

MILFORD CITY COUNCIL
MINUTES OF MEETING
October 22, 2012

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 22, 2012.

PRESIDING: Mayor Joseph Ronnie Rogers

IN ATTENDANCE: Councilpersons Steve Johnson, S. Allen Pikus, Owen Brooks, Jr., Douglas Morrow, Sr., James Starling, Sr. and Katrina Wilson

Police Chief Keith Hudson and City Clerk/Recorder Terri Hudson

City Solicitor David Rutt, Esquire

CALL TO ORDER

Mayor Rogers called the Monthly Meeting to order at 7:05 p.m.

It was noted that City Manager Carmean was absent due to being hospitalized on Thursday evening. However, he is now home and recovering.

INVOCATION AND PLEDGE

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

RECOGNITION

No special guests in attendance.

COMMUNICATIONS

Mayor Rogers reminded council that the next meeting will be held Tuesday, November 13, 2012 due to Veterans Day being observed November 12th.

UNFINISHED BUSINESS

Appointment of City of Milford Planning Commissioner

Mayor Rogers noted there remains one vacancy on the planning commission. He again asked council to submit names of any persons interested in serving.

A representative from the first ward would balance the commission though that is not required.

Monthly Finance Report-August 2012

City Clerk Hudson advised council that though this item was on the October 8th agenda, no vote was taken. A motion was made to accept the report followed by a comment which led to a lengthy discussion. As a result, the motion did not have a second and a subsequent vote did not occur.

Mr. Pikus moved to accept the August 2012 Finance Report as submitted, seconded by Mr. Brooks. Motion carried with no one opposed.

NEW BUSINESS

Award of Bid & Funding for Public Works Radio Replacement & Tower Project

Finance Chairman Pikus reported the finance committee met and agreed to approve up to \$240,000 for the bid award. However, the public works director will decide which company would be awarded the bid; that decision will then be reviewed by the city manager.

City Solicitor Rutt explained that a different bidding procedure was used for this project. A Request for Proposal was put out which resulted in two companies submitting bids. Those bids went before the finance committee. At that meeting, the public works director provided different options for the committee to consider. One consideration was to obtain additional information and pricing from the lower bidder. Mr. Pikus stated that he believes Mr. Dennehy had submitted an additional 42 questions to both contractors asking for clarification due the \$30,000 difference in bids. A finance committee meeting was then held on Thursday and he received the answers on Friday. Unfortunately, the city manager was unable to review the responses because he was hospitalized Thursday evening.

As a result, Mr. Pikus explained that both the public works director and city manager still have unanswered questions. He reported the one bid was offset by the pricing because the one bid covered some additional items that were not included in the lower bid. However, time is of the essence because of the January 1, 2013 deadline which both companies are able to meet. However, the bids must be awarded by the end of this week for that to happen. Upon clarification of the differences in the bids, a decision will be made and the bid awarded.

Mr. Rutt explained that legally, once the bid numbers have been disclosed, they cannot be changed. He said they cannot be negotiated by offering to add, remove, or change an item in the bid. He said Delaware Statute is very clear and states that the disclosure of one offeror's price to another and any information derived from competing proposals is prohibited. Therefore, it is very strictly prohibited.

Mr. Pikus said it is his understanding that the questions asked will not have an impact on the price. One has a different warranty and one has capabilities the other does not.

Mr. Rutt emphasized that it can be done in this manner as long as any discussion is for clarification of information and there is no intent to change the bid or prices. He does not want the city to go down the wrong path in this matter.

Mr. Pikus agreed noting the bids will stand as submitted.

Ms. Wilson expressed concern with the manner in which this is being done. She asked what happens if council agrees to approve the wrong bid and finds out later that the questions should have been asked beforehand. She is concerned we are putting the cart before the horse. Mr. Pikus said that is the reason he recommends the public works director and city manager very carefully review the bids before a final determination is made.

Ms. Wilson confirmed they could still say no and turn down each bid; Mr. Pikus stated yes but that will be the decision of Mr. Dennehy and Mr. Carmean.

Mr. Brooks asked if Mr. Dennehy was leaning toward Delmarva Communications who was the low bidder; Mr. Pikus said he does not recall him leaning toward either though he liked one better than the other. However, he recalled several items that Mr. Dennehy said needed further clarification. Mr. Morrow disagreed stating that he felt that Mr. Dennehy favored the higher bidder.

Mr. Pikus said that Mr. Dennehy is very knowledgeable in this matter and that is why they agreed to leave the decision to him. Mr. Pikus then moved that up to \$240,000 be approved and to allow the public works director determine which company be awarded the bid, which will then be reviewed and approved by the city manager.

Mr. Brooks recalled the matter being discussed more than a year ago. Mr. Pikus agreed noting that the previous city manager had this information on his desk but nothing was done; Mr. Brooks pointed out the previous city manager was gone for more than nine months before the matter was brought before council. Mr. Pikus agreed emphasizing the bid will be awarded this week.

Mr. Morrow seconded motion and agreed we need to move this along. However, he has the same concerns Mr. Brooks expressed because this needs to be completed and in place by January 1st. He does not see how we can wait until November 13th.

Mr. Pikus said it will be completed by the deadline.

Mr. Morrow said we also need to keep in mind the laws the city solicitor has referenced and any changes to the bid may require it to be re-bid. However, Mr. Dennehy has indicated there remains unanswered questions that still need to be resolved.

Mr. Pikus said that the city manager informed him that he conferred with the public works director who assured him the bid would be awarded this week.

Mr. Brooks said he also spoke with the city manager who agreed with the urgency in getting the project completed quickly.

Motion carried then carried unanimously.

Ms. Wilson votes yes but stated that she wants to make sure the city manager and the public works director review everything thoroughly and any item that is questionable needs to be brought back to city council or at a minimum, council needs to be made aware of any discrepancies or potential problems.

Growmark Land Deposit & Archeological Survey and Environmental Study Fees

Mr. Pikus advised that the city manager has received notification from Growmark that they will accept the city's appraisal and are ready to work with the city to sell this land.

As a result, the finance committee recommends council direct City Solicitor Rutt to immediately draw up the related documents immediately and submit a \$50,000 deposit to secure the land to be used for the future growth of the Milford Police Department which he is putting forth as a motion. Mr. Morrow seconded the motion noting they have been working toward securing this land for numerous months and have finally received some positive communications from Growmark which is a huge step toward the construction of the new police facility. In addition, this keeps the department in the downtown area.

Motion carried by unanimous roll call vote.

Mr. Pikus then moved that after we receive the signed authorization to enter the land, council directs Chief Hudson to contact the appropriate authorities to begin the archeological survey, environmental studies and any other evaluations required to qualify the land for development. Motion seconded by Ms. Wilson and carried by unanimous roll call vote.

It was confirmed the next step will be to prepare the purchase/sales agreement, have it signed by Growmark and the City of Milford and forward the down payment. In the meantime, Chief Hudson will begin making contacts with the appropriate agencies.

Mr. Pikus estimated it could take approximately sixty days to complete the studies after the agreement is signed; City Solicitor Rutt explained the typical agreement provides a ninety-day due diligence period for those type studies.

It was noted the Division of Historical and Cultural Affairs requires a letter of approval to go on the land. At that point, Chief Hudson will select a team to do the work. Because this involves the State of Delaware, Mr. Pikus is unsure how long the process will take.

2013 New Year's Holiday

City Clerk Hudson advised that the upcoming New Year's holidays falls on a Tuesday. When this has occurred in the past, city council has considered Monday (New Year's Eve) as an additional holiday. Should this be approved, city offices would be closed Saturday, December 29th thru Tuesday, January 1st.

Human Resources Manager Lisa Carmean brought the matter to the city manager's attention though the final decision will be by city council.

Mr. Brooks asked if the State of Delaware will recognize it as a holiday; Ms. Hudson advised that the state is somewhat unique and offers floating holidays. At this point, she is unsure and depending on the division, it may or may not be observed.

Mr. Brooks recalled that years ago, the city adopted the State of Delaware Holiday Schedule. Mr. Morrow noted that in some instances, the Governor has declared these type holidays at the eleventh hour. Ms. Hudson noted that it is not a legal holiday though our holiday schedule is subject to change, with the approval of city council.

Mr. Starling moved to approve December 31st as an additional city holiday, seconded by Ms. Wilson. Motion carried with no one opposed.

EXECUTIVE SESSION

Pursuant to 29 Del. C. §10004(b)(9) Personnel matters in which the names, competency and abilities of individual employees or students are discussed.

Mr. Pikus moved to go into Executive Session reference personnel matters, seconded by Ms. Wilson. Motion carried.

Mayor Rogers recessed the Council Meeting at 7:27 p.m. for the purpose of an Executive Session to discuss a personnel matter.

Return to Open Session

City Council returned to open session at 7:38 p.m.

Adoption/Domestic Relation Procedure/ING 457 Deferred Compensation Plan

Mr. Pikus moved to adopt the Domestic Relation Procedure 457 Deferred Compensation Plan, seconded by Mr. Morrow. Motion carried.

Adoption/Domestic Relation Procedure/ING 401A Retirement Plan

Mr. Pikus moved to adopt the Domestic Relation Procedure 401A Retirement Plan, seconded by Mr. Morrow. Motion carried.

FY2012-13 Budget Adjustment/Transfer of Funds/City Hall Improvements

Mr. Pikus advised that this was the last phase of the work needed at city hall as a result of the water damage that occurred in the basement last year. Some sidewalks were removed and concrete replaced at a different pitch. Drywall and flooring repairs were also completed.

Mr. Pikus moved to transfer \$5,423.00 from the general fund reserve account to pay for the repairs, seconded by Ms. Wilson. Motion carried with no one opposed.

ADJOURN

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

The Council Meeting adjourned at 7:43 p.m.

Respectfully submitted,



Terri K. Hudson, MMC
City Clerk/Recorder

MILFORD CITY COUNCIL
MINUTES OF MEETING
October 22, 2012

The City Council of the City of Milford met in Workshop Session on Monday, October 22, 2012 in the Joseph Ronnie Rogers Council Chambers of Milford City Hall, 201 South Walnut Street, Milford, Delaware.

PRESIDING: Honorable Mayor Joseph Ronnie Rogers

IN ATTENDANCE: Councilpersons Steve Johnson, S. Allen Pikus, Owen Brooks, Jr.,
Douglas Morrow, Sr., James Starling, Sr. and Katrina Wilson

Police Chief E. Keith Hudson and City Clerk/Recorder Terri Hudson

City Solicitor David Rutt

The Workshop Session convened at 7:43 p.m.

Tax Exemption Status/Homeowner Associations (HOA's)

City Solicitor Rutt recalled at last month's meeting, the Meadows at Shawnee submitted a request for a tax exemption status which council awarded. At that time, there was a question about whether all HOA's would be exempt. Mr. Rutt got the impression council felt it was appropriate to make all HOA's tax exempt.

After discussing the issue with the city manager, he reviewed the regulations which he found to be somewhat complicated. In addition, the qualifications vary in each county.

Mr. Rutt advised there are two ways an HOA can qualify for exemptions. One is to apply under a 501(c)(4) of the Internal Revenue Code and another is under a separate section of the IRS code. However, there is specific criteria HOA's must meet to qualify.

The solicitor noted that the rules in Kent County are much more stringent than those in Sussex County. Kent County requires an application be submitted and specific items provided to be considered. Sussex County was unaware of the parkland exemption under the Delaware code or the IRC exemption and simply awards the exemption. Mr. Rutt announced that will be changing when Sussex County adopts a similar policy.

Mr. Rutt suggests that Milford consider a policy that is consistent with each county. The homeowners' association would be required to file the application and provide proof they qualified under the application county before the city makes a determination. He does not recommend the city accept the word from an HOA that they are exempt when there could be a conflict with the county and an issue with property taxes. In this manner, the city will conform with the county rules.

Mr. Pikus noted that the IRS Code states a homeowners' association can apply for a tax exempt status as a 501(c)(4) so long as its "open space" or "parkland" is open to the general public and not just to its own members. He explained that once the city grants a tax exemption, that land is open to any person and not just those living in that community.

Mr. Rutt referenced Kent County's application which asks for the type of exemption being sought; it then asks for an explanation of the activities. This clearly defines the intent. He then referenced the language from 9 Del. C. §8110 which states that civic organizations owning parkland whose use of the property is open, without charge, or to the public, or to members of the civic organization, or to the residents of the neighborhood, or to residents of the community, etc.

He recommends we allow the counties to do the due diligence before the city makes a determination.

Mr. Pikus confirmed that any tax-exempt land owned by an HOA can be used by anyone who wishes. He asked if the HOA can deny someone from using their land; Mr. Rutt explained that theoretically they are unable to once they file for the tax exempt status.

Mr. Brooks pointed out that Meadows at Shawnee has already obtained their exemption from Sussex County. Therefore, any land in the HOA's name can be used by the public. However, he does not believe those areas are not appropriate for public use.

Mr. Rutt said he confirmed that Sussex County granted Meadows at Shawnee the tax exempt status; the HOA has since requested the City of Milford exempt them from paying city taxes. The homeowners' association, by seeking the tax exemption, has agreed to open any HOA lands to the public.

Mr. Pikus asked if the homeowners' associations are aware of this; Mr. Rutt stated it is their responsibility to be aware of this. Mr. Rutt further explained that when his law firm represents homeowner associations and prepares the related documents, they are informed of these laws. In addition, they are provided with copies of any related statutes.

Dan Marabello of 1 Windy Drive, Meadows at Shawnee, asked for clarification of §8110(2)c and whether it means the HOA has to open it to the public. Mr. Rutt informed Mr. Marabello he will not provide legal advice for his HOA. However, it is his duty to counsel the city and to make sure the tax exemption procedure is in place before they award a tax exemption.

Mr. Pikus and Mr. Brooks both agree with Mr. Rutt that the HOA's should be cognizant of any stipulations related to a tax exemption status before they apply.

Dave Markowitz of 8 East Thrush Drive, Meadows at Shawnee, stated that as far as issues of public lands and people using them, they do not have any land that can be used. Therefore, he does not see what the issue will be for the Meadows at Shawnee. People have egress and ingress into the neighborhood which is no problem. However, they have no parkland and nothing visitors can use except they can drive on their streets. Their only public land borders around the development and the bordering roads do not belong to the HOA. The ponds are regulated and cannot be used. Therefore, he does not see this as an issue at Meadows at Shawnee.

Mr. Rutt pointed out that even though that may be the case at Meadows at Shawnee, other HOA's may have public or green areas that could be used by the public. He then read the following definition of parkland:

Real property, including improvements erected thereon and fixtures attached thereto, used primarily for recreational purposes and dedicated as parkland, public open space, private open space or other public use on a recorded subdivision plan, or through valid and binding restrictive covenants.

Mr. Rutt recalled the plans for the Hickory Glen (Walter Thomas) subdivision which included open space, tot lots, etc. He emphasized this would fall within this definition and does qualify for use by the public.

Joe Palermo, 5 Misty Vale Court, Meadows at Shawnee, stated that according to the subdivision plan, there is 8.9 acres of common area (not parkland), most of which is stormwater ponds.

Mr. Brooks confirmed that the HOA is liable for any injuries in the public areas of the subdivision.

Parliamentary Procedure/Roberts Rules of Order-Future Agenda Item

Mr. Rutt referenced the finance report which had to be voted on at the council meeting earlier this evening. He reiterated this was because a discussion took place before the motion on the floor at the October 8th meeting was seconded and disrupted the normal procedure. In addition, there are other things he has observed over the last few months that he and the city clerk have discussed and need to be addressed.

As a result, he recommends a workshop be scheduled with members of the planning commission, board of adjustment and city council. During that session, the rules of procedure, Roberts Rules and FOIA will be discussed. In that way, all boards and commissions in the city will be on the same level.

Mayor Rogers and council members were very receptive to the idea noting a recent problem that occurred with a planning commissioner. Mayor Rogers will follow up with a later date and time.

Trash Container Pickup/Delivery Fee

Mr. Pikus asked the deadline for yard waste pickup; Mr. Morrow advised that yard waste is picked up through October 31st.

The city clerk reported that she was asked by City Manager Carmean to present council with his idea for a proposed trash container pickup and delivery fee.

She advised our current ordinance requires that every customer in Milford be charged a monthly trash fee whether or not they are using the service. Mr. Carmean has received an increased number of complaints from residents who go away for four or five months a year and have to continue paying for the service though they do not put out trash during that time frame.

To accommodate those requests, he is recommending a \$12.50 pickup and delivery fee. Each container is individually marked for their specific address. As a result, any container picked up for a \$12.50 fee, taken to the warehouse, inventoried and stored specifically for that address. When the customer calls for its return, that specific container is returned and another \$12.50 fee charged.

In the meantime, our crews will be instructed that nothing is to be picked up until they the official City of Milford container is set out again.

Ms. Hudson noted there are scenarios that would apply as well. For example, a resident might be staying in the hospital, rehab center, nursing home or even living with another relative for an extended period of time and no one is at their home.

She advised that any change to this policy would require an ordinance amendment. At this point, the city manager is only asking for councils' opinion and whether they feel it is worthwhile considering.

It was agreed to postpone discussion until the next workshop.

With no further business, the Workshop Session concluded at 8:06 p.m.

Respectfully submitted,



Terri K. Hudson, MMC
City Clerk/Recorder