

*MILFORD CITY COUNCIL
MINUTES OF MEETING
January 10, 2011*

The Monthly Meeting of Milford City Council was held in the Joseph Ronnie Rogers Council Chambers of Milford City Hall, 201 South Walnut Street, Milford, Delaware on Monday, January 10, 2011

PRESIDING: Mayor Joseph Ronnie Rogers

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

City Manager David Baird, 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 7:02 p.m.

INVOCATION AND PLEDGE

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

APPROVAL OF MINUTES

Motion made by Mr. Pikus, seconded by Mr. Adkins to approve the minutes of the December 10, December 13 and December 28, 2010 Council Meetings as presented. Motion carried.

RECOGNITION

Mayor Rogers then introduced newly appointed City Solicitor David Rutt of Moore and Rutt, P.A.

POLICE REPORT

Mr. Morrow moved to accept the police report as submitted by Chief Hudson, seconded by Mr. Brooks. Motion carried.

It was noted that applications are still being accepted for the Citizens Academy that begins this month.

CITY MANAGER REPORT

Mr. Baird then read the following report into record:

Solid Waste & Recycling

On August 1, the City Solid Waste Department began the collection of curbside recycling. During the month of November, the Solid Waste Department collected 377.85 tons (304.60 tons of Solid Waste; 46.62 tons of Recycling and 26.03 tons of yard waste).

	<i>Recycling Tons</i>	<i>Recycling Rate</i>
<i>Dec-09</i>	<i>46.12</i>	<i>10.70%</i>
<i>Dec-10</i>	<i>46.62</i>	<i>10.98%</i>

Earlier this year, SB234 was signed into law and part of the legislation establishes diversion rates of 50% by January 1, 2015 for Municipal Solid Waste being disposed of at the landfill.

<i>Year</i>	<i>Recycling</i>	<i>Solid Waste</i>	<i>Yard Waste</i>	<i>Total</i>	<i>Diversion Rate</i>
<i>2009</i>	<i>442.44</i>	<i>4,684.38</i>	<i>-</i>	<i>5,126.82</i>	<i>8.63%</i>
<i>2010</i>	<i>441.14</i>	<i>4,630.47</i>	<i>37.49</i>	<i>5,109.10</i>	<i>9.37%</i>

Impact Fee Waivers

Since the waiver of impact fees was implemented in June, the City has waived \$135,507 in fees. This waiver has allowed property owners in Milford to retain this money and has helped to support a total investment of \$7,637,997 (based on building permit values) during the months of June through December.

N.E. 10th Street Paving

I have met with Mr. Mallamo and Mr. Dennehy regarding the paving work completed by C&J Paving and Mr. Mallamo is in the process of evaluating options that will address the issues associated with the recent work. It is planned for this to be discussed at the January 24, 2011 City Council meeting where Mr. Mallamo will be presenting the alternatives and providing a recommendation on how to proceed.

Mr. Pikus confirmed that nothing will be paid to the contractor until it is corrected; Mr. Baird stated yes, nothing has been paid for the work on Tenth Street.

Ms. Wilson questioned why the contractor does not have the equipment to make repairs if they were able to pave the road; Mr. Baird agreed that is part of the problem and perhaps his equipment may have fallen below the standards that were expected. We said we need some assurances that he has the proper equipment and know-how to correct the problem.

When asked if the entire street will need repaving, Mr. Baird explained the city engineer is reviewing the situation to determine if it can be done in sections or the entire road will have to be repaired.

201, 203, 205 & 207 NW Front Street

The property owners of 205 & 207 NW Front Street filed an appeal of the City Board of Appeals Decision in Superior Court on December 21, 2010 and the City subsequently filed a motion to dismiss this appeal. On December 30, 2010, the Court held a hearing and issued a stay on the demolition until January 21, 2011. At this time, the Judge indicated they would rule on the City's motion to dismiss on or before January 7, 2011. If the Court denies the motion to dismiss, Mr. Willard believes the Court will request a certified record and a briefing schedule for further review. If the motion to dismiss is granted, the City will be in a position to proceed with demolition unless the property owner appeals to the State Supreme Court and obtains a stay.

Mr. Pikus asked how they were able to file the appeal after the deadline; City Solicitor Rutt said Tim Willard is handling the case noting that is the basis of his motion to dismiss the case.

Mr. Baird confirmed there is still one resident living in one of the units. The language in the stay confirmed both the condemnation and the demolition. Therefore, we do not have the means to evict the person though that is what must be done.

Mr. Pikus asked hypothetically what happens if the court rules the two buildings can remain pointing out the other is already partially torn down. The city manager said that in his opinion, it will be difficult to challenge because the information that has been presented by structural engineers all points to the fact those properties are incapable of standing on their own.

Mr. Rutt advised that typically those appeals are based on their record. The court would review the record established in this situation to confirm any evidence that supports the decision. Depending on the way the court rules, there is the ability to appeal to the Supreme Court noting that could take another six to eight months.

Mr. Brooks asked who would be responsible for the demolition if the two homes were allowed to remain but the other two had to be torn down; Mr. Baird explained that any costs would apply to the owner. However, part of the city's position and what the engineers found is the wall that connects the two is the issue. If the demolition of 203 continues, it will have a tremendous impact on 205 and 207. The city has the authority to demolish the property and should the property owners continue to disregard any orders, the city has the authority to lien the property for associated costs though he does not believe the court will go that far.

Mr. Rutt confirmed that the U.S. Supreme Court would not become involved in a situation like this.

Economic Development Strategy

A copy of the Economic Development Strategy has been provided to members of City Council and will be presented by Mr. John Rhodes at the January 24, 2011 Workshop.

Mr. Grier then reported his committee met last week at which time First State Manufacturing was present. Several options were discussed in ways the city can help them achieve their goals. He will follow up with Eli Valenzuela later this week.

Electric Utility Rate Comparison

See the attached Residential Utility Rate Comparison from DEMEC for January 2011.

City Holidays

City offices will be closed on Monday, January 17, 2011 in observance of the Dr. Martin Luther King, Jr. holiday.

RESIDENTIAL RATE COMPARISON @ 1,000 kWh

		<i>% Difference</i>	<i>% Difference</i>
<i>De Co-op</i>	<i>\$112.91</i>	<i>0%</i>	<i>-25%</i>
<i>Milford</i>	<i>\$143.53</i>	<i>27%</i>	<i>-5%</i>
<i>New Castle</i>	<i>\$144.63</i>	<i>28%</i>	<i>-4%</i>
<i>Dover</i>	<i>\$147.38</i>	<i>31%</i>	<i>-3%</i>
<i>Lewes</i>	<i>\$149.41</i>	<i>32%</i>	<i>-1%</i>
<i>Delmarva Power</i>	<i>\$151.27</i>	<i>34%</i>	<i>0%</i>
<i>Smyrna</i>	<i>\$152.48</i>	<i>35%</i>	<i>1%</i>
<i>Seaford</i>	<i>\$156.05</i>	<i>38%</i>	<i>3%</i>
<i>Middletown</i>	<i>\$158.78</i>	<i>41%</i>	<i>5%</i>
<i>Clayton</i>	<i>\$162.70</i>	<i>44%</i>	<i>8%</i>
<i>Newark</i>	<i>\$163.71</i>	<i>45%</i>	<i>8%</i>

Mr. Pikus moved to accept City Manager Report, seconded by Ms. Wilson. Motion carried.

COMMITTEE REPORTS

Cold Weather Shelter for the Homeless

Mr. Johnson reported that he attended a meeting in relation to the Cold Weather Shelter yesterday where more than thirty people attended.

Ms. Wilson advised the shelter will officially open January 17th but then learned it had been postponed until January 25th. She advised that registration will occur at the Circle of Light after which those persons will be transported to the Church of the Nazarene.

St. Paul's Church will be the first group to help man the shelter as well as provide food.

It was again reported the Lions Club is making a substantial contribution to the Circle of Light for this project.

Public Works Committee

Mr. Brooks asked if the Public Works Committee meeting had been scheduled. Mr. Baird said they were sidetracked with the recent snowstorms though he will follow up with a date.

Christmas Dinner

Mr. Starling thanked the council and city employees for their support of the dinner that was served to the less fortunate in our community on Christmas Day. Of the more than 225 people served, many were delivered to homebound residents.

UNFINISHED BUSINESS

Right of Way Acquisition/Cypress Hall Development

Mr. Baird reported that at the city water plant site on Seabury Avenue Extended, the city was requested to provide a 20-foot easement and 10-foot temporary construction easement to allow a turn lane for southbound traffic turning onto Route 113 from Shawnee Road (west of Route 113). This was identified as a public safety issue in the Traffic Impact Study completed as one of DelDOT's requirements on behalf of the Cypress Hall commercial project.

He reminded council the northern side of Cypress Hall will be developed commercially with a residential component to its south. The dedication would be from the city to DelDOT so it would remain in the public's hands and not be given to a private entity.

It was confirmed we own the land where the Seabury Avenue well is located over to Route 36. Mr. Baird confirmed that the street that runs behind the houses off Seabury Avenue Extended will be closed off. A cal-de-sac will be added which will allow the city to have access to the water plant.

Tim Metzner of Davis, Bowen and Friedel was present on behalf of the request. He then explained there will be no access from Route 113 onto that street; however, the well and city facility will be accessed from the backside. Vehicles will come into the proposed development with both front and rear access provided to those houses that currently exist between Seabury Avenue Extended and Route 36. Therefore, access to Seabury Avenue Extended will continue in their proposed entrance to the Cypress Hall Development, but access from Route 113 will be closed as was requested by DelDOT.

Mr. Rutt explained that this is a public safety issue which gives the city the authority to dedicate it to the state. If it were being dedicated to a private entity first, there may be some issues.

Mr. Metzner reported the main objective is for maintenance reasons. This will prevent the city from maintaining the paving and drainage along the right turn lane which will now be handled by DelDOT.

Mr. Baird said some additional language is still needed; he then asked council to authorize Mayor Rogers to enter into an agreement consistent with the proposal presented.

Mr. Pikus moved to allow Mayor Rogers to act on behalf of the city and enter into an agreement with DelDOT as was presented, seconded by Ms. Wilson. Motion carried.

NEW BUSINESS

Reappointment of Board of Adjustment Member

Mr. Grier moved to reappoint Keith Gramling of 5 Homestead Boulevard, Hearthstone Manor for a second term beginning 02/28/11 through 02/28/14, seconded by Mr. Brooks. Motion carried by unanimous roll call vote.

Introduction of Ordinance 2011-1/Fiber Optic Leasing

The following ordinance was officially introduced:

ORDINANCE NO. 2011-1

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF MILFORD BY ADDING A NEW CHAPTER ENTITLED FIBER OPTICS.

NOW, THEREFORE, THE CITY OF MILFORD HEREBY ORDAINS:

Amend the Milford Code by adding a new Chapter entitled Fiber Optics to read as follows:

Section 1. General Conditions.

- (A) The City of Milford has installed fiber optic cables to improve internal networking capabilities and to provide telecommunication services to its electrical customers.*
- (B) Of those fiber optic facilities, the city has the ability to license certain unused capacity within its communications network to enhance utilization and to obtain additional revenues.*
- (C) Customers who desire to utilize a portion of the city's unused fiber optic must enter into a Fiber Use License Agreement in which the terms and conditions are contained therein.*
- (D) All agreements are subject to the review of the City of Milford Electric Department Superintendent.*
- (E) The Mayor of the City of Milford is hereby authorized to execute a Fiber Use License Agreement upon the approval of the Electric Department Superintendent.*
- (F) Although the City of Milford will make every effort to provide customers with quality, reliable, continuous fiber optic service, the city makes no guarantees to system interruptions specifically caused by weather, earthquakes or any other conditions beyond its control.*

Section 2. Fiber Optic Rates, Fees and Charges

(A) Rates, Fees and Charges shall be in accordance with the following table:

(1) Fiber Pricing (Per Month/Per Fiber/Per Mile)

<u><i>1-12 Fibers</i></u>	<u><i>Current</i></u>	<u><i>New</i></u>
<i>1 Year Term</i>	<i>\$75.90</i>	<i>\$103.50</i>
<i>5 Year Term</i>	<i>\$66.00</i>	<i>\$90.00</i>
<i>10 Year Term</i>	<i>\$59.40</i>	<i>\$81.00</i>
<i>15 Year Term</i>	<i>\$50.76</i>	<i>\$72.90</i>

	<u>Current</u>	<u>New</u>
<i>13 or More Fibers</i>		
<i>1 Year Term</i>	<i>\$70.67</i>	<i>\$96.36</i>
<i>5 Year Term</i>	<i>\$60.67</i>	<i>\$82.73</i>
<i>10 Year Term</i>	<i>\$55.40</i>	<i>\$75.54</i>
<i>15 Year Term</i>	<i>\$48.88</i>	<i>\$70.20</i>
 (2) <i>Drop Cable</i>	 <i>\$2.20/ft</i>	 <i>(Pole to Building)</i>
(3) <i>Construction Cost (Labor)</i>	<i>\$3.00/ft</i>	<i>(4 Men & 2 Bucket Trucks - 16 hrs)</i>
(4) <i>Splices (City)</i>		
<i>Splices & Trays</i>	<i>\$40.00/splice</i>	
<i>Splice Enclosure</i>	<i>\$1,000.00</i>	
(5) <i>Splices (Under/Comm, Incorporated)</i>		
<i>Set up and splice designated strands of the 96 fiber loop to new cable using splice cases and trays provided by the City.</i>		
<i>Splice Setup Per Location</i>	<i>\$300.00</i>	
<i>Splice Per Strand</i>	<i>\$25.00</i>	
(6) <i>Set up and terminate designated strands of new cable at customers' location using new hardware and pigtails provided by Under/Comm, Incorporated</i>		
<i>Termination Setup Per Location</i>	<i>\$200.00</i>	
<i>Splice Pigtail Per Location</i>	<i>\$34.00</i>	

Rates are subject to change annually.

Section 3. Dates.

Introduction: January 10, 2011
Adoption: January 24, 2011
Effective: February 3, 2011

Mr. Baird advised the city has an internal, fiber optic network stretching through parts of the city. It is beneficial for communications within the city though there is no connection out. Businesses within the city have two locations. Milford Hospital has been a key user and the State of Delaware Offices are now starting to use it.

The fee schedule has not been changed in more than a decade. This ordinance increases those fees to a more competitive level though they remain below what private networks are charging. Fees are on a per-month basis per-strand and mile of fiber. In addition, there are associated support costs as outlined in the ordinance.

Each customer on the city's fiber network has a specific agreement that outlines the responsibility of the city and the customer. A section deals with price. The new rates in this ordinance will not impact any current contracts though they will increase at the time of their renewal. These new rates will apply to any new customers.

Current contracts vary from one to five years.

The ordinance is scheduled for adoption at the January 24th meeting.

State of Delaware Fiber Optic Agreement

Mr. Baird presented the proposed agreement for the use of the city fiber optic network by the State of Delaware, Department of Health and Social Services. The standard, five-year agreement is associated with their new office lease at the Riverwalk Shopping Center.

He said there were substantial language changes on the insurance components in Article VIII and IV. The state requested the agreement be modified due to their immunity clauses and because they are self-insured. Typically, we ask for certificates of insurance and other protections afforded to the city because of the information being transferred on our fiber optic network that we are not responsible for. When the state attorneys were reviewing the language, they asked for some proposed modifications. Former City Solicitor Tim Willard was able to work out an acceptable agreement that met both the state's needs and protected the city's interest as well.

There was a question with regard to the signature page, which has since been modified. The city manager recommended approval contingent upon the appropriate officials signing the agreement. Mr. Rutt confirmed the present signature is not binding.

Mr. Pikus moved for approval of the State of Delaware DHSS Fiber Optic Agreement, contingent upon the correct signatures being obtained from the State of Delaware, seconded by Mr. Starling. Motion carried.

MONTHLY FINANCE REPORT

Chairman Pikus reported that through the fifth month of Fiscal Year 2010-2011 with 42% of the fiscal year having passed, 48.82% of revenues have been received and 38.98% of the operating budget expended.

He noted that 134% of the anticipated building permit fees has been received. Of the \$30,000 budgeted, over \$40,000 has been received. He attributes that to the building incentives and impact waivers approved by city council this past fiscal year.

Overall, he feels the city is in good shape.

Mr. Pikus moved to accept the November Finance Report, seconded by Mr. Morrow. Motion carried.

Mr. Adkins asked if we are well suited for a snowy winter; Mr. Baird stated we are though we are still finalizing costs from the first storm over Christmas weekend. As always, the largest expense is personnel costs. He added there are similar costs associated with the snow received this past Saturday.

With another storm anticipated this week, staff schedules are being adjusted. The streets and grounds crews will begin work at 2:00 p.m. tomorrow and will most likely be working into the early hours. This will eliminate some of the overtime costs and provide relief from personnel working an extended period of time. He confirmed there are adequate reserves available to cover those overtime costs as well.

The city manager reported the city recently received a check from FEMA for \$96,000 which reimburses the costs of the snow storm and blizzard in 2010. He noted those funds are only available when there is a declaration of emergency by the federal government.

Mayor Rogers again thanked the employees for the fine job they have done this year in managing the snow and ice.

Mr. Pikus reported there is a need for some upgraded equipment and in order to properly address these storms, good equipment is needed which may need to be considered this budget year. Mr. Baird advised that we are addressing many of those needs over multiple years. Some additional snow plows were purchased this year which allows us to equip more trucks this year.

Mr. Pikus reiterated the Finance Committee has always prioritized public safety and public service.

Executive Session

Mr. Pikus moved to go into Executive Session pursuant to 29 Del. C. §10004(b)(4) strategy sessions, including those involving legal advice or opinion from an attorney-at-law, with respect to collective bargaining or pending or potential litigation and pursuant to 29 Del. C. §10004(b)(9) personnel matters in which the names, competency and abilities of individual employees or students are discussed, seconded by Mr. Grier. Motion carried.

Mayor Rogers recessed the Council Meeting at 7:48 p.m. to go into a closed session.

Return to Open Session

Council returned to open session at 8:20 p.m.

Executive Session Matter

Mayor Rogers announced two issues were discussed and no action is needed on the legal issue.

Mr. Pikus moved for approval and proceed with the item related to personnel, seconded by Mr. Grier. Motion carried by unanimous roll call vote.

ADJOURN

Motion to adjourn Monthly Meeting made by Ms. Wilson, seconded by Mr. Starling. Motion carried.

Mayor Rogers adjourned the Monthly Council Meeting at 8:21 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Terri K. Hudson". The signature is written in black ink and is positioned above the printed name and title.

Terri K. Hudson, CMC
City Clerk/Recorder