

MILFORD CITY COUNCIL
MINUTES OF MEETING
September 12, 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, September 12, 2011

PRESIDING: Mayor Joseph Ronnie Rogers

IN ATTENDANCE: Councilpersons Steve Johnson, Garrett Grier III, S. Allen Pikus, Dirk Gleysteen, 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 7:03 p.m.

PUBLIC HEARING

*Borrow Funds to Demolish and Reconstruct the Washington Street Water Plant and Office Building
Adoption of Resolution 2011-12/Final Authorization-Proposed Borrowing/Referendum*

Mayor Rogers advised the public hearing was postponed.

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. Brooks to approve the minutes of the August 8, 17 and 22, 2011 council and committee meetings as presented. Motion carried.

RECOGNITION

Proclamation 2011-14/Prostate Cancer Awareness Month/David Sauls

City Clerk Hudson read into record the proclamation recognizing September as Prostate Cancer Awareness Month. Mayor Rogers then presented to Mr. Sauls, Chapter Leader of the Us Too International Support Network, the signed proclamation.

WHEREAS, among men, prostate cancer is the most commonly diagnosed non-skin cancer and the second leading cause of cancer-related deaths; and

WHEREAS, each day, countless physicians and researchers devote themselves to treating patients and finding a cure. Educating the public about the risks and treatment of prostate cancer is one of the strongest tools they have to increase early detection and save lives; and

WHEREAS, with early detection and treatment, prostate cancer can be cured and many deaths can be avoided; and

WHEREAS, the 2011 observance of National Prostate Cancer Awareness Month provides a unique opportunity for citizens throughout the City of Milford and the nation to join together to raise public awareness of the symptoms, prevention, and treatment of prostate cancer.

NOW, THEREFORE, I, Joseph Ronnie Rogers, by virtue of the authority vested in me as Mayor of the City of Milford, Delaware, do hereby proclaim the month of September as

NATIONAL PROSTATE CANCER AWARENESS MONTH

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Official Seal of the City of Milford to be affixed this 12th day of September in the Year of our Lord Two Thousand and Eleven.

s/Mayor Joseph Ronnie Rogers

Mr. Sauls stated he also represents Delaware Prostate Cancer Coalition, Southern Delaware Prostate Cancer Group and the Man to Man Prostate Cancer and Education Group. He noted that in addition, Governor Jack Markell signed a proclamation declaring September as Prostate Cancer Awareness Month in Delaware.

Mr. Sauls thanked the Mayor and Council for the proclamation and presented the Mayor and Council with prostate cancer blue ribbon pins.

POLICE REPORT

Police Committee Chairman Morrow presented the monthly report on behalf of Chief Hudson. Mr. Morrow moved to accept the Monthly Police Report, seconded by Mr. Starling. Motion carried.

CITY MANAGER REPORT

Mr. Baird referenced the public hearing that was postponed at the beginning of the meeting. He reported the original resolution and public notices were based on the original offer from the State of Delaware for \$3.7 million. A letter was then received from the state increasing the offer to \$4 million.

Therefore, the process needed to be restarted with the correct numbers. Tentatively, the public hearing is scheduled for October 10th.

He also advised that the heavy rains that occurred last week caused some significant water to enter the city hall basement again. ServPro has been working on the cleanup but at this point, we need to determine what is causing the problem. It is occurring more frequently and into areas that were not previously impacted.

In the meantime, the employees housed in the lower level have been relocated. The code and building inspector, along with the city planner, have been moved to public works. The IT Department will be working out of the finance department.

Mr. Baird has met with contractors regarding the repairs. Options and proposals are expected this week which he will share with the finance committee to make a determination.

He reported that all road signs for Hearthstone Manor have been ordered by the street department and are expected to arrive any day. Upon their receipt, they will be installed by the public works staff. That project will be coordinated with the police department as well.

Mr. Baird then presented the following report:

Solid Waste & Recycling

In 2010, 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. The tables below compare the City's diversion rate by month with the same period of the previous year as well as year to date and annual totals.

	Solid Waste	Curbside Recycling	Igloo Recycling	Yard Waste	Total	Diversion Rate
July 2010	393.17	38.65	42.77	0	475.59	17.2%
July 2011	337.47	36.29	29.03	20.02	422.81	22.0%

	Solid Waste	Curbside Recycling	Igloo Recycling	Yard Waste	Total	Diversion Rate
2009	4,684.38	442.44	545.68	-	5,672.50	17.4%
2010	4,630.47	450.12	505.82	37.49	5,632.39	17.6%
2011(YTD)	2,365.56	271.81	272.21	189.37	3,098.95	23.7%

Impact Fee Waivers

Since the waiver of impact fees was implemented in June 2010, the City has waived \$260,013 in fees. This waiver has allowed property owners in Milford to retain this money and has helped to support a total investment of \$15,111,366 (based on building permit values) during the months of June 2010 through August 2011.

Hurricane Irene

I want to extend my thanks to all City employees for their hard work before, during and after Hurricane Irene passed through Milford. The City was spared any major damage although we did have minor power outages and a number of fallen trees. The electric crews worked hard through the past week addressing lingering power issues remaining from the storm while the Streets and Grounds Department continues to remove excess yard waste placed for collection by residents. The City's water system made out fine while the sewer system was taxed with excessive flows. Much of this cost will be seen in the City's August sewer bill from Kent County. A public works call center was established during this storm to handle public works-related calls so the police dispatchers could focus on 911 emergency calls. Early indications are the PW call center was successful and we will work on building from that in future storm and emergency situations. I would also like to thank our citizens and businesses for their cooperation during the storm. The people of Milford were extremely helpful in preparing for the storm, informing us of issues during and after the storm, as well as helpful and patient as we handle the clean up from the storm.

South Walnut Street Sinkhole

A sinkhole developed on S. Washington Street in the downtown area on Tuesday, August 30, 2011 as the result of a washout created by a ruptured sewer line under the roadway. Public Works crews responded immediately and have temporarily fixed the problem while further investigatory work is conducted so a permanent solution can be designed. Contractors will be starting work on the City's I&I project in the coming weeks so we will have contractors in town to assist if necessary.

SR1/SR30 Crossover Temporary Improvements

Following a meeting between the City, DelDOT, Carlisle Fire Co., Senator Simpson and Rep. Kenton, DelDOT has announced temporary traffic improvements in the vicinity of SR1/SR30 in an effort to reduced traffic accidents in this area (see attached letter from DelDOT). The improvements include, closing the Wilkins Road/SR1 Crossover, Modifications to the Johnson Road/SR1 Crossover, Removing the existing crossover just north of Wilkins Road, and Signage improvements in the area. These improvements are scheduled to be made between now and the end of October.

I&I Construction Work to Begin

Construction work is scheduled to begin on the I&I project beginning the week of September 12. The construction work will be staggered with the first contract (Open cut and replacement) beginning the week of Sept. 12 followed by Contract II (trenchless rehabilitation of the laterals) in late September and then Contract III (trenchless rehabilitation of mains) in mid-October.

10th Street Water Tower Cleaning and Painting

The City and Southern Corrosion (tower contractor) are working on addressing lease obligations regarding the relocation of equipment with the communication companies that are leasing space on the water tower. This should be completed in the coming weeks and work is expected to begin on the cleaning and painting of the 10th street water tower in late October.

Community Transportation Funding-Street Paving

I would like to thank Senator Simpson and Representative Kenton for each providing \$100,000 and Representative Peterman for providing \$25,000 in Community Transportation Funds that will support the City's street paving program. Mr. Mallamo is in the process of preparing bid documents for street paving, sidewalk and curbing work that will cover the City's street paving needs through December 31, 2012.

Electric Rate Comparison

Rate comparison chart as prepared by DEMEC as of September 1, 2011:

Residential Rate @ 1,000 kWh

<i>Del Co-Op</i>	<i>\$121.31</i>	<i>0%</i>	<i>-21%</i>
<i>Lewes</i>	<i>\$136.78</i>	<i>13%</i>	<i>-10%</i>
<i>Dover</i>	<i>\$141.61</i>	<i>17%</i>	<i>-7%</i>
<i>New Castle</i>	<i>\$152.13</i>	<i>25%</i>	<i>0%</i>
<i>Delmarva Power</i>	<i>\$152.78</i>	<i>26%</i>	<i>0%</i>
<i>Middletown</i>	<i>\$154.64</i>	<i>27%</i>	<i>1%</i>
<i>Milford</i>	<i>\$155.27</i>	<i>28%</i>	<i>2%</i>
<i>Smyrna</i>	<i>\$162.28</i>	<i>34%</i>	<i>6%</i>
<i>Clayton</i>	<i>\$162.70</i>	<i>34%</i>	<i>6%</i>
<i>Seaford</i>	<i>\$162.75</i>	<i>34%</i>	<i>7%</i>
<i>Newark</i>	<i>\$163.98</i>	<i>35%</i>	<i>7%</i>

Mr. Starling recalled that some additional time was provided to allow taxpayers to pay their bills. Mr. Baird said he did not take any action this year because so few people took advantage of it last year. He said the majority of the bills are paid by mortgage companies who have the September 30th date plugged in and most of our residents were already planning to pay the bill by the September 30th date.

Mr. Baird noted that if anyone has a hardship, they should contact our billing office to work out a payment arrangement with our staff as is done with utility bills.

Mr. Brooks pointed out that Milford has gone from second to seventh in electric rates. He asked if a reduction is being considered; Mr. Baird said he has Mr. Kumar evaluating our rate structure in comparison to the projections from DEMEC. Mr. Kumar plans to provide him with a recommendation this week which he will then provide to city council.

Mr. Pikus asked for confirmation those rates will be part of the economic development package; Mr. Baird stated yes, it will address all classifications.

Mr. Johnson asked which area of the city Tyler is working in and who are they answering to; Mr. Baird stated they are coming to him noting they are still in the data collection phase and going door to door. He said their representatives are in various areas of the city and currently have three to four assessors assigned to different areas for consistency. At this point, they have been out about six weeks and have addressed a number of areas.

Mr. Brooks noted that only one side of Tenth Street was done approximately three weeks ago.

It was asked if they could provide a possible schedule of the locations they are working in. In that manner, residents could make arrangements to have their homes available during that time.

Mr. Baird said that information was put on the website initially. Because of the staffing changes and storm issues, it was then placed on the backburner. However, he will see that is again posted.

A question was then asked about when the Comcast representative would again attend a council meeting noting the various problems residents are experiencing. It was also noted that depending on which county you live in, customers have to go to Rehoboth or Dover to obtain the new digital boxes. It was suggested that a Comcast distribution center be put in Milford to serve the area customers.

A number of council members stated that Comcast had mailed the digital boxes.

Mayor Rogers suggested that Tom Worley attend a future meeting to discuss the ongoing problems in Milford.

It was agreed to invite him to the September 26th meeting. Mr. Baird recommended that he address council concerns at that time. He would then have him follow-up with the individual communities depending on the outcome of the meeting.

COMMITTEE REPORTS

Riverwalk Festival-Community Affairs Committee

Chairman Johnson reported that the weather cooperated and the Riverwalk turned out to be a very nice event. He said he heard many positive remarks and noted the huge turnout for the fireworks display.

Public Works Committee/Police Committee

Public Works Chairman Brooks reported that on behalf of Police Committee Chairman Morrow, they wish to thank all the employees of the public works department and police department for the outstanding jobs they did during the recent storms. He emphasized that we experienced an earthquake, hurricane and tornado—all within five days.

Moment of Silence

Councilwoman Wilson asked for a moment of silence in remembrance of 9-11 and the victims and their family members as well as the first responders and our country.

A moment of silence was then observed.

COMMUNICATIONS

Communications included in packet.

UNFINISHED BUSINESS

Maroulas Northwest Front Street Condemnation Update

Mr. Baird advised that Superior Court of Kent County overturned the Board of Appeal's decision on a technical issue that involved the number of members on the Board of Appeals. A decision needs to be made how to continue to address the problem.

Since that time, the ordinance has been reviewed and an amendment is being proposed.

Ms. Wilson asked why the board convened with fewer members than was allowed; Mr. Baird explained the Board of Appeals consists of three people including a design professional (architect or engineer), a representative of the contracting industry, an alternate and himself. He said he rendered a decision during the first step and recused himself as a result. The decision for the alternate to recuse themselves was because he is an architect with Davis, Bowen and Friedel and a structural engineer had reviewed the structures on behalf of the city.

He said when it was time to convene the hearing, that point was raised and the applicant was asked if they had any objections to proceeding with only two people. In a statement, they stated they did not. However, at the time of the appeal, the issue was raised and supported by the court.

Mr. Rutt further explained that the court went through the factual background but did not decide it on merits. The judge decided it strictly on the procedure. At the time of the hearing, a quorum (2 of 3 members) was convened with no objection. On appeal, they raised the issue. He explained that typically, if an issue is not raised below, it is waived. However, in this case, the court accepted the argument there was a procedural error and distinguished the city manager position versus the other two positions on the board and found it was not a complete board. Therefore, it was a technical violation of the appeal process and he overturned the board's decision.

He said at this point, it is not necessary to go back to the very beginning, but it can be picked up midstream. The condition of the property has not changed and nothing was based on the condition of the property. Therefore, Mr. Williams was going to review the property and verify its status. The process will then begin again.

The solicitor noted there is a bifurcation of the properties; two are owned by Dan Bond who was not part of the appeal. As a result, that process will continue. However, the problem arose from the current appeal process which is now being corrected.

Mr. Pikus said this has been on going for years and now a court decision has been rendered so nothing will occur. He said there was an original order issued for the owner of the dilapidated structure to do some work and nothing was done. It then became predicated on the result of the condemnation of the other two properties. There remains a problem with the property that sits on the street and is getting worse. He asked if that problem can be addressed immediately.

Mr. Rutt said that should be addressed immediately.

Mr. Baird said we are proposing to move forward and take parallel tracks with the two properties. He explained that 201-203 Northwest Front Street is owned by Downtown Properties/Dan Bond. The 205-207 Northwest Front Street property is owned by Spyros Maurolas Incorporated/Spyros Doukas. A condemnation and demolition was ordered on Mr. Bond's property and the city will proceed and handle that as a stand-alone case with no relationship to the neighboring property. He believes a case will be made that the two properties are tied together even though that stalled the action and is why the city is in this situation. Therefore, the city will enforce the condemnation and demolition orders on 201-203 properties.

According to the city manager, it has been decided that no appeal will be filed on the 205-207 Northwest Front Street properties as it would not be in the best interest of the city based on the technicalities raised. He agrees there were some inherent conflicts in the ordinance. Therefore, those flaws are being addressed through the amendments being proposed this evening. Once those ordinances are effective, Mr. Williams will return to the properties, perform a new inspection, issue a condemnation and demolition order based on his reports. They will then have twenty days to appeal his determination to the Board of Appeals.

Mr. Baird recalled that when this process began, a hearing was held and they were given a 90-day period to explore different options. He is unsure if that will happen again though the chances are slim to none because much of that was part of the due diligence and fact-finding process the board went through. He said all of the records from the previous hearings will be reintroduced. In addition, Mr. Williams will provide updated reports.

He believes we will end up before Milford's Board of Appeals and should they again support the city's decision, he believes another appeal will be made to the court. After these changes, he hopes the decision will be upheld by the higher court.

The city manager emphasized that 205-207 will not hold up 201-203.

Mr. Pikus asked the procedure for the Bond property; Mr. Baird advised that the building inspector has had conversations with the property owner as well as demolition contractors to determine how to move forward.

City Building Inspector Don Williams then stated that Mr. Bond is willing to allow the city to demolish his structure. However, he explained it is not that easy. Mr. Williams explained that at one point, Mr. Bond had pulled the permit for the demolition; Brad Dennehy was the building inspector who stopped the demolition and informed him that nothing further could be done without a structural engineer verifying he was able to proceed safely. Mr. Williams said that is when the makeshift wall for support came about that Mr. Bond was planning. However, he does not feel safe allowing a footer and foundation to be poured between the existing building in order to construct the make shift wall though Mr. Bond is willing to allow the city to demolish his units.

Mr. Williams advised the engineer's report states that the units can be taken down and the wall installed. He said if the city directs Mr. Bond to take it down, should Mr. Williams force him to put the wall up or tear it down two feet from the other structure and allow the wall to fall away. He explained it is connected to Mr. Bond's structure. The wall will cost \$60,000 for a building that Mr. Williams ultimately plans to demolish.

He said if he then tells Mr. Doukas to tear it down and we lose another appeal a year from now, then Mr. Bond is out \$60,000 for a wall.

That is the reason the city was tying the issues into one even though they are separate. He emphasized that Mr. Bond is willing to demolish the property.

He noted that Mr. Doukas recently returned to Milford though Mr. Williams has not had a chance to speak with him. He plans to meet with him tomorrow to determine what he will do to compromise. He will then follow up with Mr. Bond who does not want the liability involved with removing the wall though he does not want the liability to fall on the city. He also needs to know who will put the wall back up if he removes it.

It was agreed the city is not responsible for taking it down; Mr. Williams explained that if Mr. Bond says no, he will hire a demolition contract to remove it. However, if the wall falls, he needs an answer as to who is responsible.

Mr. Baird said what Mr. Williams described is the inherent conflict between the two properties that has forced them together over the past last three years. That approach has gotten the city to this unacceptable situation. At this point, costs cannot be the driver in this decision. At this point, the city manager said they need to be told they are responsible and the liability falls on them regardless of whether the city handles it or not. However, it is something we cannot simply walk away from.

The city manager reported that our new ordinances need to be in place before we can start the condemnation and demolition process of 205-207 Northwest Front Street.

Solicitor Rutt emphasized that no agreements should be made with the homeowner that will box the city in and allow them to say you have waived the right to condemn it because you have agreed to do something.

Mr. Williams said his plan is to ask them what they are willing to do and if both agree, he will come back and allow council to make a decision. He feels they understand the properties are in dire need of maintenance. The last he knew, they had gutted the one though they do not feel it should be torn down and a wall put up. He has some ideas and hopes he can get them to come to an agreement.

Mr. Baird said the only time frame we are willing to work out is before the proposed ordinances become effective. If it has not been worked out, they will be informed the city will proceed with the strict enforcement of the condemnation and demolition order for Downtown Properties, then move forward with the condemnation and demolition for the Spyros Maroulas property.

According to the city manager, one owner asked what would happen if he abandoned the property and walked away from it. He said abandonment is not an issue because he will remain the owner of record which could impact his other properties.

Mr. Pikus asked if the property owner can legally abandon the property and tell the city they can have it. Mr. Rutt confirmed that the city could demolish the property but would then place a lien on the property. If there is a lien on any property owned by the same entity, it becomes a lien on all properties under that same ownership until it is satisfied.

Mr. Baird said the city will continue with the condemnation and demolition of 201-203 and 205-207 Northwest Front Street but make sure they are handled as two separate properties.

It was confirmed that the current city solicitor will handle the case from this point forward.

Mayor Rogers emphasized the importance of getting this situation resolved—noting it is an eyesore as well as a safety hazzard. He encouraged the city manager and building inspector to work with both parties and get the matter resolved.

Mr. Williams said they will be given until the time the ordinances become effective; after that time, he will take the appropriate action.

FY 2011-2012 Budget/Municipal Street Aid Funds

Mr. Baird requested \$18,367 be paid from the Municipal Street Aid Account 123-9010-431-70-45 to cover the additional costs of the concrete work on Northeast Tenth Street and associated striping.

Mr. Pikus moved for payment of \$18,367 from Municipal Street Aid Account 123-9010-431-70-45 to cover the above costs to Northeast Tenth Street, seconded by Mr. Gleysteen. Motion carried by unanimous roll call vote.

Release of Liability/C&J Agreement

Mr. Baird advised that the proposed agreement was tentatively agreed to by C&J's attorney. The agreement requires a payment by the City of Milford in the amount of \$58,358.15 for the work completed on Northeast Tenth Street and the retainage for the Tenth, Foster and Evans Street projects. In return, C&J is releasing all of its interest in the remaining contract which included paving of Church Street. In the meantime, the Church Street project will be included in the bid currently being prepared by the city and presented to council on October 10th.

Solicitor Rutt explained the amount is slightly more than what was authorized by city council. However, when the costs of litigation were compared to the payoff and release of liability on Church Street, the settlement worked out to the city's advantage.

Mr. Pikus moved for approval of the C&J Settlement Agreement and Mutual Release, seconded by Ms. Wilson.

Mr. Pikus said he votes yes, but reluctantly due to the problems that still exist on Northeast Tenth Street which is a major street. However, he agrees to settle the case which will allow the city to move on.

Mr. Starling confirmed that additional work is needed; Mr. Baird stated yes though it will involve minor work. It will not need to be completely repaved but instead minor patches and repairs in addition to some utility adjustments. He feels most of the work can be handled in house.

Motion then carried by unanimous roll call vote.

Mr. Brooks added the street is so bumpy that he observes vehicles traveling the street whose drivers stop and get out of their car to see if something is wrong with the car. He said there is also a problem after a rainfall with drainage. As the weather gets cold, the water will freeze which will cause even more damage to the paving. However, he agrees we do not need to go to court for \$11,000.

Mr. Baird then noted that the contractor has come back and finished the punch list items on the other streets that were completed.

NEW BUSINESS

Bid Award/Chaney-Wilmont Mispillion Greenway Phases 15 & 16

Mr. Baird advised that this portion of the greenway runs through the old Fisherhawke area and will tie back into Columbia Street.

Sealed bids were received, publicly opened and read on August 22, 2011 for the Chaney-Wilmont Greenway Phases 15 & 16. Bids were as follows:

Clean Cut Interlocking Pavers	
Total Bid	\$289,677.79
A. P. Croll & Sons	
Total Bid	\$301,901.00
George & Lynch	
Total Bid	\$327,718.82
Conventional Builders, Inc.	
Total Bid	\$338,690.00
First State Crane Service	
Total Bid	\$380,241.59

A letter from Matt Spong of Landscape Architectural Services LLC indicates he has reviewed the bids and recommends acceptance of the low bid offered by Clean Cut Interlocking Pavers in the amount of \$289,677.79. The price includes the two alternate bids.

The original bid was \$350,000; the architect's estimate was at \$347,000.

Mr. Pikus confirmed this project is being paid by grant money; Mr. Baird stated yes, the bulk of the funding is from the Community Transportation Fund and Land and Water Conservation Trust Fund though minimal funding was included in the Parks and Recreation's capital budget.

Ms. Wilson moved to award the Greenway Phases 15 and 16 bid to Clean Cut Interlocking Pavers in the amount of \$289,677.79, seconded by Mr. Starling. Motion carried by unanimous roll call vote.

Scheduling of Fall Clean-up Week

Mr. Pikus moved for approval of the week of October 24th as fall clean-up week and in the case of inclement weather, it be moved to the week beginning October 31st, seconded by Mr. Brooks. Motion carried.

Adoption of Resolution 2011-14/Establishing Dates/Halloween Events

Mr. Brooks moved for adoption of the Resolution 2011-14, seconded by Ms. Wilson:

WHEREAS, it has been a custom for many years for children and adults to celebrate the Eve of All Saints Day by costuming, masquerading and fun-making; and

WHEREAS, we would like to continue the celebration in an orderly manner.

NOW, THEREFORE, BE IT RESOLVED, I, Joseph R. Rogers, Mayor of the City of Milford, do hereby request and urge the observance of this annual period as follows:

WEDNESDAY, October 19, 2011 starting at 6:30 p.m. and ending at 9:00 p.m. shall be the time for the Annual Community Parade.

SATURDAY, October 22, 2011 shall be the official date for youngsters to make their annual UNICEF collections to be completed by dark.

MONDAY, October 31, 2011 shall be the official date for youngsters to observe Halloween Trick or Treat Night.

AND, BE IT FURTHER RESOLVED THAT:

**Only celebrants of 12 years and under will be permitted to engage in Trick or Treat between the hours of 6:00 p.m. and 8:00 p.m.*

**All celebrants are requested to refrain from committing acts of vandalism or destruction.*

**Residents are requested to indicate their willingness to welcome children by keeping their porch or exterior lights on and that youngsters call only on homes so lighted.*

Motion carried.

*Introduction of Ordinance 2011-22/Building Construction/Chapter 88
Introduction of Ordinance 2011-23/Property Maintenance/Chapter 174*

Mr. Baird reminded council that modifications were needed to the ordinance as a result of the Superior Court decision. Ordinances 2011-22 and 2011-23 address that.

He explained there are three codes—Building Code and Property Maintenance Code. The building code is in two sections. Article I deals with the International Building Code which governs commercial construction. Article II deals with the International Residential Code which governs residential construction. Chapter 174 addressed property maintenance standards which includes the International Property Maintenance Code. All three are used by the building and code officials in the city.

Mr. Baird said each has similar, but different appeal processes. After the court ruling, it was agreed it would be best to address the appeal processes as one. As a result, the building code, residential code and property maintenance code will all have the same appeal process.

The specific of the changes are addressed in Ordinance 2011-22, Article III:

ARTICLE III-Board of Appeals

§88-6 General.

In order to hear and decide appeals of orders, decisions, or determinations made by the building or code official relative to the application and interpretation of the code, there shall be and is hereby created a board of appeals.

§88-7 Limitations on Authority.

An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an equally good or better form of construction is proposed. The board shall have no authority to waive requirements of this code.

§88-8 Membership of the Board.

The Board of Appeals shall consist of three members: the City Manager or his designate, a design professional (architect or engineer), and a representative of the contracting industry. The City Manager or his designate will be a standing member of the Board of Appeals. City Council shall appoint the design professional and the representative from the contracting industry. The initial term of the design professional shall be two years and the initial term of the

representative of the contracting industry shall be for one year. The term of all subsequent appointments shall be two years.

§88-8.1 Alternate Members.

City Council shall appoint an individual of its choice to be an alternate during those times where one of the permanent members is unable to attend an appeals hearing or in cases where a conflict of interest may exist. Said appointment shall be made for a two-year term.

§88-8.2 Chairman.

The Board shall annually select one of its members to serve as chairman.

§88-8.3 Disqualification of member.

A member shall not hear an appeal in which that member has a personal, professional or financial interest.

§88-8.4 Secretary.

The City Manager shall designate a qualified clerk or staff as Secretary to the Board. The Secretary shall file a detailed record of all proceedings with the office of the City Clerk. Secretary shall have no right to vote on matters coming before the board.

§88-8.5 Compensation of members.

Compensation of members shall be determined by ordinance of City Council.

§88-9 Application for appeal.

Any person directly affected by a decision of the Code Official or an notice or order issued under this code shall have the right to appeal a decision of the Code Enforcement and/or Building Official to the Board of Appeals provided the application is filed within twenty (20) days of the day the decision, notice, or order was served. An application for appeal shall be based on a claim that the true intent of the code or the rules legally adopted thereunder have been incorrectly interpreted, that the provisions of this code do not apply or that an equivalent form of construction is to be used.

§88-9.1 Hearing fee.

The following fee schedule shall apply for hearings of the Board of Appeals:

<i>International Residential Code:</i>	<i>\$ 300.00</i>
<i>International Building Code:</i>	<i>\$1,000.00</i>
<i>International Property Maintenance Code:</i>	<i>\$ 300.00</i>

§88-10 Notice of meeting.

The Board shall meet upon notice from the Chairman. The meeting date and time shall be scheduled in accordance with the state guidelines for public hearings. Surrounding property owners within 200 feet of the property or building in question shall be notified by mail.

§88-11 Open hearing.

All hearings before the Board shall be open to the public. The appellant's representative, the Code Official and any other person or persons that may be deemed necessary as witnesses and all other persons whose interests are affected shall be given an opportunity to be heard.

§88-11.1 Procedure.

The hearing shall address only those issues or items that may be deemed relevant to the case being heard. The Board shall adopt and publish, for public information, the procedures under which the hearing will be conducted.

§88-12 Postponed hearing.

When there are fewer than two members of the Board available and the authorized or appointed alternate is unavailable, notification shall be given to the interested parties.

§88-13 Board decision.

The Board shall affirm, modify or reverse the decision of the Code Official by means of a simple majority.

§88-13.1 Records and copies.

The decision of the board shall be recorded. Copies shall be furnished to the appellant and to the appropriate Building or Code Official.

§88-13.2 Administration.

The appropriate Building or Code Official shall take immediate action in accordance with the decision of the Board.

§88-14 Court review.

Any person, whether or not a previous party of the appeal, shall have the right to apply to the Superior Court of the State of Delaware in the applicable county for a writ of certiorari to correct errors of law. Application for review shall be made in the manner and time required by law, following the filing of the Board's decision in the Office of the City Clerk.

§88-15 Stays of enforcement. Appeals of notices and orders (other than Imminent Danger Notices) shall stay the enforcement of the notice and order until the appeal is complete or the stay is lifted by the Superior Court.

Mr. Baird pointed out the membership of the Appeals Board still includes the city manager or designee, a design professional and a representative of the contracting industry. However, the previous ordinance allowed an appeal of the code official to the city manager which became a conflict. That caused him to recuse himself which led to a deficiency in the board. Henceforth, any appeal will go directly to the Board of Appeals. An alternate member will also be appointed.

Mr. Brooks asked if one alternate member is adequate; Mr. Baird stated yes. Mr. Brooks noted there were two conflicts from the beginning. In this case, the representative from Davis, Bowen and Friedel had to be recused along with the city manager who had already made a decision thus leaving only two members.

Mr. Brooks said his understanding was that Mr. Doukas or his attorney were asked if two members were adequate and their response was yes. However, it became one of the issues raised in the appeal to Superior Court.

City Solicitor Rutt then explained the problem was that the city manager was a standing member of the committee and no designee was assigned in his place. The court ruled the process was incorrect because no substitute for the city manager was made. He said this actually allows two alternates. This gives the city manager the right to designate an alternate in his place. The alternate member (section 8.1) is actually for the other two members—the design professional or construction professional.

When asked if there should be three appointed alternates to prevent this from reoccurring, Mr. Baird said the ruling is that three members must be present in any hearing. Mr. Baird said it will always require himself or his designee to be present.

Mr. Baird then reviewed the balance of the proposed ordinance.

He pointed out that one item not in the previous code was that the board shall modify or reverse the decision of the code official, but not affirm the decision. That change has since been made.

Also added is the court review and the desire to appeal the board's decision to superior court in the appropriate county. Additionally, it addresses the stay in the case of an appeal.

He is confident the proposed amendments address the deficiencies in the previous ordinance.

The ordinances will be placed on the September 26th agenda for a final decision. They would become effective on October 7, 2011 which will allow Mr. Williams to proceed with the condemnation and demolition process at 205-207 Northwest Front Street.

Mr. Pikus moved to the introduction of Ordinance 2011-22 and 2011-23, seconded by Ms. Wilson. Motion carried by unanimous roll call vote.

Introduction of Ordinance 2011-24/Outdoor Burning Code/Chapter 92

This ordinance is a follow-up to the recent amendment made to the zoning code regarding outdoor furnaces. Mr. Baird said after additional review, the solicitor and building inspector agreed it would best to amend the outdoor burning code to specify what is permitted and prohibited.

He said that in addition, state regulations have been addressed for continuity purposes.

When the ordinance was initially circulated for review, Chief Hudson recommended that some additional requirements for bonfires in the city which has since been added.

The proposed ordinance was the reviewed:

§96-1 Purpose and Intent

It is recognized and found that smoke from leaves, grass clippings, stumps, unsplit logs, garbage, trash, waste lumber and other combustible materials is hazardous to an individual's health and may affect the health of the general public when they are involuntarily exposed to the presence of such smoke.

§96-2 Prohibition of Outdoor Burning

It shall be unlawful for any person to engage in any of the following activities:

- (a) The burning of materials wherein products of the combustion are emitted directly into the open air, including burning in burn barrels.*
- (b) The burning of waste or garbage.*
- (c) The burning of leaves or grass clippings.*
- (d) The burning of land clearing debris.*
- (e) The burning of waste lumber, unsplit logs or stumps.*
- (f) The burning of any combustible material in outdoor wood burning boilers or furnaces, or any other equipment or apparatus or any part thereof, whether open or enclosed, that is designed, intended or used for the purpose of providing a component of a heating system or providing heated water to another structure even if attached to such structure.*
- (g) The burning of plastics, rubber, fiberglass, insulation, or other materials that may contain carcinogenic compounds.*

§96-3 Exceptions

The following outdoor burning activities shall be exceptions to the outdoor burning prohibitions of this Chapter.

- (a) Barbeque grills, gas or charcoal, used for cooking food.*
- (b) Campfires or fire rings less than twenty-four (24) inches in diameter.*
- (c) Patio fire pits or chimenea, provided such fire pits or chimenea are not operated continually for more than six (6) hours.*
- (d) Outdoor fireplaces provided such outdoor fireplaces are not operated continually for more than six (6) hours.*
- (e) Indoor fireplaces where the smoke is discharged through a chimney or other means in accordance with the Code of the City of Milford, Chapter 88, Building Construction.*

§96-4 Bonfires

Ceremonial bonfires conducted by established groups or organizations such as schools, service clubs or churches, will be permitted provided:

- (a) Notification is provided to City Hall at least three (3) days in advance.*
- (b) Advance notification is made to the Fire Board in the county the bonfire is to occur.*
- (c) Such bonfires are not burning continually for more than six (6) hours.*

§96-5 Burning by Fire Department Or With Permission of State Fire Marshall

Nothing in this Chapter shall prohibit controlled burning of grass or brush on any lot or of any structure by the Carlisle Volunteer Fire Department or by any other fire department authorized to conduct such burns by the Delaware State Fire Marshall.

§96-6 Ban on Open Burning

Any burning ban issued by the State Fire Marshal shall supersede applicable provisions of this ordinance.

§96-7 Penalties for Violation:

- (a) Failure to comply with any of the provisions of this Chapter shall be a violation and, upon conviction thereof, shall be punishable by a fine of not more than \$500 for the first offense.*
- (b) Any subsequent offense shall be punishable by a fine of not more than \$1,000.*
- (c) Each day that a violation occurs shall constitute a separate offense. The owners of premises upon which prohibited acts occur shall be jointly and severally liable for violations of this Chapter.*
- (d) Any fine imposed hereunder shall constitute a lien upon the real property where the violation occurred.*

The current language will remain in the zoning code because there are properties that still fall under that ordinance. However, anything new will follow the new ordinance.

Mr. Rutt emphasized this is not a zoning ordinance but instead falls under the police powers and health, safety and welfare issues.

When asked who enforces this ordinance, Mr. Rutt stated the code officials and police have the ability to enforce this ordinance.

He noted there is a penalty for violations which is a fine. A citation would be issued which would go before the Justice of the Peace Court. Each day is a separate violation which is punishable up to \$1,000 per offense and would fall under the jurisdiction of the Justice of the Peace Court.

Mr. Grier moved for introduction of 2011-24, seconded by Mr. Johnson. Motion carried with no one opposed.

It was noted the ordinance is scheduled for adoption at the September 26th meeting, with a proposed effective date of October 7, 2011.

FY 2011-2012 Budget/Transfer of Funds/Electric Department

Electric Superintendent Rick Carmean submitted the following request:

Please transfer \$4,400.00 from budget line item 20550504325012-Distribution into 20550504327044-Capital Infrastructure. This transfer will cover purchase order #13828 (Perfect Finish) in the amount of \$4,400.00. This purchase order was for powder coating of poles for the lighting project funded by the Energy Grant. The invoice should have arrived before July 1, 2011 since the work was completed in FY11. However, it did not arrive until August 9, 2011 and had to be processed in FY12 creating a shortage.

The city manager said this completes the work associated with the Downtown Lighting project. He confirmed it is within the current year's budget.

Mr. Pikus moved for approval of the transfer of funds as requested, seconded by Mr. Grier. Motion carried by unanimous roll call vote.

MONTHLY FINANCE REPORT

Mr. Pikus reported that through the twelfth month of Fiscal Year 2011-2012 with 8.3% of the fiscal year having passed, 8.9% of revenues have been received and 7.9% of the operating budget expended.

He noted that building permits are up and expenses remain below budget.

Mr. Pikus moved to accept the July 2011 Finance Report, seconded by Mr. Morrow. Motion carried.

Mr. Baird advised the auditors will begin their review next week for the fiscal year ending June 30, 2011. Mr. Pikus said Mr. Portmann has requested the finance committee meet with the auditors; after that meeting, they will report back to city council.

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, seconded by Mr. Grier. Motion carried.

Mayor Rogers recessed the regular Council Meeting at 8:40 p.m. to go into a closed session.

Return to Open Session

Council returned to open session at 8:59 p.m. No action needed as a result of the executive session.

ADJOURN

With no further business, Mr. Brooks moved to adjourn the Monthly Meeting, seconded by Mr. Grier. Motion carried.

Meeting adjourned at 8:59 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Terri K. Hudson".

Terri K. Hudson, CMC
City Clerk/Recorder