

MILFORD CITY COUNCIL
MINUTES OF MEETING
October 26, 2009

A Meeting of Milford City Council was held in the Joseph Ronnie Rogers Council Chambers of Milford City Hall, 201 South Walnut Street, Milford, Delaware on Monday, October 26, 2009.

PRESIDING: Honorable Mayor Daniel Marabello

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

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

COUNSEL: City Solicitor Tim Willard

Mayor Marabello called the Council Meeting to order at 7:31 p.m.

NEW BUSINESS

Presentation/Milford High School 2009 DIAA State Softball Champions

Skip Pikus, 16 West Clarke Avenue and Owner of Lou's Bootery, was present to honor the High School Varsity Softball team for winning the 2009 Delaware State Championship last school season. He then introduced Team Members Marcy McKee, Nikki Parsley and Janee Williams, parent and school teacher Sherri McKee and Athletic Director Dr. Glen Stevenson.

Mr. Pikus explained that when he learned the team wanted commemorative jackets and pants, he knew a substantial amount of money was needed. In turn, Mr. Pikus contacted a few people including Mayor Marabello on behalf of the City of Milford, State Senator Gary Simpson, State Representative George Carey, State Representative Dave Wilson, State Representative Bob Walls and Randy Duplechain of Davis, Bowen and Friedel. He said that as soon as the exact amount was determined, these individuals, along with himself, stepped up to the plate to accomplish this goal through personal contributions.

Mr. Pikus then recognized Senator Simpson and wife, Debbie and Representative Carey and wife, Jeannette. A formal presentation followed with Mr. Pikus presenting a jacket to each team member on behalf of the donors.

Mr. Pikus said he hopes they will return again next year to be honored for the 2010 championship.

Proclamation 2009-14/Red Ribbon Week/Brenda Lomax-Platoon Sergeant/Lower Delaware Detachment of Young Marines

Present to accept the proclamation were Danielle Swidley, Brenda Lomax, Andrew Atkins and George Little.

The mayor then read the following proclamation into record:

Whereas, cities across America have been plagued by the numerous problems associated with alcohol, tobacco, and other drug use; and

Whereas, there is hope in winning the War on Drugs, and the hope lies in the hard work and determination of our communities to create a drug free environment; and

Whereas, local leaders, in government and in the community, know that the support of the people in the neighborhoods is the most effective tool they can have in their efforts to reduce use of alcohol, tobacco, and other drugs by Delawareans; and

Whereas, success will not occur overnight, our patience and continued commitment to drug education and prevention are imperative; and

Whereas, the red ribbon was chosen as a symbol commemorating the work of Enrique "Kiki" Camarena, a Drug Enforcement Administration agent, who was murdered in the line of duty and has come to represent the belief that one person can make a difference; and

Whereas, the Red Ribbon Campaign was established by Congress in 1988 to promote this belief and encourage a drug free lifestyle and involvement in drug prevention efforts; and

Whereas, October 23-31, 2009, has been designated National Red Ribbon Week calling on all Americans to show their support for a drug-free state by wearing a red ribbon and participating in drug-free activities during that week.

Now, Therefore, Be it Resolved that I, Daniel Marabello, Mayor of the City of Milford, does hereby proclaim October 23-31, 2009, as Red Ribbon Week in honor of the Lower Delaware Detachment of the Young Marines and encourage all citizens, businesses, public and private agencies, media, religious and educational institutions to wear and display red ribbons and participate in drug-free activities throughout that week, joining the rest of the state in promoting the Red Ribbon Celebration and a drug-free America.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Official Seal of the City of Milford to be affixed this 26th day of October in the Year of our Lord Two Thousand and Nine.

Mayor Daniel Marabello

Proclamation 2009-15/Food Bank Month/Crystal Timmins

Mayor Marabello read the following proclamation into record:

WHEREAS, many people are not aware of the serious hunger problem that exist in the City of Milford and the State of Delaware; and

WHEREAS, with the economic recession and increasing number of furloughs, job cuts and closings of some of Delaware's largest employers, more and more Delawareans are unable to feed their families; and

WHEREAS, the cost of basic housing is out of reach for many low-income households who are often headed by single parents; and

WHEREAS, the vast majority of Food Bank of Delaware clients have to choose between paying for food or paying for housing, utilities or medical care; and

WHEREAS, among those seeking food assistance are families and individuals who once donated their time, money or food; and

WHEREAS, the Food Bank of Delaware and its member agencies are reporting a thirty percent increase in need; and

WHEREAS, the City Council of the City of Milford has joined with the Food Bank of Delaware to bring public attention to the serious issue of hunger.

Now, Therefore, Be it Resolved that I, Mayor Daniel Marabello, on behalf of Milford City Council, do hereby proclaim the month of November as Food Bank Month and graciously join this hunger-relief organization in its goal to collect more than 75,000 pounds of food for the less fortunate in our community while enhancing awareness and advocating for those needing food assistance not only in November, but throughout the coming year.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Official Seal of the City of Milford to be affixed this 26th day of October in the Year of our Lord Two Thousand and Nine.

Mayor Daniel Marabello

He then presented the proclamation to Ms. Timmons of the Milford Food Bank.

Mayor Marabello also acknowledged Councilman Workman and Councilman Johnson for requesting the proclamation in support of the food drive.

Councilman Workman announced that Parks and Recreation will be a designated collection site. On Friday, he plans to visit some other facilities in hopes they will allow food drop offs as well. He will make arrangements for those items to be transferred to the Food Bank.

DELDOT Grant Agreement/S.E. Front Street Project

Mr. Baird presented an agreement where DelDOT's Annual Capital Improvement Program is providing funding of \$894,208 for the Southeast Front Street (from South Walnut Street to Rehoboth Boulevard) Paving Project.

He referred to page two, item (a), which shows the city agrees that DelDOT is not responsible for the maintenance of the improvements. The city manager explained that because Southeast Front Street (Route 36) is a state-maintained road, that item has been changed. He did receive written confirmation to disregard item (a) on page two and it is understood that Milford is not responsible for the maintenance of the improvements and any previous agreement between the city and DelDOT regarding maintenance responsibilities apply.

Mr. Brooks moved to approve the agreement, subject to the modification as read by the city manager, seconded by Mr. Morrow. Motion carried by unanimous roll call vote.

UNFINISHED BUSINESS

Delaware Water Pollution Control Revolving Fund/Commitment Letter

Mr. Baird reviewed the binding commitment letter for State Revolving Funding for sewer projects. He stated there are two projects listed. City Council has already stated they will not proceed with the North Shores Subdivision Sewer Extension Project. However, the North Front Street Sewer Replacement Project will continue and is presently under bid.

He said approval of this letter by the city is not a final commitment to accept the funding which does not take place until closing. If closing does not occur by December 31st, the remainder of the funds, which includes the North Shores Project, would revert back to the state and the city would need to reapply.

Mr. Baird pointed out that utilizing the 2.0% interest rate over a twenty-year term will save the sewer rate payers \$312,660 compared to the standard rate of 3.97%.

It is his recommendation to enter into the commitment letter with DNREC in order to proceed.

The mayor asked for a motion to accept the commitment letter, as modified, for the North Front Street Sewer Replacement of \$1,301,872. Mr. Morrow moved for approval, seconded by Mr. Brooks.

Ms. Wilson asked that before this letter is submitted, the North Shores sewer project would be stricken.

Mr. Baird explained that when he informed DNREC that council had requested the project removed, they preferred it not be modified because it had already gone through the award process at their level. He stated that if the city does not pursue the North Shores project, which council has stated will not proceed, on December 31st, those funds will revert back to

the state.

Mr. Brooks added that was discussed at the Public Works Committee meeting last week.

Motion carried by unanimous roll call vote.

Homestead DE, LLC on behalf of R&C Fry Farms, LP for the final Major Subdivision of 182.29 +/- Acres into 662 lots/1,057 residential units and a Change of Zone from R-3 (131.71 +/- Acres) & C-3 (50.58 +/- Acres) to R-3 (180.11 +/- Acres) & C-3 (2.18 +/- Acres) located on the west side of State Route 15 (Canterbury Road), north of State Route 14 (Milford-Harrington Road) abutting Church Hill Road in Milford, Delaware. Tax Map MD-16-173.00-01-01.00-000 - Adoption of Ordinance 2009-15

City Planner Gary Norris advised this application has been on the books for sometime and had received two extensions from the planning commission. The commission voted 8 to 0 to recommend the change of zone as requested. By a vote of 5 to 3, the commission recommended approval of the final major subdivision with the following conditions:

1. Reduction in the off street parking requirement for the townhouses and condominium units from 2.5 spaces per unit to 2 spaces per unit because this was approved in the preliminary plan approval.
2. The developer will provide four-sided elevations of the townhouses and condominiums prior to the issuance of any building permits.
3. The developer will provide HOA documents for review by the staff prior to recordation of the subdivision.
4. The developer will meet with City staff regarding the requirement for recreation, both active and passive.

Mr. Norris noted that both the developer and engineer were present.

In regard to a question, Ring Lardner, Civil Engineer of Davis, Bowen and Friedel, Incorporated, stated they have received three extensions. The first extension was in 2007, the second in 2008 and the emergency extension granted by council just over a month ago that was needed because of the quorum issue with the planning commission.

Mr. Workman recalled a parking issue and asked how many parking spaces were approved during the first application. Mr. Lardner explained that at that time, the code required 2.5 parking spaces per unit. During the Planned Unit Development review in October 2006, council granted a reduction to 2 spaces for the condominiums and townhouses. He added those conditions are listed on sheet R2 of the latest record plan which was reviewed by city staff.

When asked what council's vote was at that time, Mr. Lardner presented the minutes from the October 2, 2006 Public Hearing showing a 7 to 0 unanimous roll call vote.

Mr. Spillane asked if the project complies with the most recent code. Mr. Ring explained the plan meets the requirements of the Subdivision Code in effect in 2006.

City Solicitor Tim Willard then confirmed that all agency approvals have been received.

When asked if the change of zone has changed the project design, Mr. Willard explained this was presented as a PUD which it was originally approved. Afterwards, the preliminary was amended. However, it does not change the potential for what can be done on the PUD.

Mr. Lardner explained the original application in January 2006 was submitted as a planned unit development for the entire 182 acres. The project has always been split zoned C-3/R-3 with the commercial zoning along Route 14. The planning commission had some concerns with the commercial development in relation to the proposed residential units and surrounding homeowners. At that time, the planning commission recommended a change of zone to allow more residential. Council agreed. The rezoning then became a conditional to the preliminary plan.

He emphasized it was the request of the planning commission and not the developer. Council agreed with the

commission's recommendation that it would best protect the interests of the city by not having a C-3 use in the middle of a residential subdivision. He explained that is the reasoning behind the two commercial outparcels that will serve the subdivision.

Mr. Workman asked for Mr. Norris' opinion of the overall project including the change of zone. Mr. Norris stated he is in favor of the rezoning because it will provide further protection for the residential areas from any potential commercial use. As it related to the subdivision, they have met the four conditions. He wanted it spelled out that they could not meet the off street parking but did receive conditional use approval from council. He believes the other conditions are added security.

He concluded by stating he is in favor the project and the applications before council this evening.

Mr. Spillane asked how much open space is included in the project. Mr. Lardner stated that currently, there is 2.1 +/- acres dedicated for a community club house, a tot lot and pool. One of the planning commission conditions is for the developer to meet with the planning staff to discuss active and open space. They have agreed to review the open space plan before any building permits are issued.

Mr. Brooks moved to accept the planning commissions' recommendation as noted in PC Resolution 09-019 and the adoption of Ordinance 2009-15 for a change of zone of 48.40 acres from C-3 to R-3 (total 180.11 +/- acres) thereby reducing the total amount of C-3 zoning to 2.18 +/- acres, seconded by Ms. Wilson. Motion carried by unanimous roll call vote.

Mr. Brooks noted that during the meeting, there was a great deal of public concern about the amount of commercial space. He feels the residents will be much happier with this amendment.

Ms. Wilson moved to accept the planning commission recommendation referenced in PC Resolution 09-020 for Final Major Subdivision with the conditions as noted, seconded by Mr. Morrow.

When asked for questions, Mr. Johnson asked at what point does council start considering the current regulations during a lengthy land application process. Mr. Willard explained that when an applicant submits a preliminary subdivision/site plan, it is pursuant to the current zoning and subdivision code in effect then. Those rules follow the plan all the way through final. He advised that considerable engineering costs and agency approvals are based on what is in place at the preliminary. He noted that many legislative bodies do not even see the final approval because it is more of a technical matter at this stage.

He noted that any new law or code is used for preliminaries filed after the effective date of the new legislation.

Motion then carried by the following 6-1 vote:

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

Mr. Spillane voted against the plan and indicated he feels they should follow the current code because this was started and changed since 2006. In addition, he feels the plan should meet the code requirement of 2.5 spaces per unit.

Approval/Property Lease/Neil Moore Bus Service

Mayor Marabello referenced the \$600 a month lease for the Moore Bus Service covering the period from October 1, 2009 through July 31, 2009. He noted it also includes an additional provision that if he does not proceed with the development of his property in the business park, the lease could be in default.

The city manager advised that during a discussion with Mr. Moore, and in consideration of the current date, he asked the lease be modified to begin November 1, 2009 versus October 1, 2009 as is presently written.

The solicitor believes this is a somewhat unique situation because the business park property had been granted to Mr. Moore by the city, though he continues to use the city property on Fisher Avenue. He advised the lease contains specifics and one being, if he does not submit a site plan by December 31, 2009, the lease will be considered in default. However, the term may be extended to December 31, 2010, but only with the approval of council and proof that the tenant has, in good faith, progressed toward approval of the final site plan.

There is also the provision in the conveyance to buy back the land that was granted to him if it is not developed. He added that will be triggered if he does not submit a site plan within the next couple of months.

Mr. Workman recommends no change to the lease date (from October 1st to November 1st), especially considering the number of years Mr. Moore has used the city property on Fisher Avenue without paying any rent. If Mr. Moore wants to argue the point, then the city should consider assessing some back rent for that time frame.

Mr. Baird agreed noting it was a simple request with no other motive than saving \$600.

Mr. Morrow moved to approve the Commercial Land Lease between Cornelius Moore and the City of Milford for \$600 a month to begin October 1, 2009 as is currently written. Mr. Adkins seconded the motion.

It was asked the penalty for not paying the rental fee, Mr. Willard said the city can find him in default and have him removed from the property.

Mayor Marabello concurred with Mr. Workman and asked that when he vacates the property and moves his bus service to the business park, it is assured the property is left clean and without any environmental repercussions. His concern is the fuel at this site over the years which could have created some problems. Mr. Willard responded by saying there is language in the lease that requires him to keep the property properly maintained adding it includes indemnifications for general liability matters.

Motion carried by the following 6-1 vote:

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

Mr. Spillane is voting no adding that Mr. Moore should be required to pay back rent for the time he has been using this land.

Hearthstone II Preliminary Plan Extension Authorization

City Solicitor Willard recalled the meeting last Wednesday when this matter went before council in an executive session. He explained that Key Properties LLC filed a suit electronically in Chancery Court to ask for declaratory relief to receive their final subdivision plan for Hearthstone II. However, it has not been served nor officially received. He said it included a motion for preliminary injunction which would require the city to give them a stay for the expiration of the plan.

Mr. Willard reiterated that last week, council scheduled a quick meeting and went into executive session. When they came out, the public record reflected that council agreed to extend the validity of that preliminary subdivision plan for five additional months.

He said the charter requires that any action taken in executive session must be placed on the agenda. On Wednesday's agenda, the matter was noted as Executive Session Matter. He thought it would be clearer to have it put on tonight's agenda and ratify that action which he believes was a unanimous vote.

He asked council to ratify the action taken last Wednesday.

Mayor Marabello asked for a motion to ratify that action which extends the Hearthstone II Preliminary Plan approval through March 26, 2010.

Mr. Morrow moved to ratify the action as described by Mayor Marabello, seconded by Mr. Johnson.

When asked for questions, Mr. Spillane asked if we have heard anything or whether anything else was filed. Mr. Willard stated nothing more than he has the package of those pleadings that he will give to the city manager this evening. He believes there are some procedural hurdles that need to be done with an assignment.

The solicitor then informed council that he wrote a letter to their attorney, Jim Griffin, advising of councils' action and recreating the procedural posture as Mr. Willard saw it. He will provide council with a copy of that letter.

He has not heard anything more since that time.

In response to a question about the service, Mr. Willard explained it is still within the electronic filing system of the court though the judge has to assign it before he authorizes the service of process. He is unsure what he will do next, though the preliminary injunction should be moot because council extended the approval.

He will keep the city manager posted. If council needs to know anything more about it, he will make sure council is made aware.

Mr. Baird added that he will transfer any correspondence or any other related document to council electronically unless it is too large and hard copies need to be made.

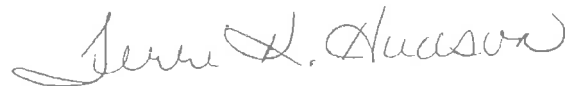
Motion carried by unanimous vote.

ADJOURN

With no further business, Mr. Workman moved to adjourn the Council Meeting, seconded by Mr. Morrow. Motion carried.

The Council Meeting was adjourned by Mayor Marabello at 8:21 p.m.

Respectfully submitted,



Terri K. Hudson, CMC
City Clerk/Recorder

*MILFORD CITY COUNCIL
MINUTES OF MEETING
October 26, 2009*

The City Council of Milford met in Workshop Session on Monday, October 26, 2009 in the Joseph Ronnie Rogers Council Chambers of Milford City Hall, 201 South Walnut Street, Milford, Delaware.

PRESIDING: Honorable Mayor Daniel Marabello

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

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

COUNSEL: City Solicitor Tim Willard

Mayor Marabello convened the Workshop Session of City Council at 7:18 p.m.

David Rutt/Rotary Area/Can-Do Too Playground

David Rutt of 724 North Shore Drive, North Shores, stated he was present on behalf of an incorporated, nonprofit organization called the Rotary Area for Can Do Too Playground, Incorporated. He explained the organization is a joint effort of the Milford, Mispillion, Seaford, Lewes-Rehoboth and Hub (Harrington, Greenwood and Felton) Rotary Clubs. Also present was Jim O'Neill, a member of the Milford Rotary Club and Charlie Towers of the Seaford Rotary Club.

Mr. Rutt advised they presently have a 501(c)(3) application pending. A steering committee is comprised with members of the clubs identified and broken into subcommittees for funding raising, concept and design, public relations and budgeting.

He explained the purpose is to construct a playground patterned on a similar playground constructed in the Alapocas Run State Park on Route 202 by area Rotary Clubs from the Wilmington area.

Mr. Rutt presented a number of pictures from that park for council to view (see attached).

He stated the playground will provide opportunities for parents and children with physical limitations to interact in a playground setting with those without impairments. They believe this is a unique situation as most playgrounds are built for children without physical impairments which eliminates a large number of children.

Mr. Rutt referenced the soft areas around the playground and what looks like asphalt, is actually a rubberized type material. The equipment has specialized seating designed for children with impairments. He noted it is also appropriate for children without impairments.

It is also built for children with autism, that do not necessarily have physical impairments, but need some type of motor skill development. It also provides an opportunity for parents, who may have some type of impairment, to use the equipment along with their children who do not have any impairment.

He noted the various types of equipment and unique design.

Mr. Rutt reported the organization has a two-year time line. They will raise funds through foundations, grants and corporate sponsorships. Through the same type of funding, the Wilmington organization was able to raise all of their money with very little needed from private individuals.

The plan is to contract with Boundless Playgrounds, Incorporated, who has built approximately two hundred similar playgrounds. They have very detailed procedures on how to build the playground and how to put together the type of structures to fit the community needs.

The Wilmington Rotary Clubs are dedicated to building other playgrounds in the Delaware-Eastern Shore Maryland District. They have found people are driving up to two hours to utilize such playgrounds because it is something that is lacking for children with these special needs.

Mr. Rutt noted the Boundless Playground concept utilizes other organizations in the area that would have this need such as Easter Seals, Ennis School in Georgetown and the Consortium Schools.

He said they plan to raise the funds to buy the equipment and establish an endowment for future equipment replacement. The Rotary Club members will be using a lot of their own manpower for this project.

Mr. Rutt said they have spoken with the Director Gary Emory of Milford Parks and Recreation. Mr. Emory has suggested a site at the Silicato Park between the Boys and Girls Club and Hospice which he feels is an ideal location for the project.

He referenced the site in the Silicato Park and another area shown for future expansion. He also noted a triangular piece of approximately .4 acres, that is under the ownership of PJ and Phyllis Walker. They are willing to provide the land, by way of an easement, though some maintenance agreements would be required.

Mr. Rutt advised the total area is one acre which would adequately provide land for the playground, open space, a wooded area to be used as a picnic site in addition to the future expansion area. Parking already exists in the area.

Mr. Rutt asked council to allow the Parks and Recreation Department to participate for guidance and design and that the city dedicate a portion of the Silicato Park for the playground. Additionally, once the playground is completed, they are requesting the Parks and Recreation staff maintain the playground in conjunction with the endowment being established.

He feels it will fit well with the other structures in the park including the Boys and Girls Club, as well as Hospice and Veterans Home.

Mr. Rutt asked for councils' support and endorsement of the project stressing the Rotary Clubs will raise the money for the equipment.

Mr. Adkins advised that he is a member of the Milford Rotary Club and will abstain from any voting. However, from his perspective, this is the type thing council should support. He said it will be an attraction for anyone interested in moving to Milford and feels this is a minimal contribution relative to the benefits. He asked for councils' consideration.

Mr. Brooks said he spoke with the city manager today to confirm Mr. Baird and Mr. Emory were in favor of the project. As a result, he is also supportive.

Mayor Marabello believes this is a win-win for the city and a well-thought out program. He agrees it is an appropriate location and will follow up with the city manager and parks and recreation in addition to council members. He believes they will come up with a favorable decision.

With no further workshop items, the Workshop Session of City Council concluded at 7:30 p.m.

Respectfully submitted,



Terri K. Hudson, CMC
City Clerk/Recorder

Attachment

Can-Do

TOO PLAYGROUND



Rotary Area 4

Can Do Too Playground Inc.

PRESENTS



