

MILFORD CITY COUNCIL  
MINUTES OF MEETING  
February 9, 2009

The Regular 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, February 9, 2009.

PRESIDING: Mayor Daniel Marabello

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

ALSO: City Manager David Baird, Police Lieutenant Edward Huey and City Clerk/Recorder Terri Hudson

COUNSEL: City Solicitor Timothy Willard

#### CALL TO ORDER

Mayor Marabello called the Monthly Meeting to order at 7:30 p.m.

#### INVOCATION AND PLEDGE

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

#### APPROVAL OF PREVIOUS MINUTES

Motion made by Councilman Ambrose, seconded by Mr. Morrow to approve the minutes of the December 30, 2008, January 8, 2009, January 12, 2009, January 23, 2009 and January 26, 2009 meetings as presented. Motion carried.

#### RECOGNITION

Mayor Marabello noted that Lieutenant Huey was present on behalf of Chief Hudson who was unable to attend because of medical reasons.

#### POLICE REPORT

Police Committee Chair Morrow moved for acceptance of the monthly police report submitted by Chief Hudson, seconded by Mr. Brooks.

In response to Mr. Ambrose, Lieutenant Huey explained that the number of misdemeanors doubled this month in comparison to January of 2008 because of the criminal charges filed as a result of various drug raids throughout the month.

With no further questions, the motion carried.

#### CITY MANAGER REPORT

City Manager Baird read the following report into record:

##### *Federal Stimulus Package*

*The City continues to monitor the actions of Congress as it relates to the Economic Stimulus Bill. The City is continuing to work Federal and State agencies regarding utility, transportation, and economic development projects within the City. Our goal is to have our project applications ready for review and approval by the appropriate agencies once a final bill is approved.*

##### *N.E. Front Street Streetscaping Project*

*Representatives from DMI, DBF and the City are continuing to meet to review the progress on this project. The surveying phase of the project has been completed and we are moving into the design portion of the project. DMI will have an instrumental role in this phase of the project. We continue to move forward toward our goal of bidding the project in the Spring 2009.*

*BMX Lease*

*The City is working with representatives from the BMX Track regarding the renewal of the lease for the land adjacent to the High School. The renewal was delayed for a few months while the City and School District finalized the terms of the sale of a portion of the land from the City to the District. I expect the final lease agreement to be in front of City Council within the next 30-60 days.*

*Property Tax Information Available Online*

*As part of the City's efforts to improve access to public information by the community, I am happy to report that property information is now available through the City's website. General Property information, Assessed Value and Tax History are available for viewing online. The City will continue to enhance this service as more information is put in a format for inclusion on the website. Users can simply click on a link on the City's website to access this information.*

*Electric Utility Rates*

*Please see the attached utility rate comparison that was compiled as of February 1, 2009 by DEMEC for residential customers using 1,000 kWh per month. As you can see, the City continues to be competitive with area electric utilities. Appropriate and Competitive rates are an area of emphasis in all City rate structures that we will continue to improve upon.*

		% Difference	
De Co-op	\$121.95	0%	19%
New Castle	\$136.68	12%	10%
Milford	\$138.03	13%	9%
Newark	\$142.53	17%	6%
Seaford	\$146.59	20%	3%
Dover	\$150.18	23%	1%
*Delmarva Power	\$151.44	24%	0%
Middletown	\$156.18	28%	3%
Lewes	\$157.21	29%	4%
Clayton	\$162.70	33%	7%
Smyrna	\$167.68	37%	11

*\*Approximate. DP&L's new transmission capacity charge is based on each individual's Peak Load Contribution (PLC) to the overall transmission load; each customer has a unique PLC that changes every January*

Mr. Ambrose asked if the sewer line being proposed by Kent County will fall under the stimulus package; Mr. Baird advised he has been in touch with the USDA because Harrington's project is currently being funded by them. In response to Mr. Brooks, Mr. Baird advised that Harrington is expected to make a decision on the sewer project within the next 30 to 60 days.

In regard to the Streetscape Project, the city manager advised that DMI has a total grant award of approximately \$250,000 which is 40% of the total project cost of \$625,000. A matching requirement of 60% or \$375,000 is required. He does not believe it was clear whether the city made a full commitment of the match even though council agreed to match the engineering services approved in December in the amount of \$38,000. As a result, formal action is needed to commit to 60% of the project cost. The vote will reaffirm the city's commitment to the project. There is concern that because of the tight funding issues at the state level, the money could be pulled from the table. Providing the full local match will make a stronger case.

When asked where the funding would come from, Mr. Baird confirmed he has discussed this with Finance Director Jeff

Portmann who advised monies are available in the general fund balance. He added that the finance director is very comfortable with those dollars being utilized for this project.

Mr. Brooks said he attended a recent SCAT meeting where it was discussed a number of towns are cutting back on spending and a great deal of concern was expressed about the financial status of the municipalities. Mr. Baird said he looks at why this project was originally put on the table. He said the downtown group and city believed in this project and felt it was going to be a good project as you enter our city. It will be good from a visual aspect and good for the business district that extends down Northeast Front Street. He said the reason it is a good project has not changed though the funding may be in question. Whether it is done this year or should the funding be pulled, and it would potentially have to wait five or six years, he feels it is extremely important to move forward.

Mr. Brooks asked for a confirmation that money is available for this project. Mr. Baird answered yes, there is presently \$250,000 in state funds through the grant awarded to DMI that requires a local grant of \$375,000 that the city is in a position to put toward this project.

Mr. Workman referred to the city manager's report that states the survey phase of the project has been completed noting that neither he nor DMI has seen it. Mr. Baird explained it was presented at the progress meeting with DMI last week. The initial survey work was completed showing the boundaries of the project. He added there is a question about the scope of the project. During the meeting last week, he reported there was discussion about extending the scope of the project to Rehoboth Boulevard. He said that is how the progress meeting ended. It was then discussed with the DMI Board on Thursday though it was their preference to keep the original scope from Milford Senior Center to Northeast Fourth Street which was more inclusive of the downtown district.

He concluded by saying the scope will not change because the boundary will remain the same, therefore additional survey work will not be needed. However, one thing that may require additional survey work is the possibility of relocating the overhead utilities underground. As that is worked into the design, they may have to extend the boundaries if any easements or right-of-ways are needed from private properties.

When asked by Mr. Brooks if the underground utility work is now part of the project, Mr. Baird said the proposal is to revise the engineering service agreement approved by council on December 8<sup>th</sup> which did not include relocating underground utilities. After the discussions between the city, DMI and the engineers, it was agreed to move forward with designing all utilities underground even though the costs will be significantly higher. By putting the utilities underground, the project may have to be phased over a longer period of time. The construction may have to be done in smaller sections in order to do it as we can afford it.

Mr. Brooks recalled the \$6 million cost of relocating utilities underground in the Southeast Front Street area. Mr. Baird reported he has a meeting scheduled this week with Verizon and Comcast. Chesapeake Utilities was also invited to discuss extending natural gas into that area. He explained the initial cost of the relocation was the high cost of copper at the time. However, it has since declined as will be noted in a revised estimate to be submitted on Thursday morning and will allow the city to revisit these projects.

Responding to Mr. Oechsler, Mr. Baird reported there is no water leak issue under Southeast Front Street and the water on the surface of the road is not coming from the city's water system. When the tide is up, the pressure on the river banks is pushing the ground water up. Efforts will be made to mitigate that though there is no guarantee.

He added there are concerns regarding the sewer line which the city is prepared to address separately as part of the work. He hopes to have a proposal on that project at the February or March meeting.

Mr. Ambrose advised that Electric Superintendent Rick Carmean indicated it is not a big problem for the city staff to bury the electric lines. It would be rerouted through Fourth Street requiring no electric lines beneath Front Street though it would go in different routes. Mr. Baird said we would still have some properties to service through there.

Ms. Wilson asked if there should come a time when the project needed to be stretched out because funds are not available and would the city still be obligated to provide the funding or could some of the work be postponed until the money became

available. Mr. Baird emphasized that the city will have the power to do that, but if council takes action to commit the funding, they will be held in reserve accounts earmarked specifically for this project. However, depending on where the project is, it may be necessary to talk to the state and DMI to inform them it may be in the city's best interest to wait a year or two. He feels Mr. Portmann is extremely conservative when it comes to commitments like this though they had some long discussions and can confirm Mr. Baird's comfort level with this.

Mr. Brooks reported that he and Mr. Workman attended the Delaware League Meeting where Lieutenant Governor Matt Denn discussed how Delaware is presently in trouble and that they do not know when and what they will decide to cut.

Mr. Baird understands Mr. Brooks' concern; however, he feels that at this point, the city should proceed with the understanding the funding is there though we need to be prepared there could be a chance it may be cut which would be out of the city's control. Our local legislators are aware of the project and can speak on behalf of DMI and the city to minimize any attempts to take the funds back.

President Scott Angelucci of DMI then added that when they met with our state representatives, one of the things they indicated is the amount of time these funds have been in place. He thinks that as stewards of state money, it is important to show that we have the ability to use these funds correctly as they were initially intended. He agrees with the concerns about the economy noting that one of the goals of this project was to increase the viability of the downtown area by helping to rebuild the business district.

President Angelucci said this project is an opportunity to help people get back to work. They have worked on this for some time to assure they are moving in the right direction. The money in place is just under \$250,000. He agrees that some of the costs have decreased recently and with this being done as an as built, it can be done in phases. The city's responsibility is the 60% match, but the continuing costs would be able to be regulated according to what money is available at the time. Once the requirement has been met by the state, the city will be able to manage the rest of the project to determine when it would be most appropriate to move forward. Once the city has met its obligation, the progress of the project will move at a comfortable pace.

When asked if council is able to make a decision on this because it is not on the agenda, Mr. Baird said that is a question up for debate and there are different trains of thought on it though the commitment needs to be made. He informed DMI that action by council would take place tonight or at the first meeting in March.

City Solicitor Willard said it should be on the agenda as an action item for a vote particularly because it is an expenditure of money being approved. It is a FOIA issue and the requirement is public notification. Anyone looking at the agenda would not know council was taking action on this matter tonight.

Mr. Baird then said it can be scheduled on the February 23<sup>rd</sup> agenda. Mayor Marabello wants to make sure we do not lose the \$250,000 emphasizing that timing is of the essence. The next meeting is two weeks away which he feels is a long time. He suggests a special meeting be scheduled in the interim.

Mr. Workman agrees this is very important. If we show we are working together to move forward, that would be considered. This is money the city will not have to spend if we decide to do this street on our own. He added this money was only available to a non-profit organization. He feels we need to move as soon as possible but waiting two weeks is too long.

Mr. Ambrose asked if the minutes could reflect it is the sense of council they will commit or would that be an illegal action.

When asked about the seven day requirement to post an agenda, Mr. Willard explained there is an exception if something comes to council or the mayor's attention, or if there is a good cause or emergency which requires a vote, a special meeting can be held with less than seven days. However, the agenda would have to reflect the reason. Without an emergency situation, council should abide by the seven day requirement.

Mr. Starling asked why this cannot be voted on tonight because the money could be lost tomorrow. He asked why wait though he is unsure if it is illegal. Mr. Willard said there is the possibility of a legitimate debate about the urgency of the matter though his opinion is to consider FOIA which requires public notification.

Mr. Starling moved to approve the match money of \$375,000, seconded by Ms. Wilson.

It was agreed that if the outcome is a favorable vote, a confirmatory vote would be needed at the next meeting. Mr. Willard explained that the penalties for FOIA violations are remedial which means it would need to be placed on the agenda properly and action taken again.

Mr. Brooks said his impression is that anything voted on by council is required to be on the agenda. Mayor Marabello referred to the motion on the floor which was seconded. Motion then carried by a unanimous roll call vote.

Mr. Oechsler said he votes yes though he prefers a confirmatory vote be added to the February 23<sup>rd</sup> agenda so that the public will have the opportunity to comment prior to the meeting.

Mr. Brooks also supports the project though he prefers it be on the agenda so that it is done correctly and legally. The mayor then asked if Mr. Brooks is voting no; Mr. Brooks stated he is not voting no and votes yes.

Mr. Morrow agrees with Mr. Oechsler's comments and votes yes.

Ms. Wilson also prefers the vote be legal though she is definitely voting yes.

Mayor Marabello said the item will be placed on the February 23<sup>rd</sup> agenda for a confirmatory vote.

In regard to electric rates, Mr. Baird advised this is the last month we have on DEMEC's actual rates. Based on their new billing rates, customers using 1,000 kW will see an average increase of approximately \$5.50 beginning with the bill mailed the end of February.

He feels we are heading in the right direction though we can still do better to keep the rates level or bring them down.

Mr. Ambrose moved to accept the city manager's report, seconded by Mr. Workman. Motion carried.

## COMMITTEE REPORTS

### *City Hall Facility Assessment Committee*

Chairman Workman reported the plans are moving forward for the renovations to the lower level of city hall. Mr. Baird is working on the bid specs and anticipates the bid process to occur quicker than originally anticipated.

## COMMUNICATIONS

None.

## UNFINISHED BUSINESS

### *Milford Community Parade/2009 Date*

Parade Committee Chairman Charles Gray reiterated the discussion at the last meeting regarding the approval of the 2009 parade. He also requested an insert be added to the electric bill to solicit donations as has been done in the past.

Mr. Morrow moved for approval of the 2009 Milford Community Parade on October 28, 2009 from 6:30 p.m. to 9:00 p.m. with the parade route to remain the same as the 2008 route.

Mr. Baird asked for the motion include approval of the billing insert.

Mr. Morrow amended his motion to include the utility bill insert, seconded by Ms. Wilson. Motion carried.

*Introduction of Ordinance 2008-1/Zoning Code Amendment/Chapter 230/C-3 General Category*

Mr. Willard explained that the planning commission is considering an ordinance that addresses C-1, C-2 and C-3 in regard to density and conditional uses. As a result, this ordinance may not be needed. It would include a provision for a residential conditional use which would be separate from a commercial use.

The planning commission had previously recommended approval of this ordinance and Mr. Willard's recommendation is to proceed with the introduction, though it may be combined with another ordinance. Additional information will follow at a later date.

*Update/Code Issues/Key Properties/Hearthstone Manor*

Mr. Baird recalled that at last month's meeting, council directed Mr. Baird to move forward with the three issues in question. He reported back two weeks ago on the progress but a final report is due this evening.

Tax Assessor John Darsney has completed his review of the assessment issue. After numerous discussions with the property owner, the city has delivered a fair assessment of what the property should be which is equitable not only for the property owner but also in comparison to other properties in the city. Mr. Darsney is moving forward which will be finalized in the next couple of weeks.

The three signs in question include two v-signs on one parcel and a third sign in the Matlinds Estates area. One permit was issued for a v-sign on Route 30 and Route 1. There are questions whether the signs are billboards which are prohibited on the site though the property owner does not feel they are billboards. The city issued a permit for one sign which is an additional concern.

Mr. Baird said his recommendation is to put one more offer forward to Mr. Fannin regarding the signs. Should that fail, he would then direct the code official to move forward and file a complaint to put this issue to bed. This has been discussed for the past two to three months and if this does not work, no later than the end of this week, the city will proceed with moving toward that property being in violation of the code. He added that at the time the triangular piece of land was annexed into the city, there was a clear stipulation that no billboards would be permitted at that site.

In December, Mr. Baird and Mr. Willard met with Mr. Fannin and his attorney regarding the swale issue. At that time, Mr. Fannin alluded to the fact that he may be willing to allow the city to come in and install the storm drainage improvements with the condition it would be at the city's sole expense and the city would assume responsibility for the stormwater management along Clearview Drive. Hearthstone would no longer have any ownership or maintenance responsibilities associated with the storm drain improvements as was discussed at last month's meeting.

He reported a follow-up meeting was held last Friday with Clearview Drive property owners, Jessica Watson from Sussex Conservation and Councilman Ambrose, Councilman Spillane and Councilman Workman. Mr. Fannin was also invited. Mr. Baird does not feel a lot was accomplished. They heard the concerns from the residents, they discussed the options available and whether the city would make the improvements at a potential cost of \$15,0000. He said it really was not conducive to work out an agreement because earlier in the week, correspondence was received from Mr. Fannin stating he would not attend nor would he send a representative because he previously outlined his position in earlier correspondence to the city.

Mr. Baird felt there was a decent dialogue with the property owners in the area, with the conservation district, with city officials and representatives, but at the end of the day, there was no resolution because the key party was not in attendance.

He concluded by saying the options regarding the swale issue are 1) to do nothing, 2) support the property owners and any efforts they would be taking against the developer for their concerns, 3) the city go in and make the improvements as are being proposed. Mr. Baird recalled that the city took that approach once but was accused of trespassing and directed to leave the property.

Mr. Baird said the final option would be to pursue more formal action against the property owner to have the improvements made. He then deferred to the city solicitor for additional comments. Mr. Willard believes the discussion is more suitable for executive session if it involves potential litigation.

In review, the city manager said the assessment issue is resolved, the sign issue can be resolved and his recommendation is to put one more effort forward no later than the end of the week. If unable to come to resolution by then, a formal complaint would need to be filed. There swale issue has yet to be resolved.

Councilman Workman then provided the following facts. On April 21, 2003, the annexation committee voted to proceed with the annexation of the parcel without signs. On June 30, 2003, council voted to annex the parcel into the city. Mr. Workman referred to a petition signed by 38 residents in that area. The city sent a letter to Mr. Fannin on October 2, 2008 regarding the billboards that stated the billboards had to come down within 15 days or a fine of \$100, not to exceed \$500, a day would be assessed. He said that stopped because another letter was sent by Mr. Baird allowing another month.

Mr. Workman said he received it because he had a copy of the receipt showing the signature of the representative of the company that signed for the letter. A letter was then sent on November 3, 2008 from the city manager discussing the signs. He explained that fifteen days from the receipt would be November 20, 2008.

Mr. Workman feels that from that day on, the fines should be assessed. Instead, Mr. Baird wants to give them one more opportunity. He personally feels that we have opened the door plenty of times. This involves violations that need to be enforced. The code inspector is unable to act because he was directed by the city manager not to do anything.

Mr. Workman is unsure how much more is needed before these signs are taken down. He reiterated there are codes being violated and a letter stating that if the signs are not down and only permit for one sign, the other sign is totally illegal and billboards are prohibited on that site anyway. He does not understand why Mr. Baird wants another week to talk to this developer when we have been trying to talk to this developer. On November 22, 2008, one of his representatives stated at the council meeting that he wanted to work with the city.

Mr. Workman thinks it would be great to be able to work with the developer. But we opened the door and if he did not come in and want to work with us, he is sorry. But the sign situation needs to be addressed now and fines need to be put in place because this needs to be taken care of. He feels that every time we do something, it is never completed and he is tired of it.

Mr. Spillane clarified the November 22, 2008 above referred to was an incorrect date and should have stated January 12, 2009. Mr. Baird agreed noting that has been corrected.

Mr. Morrow referred to Mr. Baird's recommendation to send one more letter and asked if that is procedure before a formal violation can be filed. Mr. Baird stated he was proposing a phone or face to face conversation with Mr. Fannin as one final effort and if it does not work, then the final step would be to file a formal complaint in JP Court. The code official would then file the paperwork, a subpoena would be issued and a date scheduled. However, he does not feel that would be an expeditious process.

Mr. Morrow asked if the intent is to end up there; Mr. Baird said that is possible and the reason he wanted to exhaust another option.

Mr. Starling feels that we need to abide by the code. He added that tomorrow morning we need to file whatever is necessary to bring this to a closure.

Ms. Wilson agrees with what Mr. Starling is saying which is also what Mr. Willard had already recommended to council and allow the code official to handle it. She thinks we should have taken his advice a few weeks ago and council would not have been talking about it again tonight. She feels it should be handled by the code official to prevent having to discuss the same issue over and over again. The city manager can follow up with a report to council on the status of the situation.

Ms. Wilson added that she thinks Mr. Baird did a good job with regard to what has been done. She pointed out that he did what council asked him to do. However, Mr. Baird should continue to do his job by directing the code official. Then the code official can provide Mr. Baird the information which Mr. Baird can present to council. This should be a done deal and council should not have to continue to discuss how to handle it anymore.

Ms. Wilson does not feel it is council's job to handle this because we have a code official to do this work. We have city departments in place to do specific duties.

Mr. Ambrose agrees with Ms. Wilson noting that none of these issues are black and white. He feels there are issues that have to be worked out and it first needs to be determined whether these are billboards or signs and was there an illegal permit issued by the city. There are many issues an independent third party needs to determine. He believes the same applies to the swales. This was discussed at the meeting with the residents on Friday and he believes this started in 2005 when he first looked at the swales in an attempt to resolve. He feels that unless the sides are willing to compromise on either of these things, council will continue to talk about this for the next ten years. He feels we need a definitive answer.

Mr. Spillane moved to instruct the code official to remove the sign which he was going to do. He had already arranged to take the signs down and we shall go from there. He said what happened at Hearthstone is he believes we had to sue somebody to get the pipes in there. Mr. Spillane said why not let the people come and sue us instead of the city spending the money to sue everyone else.

Mr. Workman said we have been discussing this and discussing this and the code official was ready to go when he sent the first letter out. But when he was directed by the city manager not to do anything, everything stopped. He was ready to go and had the equipment to pull those pipes out of the ground. Therefore, he does not understand why we are still sitting here and nothing has been done. He is tired of talking about these signs and if a permit was issued in error, the code allows us to give them the permit and the fee back. We have codes in place which is what we are supposed to abide by. He agrees our code official is the person who knows his job and he needs to be allowed to do it.

Mr. Spillane agrees noting that we have to stand behind him when he wants to do his job.

The city solicitor reported the zoning code says if land is used in violation of this chapter, there are penalties and there is a procedure to issue a summons. The summons notifies the violator and the court invites you to court. The third party previously referred to needs to be the court. He noted that the code allows a fine of up to \$500 a day which is a penalty.

Mr. Willard said this is where the factual issues need to be determined and the justice of the peace courts have jurisdiction not only to fine, but to also require the removal. He said that generally it is a criminal offense so they have a broader range of sentencing. He said that if they raise an equitable defense such as the issuance of the permit, they may try to move it to Chancery Court. However, he agrees the summons needs to be issued to get the court involved. He is willing to work with the code official on this.

Mayor Marabello asked Mr. Willard to respond to Mr. Spillane's request to take down the sign. Mr. Spillane said it was agreed that signs were not permitted out there at the time they were annexed. Both parties agreed no signs would be placed on that property but then the owner put signs there.

Mr. Willard said there is the code and laws and when someone is using land in a manner they shouldn't, the code official can issue a summons for \$500 a day. The judge can order penalties up to time they were found in violation and he can make them remove the sign. The only question is if they raise an equitable defense, it could end up in Chancery Court. But the first step is to get the summons in court.

Mr. Willard does not recommend the city going out there to remove the sign. The code gives a specific penalty which is through the court system.

Mr. Oechsler referred to the code official's letter that clearly defined the billboard as a sign that directs attention to a business, commodity, service or entertainment conducted, sold or offered at a location other than the premises on which

the sign is located.

Mr. Oechsler then moved to direct the code official as he has stated and fine the developer from October 21, 2008 which is fifteen days after the receipt of the October 6, 2008 by his employee Tina Stout during which time he did not respond. He wants to fine him \$100 a day and then take him to court tomorrow or as soon as we can get to the courthouse and simply get it done. Referring to the picture the code official took, Mr. Oechsler pointed out flags on top of the second sign which is another clear code violation that has never been addressed but is in Section 230-40 which states that flags, other than the United States Flag, and banners are not allowed unless the code official allows it. He asked how many violations are needed before something is done. He said the motion is on the floor. Mr. Workman then seconded the motion.

Ms. Wilson said she totally agrees that the code official should be allowed to do his job; however, she questions the procedure and suggests that this be done under the direction of the city manager, that Mr. Baird's recommendation to make the last contact be considered and that he be the one to direct the code official to ensure the correct procedure is followed. She also feels that any fines be assessed from the last letter that was sent because typically, the most recent letter legally supersedes any previous letter.

Mr. Morrow asked if council would set a standard by directing the code official to do his job. He believes the current procedure is for the city manager to tell him tomorrow that he should proceed. He agrees with what needs to be done but questions the validity of council being the one to direct an employee to do this.

Mr. Baird said he clearly understands council's direction in this matter.

Mr. Willard agrees there are certain procedures in the code that deal with appeals to the board of adjustment in regard to the code official's decision. He said council is going down a different track which he feels is a criminal track. The fine is used as leverage and the court has the jurisdiction to order things such as requiring it be removed or assessing the \$50 a day fine. In that respect, the question is why is it on the agenda and he feels it is because the city manager had some concerns about the permit. He thinks it is wise to say we have reviewed the facts and the code official will pursue it.

Mr. Morrow reiterated that everyone is in agreement but not following the proper procedure which could result in dismissal because of a technicality. He also feels it is important that Mr. Baird be allowed to do the job he was hired for.

Mr. Willard emphasized that is a good point in the context of the board of adjustment and he is actually involved in a case involving an appeal in Superior Court in which the code enforcer wasn't on board with the decision which became issued.

Mr. Workman said that though Mr. Baird wants to give him one more opportunity, he does not feel it is necessary. We gave him plenty of time to react to these letters and every time we sent a letter, even our code enforcement officer wasn't able to do his job because of what he was told by his boss. However, the facts are in black and white. He is unsure how much more is needed. He feels we should not talk to this developer anymore but instead need to take action to show we are not playing games. We have our code and have to obey the codes that council took an oath to abide by.

Motion failed by the following 4-5 vote:

No-Ambrose, Morrow, Starling, Wilson, Marabello

Yes Spillane, Workman, Oechsler, Brooks

Mr. Ambrose votes no only because the direction of this body is to the city manager; he does not feel it is appropriate for council to direct his employees.

Mr. Workman votes yes noting this is something that must be taken care of and the city manager tried to deal with it yet nothing has happened. Therefore, we need to take action as a council.

Mr. Oechsler votes yes stating that as he indicated before, we need to put the harshest terms in front and let the courts deal with it from that point on. If they want to take less of a stand, then we will take less of a stand.

Mr. Brooks votes yes but wants it stated that he fully supports Mr. Baird and appreciates his efforts to send letters that have been ignored. He scheduled a meeting last Friday that the man never showed up. He votes yes to get the remove the signs.

Mr. Morrow agrees we need to take action tomorrow but feels it should be done through Mr. Baird. He feels as though we are dumping on the city manager even though he has done what council asked of him whether it was to send another letter, call him on the phone or have another meeting. Council needs to look in the mirror and it is not all on Mr. Baird because he has done what has been asked. He feels the vote is not necessary because Mr. Baird should handle it and votes no.

Mr. Starling says going back to what he said about taking action tomorrow morning and feels Mr. Baird will do what he has to do. He is going to vote no.

Ms. Wilson votes no.

The vote resulted in a 4-4 tie.

Mayor Marabello said he agrees with the city solicitor and also feels this is something that should not be done by council. He thinks council should give the directive to Mr. Baird that this be done tomorrow. He said it is not that he is not backing the people, but wants it handled through the city manager.

The Mayor voted no; the motion failed as a result.

City Manager Baird clarified that he will be working with the code official tomorrow and instructing him to start the proceedings to move forward.

The mayor asked if there are any penalties subsequent from the last date as that has not been resolved. Mr. Baird feels we should go back to the initial date as Mr. Oechsler alluded to and put that facts on the table so a decision can be made. As we move forward, that will need to be sorted out as part of any final decision.

Mr. Baird said the assessment issue is basically resolved; the assessor has come up with a fair and equitable assessment on all properties in question. Mr. Oechsler confirmed that the properties are being taxed as developed land; Mr. Baird answered yes.

Mr. Spillane asked if all the people are paying taxes on the C-3 zone or is it being taxed as farm land in some cases. Mr. Baird explained there is a provision for farm land assessment, but there has to be an agricultural use permitted in that zoning district. In commercially zoned property, there is not an agricultural use allowed, therefore, the farm land assessment provision does not apply in this case.

Mr. Spillane verified that even though some land is being farmed, it is still being taxed at the C-3 zone. Mr. Baird said that is correct and that zoning classification has an impact on the assessed value. However, the property is billed in comparison to other properties zoned with the same classification.

Mr. Spillane moved that the city fix Clearview Drive to conform with the city code and the way the plans were drawn up which includes shoulders to make the road safe.

Mr. Brooks asked Mr. Spillane if he wants the city to fix the swales and the road and pay for it. His question to the city manager is whether the city would do this for anyone else.

Mr. Spillane apologized and clarified that we need to go back and enforce our codes; we don't have a final yet on Hearthstone so we go back to the builder which we didn't do before and say address these problems as the code says. We don't have shoulders out there but need shoulders for safety because it is an unsafe place out there.

Mr. Brooks confirmed that Mr. Spillane is saying we are going to direct Mr. Fannin to fix the problems. Mr. Spillane said yes because we are the city and we were supposed to inspect out there and he does not know what happened but we need

to go back out there and do it right. We need to inspect out there and fix the problems as it is in our code and in the plans.

Ms. Wilson said who do we direct to go out there to do the inspections. She does not feel we can fix it as a council. This must be put in the hands of the city departments who are responsible for fixing these things. This goes back to the code enforcement department under the direction of the city manager.

Mr. Baird commented on Ms. Wilson's remarks stating he agrees that city council should be directing everything to him and he will then work with the city departments.

Mr. Oechsler asked who approved the project the way it is now; Mr. Baird said the City of Milford. Mr. Oechsler asked who inspected the project; Mr. Baird said the City of Milford through a contract inspector. Mr. Oechsler asked if the contract inspector would provide documentation of the changes that were made different from the site plan; Mr. Baird said we do not have copies of that. Mr. Oechsler asked why we are not asking them why the changes were made and why the city wasn't given the plan with those changes. Mr. Baird explained those questions were raised to that contract inspector which was Davis, Bowen and Friedel. We were told they will have to be pulled from archives and they have not been able to provide them at this time. Mr. Baird added he does not have an answer as to how long that will take.

Mr. Workman disagrees that council does not have the right to act on this noting the first time council directed the pipe to be purchased and installed.

Ms. Wilson agree but does not understand why we are going backwards noting that it appears we continue to go backwards on all of these issues. She emphasized the need to move forward. She explained that because she made a mistake several years ago, that does not mean she will continue to trip again and again. In order to move forward, it must be placed in the proper hands and she believes council now has a better understanding of what the problem is. At the time, council never thought the decision made to approve the subdivision would still be talked about years later. At that time, swales were brand new and it was an education to everyone. She is only asking that council move forward. Not knowing the plans were never made available, she thinks it would be interesting to see how those plans changed. Regardless, she feels this is a code issue.

Mr. Baird said that in response, the same direction given on the signs will apply here. That is the direction he is hearing city council wants to proceed. The only way he feels there will be resolution is for a similar type direction as was previously provided.

Mr. Ambrose agrees that the city is going to have to take action and a third party needs to make the decision.

Mr. Workman understands noting he is behind Ms. Wilson 100% on this. However, everytime we go forward, it seems we never get anywhere and it is time now to get somewhere with this.

Mr. Oechsler says he feels we are being played in a shell game. The more we move here, they move there. It is obvious this will end up in litigation and he personally does not think that council will stand up for litigation. The homeowners of Hearthstone are the ones that will suffer. He does not think the city should fix this with city money. The issue is between the contractor that approved this without city knowledge and without giving that documentation to the city and the developer. That is where the issue is and the city needs to put pressure on them to correct their issues. If we do not have documentation of it, then he does not feel it was not clearly approved by the City of Milford.

Mr. Starling thinks that some research is needed. He said a lot of this should be turned over to the city manager. We also have to realize that a lot of these things were dropped into our new city manager's lap. We need to give him time to get on board. He is still new at this and new at some of these situations that were voted on years ago. Council needs to give him a chance but we definitely need to go through him.

Mr. Spillane said that since he came down here, he has been working with the city on this. The previous manager was in charge but Mr. Baird was right there and very aware of this situation long before he became city manager. He had participated in a number of related meetings because it has been an ongoing issue for almost five years. He asked where this ends and agrees this is some kind of shell or chess game and if we do this, they will do that over here. It's time to take

a stand and do something. Obviously, someone did not do their job but it was not the people's fault. More importantly, it is unsafe out there. It says in our code books we cannot approve anything that is unsafe. He is unsure how it got approved. But it is a safety issue.

Mr. Morrow feels all of council is in agreement noting that everyone has been out there and has seen it first hand. The problem is the city went out there and put some pipe in there, but was directed to remove the pipe. The bottom line is the land does not belong to the city and is still private property. He agrees it will end up in court. However, council needs to tell the city manager to do his job, get the ball rolling and get this in court.

Mr. Morrow also recommends the residents become involved, get together and sue them too. He does not feel this needs a vote because it is obvious to Mr. Baird what needs to be done.

Mr. Oechsler said he does not feel Mr. Baird is doing a bad job or anything wrong. He agrees council should not direct him to do anything. But he questions how many times a letter can be sent to someone and they send a letter back saying they don't agree. At some point and time, you have to stand up and fight for what is right. We need to take him to court. Mr. Baird is doing his job and what council asked him to do. But he feels this is just a shell game.

Mr. Morrow said his interpretation of Mr. Spillane's motion is to have the city fix it and pay for it. Mr. Spillane clarified that someone from the city has to say these are all the things that are wrong. The property has never been turned over to the city so we still have the right to enforce what is here, tell him what is not right, stop all permits right now so he cannot build anything more until this is resolved. He said we also need a bond out there which is another problem because there is no bond. So he does not care. Mr. Spilane believes that if we had a bond in place, we wouldn't be talking about this right now.

Mr. Workman said the city manager understands what council wants. He wants to see action first and he wants action now. Something is needed tomorrow. Firm action that will let this developer know we are not playing the game. We are tired of playing the game and it is over.

Mayor Marabello agrees the swales are a safety issue. He stated that what was done in the past as far as design approval probably never should have happened. However, some of the council is saying we have the rule of the code. He asked if there is a law that the potential plaintiff in this case has rights as well and if there is a procedure that has to be followed legally. The mayor feels that if the city goes in and installs the pipes, are we violating the rule of law.

Mr. Willard agrees there are a lot of legal issues here. Generally, you want action. Mr. Willard said he is a lawyer who sues people for damages to get money because they cause damages. Or he sues people because he wants a judge in Chancery Court to make someone do something. There is a lot of this type of litigation in Chancery Court and not the type where a person is fined \$100 because the grass is too long or because a sign should not be up.

The solicitor feels we need to get the town engineer involved. He agrees that some of the history on this is messy and murky and there are many people involved. However, if we gather all the facts, he will give his legal opinion or another opinion can be obtained about what the cause of action is or what the likelihood of success is. Then the city will need to make a decision about whether to file suit or whether the private citizens should be directed to file suit.

However, Mr. Willard said he will do whatever he is told and he will then give his legal opinion.

When asked by Mr. Spillane if he had already reviewed this information, Mr. Willard said that three years ago he issued a letter stating the swales appear to be built according to what was approved and that he did not feel the city had a cause of action. It was researched and Mr. Willard went to the recorder of deeds where he received the final site plan. He even talked to Mr. Mallamo about it. He did not think the city had a cause of action on the swale issue alone. But today, he is hearing about curves, sidewalks and other things and new facts. However, that was his opinion on that specific issue at which time documentation was provided.

Mr. Oechsler asked if two weeks will be enough time for Davis, Bowen and Friedel to provide some information. Mr. Baird

said possibly but he is unable to commit for them. His question is once these facts are gathered, what is a realistic time frame on being able to address all of these questions. Mr. Willard said it will depend on what facts can be uncovered. He has an old file with a lot of documentation. A lot of these issues are engineering matters and what was approved, what was built and if there is a cause of action to pursue it.

Mr. Spillane said the issue is the swales that are unsafe and that fact the city should not have approved it because the code says it must be safe. Mr. Willard said that a cause of action is something that creates a hazzard. His job is to represent the city and try to predict what would happen and determine the best remedy.

Mr. Baird can provide a written status report back in two weeks. He will have it on the agenda for the March 9<sup>th</sup> meeting which he feels is realistic.

Mr. Oechsler moved to direct Mr. Baird to go on a fact finding mission on the swales and report back to council on those findings in two weeks, seconded by Ms. Wilson.

Mr. Brooks feels Mr. Baird is aware that council wants the report in two weeks and that he will have it at that time.

Motion carried by the following 5-2 vote:

No-Ambrose, Morrow

Yes-Spillane, Workman, Oechsler, Starling, Wilson

Mr. Ambrose votes no because of the procedural issue he raised previously. The city manager is aware of the direction council wants him to go in and he does not feel a vote is necessary.

Mr. Workman is voting yes because if there is a deadline, things may be resolved faster instead of prolonging it. He thinks the city manager is doing a good job but a deadline should be added, because talking to everyone and everything did not work.

Mr. Oechsler votes yes because he wants closure.

Mr. Brooks said if he votes yes and he votes no, then the mayor will be the tie vote again. (Mr. Brooks did not state his vote which was inadvertently overlooked.)

Mr. Morrow said he does not want to micro-manage Mr. Baird. He is going to proceed tomorrow morning and he feels that it is inappropriate to vote on a job that Mr. Baird has been told to do. He has done everything asked by council and probably more. He does not want to get down to micro-managing every move that Mr. Baird makes, otherwise we can trade Mr. Baird and his big salary into another person. He feels bad for everyone on Clearview and agrees and wants these things fixed. He definitely believes we need to take him to court and handle it just as the signs are being handled and make sure the taxes are paid or sue them on that too. So he votes no.

Ms. Wilson said she feels like Mr. Oechsler and she does not want to micro-manage but wants closure. She wants this to be done and is basically pleased with what has been done because at least we are moving forward. She votes yes.

Mr. Baird said he will report back to council in two weeks.

## NEW BUSINESS

### *Approval & Reservation of Funds/Green Energy Grant/Bethany Parry*

Mr. Workman moved that Green Energy Funds be reserved in the amount of \$1,800 for a residential geothermal heat pump for Bethany Parry of 20466 Cedar Beach Road, seconded by Mr. Ambrose. Motion carried.

*Introduction of Ordinance 2009-4/Chapter 204/Senior Citizens Property Tax Reduction*

The following ordinance, scheduled for introduction this evening, will increase income levels for senior citizens on property taxes by 50% as has been previously discussed.

*Ordinance No. 2009-4*

*AN ORDINANCE TO AMEND THE CODE OF THE CITY OF MILFORD, CHAPTER 204 THEREOF, ENTITLED TAXATION, FOR THE PURPOSE OF AMENDING THE CONDITIONS FOR SENIOR CITIZEN EXEMPTION OF REAL PROPERTY TAX.*

*WHEREAS, the City Council recognizes a need to adjust the income levels for senior citizens to qualify for the senior citizen tax exemption on real property tax.*

*NOW, THEREFORE, THE CITY OF MILFORD HEREBY ORDAINS:*

*Section 1. Section 1 of Chapter 204, Taxation, of the Code of the City of Milford is hereby amended to read as follows:*

*§204-1. Conditions for senior citizen exemption on real property tax.*

*Every person 65 or more years of age having an income not in excess of ~~\$10,000~~ \$15,000 per year, exclusive of social security and railroad pensions, and residing in a dwelling owned by him or her which is a part of his or her real property shall be entitled, on proper claim being made thereof, to exemption from taxation on \$20,000 of assessed valuation of such real property, in the aggregate, and in the case of jointly owned property or property owned by husband and wife, such exemption shall be granted where the income of both does not exceed ~~\$17,000~~ \$25,500 per year, exclusive of social security and railroad pensions.*

*Section 2. Dates.*

*Projected Adoption Date: February 23, 2009*

*Date Effective: October 1, 2009*

The ordinance is scheduled for final action at the February workshop.

Mr. Ambrose noted that in the past such increases have not cost the city a great deal. In this instance, it is expected to impact the overall tax base by a little more than \$7,000 which he feels is well worth the benefit to our seniors.

*Bid Award/Mispiration Greenway Phase 17/Warnell Greenway*

Parks and Recreation Director Gary Emory advised that sealed bids were received, publicly opened and read on January 26, 2009 for the Mispiration Greenway project. Bids ranged from \$67,213 to \$179,992. A letter from Matthew T. Spong of Landscape Architectural Services LLC indicated the bids were reviewed and it is recommended we accept the proposal offered by Superior Landscaping Incorporated in the amount of \$67,213. The bid is well under budget and funding is through the Land and Water Conservation Trust Fund.

A conceptual showed the thousand foot extension of the walkway on the Warnell property which will connect to the bridge.

Mr. Workman moved for award of the bid to Superior Landscaping Incorporated in the amount of \$67,213, seconded by Mr. Ambrose. Motion carried.

Matt Spong of Landscape Architectural Services was present and noted they had prepared the construction documents and design plans for the project.

*driveway as is presently done and Mrs. Stratman agrees with the City of Milford and the builder as to what the minutes state.*

*We do not need to hire an attorney to answer the 4 questions.*

*The questions have been answered:*

- 1. Mrs. Stratman is allowed by City Council Minutes to use 10 feet.*
- 2. Anyone is entitled to use the ROW/Easement/Road.*
- 3. Yes, applicant needs to file amended plan.*
- 4. The Council Minutes state that Mrs. Stratman will be able to access her driveway as presently done.*

Mr. Spillane then explained that a couple of years later, the city approved a site plan showing a townhouse on the forty foot road though she was told she could use that road to enter her property. He does not understand why anything further is needed other than for council to vote tonight to pull the plans and have the contractor move the townhouse to allow Ms. Stratman to have her access back.

Mr. Brooks informed Mr. Baird that he had worked on this issue for approximately one year. After reviewing the property, Mr. Carmean said the city nor the Robert Smith Company had no problem with the access. DELDOT was the one that had it removed, but tonight he has been informed that DELDOT does not have a problem with it. When asked for confirmation, Mr. Spillane answered it is correct that DELDOT has no problem with the entrance.

Mr. Brooks said if DELDOT verified there was no problem, then Ms. Stratman should be permitted to use the easement.

Mayor Marabello referred to the comments of Deputy Attorney General Dennis Spivack; it was confirmed that Mr. Spillane had contacted Mr. Spivack.

Mr. Spillane advised that if Mr. Willard is involved, that would create a conflict of interest because of his law firm's previous involvement with the Stratman land transaction. He added that the city and contractor both agreed that Ms. Stratman would have access to the forty foot road. But the ball was dropped when the plans were submitted to the city and a house was built on the roadway.

It is Mr. Willard's recommendation this matter be addressed in executive session as it involves potential litigation because a developer has an approved plan and a private homeowner is maintaining a right to a related easement. In addition, a Deputy Attorney General, has informed Mr. Willard's firm there is a conflict. Because of the unique situation, he feels the city should be made aware of some issues on how to proceed legally.

Mr. Workman said that Mr. Willard is unable to represent the city in this case. He feels it is important the right information is received. Therefore, he does not understand why it should be discussed in executive session.

Mr. Willard said it is council's decision whether to go into executive session; he is only informing council of his opinion. The solicitor then read the letter of response from Jim Fuqua to Mr. Spivack:

*Dear Dennis,*

*In followup to our telephone conversation today regarding the above matter (Stratman/Watergate), I advised that our title examination found no documents of record creating any easement rights for the Stratman use of the forty foot road.*

*The Stratmans acquired the property from Linda Konowitz (Deed 1717/73). Ms. Konowitz acquired the property from Edmay Corporation (Deed 1249/338). The Stratman property is the southern half of parcel 1 of that deed. The City of Milford owns the northern half of parcel 1.*

*Parcel 2 of that deed is described as a separate ten acre parcel located to the south of the Stratman's lot. The ten foot*

*outlet mentioned in that description, refers to a ten foot easement across parcel 2 connecting the forty foot road to other lands. It does not affect the boundary of the Stratman parcel.*

*In your letter of January 26, 2009, you stated that you advised Councilman Spillane that my law firm had a conflict in this matter. Quite frankly, I am quite puzzled by your statement and would require the basis and reasoning for giving such advice.*

*James A. Fuqua, Jr.*

Mr. Willard explained that council can make a decision on this though the plan was approved by the city. Mr. Spillane has stated there are mistakes in the plan which he is unsure if he should admit because the plan was already approved for this development. It is clear that Ms. Stratman used this property as a lane and she believes she had a right to continue to do that. However, there is no recorded easement though there may have been a license or a right to use if the property owner at one time had allowed her to use it. Therefore, it does not appear to be clear. If something is done to the developer, the plan was already approved.

The solicitor feels this is more of an interpretation matter. Mr. Spillane and Ms. Stratman indicate the minutes state she should access it as it existed and will always have the forty foot easement. Somewhere along the line, they interpreted access as meaning the subdivision road which accesses the rear of the property.

Mr. Workman explained the only way Mr. Spillane was looking at this in relation to the conflict of interest with Mr. Willard is because his law firm was involved in the beginning. He said it involves his boss and he understands where Mr. Spillane is coming from. He believes this has come before council since he has been on council and the easement was discussed when Watergate was approved. He recalled the developer and the person living in the house having an agreement. He asked if this is the same developer or if the property changed hands.

Mr. Willard recalled contacting Attorney John Tracey who always represented Watergate. At that point, he turned it over to his partner Jim Fuqua for an interpretation of the access. Mr. Fuqua again reviewed it to determine whether there was an easement; there was a search for a recorded right of way and none was found.

Mr. Workman then referred to the comments of Mr. Konowitz, the earlier property owner, who stated that road was always an easement. Mr. Willard advised that an easement must legally be recorded. However, there are certain things that can be obtained by adverse possession which means it is must be open notorious, continuous and exclusive. Ms. Stratman said the neighboring property always allowed her use of the road which is only a license or less formal transfer. A license can be revoked anytime.

Mr. Spillane referred to the Stratman deed which he says clearly states there is a forty-foot road. He said it talks about the forty foot right of way which everything points to.

Mr. Baird stated it appears that council feels this is something the city needs to be involved in or is it an issue between two property owners.

Mr. Spillane said the city is involved because when they issued the plan, it was said she would continue to have access as was presently being done. He noted that even the contractor agreed; therefore, the city has a play in this.

Mr. Oechsler then referred to the correspondence from DAG Dennis Spivack that reads:

*"The deed states the party of the first part and the party of the second part its successors or assigns, agree that a ten-foot outlet over the within described lands and along the boundary line of the Milford Stitching Company's lands, from the run of said branch to the forty-foot road, shall at all times remain open."*

*My reading of the paragraph is that an easement of, at least, ten feet of the forty feet service road exists for perpetuity.*

Mr. Oechsler asked if this means it exists forever. Mr. Willard answered yes, not to mean that it exists forever. He does not want to give council second hand information, but Mr. Fuqua had the complete information. After a review of the file and the deed search, he indicated to Mr. Willard that the road access, which was included in his response, was the ten foot outlet mentioned in the description across parcel two which connected the forty foot road to other lands that do not affect or benefit the Stratman property. He said that the point is that it is adjacent or connected to it, but Mr. Fuqua's interpretation was to allow access to the rear of the property.

Mr. Spillane pointed out that that if the forty foot had stayed, she would have access.

When permission was granted to speak, Herb Konowitz explained the forty foot section was at the front that came up to Marshall Street. His factory was parallel to that forty foot section. The ten foot section was an add on to the forty foot section to lengthen it to the woods. Ultimately, the city placed a pumping station at the end of the ten foot lane. He stated it was kept open for the fire company to access the rear property. The Stratman property was at the beginning of the forty foot lane. Ms. Stratman would back out of her driveway onto the forty foot lane, then over to Marshall Street.

Mr. Konowitz advised that had been on the deed he was shown tonight. That forty foot section had been there since they purchased it from the Maloney family prior to his arrival in 1958.

Mr. Spillane explained that she has access to the forty foot road and the ten foot picks up after that though it clearly states a forty foot road. Mr. Konowitz stated that was added on. Mr. Spillane said to get to the ten foot because the forty foot always stayed there which was access to the ten foot. It gave Stratman and whoever else owned the house had the right of way to get to their house.

When asked if there was an attempt between the property owner and Mrs. Stratman to resolve this before it was brought to council, Mr. Oechsler recalled Mr. Johnson, who was on the planning commission at the time, stated that during the planning commission hearing the developer and Ms. Stratman agreed the access for Ms. Stratman would continue. Ms. Wilson said it appears Ms. Stratman has some basis for legal action against the developer and the city should not need to be involved.

Mr. Willard explained it may be different if there was an actual recorded easement which would involve property rights. There should be a quiet title on that because you are using land that one has a right to. Without that, it only involves a license to use the outlets. The solicitor said that Mr. Spillane's point is that the city approved the plan which interrupted the use of the forty foot easement and he (Mr. Spillane) thinks the city should be involved.

Mr. Willard said he has seen subdivisions come before a planning commission where there are easement questions. But it is the property owner's responsibility to say what is there; if they are wrong, someone else will have an interest in it. He feels there are two issues. One is whether there is an easement and if she has a private action against the new land owner who is using or interrupting their use. The other issue is the minutes which state she would be allowed access, but subsequent to that, the city approved a plan that gave her access to a subdivision road and not the access she previously had.

Mr. Spillane said if he bought a piece of land to build something on, the city checks to make sure he owns it. In this case, it looks like the city didn't check anything such as the deeds. Mr. Willard said the city does not do title searches for purchases of land in the city. If someone is building on land that does not belong to them, is a good cause of action.

Mr. Willard feels that is why Mr. Baird's interpretation is this is a private action and a threshold issue. In addition, Mr. Fuqua has not found a recorded easement.

Mr. Ambrose said that whether there is an easement there or not, it was promised to Ms. Stratman. Therefore, it should stay that way.

Because of the legwork done by Mr. Spillane, Ms. Wilson asked him if before any formal action is taken, had he made contact with the developer. Mr. Spillane said the developer feels he can build anywhere he cares to. Mr. Ambrose asked if he made that statement to Mr. Spillane; Mr. Spillane and he said he has some papers he gave him.

Mr. Spillane moved that the developer change the site plan to allow Ms. Stratman to use the forty foot existing easement to her property, seconded by Mr. Oechsler.

Mr. Ambrose said there is a question about whether there is an easement or not; he feels we need to avoid the word easement. The mayor said that language is used in the legal document—prescribed easement, adverse possession so it cannot be avoided. Mr. Ambrose feels it should state agreed upon right-of-way.

Mr. Spillane changed the wording in his motion to agreed upon right-of-way which was again seconded by Mr. Oechsler.

Mayor Marabello said there is a motion to have the developer change the design of the site plan to incorporate the existing use of the approach to her house as she is doing now, which was seconded.

Mr. Morrow asked if council can do this legally and does this follow procedure when it comes to zoning issues; Mr. Willard said the problem is the city approved the site plan which is causing the issue. In other word, it is hindsight after the action was taken. He is unsure how this should be worded and whether it was a mistake or shouldn't have happened or wasn't thought about and is why the city has some exposure. Looking at the title search it still remains an interpretation question as to the minutes because they maintain that there was an agreement which gave her access. Clearly, they say that is not what they meant which are the concerns Mr. Willard has. He really does not have an answer.

Mr. Morrow asked if council takes this action is it binding. Mr. Willard said the wise approach would be to write their attorney and inform him council met and discussed the issue and the consensus of council is to change the site plan to allow this. Then wait for a response.

Mr. Ambrose said that another way to deal with this is to write the developer and inform him that council took this action to correct a previous error and ask they resubmit different plans.

Motion carried by unanimous roll call vote.

## FINANCE REPORT

Through the sixth month of Fiscal Year 2008-2009 with 50% of the fiscal year having passed, 56.23% of revenues have been received and 49.46% of the operating budget expended.

Mr. Ambrose advised the margin calls for DEMEC were paid from the operating portion of the electric department budget and will be reflected in the January 2009 report. That money is expected to be paid back this week. Therefore, the January operating expense will be reduced to approximately \$1 million but will increase once the \$1.7 million is repaid.

It was confirmed the balance owed for the replacement patrol vehicles was paid from capital funds originally allocated for the police facility needs and assessment study. Mr. Baird added that though this was a shift of projects, the funding source remains the same.

Mr. Ambrose moved to accept the December 2008 Finance Report, seconded by Ms. Wilson. Motion carried.

### *Executive Session - Legal Advice-Potential Litigation*

Mr. Oechsler 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. Workman. Motion carried.

Mayor Marabello recessed the Council Meeting at 9:58 p.m. to go into a closed session to discuss matters involving potential litigation.

### *Return to Open Session*

City Council returned to Open Session at 10:33 p.m. Councilman Brooks left at this time.

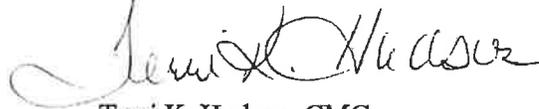
Mr. Oechsler moved that Mr. Willard sign the Kent Scrap Metal Incorporated settlement, seconded by Mr. Morrow. Motion carried by a vote of 7-0.

ADJOURN

Mr. Workman moved to adjourn the Monthly Meeting, seconded by Ms. Wilson. Motion carried.

The Monthly Meeting was adjourned at 10:34 p.m. by Mayor Marabello.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Terri K. Hudson".

Terri K. Hudson, CMC  
City Clerk/Recorder