow as the result of his mother-in-law's death.

INVOCATION AND PLEDGE

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

APPROVAL OF PREVIOUS MINUTES

Motion made by Mr. Workman, seconded by Mr. Brooks to approve the minutes of the September 3, 14, 15, 22 and 28, 2009 meetings as presented. Motion carried.

RECOGNITION

Superintendent Sharon Kanter/Milford School District

Ms. Kantner provided council with an update on Milford School District and her future goals which include the No Left Behind Program. She noted that three of Milford's elementary schools ranked superior based on the Delaware State Testing Program this past spring. In addition, the 4th, 6th and 8th graders ranked first in the state on state testing and continue to move forward.

She advised the current population is approximately 4,100 which is slightly higher than last year. The Central Academy is expected to open in July 2010 and will house 8th and 9th graders with 6th and 7th graders remaining at the middle school. Ground was recently broken for a new 74,000 square foot Upper Elementary School at the Ross campus. The initial plans are to place 4th and 5th graders at the new school and 1st, 2nd and 3rd graders at Ross Elementary. However, Ms. Kantner pointed out those plans are not etched in stones.

Ms. Kantner advised that in the fall of 2011, Milford School District will go to full time kindergarten. They are currently one of two districts in the state that do not have full time kindergarten.

Other renovations were also discussed by Ms. Kantner.

She also discussed the problem recruiting highly qualified teachers when competing with other districts including Cape and the area tech schools.

She also promoted a mentoring program where a number of businesses including Caulk Company, Stevenson House, IG Burton, NAACP and the Chamber of Commerce are participating. She invited members of the city council to participate in that program as well.

MONTHLY POLICE REPORT

In the absence of Chairman Morrow, Police Committee Member Starling advised the police report was included in the council packet and asked if anyone had any comments. Mr. Adkins noted the number of complaints had increased; Chief Hudson advised that complaints had increased, though the newly implemented CAD (computer aided dispatcher) system documents more calls, which includes traffic stops, so those numbers will be higher.

Councilman Workman then reminded those present that the new Citizens Police Academy begins in January if anyone is interested in attending.

Mayor Marabello noted there were some incorrect numbers in the written summary of the report though he has discussed it with Chief Hudson who advised him they would be corrected.

Mr. Starling moved to accept Chief Hudson's report, to be corrected as noted, seconded by Mr. Workman. Motion carried.

CITY MANAGER'S REPORT

Mr. Baird distributed copies of the following report at the meeting:

City Hall (Administration Goals)

Daystar Stills has been in to seal additional areas that may be the source of the leak. If this is not successful, they are proposing to seal the brick as further measure.

SE Neighborhood Master Plan (Planning & Zoning Goal)

The second of a series of three meetings on the SE Neighborhood Master Plan will be held on Thursday, October 15, 2009 at the Carlisle Fire Company beginning at 6:00 p.m.

Public Works Committee Meeting

The Public Works Committee will be meeting on Wednesday, October 21, 2009 at 4:30 p.m. at City Hall. Agenda items include an update on the SE Front Street Paving and Rehabilitation Project, SE Water and Sewer Extensions and updates on the Water, Sewer and Electric Capital Projects.

NE/NW Front Street Sewer Project (Engineering Goal)

This project that will make sewer improvements from the Truitt Street to Walnut Street and improvements from the Kent Co. Pumping Station to Rehoboth Blvd. has been bid. A prebid meeting will be held on Wednesday, Oct. 14, 2009 and the Bid Opening is scheduled for Friday, October 30, 2009. It is anticipated City Council will be asked to award the project at its November 9, 2009 meeting.

Meadows at Shawnee Stormdrains

Over the past few weeks, Mr. Mallamo and I have met with representatives of the Meadows at Shawnee HOA to discuss options on how to proceed. The HOA disagrees with the City's position that the drains in the rear yard are the responsibility of the homeowner/HOA. All correspondence on this issue has been forwarded to City Council and we are attempting to meet again the week of October 19 in an effort to resolve this difference and bring a unified position to City Council for its consideration.

Clariant Closing—Impact on City

As many of you are aware, Clariant has announced it will be further downsizing its operations in Milford over the next few months and completely closing in Spring 2010. Milford will be losing approximately 33 jobs over the coming months that will have an impact on families and other businesses in the community. The City will see a direct loss in its utility revenues as well. The City is projected to lose \$520,000 in electric (\$506,000) Water (\$5,000) and Sewer (9,000) in revenues with the loss of one business.

SE Downtown Neighborhood Project

The next meeting will be held on Wednesday, October 21, 2009 at 6:30 pm at City Hall. The code officials will be making a presentation at the Council meeting on October 12, 2009.

Mr. Baird then advised that the city had received a grant in the amount of \$894,208 for the S.E. Front Street paving project. He will have it added to the October 26th agenda though he will make sure we are in agreement with the terms.

He also advised the Northeast and Northwest Front Street Sewer Project is currently out to bid. A pre-bid meeting is scheduled this week with final bids due Friday, October 30th. The award is scheduled at the November 9th meeting.

Mr. Baird noted that the Meadows at Shawnee HOA disagrees with the city's position on the residential storm drains. He continues to correspond with HOA President Linda Boone and is scheduling a meeting to discuss the matter. Copies were provided to council members (Letter on File in City Clerk's Office).

The city manager report will be added to the on-line council packet.

Mr. Baird then asked Code Officials Don Williams and Linden "CC" Dennis to provide an update to council.

A power point was then presented by Mr. Williams who stated he was asked to provide this information this afternoon. (See attached).

Following its conclusion, Mr. Workman asked the status of the deteriorating home on N.W. Front Street adjacent to the Avenue Church Street property and old Jewells Market. Mr. Baird advised that notices for demolition have been prepared for all four properties. He explained one is down, one is partially down and two are adjoining properties. A structural engineer has assessed the properties and determined that all four need to be demolished. He reiterated that all notices are ready and he is working with the solicitor's office to ensure everything is in order.

Mr. Willard confirmed that one letter has been sent. Mr. Baird believes this may result in some civil action between the two property owners though the city has done its job.

Mr. Workman advised there are serious maintenance issues, including overgrown weeds, that are causing problems for adjoining property owners and area residents. Mr. Baird responded the two code officials will handle the matter.

Mr. Workman also inquired about the number of healthy trees being removed throughout the city and recalled Milford being designated as a Tree City USA community. Mr. Baird advised that in most of the cases, we are trimming trees in conjunction with the property owners who wish the trees removed. City Arborist Bill Pike has been consulted in most of these situations. In addition, property owners have been consulted regarding their replacement. He explained that when the city electric department removes a tree, they offer replacement trees though it is not normally a fast growing tree.

Mr. Brooks confirmed the city removes tree limbs on private property that are encroaching electric lines; Mr. Baird agreed.

Mr. Starling advised that he witnessed some workers that appeared to be addressing these problems. Mr. Baird explained that one of the properties is still occupied though there were some roof issues. They came to the city requesting the permit though we were reluctant to grant it because of the structural engineer's report for demolition. Mr. Starling believes that person may have been making some interim repairs on their own.

Mr. Workman moved to accept the city manager's report, seconded by Mr. Adkins. Motion carried.

COMMITTEE REPORTS*Charter Review Committee*

Chairman Spillane reported the Charter Review Committee will meet tomorrow (Tuesday) at 4 p.m. He advised the document is very close to being presented to city council.

Finance Committee

City Manager Baird advised that the committee meeting canceled their meeting earlier this evening; it has tentatively been scheduled for Monday, October 26th.

Homeowners Association Committee

Chairman Spillane advised it was in the best interest of the city to resign as chair. He received a number of reports from people that felt he had a conflict. To prevent any of the committee work being compromised, he felt it was necessary step down as chairman. He noted that his opinion is he does not have a conflict.

He encouraged the committee in hopes that the accomplishments will continue. Mr. Willard, City Manager Baird and Mayor Marabello confirmed they have not received any phone calls implying Mr. Spillane had a conflict of interest.

Mayor Marabello asked if any other council person wished to take over the committee. With no response, the mayor asked council to consider the matter.

COMMUNICATIONS

McColley Rezoning Issue/Reconsideration

A letter from the McColley's attorney indicated he was unavailable for tonight's meeting. Therefore, Mayor Marabello advised the matter would be postponed. The city manager then noted the attorney for the McColley's had requested the matter be discussed at the November 9th meeting.

City Solicitor Willard recalled council asking that he verify postponing action for one year was legal.

Mr. Willard did some research though he was unable to find any specific legal opinions on tabling a matter for this period of time. He found that most zoning decisions would be judged by an arbitrary comprecious standard and substantial evidence. However, if there is no evidence, the question is whether or not the applicant has a right to a reasonable decision.

Mr. Willard reported that a code official's act can clearly go to court on a writ of mandamus. He hopes to have more case law at the next meeting though he has found nothing substantial.

The solicitor confirmed that if the matter is still pending, in one year, the matter can be placed on the agenda as old business.

Mr. Spillane asked how it was added to tonight's agenda. Mr. Baird said it was listed under communication as a non-action item. He stated that he and Mr. Willard both felt it was an appropriate item to be placed under communications.

Mr. Spillane stated he is still trying to determine who decides what and how something goes on the agenda. He has been trying for some time to have something added though it was never done.

Mr. Workman asked the mayor and city manager to confirm we are handling these agenda items correctly and consistently. The mayor stated those decisions are made by our attorney.

Milford Public Library

The mayor then read a letter from Milford Library Director Kay Hudson who stated the library construction is progressing very well. She thanked council for the second installment of \$75,000 that was received toward the \$300,000

commitment.

UNFINISHED BUSINESS

Planning Commission Appointments

Mayor Marabello advised it is imperative that commissioners be appointed so they can be in place by October 20th to insure any pending applications can be acted upon.

The mayor then recommended that Archie Campbell and Keith Grambling be appointed to the planning commission.

Mr. Spillane recalled that at the last meeting, council agreed that all members be present to vote on these appointments. He noted that at that time, only one council member was absent but tonight, two council members were absent. Though he understands the urgency, he is uncomfortable making those appointments with only two six members present.

Mayor Marabello advised that Councilman Morrow had informed him of the importance of the appointments tonight. He stated to prevent any further applications from being postponed due to a lack of quorum of the commissioners, the appointments needed to be made.

Mr. Workman asked what criteria Mayor Marabello based his decision that Mr. Campbell and Mr. Grambling be appointed versus the other applicants. The mayor said it was somewhat subjective. He eliminated some applicants because there was a possible conflict of interest.

Mr. Johnson referenced the applicant from the fourth ward which he feels would have provided more equal representation of all wards. The mayor noted he is also the president of the Knotts Landing HOA. Mr. Johnson recalled him stating that if that was a problem, he was willing to remove himself from that position.

Mayor Marabello agreed and stated he is willing to submit the names of Arthur Campbell and George Pilla from the 4th ward.

Mr. Johnson asked if it was possible to have an alternate in case someone was unable to serve or complete their term. The mayor preferred the two positions be filled at this time. Mr. Workman verified the other applications would remain on file should another vacancy occur.

Mayor Marabello recalled that Keith Grambling, Michael Ward, Frank Bason, Paul Hayes, Archie Campbell and George Pilla were interviewed. There were seven candidates though only six were interviewed.

Mr. Brooks moved to appoint Mr. Campbell to replace Brendon Warfel (Third Ward-expiring August 31, 2010) and Mr. Pillan be appointed to replace Jason James (Fourth Ward-expiring August 31, 2011), seconded by Mr. Starling.

Mr. Adkins stated that he preferred one of the other candidates be recommended for approval adding he was extremely qualified.

Motion carried by the following 5-1 vote:

Yes-Johnson, Spillane, Workman, Brooks, Starling

No-Adkins

Mr. Adkins stated he is only voting no because he feels there is one candidate who was the most qualified and should have been appointed.

The mayor advised he will notify the new appointees that their term is effective immediately.

NEW BUSINESS

Reverend Gregory Nelson/Bethel AME Church/Special Event Announcement

Reverend Nelson advised that the men of Bethel AME Church are sponsoring the conclusion of the Men's Faith Empowering our Community and are bringing in Reverend Doctor Al Sharpton as a guest speaker. The event will be held at the Jesus Love Temple.

Reverend Nelson said that because of the international position Doctor Sharpton holds, it will be a historical time for Milford and asked that the City of Milford present him with a key to the city.

Mr. Starling moved that a key to the city be presented to Reverend Sharpton, seconded by Mr. Spillane. Motion carried by unanimous roll call vote.

Property Lease/Neal Moore Bus Service

City Manager Baird advised that Neal Moore is currently using ground owned by the City of Milford off Fisher Avenue. The land was acquired by the city approximately six years ago from Joseph Warnell. He stated the Moore bus operation was using the facility at the time. As a result, there was a gentleman's agreement that allowed Mr. Moore to use the site. In return, Mr. Moore was provided a parcel at the city's business park as was outlined in the deed transfer that occurred between Mr. Warnell and the city.

Mr. Baird reported that Mr. Moore has not proceeded with the development of the business park parcel as was required. He referenced the reversion clause in the zoning code and the deed that if action is not taken to locate and develop the site within one year of acquisition, the city has the ability to claim it back at the cost occurred by the owner.

He stated the other issue is that Mr. Moore and the city has been without a lease and no payments have been received on the Fisher Avenue property over this period of time.

According to Mr. Baird, it is Mr. Moore's intent to move his operation out to the business park. He referenced the draft agreement which will cover the period of October 1, 2009 through July 31, 2010. Reviewing some of the terms, he stated it is a month to month lease and should Mr. Moore move to the business park, he is able to terminate the lease. The payment is \$600 per month (\$500 current payment with \$100 for back charges). The city will be named as an additional insured.

The city manager advised that Mr. Moore will be required to submit a site plan application for the business park site by December 31, 2009. If not, the city would pursue the buy back option as noted in the current deed. As long as the site plan approval process continues, the lease has the ability to continue on a month to month basis but will expire no later than December 31, 2010.

The solicitor said that it has taken some time to become acquainted with the terms though Mr. Baird and his assistant have provided this information. He has prepared a fourteen-page lease which has a great deal of protection for the city as far as indemnity with insurance, etc. The other aspect is the industrial property which the city could reclaim should Mr. Moore not build.

Mr. Workman asked for clarification that the city will be included in the insurance policy. Mr. Willard explained that it would indemnify the city and would carry a million dollar policy should there be any bodily injury though the tenant is responsible through his insurance policy.

Mr. Workman asked what would occur should the claim go over the one million dollars; the solicitor said it could happen if someone was awarded more than a million dollars. Mayor Marabello noted that Mr. Adkins is in the insurance business and asked for his opinion. Mr. Adkins explained it is a standard practice noting the city is asking to be named as an additional insured meaning the city is insured through their policy first, up to a million dollars. At that point, the city's policy would kick in. He feels it is an extra layer of protection noting that any landlord should request it.

When asked why the lease payment was not paid during this interim period. Mr. Baird explained the lease agreement Mr. Moore had with the previous owner did not transfer to the city. He said that once the Fisherhawk project fell apart and the riverwalk proposal did not occur, the conversation did not proceed.

Mr. Adkins moved to prepare the lease as has been discussed to be presented in final form to city council, seconded by Mr. Brooks. Motion carried by a 5-1 vote with Mr. Workman voting no stating he is uncomfortable with what is being presented and prefers additional information being provided.

Mr. Adkins noted the insurance requirement is a standard policy and does not need to be increased.

Adoption of Resolution/Annexation Committee Review/Lands of Beverly Ann Thawley/ Tax Parcel 3-30-11.00-70.03

In response to a request from Beverly Thawley, Mr. Workman moved to adopt the following resolution, seconded by Mr. Adkins:

*Annexation/Lands of Beverly Ann Thawley
Tax Parcel 3-30-11.00-70.03
9.28 +/- Acres
Current Zone AR
Proposed Zone C-3*

COMMITTEE DIRECTED TO INVESTIGATE ANNEXATION

Whereas, a Petition, signed by the legal property owner and duly witnessed, requesting the annexation into the City of Milford, lands containing 9.28 +/- acres of land, more or less, legally described as follows:

All that certain tract, piece and parcel of land, lying and being situate in Cedar Creek Hundred, Sussex County, and the State of Delaware, as depicted on a survey prepared by Charles D. Murphy Associates, Inc., dated 31 August 2007, fronting on the northwesterly right-of-way line of County Road 206, also known as Cedar Neck Road, at fifty (50) feet wide, and on the northeasterly right-of-way line of State Route One, also known as Coastal Highway, of which the width varies, adjoining other lands now or formerly of Beverly Ann Thawley, Knollac Acres Subdivision, Section II, as recorded in Plot Book 82, Page 24, at the Office of the Recorder of Deeds, in and for Sussex County, at Georgetown, Delaware, and Beverly T. Dugan Subdivision, as recorded in Plot Book 50, Page 147, at said Recorder of Deeds, and being more particularly described as follows, to wit:

Beginning at a point of intersection of the northwesterly right-of-way line of Cedar Neck Road, and the northeasterly right-of-way line of State Route One, also known as Coastal Highway; thence running with said Route One the following two (2) courses and distances:

*1) North 86 degrees 52 minutes 06 seconds West 57.19 feet, and
2) North 49 degrees 00 minutes 17 seconds West 873.40 feet to a corner for other lands now or formerly of Beverly Ann Thawley thence running with said Thawley lands North 39 degrees 47 minutes 44 seconds East 413.50 feet to a corner for a thirty (30) foot wide buffer of Knollac Acres Subdivision; thence running with said buffer and with Beverly T. Dugan Subdivision South 53 degrees 01 minutes 49 seconds East 897.88 feet to a point on the aforementioned northwesterly right-of-way line of Cedar Neck Road; thence finally proceeding along said right-of-way line South 36 degrees 51 minutes 53 seconds West 442.46 feet to the place of beginning, containing 9.28 acres of land, more or less has been submitted to the City Council of the City of Milford.*

Now, Therefore, a Committee, composed of four (4) elected members of City Council and one (1) member of the Planning Commission has been appointed by the Mayor to investigate the possibility of annexing said property, said Committee to be comprised of Chairman Katrina Wilson, Michael Spillane, John Workman, Douglas Morrow and Planning Commission Chairman Charles Rini.

Be It Further Resolved, that said Committee shall submit a written report containing its findings and conclusions, including the advantages and disadvantages of the proposed annexation both to the City and to the property proposed

to be annexed and said report shall further contain the committees' recommendations whether or not to proceed with the proposed annexation and the reasons therefor.

Motion carried.

MONTHLY FINANCE REPORT

With the absence of Chairman Morrow, Committee Member Brooks advised that through the second month of Fiscal Year 2009-2010 with 17% of the fiscal year having passed, 23.98% of revenues have been received and 15.55% of the operating budget expended.

With no further questions, Mr. Brooks moved for acceptance of the August 2009 finance report, seconded by Mr. Adkins. Motion carried.

ADJOURN

Mr. Workman moved to adjourn the Monthly Meeting, seconded by Mr. Adkins. Motion carried.

The Monthly Council Meeting was adjourned by Mayor Marabello at 8:51 p.m.

Respectfully submitted,

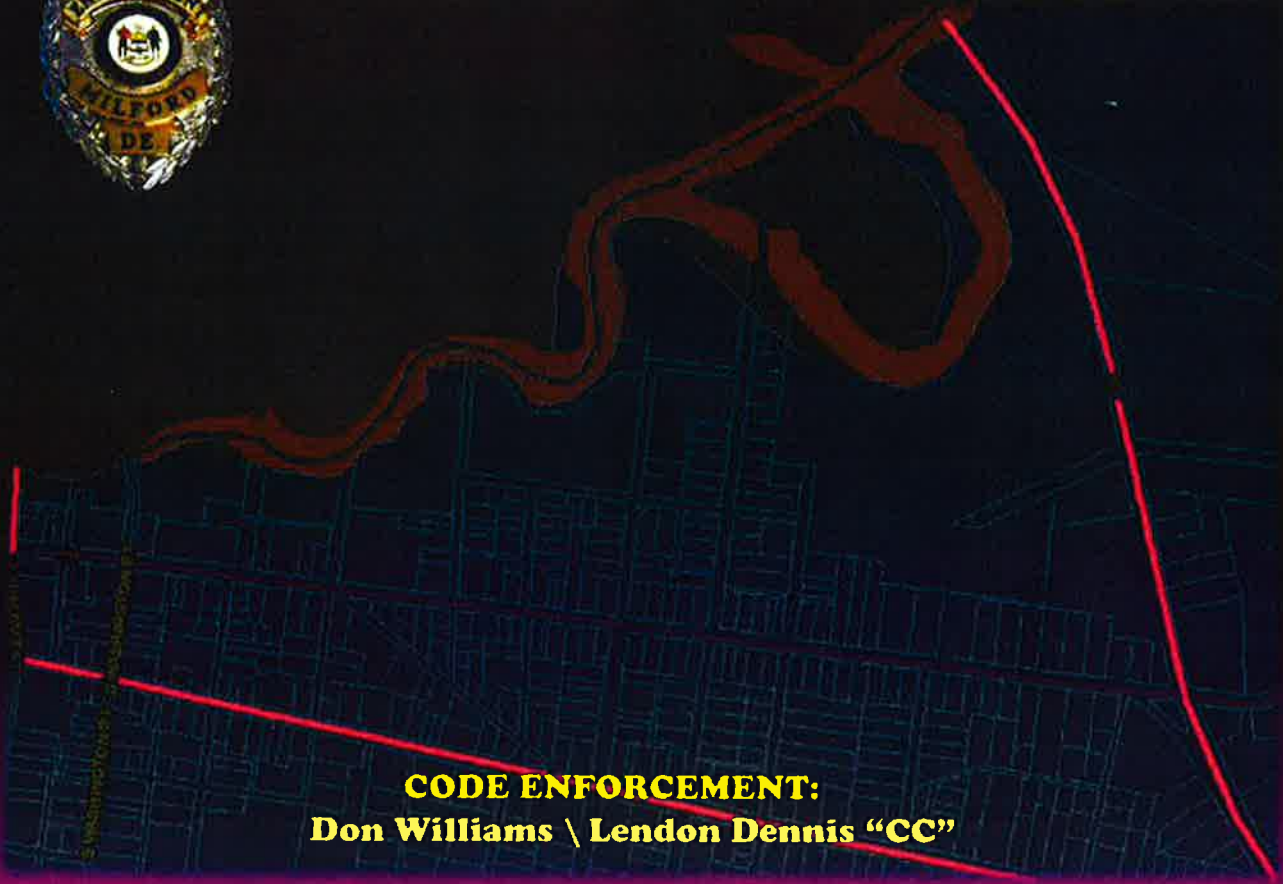


Terri K. Hudson, CMC
City Clerk/Recorder

Attachment



Target Area (Oct 09)

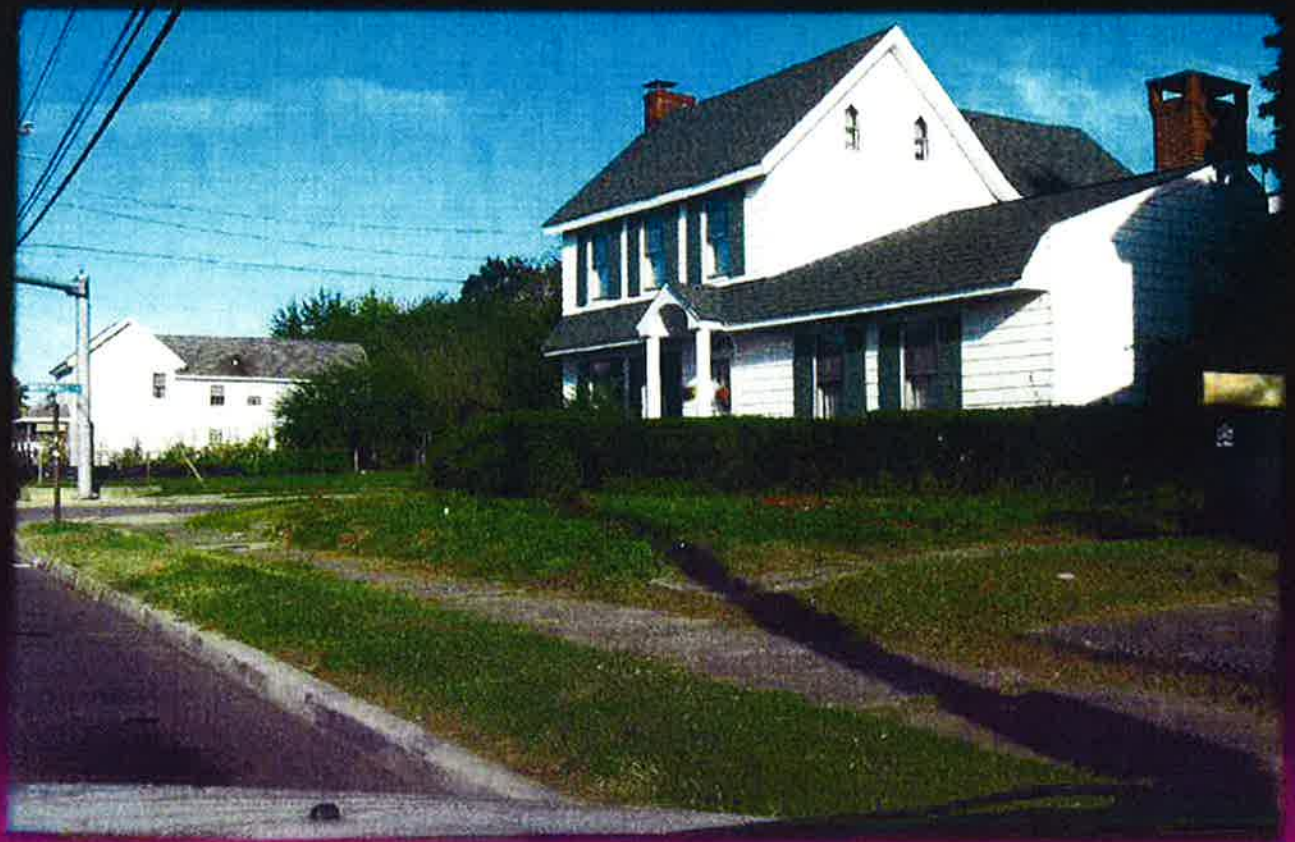


CODE ENFORCEMENT:
Don Williams \ Lendon Dennis "CC"

Property Maintenance



Property Maintenance



Property Maintenance

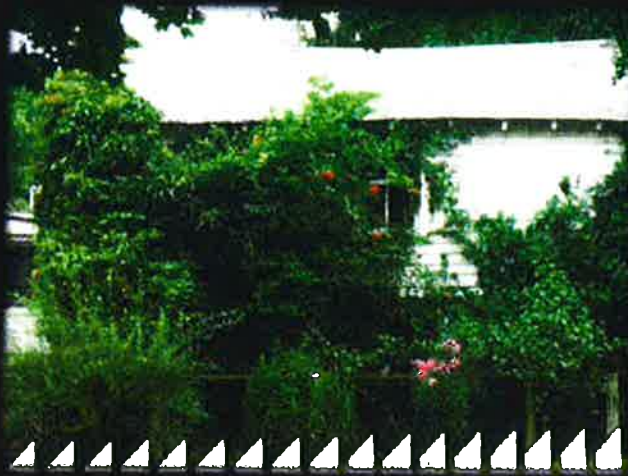


Property Maintenance



09/30/2008

Property Maintenance



Property Maintenance



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