

MILFORD CITY COUNCIL  
MINUTES OF MEETING  
May 27, 2014

A Meeting of Milford City Council was held in the Joseph Ronnie Rogers Council Chambers at Milford City Hall on Tuesday, May 27, 2014.

PRESIDING: Mayor Bryan Shupe

IN ATTENDANCE: Councilpersons S. Allen Pikus, Dirk Gleysteen, Owen Brooks Jr.,  
Douglas Morrow, Sr. and James Starling Sr.

City Manager Richard Carmean, Police Chief Keith Hudson and City Clerk/  
Recorder Terri Hudson

COUNSEL: City Solicitor David Rutt, Esquire

CALL TO ORDER

Mayor Shupe called the Council Meeting to order at 7:00 p.m.

The mayor noted that Councilman Grier had another commitment this evening and was unable to attend meeting.

Councilwoman Wilson was also absent.

INVOCATION AND PLEDGE

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

RECOGNITION

*Milford Post Office/Postmaster Lindon Mingo*

Lindon Mingo was invited to attend council meeting to introduce himself.

Mr. Mingo stated he has been postmaster for the past two years and has thirty-eight total years of service. Though he has not met a lot of council members, he met Mayor Shupe when he was campaigning.

The postmaster said that he realizes there are a lot of problems with the post office he is trying to fix. One thing is they have UPS and Fed Ex as competitors though he emphasized the postal service can do a better job than either of them. He wants the residents of Milford to know this.

He acknowledged that one concern is the behavior of Milford Post Office employees and he is working to change that. One of his main goals is to improve customer service.

Recently, he has been sending his employees out to inform people of the new services the post office offers. For example, businesses in Milford have the opportunity to advertise (Every Door Direct Mail) for 16.5 cents per piece of mail. Every Door Direct Mail enables you to target your local neighborhood.

He noted that an ongoing problem is their old building. He reported that every year there is a problem with the air conditioning and a great deal of money is being spent on repairs.

Mr. Brooks recalled several years ago, council campaigned for a new post office. At that time, Middletown, Milton and three other Delaware towns received one.

Mr. Pikus agreed adding that he also contacted our federal legislators in Washington, D.C. They indicated they would do what they could though the Postmaster General had the final say.

When asked if that is still being considered, Mr. Mingo explained that when he first came to Milford, a new post office was being considered. At that time, several post offices were being combined. To move Milford would require it to be relocated to Dover. The postal workers would then drive from Dover to Milford to deliver mail. At this time, he believes that Milford is too large to be combined but someone needs to step up and say that will not be done and instead another building is needed. He emphasized it does not make sense to keep putting money into an old building when a new building can be built with no maintenance costs.

The postmaster will be visiting in two weeks at which time Senator Tom Carper will be in attendance. Senator Carper did discuss that possibility this time last year and he is anxious to hear any new considerations.

Mr. Pikus asked if Mayor Shupe would be able to attend that meeting. Mr. Mingo liked the idea but stated that he would have to get back with him.

He also introduced his wife Donna Mingo who was also present.

## COMMUNICATIONS

### *New Journal Article*

Mr. Brooks referenced a recent article in the News Journal that reported that Milford was the fastest-growing large city or town in Delaware for 2013 according to U.S. Census population estimates released this week.

According to the report, Milford's population has increased more than 3% since 2012; the estimated population is 10,122.

Mayor Shupe agreed it was a very good article written by Nicole Dobo who had contacted him for his input. The day after it was released, he received an e-mail from State Director of Economic Development Alan Levin congratulating him on the article.

He said he welcomes any areas where we can get some press about economic development.

### *Mosquito Control Spraying*

Mayor Shupe read the following DNREC news release into record:

Weather permitting the Mosquito Control Section is planning the following insecticide application during the evening hours on Tuesday, May 27, 2014 and during the morning hours of Wednesday, May 28, 2014.

Application with a truck-mounted sprayer to control adult mosquitoes will be in Milford, as well as some other towns.

All insecticides to be used are registered with the USEPA for mosquito control and will be applied according to USEPA approved label instructions. The USEPA has determined that the insecticides to be used do not pose unreasonable risks to human health, wildlife, or the environment.

### *Sitel*

Mayor Shupe announced that Sitel contacted him for a meeting last week. They informed him they will be hiring one hundred customer service agents in June at their facility in the old Walmart building off Route 113. The company provides services for Fortune 500 companies across the company.

## UNFINISHED BUSINESS

*Planning Commission Vacancy/Appointment of Commissioner*

Mayor Shupe spoke with the city manager and the 4<sup>th</sup> Ward Council Representatives regarding the vacancy. He is considering a few people and will be presenting their resumes at a later meeting.

## NEW BUSINESS

*Bid Award/SE Milford Elevated Storage Tank Project/Public Works Department/DBF, Incorporated*

The following sealed bids were received on May 9, 2014 for the general construction of the Southeast Milford Elevated Storage Tank Project, DBF Contract No. 052A138:

<i>Bidder</i>	<i>Base Bid</i>
Phoenix Fabricators & Erectors, Incorporated	\$2,250,350.00
Chicago, Bridge & Iron (CB&I), Incorporated	\$2,264,330.00
Caldwell Tanks, Incorporated	\$2,276,000.00

Davis, Bowen and Friedel, Incorporated over saw the project on behalf of the city. The following recommendation was received from P.E. Randy Duplechain:

*Bids for the above-referenced project were received on May 9, 2014. We have evaluated the bids and the associated information submitted by each of the Contractors. Please find enclosed a tabulation of the three (3) project bids received.*

*Based on our review of the bids we have found that the low bidder, Phoenix Fabricators & Erectors, Inc. (PFE) of Avon Indiana, did not meet the experience requirements set forth in the project specifications. The experience requirements are stated as follows:*

*"Bids will be received only from experienced tank contractors who have furnished and erected at least five new single pedestal spheroid elevated tanks of equal or greater capacity. A letter shall accompany the bid listing five such tanks including the name of the owner, contact name, phone number, the capacity, location and year completed. Tank contractors must have done all their own design, fabrication, and field erection to be considered a representative project. Subcontracting of any of these critical items will not be considered representative of the level of experience necessary to bid as an experienced tank provider for this contract."*

*The experience information received with the bid from PFE included only two tanks of equal size to the 750,000 gallon spheroidal type tank proposed for this project. One of these tanks is presently under construction in Fall River, Massachusetts, and therefore not yet complete. The other tank was constructed in 1998 in Bluffton, Indiana.*

*Based on the lack of experience provided by PFE we evaluated the bid from the second lowest bidder, CB&I, Inc. CB&I is a worldwide company with their closest branch office located in New Castle, Delaware. The experience information provided by CB&I well exceeded the criteria required for this project. From the six page list of CB&I's elevated storage tank experience submitted with their bid, 35 storage tanks were equal to or greater in size to 750,000 gallon tank proposed. Also, our company has direct experience with CB&I, having worked with them on a number of elevated storage tank projects on the Delaware and Maryland Eastern Shore.*

*Additionally, CB&I has worked for the City of Milford in the past having been the contractor for both the 500,000 gallon 10th Street Tank constructed in 1987 and the 250,000 gallon L.D. Caulk tank constructed in 1999. We, therefore,*

*recommend award of the S.E. Milford Elevated Storage Tank project to CB&I, Inc. for the estimated amount of \$2,264,330.00.*

*Should City Council agree with our recommendation, the formal award of the Contract should be made contingent on USDA's approval of the bid process. We have attached one (1) copy of each set of bid documents, the bid tabulation, and the proof of advertisement to bid. A second copy of these documents will be submitted directly to the City's attorney upon the vote by City Council to award this project.*

Erik Retzlaff of DBF was in attendance and reported this was part of the Southeast Water Extension Project.

The proposal required the successful bidder to submit five examples of projects of equal or larger sized tanks they have constructed. The low bidder, Phoenix Fabricators & Erectors (PFE) of Avon, Indiana did not meet this experience requirement due to submitting only two equal tanks of which one is still under construction. Therefore, PFE was removed from consideration for award.

Following a thorough review of the next lowest bidder, it was decided to recommend the bid be awarded to CB&I in the amount of \$2,264,330.

Mr. Retzlaff reported a 750,000 gallon tank is being constructed which is 50% larger than the city's biggest 500,000 gallon tank at NE Tenth Street. Besides providing additional pressure, the tank will allow other facilities to be taken off line for maintenance. Currently, that ability is limited.

Mr. Pikus noted that this will take a little more than 15 months to complete.

The city manager advised that additional treatment will also be provided at this tower.

Mr. Pikus asked the time frame on the Wickersham subdivision. Mr. Retzlaff advised that their subdivision has been recorded and the property for the water tower turned over to the city. DBF is currently designing the substation for the sewer which will now be constructed on city land.

Mr. Brooks moved to award the bid to CB&I in the amount of \$2,264,330, seconded by Mr. Morrow. Motion carried.

Mr. Carmean thanked Lisa Fitzgerald of the USDA for her assistance in this project. The city manager reminded council this project has been on hold since 2008 just as the substation project was. When he returned to work, he received a letter from the USDA who was very upset the project had not been started. He and Ms. Fitzgerald worked together until everything was in place.

#### *Tenth Street Water Tower*

When asked whether our Water Tower Maintenance agreement will address the mildew problem at the Tenth Street Water tower, Mr. Retzlaff advised that tower is scheduled for pressure washing within the next few months. Each year, one tank is to be recoated and the other two cleaned.

Mr. Retzlaff recalled the Tenth Street Water Tower being repainted approximately four years ago.

#### *Finance Committee FY 2014-2015 Budget Hearing Dates*

Finance Chairman Pikus advised the annual budget hearings will be held June 17<sup>th</sup> and June 18<sup>th</sup> at city hall.

#### *House Bill 333/Limitation of Municipal Taxing Powers*

Mayor Shupe reported that this bill is pending in the state legislature and will limit Delaware municipalities' taxing authorities.

The mayor then read the following synopsis:

§ 11(a), Article VIII, of the Delaware Constitution provides that "No tax ... may be imposed or levied except pursuant to an Act of the General Assembly adopted with the concurrence of three-fifths of all members of each House."

He explained that if Milford were to raise taxes, we would need approval of our Delaware Legislators which is a concern to him.

City Solicitor David Rutt advised this bill is the result of a decision of the Court of Chancery on an issue that arose in Dewey Beach. They passed a licensing fee for businesses which was challenged as being a tax in comparison to a licensing fee.

According to Mr. Rutt, the town essentially agreed it was a tax.

The court stated this was a power of the municipality under the "all powers" clause that all Delaware charters have. Milford's charter reads as follows:

"The City of Milford shall have all powers possible for a city to have under the constitution and laws of this State as fully and completely as though they are specifically enumerated in this Charter."

Mr. Rutt then explained that under Delaware law, the general assembly delegates powers to lower governments such as municipalities and counties. The all powers clause in the Dewey charter allowed them to pass the licensing fee.

He said the court goes through a detailed history of the all powers clause and how municipalities have the authority and power to raise revenue in certain ways. This bill says there is a limitation on municipal taxing powers. It states that every municipal corporation in this state, regardless of population, shall only have the power to impose, levy, assess or collect a tax of any kind as expressly authorized in its municipal charter or this title.

It further states that all powers shall not be construed as exempting a corporation from that limitation. He explained that it essentially says that any fee a municipality wants to impose must be approved by the general assembly by both the house and senate by a 3/5 vote.

Mr. Rutt agrees it will take away quite a few of the powers and especially those granted under home rule to municipalities throughout the state.

It was confirmed the bill was sponsored by Representative Schwartzkopf along with Senator Blevins, Representative Atkins, Dukes, Gray, Hudson, Jaques, Keeley, Longhurst, Viola, Williams, Wilson and Senator Lopez, Poore and Townsend

Mr. Rutt believes some of the sponsors have started to back off due to the opposition from most municipalities. He has even heard some rumblings that some of the smaller municipalities are threatening to turn their charters back to the state stating 'if you want us, you got us'.

He feels this could strip away some of the powers that municipalities have to raise revenue if it is passed.

Mr. Pikus asked if the Court of Chancery ruling has been appealed; Mr. Rutt is unaware if that has occurred. Mr. Rutt explained that the delegation of powers was answered in the case of Sussex County vs. DNREC. DNREC had imposed regulations that set buffers on inland bays. Superior Court determined they could not do that and the opinion of the Supreme Court stated if the General Assembly delegates power to a municipality/county, another entity or government agency (DNREC) could not overstep that. The only way it could occur was if they had powers delegated to them.

Therefore, the whole issue of delegation of powers, under the constitution, has been answered by the Supreme Court.

Mr. Rutt suspects when the Chancery Court decision came out, they decided to go a different avenue and try and get the law changed as opposed to fighting in court.

Both the League of Local Governments and SCAT are opposed to the bill.

Mr. Carmean agrees it flies in the face of home rule and asked how the State of Delaware would feel if the federal government was taking their rights away unless congress approved it.

Mr. Brooks pointed out the number of regulations already imposed by the various agencies in the state though they never offer the city any money to assist with those changes.

Mayor Shupe emphasized the need to be partners with the State of Delaware. He only brought it to council because he feels we need to be aware of what is occurring and perhaps discuss with our state legislators. He has already been in contact with our local legislators to express our concerns should the bill be passed as it is currently written.

As new information is received, he will make sure council is made aware of it in addition to the public.

The recent tax increase created by the ten-year reassessment of property was referenced and the question asked whether that process would be affected by this law. Mr. Rutt explained that our charter lays out a specific plan for reassessment and taxation of real properties. That would not be impacted because it is a specific delegation of power. The all powers clause was challenged in this case which is rather broad. It was indicated the business licensing fee was not a specific delegation. As a result, they claimed it was illegal.

The court ruled that the all powers clause/phrase did give them the right to do that.

The solicitor emphasized that Milford's tax on real estate would not be affected because it is specifically laid out in the charter.

The city manager stated that the charter does not allow us to raise taxes through the reassessment process. Instead, the tax rate needs to be rolled back if the values increase. He asked if we could still increase taxes after that occurs. Mr. Rutt said he read the charter and believes that can still happen.

#### *Milford Armory Building*

Mayor Shupe announced that State Representative Harvey Kenton contacted the city manager and himself to find out if the city was interested in the 3.4 acre Milford Armory property on North Walnut Street. He said the state is interested in selling the property. A time was arranged for himself, City Manager Carmean and Chief Hudson to tour the armory. He informed council the building is old but in decent shape. There are a number of outbuildings that could actually be useful to the city.

Mayor Shupe confirmed that Representative Kenton stated the state would be willing to sell the property to the city for \$1. They want the property off their rolls and no longer want to maintain the property. The only condition is the building would have to be used for public use. If the city decides to sell the property in the future, the state would have the first right of refusal.

He reported that with the end of the legislative session quickly approaching, a decision needs to be made. As a result, they gave Senator Kenton a tentative yes until it could be brought before city council.

City Manager Carmean reported that Milford School District was offered the property, but because of the recent referendum failure, the board declined the offer because they felt the cost of maintaining and repairing building would outweigh the benefits of the additional space.

In the meantime, they offered the property to a number of state agencies, including DNREC, and no one was interested. At that time, Representative Kenton contacted the city. Mr. Carmean scheduled a tour with Mayor Shupe, Chief Hudson, Lieutenant Brown, Public Works Director Brad Dennehy, Streets Superintendent Tim Webb, Councilman Pikus and Councilman Morrow. The consensus was that for the price of \$1, it was a great deal for the city.

He noted the rear buildings are large and in excellent condition. There is a large ramp that would be ideal for use by our dump and trash trucks. Also included is an expensive high pressure washing system and the setup is such that these trucks could be easily washed.

Though the roof has leaked, it has since been repaired and all windows recently replaced.

The Parks and Recreation Director was unable to attend though he is very familiar with the property. There is a gym in the main building and Mr. Emory had previously indicated they had used it for their programs which could be done again.

Mr. Carmean recommends the city proceed with the acquisition of the armory.

Mayor Shupe agreed that the Public Works Department would also be able to use the building for storage in addition to cleaning their large trucks.

Mr. Pikus pointed out there are only fourteen days left in this legislative session and asked if a motion was needed. Mr. Carmean advised that the general assembly had Representative Kenton and Senator Simpson present a bill to release the property to the City of Milford. That will need to pass though both legislators believe it will not be a problem.

Mr. Pikus stated the building has the potential for a multitude of uses. He then moved that the city accept the offer to acquire the Milford Armory property for \$1, seconded by Mr. Gleysteen. Motion carried.

#### EXECUTIVE SESSION

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

Mr. Pikus moved to go into Executive Session reference a pension matter, seconded by Mr. Brooks. Motion carried.

Mayor Shupe recessed the Council Meeting at 7:41 p.m. for the purpose of an Executive Session as permitted by Delaware's Freedom of Information Act.

#### *Return to Open Session*

City Council returned to Open Session at 7:51 p.m.

#### *Early Buy Back/General Obligation Bonds, Series of 2005/Funding Approval*

Mr. Pikus recommends we pay off our 2005 bonds, which would be payable in 2019. By paying the bonds off early, the city is saving approximately \$320,000 a year. The city will see a substantial annual savings which is fiscally responsible in his opinion.

Mr. Pikus moved for the early payoff of the General Obligation Bonds, Series of 2005 with electric reserves, seconded by Mr. Morrow. Motion carried.

#### *Personnel/Pension Matter/Funding Approval*

Mr. Pikus moved to approve funding the pension matter discussed in executive session by using the first year of savings resulting from paying off our outstanding 2005 General Obligation Bonds with electric reserves and eliminating those annual payments. Mr. Gleysteen seconded motion. Motion carried.

*Purchase Power Cost Adjustment*

Mr. Carmean announced that we have been able to remove the purchase power cost adjustment off our industrial and larger user accounts which is .5 cents per kilowatt. This is a substantial savings to our large use customers. Since December, our revenue streams have been adequate and allowed the city manager to remove that fee. In the future, this could be another fund of revenues that may allow us to continue this for our businesses which will help with economic development and stabilization of some of our larger employers.

He reported that he and Finance Director Portmann will recommend that for the future.

He noted that the .5 cents removal was like a gift that we continued to give through the May bills.

Mr. Gleysteen asked at what level the city considers a customer to be a large user as far as dollars or amount of power. Mr. Carmean informed Mr. Gleysteen that he is affected by this. He noted that Mr. Gleysteen is considered manufacturing and his business would be involved. Some of the larger commercial businesses such as restaurants will also see a savings. He emphasized it is not restricted to Perdue, Sea Watch, etc. and instead trickles down to manufacturing and similar businesses.

The city manager recalled when the city was sought out for an electric takeover. Mr. Carmean said at the time, those prices that were offered would not hold. That company has since had numerous rate increases and he predicts more will come. Council did the right thing by refusing the offer and keeping our electric business in house.

ADJOURN

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

The Council Meeting adjourned at 7:55 p.m.

Respectfully submitted,



Terri K. Hudson, MMC  
City Clerk/Recorder