

*MILFORD CITY COUNCIL  
MINUTES OF MEETING  
September 22, 2008*

A Council Meeting of Milford City Council was held in the Meeting Room of the Delaware Rural Water Association Facility at 210 Vickers Drive, Milford, Delaware on Monday, September 22, 2008.

PRESIDING: Honorable Mayor Daniel Marabello

IN ATTENDANCE: Councilpersons Irvin Ambrose, Michael Spillane, John Workman, Owen Brooks, Jr., James Starling, Sr. and Katrina Wilson

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

COUNSEL: City Solicitor Timothy Willard

Mayor Marabello opened the Council Meeting at 9:35 p.m.

*Paving Projects & Funding Source Approval*

Mr. Baird is requesting funds from the Municipal Street Aid Fund for the following invoices:

Jerry's Paving: \$73,232.58  
Shea Concrete: \$ 22,920.00

He advised the Jerry's Paving Invoice covers an open contract rewarded earlier this year.

The Municipal Street Aid Balances are as follows:

Current Balance:	\$582,000.00
Projected Revenue by June 30, 2009:	\$207,000.00
Total Projected Balance:	\$789,000.00
Remaining Balance after Invoices Paid:	\$692,847.42

Mr. Ambrose moved for approval of the payment for Jerry's Paving and Shea Concrete from the Municipal Street Aid Account, seconded by Mr. Morrow. Motion carried by unanimous roll call vote.

*City of Milford-Delmarva Power Interconnection & Mutual Operating Agreement*

City Manager Baird recalled on-going discussions regarding the agreement which outlines the terms of the interconnection with Delmarva Power. This involves the transmission line from the proposed interconnection point by the DSWA facility on Rt 113 to the location of the new substation.

The contract was negotiated between DP&L and DEMEC attorneys and mirrors the general agreement DEMEC has in place. DP&L is required to have individual agreements with each wholesale customer of which Milford is one.

Mr. Ambrose moved for approval of the Delmarva Power Interconnection & Mutual Operating Agreement, seconded by Mr. Workman. Motion carried by unanimous roll call vote.

*FY2008-09 Budget Amendment/Training/Billing & Meter Departments*

The city manager submitted a request from Office Manager Denise Barnes for a transfer of \$4,000 from Training 224-1410-416.50-90 (Billing & Collections) to 223-6250-436-50-90 Training (Meter Department). This transfer will cover the expenses for a meter department employee to attend an ITRON Users Conference in Texas from October 18<sup>th</sup> - 21<sup>st</sup>. They

new vehicles. He does not understand how this just became a problem and should have been presented during the budget hearings. He referred to the memo stating the electric department supervisor would use one of these vehicles. He recalled riding with the electric department supervisor who had an assigned vehicle.

Mr. Baird advised Mr. Workman he may have ridden in the 1999 Suburban which is being disposed of. Mr. Workman asked if these vehicles are in such disrepair they are unable to be used. The city manager advised that after considering what is being spent on maintenance and repairs, it only makes sense to dispose of them.

Mr. Morrow is also very uncomfortable with purchasing multiple cars a few months into the budget when this need should have been addressed when the budget was discussed.

Mr. Brooks asked if this problem will improve when the staff moves back to city hall. Mr. Baird answered no because of our employees being in different locations. Transportation will still be necessary between the public works and city hall which is the disadvantage of employees being at different sites.

Mr. Spillane suggested employees who are out in city vehicles be contacted to stop at these other locations when something is needed. Mr. Baird said that is being done now and sometimes it works but other times it does not.

Mr. Workman asked if employees using their own vehicles for city business creates a potential liability for the city. City Solicitor Willard feels that if an employee is using their car in the scope of employment, the city's insurance should cover them through liability or workmans compensation. Though he is unfamiliar with the liability coverage, there could be a debate about whether it is in the scope of employment which could place an employee in some jeopardy. Generally, an employee using their own vehicle during work would be covered.

Mr. Ambrose again recommended the city explore buying hybrids as the trend is to go green. He hopes the state bidding process will eventually consider hybrids. Mr. Baird advised the cost is still very high, but is getting better. Mr. Workman pointed out our city mechanics would have to receive specialized training and possible certification to work on hybrids. Presently, there are very few mechanics qualified to work on those vehicles including simple tasks such as replacing batteries. He agrees going green is great, but if our in-house mechanics are not qualified which will result in additional maintenance fees.

Taking into consideration the concerns of council, Mr. Baird then withdrew his request to purchase these vehicles.

No further action was taken.

#### *Adoption of Resolution/Greater Milford Business Park & Independence Commons Lot Sales*

Mr. Baird recalled the discussion regarding the status of remaining lots in the business park and those available in Independence Commons. The work has been completed and the lots are ready for sale.

He then read the following resolution into record:

A Resolution Authorizing the City Manager of the City of Milford  
to Sell Land in the Greater Milford Business Park and Independence Commons

WHEREAS, in 1998, the City of Milford purchased and subdivided 211 +/- acres of property on the north and south sides of County Road 409 (Airport Road and east side of State Route 15 (Canterbury Road) for economic development benefits; and

WHEREAS, the City of Milford initially sold the land for \$24,000 an acre; and

WHEREAS, an appraisal of the property was completed in 2006 and updated in 2008; and

WHEREAS, it has been deemed in the best interest of the City of Milford and its taxpayers to increase the price of land in accordance with this most recent assessment; and

WHEREAS, there shall be a Declaration of Covenants, Conditions, Restrictions and Easements, attached as Exhibit B, recorded for the subdivision in addition to being recorded with each deed; and

WHEREAS, no lot shall be resubdivided or resold without the specific consent of the majority of the Milford City Council, but shall remain as shown on the recorded plat; and

WHEREAS, City Council authorizes the Mayor to enter into a contract of sale, attached as Exhibit C, for the sale of the lots in the Greater Milford Business Park and Independence Commons; and

WHEREAS, prior to Site Plan Review by the City of Milford Planning Commission, the building(s) design and four-sided architectural elevation drawings must be approved by the Independence Commons Architectural Review Committee consisting of the City Manager, Assistant City Manager, City Planner and City Engineer; and

WHEREAS, any persons who have expressed a previous interest but are not in possession of a fully executed contract with the City of Milford may execute a contract based on the current sale price listed in Exhibit A; and

WHEREAS, this resolution supersedes any previous resolutions

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Mayor and Council of the City of Milford:

- 1) An Appraisal has been completed establishing a reasonable market value for the properties.
- 2) Lots shall be offered for sale as stated herein Exhibit A.
- 3) City Council approves the Declaration of Covenants, Conditions, Restrictions and Easements attached as Exhibit B.
- 4) City Council authorizes the Mayor to enter into a contract of purchase and sale attached as Exhibit C for lots in Greater Milford Business Park and Independence Commons.
- 5) This Resolution shall supersede Resolutions passed by the majority of City Council on February 13, 2006 and March 12, 2007.

#### Exhibit A-Independence Commons Projected Sales

1 acre lots	\$125,000.00 (7 total)
1.16 acre lot	\$135,000.00
1.42 acre lot	\$145,000.00
1.69 acre lot	\$158,000.00
1.83 acre lot	\$170,000.00
3 acre lot	\$270,000.00
3.05 acre lot	\$274,500.00 + \$50,000.00 premium = \$324,500
3.36 acre lot	\$302,500
11.52 acre lot	\$596,000.00

Total Revenue \$2,976,000

•Prices based upon 2008 Appraisal at fair market value.

Exhibit B-Declaration of Covenants, Conditions, Restrictions and Easements

Independence Commons in the City of Milford, Kent County, Delaware

(On file in City Clerk's Office; Recorded in the Kent County Recorder of Deeds Office, Dover, DE)

Exhibit C-Contract of Sale

(On file in City Clerk's Office)

There was a discussion regarding the price of lots and whether they should be offered at a discount price in order to attract new business. Mr. Baird explained the proposed price is slightly lower than the appraised value but emphasized these lots are improved with existing water, sewer and stormwater which makes them premium lots. They originally sold at \$24,000 an acre, but the price increased over the years and were more recently sold at \$160,000 which was still at a discount.

The city manager advised there has been and continues to be a great deal of interest in the lots. They remain a very attractive proposal considering the amenities which include utilities and roadways which saves the purchaser a great deal of up front money.

It was confirmed the Independence Commons Architectural Review Committee consists of the City Manager, Assistant City Manager, City Planner and City Engineer. Mr. Workman raised the concern that council does not have a representative. He suggests that any future committees include at least one member of council.

The city manager suggests that a planning commissioner also be added if council proposes a change. He explained the review only involves site plans which are only seen by the planning commission.

An inventory of vacant lots in the city business park (south side of Airport Road) has been completed. Mr. Baird advised a proposal for those four lots will be presented to council at a later date.

Mr. Ambrose recommended that when the city repurchases these lots at the original selling price, as is required in the deed restrictions, any additional monies spent on the lot by the buyer should be taken into consideration to allow them to break even. Mr. Workman disagreed pointing out that when they purchased the lot at the discounted price, it was made clear and a contract signed that included the deed restriction that the city would repurchase the property at the original cost if not developed within two years.

Mr. Ambrose moved to adopt the Resolution Authorizing the City Manager of the City of Milford to Sell Land in the Greater Milford Business Park and Independence Commons at the Proposed Sale Prices and adopt the Declaration of Covenants, Conditions, Restrictions and Easements as attached, seconded by Mr. Starling. Motion carried by unanimous roll call vote.

#### *Executive Session-Citizen's Qualifications to Hold Job or Pursue Training*

The Executive Session was canceled.

#### *Second Ward City Council Vacancy*

Mayor Marabello announced the following names of residents interested in filling the 2<sup>nd</sup> Ward Council seat:

Tamela Mallamo, Paul Hayes, Joseph Rogers, II, Constance Fox, Jim Purcell and Skip Pikus.

City Solicitor Willard responded to a previous question about whether it is legal to go into a closed session to consider qualifications and competency for a temporary council seat appointment. He stated that Title 29 Section 10004(b)(1) allows Council to meet in executive session for the "discussion of an individual citizen's qualifications to hold a job...." He stated that an applicant or individual being considered for a council seat is a citizen. Therefore, the discussion about qualifications in executive session is appropriate.

Mr. Workman feels that a special meeting should be scheduled to address this. Considering the importance of the appointment, each person should be interviewed individually. He does not completely agree with the city solicitor's opinion and wants to go on record stating this process should be handled in open session.

Mr. Morrow agrees with Mr. Willard as he is uncomfortable openly discussing any personnel issue including the qualifications of council or planning commission. But he also wants to emphasize it is not a requirement that council appoint someone or that council is solely restricted to those who submitted letters.

Mr. Brooks feels that the second ward representative should have more input. Mr. Workman feels that council as a group needs to make this decision. Not only will the person have to work with him, but with all of council.

Ms. Wilson agrees it is important to choose the right person. Though she is representing the fourth ward, her decisions impact everyone in Milford. The input of each council member is vital to make the best overall decision possible.

Mr. Starling wants this discussed in executive session not because there is something to hide, but he is also uncomfortable discussing people's qualifications in front of the public.

A special meeting to interview candidates was scheduled for Monday, September 29, 2008 at 6:00 p.m. Each candidate will be contacted and provided a time based on 15-minute intervals. Questions will be prepared and the same questions asked of each candidate.

It was suggested that potential questions be sent to the city clerk no later than Wednesday, September 25, 2008. Council will then select the questions that will be used.

With no further business, Mr. Workman moved to adjourn the council meeting, seconded by Mr. Morrow. Motion carried. The Council Meeting adjourned at 10:16 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Terri K. Hudson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Terri K. Hudson, CMC  
City Clerk/Recorder

*MILFORD CITY COUNCIL*  
MINUTES OF MEETING  
*September 22, 2008*

The City Council of Milford met in Workshop Session on Monday, September 22, 2008 in the Meeting Room of the Delaware Rural Water Association Facility at 210 Vickers Drive, Milford, Delaware.

PRESIDING:                   Honorable Mayor Daniel Marabello

IN ATTENDANCE:       Councilpersons Irvin Ambrose, Michael Spillane, John Workman, Owen Brooks, Jr., Douglas Morrow, James Starling, Sr. and Katrina Wilson

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

COUNSEL:                City Solicitor Timothy Willard

Mayor Marabello convened the Workshop Session at 9:33 p.m.

*Ordinance 2008-12/Subdivision Code/Chapter 200/Adoption Postponed*

City Manager Baird advised that the ordinance is continuing to be worked on. He plans to present the revised draft at the October 13<sup>th</sup> council meeting.

Mr. Spillane confirmed that the recommended changes would be incorporated at that time. Following that, it would be sent to the planning commission for their review and comments. A final vote would then be scheduled by council.

The Workshop Session of Council concluded at 9:35 p.m.

Respectfully submitted,



Terri K. Hudson, CMC  
City Clerk/Recorder

*MILFORD CITY COUNCIL*  
*MINUTES OF MEETING*  
*September 22, 2008*

The City Council of the City of Milford held a Public Hearing on Monday, September 22, 2008 to take public comment and make a final determination on the following matter:

Conditional Use application of George, Miles and Buhr, LLC on behalf of Milford School District for an additional school to be constructed at 310 Lovers Lane, Milford, Delaware in an R-2 District; Area of Petition 31.31 +/- Acres; Tax Map 3-30-11.05-218.00; 3-30-11.05-217.00.

PRESIDING:           Honorable Mayor Daniel Marabello

IN ATTENDANCE:   Councilpersons Irvin Ambrose, Michael Spillane, John Workman, Owen Brooks, Jr., Douglas Morrow, James Starling, Sr. and Katrina Wilson

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

COUNSEL:           City Solicitor Timothy Willard

Mayor Marabello called the Public Hearing to order at 7:01 p.m.

David Miles from George, Miles and Buhr, LLC presented the application. He reported the school district is proposing a new elementary school off Bridgeham Avenue next to the existing Lulu Ross Elementary School. They submitted a two-part application for a conditional use and preliminary site plan. The preliminary site plan was approved by the planning commission last month.

Mr. Miles explained this will be somewhat of a campus with the existing building on one parcel and the proposed school on another parcel. Both parcels are zoned R-2. He referred to a map showing the parent drop off loop on Southeast Third Street at Lulu Ross that will continue around to the new building and exit onto Lovers Lane. The bus drop-off will be off Bridgeham Avenue.

He is seeking a conditional use approval needed for a school though it will extend the current use.

City Planner Gary Norris advised the recommendation of the planning commission was for unanimous approval with a condition that a gate connection be made at the end of Claude Street with the school's internal roadways which may be locked during the school's operating hours.

Mr. Miles advised that School Superintendent Robert Smith had some reservations about the condition because of the public traffic using his driveway. However, he stated it could be open during the day but closed at night.

When asked the basis for the gate requirement, Mr. Norris advised that Planning Commissioner Karen McColley made the motion with the condition for the gate connection. He explained she felt it would allow better traffic circulation by preventing vehicles from leaving one specific area. Mr. Miles referred to the area across from the school used by Pop Warner Football which created some potential congestion to school traffic.

Mayor Marabello opened the floor to public comment. Having no comments, he closed the floor to public comment.

City council had no further comments.

Mr. Brooks moved for approval of the conditional use to allow for a new school at 310 Lovers Lane, seconded by Mr. Starling. Motion carried by unanimous roll call vote.

Mayor Marabello then called the public hearing to order on the following matter:

Final Minor Subdivision application of Charles Murphy Associates on behalf of Lynn E. Walsh & Richard P. Dushuttle at 800 Airport Road, Milford, Delaware in an OC-1 District; Area of Petition 6.50 +/- Acres; Tax Map MD-16-173.00-01-19.00.

When asked if anyone was present on behalf of the application, no one responded. City Planner Gary Norris advised the request is for a four-lot subdivision off Airport Road that conforms to the code. The recommendation of the planning commission was 7 to 1 in favor of the minor subdivision. He added that the applicant must return for site plan review.

Mayor Marabello questioned the side setbacks and Mr. Norris advised they conform to the zoning code requirements in the OC-1 District.

Mayor Marabello opened the floor to public comment. Having no comments, he closed the floor to public comment.

A debate on whether council could act on the application with no one present to represent the application then followed.

Ms. Wilson then moved for approval of the final minor subdivision, seconded by Mr. Starling. Motion carried by the following 4-3 vote:

Yes-Brooks, Morrow, Starling, Wilson  
No-Ambrose, Spillane, Workman

Mr. Ambrose voted no because he feels that it is very important to have representation at a public hearing.

Mr. Spillane voted no stating he agrees with Mr. Ambrose.

Mr. Workman voted no stating he also agrees with Mr. Ambrose

Mayor Marabello then called the Public Hearing on the following matters to order:

Conditional Use application of Davis, Bowen and Friedel, Incorporated on behalf of NKS Distributors, Incorporated and State of Delaware southwest of State Route 1 at the Corner of NE Front Street; Proposed Use Wholesale Distribution Center; C-3 District; Area of Petition 13.21 +/- Acres; Tax Map MD-16-174.00-02-08.00; MD-16-174.00-02-09.00.

Conditional Use application of Two Farms, Incorporated t/a Royal Farms on behalf of Silicato-Wood Partnership LLC at 608 N. E. Tenth Street (Corner of Northeast Tenth Street and Southbound Lane of State Route 1); Proposed Use Convenience Store with Gasoline Pumps; C-3 District; Area of Petition 3.09 +/- Acres; Tax Map MD-16-174.15-01-01.00 (Part of).

City Planner Gary Norris reported the Planning Commission recommended approval of the condition use by a vote of 6 to 1 but included the stipulation that an additional buffer be placed along State Route 1.

Attorney Richard Abbott of Abbott Law Firm spoke on behalf of NKS Distributors and was given permission to address the NKS and Silicato-Wood applications simultaneously though a separate vote will be taken.

Mr. Abbott advised NKS Distributor has been in Milford at a different location since 1961 and wants to remain in Milford. They have been working on this project for about two years during which time the city has been supportive of their efforts along with Governor Ruth Ann Minner. The property was annexed six months ago and zoned C-3. The NKS property is a wholesale and warehouse. The warehouse is permitted in the C-3 zone though the wholesale portion, which includes some ancillary offices, require a conditional use.

The general review standards require compatibility with the area in terms of the comprehensive plan and nearby uses and its impact on adjacent uses. He reported that Hitchens Tire is to the south of the site, which is more of a light industrial type use though years ago the facility houses a beer distributorship almost identical to this use. To the north will be the



Silicato property and to the west is the McColley property which is being requested for annexation also under the C-3 zone. It is located on State Route 1, a limited access highway, with a 30,000 average daily traffic count. Therefore, all of the surrounding uses and areas are conducive to this use. This comprehensive plan designates the property as commercial.

The DELDOT review provisions of the PLUS report were submitted electronically and included in the council packet. Mr. Abbott explained that DELDOT is comfortable though they want some improvements. When a connection is developed that will connect Tenth Street to Front Street, they want the development to participate which is acceptable to NKS.

He stated the conditional use for the Silicato-Wood/Royal Farm application is on parcel number one off Tenth Street and Route 1. DELDOT also reviewed this project with a number of conditions similar to NKS. They include improvements to the adjacent street and the construction of the east-west connector as well as the north-south service in addition to some improvements that will enhance circulation.

A channelization island will be constructed at the Tenth Street/Route 1 intersection to ensure vehicles traveling east on Northeast Tenth Street can only make a right turn/south onto Route 1. East bound vehicles will not be permitted to cross Route 1. All other existing movements will remain.

Mr. Abbott explained the convenience store in a C-3 zone is permitted; however, the gasoline pumps are only permitted under a conditional use. He added that C-1 is a less intensive commercial use and C-2, which is a middle intensity and density commercial zoning category, both permit a convenience store with gas pumps as a conditional use. He said that typically, most jurisdictions allow it in a C-3, though Milford's code requires the conditional use.

Considering the adjacent similar uses, there are sports fields to the north of Tenth Street which are part of the Milford High School complex and an area to the west which is proposed residential under a current annexation request. Other than a single home that fronts Northeast Tenth Street, there is no development on the adjacent McColley property. Therefore, Mr. Abbott feels there is no detrimental impact.

He said there is a precedent for a Royal Farms with the Wawa at Route 113 and Tenth Street and a Royal Farms at Route 113 and 36. Both are convenience stores with gas pumps.

Zac Crouch of Davis, Bowen and Friedel, Incorporated then presented the site plan showing the service road coming off of Tenth Street through the project and its connection onto Route 1 and the NKS site whose direct access will be off Northeast Front Street. He explained the preliminary subdivision plan was approved by the planning commission on May 20, 2008.

He informed council the proposed NKS warehouse facility consists of 84,582 square feet of which 15,000 square feet will be used for office space. Another 36,000 square foot building is planned as a future warehouse. The main entrance, with a gated access, will be off Northeast Front Street and not from the service road. The office portion will front Route 1. The warehouse will be in the rear of the site. The maximum number of employees will be 48 with 98 parking spaces included on the plan which meets Milford's code.

Northbound truck traffic will take Route 1, exit onto the Route 36 bypass and turn and head north to prevent crossing Route 1 at the Northeast Front Street intersection. The two stormwater management ponds will act as the stormwater facility for the service road and all the out parcels in the subdivision. The project is in an excellent groundwater recharge area per the city ordinance and will comply with that ordinance and requirements. The city will provide water and sewer with a pump station on the site.

The roadway improvements approved by DELDOT include the construction of the east-west access road that extends from Tenth Street to Route 1. The north-south collector road that extends from Tenth Street to the east-west access road will provide access for the Silicato-Wood commercial parcels but not provide access for the NKS site. It will have a gate for staff and truck access. The north-south collector road will utilize a future service road between Tenth Street and Northeast Front Street. The Tenth Street access from the proposed collector road includes a separate left in and right in turn lanes for Tenth Street and a separate left out and rights out for the collector roads.

Mr. Crouch reported that Woodshaven residents met with DELDOT to discuss some of the options. Two letters from Ted Bishop were sent explaining this concept. Full access will be granted from Woodshaven across the north and south bound lanes of Route 1 into Milford. There will be full access north and southbound.

However, the change to the southbound lane, which is the responsibility of the developers, adds a concrete island to restrict access across Route 1 northbound. Traffic will be channeled southbound. Traffic heading east on Tenth Street will be required to go south with an island restricting crossover traffic into Woodshaven. Vehicles will proceed south to either the Front Street intersection or Route 36 overpass to eliminate crossover traffic at Tenth Street.

Mr. Crouch explained the original proposal was to eliminate the crossover but this was a compromise DELDOT made after meeting with the Woodshaven residents.

Restricting northbound traffic and redirecting traffic southbound improves the intersection from a current level service of failing to a passing level.

Mr. Crouch confirmed that both of the properties are designated for commercial use in the current Milford comprehensive plan as well as the new plan. Based on the traffic impact study performed, all improvements are the responsibility of both developers.

He then referred to the condition recommended by the planning commission for a buffer along Route 1. He explained their stormwater plan is to construct a centralized bio swale along Route 1 to consolidate all stormwater management into one regional system. This would serve all the out parcels which the conservation district and DNREC prefer. He is asking the buffer requirement be revisited to allow the proposed stormwater management system in addition to providing more visibility from Route 1.

Mr. Crouch stated it was agreed that low level lighting would be installed with no lights directed toward any residential areas.

All access into the Royal Farms will be off the service road with no direct access off Tenth Street. The parcel will consist of 16 gas pumps with canopies, a 5,000 square foot building and a carwash.

Mr. Crouch presented Royal Farms' latest prototype as is being built in Dover and Smyrna and was recently completed in Greenwood. A signage packet would be submitted to the planning commission and included in the final site plan.

He concluded by asking approval of the conditional uses as allowed in the C-3 zone and that council consider removing the buffer requirement along Route 1.

Mr. Brooks asked for a clarification of traffic entering and exiting the service road. Mr. Crouch explained that the access point on Tenth Street will be full access. It will include a protected left; a deceleration lane will come into the site. No traffic signal will be added.

When asked if Tenth Street would remain a no truck road, Mr. Crouch confirmed it would. The main entrance to the NKS Street would be off Front Street.

Chief Hudson verified that no trucks over 5,000 pounds are permitted on Northeast Tenth Street. Mr. Crouch reiterated that would not change. He explained the service road would be constructed from Tenth Street to Route 1 and NKS would have a service road with their main entrance off Front Street. Any truck unable to access the Royal Farm site could enter via the service road off Route 1.

Mr. Workman asked if the no truck sign could be made larger to direct them to enter off Route 1. Mr. Crouch feels that some signage could be included that would direct truck traffic off Route 1. However, DELDOT will be required to change the no truck sign because it is on Route 1.

Ms. Wilson suggested that recommendation be made a condition of the approval. Mr. Crouch questioned making it a conditional use because they have no control over DELDOT signs though it can be made part of the record. Mr. Morrow said that should be addressed during the site plan review. He also feels the buffer is part of the site plan.

Mr. Workman suggested that Royal Farms make this store a step up in design when compared to other Royal Farms. He said council has the right to require a better product and even their top of the line prototype. He wants developers to be aware that Milford has a higher standard than other municipalities.

Mr. Spillane then referred to the statement made by Richard Abbott that the convenience store was a use permitted in the C-3 zone but the gas pumps triggered a conditional use. Mr. Spillane referred to the City of Milford code which states that service stations cannot be within 500 feet of school.

Mr. Abbott explained that is a different category and referred to paragraph 14 that addresses convenience stores with gas pumps which applies to this application.

Mr. Spillane reported he was looking at the traffic study performed by the state. The report said that a business with over four pumps is considered a full service station and not a convenience store. Mr. Abbott feels that may be used for purposes of estimating the traffic trips that would be generated by a particular use, but the issue of whether this is a service station or a convenience store with gasoline pumps is governed by the City of Milford Zoning Code. There are no service components because there are no service bays, no automotive service, no oil changes, no tune ups or any automobile repairs so this is not considered a service station.

Mr. Spillane said the Milford code also states any land that is used for the sale of gasoline. Mr. Abbott stated the provision Mr. Spillane is referring to is subsection 10 which discusses service stations. He explained there is a difference between a gasoline service station and a service station. The service station does not have gas, but the gasoline service station would have gasoline. What they applied for and what is contained in subparagraph 14 is a convenience store with gas pumps.

From the site plan, Mr. Ambrose believes there are eight canopies which contain sixteen total pumps.

Mr. Workman agrees the code reads no gas stations are permitted within 500 feet of the school. He asked for a clarification between a gas pump at a service station or a gas pump at Royal Farms. Mr. Abbott said the interpretation of the code, in his opinion, is the plain and ordinary meaning of the language and a convenience store with a gas pump is exactly that. This is a Royal Farms, which is a convenience store, with the addition of gasoline pumps. A service station is not defined in the code, though it defines gasoline service station. However, when you put the term gasoline in front of it, a court is going to say that extra word was put there to distinguish it from a plain service station. Because service station is not defined in the code, you would apply the common and ordinary definition of what a service station is which is a facility with service bays or garages with doors that perform automobile services.

Mr. Abbott reiterated that a Royal Farms does not qualify as a service station and they applied for a convenience store with gas pumps. What is proposed is precisely and squarely within the definition of convenience stores with gas pumps. Mr. Spillane disagreed stating that if someone rings a bell, an employee will come out and pump your gas which is a service.

Mr. Abbott referred to Section 230-14C Conditional Uses (10) which reads service stations, automobile sales agencies, public garages, etc. and talks about repair works, equipment, etc. The code does not require a distance limitation when you apply. HE added this fits within the definition of convenience stores with gas pumps.

Solicitor Willard said that he examined the different definitions of service stations and if you look strictly at the definition of gasoline service station and consider what they are doing, someone could think that could apply. However, the 500-foot limit is only addressed using the words service station. He said if there is still some ambiguity and you have a specific section, the use has to fit the application. In this case, there is a specific use which is a convenience store with gas pumps and that is the section this falls under.

Mr. Workman again referred the code that specifically says it must be 500 feet from the school property. If it was being

placed anywhere else this would not be an issue, but in this case it is within 500 feet of the premises of the high school.

Mr. Willard understands but his opinion is it applies only to service stations and this application does not fall under that.

Mr. Brooks said that what he, Mr. Spillane and Mr. Workman are concerned about is the fact that sixteen gasoline pumps are being installed that close to a school or playing fields.

Mr. Crouch put together an aerial based on two other convenience stores within the same vicinity. Wawa is 1,400 feet, Valero is 1,000 feet and the proposed Royal Farms is 1,950 feet from the building.

Mr. Abbott said he is unsure why the distance requirement was added for service stations, but the code is clear there is no intent or distance requirement applicable for convenience stores with gas pumps. At the time the code was amended, city council felt it was appropriate to have no such limitations.

Mr. Spillane said the ITE stated that a convenience market with more than four pumps shall be considered a service station. He asked that council follow up more on this study. Mr. Abbott feels that is a semantics issue though Mr. Crouch may be more familiar with the ITE manual that provides estimates for traffic trip generations for the purpose of analyzing a type of use and then estimating the daily volumes and peak hour volumes generated by that particular category of use. He feels that by using the term service station, they are using a term to provide a category with a more intensive use. There are still gas stations with two islands for pumps and small convenience stores.

Mr. Spillane said this study was done in 2001 and back in those days, there were more small convenience stores with a couple of pumps. But in more recent years, larger convenience stores such as Wawa and Royal Farms have been built with many more gasoline pumps. He agrees the store and the pumps are separate issues.

Mr. Baird then announced correspondence was received from DELDOT Assistant Director of Planning Ted Bishop dated September 18, 2008, as was referenced by Mr. Crouch during his presentation, which he read into the record:

*“As part of our customary review process we have evaluated the traffic expected to be generated by the NKS distribution site development and the Silicato-Woods commercial development proposals. We have determined that the recommended improvements at SR 1 and NE Tenth Street and a limited access entrance on SR 1 as part of a new connector service road between NE Tenth Street and NE Front Street will provide adequately safe site access and an alternative route for motorists.*

*We look forward to continuing to work with the City of Milford as we build upon these improvements as part of the future grade-separated intersection project at SR 1 and NE Front Street. That project, while not currently in DeIDOT's Capital Transportation Program, is recognized as being very important.”*

Mr. Brooks said the traffic counts were done in February and August. He hopes they took into consideration that in two years, there will be one thousand more students at the Milford High School site.

Mayor Marabello then opened the hearing for public comment.

Emmett Venett, Jr. of 810 N.E. Tenth Street, Woodshaven, advised he is President of the Greater Woodshaven Civic Association which consists of about 175 homeowners on the east side of State Route 1. He said the residents are concerned for the safety aspects of this development. There are other concerns as to buffering as has been mentioned. However, the major concern is for safety.

He said the initial response by DELDOT was to close Tenth Street and its access into the City by Woodshaven residents. This would also impact the Lighthouse Estates development which currently has one home and several commercial areas planned that would use Tenth Street to access the city. That projected closing would shift all the other traffic to the only other access road Woodshaven has which is Front Street. If the Tenth Street intersection were closed, that would bring the Lighthouse traffic through Woodshaven.

Mr. Venett said there have been several accidents of which seven have been in the past year with two accidents at Front Street. One recently involved a school bus and resulted in a fatality. Since neither of these crossovers were designed to handle the volume of traffic that currently exist, he believes additional studies are needed by the state regarding the impact of the use of this property. The only traffic study done was insufficient and did not include the impact of Front Street. Within that study, there were questions about the size of the sample. He said it seems statistically that when only two days of sampling is performed to try to project the use, some statistician would question whether that was a sufficient sample size.

He advised that State Route has had property set aside since the 1970's for an overpass. There was property on Tenth Street whose easements were later withdrawn by DELDOT that Mr. Silicato was able to purchase. However, Mr. Venett believes there are still easements at the Front Street intersection for an overpass.

Over 128 residents signed a petition after learning this development was going to occur without an overpass being built. They want this to be a condition of the development because they believe it is in the best interest of the broader community of Milford to have an overpass. He noted that in light of the recent DELDOT comments that were referred to earlier, it appears they have come around to the residents' point of view which Mr. Venett feels should have been considered from the beginning.

Mr. Venett believes they have been promised safe passage across Route 1 since it sliced through their development over 38 years ago. He finds it interesting that part of the Marvel-Fischer lands of Woodshaven that were bought by DELDOT and formed a piece of thirteen acres is now being leased to NKS. He recalled when the developers tried to access and annex the land into the City of Milford and it was turned down.

He said they appreciate council and the city management taking an interest in their concerns for the safety of this development. They have also met with state senators, state representatives and levy court commissioner who support their position and share the concern for the adequate safety of these residents.

He said DELDOT has now said they would support an overpass and will place it on their capital improvement project list. They want council to help Woodshaven make sure they do that.

Mr. Venett said they have also been trying to determine if there are plans to close Tenth Street. They were assured several times that Northeast Tenth Street would not be closed until there was an overpass. Mr. Silicato was the first one to step forward with a complete picture of what was happening with this project. Once they learned the truth, it was much easier for them to get things done.

They are encouraging the city to continue to deliberate on these projects and consider the safety and the impact to our school children and older people who cross that highway. He said many Woodshaven residents work in Milford and they would appreciate the continued support in analyzing this project. They would also like to contribute whenever possible to make sure that DELDOT does the right thing. The letter from Ted Bishop was generated since last Monday when they did not hear any of those comments. Therefore, they feel this has come a long way in just one week.

Paul Goldstein of 15 West Thrush Drive, Meadows at Shawnee, stated he is sure city council loves the children and grandchildren in Milford. He does not care if the store is built or not but everyone wants growth for Milford. But if a law says a gas station must be 500 feet from school property, do we really want to play with words and say it's a convenience store with a gas pump. If something were to happen with 32 pumps who cares how and do we really want to concern ourselves with the safety of the children of Milford. There could be an explosion and who cares how it happens because kids are playing in the field. He said to do what is right for the children and don't let the law play with it. If we had an ordinance written 20, 30 or 40 years ago, that had a meaning and a definition, there is no question the ordinance says that a gasoline station has to be 500 feet or more from a school property. He feels council will do what is right for the people of Milford and their children rather than the commercial interest. Build anything but an explosive factory, a chemical plant or put in 32 gas pumps. He is sure things like this have happened across the country. He does not want to know that two cars raced into the gas station and hit each other and caused a problem. The children are important and do not let lawyers play with words.