

MILFORD CITY COUNCIL  
MINUTES OF MEETING  
January 26, 2009

A 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 26, 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

Mayor Marabello called the Council Meeting to order at 8:07 p.m.

*Adoption of Resolution/Final Approval of Milford Comprehensive Plan  
Adoption of Ordinance 2008-14/Final Approval of City of Milford Comprehensive Plan*

Planner Norris then thanked the city manager, city council, planning commissioners and State Planning Director Connie Holland and Planner David Edgell for their participation in the development of the comp plan.

Mr. Norris provided an Power Point presentation of the 2008 Comprehensive Plan noting that on November 10, 2008 city council held their final hearing on the comp plan.

City Planner Gary Norris introduced Connie Holland the Director of State Planning. Director Holland introduced her noting that her office is at 122 William Penn Street, Dover, Delaware. She is present to commend City Planner Gary Norris, city council, the planning commissioners and citizens on a comprehensive state planning feels is very well done. She said they like most is the vision for the future which is phased with master planning components aligned with the growth. Therefore, it will not happen haphazardly and will need to be done through many meetings and approval of the citizens.

Ms. Holland noted it is a complete upgrade of the plan which is positive because by state law, only an update was required. Therefore, the city planner and staff need to be commended on that effort.

She asked that the city move forward with the transfer of development rights option. Though it will be said that it does not work, in this day and time, she said it does work and the only two applications going through in Kent County right now are two re-dos of a subdivision that are coming through as transfer of development rights subdivisions.

Ms. Holland said that in this climate, when work housing and planning is on everyone's mind, as well as how to spend money wisely, she feels Milford will be in the forefront of that and looks forward to working to accomplish the goals set in the plan.

Responding to Mr. Ambrose, Ms. Holland explained that transfer development rights allow local jurisdictions throughout the United States to delineate areas as open space or that the farming community would like to continue to farm. But in order to maintain the value of that land and make it prosperous for open space and agriculture, it gives the land owner the right to sell for a certain amount of money, usually to be determined between the developer and the farmer, as the intent is to leave the government out, to an area designated for growth. This program is another tool for anyone owning land in an area that has a special designation, possibly open space or has agricultural benefits, that we can retain our ag community as we desire but also give them the benefit of regaining some money instead of selling it to be used for a subdivision.

Mr. Ambrose then asked if these rights contain density requirements; Ms. Holland said they can, but usually what happens is there is a receiving and sending area. When it goes in the proper place instead of having one acre lots, three or four (whatever number is desired) lots per acre can be obtained. She further explained that most of the local jurisdictions do not realize the density they have within their local jurisdiction. She said in her career of working in planning, many of the places that people like to live, if they want to live in town, are very densely populated so they will not have to use a car, or they can get police and EMT services very quickly, or so their children can walk to school or have access to a local library or be close to a convenience store, city hall, etc.

Many people have the impression they will be crammed in with a TDR or a very densely populated area, but Ms. Holland feels that some of the most beautiful places in the state, for example, Odessa, Lewes and Downtown Dover and Downtown Milford could be twelve to sixteen units per acre. However, she is not asking Milford to do that, but density of 4 to 6 to 8 can be easily achieved and still have an extremely nice community with mixed uses.

Mr. Ambrose asked if the developer of the Mills Farm, which was annexed in with an R-1 (four units per acre), go to the owner of the light green area on the comp plan designated for open space, and buy development rights for eight units per acre, then come back to the Mills property where it would become twelve units per acre. Ms. Holland said if the program was set up to do that. Kent County has already done one that could be used as a sample, but she feels better if each local jurisdiction handles there own to ensure it corresponds with the character of the town.

Mr. Ambrose asked if the town has any control; Mr. Norris explained the market controls the transfer or the development right. He added the guidelines would be set up in the transfer development ordinance and confirmed that we could control the number of density units that could be sold.

Ms. Holland explained that is handled by determining where the density should go which should include citizen input. The goal is to maintain character which is why there are specific receiving and sending areas. However, the amount is determined by the developer and the farmer.

Mr. Ambrose verified the receiving area would be where the city was willing to accept higher density such as the town center areas. Ms. Holland agreed and noted that infill and redevelopment could also be encouraged. Areas being used for commercial are also being used for infill where a structure would be torn down and some benefits afforded where transfer development rights could be used.

She said that a bank could also be set up where a farmer could sell his development rights.

Mr. Workman said he has not supported any development east of Route 1 and he feels there need to be areas that must be kept as open space. This sounds to him as if we are selling the open space for development. Ms. Holland said not necessarily which is why she is enthused about Milford's comp plan. She feels that left alone, it would be to the legal status of Sussex County where they could do two units per acre. Slaughter Beach and several neighboring towns were upset and wanted to be protected. The comp plan allows the option to define open space in the regulations. She would never tell a town to put regulations in the comp plan because the comp plan is only supposed to be amended every five years though it can be done once a year. By putting regulations in, would require constant updates to the comprehensive plan. It is her understanding that open space will be defined which is when these issues need to be outlined.

Ms. Holland said that they are trying to get a statewide definition of what open space means. She believes it can be passive and also interactive. She recommends that be done once the comprehensive plan is certified.

Ms. Holland noted there is a great deal of language in the plan that discusses urban growth boundary that addresses preservation.

She concluded by explaining that the only way TDR's work is if there is a market.

Mr. Norris then referred to the green area designated as open space, explaining there are currently only three properties in the corporate boundaries of the city and any others would have to petition to annex. This plan serves as a guide that

designates open space and potential sending areas for residential units in order to preserve and enhance that area for future generations.

When asked if there was a time limit on TDR's after they are sold, Ms. Holland explained that once they are sold, they are owned by the developer. However, it is up to the town how many they wish to sell at one time whether it is five or one hundred, for example.

It was confirmed that if the comp plan is developed, the area designated as open space will remain open space for the next five years.

Though the charter allows the comp plan to be adopted by resolution, state planning is directing all local jurisdictions to adopt their comp plan by ordinance. Mr. Willard agrees with the recommendation noting the ordinance is more formal and will be published. Therefore, a resolution and ordinance should be adopted.

Mr. Oechsler moved for adoption of the following resolution, seconded by Ms. Wilson:

*RESOLUTION  
City of Milford 2008 Comprehensive Plan*

*WHEREAS, pursuant to Article VII and as is provided in Section 7.08, Section 7.09 and Section 7.10 of the City of Milford Charter, the Planning Commission is responsible for preparing the comprehensive plan and amendments thereto and forwarding them to the Milford City Council for modifications and adoption; and*

*WHEREAS, the City of Milford Planning Department and Planning Commission were directed to evaluate and update this Plan; and*

*WHEREAS, the Planing Commission has completed this process, conducted public hearings and developed revisions to this Plan; and*

*WHEREAS, the revised Comprehensive Plan has been approved by the Planning Commission and forwarded to Milford City Council for adoption;*

*WHEREAS, the action taken in preparation, revision and adoption by Milford City Council is consistent with 22. Del. C. Chapter 7; and*

*NOW, THEREFORE, THE CITY OF MILFORD HEREBY ORDAINS the revisions to the City of Milford's Comprehensive Plan, as certified by the State of Delaware, and adopted hereinafter by Ordinance 2008-14 shall be approved.*

*PASSED AND ADOPTED by the City Council of Milford, Delaware upon this 26<sup>h</sup> day of January, 2009.*

Motion carried by unanimous roll call vote.

Mr. Oechsler moved to adopt Ordinance 2008-14 approving the 2008 City of Milford Comprehensive Plan, seconded by Mr. Workman.

*ORDINANCE NO. 2008-14*

*WHEREAS, Title 22, Section 702 of the Delaware Code, the Livable Delaware program of the Governor of the State of Delaware and House Bill 255 amending Title 9, Title 22 and Title 29 of the Delaware Code authorize Delaware municipalities to carefully prepare and adopt Comprehensive Land Use Plans to guide and regulate future growth and community development, and*

*WHEREAS, Delaware's Office of State Planning Coordination provides guidance to municipalities in order to effectuate the goal of having well-drawn and executed Comprehensive Plans for all Delaware counties and municipalities, including the provision that Comprehensive Plans be approved and certified by the Governor of Delaware upon their completion, and further requires that certified Comprehensive Plans be revised on a five-year cycle, and*

*WHEREAS, the City of Milford's Comprehensive Plan was last adopted in 2003, as amended, and requires revision to account for physical changes and revitalization accomplishments which have since occurred in both the built and natural environments of the community; and*

*WHEREAS, the City of Milford Planning Commission has prepared and approved, in consultation with the public, interested parties, and government agencies, a Comprehensive Plan for the City of Milford, which articulates an overall vision for the community's future, including goals, objectives, policies and action project recommendations for achieving that vision and has conducted a duly advertised public hearing for public review and comment on September 16, 2008 and October 21, 2008 and, at its meeting on December 16, 2008 did recommend approval and adoption of the 2008 City of Milford Comprehensive Plan by Milford City Council.*

*WHEREAS, the 2008 City of Milford Comprehensive Plan will be the foundation for revision or improvement of the City's Zoning Ordinance, Subdivision Regulations, Housing and Maintenance Codes, Capital Improvement Program, Community Development Program, Public-Private Agreements, Potential Annexation Plans and other implementation tools;*

*WHEREAS, the Mayor and City Council held a duly advertised public hearing on the Plan on November 10, 2008, at which time the 2008 City of Milford Comprehensive Plan was reviewed with the public.*

*NOW, THEREFORE, THE CITY OF MILFORD HEREBY ORDAINS that the 2008 City of Milford Comprehensive Plan is hereby adopted and made effective as the Comprehensive Plan for Milford on this 26<sup>th</sup> day of January, 2009.*

*Dates:*

*Adoption Date: January 26, 2009*

*Effective Date: February 5, 2009*

Motion carried by unanimous roll call vote.

Mr. Baird thanked Mr. Norris for the work on the comp plan as well as those citizens who participated in the process.

#### *FY 2008-2009 Budget Adjustment/Code Enforcement*

A request was submitted to transfer \$3,000 from General Revenues Account 101-000-311-20-10 to Code & Inspections Demolition Account 101-1045-429-68-10. This will be used for demolitions at abandoned homes at 402 and 504 Truitt Avenue. According to the city manager, the demolition account was not used the past couple of years and the budget was decreased from \$40,000 to \$15,000 last spring as a result.

Mr. Ambrose moved for approval of \$3,000 from the general revenues account to the demolition account as noted above, seconded by Ms. Wilson. Motion carried.

#### *Committee Report & Recommendation/City Hall Lower Level/Use by City Departments*

Chairman Workman advised that the committee met on Friday though Ms. Wilson was unable to attend due to another commitment. He then read the following committee recommendation into record:

During its meeting on January 23, 2009, the committee unanimously voted to recommend the following:

1. The Billing Department is relocated back to City Hall with the Department Supervisor and Billing Staff utilizing the lower level and the cashiers utilizing the first floor level.

2. City Council authorize the City Manager to utilize \$7,500 of funds described below for preliminary costs associated with the design, permitting and other start-up costs associated with recommendation No. 1. In addition to the above recommendations, the Committee directed the City Manager to prepare the following:

1. Estimated Project Time Line
 

Complete Design and Bid Specifications	6-8 weeks
Bid, Review and Award	2-3 weeks
Mobilization:	1-2 weeks
Construction:	10-12 weeks
 Total	 19-25 weeks-Mid June-Late July 09
  
2. Estimated Cost & Project Budget: \$110,000-\$150,000.

The City Manager recommends City Council establish a project budget of \$150,000.

3. Account Used to Fund Project  
General Fund-Fund Balance. Mr. Portmann has set aside \$200,000 pending City Council approval.

Ms. Wilson advised that she was unable to get off work and she is not in favor of the recommendation and would have noted so at the meeting. She feels it is very costly and will involve money not wisely spent considering what has already been spent on the building which was only completed during the past year. Safety issues are still a concern with city staff and the fact that citizens go up and down the steps or have to use an elevator.

Mr. Ambrose said he attended the committee meeting last Friday and he prefers that billing return though he is concerned with the cashiers using the first floor. When he asked Office Manager Denise Barnes, she stated that she will work as council directs but her preference would be to have the cashiers on the same floor as the balance of the billing staff. If someone has a problem, Ms. Barnes would be called to confront that person in an unprotected environment. He prefers adjusting the motion to allow the cashiers and billing staff downstairs with the understanding that if it does not work, that option is still available.

It was noted that presently, there is a large counter between the staff and the customers. Mr. Ambrose said the same situation would apply to the receptionist should a customer confront her in a similar situation. He does not want to see any employees hurt.

Mr. Spillane feels that our employees need training to handle customers who are confrontational. The key is for our employees to learn how to deal with upset customers. He agrees the funding is going to be high and believes the proposal is extremely out of line. His understanding is we would try not to have anyone in the front by themselves and instead place a sign which would direct people to the cage where the cashiers would be located.

He said that many people want the billing staff back and it is important that our residents have the ability to pay their bills at city hall.

Mr. Ambrose agrees but noted his concern is the location of the cashiers on the main floor and the fact that any other employee needing to address someone irate would have to do that in a face to face situation without any type of barrier.

Mr. Spillane advised there would be a panic button used by the cashiers but training is the key.

Ms. Wilson said there were many meetings and does not feel the committee really took into consideration the number of concerns expressed by city staff.

Mr. Oechsler said that if an employer requires an employee to do a certain duty, the employee needs to follow that direction. He feels that spending \$100,000 to bring billing back downtown is a lot less than \$1.5 million spent on the

overall renovations. He does not know what other options are available though this is the recommendation of the committee and the right decision needs to be made though it was not made by council in the past.

Mr. Brooks said that it was the right decision at the time, but in the meantime, there have been 27 change orders made that cost the city a great deal of money. Now council is willing to spend \$200,000 more which will bring the grand total to \$2 million.

Mr. Workman agrees that council made a mistake in the beginning because the project was not overseen by the council. That is why a committee was formed now to make sure it was handled properly this time. He apologizes to the people of Milford and does not feel we would be in this situation now if it was done in the beginning. This is city hall and the people's house and where they want to come and pay bills.

In addition, he spoke with each employee individually about whether they wanted to be at city hall or remain at public works. He agrees there were mixed emotions though the majority of the staff preferred to be here.

Mr. Workman said the last thing he wants to do is jeopardize the safety of our employees. However, there needs to be daily activity out of city hall and right now, it appears it was only renovated to have council meetings here twice a month.

Mr. Morrow agrees the billing department should be housed out of city hall. He asked if there is a major cost factor involved with the cashiers being upstairs and the billing staff downstairs. Mr. Workman said that will not be answered until the proposals are returned. He asked if it would be less expensive to have all billing and cashiers downstairs, perhaps that should be considered. However, he emphasized the need to have them back downtown to increase foot and vehicle traffic which will benefit the local businesses.

Mr. Workman reported there was \$19,000 allocated for furniture with one office chair estimated at \$1,300 and eleven filing cabinets at more than \$17,000. He said there are other places that furniture can be purchased. He suggested contacting the state surplus warehouse where used equipment and furniture can be purchased from the state. However, the costs being presented are only estimates and he agrees that something else must be considered.

Mr. Baird said the proposal presented includes the cashiers being housed in the upstairs vault with teller windows at a preliminary estimate of \$15,000. One of the major unknowns is whether this will be a simple job or a major project because of not know what type of walls we are dealing with. If it was truly constructed as a vault with steel beams, that is another major issue.

The city manager said that no one is talking about spending \$200,000 on this project. The initial proposal was done back in early December and had a preliminary estimate of \$163,500 with a 15% cost adjustment factor bringing the total to \$188,000 to bring the billing department back in.

Mr. Baird explained that he sat down with Mr. Workman and considered a couple of scenarios and backed out some costs. That number then became \$110,000 on the low end. Some up front planning will be needed to prevent the unknowns; fine tuning will also be needed on some of the costs. That is the reason for the increase from \$110,000 up to \$150,000. Based on that, the project budget will be set at \$150,000. He believes it is prudent for council to say it may cost \$150,000, but wants to go into it with a realistic time frame and be prepared to spend that if necessary. He feels the committee was clear and the staff understands that costs will be very closely monitored.

He also added that the initial proposals were ridiculous and noted there is no way to go with some of the options which do not make sense. Having a lot of the work done in house, in comparison to the contracted work done at city hall, will be less money. In that manner, the \$110,000 will be within reach. However, this cannot be done as cheap as possible because if we took that approach, we would need to make repairs in a short time because of the lesser quality. He agrees we should be much more prudent this round and there needs to be a lot more interaction though no one is talking about \$200,000.

Mr. Starling said he was reading in the newspaper that many city councils are meeting tonight to discuss saving money. He thought city hall was completed and now it appears the city has made a mistake and though the building is done, it is now going to need more work at a cost of approximately \$150,000. As a citizen, he would question if there is any other way to do this. At some point, the city budget is going to become much tighter. To spend \$150,000 to renovate a building that is completed will leave questions in a lot of people's minds. He does not know the answer even though he agrees a mistake was made. But in the meantime, the building was done, is being used and now is going to need more construction.

Mayor Marabello said that what happened in the past is done. Now we are trying to come up with a solution to resolve the problem and get it ready for the billing staff to work here.

Mr. Workman said if this building is complete, what is its purpose and what is it being used for. The IT staff uses it downstairs and meetings are held for Board of Adjustment, Planning Commission and City Council. He does not feel the building is complete. The general construction which was not overseen by council is complete though it was not done correctly.

Mr. Brooks asked if the furniture moved out could not be moved back. Mr. Baird said some furnishings could come back but a lot cannot come back. A lot of the furniture will not withstand another move.

Mr. Brooks agrees with Mr. Starling and his concerns about the recession. Last month when he asked about money, he was told that everything looks good, the budget hearings will start earlier while other towns are starting to get tighter. He feels that we need to take care of our problems before there is a problem.

Mr. Workman agrees that a lot of the furniture should be able to come back unless it is broken. However, there was a great deal of money spent on the city manager, city clerk and administrative assistant's new furniture. The furniture being used by them will be able to be used which would eliminate some of the costs. There was a \$7,000 security system included and asked that other alternative systems be considered that cost a lot less money. From the prices he saw on the first proposal, it appeared they were trying to sabotage the project because they appeared to be inflated. That is the reason he asked the city manager to review those costs.

When asked when the city manager, city clerk and administrative can move back, Mr. Baird said that could be done anytime. The only thing impacting that decision is any additional construction that may occur upstairs. If the construction is isolated downstairs, that move could be done much quicker.

Mr. Spillane said that when the project is bid, the contractor could come in during the evening to prevent the work from being done during the day. Mr. Workman said that could be included in the bid specs. However, anyone working at night is going to cost even more.

Mr. Baird said that one of the options considered by the committee is to have the work completed upstairs, the administrative staff move back, the IT staff stay downstairs and the balance of the employees continue to work out of the Vickers Building for a short time. However, the committee's determination was to have a much stronger presence in the downtown area. That option was considered but the committee's decision was to move forward and have billing return.

Ms. Wilson confirmed the long term plan is to have a freestanding building built for the billing staff. Mr. Workman explained they did not only look at the billing staff, but also planning, building and code. They even considered moving finance here and adding an extension to the finance building. We purchased the property across the street and considered that. There were other considerations, but he feels that the downstairs can be designed to fit their needs. At the same time, the billing staff could be moved, when additional funds are needed, with the intent not to do major construction. The committee discussed those options. However, it is important that something happens in this building.

Mr. Starling asked if a few employees could be brought in and safety still taken into consideration. Leave other staff members at public works. He is still worried about the funding because sooner or later, he feels the city is going to get caught.

Mr. Oechsler agrees he does not want to spend any money, but we will have to spend it now or later. At least, the city may help to bring work to some local contractor and if the economy turns around, the \$150,000 may become \$250,00 in two years. That is in addition to a new building that may be considered later on as well.

Mr. Workman agrees noting that a recent parks and recreation bid brought in more than twenty-five bidders where in the past, five or six is normal. Contractors want work and many are willing to cut their costs because they want to work.

Mr. Oechsler moved to accept the committee recommendation that the billing department is relocated back to city hall with the department supervisor and billing staff utilizing the lower level and the cashiers utilizing the first floor level, earmark \$150,000 for the work and that the city hall review committee oversee the construction, seconded by Mr. Spillane.

Mr. Ambrose moved to amend the motion and remove the words cashiers utilizing the first floor level for safety reasons.

Mr. Brooks asked what the \$150,000 covered and whether if this included bringing the billing department back, the furniture and all wiring and related work. Mr. Ambrose said if his recommendation is considered, the bid would be approximately \$15,000 less.

Mr. Workman agrees that if going through the wall is going to be very costly, that needs to be considered. This will still come back to council before a decision is made.

Mr. Ambrose said his point is that all billing and cashiers be kept together. Mr. Workman explained that the reason for the cashiers being upstairs is to eliminate any lines downstairs which the staff felt there was not enough room downstairs.

Mr. Morrow said by seconding the amendment, that leaves an option of either placing the cashiers upstairs or downstairs. The motion now is to put the cashiers on the first floor regardless of the costs. As a result, he seconds Mr. Ambrose' amendment which gives an option while still considering employee safety and cost efficiency.

Mr. Oechsler said he does not have a problem giving the option to the committee to consider the placement of the cashiers and he will change his motion to include that option subject to costs if Mr. Ambrose and Mr. Morrow rescind their motion.

Mr. Ambrose rescinded his motion to amend.

According to the city solicitor, the record should reflect the subsidiary motion has been withdrawn and the primary motion has been amended.

Mr. Oechsler moved to amend the motion to accept the committee's recommendation with an adjustment to allow the committee to best determine whether it is cost effective to have the cashiers on the lower level or first floor for safety, convenience and costs. Mr. Spillane seconded motion.

Mr. Brooks asked that it be considered that many citizens are unable to access stair steps and many people do not like riding an elevator.

Motion carried by the following 7-1 roll call vote.

Yes-Ambrose, Spillane, Workman, Oechsler, Brooks, Morrow, Starling

No-Wilson

Mr. Starling added that he will continue to use the drop box which is convenient to all.

Ms. Wilson votes no because of the safety concerns and the fact that the downstairs area to her is not conducive to the needs of the billing department. She feels they will outgrow it in a couple of years and council will be back discussing this again about a plan needed for the next step. In addition, costs are very much a factor.



*Update/Code Issues/Key Properties/Hearthstone Manor*

The city manager reported on the swale, sign and assessment issue at Hearthstone Manor though a final report will be given on February 9<sup>th</sup>. A meeting has been tentatively scheduled for Friday, February 6 at 9:00 a.m. at city hall to discuss the Clearview swales. More information will follow.

He then addressed the second issue regarding the signs, the number of permits issued and what permits were issued. Thus far, it was determined that one permit was issued for a V sign structure on parcel 406. Work continues on that matter.

City Tax Assessor John Darsney had some contact with the property owners regarding the tax assessment issue. The property owner has agreed that what is fair is fair as long as they are being treated equally.

Mr. Oechsler asked if the deed on parcels 405 and 406 has been located because it has been said the deed contains a restriction on that site. Mr. Baird said there has not been a deed search done at the courthouse; however, the annexation resolution contains specific language prohibiting billboards as was voted on by council at the time of annexation. Mr. Oechsler confirmed it clearly stated signage was not permitted; Mr. Baird clarified the language states no billboards are permitted.

Mr. Spillane asked what is being done about the sign without the permit. Mr. Baird reiterated that only one permit has been found. Mr. Workman agreed that only one permit was found, noting the problem is the additional V-sign without a permit and asked if the owner will be required to take it down or whether they are being fined.

Mr. Baird said they are continuing to work on that. He is only updating council on what has been found at this point. Mr. Willard added that if it is not permitted, it is a code violation and the land owner would be appropriately informed. If they disagree with the decision, they can appeal to the Board of Adjustment. If the board agrees with the code official, the applicant can appeal to Superior Court. Mr. Workman said a letter has already been sent informing them the sign was not permitted. The code has determined it is not in compliance.

Mr. Willard explained this issue must be dealt with through the procedural process which is the code official determination and then Board of Adjustment. When council starts getting involved, it blurs the legal due process. When they were originally sent a letter stating there was a problem with the signs, we received a lengthy letter from their attorney that addressed some equitable issues which is why it added to the council agenda.

Mr. Spillane does not understand how something can be appealed when there is documentation that clearly states a sign is not permitted.

He said the plans for the swales were not followed; he asked how that will be addressed. Mr. Baird said that is being discussed on February 6<sup>th</sup>. Responding to Mr. Spillane, Mr. Baird said that residents on Clearview Drive will be sent notices.

*DEMEC Cash Market Calls & Power Market**Consent, Acknowledgment & Certification Agreement: Integrys Energy, American Electric, Macquarie Cook Power*

City Manager Baird referred to the January 20, 2009 memo from DEMEC President Pat McCullar. The city has received five cash calls two weeks ago regarding requests for additional cash collateral. Those calls totaled just over \$1.7 million to the City of Milford. It has been described in the newspapers and has been discussed by council at the retreat last Friday.

He explained it was based on the price when DEMEC purchased power compared to where the current market for energy is today. This additional collateral does nothing more than guarantee those energy companies they will get that price for the power that DEMEC has contracted.

Mr. Baird said the reason why there is additional collateral being called is a couple of factors. Number one is the change in price. Since we purchased, the market has fallen about 17%. When Mr. McCullar addressed council in early 2008, the direction he was getting was to purchase out to 90% of our power needs. At that point in time, energy prices were upwards of \$115 a megawatt. Everyone was reacting to that at the time. The overall consensus of the DEMEC board was price stability and how to accomplish that. The answer was to purchase the bulk of the power needs and lock in at those rates. That was the direction the board was giving Mr. McCullar.

The city manager said that because DEMEC got itself into that position, made its members subject to additional cash collateral calls. The city had to respond with cash based upon the energy contracts with three specific power providers—American Electric Power, Integrity's Energy and Macquarie Cook Power.

Mr. McCullar immediately went to work attempting to get those cash calls replaced with additional letters of credit. DEMEC had \$10 million in unsecured credit with the power companies that was insufficient and prompted the additional costs. Mr. McCullar has been able to get a stay on any additional cash collateral calls because he is implementing and getting in place three letters of credit for DEMEC in the amount of \$15 million for each power provider.

Mr. Baird is presenting a Consent, Acknowledgment and Certification for participating members of DEMEC to enter into a \$15 million letter of credit that will be issued through PNC Bank for each power provider.

The city manager informed council we sent a number of representatives at last week's DEMEC board meeting. He advised that Councilman Ambrose and Councilman Spillane attended to hear the information that was provided. Mr. Baird said that in talking about the direction DEMEC is going and by holding DEMEC accountable, the city took a major step last week by not marching in tune with the balance of the DEMEC members. We had concerns about the fixed billing rate being proposed and felt it was high for what we should be seeing at this point. Therefore, the city voted against it because we felt it should be a few dollars lower. Mr. Baird stated that Milford was the lone dissenter. However, he believes it made our colleagues think there is more to this and that we need to start looking at this a lot closer.

Mr. Baird believes that Milford is probably taking some shots with our colleagues at DEMEC but he feels our position and rationale by simply asking questions and challenging the DEMEC board and DEMEC organization to do better will pay dividends as we move forward through some of these issues. He said that it will come down to what our residents and our customers, both inside and outside the city, will be paying for power, in addition to the businesses in the city who are paying for power.

The city manager feels we need to get this under control and not turn a blind eye and allow costs to spiral up.

Mr. Baird was very frustrated about what took place at the DEMEC meeting and he does not understand where six others can be right and Milford is wrong. But he believes that Milford is correct in the stand it is taking by raising these questions because it deals with how much money the people and businesses in our community are having to pay for power. In today's climate, it is even more important to take a look at this and do our best for them.

Then he hears that Delaware Co-Op is postponing its projected increase in April. He added the city is a minority right now but we will continue our course, continue to ask a lot of questions and be very proactive with DEMEC in order to get our questions answered. If nothing else, it raises the bar to make people look in the right direction or maybe even take a second or third look at the positions we are taking and cover all of our bases.

Mr. Baird reiterated it not about what they are paying for power and what they are charging Milford, but is about what we are paying in our monthly electric bills. He wants it kept real and not artificially inflated.

He wanted council to know what Milford is doing as a member of DEMEC and we are not just marching to the beat of the drum. He feels there are still some questions about the letters of credit, but at the time being, approval will allow those cash collateral calls to be replaced by letters of credit. That means the \$1.7 million will come back to the City of Milford.

The city manager feels there are questions on the security of those dollars that are out there. He forwarded the responses to council so they could review them even though the answers were what he was expecting.

Ms. Wilson feels that all the questions Mr. Baird asked Mr. McCullar were on point and good; his responses were good as well. She felt good knowing that Mr. Baird jumped right on it after the meeting on Friday.

Responding to Ms. Wilson, Mr. Baird said he spoke with Jay Kumar specifically in regard to the integrity and position of the companies we are dealing with. He advised the three companies are very stable and sound from a credit standpoint and solid from a business standpoint. In his position, none are at risk of any sort of bankruptcy and will continue to be major players in the energy market.

Mr. Baird said the second part of their conversation got into the rate issue that he informed Mr. Kumar the city had voiced its concern about at the DEMEC meeting.

Mr. Ambrose reported that he attended along with Councilman Spillane, Electric Superintendent Rick Carmean and Finance Director Jeff Portman. He referred to page 99 of the council packet which has market to market margining.

There have been circumstances where the electric companies have issued letters of credit to DEMEC and their customers when the reverse of what has happened in this market has occurred. It is not if he understood this correctly, we do not give them a blanket permission to go out and buy energy at any price. This only covers our exposure and gets our cash back. Mr. McCullar had indicated he is pretty secure they will not have to go beyond \$45 million and does not really expect to go up to that amount. However, he wanted \$15 million from each of the three supplies to prevent having to come back to the board and the cities asking for more money. Unfortunately, no one knows what this economy will do.

Mr. Oechsler asked if the line of credit has an end date or are they open ended. Mr. Baird said he spoke to Mr. McCullar about that earlier and there is an end date. The first is for six months but has the ability to extend that period if necessary. That was his understanding though there may be some particulars he missed because it was a quick phone call.

Mr. Spillane asked that this line of credit not be permitted for other things and specifically for the purchase of power only. Mr. Baird said that is spelled out in each agreement.

Mr. Spillane said Mr. Baird said we may not need the \$45 million and asked if we still have to pay for that. If it goes down, will the line of credit drop. Mr. Baird explained that declines as the collateral declines but presently we are paying for the entire \$45 million.

Mr. Spillane asked if there is another way to do that so we do not have to pay the \$450,000 as we are only using \$20,000 and we know we can go back and get more. The problem is we have to pay on the whole 45 similar to a credit card.

He then asked if our residents can come in and view the contracts at the city. Mr. Baird advised we do not maintain the power contracts; they are in the possession of DEMEC. Mr. Spillane asked if we have a contract with DEMEC; Mr. Baird answered yes. Mr. Spillane confirmed that is at city hall.

Mr. Workman asked that the six months period and potential extensions be spelled out in the contract. Mr. Baird will follow up because he does not have copies of the letters of credit proposals only the consent being presented to council which allows DEMEC to enter into the letters of credit as is spelled out in the document. He feels that as a member of DEMEC we should be privy to that information though he does not have it with him this evening.

Mr. Workman asked that these issues be clarified before the contract is signed. Mr. Baird agrees with Mr. Workman, but from a timing standpoint, if those questions come back with satisfactory answers, these contracts need to be signed.

Mayor Marabello confirmed the 1% is an annual rate.

The mayor confirmed that these contracts do not allow this credit to be used for future purchasing beyond the existing contracts.

Mr. Ambrose feels we need to sign these documents because we are part of this organization. If we do not sign them, we will be declared in default. In addition, the longer we delay, the longer it will take to get the \$1.7 million back. If they do not have the letters of credit and the agreement to go with them, then the money is still out there and exposed not like the letters of credit. He pointed out that everyone is in this together and it is being presented as if DEMEC is an entity, but Milford is part of DEMEC.

Mr. Oechsler said we have a choice of either keeping our cash out there and be subject to additional cash calls or sign the letters of credit. There is no other choice.

Mr. Morrow agrees noting the instruction was to get the letters of credit and the time period is really immaterial because it can be renewed.

Mr. Oechsler moved for Mayor Marabello to sign the consent agreements for a \$15 million line of credit to each of the three power companies, seconded by Mr. Ambrose. Motion carried by unanimous roll call vote.

*Executive Session - Pursuant to 29 Del.C. §10004(b)(4); Strategy sessions, including those involving legal advice or opinion from an attorney-at-law, with respect to collective bargaining or pending or potential litigation*

Mr. Oechsler moved to go into executive session reference legal advice regarding collective bargaining and pending litigation, seconded by Mr. Workman. Motion carried at 10:04 p.m.

*Return to Open Session*

City council returned to open session at 10:39 p.m.

*FOP Collective Bargaining Agreement*

Ms. Wilson moved for approval of the FOP contract, seconded by Mr. Morrow. Motion carried by the following 7-1 roll call vote:

Yes-Ambrose, Workman, Oechsler, Brooks, Morrow, Starling, Wilson

No-Spillane

*Adjourn*

Mr. Oechsler moved to adjourn the council meeting, seconded by Mr. Workman. Motion carried.

Mayor Marabello adjourned the meeting at 10:39 p.m.

Respectfully submitted,



Terri K. Hudson, CMC  
City Clerk/Recorder