

*MILFORD CITY COUNCIL*  
MINUTES OF MEETING  
*November 14, 2011*

The Monthly Meeting of Milford City Council was held in the Joseph Ronnie Rogers Council Chambers of Milford City Hall, 201 South Walnut Street, Milford, Delaware on Monday, November 14, 2011

PRESIDING: Mayor Joseph Ronnie Rogers

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

City Manager David Baird, Police Chief Keith Hudson and City Clerk/  
Recorder Terri Hudson

City Solicitor David Rutt, Esquire

CALL TO ORDER

Mayor Rogers called the Monthly Meeting to order at 7:01 p.m.

INVOCATION AND PLEDGE

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

APPROVAL OF MINUTES

Motion made by Mr. Brooks, seconded by Mr. Pikus to approve the minutes of the October 10, October 12, October 17, October 24 (council meeting and workshop) and November 1 Committee and Council Meetings as presented. Motion carried.

RECOGNITION

No special guests in attendance.

MONTHLY POLICE REPORT

After presenting the monthly police reported on behalf of Chief Hudson, Mr. Morrow moved to accept the police report as submitted, seconded by Mr. Pikus. Motion carried.

CITY MANAGER REPORT

Mr. Baird then read into the record the following report:

Solid Waste & Recycling-

In 2010, SB234 was signed into law and part of the legislation establishes diversion rates of 50% by January 1, 2015 for Municipal Solid Waste being disposed of at the landfill. The tables below compare the City's diversion rate by month with the same period of the previous year as well as year to date and annual totals.

	Solid Waste	Curbside Recycling	Igloo Recycling	Yard Waste	Total	Diversion Rate
Sept 2010	384.78	37.83	41.52	-	464.13	17.1
Sept 2011	368.29	50.41	23.94	52.47	495.11	25.6%

	Solid Waste	Curbside Recycling	Igloo Recycling	Yard Waste	Total	Diversion Rate
2009	4,684.38	442.44	545.68	-	5,672.50	17.4%
2010	4,630.47	450.12	505.82	37.49	5,632.39	17.6%
2011 (YTD)	3,143.51	358.21	328.13	285.14	4,114.99	23.6%

**Impact Fee Waivers-**

Since the waiver of impact fees was implemented in June 2010, the City has waived \$332,523 in fees. This waiver has allowed property owners in Milford to retain this money and has helped to support a total investment of \$17,168,038 (based on building permit values) during the months of June 2010 through October 2011.

**I&I Construction Work Continues-**

Construction work continues on the I&I project with the bulk of the work being completed by Teal Construction. Over the past two weeks, the focus of their work has been on N. Washington Street.

**10<sup>th</sup> Street Water Tower Cleaning and Painting-**

Residents are now able to see the progress on the 10<sup>th</sup> Street Tower. Approximately 50% of the Tower has been painted and crews are expected to return this week to complete the painting, weather permitting.

**Electric Rate Analysis-**

Mr. Kumar has prepared a number of options for the City to consider and I feel there are 3-4 that are worthy of more consideration. With this said, I am planning a time for Mr. Kumar to come to Milford and present the options to a committee comprised of the Chairman of the Public Works Committee, Finance Committee and Economic Development Committee to review and make a recommendation to the full Council. The meeting will be open to everyone and I will advise of the date and time once it has been established.

**Wawa Settlement-**

City Solicitor Rutt advised he received the fully signed contract from Wawa; he received all the signatures from the city prior to the meeting. He noted that the settlement should occur before the end of this week.

**Public Referendum—Washington Street Water Plant-**

The City will be holding a public referendum on Saturday, Nov. 19 from 12pm to 8pm at City Hall for the purpose of voting on a loan to reconstruct the existing water plant and office building on Washington Street. The proposed project cost is \$4,000,000 and will be funded through the Drinking Water State Revolving Fund. Upon loan closing the State will forgive \$1.4 million (35%) of the loan leaving a loan balance of \$2.4 million with 1% interest to be paid over 20 years. Water user rates will not have to be increased as a result of this project. Anyone registered to vote in the City election is eligible to vote in the referendum.

Ms. Wilson moved to accept City Manager Report, seconded by Mr. Brooks. Motion carried.

**COMMITTEE REPORTS**

*Community Affairs-*

Chairman Johnson reminded council the Holiday Stroll is Friday, December 2<sup>nd</sup>. City Hall will be decorated and a couple of groups will provide entertainment.

*Economic Development-*

Chairman Grier advised the Advisory Panel will provide a presentation later this evening. He acknowledged Chair Valenzulez and panel members and thanked them for their effort and time in helping out our city.

*Public Works-*

Chairman Brooks advised that Police Committee Chairman Morrow met with Chief Hudson and City Manager Baird regarding the one/two hour designated parking areas on Walnut Street. It was agreed the matter will be presented to Downtown Milford President Irv Ambrose to survey the downtown merchants for their input. Chief Hudson plans to have his police officers also discuss the matter with the staff at the State Service Center.

*Christmas Dinner-*

Mr. Starling reminded council that his church will again provide free Thanksgiving and Christmas dinners to the community. He appreciates anyone able to donate time or items to these efforts.

COMMUNICATIONS

All communications included in packet.

UNFINISHED BUSINESS

*Certification of Voter Registration List/November 19, 2011 South Washington Street Water Plant Referendum*

Mr. Pikus moved for certification of the November 19, 2011 Voter Registration list, seconded by Mr. Grier. Motion carried with no one opposed.

NEW BUSINESS

*Utility Agreement with MBT Land Holdings LLC*

City Manager Baird recalled that city council ratified the MBT Land Holdings agreement on October 24, 2011. He reported that since that time, Economic Development Director Carmean was informed the agreement was unacceptable. In addition, Mayor Rogers, council members, Mr. Carmean and City Solicitor Rutt received a related letter dated November 7, 2011. A copy of the letter is included in the council packet.

He reported that November 10, 2011 was the deadline for the MBT agreement; the agreement was then signed on behalf of Mr. Fannin and delivered to Mayor Rogers that afternoon.

Mr. Baird advised that since that time, he has informed council members the agreement had been signed though he planned to discuss it this evening. He then deferred to the city solicitor for additional information.

City Solicitor Rutt explained the proposal council adopted two weeks ago was a contract of an offer to MBT. He reported that MBT sent a letter rejecting the offer and making a counteroffer. He said that under the law, once that counteroffer and rejection has been made, there is no longer a contract to accept. Therefore, the offer is no longer available for MBT to accept. However, council can ratify the document or offer. However, at this point, the acceptance under the law is not effective.

Attorney James Griffin of Griffin and Hackett stated he represents MBT Land Holdings LLC. He noted that the LLC was formed March 16, 2011. He said that with all due respect to Mr. Rutt, he has a different view of the matter. He referenced the letter from Mr. Rutt, dated October 25, 2011, stated the agreement will be valid until 4:30 p.m. on November 10, 2011. If Mr. Fannin did not execute the agreement prior to that time, the terms of the agreement would become null and void and there would be no obligation of either party.

Mr. Griffin said it is true that Mr. Fannin did send the letter with different terms. The counteroffer was not accepted so his view of the law is that a counteroffer that is not accepted dies, for lack of acceptance, rejection, etc.

Mr. Griffin said he goes back to Mr. Rutt's letter and the agreement, both of which state the agreement shall be valid until November 10, 2011. He feels that Mr. Fannin executed the agreement, within the legal time frame, thereby making it a two-part agreement because it had already been approved by the city.

He emphasized that the over the past couple of years, the city has been working on a master plan that recommends the water tower be placed on Route 1 on the Mills property or that vicinity. He is also aware that DNREC has advised the city that the aquifer is on the Mills and Isaacs property.

He stated that council approved this location on October 24<sup>th</sup> because they were convinced that was the right place for the water tower. Mr. Griffin asked council to consider that fact. He said if council still believes the water tower should go on the Mills Farm, he does not think we should be rankling about the counteroffer that rejected. It was open for acceptance by Mr. Fannin until 4:30 p.m. on November 10, 2011 and accepted by that date and time.

Mr. Griffin said that the agreement was signed by Mary Ann Fannin instead of Elmer Fannin because he was out of state at that time. Mrs. Fannin is a member of the LLC, and Mr. Griffin has the document which gives her the right to sign the agreement. He stressed it is a valid agreement executed by an authorized member of the LLC.

He encouraged council to put the water tower on the correct site. By the LLC member signing the agreement, Mr. Fannin has indicated he is willing to follow the conditions of the agreement. The conditions are for the successful results of the test well program on the Mills farm for both water quantity and quality as determined by the city and approval by USDA for the installation of future water facilities.

Mr. Griffin noted that if the conditions are not met and the USDA disapproves the project, then other possibilities will need to be investigated.

The attorney concluded by stating that Mr. Fannin has accepted the agreement and is willing to donate 6.5 acres and easement over the fifty-foot road. He is unaware of a special meeting when council would have withdrawn his prior approval of this agreement. Because it was signed and returned prior to the deadline, all the conditions were followed.

Mr. Brooks asked why the signed agreement was not delivered to city hall. Mr. Griffin said he believes it was given to the mayor to ensure it was accepted by an authorized representative of the city before 4:30 p.m. The next day was a holiday and city offices were closed.

Mr. Brooks pointed out that most business occurs in city hall; Mr. Griffin said the agreement did not stipulate that location for its return.

Mr. Brooks also noted that originally, the agreement stated 5:00 p.m. but changed to 4:30 p.m. because that is the time city hall closes.

Mayor Rogers confirmed he received the agreement after 3:00 p.m.; Mr. Baird added that city hall was closed Friday and he was informed on Saturday.

When asked the status of the easements, Mr. Baird advised the easements needed to connect where the water stops to the Mills Farm have not been obtained. They are required to be in place before the loan is approved by the USDA.

Mr. Brooks is concerned that nothing could be happening again this time next year. Mr. Grier stressed that will not happen and reminded council the project was stimulated only a month ago though it had been sitting idle for more than a year. His problem is council was unaware of this possibility until today.

Mr. Grier said he received the letter from Mr. Griffin which persuaded him to consider another plan. He feels it is important to have a discussion that includes any and all correct information.

Ms. Wilson agrees that clarification is needed. Mr. Morrow questioned the easement and its relation to the loan. Also, if the well testing comes back positive, it appears we may need to negotiate the easements. If that cannot be worked out, that scraps the entire project for now.

Mr. Baird stated that if we are unsuccessful in the second round of negotiations and end up with no connection, we will

need to go farther south and come up Sharps Road which is not within the budget.

Mr. Pikus recalled the discussion between our economic development committee chairman, economic development director and Mr. Fannin. Mr. Grier and Mr. Carmean were under the impression everyone was on the right page at that point. He asked the reasoning behind the rejection letter, which was followed by a signed contract being submitted.

Mr. Griffin advised he was not at the meeting and must act on the information provided. He repeated that Mr. Fannin sent the letter, changed his mind, then accepted the offer made within the required time frame. He feels the focus should be on where the city feels is the best place for the water tower. He said when council approved the offer, it was agreed it should be placed on the Mills property. If something else has occurred, they should be informed. Otherwise, the master/comprehensive plan states it should be on that site with everything falling in place as it should.

When questioned, Mr. Baird stated it does support the comprehensive land use plan and master plan.

Mr. Griffin pointed out that if it is not placed there, the land as it was zoned is unusable. The owners of those properties that were annexed may have an argument they are not getting services. He noted the annexations are somewhat of a promise that city services will be provided.

Mr. Grier asked what needs to be done; the city manager said a status needs to be given on the second property (Hall). He explained that Mr. Rutt has been handling the associated negotiations. He advised there are several owners—Mr. Hall, his two sons and the contractual owner, Mr. Bolis. Mr. Rutt confirmed that all four have executed the agreement.

Mr. Baird explained that this gives the city the ability to proceed with no further negotiations. This agreement allows the city to proceed with the full project. He advised that at the October 24<sup>th</sup> meeting, council agreed that if Mr. Fannin was not in agreement, the second option would be presented for action tonight.

Mr. Baird confirmed that all easements (including those on other properties) must be obtained for this to occur on the Mills farm. Mr. Griffin restated the agreement was signed by the LLC which is owned by the Fannin family. He stated he is unsure who prepared the utility agreement though it may have been Mr. Rutt. The utility agreement only addresses the test well. He feels that was probably based on the results of the test well. If the test well is successful, the agreement has been secured for 6.5 acres to be donated for the well site and easement (right of way) to get to it.

He noted he did not prepare the agreement which did not address all the easements between the terminus of the present city water and the tower site, and they accepted what the city provided. He assumes those will be done in the same manner as is normally done. If someone does not agree to the terms through negotiations, they can be obtained through condemnation.

Mr. Pikus said he was under the impression we would be granted all easements. Mr. Baird explained that was in the original proposal. Mr. Griffin explained there are a number of land owners involved.

Mr. Rutt noted that Mr. Griffin's letter to him dated November 7, 2011 states Mr. Fannin's position has been consistent and has not changed. He has made it clear on a number of occasions that if the city should grant him usable monetary credits equal to the appraised value of the land and easements he offered to transfer to the city and agrees to install water and sewer lines to the tower site during the Southeast Expansion Project he would adhere to the three conditions that followed.

Mr. Rutt said the question is how this would be done; the answer is the city will have to grant Mr. Fannin monetary credits equal to the appraised value of the land. Mr. Griffin said that is one possible method adding it would be acquired like any other easement between the municipality, county or state and private property owner. He said the process requires the land to be appraised and the appraisal has to be presented to the land owner through the process of negotiations. The easements not acquired through negotiation will follow state law which specifies the method of acquisition is condemnation.

Mr. Gleysteen stated that a couple of weeks ago, council unanimously agreed this was the direction we should go. He does

not feel there is anything unusual about a counteroffer being presented. He said it happens all the time and he believes they are simply trying to improve their position. He said that was turned down after which they agreed to the terms originally presented by the deadline. He said that other than having a second option on the table, he does not see anything that has changed from this being the city's first choice.

Mr. Baird said he agrees though once Mr. Fannin informed the city he would not agree with the proposal, they began negotiations in good faith with the second property owner. They have proceeded to the point where all those parties have signed which is before council tonight for ratification.

Mr. Gleysteen pointed out that negotiations were also started with the second party before the deadline for the contract. Mr. Baird said only after the offer was rejected.

Ms. Wilson then commented. She stated that council is considering their constituents and is why a little more time may be needed because of the new information council is receiving this evening.

She thanked Mr. Fannin for considering this agreement though she was confused by the letter stating he was rejecting the agreement and why negotiations began with the second property owner. However, she agrees it was always their intent to go with the first option on the Mills farm.

Mr. Grier asked if this should be tabled noting this is a major investment. In his opinion, this is a shotgun type approach which is not how this should be handled.

Mr. Gleysteen agrees asked for the city engineer's opinion. Mr. Baird advised that Randy Duplechain at Davis, Bowen and Friedel has handled the matter for the city. He asked if Mr. Duplechain wants to discuss this tonight. He also asked if council wants to hear this tonight or would rather wait until they have time to digest it.

Mr. Brooks asked that Mr. Rutt reiterate what he stated at the beginning of the meeting. He believes he said that when Mr. Fannin rejected it, the contract became null and void.

Mr. Rutt stated that is what he said. He referenced a 2007 case in the Chancery Court of Delaware—Centreville Veterinary Hospital versus Butler-Baird. He noted that Vice Chancellor Parsons stated that once an offer has been rejected, the offeree no longer has the power to accept and cannot revive the offer by tending acceptance.

Mr. Rutt stated that the Vice Chancellor Parson has properly stated it and has cited 'Restatement (Second) of Contracts that once an offer has been rejected, there is no offer. He said if council wishes to accept and go with the MBT Land Holdings LLC offer, the city would have to vote to ratify that. Mr. Rutt said it is a different vote than saying we want to make an offer.

At this point, Mr. Rutt feels there is no offer on the table and Vice Chancellor Parsons restated that in 2010 in a lengthy decision that "in order to constitute an acceptance, a response to an offer must be on identical terms and must be unconditional. A response to an offer that is not on the identical terms constitutes a rejection of the original offer."

Mr. Grier asked if both can be accepted; he feels in that manner council is not leaving without a site. In the meantime, Mr. Carmean can continue to work on it as was directed by his committee. He said that is the only option he can think of because he is unwilling to make a decision on one or the other site at this point.

Mr. Rutt advised Mr. Grier not to accept both because the city would then have two contracts. He explained that both parties could then require the city to drill a test well.

Mr. Grier emphasized there have been meetings after meetings on this one topic. He agrees the city decided and stated on numerous occasions that the Mills farm was the best location. He explained this is needed for economic development purposes in addition to other reasons. Though it is \$700,000 to \$800,000 more, the city is gaining a substantial amount of infrastructure in the ground east of Route 1. The water tower will be out of sight and it opens the possibility for many

new jobs. He noted this is part of the master plan and its construction can coincide with the overpass being built.

Mr. Grier agrees we can build the water tower on the Hall property and stub water up east of Route 1, but this extends the water into what is a very developable area. He pointed out that if we decide to extend these utilities to the Mills farm, the Hall property will still be served with water.

Mr. Brooks said that in 2008, the city held a successful referendum for this purpose. The money has been sitting for almost four years. If a decision is not made soon, the money will be gone.

Mr. Griffin then said if council tables this decision, he asked that both be tabled so that all options are left open.

Randy Duplechain of DBF then commented on the benefits of one site versus the other. Mr. Duplechain stated that from an economic development standpoint, Mr. Grier said it correctly. For future development and the ability to have water on property that is potential development, the Mill property is the location that would provide the maximum benefit in relation to economic development.

Mr. Duplechain stated from a financial standpoint in relation to placement and initial expense, the Hall property is a less costly alternative for several reasons. He explained that instead of extending 10,000 feet of water main to the Mills property, only 3,800 feet will be extended. The Hall property is approximately 15 to 20 feet higher in elevation, so there is another cost savings in the height of the tank.

Regardless, he feels the tank can go anywhere in the southeast area. They have run water system models for the entire area. He recalled a discussion related to aesthetics and whether it should be in a prominent location or in a more secluded, wooded area. The Hall property would be a more prominent location; the Mills property would be in a wooded area off Route 1.

Mr. Duplechain emphasized that the location for the water, treatment facility and tank can go anywhere in the southeast area.

Mr. Gleysteen asked about the quality of the wells on the different sites; Mr. Duplechain said they have not done test wells at either site so that cannot be answered until that is completed which is the first step in the process. Three years ago they did a test well across the street from the Hall property and the water quality and quantity turned out well; they expect similar results at the Hall property. However, they are unsure of the results at the property east of Route 1.

Mr. Duplechain confirmed it is less expensive to place it on the Hall property; he then added that depending on where you stop the water main, it will cost somewhere between \$.5 million to \$.75 million. He explained this would tie into the West Shores subdivision next to Hearthstone though the connection between the two has never been made. Therefore, the water main will be tied back into Hearthstone. He explained there are some cost discrepancies that involve some easements along Wilkins Road which have not yet been secured. The water main will most likely end up in the right of way which is more costly due to pavement restoration and similar issues.

Mr. Brooks said he has discussed this for four to five years; he emphasized the importance of getting this project done considering the many others that need to be addressed.

Mr. Grier agrees with Mr. Brooks but feels that additional information is needed to make this decision.

Mr. Duplechain then explained that when the Hall property is developed, the water main will need to be extended at either the city or developer's expense.

Mr. Grier agreed the Mills farm was always option 1. This provides an opportunity to run water out to this site which could open the door for many new jobs which can ultimately change our local economy. Mr. Brooks agreed noting the \$15 million referendum was passed almost four years ago and the money is still sitting there. We have another referendum for more borrowing this Saturday and nothing has happened with these previous projects.

Mr. Grier assured Mr. Brooks he will not allow this to die. Mr. Grier recommends a special meeting be scheduled to allow time for additional information to be obtained.

Mr. Duplechain said that Mr. Rutt stated that both agreements cannot be accepted even though the water quality and quantity are unknown on either site. He understands it will cost more money to do both sites, but recommends council consider that. A decision can be made based on the outcome. He said that will keep the project moving.

Mr. Brooks asked how much it will cost to do both test sites; Mr. Duplechain said \$25,000 more. Mr. Rutt said if both sites test positive, both parties can say it tested positive and require the tank be built on their site. Mr. Duplechain said the one agreement did not require the facility be built on their site though it addresses the test well and donation of property. He said if something occurs east of Route 1, one of two wells will not serve the entire area anyway. Additional wells will be needed depending on the size of the development.

Mr. Baird asked how long it will take to install the test well and get results; Mr. Duplechain said depending on the contractor though he anticipates three weeks to a month.

Mr. Grier asked Mr. Rutt's opinion; Mr. Rutt stated his concern is the intent to have a tank and storage facility on the land. If both come back positive and the city chooses one, the other party could argue that their site meets the criteria and because they are willing to donate the land, the city needs to place the tank there.

Mr. Duplechain then added that we still need to get USDA's approval before they approve the site and that all easements must be in place. He said that part of the battle over this has been how to obtain the easements. If we do not get the easements, the property becomes non-viable whether water is available or not.

Mr. Duplechain noted that they were trying to get easements from Mr. Fannin for water and sewer in that area which was a stumbling block in many of the cases.

Economic Development Director Carmean then addressed council stating he has been involved in this for a few weeks. Two weeks ago there was no site and now we have two sites. He does not want council to leave here tonight with no site. Mr. Carmean asked the city solicitor if he was sure that if we hit water on the Mills property, we were required to place the tower there according to the agreement Mr. Fannin signed. He did not interpret the agreement in that manner.

Mr. Rutt then reread the agreement. The solicitor explained the agreement states the city would install a well; in exchange for the installation of the well, the owner agrees to deed the property to the city and donate the right of way. That is contingent upon the well program or successful results of the well and approval by USDA of the Mills farm for installation. He said it does not require a tank to be installed.

Mr. Carmean stated to that point, he has been involved with both parties and has known Mr. Hall a long time. He feels he is smart enough to realize he is donating his land. He recommends that be voted on tonight and council accept his proposal. He said that tomorrow, Mr. Hall may learn he would have gotten water right in front of his land without donating anything. He may question why he was asked to give up four or five acres if the water will end up in front of him anyway.

He noted that initially, the tower was going in not for growth, but because we needed the supply, storage and pressure on that end of our community. He highly recommends council end this meeting without making a decision on one of the sites. He agrees there are some concerns with regard to the easements to the Mills farm. With a second option, the only risk is that the city will pay for a test well on the Mills farm. If that test well is successful and a decision is made to put the tower and treatment plant there but the easements are not obtained, the city has only lost the cost of the test well. At that point, the city can proceed on the Hall property.

Though there will be additional cost for testing both sites, the potential benefits of economic development must be considered.



He asked Mr. Rutt to consider recommending both agreements be approved.

Mr. Rutt then stated that council can accept both agreements though it is a risk. In addition, council could make it a conditional acceptance.

Mr. Baird agrees with Mr. Rutt there is a risk noting the Hall agreement states that in return for allowing the test well, subparagraphs 2, 3 and 4 state there will be a minimum of one production well and associated treatment facility on the property, one elevated storage tank and associated mains. As a result, he feels that is a hard commitment.

Mr. Carmean again emphasized that he feels the Halls will not push donating 6.5 acres of their land for a water tank if they know they can still obtain water services. He agrees the agreement was written to require the city to build the tank on their site if it tested properly.

Mr. Garrett asked why that provision was in the Hall agreement but not in the Mills Farm agreement; he feels they should mirror one another.

Mr. Carmean said he has been directed by council to find a location for the water tower and finalize the deal. He reiterated that both agreements are ready to be signed; however, if we are unable to obtain the easements, we will not be able to place this on the Mills farm site despite the fact it was our first choice.

Mr. Duplechain then added that if the southeast area of Milford grows as is proposed, the city will need multiple well sites and multiple wells. He believes that two well sites will be an advantage to the city in the future as development occurs.

Dave Markowitz of 8 East Thrush Drive, Meadows at Shawnee, stated that he does not know how to make a decision on two options without at least a cost benefit analysis as any business would require. He asked council to think like a business and act like a business and consider that option.

Ms. Wilson asked if the associated documents related to the referendum provided the cost analysis; Mr. Baird explained we know the cost of the two options and have discussed the pros and cons of each. He said in the long term, they will be about the same. He said location will not have an impact on the long term costs. Mr. Duplechain alluded to the elevation of the property having a slight savings on the higher elevated land during the initial construction though that is not a deal breaker. He agrees that both sites are viable.

The city manager said from a cost standpoint, the differences have been discussed and \$500,000 to \$750,000 is realistic. From a long term operating cost standpoint, both sites are very similar with an additional 6,500 feet of water main which will eventually be used to serve properties as they are developed. As a result, it will be installed either now or in the future.

Ms. Wilson then referenced Mr. Carmean's comments and asked for confirmation it is possible to accept both. She said it may be a little risky because of the language relating to the water tower in the Hall agreement.

When discussing how quickly a decision can be made, Mr. Brooks said we need all the facts. Ms. Wilson said the problem is council was just informed about this other option today.

Mr. Grier asked if we approve the Hall agreement, are we required to install all three items on their land; Mr. Baird replied that council has not yet approved that agreement so it can still be amended. However, he noted it was negotiated in good faith after the city received the letter from Fannin stating their offer was rejected.

Mr. Rutt stated council could make a counter offer and change the terms of the Hall agreement. Mr. Brooks pointed out that in 2008, the citizens voted favorably in a referendum to do this project. Almost four years later, this is still being argued. Mr. Grier noted that in two months, there are two viable options on the table for consideration.

Mr. Brooks wants it done correctly to prevent any further legal action.

Mr. Rutt noted that there was an offer to MBT and a rejection. Since then, MBT has signed the contract which is being presented to council to accept or reject it. In the case of the Hall agreement, all parties have signed the agreement, though city council has not yet voted on it. Thereby, city council could state that the Hall contract could be accepted subject to the amended terms. It would then go back to the Hall property owners for their review and approval. The Hall agreement could also be accepted as written which contains provisions about the installation of the tank, well and water main extensions.

Mr. Griffin said he has not seen the Hall agreement and did know that it contained different terms. It appears to him, under Mr. Fannin's agreement, they bargained for the right to put a test well there. In the Hall agreement, the city bargained for that though they promised if the test well proved out, the city would install these other three things. He said the city can keep the options open by doing a test well on both, though he is unsure why that is necessary when the city now has the preferred site and the additional test well will cost another \$25,000.

In his opinion, it makes no difference the opinion of a judge in relation to a rejection and its effect. He said the agreement has been signed and this land is now available for use by the city. Council has the right to waive any objections even if it were a rejection. It can be revitalized by saying that is what we will do, However, if council wants the extra backup and are willing to spend an additional \$25,000, council does not have to accept the Hall offer as signed. Instead, a motion could be made to authorize the city's representative to return to Mr. Hall with a counteroffer and amend his agreement to read just like the MBT agreement.

Mr. Morrow asked Mr. Baird to explain why the agreements are different; Mr. Baird advised that Mr. Hall's agreement is similar to what was proposed to Mr. Fannin originally a year ago and was rejected. There were negotiations that took place and a different agreement created. They tried to accomplish everything in the Hall agreement to prevent any further negotiations. This would streamline the process so it could proceed.

Mr. Baird said the language is consistent in both agreements in item A(1):

Installation of one test well for the purpose of determining the water quality and long term production capacity of the aquifers at the Hall property. Results of the water quality capacity testing will be the basis for determining the feasibility for installation of the additional improvements listed below.

The city manager asked if that language is strong enough to allow the city to determine whether it is feasible or not to choose one site over another.

Mr. Rutt said that the water quality and capacity is an engineering question. They will need to determine if it would fit the needs of the installation for the water system improvements.

Mr. Baird stated that both agreements allow us to proceed with test wells, but an engineer needs to determine which site is better. However, the Hall agreement contains additional stipulations which could be removed. He said that could allow both agreements be ratified this evening if council is comfortable with the language not committing the city to complete the improvements in A2-A4.

Mr. Brooks pointed out we have the signed Hall agreement and asked if we will offer MBT the same terms. Mr. Baird said Mr. Fannin was originally offered the same terms which he rejected. The amended agreement for MBT is the result of the discussions between Mr. Fannin and city officials.

Mr. Duplechain stressed that the key difference with the Mills property is the city cannot commit to a well, treatment facility and tank because the easements are not in place. At the time, Mr. Fannin was unwilling or unable to provide those easements. Because this would stay in DelDOT's right of way with the Hall property, the city has the ability to put those facilities there. If the test well comes in, he feels there is no problem with getting the water main extended to the property and facilities so it can be connected into the city system.

He said if the test well comes in on the Mills farm, that does not ensure the ability to put the tank and treatment facility out there because there are no easements.

When asked, Mr. Rutt confirmed that council has the right to accept the MBT contract. There was concern expressed about the lack of easements needed to place the improvements on the MBT property.

Mr. Grier said the agreement was amended because the bank needed a positive test well. After a positive test well and a commitment for the water tower, the bank needed to release the easements because it impacted the Mills farm, Isaacs farm and other properties. Therefore, there are other entities involved including other banks. As a result, Mr. Fannin was unable to commit easements without the positive results.

Mr. Griffin recalled that council approved the MBT contract two weeks before because that was the preferred site. Mr. Pikus explained it was predicated on getting the test well approved and all the state and federal agencies to accept it. However, in order for the city to do a test well, a commitment was needed.

Mr. Baird also reminded Mr. Griffin that council has had reservations from their previous commitment and the response he prepared for Mr. Fannin which suggested some doubt.

Mr. Griffin said if the city is no longer interested in the MBT site, they need to be informed and the conversation will end. However, the agreement was signed and has been presented to council for action.

Mr. Baird then reported that in October of 2010, an agreement was prepared for Mr. Fannin addressing the exact items noted in the Hall agreement. That was denied and refused by Mr. Fannin. Subsequent conversations have taken place over the past 30 days where the agreement was broken up and made weaker in order to move forward.

The consensus of council was to keep both contracts active; Mr. Pikus asked Mr. Rutt if that can be done legally noting there are some issues that need to be cleared up adding that he is confident Mr. Grier's committee will ensure that.

Mr. Pikus asked for Mr. Rutt's help with a motion. Mr. Rutt asked if council wants to accept the Hall property without amendment; Mr. Gleysteen and Mr. Pikus said no they want it accepted with proposed amendments. Mr. Rutt said that would be a counteroffer to the Halls which would have to go back to them for further review and approval.

Mr. Rutt said council can move to accept both contracts but if one needs to be amended, that constitutes a counteroffer to MBT or Hall and would have to go back to them.

Mr. Baird referenced the language in A(1) stating that will be the basis for determining the feasibility for the installation and asked if it is really necessary to amend the Hall agreement. He said additional decisions will be made by the city based upon the test results. Mr. Rutt agrees noting that Mr. Duplechain explained why the other conditions were in the agreement and that the city does not need subsequent easements because every thing is in place to proceed with a valid test. He said the engineering decision is a condition. The results will become the basis for moving forward with the improvements.

Mr. Gleysteen moved to accept the MBT Land Holdings utility agreement as originally offered and is now signed. Mr. Rutt explained that this action would not be needed if they had originally signed the agreement, but because of the rejection and the agreement now being signed, it needs to be accepted in order to become a valid agreement. Mr. Johnson confirmed that this motion does that; Mr. Rutt stated yes.

Ms. Wilson seconded motion. Motion carried by the following 7-1 vote:

Yes-Grier, Pikus, Gleysteen, Brooks, Morrow, Starling, Wilson  
No-Johnson

Mr. Johnson votes no adding that he feels council needs to listen to our city solicitor though keep our options open.

Mr. Grier votes yes based on this site being the first choice and having made it available which allows us to move forward.

Mr. Pikus votes yes noting we need to get the project moving and noted Mr. Brooks' concerns. He said we have an economic development committee dedicated to getting these programs moving and an economic development director

working hard toward this effort.

Mr. Gleysteen votes yes adding it is necessary for the economic development of the southeast portion of the city.

Mr. Brooks votes yes.

Mr. Morrow votes yes for the reasons stated.

Mr. Starling and Ms. Wilson vote yes.

*Utility Agreement with W. Nelson Hall, Trustee of Revocable Trust of W. Nelson Hall, Stephen K. Hall and Gregory D. Hall, Co-Trustees of the Irrevocable Trust of Dorothy I. Hall, All Owners in Fee, Gary W. Bolis, General Partner of Bolis Partners, LP, Equitable Owner*

Mr. Morrow moved to accept the Hall agreement with the elimination of subparagraphs A(2), A(3), A(4).

When asked about jeopardization, Mr. Duplechain stated those conditions were in the initial agreement on the MBT site. He said we have all the ability based on the discussions with DeIDOT to extend the utilities to this property. That is why he feels it is important that should the test well come in with the water quality, we move forward with the facilities there. His recommendation is to leave the conditions in.

Mr. Morrow moved to amend his motion to reflect Mr. Duplechains' comments and accept the agreement as presented. Mr. Brooks seconded the motion.

Motion carried by the following 7-1 vote:

Yes-Johnson, Grier, Pikus, Brooks, Morrow, Starling, Wilson  
No-Gleysteen

Mr. Gleysteen votes no because provisions A(2), A(3) and A(4) should be eliminated and both contracts should mirror one another.

*Introduction of Ordinance 2011-26/Approval of Borrowing/DWSRF Loan/Washington Street Treatment Facility*

The city charter requires that an ordinance be adopted to allow any borrowing.

Mr. Pikus moved to introduction Ordinance 2011-26, approving the DWSRF loan to fund the Washington Street Water Plant, pending a successful November 19, 2011 Special Election, seconded by Mr. Brooks:

*AN ORDINANCE AUTHORIZING THE BORROWING OF FUNDS TO FINANCE THE CITY OF MILFORD'S SCADA IMPROVEMENTS AND THE DEMOLITION AND RECONSTRUCTION OF THE WASHINGTON STREET WATER TREATMENT FACILITY PLANT AND OFFICE BUILDING LOCATED ON THE SAME SITE.*

*Section 1.*

*WHEREAS, the City Council of the City of Milford, Delaware ("Council") has been advised that up to \$4,000,000 is required to finance SCADA improvements and the demolition and reconstruction of the Washington Street Water Treatment Facility Plant and office building located on the same site.*

*Section 2.*

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

1. *The City of Milford, Delaware operates its public water system in accordance with the provisions of the State of*