

MILFORD CITY COUNCIL
MINUTES OF MEETING
December 26, 2012

A Meeting of Milford City Council was held in the Joseph Ronnie Rogers Council Chambers at Milford City Hall on Wednesday, December 26, 2012.

PRESIDING: Honorable Mayor Joseph Ronnie Rogers

IN ATTENDANCE: Councilpersons Steve Johnson, Garrett Grier, III, S. Allen Pikus,
Dirk Gleysteen, Owen Brooks, Jr., and Katrina Wilson

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

City Solicitor David Rutt, Esquire

CALL TO ORDER

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

PUBLIC HEARING

Mayor Rogers reported that the Public Hearing for the proposed Hickory Glen Subdivision and Conditional Use has been cancelled because the application, submitted by Eric Dunn of Dunn Development LLC on behalf of Walter N. Thomas II, was withdrawn on December 4, 2012.

INVOCATION AND PLEDGE

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

RECOGNITION

No special guests in attendance.

COMMUNICATIONS & CORRESPONDENCE

None.

UNFINISHED BUSINESS

None.

NEW BUSINESS

Approval/Project Agreement/Delaware Land Water Trust Fund/Milford Can-Do Playground (Parks & Recreation)

Parks and Recreation Director Gary Emory reported that he applied for a \$180,000 grant with matching funds (\$140,000 from the city and \$40,000 from Milford Rotary) and received approval.

Mr. Pikus moved to approve the Project Agreement, seconded by Mr. Brooks. Motion carried.

Waiver of City Charter Requirements for Bid Process/Milford Can-Do Playground

City Solicitor Rutt announced he wished to make a disclaimer statement. He stated that he has been working on this project himself and has been in charge of the committee for some time.

The first item he is addressing is the waiver of the city charter requirements. He asked council to be assured he has looked at this from the perspective of the city and not from the perspective of the playground because the last thing he wants to do is get the city in trouble on this issue. He explained that DNREC agreed to permit, if council agreed, a sole source bid procedure. They agreed that if the contracts met the criteria, the matter could proceed in that manner.

He said that Section 3.01 of the City of Milford Charter (Procurement Provision) gives all powers possible for a city to have under the constitution and laws of the State of Delaware as though they are specifically enumerated. Section 3.01(B) states the city can enter into contracts for the purchases of supplies for any municipal project. Then it states that public competitive bidding shall not be required if the contract is serviced to the state or any other political subdivision or professional services or contracts of less than \$30,000.

Mr. Rutt explained this does not fit those three specific items. However, Section 3.02 states the powers of the charter shall not be construed as limiting the general power stated in this article. He said in other words, the general power of a municipality or a state agency to do sole source bidding.

He referenced a specific provision in Delaware Code (29 Del. §6925) that states a contract can be awarded for materials without competition if the agency head (Parks and Recreation Director Gary Emory in this case) prior to the procurement, determines in writing, there is only one source for the required material.

Mr. Rutt asked if the existing playground equipment at the site was constructed by Gametime and the intent is to incorporate that into the overall project; Mr. Emory stated yes. Mr. Rutt also pointed out that Gametime notified the city that if another competitor or another company were to add on or modify it, all warranties would be waived. In addition, there would be warranty problems with the new company as a result. Thereby, the city would risk losing all warranties on the equipment on both sides of the project.

Mr. Rutt further explained there is a procedure in place and he is assuming Mr. Emory looked into it. He asked him to confirm that Gametime informed him; Mr. Emory stated yes.

Mr. Rutt said he did some legal research and found some case law and several regulations under state and federal law that if an acquisition requires a brand name description or proprietary description or a feature to maintain the contract integrity, sole source bidding is permitted. The rationale is the government's needs should not be compromised simply to achieve competition.

In Mr. Rutt's opinion, the city charter, state laws and decisions or regulations promulgated under that allows the city to use sole source bidding to enter into these contracts.

Mr. Gleysteen asked why Gametime did not have the type of equipment needed to bid on this project; Mr. Rutt explained the proposal is from Gametime. He said there are four or five other companies that provide this type of equipment. This is a very specialized type equipment because of its construction which allows impaired children and children without impairments to use the same equipment. What currently exists is not handicapped friendly and would need to be modified. Some portions will even need to be split and modified into other aspects of the overall design.

Mr. Gleysteen asked if the equipment being installed will be challenging enough for children without disabilities; Mr. Rutt stated absolutely. He said the closest similar playground is in Alapocas Run State Park in Wilmington. He has personally observed children playing and can assure Mr. Gleysteen there are features suitable for both impaired children and those who are not.

Mr. Emory then stated the city will design, purchase and maintain this. He said the purchase of the equipment is important because there is a lot of Rotary money involved which is another faction of this project as far as bidding out

the installation though that will occur later. However, the city is involved in the design. The intent is to get the equipment, the discount, the warranty and delivered to the site in order to meet the March deadline. Later, there will be installation costs involved and another contract based on the Rotary's involvement.

Mr. Gleysteen asked what is the warranty; Mr. Emory deferred to Erik Retzlaff noting that DBF has been working on the project from the beginning. Mr. Retzlaff said he believes there is a lifetime warranty on the metal parts and a shorter warranty on the plastic materials which may be twenty years.

Mr. Rutt noted that the Wilmington Can-Do Park is approximately five years old and their equipment will be updated and improved. He added that as new designs are created, they can be replaced. He explained that lifetime warranties are typically around thirty years.

Mr. Pikus then questioned the security of the park at night noting that this site is away from town and in a somewhat remote area though it is in the business park and near a residential area. He asked if Mr. Emory is planning to install security cameras in the area. Mr. Emory said it is not a lit area though the electric department will be providing some lighting at the parking area. The Boys and Girls Club is active in the evening and there has been zero vandalism in this area so far. There have been some minor issues at the playground behind Parks and Recreation but that only occurs during Little League season. He is willing to manage that.

Ms. Wilson said her grandchildren use the park on a regular basis and she is very comfortable leaving the children there to play while her sister and her use the walking path.

Mr. Gleysteen said the fields are currently used for soccer and asked what will happen to them once this playground is built. Mr. Emory said it will only minimally impact the exterior of the existing playground. The other fields will not be impacted.

Mr. Gleysteen noted the DTF grant is \$180,000 though Mr. Emory stated was a \$140,000 match by the city and \$40,000 match by the Rotary Club. He questioned the project description which stated that \$242,000 was being provided by area Rotary Clubs. Mr. Emory explained that is the total funding available to date. Of that, \$40,000 will be provided to the city and \$200,000 will be left to complete the project. He feels the project is well within budget, but believes the Rotary will continue their fundraising efforts to cover the costs of the plaques and landscaping.

Mr. Gleysteen asked for clarification noting the total project cost is \$562,000. The DTF and local grant is \$360,000 which leaves \$202,000. Mr. Emory said the city is only able to request from the state what was requested. The city asked for \$180,000 and got \$180,000. The city had to show the \$180,000 match though the entire project is \$562,000. He is confident there is that much more money available through the Rotary Club.

Mr. Rutt explained the Can-Do Committee has raised over \$250,000. A large part was grants (Longwood Foundation, McDonalds, Welfare Foundation, Crystal Foundation). Each Rotary Club has also provided money and fundraising continues. They are not concerned with the balance because they are still in the fundraising mode and still waiting to hear back from several grants. Some have asked them to re-apply. When they did the budget, they did a wish list though they understood that everything could not be met based on the monies received.

He explained that buying the equipment and having the design work through government funding, then having the Rotary contract the installation, eliminated any prevailing wage issues. Had any of the other money been used for prevailing wages, the costs would have doubled.

Mr. Pikus moved to waiver the city requirements for the bid process for the Milford Can-Do Playground, seconded by Mr. Brooks. Motion carried.

Approval of Gametime Proposal/Playground Equipment

Mr. Retzlaff presented the proposal to cover the costs of furnishing and delivering the equipment, safety surfacing accessories and site furnishings for three separate playground areas as depicted in the West Recreation drawings. The proposal includes the delivery of all equipment to Silicato Park once the site preparation is completed. Installation services will need to be contracted.

Mr. Gleysteen asked the total contract price; Mr. Rutt stated \$215,747.94. Mr. Pikus confirmed the maintenance of the land around the playground will be handled by Milford Parks and Recreation. Mr. Emory stated yes, noting there are some preventive maintenance measures in place including designed drainage that will help. They are using the company that designed the current park where there have been no problems. They will add this park to their maintenance schedule and foresees no issues as a result.

Mr. Rutt advised that each of the Rotary Clubs has committed to service days where someone from Parks and Recreation will direct them on what is needed. By handling in that manner, there will be no maintenance costs to the city.

Mr. Brooks moved for approval of the Gametime Proposal for the Playground Equipment, seconded by Mr. Grier. Motion carried.

Approval of Gametime Proposal/Surfacing Project

Mr. Retzlaff presented the second proposal advising this covers the supply and installation of safety surfacing, poured-in-place rubber surfacing and play sand as depicted in West Recreation, Inc. drawing. He explained rubberized surface is a specialized material and must be installed by a certified installer. The total contract price is \$94,446.

Ms. Wilson moved for approval of the Gametime Proposal for the Surfacing Project in the amount of \$94,446, seconded by Mr. Brooks. Motion carried.

Approval of DBF Proposal/Playground Site Design

Mr. Retzlaff then presented a proposal on behalf of Davis, Bowen and Friedel to provide the design services needed for the playground work. He stated that a fairly detailed survey is required of all the walking surfaces to ensure they are ADA compliant. A design and review of the stormwater will determine whether drainage improvements will be needed. Overall, the contract covers Preliminary Engineering Services, Topographic Survey Services and Site Design and Permitting Services.

The package will then be given to the Rotary Clubs for them to solicit bidding. They will provide budgetary amounts and charge for their time as their donation toward the project.

The total contract price is \$28,000.

Ms. Wilson moved for approval of the DBF Proposal for the Can-Do Playground Site Design as submitted not to exceed \$28,000, seconded by Mr. Grier. Motion carried.

Mr. Rutt thanked council for approving the contracts noting that the reason they had to be approved in 2012 is because Gametime or West Recreation, which is their distributor, stated that if the contracts were approved this year, that would eliminate price increases and they would receive some additional discounts. As a result, approximately \$25,000 to \$30,000 was saved by approving before the first of the year.

Approval of DBF Proposal/SCADA Upgrades

Mr. Retzlaff recalled two council meetings ago, there was a grant awarded to the city to evaluate the SCADA system at the different water sites. This proposal is a follow up and authorizes DBF to proceed.

Mr. Pikus confirmed this involves the \$17,500 grant from the Drinking Water program; Mr. Retzlaff stated yes.

Mr. Pikus moved to approved the DBF proposal, seconded by Mr. Gleysteen. Motion carried.

Adjourn

With no further business, Mr. Pikus moved to adjourn the meeting, seconded by Mr. Grier. Motion carried.

Council meeting adjourned at 7:40 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Terri K. Hudson". The signature is written in a cursive style with a large, sweeping initial "T".

Terri K. Hudson, MMC
City Clerk/Recorder