

MILFORD CITY COUNCIL

MINUTES OF MEETING

January 12, 2009

The Regular Monthly Meeting of Milford City Council was held in the Joseph Ronnie Rogers Council Chambers of Milford City Hall, 201 South Walnut Street, Milford, Delaware on Monday, January 12, 2009.

PRESIDING: Mayor Daniel Marabello

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

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

COUNSEL: City Solicitor Timothy Willard

CALL TO ORDER

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

PLEDGE AND INVOCATION

Following the Pledge of Allegiance, Mr. Starling gave the invocation.

APPROVAL OF PREVIOUS MINUTES

Mr. Ambrose moved for approval of the November 24, 2008, December 3, 2008, December 8, 2008 and December 22, 2008 minutes as presented, seconded by Mr. Workman. Motion carried.

RECOGNITION

Kent County Tribute to SeaWatch, Perdue Farms and City of Milford

City Manager David Baird explained that on Monday, December 1, 2008, Kent County's Department of Public Works was notified of a force main break along Route 1 north of Milford. Upon inspection, the gravity of the situation was realized and over one and a half million gallons of wastewater had to be diverted.

According to Mr. Baird, the City of Milford assisted Kent County heavily. When contacted about the force main repair, both Sea Watch and Perdue agreed to halt operations at their Milford facilities, redirect production to other plants and adjust their production schedules. They did so at a significant expense to their operations, but as a result, less wastewater was spilled into the Mispillion River lessening the overall environment impact.

As a result, on Tuesday, December 16, 2008, Kent County Levy Court recognized Sea Watch International, Perdue Farms, Incorporated and the City of Milford for their willingness to assist Kent County and the Department of Public Works in a critical situation.

Mr. Baird reported that he, along with Councilman Morrow, in his role on council as well as Sea Watch, attended some follow-up meetings with Perdue, the county and DNREC to explore other options should this occur again. Kent County is looking at two options. One is to build a new force main from the city up to the treatment plant in Frederica. The other is to go into the areas where they suspect additional damage and repair those lines. They are leaning toward the construction of a new force main. This would benefit the city but also Kent County because the area where this force main would be placed is located within the growth area of the county's Comprehensive Plan.

Regardless of the option, it will come at a cost to the City of Milford because the lines primarily service the city. If they repair the current line, the city manager anticipates costs to be more or less around one million dollars. Those costs would need to be incorporated into the rate structure.

Mr. Baird advised that if the new force main is selected, the city will also need to participate in the costs in addition to new users coming into the system along with Kent County.

Discussions will continue with Kent County and once the information is obtained, he will share it with council.

Mr. Morrow added it is prudent upon the city to start a dialogue with the county. They emphatically said the City of Milford would fund the line because it solely serves the city. Depending on where it is located, there would be some growth money added. He suggested we support the county in the form of a letter.

Mr. Morrow said there is the possibility of some new funding that could be available over the next couple of years with the new administration. Though he agrees it is good for the city for potential growth and services, it will come at a cost. The county engineer stated the city will pay for the repair. In the meantime, the city needs to keep an eye on the sewer rates and stay close at hand with the county on each step and express any concerns while assisting them in the planning stages.

Mr. Morrow plans to attend the Levy Court meeting tomorrow at which time they will propose an option.

Mr. Brooks asked if any federal money is available; Mr. Baird said that will be checked into and Kent County does work on projects through the rural utility programs through USDA as does the city. The city manager concluded by saying that all indications are that any stimulus money for water and sewer utilities will be coming through the USDA loan and grant programs already in place.

POLICE REPORT

Ms. Wilson moved for acceptance of the monthly police report submitted by Chief Hudson, seconded by Mr. Brooks. Motion carried.

CITY MANAGER REPORT

Mr. Baird read the January City Manager report into record:

**S.E. Downtown Residential Neighborhood*

The second meeting with residents and property owners in this area will be held on Wednesday, January 28, 2009 at 6:30 p.m. This meeting will be a follow-up on the ideas that were raised by residents and property owners at the first meeting in December. Notices will be going out to residents over the next couple of days.

**FOP Collective Bargaining Agreement*

The FOP is in the process of preparing the final document for review and consideration by city council. As soon as the document is received from the FOP and reviewed by the city's labor attorney, I will be presenting the contract to city council for your consideration.

Mr. Baird advised he received the document on Friday. It is currently being reviewed by Mr. Baird, Chief Hudson and the city's attorney. After the review is completed, it will be placed on the agenda for consideration.

**City's Utility Rates*

I have prepared a rate comparison of the City's water, sewer, and electric rates for your use. Over the years, there has been a common misperception that the City of Milford's utility rates are considerably higher than other communities in the area. The information presented clearly indicates the City's rates are not the highest, in fact, they are extremely competitive.

**Federal Economic Stimulus Package*

The City has submitted a package of projects to our Congressional Delegation as part of a request for information from their offices as Congress works to develop an economic stimulus package. The City submitted over \$10 million of projects ranging from Electric System Improvements to Street Construction projects. The City will continue to work with SCAT, DLLG, and our Congressional Delegation for critical infrastructure projects to be included as part of any stimulus package.

**Milford v. Key Properties Group*

On December 31, 2008, Superior Court Judge Scott Bradley issued a decision in favor of the City in this case. You will recall this case involves the City exercising its condemnation authority for a utility easement through the lands of Key Properties Group at Hearthstone Manor that would allow a sewer connection between Hearthstone Manor and West Shores. Key Properties had filed a motion to dismiss this case subsequent to the City filing the suit. The ruling stated "Key's motion to dismiss the condemnation is denied, and Milford's request for an order of possession is granted."

City Solicitor Willard added the court ultimately found in the city's favor. Key Properties have thirty days to appeal which he has discussed with the defendant's attorney though nothing conclusive was discussed about the appeal.

Mr. Willard reviewed a couple of the issues involved in the case and the importance of adding action items to the agenda even though they stem from the executive session. It was ruled a sewer connection is a public use as the city always maintained. The other issue involved the note on the site plan which was an estoppel argument though the court ruled they had to be more explicit if they claimed the city waived their imminent domain.

Because of the appeal time, Mr. Oechsler asked if the work was unable to begin for thirty days; Mr. Willard answered no, the take position is very clear which allows the city to do what the order says. If the defendant was going to stop the city, they would appeal and ask for a stay. He said that because this makes a direct connection to another property owner, which in this case is a subdivision in the City of Milford, he and Mr. Baird need to discuss the next step. Mr. Willard provided the opinion to the owner of the subdivision who is very anxious to make the connection to the sewer.

Mr. Willard advised the next step in the condemnation action would be to challenge the costs.

Mr. Baird then followed up on some action taken in early November in regard to the issue of adding the six inches of topsoil into the subdivision ordinance. Specific details were being added to the standard specifications for the city.

The city manager reported that City Engineer Mark Mallamo is working on that and a draft will be shared with Mr. Spillane.

Mr. Baird recalled the city hiring a bankruptcy attorney in August and the concerns regarding his fees. The city received the first bill for services through November 30, 2008. Total fees were \$1,928.50 though the attorney provided a \$428.50 credit which left a balance due of \$1,508.42. Based on the eight or nine cases handled during this time, Mr. Baird feels the costs greatly justify the services.

He then referred to the rate comparisons included in the council packet. Referring to the electric rates in December of 2008, Milford ranks in the middle for residential usage at \$153.53 (1,000 kWh). Mr. Baird feels Milford is very competitive with its electric rates. He noted that the rate reflects the two cent purchase power cost adjustment in place at that time which has since been reduced. The January bills were approximately \$13 less than the December rate. December's rate was used because the other rates were unavailable for January.

The city also ranks in the middle at \$16.50 (5,000 gallons) for water rates. He referred to the two private providers, Artesian and Tidewater, which are substantially higher.

Mr. Baird also asked council to recall some significant rate adjustments that were needed to cover pending capital projects. As the work continues, there are no plans for any additional rate adjustments.

On the sewer side, a similar position is shown with Milford being very competitive at \$31.42 in comparison with other utility companies. There is a wide range of costs with the private services considerably higher.

Mr. Ambrose asked if these charts are shared with the two newspapers and respectfully requested they be printed so that residents and property owners are made aware of these costs.

Mr. Spillane asked Mr. Baird to call Middletown and find out how they are charging \$12.76. Mr. Baird said it is his understanding that a few years ago, they went into a public/private partnership on a treatment plant. That helped to subsidize

their costs and though Middletown owns some of the treatment facilities, they are selling a large part of their capacity and acting similar to a wholesaler which is bringing the user rates down.

Mr. Spillane said he has been asked by numerous people why Milford is not talking to Delaware Co-Op considering their costs of \$121.95. Mr. Baird said we can talk to them though some council members may have a better understanding because of past discussions with them. Those talks broke down because the way they were heading was not in the best interest of the city.

Mr. Ambrose explained the city would not have gotten the same rate they provide their customers and believe it would have been comparable to what is presently being charged. He said their lower rates are the result of being part of a nationwide network of rural electric systems. Compared to our short-term contracts, some of the Co-Op contracts that were signed five years ago are good through 2028, for example.

Mr. Baird added that Delaware Electric Co-Op purchases its power supply through a long term contract with Old Dominion Electric Cooperative signed several years ago. They also own a great deal of generation where DEMEC only has a small generation in Smyrna though it has made a considerable impact over the last few years.

Mr. Oechsler suggested a quarterly rate report be provided to prevent rumors that Milford has the highest rates.

Mr. Ambrose moved to accept the city manager report, seconded by Ms. Wilson. Motion carried.

COMMITTEE REPORTS

City Hall Assessment and Needs Committee/Lower Level Use by City Departments

Chairman Workman informed council that following the last meeting, the city manager was asked to provide some information in December. Approximately three weeks ago, Mr. Workman reviewed the documents but needed additional information which was provided prior to this meeting.

Mr. Workman will schedule a follow-up meeting with his committee. In the meantime, this item should be added to the January 26th agenda at which time their recommendation will be presented.

Mr. Baird added that he provided information to the other committee members and because Mr. Workman had concerns with some of the details included in the report, they agreed to make some corrections and follow up on the option at 209 South Washington Street.

UNFINISHED BUSINESS

Approval of City of Milford FY2007-08 Annual Audit

Finance Chairman Ambrose reviewed the annual audit referring to the financial highlights. He stated the city's total net assets increased throughout the course of the year which indicate a healthy city. The business type activity increased approximately \$4.63 million which was almost 15%. Governmental activities increased almost \$2 million or 8% which includes buildings, infrastructure improvements, etc.

He discussed the general or non-enterprise funds that total \$7.9 million. Tax revenues of \$4.1 million were generated and the difference comes from the transfers of rates, cables fees, cemetery fees, etc.

He also reported that revenues increased \$1.1 million and expenses increased \$1.3 million which is attributed to the higher than anticipated power purchase costs.

The results of the tests disclosed no instances of non-compliance or other matters required to be reported under Government Auditing Standards.

Mayor Marabello referred to an error in the reported tax rate of 41, which should be 46.

Because Smyrna and Middletown have surpassed Milford in population, Mr. Ambrose noted that Milford is now the sixth largest city in the state.

Mr. Oechsler moved for acceptance of the annual audit, seconded by Mr. Morrow. Motion carried.

Introduction of Ordinance 2008-14/Final Approval of City of Milford Comprehensive Plan

The city manager advised that Ordinance 2008-14 is being introduced this evening. The 2008 Comprehensive Plan is scheduled for adoption at the January 26, 2009 meeting. He asked that council review the draft prior to that meeting. A copy is available on the city website.

Mr. Spillane thought the state was going to come down and talk to council about the land east of Route 1. Mr. Baird said he will invite representatives from State Planning to attend the January 26th meeting. Mr. Spillane added that he has concerns about development on the properties east of Route 1. Mr. Brooks was under the impression the state preferred agricultural uses in that area.

Mr. Workman agrees they should attend because they have expressed different opinions throughout the process.

Mr. Baird referred to the state planning offices' comments that all certification items have been addressed and that they have accepted the plan for certification.

Mr. Spillane said his concern is it was to be farmland but can be sold off. If there are four homes and someone on this side can buy it and build twelve homes which turns into sixteen homes on this side. Mr. Baird explained it is classified as open space with low density and similar to a rural setting which may be four to six units per acre. The discussion was not to have density as is currently seen within the city limits.

Mr. Baird emphasized that the comprehensive plan only provides the general concepts and does not specify densities or land uses. Those decisions are later made by the planning commission and city council after the comp plan is adopted. He said the planning commission and council will take into consideration the guiding principals contained in the comprehensive plan though they cannot deviate from them.

Mr. Spillane does not want to see housing bought east of Route 1, then brought to this side which could result in twenty homes instead of ten or twelve in an R-3 zone. Mr. Baird believes Mr. Spillane is referring to transfer development rights. He explained that has not been adopted; the concept is included in the land use plan but there is no program in place at this time. Before the city can institute a transfer development rights program, council will have to take action which would include various reviews and public hearings before both the planning commission and city council.

Mr. Brooks hopes that once this comp plan is adopted, we will not see multiple changes as has been the practice in the past.

Outstanding Code Enforcement Matter/Key Properties Group

Mr. Willard followed up on the meeting between the city manager, Elmer Fannin, Attorney Jim Griffin and himself. He reported there are no longer disputes with the tax assessment issue which they have agreed to pay.

He advised the city manager wrote the property owner a letter regarding the sign on highway that was not permitted according to the annexation agreement that prohibited billboards. Their position is the dimensions of the sign is allowed in the zoning district and is permitted. Mr. Willard said those facts are true. He said the code also talks about signs located on a property that can identify the property but cannot be remote.

Mr. Willard said there was no agreement and they reiterated their position based on estoppel issues. They also indicated it is within the dimensions and is actually the same property owner. The solicitor feels it does not identify the property which appears to be the intent of the code.

The solicitor said there was also some discussion about some possible landscaping around it. As a result, the issue remains unresolved.

He reported that on the swale issue, they reiterated their position that when this was approved by conservation district and DNREC, the overall plan was approved and involved some significant considerations as far as infiltration which is slower, as opposed to a drain. Their concern seemed to be a global one. If the city fixes this, their concern is disrupting the whole system. If the city is willing to put new pipe in, they will need to take over the whole system. Because soil conservation has jurisdiction, they also want to see something from them indicating it is necessary.

Mr. Willard said they also reiterated their position that they have not had specific complaints about drainage from the residents of Hearthstone. If there are specific problems with drainage, they indicated they would fix them.

Mr. Willard feels it was a positive meeting. He said it is important to keep in mind that despite council's involvement, because this involves a code enforcement issue, and ultimately a decision made by a code official, there is a recourse and they have the ability to appeal to the Board of Adjustment and then to Superior Court.

The solicitor said the discussions were open and are still open. The facts on the sign are what they are; they were given the permit which meets the dimensions, however, it is not on the property but they have offered to landscape it.

Mr. Baird added that they have agreed to pay the taxes they owe as long as it is fairly assessed in comparison to other properties. He feels they are at an impasse with the sign issue because they did not reach any sort of consensus though the door is still open.

The city manager reported that on the swales, while Mr. Fannin disagrees this is the best thing to do for the city, he does not object to the city going in to install the pipe as long as it is done under the approval of the conservation district and that it will not have any adverse impact on the rest of the drainage system or development and that the city takes over ownership and associated maintenance responsibilities.

Mr. Baird said that comes back to a point where city council needs to make some decisions. He added it is similar to the position put on the table a year and a half ago. He does not think things have drastically changed from that point depending on what councils' interpretation is.

David Hitchens, the project manager for Key Properties then addressed council. He then read the following statement into record:

"He was present on behalf of Mr. Elmer Fannin who is out of town this week. Mr. Fannin asked him to share his feelings about some very important relationship issues.

There are many opportunities to create new jobs, support our local businesses and provide new revenue for the city. Mr. Fannin wants to reaffirm his desire to have a cooperative and productive working relationship with the city and the council in support of these worthwhile issues. Mr. Fannin supports the city's efforts to grow and prosper. His vision of economic growth mirrors that of the city. In these difficult economic times, we must all work together to improve the quality of life for the citizens of the Milford area.

He said we must focus our energy on bringing new jobs and affordable housing to our community. In order for our future relationship to be successful, we should promote a win/win environment with an open dialog on all issues.

Surely, 2009 and the future will be challenging for all of us, but together with a positive relationship, the desired outcome of our mutual goals will be successful.

We thank you for your time and look forward to working with you on our future projects."

Mr. Baird said that statement summarizes the position Mr. Fannin took during the meeting the first week of January. Mr. Baird feels the door remains open and Mr. Fannin constantly alluded to the fact that he wanted to improve relationships and is willing to move forward.

Mr. Oechsler expressed concern that there was no background information included in the packet for this item. His understanding is this includes the signs on the highway. His understanding is they paid to have one sign but not for the four signs he sees on the property. He referred to the \$15 permit sign fee and asked how the other three signs are allowed.

He also understands the property was deeded not to allow signs when it was annexed per the homeowners' association in Matlinds. They indicated that if any signs were allowed, they had to relate to Matlinds Estates and not Hearthstone Manor.

As a result of these issues and questions, he is very disappointed there are no related documents in the packet.

Mr. Oechsler also said that if there has never been a flooding problem out there, why does one house have a pump beneath it and Key Properties has had to install pumps beneath their town homes. He feels there is an obvious water issue and referred to the standing water currently in the area.

He understands we are trying to work with them, but taking two to three years to solve these problems is too long for something this simple.

Mr. Oechsler also wants to know where the city stands on tax assessments and asked if we charging them the assessments of the C-3, R-2 or R-3 zone or if they are being charged the agricultural rates.

Mr. Baird recalled that initially there was an inquiry from Key Properties Attorney Jim Caulfield inquiring about the tax rates at Hearthstone Manor. It came down to what Key Properties was responsible for and what Hearthstone Manor Homeowners' Association was responsible for. As they looked into that, they found inadequacies in the tax assessments. The city manager emphasized that what was found was not uncommon as similar issues were taking place in other areas either newly annexed or recently subdivided around the city. Those are in the process of being addressed by the city tax assessor. As they looked further, there were issues with the potential mall site which was annexed in with a C-3 zone. It was determined there was no tax assessment on the property.

The city manager explained that all properties were then reviewed. Since, the city tax assessor has assessed every property based on their current zonings and potential usages. All properties are now assessed correctly and we are working with Key Properties to ensure we are in agreement with their records as well as the county records.

Mr. Baird recalled the swale issue started with concerns that the swales on Clearview Drive were not built to city specifications. The plans were reviewed which resulted in what was originally part of the plan and what was not included on the plan which ultimately appeared to be field changes. Since that time, there have been concerns about water beneath houses and people needing pumps. He said those issues are unrelated to the swales issues. He feels those are issues between that homeowner and the builder and not something the city is involved with as part of this discussion. Specifically, the city was to focus on the drainage section of the properties on Clearview Drive.

According to city records, there was one sign permit applied for as was indicated in Mr. Griffins' correspondence provided at the last meeting. Mr. Baird said the current question is whether the V sign is one or two signs. It is one structure with two sides.

The city manager agrees the second V structure was definitely not included in the permit. The other question is the sign closer to the Matlinds Estates sign. Mr. Baird agrees the V sign is one structure but the number of signs is debatable.

Mr. Spillane said that on the sign issue, there is one side but if you look around, there is another side. When you look at the other sign, there is a front side and another side. Therefore, it is a front and back to the sign so it is one side each—front and back. It is four signs in his opinion.

Mr. Ambrose said the swale issue goes back approximately four years but he does not recall a drainage issue associated with the swales. Instead, the issue was the depth of the swales and the safety factor involved in trying to cut the grass as well as residents trying to walk along the side of the road and the possibility of falling in. He agrees they are fairly deep and steep. He asked for a clarification on the swales and if they are allowing the city to install the pipes and if so, the city would have to take over the entire stormwater system at Hearthstone.

Mr. Baird said his understanding is the section along Clearview Drive would become the city's responsibility. He added that in order for the city to make those improvements, we would need assurance from the conservation district that it would not have an adverse impact on the remaining system.

Mr. Spillane said he provided that information. Mr. Baird explained that the conservation district said the city could do it as long as it did not have an adverse affect and would need to be reviewed by the conservation district.

Mr. Ambrose feels we need to install the pipe and determine if it works which everyone hope it will. If it does not work, then it will need to be removed and other options considered. He recalled when the city attempted to install the pipe two years ago.

Mr. Workman said this comes down to the minimum/maximum and why it was not done correctly. However, he does not believe the citizens of Milford should pay for something in a development they will get nothing out of it. He pointed out this is taxpayers money and this involves fixing a problem on a property that the developer is aware of. The city should not take it over until the entire project is complete which could take twenty years.

Mr. Workman does not agree the city should pay for the problem because it is the developer's problem.

Mr. Baird referred to the correspondence from the conservation district dated December 6, 2007. The ending statement read 'we have no objection to a closed storm drain system as long as the design engineer could demonstrate the pipe was sized to convey the 100-year storm and allow the ponds to function as intended in the original design.'

Mr. Spillane recalled that Mr. Mallamo had already purchased the pipe for the city. Mr. Baird said it would still need to be approved by the conservation district. He added that could be done through engineering based on the size of the pipe; if council directs him to do that. Before this is done, Mr. Baird prefers to have the approval in hand from the conservation district.

Mr. Oechsler confirmed that the city is only addressing the swales on Clearview Drive even though there is a flooding problem around the corner. Mr. Baird confirmed the flooding is coming from the rear of the property.

Ms. Wilson confirmed that would be the developer's responsibility. Mr. Baird agreed noting the issue at hand are the swales on Clearview Drive.

Ms. Wilson feels the tone of the statement read is the same tone Mr. Fannin had when he initially addressed council many years ago. She felt that Mr. Fannin wanted to do things to benefit the city and she continues to believe that. She thanked the city manager and solicitor for the meeting they were directed to arrange. She feels that by talking, things can be accomplished and some compromises could occur.

She feels that if our code and engineering staff agreed or signed off on those swales, council should support our employees. If they need to be dealt with because they were wrong, that should be addressed. In the meantime, the city needs to move on. We all need to work together and move forward. If this dialogue continues, she believes things can be accomplished that will benefit everyone and in particular the residents at Hearthstone. She agrees that this involves taxpayers' money from throughout the city. Considering we already have the piping and materials, she feels we should fix it. If there is flooding around the corner, those residents need to scream louder to the developer.

Mr. Baird said there have been complaints from residents who had water beneath their house. Ms. Wilson said she was unaware of that and asked how the city has addressed that.

Mr. Baird said that part of the problem is related to the initial construction itself and the swales that the developers are still responsible for. Ms. Wilson suggest all those things be part of these discussions. That problem needs to be added onto the roundtable discussions. This has been ongoing for a very long time and hopes we can come to some final resolution.

Mr. Willard said that we need to take a global prospective. He emphasized that soil conservation has jurisdiction over stormwater management. If the residents have complaints about flooding, we need to get those complaints to the engineers at soil conservation so they can evaluate the situation.

The solicitor said we have an offer from Mr. Fannin to fix it. He stated that if we have problems out there, he will fix it. Mr. Willard said the slope issue is a little stickier. He is now hearing from councilmembers and residents that there are flooding issues out there. They said if there are problems with the stormwater and it is not working, let's fix it. The only way we will know is to have the authority that has the jurisdiction and expertise to take a good hard look at it. His suggestion is to instruct the city manager to get soil conservation along with the residents involved and to focus on this immediately. Mr. Ambrose pointed out that some of this has been done, but Mr. Willard feels that information needs to be made current.

Mr. Baird feels that in that dialogue with the residents and soil conservation district, there is a critical part missing which is the owner of the property which is Key Properties. What he has heard over and over from Key Properties, including Mr. Fannin directly, is if there are problems out there, bring them to him directly. When the city has complaints come in, the city needs to refer them to Key Properties. He does not believe we have had that many complaints in regard to Hearthstone Manor. However, if we are going to proceed with having the conservation district back in, which has been done on at least one previous occasion, the residents and the owner of the property need to be involved.

Mr. Spillane asked why the plans approved by the city were not followed. People are having to walk out in the streets because the swales slope right at the street and there is no place to stand. Cars have no place to pull over. He said people have been complaining since 2005. He has the paperwork which should have been included in the packet.

Ms. Wilson suggests Mr. Spillane bring the letters so council can review them. Mr. Spillane said they were turned into the city.

Ms. Wilson said that Mr. Fannin has now publicly claimed he is willing to fix these problems. The city manager and city solicitor came away from the meeting with a good feeling. She is hoping that 2009 will bring some resolution to these problems.

Mr. Morrow stated there seems to be two problems. He agrees we need to fix the physical problems being experienced at Hearthstone. We also need to look at our internal audit controls to prevent this from occurring again. We need to correct these problems on both sides. He agrees we need to continue with this dialogue which should include Mr. Spillane. Mr. Fannin has committed to fixing the problems out there, but on the other hand, he feels that Mr. Baird needs to sit down with his superintendents and engineers and discuss these issues. Mr. Morrow understands that some of the people involved are no longer with the city. He sympathizes and understands Mr. Spillane's frustrations but feels there needs to be some checks and balances in place to prevent such matters from being rubber stamped in the future.

Mr. Morrow feels that most importantly, the problems need to be fixed. We need to determine the cost and set a time line. Obtain this information from the developer and put these goals in place and hold him to it.

Mr. Willard referred to the letter from the developer saying that if this is a documented engineering stormwater problem and flooding, the conservation district will determine what the global problems are. Then the developer will have some responsibility and the city will have some teeth.

Mr. Oechsler reaffirmed that if we get the homeowners, the developer and soil conservation together and soil conservation agrees that they made a mistake, then soil conservation can come back to the developer and make them change it. Mr. Willard feels that soil conservation needs to weigh in heavily. If the homeowners have safety or flooding issues, their engineers have jurisdiction and need to give an opinion about the overall system. If they say there is no problem, then the homeowners have to decide what needs to be done.

Mr. Spillane reiterated that plans were not followed when the roads were built in Hearthstone. Shoulders were not included and there are other problems beside just one slope in one area. He asked if someone could simply sit down and look at our plans to see it was not built to specs. He asked where our code people were at that time. He said our own code person stated it was done wrong.

Mr. Willard said he does not have the answers to the engineering questions. Outside of the stormwater management, which soil conservation has jurisdiction, we have a city engineer and if he looks at the code and the plans and do what they are asking, there may be more reasons for the developer to respond and correct things. However, this mainly involves engineering questions and the swale and soil conservation.

Mr. Oechsler agrees we have an internal and external problem. He said we need to go back and get as much information as possible to see how the city made a huge error in granting this, or if a city employee made an error in granting no taxes on some property. He believes we need to do an internal audit of some things and find out what is happening and why those things were handled in this manner.

Mr. Baird said an internal audit was completed on the tax issue which is when other subdivisions and annexations were checked. Those problems have been identified. One of the questions they had on a staff level is where did the exemptions come from and was it just an error or an action of city council. The first thing was reviewing the council minutes to determine what action was taken. This project and the Lighthouse Estates project had some concerns about swales and whether they met city code.

He explained that from a planning level, they have instituted new changes and when a major subdivision comes through that involve similar issues, part of that process will be on the preliminary plan level where the meat of the approval is. Final approval should involve only the design of the subdivision subject to the specifications that are already in place. Prior to the planning commission or council seeing it, there should be a certification from the city planner and other departments that it meets all land use requirements and any specific conditions of approval that were added by the planning commission or council. The engineer then provides certification that it meets all the technical requirements. That way city council knows it has received final review from staff members from the land use prospective and engineering side.

Mr. Workman said that from what he is hearing, council wants the city manager and city solicitor to get the engineers, soil conservation, property owners and developer together to get these things resolved. He agrees as was previously stated that a deadline is required. If this can be done over the next two to three weeks, it can come back to council at the next meeting.

Mr. Starling said he agrees with Mr. Workman and if there is anyway to jump start it, it should be done. He has heard this over and over and nothing has been done yet. We need an official starting point but also an ending point.

Mayor Marabello said that this is relatively small compared to what their future plans are. He is hearing that the swale issue can be resolved. The signs are somewhat sticky but he also feels that can be done. The flooding can also be resolved. He does not feel the taxation is a problem and can be accomplished. By working together this can be accomplished. Everyone knows where everyone else stands and this is a different ballgame to a degree. He agrees the meeting needs to be scheduled to get this group together.

Mr. Oechsler moved to have the city manager and city solicitor check into the sign issue and determine how many permits were issued in relation to the five signs (two V signs and one by Matlinds Estates), that information to be provided at the January 26th meeting; on the swale issue, a two-week report be given at the January 26th meeting and by February 9th, all parties including the developer, property owners, the city manager, the city solicitor and soil conservation will have met and a final resolution can be provided at that meeting. Ms. Wilson seconded the motion. Motion carried by unanimous roll call vote.

NEW BUSINESS

Green Energy Program/Grant Request/Glenn Struck

Mr. Workman moved that Green Energy Funds be reserved in the amount of \$2,400 for a residential Geothermal heat pump for Glenn Struck of 12 Victoria Drive, seconded by Mr. Oechsler. Motion carried.

Green Energy Grant/Grant Request/Tom Muhr

Mr. Oechsler moved that Green Energy Funds be reserved in the amount of \$3,000 for a residential Geothermal heat pump for Tom Mehl of 725 N. Shore Drive, seconded by Mr. Starling. Motion carried.

Green Energy Program/Grant Request/Haven Lake Animal Hospital

Mr. Workman moved that Green Energy Funds be reserved in the amount of \$30,000 for Photovoltaic Solar Panels for Haven Lake Animal Hospital at 300 Milford-Harrington Highway, seconded by Mr. Spillane. Motion carried.

Appointment of DEMEC Alternate Representative

The City Manager recommends that Electric Superintendent Rick Carmean be appointed as an alternate director in Mr. Baird's absence.

Mr. Oechsler moved to appoint Rick Carmean as the Alternate Representative for DEMEC, seconded by Mr. Morrow. Motion carried.

MONTHLY FINANCE REPORT

Through the fifth month of Fiscal Year 2008-2009 with 42% of the fiscal year having passed, 49.29% of revenues have been received and 38.70% of the operating budget expended.

Mr. Ambrose advised that most revenue line items are in line with the exception of a few. Business and rental licenses are low though they are generally billed once a year. Because the rental license notices just went out, those numbers should be reflected in the January report. Building permits are extremely low and are expected to remain low. Miscellaneous revenues are showing 29.23% though may will come in as a lump sum near the end of the year such as cell phone rentals on water towers.

Revenues are exceeding expenditures which Mr. Ambrose pointed out is a positive thing.

When asked if Mr. Ambrose has met with Mr. Portmann regarding possible budget cuts, Mr. Ambrose advised he has had numerous conversations with the finance director. The current plan is to start the budget process earlier next year. In terms of this year's budget, everything is where it should be. Next year, there is a need for a tighter budget. By starting earlier, department heads will know exactly how much money can be spent.

Mr. Baird agrees that our current spending plan is in line with projected revenues. We are slightly down on the general fund but can still handle some of the lower revenues through some of the work that has been put on hold that is not anticipated to be completed this year.

Mr. Brooks said that he anticipates a rough year and whatever can be done now should help. He does not want to see a tax increase considering the effect the current economy is having on private citizens. Mr. Ambrose stated there is no indication a tax increase will be needed.

The city manager agrees we need to watch closely the impact of state revenues coming down to the municipal level. The City of Seaford recently made a decision not to budget any state revenues into their incoming budgets. Fortunately, Milford does not include those monies in our operating budget though they do fund some capital projects. We will need to keep a close eye on the general assembly and their plans.

Transfer tax is an ongoing issue that the general assembly would like a share of the city's portion.

In addition to municipal street aid, SALLE and EIDE police funding that may be affected. The police pension program will not be affected as that is based on insurance premiums. Unfortunately, nothing will be finalized until July 1st.

Mr. Morrow moved to accept the November 2008 finance report, seconded by Mr. Brooks. Motion carried.

Executive Session - Legal Advice-Potential Litigation/Preliminary Discussion-Site Acquisitions

Mr. Oechsler moved to go into Executive Session pursuant to 29 Del.C. §10004(b)(9) Personnel Matters, seconded by Mr. Workman. Motion carried.

Mayor Marabello recessed the Council Meeting at 9:12 p.m. to go into a closed session to discuss Personnel Matters.

Return to Open Session

City Council returned to Open Session at 9:54 p.m.

Mayor Marabello announced that no action was required by City Council as a result of the discussion in Executive Session.

ADJOURN

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

The Monthly Meeting was adjourned at 9:55 p.m. by Mayor Marabello.

Respectfully submitted,



Terri K. Hudson, CMC
City Clerk/Recorder