

*MILFORD CITY COUNCIL*  
MINUTES OF MEETING  
*April 13, 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, April 13, 2009.

PRESIDING: Mayor Daniel Marabello

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

ALSO: City Manager David Baird, Police Lieutenant Steven Rust and Recorder Christine Crouch

COUNSEL: City Solicitor Timothy Willard

#### CALL TO ORDER

Mayor Marabello called the Monthly Meeting to order at 7:45 p.m.

#### INVOCATION AND PLEDGE

The Pledge of Allegiance followed the invocation given by Councilman Starling. Mayor Marabello noted the recent death of Chief Hudson's mother and the fatal accident that killed Sandy Peterman and her granddaughter and friend and asked everyone keep the Hudson and Peterman families in their thoughts and prayers.

#### APPROVAL OF PREVIOUS MINUTES

Mr. Workman moved for approval of the March 9 and March 23, 2009 minutes as presented, seconded by Mr. Ambrose. Motion carried.

#### POLICE REPORT

Police Committee Chair Morrow moved for acceptance of the monthly police report submitted by Chief Hudson and seconded by Mr. Brooks. Motion carried.

Mr. Workman asked that council be made aware of the benchmarks associated with the recent stimulus grant awarded the police department and asked that it benefit the city and to try to avoid any future costs.

#### CITY MANAGER REPORT

Following up on Councilman Workman's comments on the police stimulus funds, Mr. Baird announced the city will be the recipient of a \$50,000 grant for the Energy, Efficiency and Conservation Block Grant Program. He explained this is a new program modeled after the Community Development Block Grant Program.

Mr. Baird then read the Monthly City Manager report into record:

• *Energy Efficiency & Conservation Block Grant (EECBG)*  
*The U.S. Department of Energy Recently announced a grant award of \$50,000 to the City as part of the EECBG Program. The purpose of this program is to assist communities in implementing energy efficiency and conservation strategies to 1. Reduce fossil fuel emissions within the City, 2. Reduce total energy use, and 3. Improve energy efficiency in the transportation, building and other appropriate sectors. Examples of eligible activities include: Developing/implementing an energy efficiency and conservation strategy, Conducting residential and commercial building energy audits, Developing and implementing building codes and inspection services to promote building energy efficiency, Installing LED streetlights, and Developing public education programs to increase*

participation and efficiency rates for recycling programs, to name a few. Staff will be preparing the application and reporting to City Council prior to the June 25, 2009.

• *Mispillion Watershed Working Group & Tributary Action Team*

The next meeting of the group will be held on Tuesday, April 21, 2009 at 6:00 p.m. at the Parks and Recreation Building

• *Inflow & Infiltration Study*

Work has started on the I&I study along N.E. and N.W. Front Street. Over the past two weeks crews have been cleaning and video monitoring the sewer lines. Work is also being conducted throughout the City measuring the sewer flows to determine if and when excess water may be entering the system.

• *N.E. Front Street Streetscaping Project*

Progress continues to be made regarding the design of the project. DMI and the City are coordinating meetings with the property owners regarding necessary easements and to explain how the project will impact their properties during construction.

• *Tax Exempt Property Status*

Mr. Darsney has developed a list of properties that are classified as exempt from property taxes with no documentation to support the exemption. Mr. Darsney will be notifying these property owners to resolve their tax status. If property owners are unable to reach agreement with the Assessment Office, the property owners will have the ability to appeal their tax status to City Council. It is anticipated City Council will sit as the appeals board in May.

• *Stimulus Paving Projects*

I am pleased to announce the City in coordination with DelDOT will be the beneficiary of some of the Federal Stimulus Funds. The funds will be used for numerous repaving projects throughout the City. The streets designated for paving are

- Rehoboth Blvd (S14) from hot-mix joint (HMJ) 600' North of Shawnee Acres to Mispillion Bridge.
- McCoy St. (S211) from HMJ 150' East of South Washington St. to South Walnut St. (S213).
- Marshall St. (S225) from HMJ 500' North of Watergate Dev. to S.E. Front St (S36).
- Bay Rd, SRI/US 113, North Bound only (K8) from HMJ 750' South of New Wharf Rd (K409) to P.C.C. joint North of Milford Neck Rd (K120).
- Kings Hwy (S94) from US 113, Dupont Blvd (S113) to end of P.C.C. sidewalk on Lakeside.
- N.W. Front Street from 100' west of Church Street to Washington Street.
- Rt. 113 from County Line to Milford Overpass, North and South bound lanes.

• *Electric Rate Comparison*

Below is a DEMEC rate comparison for April 2009 as well as a comparison of residential electric costs in Milford from 2006-2009.

City of Milford Residential Electric Cost Comparison  
1,000 kwh/month

	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
January	167.90	150.70	143.35	137.85
February	163.00	147.90	143.35	143.35
March	170.90	151.10	138.35	143.35
April	144.75	152.40	133.35	
May	143.01	148.60	133.35	
June	144.28	155.98	150.39	
July	155.18	146.58	150.39	
August	152.58	146.58	165.09	
September	158.98	145.04	165.09	
October	160.00	133.30	154.95	

November	159.40	133.30	154.95
December	147.00	133.35	141.35

Residential Rate Comparison @ 1,000 kW

			% Difference
De Co-op	\$121.95	0%	-20%
New Castle	\$136.95	12%	-10%
Newark	\$142.53	17%	-6%
Milford	\$143.53	18%	-6%
Dover	\$150.18	23%	-1%
Seaford	\$150.59	23%	-1%
*Delmarva Power	\$151.89	25%	0%
Smyrna	\$155.48	27%	2%
Lewes	\$156.54	28%	3%
Middletown	\$157.78	29%	4%
Clayton	\$162.70	33%	7%

Mr. Baird noted the rate increase to \$143.35 reflects the rate increase from DEMEC instituted in the February billing when the PPCA went from .45 to 1 cent.

He believes our overall trends have been good over the past couple of years. Mr. Baird said that despite what was represented earlier this evening and in the newspapers the past week about our rates, there is no proposed rate increase that will affect the city in June of this year. He said there was an accusation made there would be a 20% increase though that is completely inaccurate. The rates effective in February are projected to be the rate throughout 2009. There is a possibility those numbers may be reduced in the late summer or early fall after the DEMEC board review.

The city manager also noted the DEMEC city comparisons incorrectly showed Milford's rate as \$143.53 and should be \$143.35. He said that though we are doing ok, he feels we can do better. The capital improvements are still scheduled for completion. The funds collected were set aside in reserve accounts as is reported on a monthly basis and will offset any borrowing needed. By doing that, it will save the rate payers overtime in interest payments. He stressed the projects are still scheduled despite rumors to the contrary.

Mr. Ambrose suggested that LED lights be considered for the stimulus dollars particularly in the Riverwalk area.

Mr. Brooks referred to a newspaper article stating the Front Street overpass is on the fast track list of state projects. Mr. Baird said he was unaware of that though he usually receives updates on the Route 30/Wilkins Road project.

Mr. Spillane advised he was in Sussex County today checking on tax exempt properties and was informed the county was unaware the Key property (across from Hearthstone) had been annexed and the zoning had changed. Therefore, the county is not billing them as a C-3 zone. They asked if the city would provide them with a notice to update their records.

Mr. Baird advised the city is entering into a memorandum with both Kent and Sussex County to improve that communication. That agreement will spell out policies that work best in the county and the city so that they are informed of any land use actions. Mr. Darsney has been working on that with the assessment offices in both counties which is close to completion.

Mr. Spillane said the county clerks were upset because the county has lost tax dollars on that property.

Mr. Spillane pointed out that the roads in the city manager's report are all state roads funded through the state. Mr. Baird said that was coordinated through the city based on impact and where the least amount of utility work was needed. He agrees it is the state's responsibility, but with the help of the city, the project will be done quicker.

Mr. Spillane then stated that power is a set rate and the city really has no control; Mr. Baird explained that DEMEC

establishes a rate based on the contracts they have. Mr. Baird explained there are three components to electric rates---power cost, power cost adjustment and an O&M which is a local charge that pays for things needed to run the electric department. The city is presently working with Jay Kumar to unbundle those rates as was done in the past. He said that if we can keep that O&M constant and in budget, we are doing our job.

Mr. Spillane asked if any other tax exempt properties are being checked; Mr. Baird said there are other properties in an exempt status that have no proper justification. Though there may be a legitimate reason, the documentation is not on file. According to the city manager, city council is the only body that can grant tax exemptions. Council will sit as an appeal board if there is a problem.

Mr. Spillane then suggested the city collect taxes back to 2003, 2004 or 2005 if they were incorrectly billed. Mr. Baird's recommendation is to start clean once a final decision is made particularly because there may be situations where the city owes money. At the end of the day, he feels it will be a wash and would be in the best interest of the city and the taxpayer to start at that point and move forward.

Mr. Spillane feels other taxpayers are footing the bill for these properties not paying taxes which he does not think is fair to our taxpayers. Mr. Baird said that will added to the next agenda.

Mr. Spillane asked if this could start in the current tax year instead of waiting until the next tax billing. Mr. Baird said we are trying to wrap the process up with the 2009 tax year and everything would be correct from that point on. He confirmed that 2008 will be used to make the corrections.

Mr. Workman moved to accept the city manager report, seconded by Mr. Brooks. Motion carried.

## COMMITTEE REPORTS

### *Charter Review Committee*

Chairman Spillane said the committee continues to meet and he is anticipating at least two more meetings before the draft can be presented to city council.

## COMMUNICATIONS

### *Dorothy Vuono Letter*

Mayor Marabello then read into record a thank you letter from Mrs. Vuono, on behalf of the Circle of Light Ministry, for allowing them to present the need for a woman's shelter in Milford. The letter was included in the council packet.

## UNFINISHED BUSINESS

### *City Hall Lower Level Plans/Final Determination*

Chairman Workman referred to the workshop discussion earlier this evening. He said if an option is selected, then the security issues will need to be resolved by council. He said council must decide to select option 1 or 2 or not to do anything.

Mr. Workman moved to accept option 1, because the supervisor prefers having total control of her staff downstairs, seconded by Mr. Spillane.

Motion failed by the following 2-4 vote:

No-Ambrose, Brooks, Morrow, Starling  
Yes-Workman, Spillane

Mr. Brooks said he would prefer option 2 but will not vote for option 1 and votes no.

Mr. Morrow said he very much appreciates the work Mr. Workman has done. However, he feels that option 1 will result in overcrowding of the space and prefer council consider other options and votes no on option 1.

No other comments from council were made.

Mr. Workman said if council decides to move forward, we need to make sure a decision will be made and followed through. It has been two years and every time we get to this point, this happens. He is not saying council wasted the committee's time because the committee enjoyed doing it. But considering the billing department was told they were be at public works for six to eight months and now two years later we are telling them they are not coming back. Something has to be done about the security at public works. Other options were put out in the beginning and could have been considered. He added that now that the billing department is not moving, a decision needs to made about the security at public works.

Mr. Workman then made a motion to add security for the billing staff at public works. He said that though that will cost money, protection is needed. Any future decision on this matter should not be prolonged for five to seven years. He is upset because the people expected this body to do the right thing. There were other decisions this body has made that he got over it because we are all professionals and need to move forward. He asked that a deadline be added for the next option.

Mr. Spillane seconded the motion.

Mr. Brooks said he agrees with Mr. Workman, but feels there would be more security issues if they returned to city hall. Being confined in the basement alone is a security risk and cameras are not enough to stop everything.

Mr. Workman referenced the incident when a person went into city hall and shot people during a council meeting. He said all kinds of security can be considered including metal detectors at every door and then asked if we are securing the people that work here now. He pointed out an employee could become irate and bring a gun in from the other side of the building.

Mayor Marabello asked that if this motion is approved, further discussions will commence on what to do with city hall immediately.

Mr. Workman referred to Mr. Ambrose' earlier statement that the city manager and his administrative assistant, city clerk and receptionist return to city hall immediately. He said council can direct them back in two weeks. It should not be discussed if it is not going to happen.

Motion carried by a unanimous roll call vote.

The mayor concluded by stating security will be instituted at the public works facility immediately and Mr. Dennehy needs to be involved. Mr. Workman emphasized the committee needs to continue to be involved with the decision.

#### *City Hall Identity Theft Policy*

Mr. Baird recalled the discussion on this matter at the previous workshop and recommended adoption of the policy.

Mr. Ambrose moved to adopt the City Hall Identity Theft Policy as presented, seconded by Mr. Morrow.

When asked how the employees will be trained on the matter, Mr. Baird explained that nothing is formally set up outside of the city. An orientation and briefing will be provided to our employees. Once all entities are in compliance, he expects outside training will be provided.

Motion carried.

*Spring Clean Up Week Reminder-April 20-24, 2009*

Mr. Baird reminded council that Spring Clean Up week begins a week from today.

Mr. Brooks then verified the doors of refrigerators should be removed. Mr. Morrow confirmed that freon must be also be removed; Mr. Baird stated that refrigerators and/or air conditioners can only be picked up if the freon is removed and an EPA tag is applied.

Mr. Workman asked if we are picking up hazardous materials such as old paint cans and suggested that in the future, our customers bring those items to the city for disposal on their behalf. Mr. Baird believes hazardous materials can be taken to the Solid Waste Transfer Station off Route 113 south of Milford. However, the city should not be picking those items up, but if they are picked up, our solid waste employees will need to separate those items.

He announced that tires will also be picked up unless there is an excessive number at which point the resident will be contacted.

It was confirmed that residents do not have to call in for these pickups, unless it is a unique item requiring a special collection.

*Approval of City of Milford Election Officer/Carole Mason*

Mr. Baird reported another election officer was needed and the city clerk has spoken with Ms. Mason.

Mr. Morrow moved to approve Carole Mason of 153 Barksdale Court, Hearthstone Manor as an election officer for the April 25, 2009 election, seconded by Mr. Workman. Motion carried.

*Amendment to City of Milford Kent County Sewer User Agreement*

Referring to the previous workshop, Mr. Baird advised this agreement will clear the way for the bypass force main constructed by Kent County who will issue bonds for both the portion inside and outside of the city. The city would then pay for the portion located within our jurisdiction. We would receive a separate invoice for the debt service cost from the county.

The city manager reported we are looking a couple-cent increase and a 7 cent per thousand gallons on the low end and approximately 9.5 cents on the high end. All indications are we can manage the lower end based on the financial options available through the USDA.

The Levy Court Committee met last week to approve the project which will be on the Levy Court Commissioner's agenda later this month for final approval. However, action is needed by city council for this to proceed.

Mr. Brooks moved for adoption of the amendment to the Kent County Sewer User Agreement, seconded by Mr. Ambrose. Motion carried with no one opposed.

Mr. Brooks pointed out that the city manager had provided him with an estimated increase of 54 cents a month which calculates to \$6 or \$7 a year.

**NEW BUSINESS***Introduction of Ordinance 2009-6/Change of Zone/Jackson & Payton/R-1 to C-3/805 North duPont Boulevard*

City Planner Gary Norris advised this is an introduction to a proposed rezoning ordinance that will comply with the comprehensive plan. The property is off Route 113; the intended use is for a professional office.

Though this is being formally introduced to council, the application will go through the zoning process with a future public hearing scheduled before council after which time a final determination will be made.

*Update to Comprehensive Plan*

City Planner Norris advised that he has been in discussions with DNREC who have responded with recommendations on the Source Water Protection Ordinance. Changes were made and today he received another correspondence with some minor amendments.

That ordinance will be presented in the near future to the Planning Commission and City Council. The ordinance should be effective in June at which time, the comprehensive plan should be certified by the State of Delaware.

*Green Energy Grant Request/Kerwin & Jean Boyer*

The applicant submitted a request for \$1,800 for a closed loop geothermal system at their residence at 524 Meadowbrook Lane. The total cost of the project is \$20,000.

Mr. Workman moved to reserve funds in the amount of \$1,800 for Kerwin & Jean Boyer, seconded by Mr. Morrow. Motion carried.

*Certification of City of Milford Voter Registration/2009 Election*

Mr. Ambrose moved to certify the 2009 City of Milford Voter Registration List, seconded by Mr. Morrow. Motion carried.

*Hearthstone Manor-Roadside Shoulder Concerns-Councilman Spillane*

Mr. Spillane advised that people are accusing him of having a conflict because he discusses and votes on Hearthstone matters. He went to the State of Delaware Public Integrity Commission where Janet Wright informed him that council is talking about all of Hearthstone and the project was approved in 2002 or 2003 when he was not on council. Therefore, he did not approve the project. He said since we are talking about all of Hearthstone and that is good for all people, she said it was ok so he is going to proceed.

He said there are three things he needs to talk about. The first item is the five-foot shoulder. There are some areas in Hearthstone with five foot shoulders on the roadways. He presented a set of site plans that shows a five-foot shoulder on both sides.

Mr. Spillane stated that at Hearthstone, we have a speeding problem and all of the people walk in the road. There have been several complaints and the police department has been out there on several occasions. He has had several conversations with the city manager and the police chief.

In speaking with the city manager, Mr. Spillane asked for verification that no one went out there to inspect anything or we do not have any paperwork. Mr. Baird said there are no inspection records currently on file. Mr. Spillane said his concern is no one was out there to inspect besides the site plans that were not followed.

He said that we, at Hearthstone have a concern with that. We do not have a safe place to walk and several people have almost been hit by speeders. People get excited and some have a dog on a 10-foot chain or leash and there have been a couple of people who have fallen though they have not been hurt.

Mr. Spillane said he wants to move we fix it. He said the city has rules that are standards regarding the work that is done and if it is not acceptable, the builder or contractors have to go back and fix it before the city will accept anything or approve houses or any building, He said it will not be a cost to the city but a cost to the builder. He thinks in a way, we might have been unfair to people because we did not inspect out there.

Mr. Spillane said that is not our problem because you are supposed to trust people, both parties and the city approved the plan. When the contractor came in, they gave us a set of plans for us to approve. So on that first issue, Mr. Spillane wants to move to address the shoulders with our departments and send a letter out so that the builder will have to fix this item throughout Hearthstone.

Mr. Spillane moved to direct the city to write to the contractor saying that the shoulders are not in accordance with the codes or the site plans.

Mr. Brooks asked for a clarification of whether the roads were inspected or if it is a case of not having the records. Mr. Baird confirmed we do not have the records. Mr. Brooks asked if the roads were inspected; Mr. Baird said it is his understanding they were inspected.

Mr. Ambrose explained that was before the city had a city engineer or an inspector and the work was contracted out. Mr. Baird agreed that is correct. Mr. Ambrose asked if those records would be in the possession of that contracted firm. Mr. Baird recalled Councilman Oechsler previously asked that question. When Mr. Baird asked DBF, they did not have those inspection documents.

Mr. Workman said Mr. Baird believes the roads were inspected. He feels that believing is one thing and having proof is another. He said we are once again in another situation that needs to be talked about. Something was not done properly. He asked what was the format and who approved the plans and he knows this body had to approve them as well. He asked at what point did we see what was done and do we wait until it is 100% completed before it is put in the hands of the city and before these changes have to be made. He does not feel that would be fair to the residents or the developer.

Mr. Workman feels that should be an ongoing project. If they are doing the first phase, it should have been addressed then. He says if our codes state that we do not do anything until it is 90% complete, then that needs to be reviewed and changed. If the five-foot shoulders were not built properly, he asked what else is out there that was done incorrectly.

Mr. Workman agrees everyone is tired of hearing about this but something went wrong. Someone is not doing their job or someone did their job incorrectly. He said someone had to approve it and he wants to know where the documents are. If we had an outside firm doing it, they must be required to keep those records for a certain number of years before they can be destroyed.

When asked if this involves all of the shoulders, Mr. Spillane said yes, it is throughout Hearthstone.

When asked for a second by the mayor, Mr. Workman said he will second it but wants some answers first.

Mr. Workman then seconded the motion to allow it to be discussed.

When asked how big the problem is, Mr. Spillane said it is large and referred to Mr. Ambrose. Mr. Ambrose said he has been out there several times and is aware of the one area at Clearview Drive that does not have a five-foot shoulder. However, he has not been in every area though the other streets he observed had five-foot shoulders. He thinks DBF needs to be contacted on this. The city paid them to inspect this subdivision and he feels they should be able to provide those inspection records.

Mr. Morrow agreed they should be held accountable.

Mr. Ambrose feels that we need to send an expert out there to identify which streets that do not have the five-foot shoulders versus making a generic, blanket statement. Mr. Morrow believes the city manager should send someone, preferably the city engineer or inspector, to measure all the streets officially.

Mr. Workman stated we are just talking about the streets now. He has seen different things that were signed off by the developer in relation to the curbing that is supposed to go in front of these places. If the city is going to look at the shoulders, he wants everything looked at. In that manner, everything can be done at once. We have shoulders this week



and next week it will be something else.

Mr. Workman stressed there are problems out there and he does not know how to address them all at once.

Mr. Spillane said the other issue is curbing which was drafted in a 2000 contract.

Mr. Spillane then reviewed the documents he presented to council. He advised that when you go out there to inspect, the state has a sheet or they inspect and they check each item off with either a yes, no or does not apply. They have a regular sheet that lists grades of berms, swales, etc. He wonders why we cannot find it. He feels it may have been done and just slid behind something.

He further explained the state also has the way sections should be built in housing developments. He is sure we took one of the plans that show shoulders on every road. Some are ten foot and on the other side, they may be five feet. He said that somehow, we picked the one with five feet on each side.

Mr. Spillane then referred to an approval in 2000. He said it lists several things and questioned if all were followed though. He does not feel they were stating each needs to be addressed. He said that what ties into the shoulder is number 6 that states 'builder will on both sides streets have rolled curbs'.

Mr. Spillane said you then ask what type of street it is and it tells you what they are. The streets in Hearthstone are under the amount of houses they are telling us it should be so he does not know what happened to the curbing out there. He said that is a contract that was signed by the city and the people building out there. He said that is one thing they are talking about and that needs to be addressed. He agrees we should address everything but he has not done too good a job since 2008 when he came on and even before that when he tried to address issues. People were telling him to address one thing at a time. So he is trying to address them one at a time.

He feels that an inspection has not been done by anyone. He said he talked to this other construction firm. They said they might have been involved in phase 1 and he needs to talk to them more. He is telling Mr. Spillane he was not involved in it and phases 4, 5, 6 or 7.

Mr. Spillane is not here to put blame on someone but believes something is wrong. He said these are facts and he does not know what happened. However, he thinks we need to stop since things are slow right now and go out there and inspect. The city does not have to fix it but the contractor does as is stated in our code. He stressed the city does not go out and fix them, but the contractor has to, period.

Though he is lost why the city did not do some of this, the problems have been found and need to be fixed or corrected which is what he is trying to do.

Mr. Spillane stated that when people drive into a single family home, there is quite a dip on either side where they pull in. On the site plan approved in 2006, there is a two-foot shoulder when you pull in. If you go off of the blacktop area, you can land in the ditch. He advised there have been a couple of cars that ended up in the ditch. The pipe under the driveway got stuck under their car and they had to get a tow truck to pull them out. Then they had to take their car to the shop to get it fixed.

Mr. Spillane believes all these things are safety issues for the people. The city has codes that do not allow anything to be built that is unsafe.

The mayor asked if it is legal to act on this without any notification to the developer; City Solicitor Willard asked Mr. Spillane to repeat this motion. Mr. Spillane said the motion is to correct the shoulders though he is willing to address all the problems out there.

Mr. Spillane said he changed his motion to address all situations out there. Mr. Workman seconded the motion.

Mr. Baird stated that with the motion made by Councilman Spillane, we are getting caught in the same situation we have been in for years. He does not believe that Mr. Spillane will want that and he does not think the other council members want it. He said if council is inclined to move in the direction that Councilman Spillane is pursuing, it is Mr. Baird's recommendation to bring a third party inspector in who has not worked for the city nor done any work for the applicant or anybody tied to them. That inspector needs to be asked to review the existing records, talk to people like Councilman Spillane, talk to some of the residents, talk to the developer and try to get their hands around this thing. Compare what is out there to the records that exist on this project. He suggests using that as a starting point and proceeding from there.

Mr. Baird agrees there will always be claims of a vested interest whether it is from the city's end or not. He feels it will probably be that way even if the city brings this person on board to do the work. He can see it being very labor intensive, from not only from a physical inspection point, but from reviewing records and trying to compile them. He reported that Councilman Spillane and he had a conversation this afternoon that was very intense because of the information he was looking for and the time frame it was going to take to compile it. His thought is to have an outsider look at this from top to bottom if that is the direction city council chooses. He has no idea of who that person would be, but he would propose something, in great detail, and talk to those that were involved and get their input and try to put it all together.

Mr. Spillane feels some of these issues need to be addressed right now because so many things are clearly wrong. Some of the other issues may be in a gray area. Some need to be fixed right now and not dragged out for another four years. He said any construction needs to be held up in order to make sure we fix and are on the right track before anything else is allowed to be built or sold. He added we are not just talking here.

Mr. Workman said if we have an outside source come in to do that, to him, this has been a headache and he is tired of hearing about it though he agrees something needs to be addressed. We need to learn from this so it does not happen again five or six years from now when other people are sitting on this body. He agrees we are not perfect and no one is perfect so let's do this right now before the problems continue. The more they develop, the more they develop wrong which will cause this headache to continue.

Mr. Workman said he does not know if this body can, but believes we should halt all construction until these things are addressed.

The third party is a good idea according to Mr. Workman, but wants it done in a timely manner and does not want three or four months to pass without anything happening. He said we are beating a dead horse all over again and he wants it taken care of.

Mr. Morrow does not believe the city manager will allow that time to pass with nothing being done, though he is unsure if council is able to vote on a matter like this until the other party has been informed of the potential action. He agrees we have responsibilities to all the citizens in Milford and do not want to put ourselves in a worse situation. He does agree that any problems need to be determined.

The mayor asked the city solicitor if the other party should have been notified before this action is taken. Mr. Willard said he understands the concern about the motion being more specific. The motion was to fix the problems out there and he was referring to the shoulder. He agrees that some information needs to be gathered to determine what needs to be fixed.

Mr. Willard said he sees the frustration of council because it was not done right and they feel it needs to be done right now. However, normally, the town engineer receives construction drawings and they would then come up with a price for a bond. He feels that back then, eight or nine years ago, the city did not require bonds. That would be the hammer which is the bond to execute it. The problem is we do not have the hammer. However, from a legal standpoint, it needs to be addressed one step at a time. The third party could then provide the plot, stating these were never dedicated and this was not improved the way it was recorded. However, he feels this may be something more appropriate to discuss in executive session in regard to legal ways to enforce this in reference to bond applications once he has all the facts.

When asked again about the legality of the vote at this time, Mr. Willard said that when Lincoln suspended the writ of habeas corpus and his Secretary of State said you can't do that and he responded by saying of course, I can, I just did. He

added that it can be done but what does it mean and what does the city manager do with that. That is where he has a problem as far as specifics and is the legal problem he has with it.

Mr. Spillane said he would like to change the motion again and would like to fix the shoulder right now and the curbing and the small shoulders should be fixed on each side of the single family houses where people drive in throughout the whole development. He then added the bond issue is a good thing that was brought up.

Mr. Willard asked if the motion is to have the city evaluate the problem and then take bids on the construction and then hire someone to fix it. Mr. Spillane answered he does not want the city to pay any funding out of their pocket but needs the city to enforce the codes and the site plans that we have approved which would be to go back to the builder and state these are not up to code or the site plan and must be fixed according to the plans. Then the city holds everything up that is done in Hearthstone. We do not allow the sale of any houses nor do we allow them to build anything.

Mr. Willard said that the appropriate motion would be, whether the problems identified specifically to do this or not, may be a question, but what Mr. Spillane is asking is that the developer be notified these are not in compliance with the code and that they be fixed. Mr. Spillane added that nothing built, sold or anything until these problems are fixed, period.

The mayor said as amended, and asked for a second. Mr. Workman seconded it.

Mr. Workman then spoke to Mr. Willard, stating that we send a letter out to the developer and the developer says he is not going to do anything. He said we already know they are wrong by the blueprints and we do not have any documentation saying an inspector went out there. He said will we get it from the firm that represented us at that time, it is possible, but most likely we will not. He asked where we stand if the developer says we will not fix this.

Mr. Willard explained that Mr. Spillane has recommended the building permits be withheld. Mr. Spillane reiterated withheld and any houses being worked on today will not have the CO (certificate of occupancy) approved. Mr. Willard said he is not ducking this, but needs to reserve his decision on whether council has the authority to withhold building permits. There is a section of the code he is familiar with but this was on the agenda as concerns in Hearthstone and prefers to reserve his opinion on this.

Mr. Spillane said that whenever we addresses something, we always try to put it off when it pertains to certain people. Mr. Willard said the code allows you not to give building permits if the performance bond has not been accepted but does not know if that code was in effect at the time. He does not know enough about the facts to see if this would apply in this case.

Mr. Spillane stated that the rights of the city allow the city to do anything. He added the council runs the city the way the charter reads. Mr. Willard advised the charter enumerates the powers that the city has within the U.S. and Delaware Constitution/State Code.

Mr. Workman then spoke to Mayor Marabello, stating that here we are again. He said when a development is being built, it is 90%, though he is unsure and apologizes but will later research it. But if we approve a project, it is not in the city's hands until it is 90% completed. Because there are problems now, there has to be something in our code or the state code that says we can do something about this now.

Mr. Morrow asked if any of these three items have been presented to the builder in the past six months; Mr. Baird clarified the issues he has been working on are the swales on Clearview Drive, the signs on Route 1 and the tax assessments. Mr. Morrow feels the first response may be that he was unaware of these problems.

Mr. Baird advised that he did make them aware this particular item was on the agenda this evening.

The mayor said there is a motion to notify the builder to fix the shoulders, the curbing and the small shoulders on the side of the driveways plus withhold any permits of future construction.

It was confirmed it was amended and Mr. Workman verified he seconded the motion.

Motion failed by the following 2-4 vote:  
No-Ambrose, Brooks, Morrow, Starling  
Yes-Spillane, Workman

Mr. Ambrose said he is voting no not because he necessarily disagrees with what Mr. Spillane is saying, but he does disagree with the position we are taking with this motion. He feels that if this motion passes and we proceed, the city will again end up in court which will only drag the matter out longer and nothing will be done in the meantime. The city manager has given an option with a third-party inspector that will get this resolved much quicker. Considering the past history, anytime council has taken action like this and the developer says no because the city is wrong, we end up in court and we have court date after court date. In the meantime, we run up substantial legal fees and still nothing gets done. He is only voting no for that reason and not because he disagrees with Mr. Spillane in terms of what needs to be corrected.

Mr. Spillane votes yes stating that because we have a set of code and a charter, the people put us in office to follow it and make sure the rules are enforced. He is trying to enforce them in our plans so that we have a safe place to live.

Mr. Workman says we have a charter and we have the facts in front of us and know they are wrong. We have to do something. We talk and talk and ask the city manager to do his job and he does it. But it seems to stop after he talks and it does not get anywhere and he is voting yes.

Mr. Brooks agrees with everyone that the shoulders should be at least five feet on each side with curbs and it should be safe to go into the driveway. But he does not know if council has the authority to cease the construction or building. He prefers to go with the third party option. Mr. Baird believes an inspection was done and feels the city should have a copy. DBF should also have a copy as well as Mr. Fannin. He feels we should ask Mr. Fannin for his copy. He votes no but agrees with all three council members. He would like to ask Mr. Fannin for the inspection paperwork to see who signed it, but would like to have that third party inspector to review the entire subdivision so it can be fixed.

Mr. Morrow said we all agree there are problems out there. He also believes this is the wrong way of getting it fixed. This is a legal issue and we are going to end up in court which is going to cost the city more money. Though he is not a lawyer, he agrees with Mr. Brooks that this would be resolved quicker and with less money using a third party. Even if records need to be subpoenaed from DBF, the information has to be somewhere. In addition we have opened up dialog about new issues. He votes no.

Mr. Starling said he has heard information and though Mr. Spillane has done his research, he is not sure about these other issues. He said that first of all, we have a city manager who is capable of finding out the correct way to do this. Once he finds out the information, it is brought back to council. He does not feel it will take a long time. He is unsure if council is legally able to do some of these things. If the developer says no, he is not going to fix it at this time, then where do we end up---in court which will end up costing the city even more money. He agrees we need to get more information in order to find out exactly what needs to be done. Then bring it back before council. He will then vote the other way. But at this point, he is voting no.

Mr. Ambrose then moved to follow the process suggested by the city manager at the beginning of this discussion and hire an independent third party to investigate all sides of this issue and present that report to council with some options. Before that occurs, Mr. Willard should be copied so if there are any legal questions about the developers' rights, an answer can be provided and the appropriate action taken.

Mr. Morrow asked that the motion be amended to include subpoena rights.

Mr. Ambrose added that we use all legal recourse available to procure the missing documents.

When asked to put a time line on it, the city manager said he will come back to council in two weeks and will need to speak with that inspector to determine how much time is needed to do that work.

Mr. Ambrose also added to his motion at a time to be determined.

Mr. Morrow seconded the motion.

The mayor reiterated the motion is to hire a third party to review the blueprints and site plans and compare them to what was done as described by Mr. Baird within certain time perimeters and to use all legal recourse to procure the missing documents.

Mr. Spillane said the construction standards are on the website of the city but are not in our code book. He has been questioning why there are certain codes on the site and not in our code book. He said if you go through the construction code, it clearly states there will be no CO approved until all the standards are met. He does not know why people don't know anything and he is concerned about that and do we really read what is in our packets. He said it clearly states no CO will be granted until everything is approved by the city and now we find out that somebody may not have gone out there to inspect. He is saying let's go out there and that we do have the right to stop everything. Let's go out there and fix things first and then proceed. He emphasized that we need to get everything right and then proceed because it is clearly written in our construction standards.

He explained it was in the packet today and is on a site that nobody can find. He has asked a couple of councilman to find the construction standards and has not found too many people that can find the construction standards.

Mr. Brooks said it was dated April of 2004. Mr. Spillane said that is right and it has been changed and these are still the same standards we use. Mr. Spillane asked if the city engineer can speak about whether the construction standards were the same at that time.

Motion then carried by the following 5-1 roll call vote:

Yes-Ambrose, Workman, Brooks, Morrow, Starling

No-Spillane

Mr. Spillane asked how much time this will take; it was explained Mr. Baird would provide that at the next council meeting. Mr. Spillane asked what costs are involved because he feels the city can do the work because we have the people who can read the blue prints. He votes no.

Mr. Workman said we talk the other way, we talk this way and he may not particularly like this way, but it is something and hopefully the information can be used by the city manager so this body can move forward and take care of all the Hearthstone problems so we are not sitting here again discussing this. He feels the rest of the people will vote yes on it so even if he votes no, it will still pass, so at least he will say yes to it because that is the only way something will be done though it may not be what he wants or in a timely manner, but agrees it is better than nothing. He votes yes.

Mr. Brooks votes yes for the third party.

#### MONTHLY FINANCE REPORT

Through the eighth month of Fiscal Year 2008-2009 with 67% of the fiscal year having passed, 71% of revenues have been received and 64% of the operating budget expended.

Mr. Ambrose reported this is the same report reviewed at the March 23<sup>rd</sup> Finance Committee Meeting.

Under the general improvement fund, there was an expenditure of almost \$300,000 which was a pass-thru related to the parking lot at the Boys and Girls Club. HE recalled that state legislators obtained the money for the club though the city paid the bill.

The expenditure, out of the water capital reserves and slightly more than \$15,000, was from a prior year's capital expense.