

MILFORD CITY COUNCIL  
MINUTES OF MEETING  
February 26, 2018

The City Council of the City of Milford met in Workshop Session on Monday, February 26, 2018 in the Joseph Ronnie Rogers Council Chambers at Milford City Hall, 201 South Walnut Street, Milford, Delaware at 6:49 p.m.

PRESIDING: Mayor Bryan Shupe

IN ATTENDANCE: Councilpersons Arthur Campbell, Lisa Ingram Peel, James Burk,  
Owen Brooks Jr., Douglas Morrow and Katrina Wilson

City Manager Eric Norenberg, Police Chief Kenneth Brown and  
Deputy City Clerk Christine Crouch

COUNSEL: City Solicitor David Rutt, Esquire

ABSENT: Councilmembers Christopher Mergner and James Starling Sr.

*Carlisle Fire Company Report*

Joe Mriss was present on behalf of Carlisle Fire Company. He recalled back in June as the City was preparing its budget, they presented some information on the various expenses the company uses the money received from the City.

He is presenting a breakdown of some of the costs incurred throughout the year, specifically on the ambulance side.

Mr. Mriss referred to the following report, stating this covers the first six to seven months from this fiscal year:

AMBULANCE PROFIT/LOSS 2018  
1 July 2017 - 22 January 2018

Income

|                     |                |
|---------------------|----------------|
| Ambulance Billing   | 330,871        |
| Appropriations      | 85,702         |
| <b>TOTAL INCOME</b> | <b>416,573</b> |

Expenses:

|                                 |                |
|---------------------------------|----------------|
| Salaries                        | 210,799        |
| Payroll Taxes                   | 16,699         |
| Employee Insurance              | 19,523         |
| Ambulance Billing               | 25,487         |
| Ambulance Supplies              | 6,814          |
| Ambulance Maintenance           | 9,343          |
| Training/IT                     | 678            |
| Fuel                            | 5,600          |
| Money for replacement Ambulance | 40,000         |
| <b>TOTAL EXPENSES</b>           | <b>334,943</b> |

Net Profit 81,630

|                                   |       |
|-----------------------------------|-------|
| Ambulance Calls (same time-frame) | 1,804 |
|-----------------------------------|-------|

MAJOR PURCHASES THIS YEAR

|                    |        |
|--------------------|--------|
| Ambulance Building | \$270K |
| Update SCBA        | \$325K |

|                         |     |
|-------------------------|-----|
| JANUARY Fire Calls      | 74  |
| JANUARY Ambulance Calls | 320 |

|                     |     |
|---------------------|-----|
| YTD Fire Calls      | 74  |
| YTD Ambulance Calls | 302 |

Mr. Mriss indicated the \$81,680 net profit is not a realistic figure as that is most likely going to change in the future.

He noted that the ambulance calls during this time (July 2017 - January 2018) is a little more than 1,800. In 2007, there were just over 2,000 ambulance calls for the entire year; in 2012, the company was slightly below 3,000 calls. Based on those figures, they anticipate ambulance calls this year to run between 3,200 and 3,300 or 250 to 260 per month.

From the first of July through the October 2017, there was only one full-time employee, in addition to the Company's secretary. One full-time EMT covered the ambulance and everyone else is a part-time employee.

They have since added a supervisor and are preparing to hire a second full-time employee to ensure the best coverage Monday through Friday 24/7.

Ambulances are presently being rotated every seven years because of the high mileage and use. They do not have long transport times to the hospital in town; however, 200 plus ambulance calls per month add up. The cost for an ambulance is approximately \$200,000.

The cost of the new building will be approximately \$270,000. An order was just placed for all new air bags to meet today's standards that are estimated at \$325,000. Profits are also eaten into by overtime and additional employees.

They have met with the City Manager and Mayor on several occasions to inform that the next three budget years, or between now and 2021, a new ladder truck will need to be purchased at the cost of \$1 million.

Mr. Mriss noted that the small profit made on the ambulance side will need to be saved for these future expenses.

He also noted that the Company continues to maintain a volunteer name though the EMS side is paid coverage in order to meet the community's demands. The expenses should be compared to what the Police Department experiences in regard to equipment and personnel expenses throughout the year.

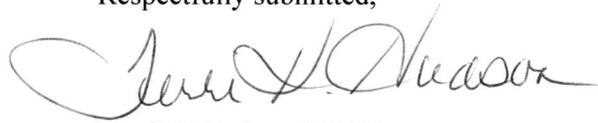
Concluding, he emphasized the Fire Company relies heavily on state funding, county funding and fund drives.

Councilman Burk confirmed their intent is to remain volunteer; Mr. Mriss stated yes, aside from the ambulance because of the round-the-clock coverage that is needed.

Mayor Shupe thanked Mr. Mriss on returning and educating Council on how busy the Fire Company is as well as the associated costs. He noted Milford is fortunate to have such a dedicated and reliable Fire Company.

The Workshop Session concluded at 6:58 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Terri K. Hudson". The signature is fluid and cursive, with a large, looping initial "T".

Terri K. Hudson, MMC  
City Clerk/Recorder

MILFORD CITY COUNCIL  
MINUTES OF MEETING  
February 26, 2018

Milford City Council held Public Hearings on Monday, February 26, 2018 in the Joseph Ronnie Rogers Council Chambers at Milford City Hall, 201 South Walnut Street, Milford, Delaware.

PRESIDING: Mayor Bryan Shupe

IN ATTENDANCE: Councilmembers Christopher Mergner, Arthur Campbell, Lisa Peel, James Burk,  
Owen Brooks Jr. and Katrina Wilson

City Manager Eric Norenberg, Police Chief Kenneth Brown and Deputy City Clerk Christine Crouch

COUNSEL: City Solicitor David Rutt, Esquire

ABSENT: Councilmembers Douglas Morrow and James Starling Sr.

Mayor Shupe called the Public Hearing to order at 7:00 p.m.

Planning Director Rob Pierce was also present.

*Bayhealth Medical Center Inc. for a Preliminary Major Subdivision  
168.48+/- acres in an I-S District  
Wilkins Road & State Route 30  
Tax Map 3-30-15.00-058.00*

Mr. Pierce reported the application was published in the Milford Beacon on December 27, 2017. All properties within 200 feet of the parcel received a copy of the Public Notice in the mail.

The property is currently designated Employment in the Comprehensive Plan and zoned Institutional Service District.

The applicant proposes to subdivide the 168 +/- acre parcel into two parcels of land to separate the hospital use from the remainder of the uses on the health campus. Lot one, the site of the new hospital/medical facility, contains approximately 39 acres. Lot two consists of approximately 128 acres of vacant land to its south. A road through the property will divide the two areas.

Staff has reviewed the application for compliance with Chapter 230 Zoning and Chapter 200 Subdivision of Land and determined that all requirements have been met.

The Planning Commission recommended approval at their January meeting by unanimous vote.

Councilman Brooks asked if the City talked to anyone about a new bypass going to the hospital or in that area. Planner Pierce referenced the recently adopted Comprehensive Plan that recommends working with DelDOT to consider an east-west connector solution that would provide access from US Route 113 to the health campus.

However, that was only discussed at the Comprehensive Plan level; some informal conversations with DelDOT have occurred over the past few months in an attempt to work out a possible transportation solution from US Route 113. He recalled it was one of the goals in the recent Comprehensive Plan though everything is all very preliminary at this point.

Planner Pierce explained this could involve some inline improvements to assist vehicles accessing the hospital from the western side of Milford. He then reiterated these are all preliminary conversation stages and a possible concept of the future. DelDOT will need to do a lot of studies and research before anything can be considered.

Councilman Brooks asked if Planner Pierce had an idea of where it would begin and end; Mr. Pierce responded by stating

no, it is all too preliminary at this time.

City Manager Norenberg stated that in a letter sent about a month ago regarding the Comprehensive Plan, included in his Friday update to Council, stated the City of Milford felt the connection needed to be considered again because it had been put on the shelf several years ago. However, there are no specific options or plans and will start at the beginning to review the possibility.

Councilman Brooks asked if the City of Milford started it; Mr. Norenberg stated that is correct though it had been discussed in the past.

Mayor Shupe added that DelDOT had called some of the local legislators on the state and local level. They were reminded of the conversation many years ago and asked if there was any interest in starting the conversation again. Everyone agreed there was no harm in discussing it particularly because the hospital is developing in that area though that was not a consideration previously. However, at this point, there is not even a date scheduled for a formal discussion.

City Solicitor Rutt stated that he received a call from Bayhealth's attorney and asked that the site plan shows easements and utilities that match the Economic Development Agreement previously entered into. He asked that Mr. Rutt make that comment on their behalf though it appears there is not a lot of overlap.

Planner Pierce pointed out that this is just the preliminary major subdivision though they will be required to submit a final record plan. In the meantime, they are working out some of the details in terms of easements for City utilities and ensuring there are easements and agreements in place for the maintenance of stormwater. Presently lot one conveys onto lot two for stormwater management. He is hoping to work that out over the next month or so and anticipates returning with their final subdivision approval in the next couple of months.

Planner Pierce noted this is in conjunction with the Site Plan Review by the Planning Commission for the Nemours Building on lot two. That is a permitted use site plan and only needs review and approval by the Planning Commission.

Greg Moore of Becker Morgan Group and Bayhealth's Mike Messing were both present.

Mr. Moore confirmed the plan presented by the Planning Director is accurate to what Bayhealth is doing. The hospital will maintain the entire property and they are trying to separate the hospital from leased-parcels that will happen in the future. The first will be the Nemours project whose plan has already been submitted, though they are not connected other than they are the hospital's first leased entity. However, that will only be seen by the Planning Commission as Planner Pierce alluded to.

There being no further questions from City Council, Mayor Shupe opened the floor for public comments. No one responded. The public hearing portion of the meeting was then closed.

Councilmember Wilson moved to approve the Bayhealth Medical Center Incorporated application for a Preliminary Major Subdivision of 168.48+/- acres in an I-S District at Wilkins Road & SR 30, Milford, Delaware. Tax Map 3-30-15.00-058.00, seconded by Councilmember Burk. Motion carried by the following 5-0-1 roll call vote with Councilman Morrow abstaining because he is on Bayhealth's Board of Directors.

Councilman Campbell votes yes to approve the Preliminary Subdivision as a result of the Planning Commission's recommendation and tonight's comments.

Councilwoman Peel votes yes adding that it makes sense and is part of the next step of delegating the entities the property will be leased to.

Councilman Burk votes yes adding that it meets all the criteria in our codes.

Councilman Brooks votes yes adding it is much needed.

Councilwoman Wilson votes yes based on the Planning Commission's recommendation and the needs of our community that this will address in time.

ADJOURNMENT

The Public Hearing adjourned at 7:12 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Terri K. Hudson". The signature is fluid and cursive, with the first name "Terri" being the most prominent.

Terri K. Hudson, MMC  
City Clerk/Transcriber

MILFORD CITY COUNCIL  
MINUTES OF MEETING  
February 26, 2018

A Meeting of Milford City Council was held in the Joseph Ronnie Rogers Council Chambers at Milford City Hall on Monday, February 26, 2018.

PRESIDING: Mayor Bryan Shupe

IN ATTENDANCE: Councilpersons Arthur Campbell, Lisa Ingram Peel, James Burk,  
Owen Brooks Jr., Douglas Morrow and Katrina Wilson

City Manager Eric Norenberg, Police Chief Kenneth Brown and  
Deputy City Clerk Christine Crouch

COUNSEL: City Solicitor David Rutt, Esquire

ABSENT: Councilpersons: Christopher Mergner and James Starling Sr.

#### CALL TO ORDER

Mayor Shupe called the Council Meeting to order at 7:12 p.m.

#### INVOCATION AND PLEDGE

The Pledge of Allegiance followed the invocation given by Councilmember Wilson.

#### RECOGNITION

##### *Milford Police Department Recognition*

Chief Brown recognized the following individuals:

Captain Lewis Sacks of Carlisle Fire Company  
Sergeant Robert Masten  
PFC Niger Golding  
Dispatcher Valerie Springer  
Detective/Corporal Timothy Maloney

Chief Brown reported that Officer Joles made a traffic stop in the Milford Plaza on Saturday, February 17, 2018 at approximately 11:00 a.m. The driver was wanted and became resistant to the arrest and began to physically resist the Officer. Captain Sacks saw the altercation and assisted with restraining the driver until further backup arrived.

Chief Brown presented Captain Sacks with a Certificate for going above and beyond in helping with the apprehension of a local fugitive.

Chief Brown then reported that next officers had already received their awards, but he wanted additional public recognition.

Sergeant Robert Masten was presented the Milford Elks Lodge 2401 Police Officer of the Year on February 16, 2018. Sergeant Masten began his career in 2002 and was promoted to Sergeant in December 2015. He is presently the School Resource Officer who supervises two other SRO's. He is also in charge of the Community Policing Unit. He also maintains the Department's social media pages 24/7 and is in constant communication with Chief Brown which is the reason Sergeant Masten was selected for this award.

Patrolman First Class Nigel Golding was awarded Officer of the Quarter for the last quarter of 2017. He received that award because he volunteers for a lot of extra duty and always steps up when he is needed. He is a true ambassador to the Police

Department with the Downtown Merchants and is often complimented by them.

Dispatcher Valerie Springer was awarded the 2017 Civilian of the Year for her dedication to the department because of the amount of time she puts in. She always filling in for someone who is unavailable which often involves double shifts.

Dispatcher Springer also provides animal welfare services to animals in need and most recently nursed an injured owl back to health. She is an all around dedicated employee.

Detective/Corporal Timothy Maloney is Milford Police Department's 2017 Officer of the Year. Detective Maloney was also awarded the second Officer of the Quarter in 2017. He was chosen out of four officers who receive quarterly awards.

Detective Maloney goes above and beyond, is a great investigator always willing to handle what comes his way according to Chief Brown. He makes himself available to patrol units for information and advice. He is also the Department's representative at Delaware Special Olympics and heads the Department's Relay for Life Team. In addition, he is also a Public Information Officer.

Chief Brown then introduced his newest recruits Patrolman Kyle Breckner and Patrolman Brett Malone who began training at the Delaware State Police Academy in September 2017 and graduated February 16, 2018.

Patrolman Breckner is also an active Air Force Reservist and Patrolman Malone completed his Master's Degree this past spring. He worked last summer as a Rehoboth Beach Seasonal Officer. They are presently in the 12-week field training program at the Department.

Chief Brown then asked to have photos taken.

#### COMMUNICATIONS AND CORRESPONDENCE

Mayor Shupe referenced the Notice to Qualified Voters in the City of Milford announcing that special voter registration times are scheduled on February 28, March 8 and March 24, 2018. The information is available on the City's website or people may call the City Clerk's Office who can confirm someone's eligibility and/or voter status.

#### UNFINISHED BUSINESS

##### *Authorization/Green Energy/City Fund Amendment*

City Manager Norenberg reported that a few weeks ago, the Public Works Committee met and one item discussed was the recommendation from the Public Works Staff and DEMEC related to the Green Energy Fund.

The City of Milford Green Energy Fund was implemented on January 1, 2007 pursuant to the Delaware Renewable Energy Portfolio Standards Act. This policy enabled Milford to establish an independent, self-administered fund separate from the state's Green Energy Fund, to support energy efficiency technologies, renewable energy technologies or demand side management programs. To date, Milford customers have received grants for 19 photovoltaic and 23 geothermal projects.

This program was discontinued at the end of 2017 in favor of a better free option offered by the United States Energy Star Program mainly due to the number of applicants and long waiting list to be funded.

The City of Milford is building its account up again and currently has \$22,055.59 in the Green Energy Fund. DEMEC recommends the City of Milford shift its focus from individual grants to supporting community wide energy improvements such as LED streetlights or municipal building climate system upgrades. Those items will benefit the entire community and match a similar path taken by several other DEMEC members.

Councilmember Peel moved to authorize support of the community-wide project for Green Energy Funds, seconded by Councilmember Morrow. Motion carried.

*Schedule/Joint Public Works & Finance Committee Meeting*

Mayor Shupe asked the members of this committees to let him know if they are available March 19<sup>th</sup> to discuss the Capital Improvements Plan.

## NEW BUSINESS

*DNREC Mosquito Control Agreement*

Councilmember Wilson moved too approved the annual Mosquito Control Agreement for spraying services in Milford, seconded by Councilmember Burk. Motion carried.

When asked about the time frame, Mr. Norenberg advised that anyone can sign up through the statewide website and notifications will be provided via email or text if their zone(s) are scheduled for spraying that evening. In addition, notices are typically added to the City website if received early enough during the day.

*Opioid Crisis Discussion*

City Manager Norenberg advised that there has been a lot of attention given to the opioid crisis and how the products are being produced by various pharmaceutical companies.

Jamie Nutter introduced himself stating he is an attorney with Parkowski, Guerke & Swayze, P.A., with offices in Dover, Rehoboth Beach and Wilmington. Along with Marc J. Bern and Partners, a New York-based firm, they have been retained by and are representing local jurisdictions in Delaware which include the City of Dover and Kent County. They are engaged in lawsuits against the manufacturers and distributors, prescribers and/or the pharmacists who have been the most egregious in fueling the epidemic. It is an epidemic because more than 300 Delawareans died in 2006 from overdoses and more than 42,000 people nationally.

Mr. Nutter reported that the rate of overdose deaths in Delaware exceeds deaths by car accidents.

Of the slightly less than one million people in Delaware, last year there were 860,000 opioid prescriptions issued in Delaware with a total of more than 50 pills per person prescribed. That includes those that use and those that do not but does not include all the illicit opioids available through the market.

He noted this the first time he has presented this in an open session though it is intended to be informative and that no action be taken this evening.

He reported that Kent County Levy Court commissioners agreed to bring a lawsuit against the pharmaceutical industry, alleging it has played a major role in the current opioid epidemic.

The decision to retain legal representation was made in a 5-1 vote at the county's Tuesday meeting. Kent County first responders spoke at one of their meetings sharing that they had been dispatched to almost 700 overdose incidents last year.

According to the National Institute on Drug Abuse, more than 115 Americans die from opioids every day.

Commissioners retained Parkowski Guerke and Swayze P.A. and Marc J. Bern & Partners who has been involved in several opioid-related suits. The litigation will be brought at no cost to the county unless a settlement in the case is reached or the lawsuit is won.

Dover City Council announced its plan to do the same earlier in February — retaining the same legal team. Kent County and Dover joined in the national trend of municipalities, counties and states bringing suits against large pharmaceutical companies.

He then referred to several handouts (see packet) involving litigation and associated payouts as a result of the abuse of

prescription opioids.

Mr. Nutter pointed out there are medical uses for which opioids are appropriate including post traumatic surgical procedures, particularly for cancer and end of life care. However, the medical community was misled about the safety of opioids when used to treat chronic pain for longer than twelve weeks.

Between 2015 and 2016, Delaware saw a 40% increase in overdose deaths which is considered statistically significant. Delaware has one of the highest opioid prescribing rates in the Country is shown on 2012 Prescribing Rate Map.

Mr. Nutter then spoke about the role of small local jurisdictions and the reason they are bringing litigation and lawsuits. He explained that many local jurisdictions are heavily affected by the crisis and have decided to take action. It has been analogized to tobacco litigation. However, the opioid crisis impact to local jurisdictions is unique because they do not have the medical resources needed to properly respond. It has societal and economic implications that are profound. It is destroying the fabric of these communities in many ways, causing havoc to their budgets. The head of Sussex County EMS confirmed they also responded to more than 700 calls last year for opioid overdoses.

Though he is unable to provide the economic analysis of how certain things that can be attributed to litigation, they believe that litigation has a beneficial impact in that it is already changing the behavior of the companies and manufacturers. He referenced one company has stated they will stop marketing the drug to US Doctors and will no longer have a sales force that is contacting doctors to solicit their business and request they prescribe Oxycontin as opposed to other drugs.

He emphasized there are other drugs that are not as addictive that offer pain relief.

Mr. Nutter explained these suits are important to help combat the ongoing opioid crisis. Aggressive marketing has flooded the state with highly addictive drugs under a false pretense that the risk was very low. Grant money is being allocated for opioid addition treatment and recovery programs. However, they are funded through private entities and not the manufacturer or distributor who has really profited. The litigation will hopefully force them to despar the massive amount of money they made and force them to change their marketing and informational campaigns being used to induce doctors and prescribers to turn to this as a first choice treatment as opposed to a more conservative treatment approach.

Highmark recently announced they will no longer pay for a new patient, first-time user any longer than a seven-day supply.

The attorney emphasized these are some changes as a result of the much needed attention and litigation. He added that Delaware is number one in the Country in the rate of high dose opioid prescriptions, number two for prescribing of extended release prescription opioids and has a neonatal abstinence syndrome three times the national average. In addition, it estimated that about 32,000 people use prescription opioids for non-medical purposes.

He reported that the litigation is brought under a no-cost basis for any town or jurisdiction interested for a straight contingency. Costs are only recoverable if there is a recovery or financial settlement.

Mr. Nutter concluded by stating that the litigation is more personal to his law firm. The firm's Founding Partner Mark Bern's 31-year-old son died of an opioid dosage as a result of a shoulder injury and was provided pain medication which he became addicted to. There are estimates that as many as 80% of today's heroin users started with prescription medications.

When questioned, Mr. Nutter reported that this involves all ages, all demographics, incomes, etc.

Mayor Shupe asked what the money recovered from the litigation is used for in terms of damages; Mr. Nutter stated the amount of grants, policing and emergency responses. For example, Narcan or Naltrexone are direct damages. There are also indirect damages such as simulation of the tax base. The CVS has placed a value on every dose and the loss of that person as a productive member of society though that is more difficult to quantify. In Delaware, damages do not have to be named up front. In most cases, a forensic economist would come in to look at the budget and what is being paid, the tax revenue, the rate of delinquency and see if there is any statistical correlation to be found.

Perspective relief can also be considered and what the City will need in the future to meet this crisis. Even if there were no

opioids around today, there is still a segment of the population that is addicted and struggling with addiction and going to need services.

Councilwoman Peel asks if that includes implications for the School District in the special ed services that are provided for the children who are born addicted. Mr. Nutter said he is unsure if that has been made a direct damage at this point though he has seen that in Delaware, of the more than 1,000 new students, 80% classify as special ed which is significant though it needs to be more on a State level.

City Solicitor Rutt then questioned Mr. Nutter.

He asked how many total jurisdictions the New York firm Mr. Nutter works with has across the country. Mr. Nutter stated more than fifteen in Pennsylvania, many in South Carolina, some in Delaware and some in Virginia. He said there are more than 3,000 counties in the United States where individuals are so deeply involved at this point, that by the end of the year, approximately 85% will be pursuing something.

Mr. Rutt said of this firm, asked if it is 50; Mr. Nutter said he does not want to misspeak, but knows that in Pennsylvania there are more than 15 and in Delaware there are two as well as multiple cases in South Carolina and Virginia.

Mr. Rutt asked how many total across the county have joined in this litigation; Mr. Nutter explained they would bring their suits in either New Castle or Sussex County Superior Court. They believe the people of Kent and/or Sussex County should determine the damages.

Mr. Rutt confirmed that it would not be brought in federal court to be consolidated with the other litigation in Cleveland; Mr. Nutter stated that is one avenue that others are going to, though it is not his firm's preferred choice, because they believe there are active negotiations ongoing. At some point, a global settlement will be reached which will be brought down to the local level as well. The State of Delaware has filed in Delaware Superior Court and a lot of individual jurisdictions are filing within their own State Courts though the manufacturers want everything brought in front of one judge to try and reach a global settlement more quickly. However, his firm believes the best way to maximize recovery and impact for local communities are through that community's state court.

Mr. Rutt asked who would be the defendants and whether it is the individual drug companies or advocacy groups like Pharma, Cardinal Health, etc. Mr. Nutter explained the individual manufacturers and distributors, all of which have already paid fines and/or substantial settlements with government entities. Some pharmacies have also been named in Delaware's complaint. Eventually the individual doctors may be involved.

Mr. Rutt said that one theory of recovery would be misrepresentation and asked if there are other theories of causation or is that being advanced in the litigation that has been filed; Mr. Nutter stated yes, there is consumer fraud action, an individual cause of action under the Delaware Consumer Fraud Act. There are other actions though they are limited to action by the Attorney General.

Mr. Rutt stated that Mr. Nutter referenced damages and some are not hard fast damages adding that Milford does not provide emergency medical such as ambulance services. The City's expenditures in this situation would probably only be the Police Department. To quantify that, he asked if it would be necessary for the City to look at what was expended by the Police above and beyond the normal routine work the officers provide.

Mr. Nutter responded by stating there is a definitely a tie-in between how the population has grown versus how the number of police officers has grown. One of the theories of defense is that the government has a duty to perform these essential government services anyway and therefore, there are no damages and is one of the defendant's potential arguments in the case of local governments.

The support for organizations like Carlisle Fire Company and if they have grown in a statistically significant manner and the effect on their funding is being used along with a host of other things that will need to be examined.

Mr. Rutt asked if the City would have to do an analysis first to provide data to the forensic economist and in fact, spend its

own time and expense to provide this information. Mr. Nutter noted that most of the budgetary and historical data is available to the extent there would be a collaborative relationship where they would anticipate the laboring work while working with someone in the town to provide the information.

Mr. Rutt explained that he is trying to find out the expectation of the City in the litigation because the client does not just sit there and let it happen in front of them. Instead the client must be involved so there is a need for input from the client and what does his firm expect from the City and staff to provide; Mr. Nutter said they would work together to pin down a division of labor. The purpose tonight was to bring more of an introductory aspect and to engage input. If there is interest in moving forward, he would be able to answer a lot of those questions more fully. But basically, they cover everything.

Mr. Rutt asked what the percentage if there is a recovery; Mr. Nutter stated 25%. Mr. Rutt then confirmed if there was no recovery, there would be no cost. Mr. Nutter agreed adding that is inclusive of costs that are advanced.

Mr. Rutt said if there is a recovery, how would the costs be determined and would it be the hourly rate of the forensic expert or a shared cost across all plaintiff recovery; Mr. Nutter explained that some jurisdictions have suggested they want their own but if they depose one doctor who was the opinion leader and pay for the video taping of the deposition that is used in all of the cases, it would only be that proportional share.

Mr. Rutt asked if one forensic expert will be used for everyone or would there be a forensic expert for each individual jurisdiction; Mr. Nutter answered that they would use one individual forensic expert most likely, though he was suggesting more on the deposition side or in relation to the larger carrying costs associated with all the claims common to the litigation.

There being no further questions by Mr. Rutt, Mayor Shupe thanked Mr. Nutter for providing the information.

#### EXECUTIVE SESSION

Councilmember Peel moved to go into Executive Session reference the below statutes, seconded by Councilmember Wilson:

Pursuant to 29 Del. C. §10004(b)(4) Collective Bargaining Matters  
Pursuant to 29 Del. C. §10004(b)(9) Discussion of Personnel Matters

Motion carried.

Mayor Shupe recessed the Council Meeting at 8:11 p.m. for the purpose as is permitted by the Delaware Freedom of Information Act.

*Return to Open Session*

Council returned to Open Session at 9:12 p.m.

*MPD Teamsters Negotiations*  
*Performance Evaluations (Council Appointees)*

Mayor Shupe announced that no action was required.

#### ADJOURNMENT

There being no further business, Councilmember Burk moved to adjourn the Council Meeting, seconded by Councilmember Campbell. Motion carried. The Council Meeting adjourned at 9:13 p.m.

Respectfully submitted,



Terri K. Hudson, MMC  
City Clerk/Recorder