

MILFORD CITY COUNCIL
MINUTES OF MEETING
May 11, 2009

On Monday, May 11, 2009, the City Council of the City of Milford held a Public Comment Session in the Joseph Ronnie Rogers Council Chambers of Milford City Hall at 201 South Walnut Street, Milford, Delaware, prior to the commencement of the official City of Milford Council Meeting in order to allow the public to comment about issues of interest that impact the City of Milford.

PRESIDING: Mayor Daniel Marabello

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

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

COUNSEL: City Solicitor Timothy Willard

Mayor Marabello declared the Public Comment Session open at 7:17 p.m.

Skip Pikus of 16 W. Clarke Avenue commended the work that was done at city hall which resulted in a lovely building and a tribute to the Ruby Vale family.

Mr. Pikus recalled years ago when citizens could make utility and tax bills at local banks. A number of residents have asked why this was discontinued; he asked council again consider utilizing the current property and add a drive-thru window. The land owned by the city behind city hall could then be used solely for employee parking and to bring back the billing department back to the downtown area. This suggestions would bring those conveniences back to city hall.

Charles Stanko of 26 N.W. Front Street noted that as a downtown business owner, it is very important to have city hall up and running again for some sort of use in order to bring people back into the downtown areas. He agrees the drive-in window is a great idea.

Richard Carmean, former City Manager, of 102 McCoy Street, referred to a recent newspaper article entitled 'Council to review Tax Free Lands'. He said the article referred to two properties not registered as tax free whose owners say they should be. Both claim to have had a handshake agreement with former Mayor Ronnie Rogers and former City Manager Richard Carmean to leave the properties untaxed when they were annexed into Milford. It further read that there are several ways to prove that you should not have to pay property taxes, but a handshake isn't one of them. The code clearly states what you need to do to become tax exempt and I don't understand how a mayor and city manager don't do that, Council Member Jim Oechsler said.

Mr. Carmean said he is in attendance to state publicly that it did not happen with either land owner. When these cases are heard, the former city manager said he will be present to explain these issues.

Mr. Carmean feels a lot of time is being spent by council on what happened in the last five years instead of what will happen over the next five years. As a taxpayer, he wants to move the city move forward and he is unsure what the current manager is doing because everything being addressed appears to have happened when Mr. Carmean was city manager.

He said he is four minutes away and very accessible and will attend any meeting council wishes. If a citizen has a question regarding something he was part of, he will gladly answer those questions. If it is something wrong, he will take the blame or the heat. However, after more than forty years of service, he will not allow these type statements to be made without a chance to provide some explanation or answers.

Mr. Carmean feels there is thin line when it goes from not being able to manage the city to doing something that may be illegal.

He also feels the paper should have contacted him for his comments. Regardless, he is at the city's disposal should an issue come up that needs some background.

In regard to the third party inspection contract on tonight's agenda, Mr. Carmean feels that as a taxpayer, he is unhappy with that proposal. He knows a little about engineering costs and also knows that once the foot is in the door and that door is open, that cost will escalate. Mr. Carmean said inspections were done on these projects though that was an issue left hanging, he personally signed a lot of the related documents and many times had to contact the developers to get the money because they were the ones paying the inspector on these projects.

Mr. Carmean also recalled going from 12 building permits a year to 350 permits under his management. He does not dispute that something were not done correctly. However, at that time, there was no clear cut spec manual that could be provided to the developer or his staff. But it was being developed as these things were occurring and mistakes were being corrected.

He reiterated that nothing was done under the table or sneakingly.

Mr. Carmean concluded by asking the mayor to gavel any resident who comes before council publicly to challenge anything done by him and he will gladly be at the next meeting to answer those questions or help the city out and prevent some of these issues from turning into

Wyatt Hammond of 1111 N. duPont Boulevard said he is a resident and business owner who employees 11 people. He moved here from Dover in 2001.

He informed council that the Milford Post Office has been chosen to stop accepting bulk mail. Mr. Hammond has a nationwide company help trucking and bus companies comply with federal and state regulations and needs direct mail to sustain his business. He does approximately 115,000 pieces annually; eliminating bulk mail acceptance unit in Milford will force his company to go to Dover or Georgetown for his bulk mail drops. To stay in Milford will cost his business a minimum of \$2,700 and realistically closer to \$4,000. He has talked to post office personnel in Milford, the regional level in New Jersey and the national level. Regardless, the bulk mail acceptance unit in Milford is going away in July.

Mr. Hammond asked the mayor and council to consider the negative effects this will have on the Milford economy. He recalled that during the past year, there was a push to welcome a higher learning facility, but Mr. Hammond doubts they will want to come to Milford if bulk mail drops must be done in Dover or Georgetown.

Mr. Hammond said he not asking for handouts or letters or phone calls to be made by council because he has already done everything possible. As a member of the chamber, he wants businesses to stay in Milford and wants Milford to become a viable business community. Milford cannot grow from an economic standpoint because of the change at Milford Post Office. He says this could be just the beginning and no one at the post office could tell him if business-reply mail would be next. If that occurs, he must leave because he relies on business-reply mail to bring the records he audits for trucking companies into this post office box everyday including Saturdays.

He reported the decision was based economics and Milford did not have the density needed to keep this service here.

With no other person signed up to speak, the public comment session concluded at 7:34 p.m.

Respectfully submitted,



Terri K. Hudson, CMC
City Clerk/Recorder

*MILFORD CITY COUNCIL
MINUTES OF MEETING
May 11, 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, May 11, 2009.

PRESIDING: Mayor Daniel Marabello

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

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 7:34 p.m. He announced that Ms. Wilson was absent due to one of her family members being hospitalized and Mr. Johnson was unexpectedly called away on a business trip.

INVOCATION AND PLEDGE

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

APPROVAL OF PREVIOUS MINUTES

Mr. Brooks moved for approval of the April 2, 3, 6, 13, 27 and May 4, 2009 minutes as presented, seconded by Mr. Morrow. Motion carried.

RECOGNITION

Proclamation 2009-4/National Police Week

Mayor Marabello acknowledged the good job that Chief Hudson and his officers are doing. He acquired a better understanding and appreciation of their duties during the civilian police academy he recently attended.

He then read the following proclamation into record:

WHEREAS, the Congress and President of the United States have designated May 15, 2009 as Peace Officers' Memorial Day and the week in which it falls as National Police week; and

WHEREAS, the members of the law enforcement agency of Milford, Delaware play an essential role in safeguarding the rights and freedoms of Milford, Delaware; and

WHEREAS, it is important that all citizens know and understand the duties, responsibilities, hazards, and sacrifices of their law enforcement agency, and that members of our law enforcement agency recognize their duty to serve the people by safeguarding life and property, by protecting them against violence and disorder, and by protecting the innocent against deception and the weak against oppression; and

WHEREAS, the men and women of the Milford Police Department unceasingly provide a vital public service.

NOW, THEREFORE, I, Daniel Marabello, by virtue of the authority vested in me as Mayor of the City of Milford,

Delaware, call upon all citizens of Milford, Delaware, and upon all patriotic, civic and educational organizations to observe the week beginning May 10, 2009 as Police Week during which time all of our people may join in commemorating law enforcement officers, past and present, who, by their faithful and loyal devotion to their responsibilities, have rendered a dedicated service to their communities and, in so doing, have established for themselves an enviable and enduring reputation for preserving the rights and security of all citizens in the City of Milford.

I further call upon all citizens of Milford, Delaware, to observe May 15, 2009 as Peace Officers' Memorial Day in honor of those law enforcement officers who, through their courageous deeds, have made the ultimate sacrifice in service to their community or have become disabled in the performance of duty, and let us recognize and pay respect to the survivors of our fallen heroes.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Official Seal of the City of Milford to be affixed this Eleventh day of May in the Year of our Lord Two Thousand and Nine.

Mayor Daniel Marabello

The proclamation was then presented to Chief Hudson.

Proclamation 2009-5/Memorial Day & Milford Veterans Poppy Sale Days

Mayor Marabello then read the following proclamation into record:

WHEREAS, the Veterans Affairs Organizations have adopted the Poppy as their commemorative symbol; and

WHEREAS, the memorial Poppy, assembled by disabled veterans, pays respectful tribute to those killed in war and also benefits living veterans and their families; and

WHEREAS, public donations for Poppies fund rehabilitation programs within each local community that benefit veterans and their families.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Milford, Delaware, hereby proclaims May 22 through May 24, 2009 to be Milford Veterans Affairs Poppy Sales Days in the City of Milford and encourages all citizens to recognize the merits of this cause by contributing to its support through the donation of funds for Poppies as symbols of appreciation for the sacrifices of our nation's honored dead.

AND, BE IT FURTHER RESOLVED, that as Mayor of the City of Milford, Delaware, I, Daniel Marabello, do hereby proclaim and declare that Memorial Day be observed on Monday, May 25, 2009 in this City.

Due reverence and honors will be given to those valiant veterans who gave their lives in defense of this great Nation so that we may remain free. It is urged that we all join together in honoring them for their supreme sacrifice

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Official Seal of the City of Milford to be affixed this Eleventh Day of May in the year of our Lord Two Thousand and Nine.

Mayor Daniel Marabello

Proclamation 2009-7/Elks Lodge 2401 Youth Week

After reading the proclamation, it was presented by Mayor Marabello to Milford Exalted Ruler Ken Dabog and Youth Activity Representative Bob Glasco:

WHEREAS, the Benevolent and Protective Order of Elks has designated a week in May as Youth Week to honor America's Junior citizens for their accomplishments and to give fitting recognition of their services to Community, State and Nation; and

WHEREAS, Milford Lodge #2401 will sponsor an observance during that week in tribute to the Junior Citizens of this community; and

WHEREAS, no event could be more deserving of our support and participation than one dedicated to these Young People who represent the Nation's greatest resource, and who in the years ahead will assume the responsibility for the advancement of our free society; and

WHEREAS, our Youth need the guidance, inspiration and encouragement which we alone can give in order to develop those qualities of character essential for future leadership, and go forth to serve America; and

WHEREAS, to achieve this worthy objective we should demonstrate our partnership with Youth, our understanding of their hopes and aspirations and a sincere willingness to help prepare them in every way for the responsibilities and opportunities of citizenship.

NOW, THEREFORE, I, Daniel Marabello, by virtue of the authority vested in me as Mayor of the City of Milford, Delaware, do hereby proclaim the week beginning May 11, 2009 as

YOUTH WEEK

in the City of Milford and urge all Departments of Government, Civic, Fraternal and Patriotic Groups, and our Citizens generally, to participate wholeheartedly in its observance.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Official Seal of the City of Milford to be affixed this 11th Day of May in the Year of our Lord Two Thousand and Nine.

Mayor Daniel Marabello

POLICE REPORT

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

CITY MANAGER REPORT

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

***New Code Enforcement Official**

I am pleased to announce the hiring of Mr. Lendon "CC" Dennis as Code Official with the City. Mr. Dennis comes to the City with over 5 years of Code Enforcement experience with the City of Cambridge, Maryland and most recently with the Town of Milton. Mr. Dennis began service with the City on April 21, 2009.

***Energy Efficiency & Conservation Block Grant (EECBG)**

Staff continues to prepare supporting information that will be needed for the application that is due to the U.S. Department of Energy by June 25, 2009. Some of the potential projects include LED street lighting in the City, funding Green Technologies on the proposed interpretive center at the base of the Goat Island pedestrian bridge, and conducting energy audits for homes and businesses in the City. Additional information on this subject will be discussed at the May workshop meeting.

***FY2009-10 Budget**

Mr. Portmann and I have met with each of the departments regarding their departmental requests and are making modifications for a review next week. Dates for budget hearings have been scheduled for Tuesday, June 2 and Wednesday, June 3. Please reserve Thursday June 4 for a third meeting if necessary.

***N.E. Front Street Streetscaping Project**

Progress continues on this project as the utility companies met last week to review the utility design and make final modifications. We have also received comments from the DMI design review committee that are being incorporated into the final design documents. I will continue to update City Council as progress continues. A future presentation will be provided to Council at a later date.

***Electric, Water & Sewer Improvements**

We continue to work on the planning and design of the improvements to our utility systems. Since Congress passed the stimulus bill, the City is in a position to potentially take advantage of low interest loans from USDA and the State of Delaware that were not available in the past for our water and sewer projects. Interest Rates are approximately 2.0% for the State SRF loans and between 2.75 and 4.00% on the USDA loans. We are working with DBF and the two agencies on completing our applications and finalizing our financing for the projects. We are still planning on a bond sale for the electric improvements.

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

COMMITTEE REPORTS

Committee Assignments

Mayor Marabello presented the committee assignments for the next year based on preferences of council and member availability and experience.

Mr. Spillane noted that most of the committees have four council members but the finance committee only has three and asked that he be added as the fourth member.

Mr. Workman feels we only need the committees that are most active which in his opinion are parks and recreation, finance and police. The others should be filled on an as-need basis. Mayor Marabello explained there were several inactive committees from the past that he did not include this year.

Mr. Brooks pointed out the public works committee is another active committee that should be continued. Mayor Marbello agreed referring to the numerous public works projects in progress besides the every day activities that often need council attention.

Because there is an opening on the finance committee, Mr. Starling moved that Mr. Spillane be added to the finance committee as the fourth member.

Mr. Brooks emphasized that all council members are able to attend any committee meeting as has been the past practice; Mayor Marabello agreed. Mayor Marabello instructed that any questions or matters of concern regarding the committee should go through the chairman for some sense of order otherwise it creates chaos. He also advised the committees are only designed as advisors to city council.

Pointing out the importance of finance in the city, Mr. Brooks feels all eight members of council need to attend the budget hearings.

The mayor added Mr. Spillane to the finance committee stating that a motion was unnecessary.

Mr. Workman felt it appeared to be unorganized and asked that a vote be taken on each council member and committee; the mayor disagreed until someone assigned to a committee wanted to be changed.

Mr. Starling said if another council member wants to be on another committee, they need to voice their opinion at this time.

Mr. Workman then stated he wants to be the chair of the police department; the mayor said he prefers to leave the committee as it currently stands noting that Mr. Workman was added to the committee. Mr. Workman informed the mayor that it is his opinion this action should be taken by council. It was noted that historically the mayor has made the appointments.

Mr. Workman advised him the charter states committees are done with council approval. Mr. Morrow responded that the charter is silent when it comes to committees but committees are traditionally appointed by council. Mayor Marabello agreed stating that the charter only addresses specific committees one of which is annexation.

When asked if council wants to move on, Mr. Workman argued that he wanted to be the chair of the police committee. He disagrees with the mayor on the matter and reiterated he wants to be the chair of the police committee and if someone has a problem with it, it needs to be discussed.

Mr. Morrow said there are two other police committee members who previously served and with their experience should be considered as chair before a new member. Mr. Workman said if they want to move up, then they should have stated so.

Mayor Marabello pointed out that two members of council are absent. He added that the committees were filled after consideration of the selection made by council. He believes he made the best choice for chairman and recommends the committees be finalized.

When asked if a vote is needed, City Solicitor agreed the charter is silent as to committee selection. If council feels this process should become a more formal rule, an ordinance could be drafted and introduced and added to the administrative code as how this is done in the future. For example, the mayor would make the nomination and council would confirm it.

City Solicitor Willard agreed that in the past, the mayor has appointed committees and historically that is how it is done by other towns in Sussex County.

Mr. Starling then moved the committee assignments be finalized, as presented, with the addition of Mr. Spillane to the

finance committee, and that any changes be considered after the next election, seconded by Mr. Adkins.

Community Affairs Committee

John Workman*
James Starling
Jason Adkins
Steve Johnson
Daniel Marabello

Finance Committee

Doug Morrow*
Owen Brooks
Michael Spillane
Steve Johnson
Daniel Marabello

Parks & Recreation Committee

Katrina Wilson*
Owen Brooks
James Starling
Steve Johnson
Daniel Marabello

Police Committee

Doug Morrow*
Katrina Wilson
James Starling
John Workman
Daniel Marabello

Public Works Committee

Owen Brooks*
Katrina Wilson
Michael Spillane
Jason Adkins
Daniel Marabello

Special Committees

Annexation Committee

Katrina Wilson*
Doug Morrow
John Workman
Michael Spillane
Daniel Marabello

Charter Committee

Michael Spillane*
Owen Brooks
Daniel Marabello

City Hall Committee

John Workman*
Owen Brooks
Katrina Wilson
Michael Spillane
Daniel Marabello

Chairperson*

Motion carried by the following 4-2 vote:

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

Mr. Workman votes no because he feels it is not a fair process and wants council handling this. He said the mayor has some authority in getting things together but he disagrees with this process because it is something this body should do.

Mr. Adkins votes yes pointing out that if this were changed tonight, we could be here until 11 o'clock which could result in animosity between council members; if it is something being considered for an adjustment next year, then established guidelines should be made before the selections are made.

Charter Review Committee

Because the charter review is almost complete, the consensus was to leave the committee members as they currently exist to prevent bringing in a new member at the last minute.

Once the entire process is completed, the charter will be submitted to the general assembly for action during the next session.

COMMUNICATIONS

Planning Board Candidates

The mayor provided council with a list of potential planning board applicants. He contacted those applicants to confirm if they are still interested. Any council member who needs copies of applications should contact the mayor.

Discussion from council regarding the selection of the chairman and its impact on equal representation from each ward then followed.

The mayor asked if council wishes to accept more applications or if the selection should be from the current list. Mr. Spillane preferred new applications be accepted. The mayor advised the city continuously accepts applications regardless of whether there is an opening or not. It was agreed to post the opening.

Bond House/N.W. Front Street

Mr. Starling asked the status of the home on the corner of N.W. Front and Church Street which was to be demolished several months ago.

The city manager stated that during the first week of May, the property owner was ordered to demolish the structure within 45 days. This action was postponed because the city was working with Avenue Church and the property owner on the possibility of moving the Hall House to that site.

Prime Shine Car Wash/North Walnut Street

Mr. Morrow expressed concern about the condition of the carwash site noting that though it has been somewhat cleaned up, the grass has not been cut.

The city manager advised the bank has taken ownership of the property through a sheriff's sale and are in the process of hiring someone for routine maintenance. Once they have been contracted, the property will be properly maintained.

Milford Museum Open House

Mayor Marabello reminded council the museum is hosting a Special Open House highlighting local baseball history for council and city employees on Wednesday, May 13, 2009 from 5 p.m. to 7 p.m.

Milford Memorial Hospital Fair

Mr. Workman reported the 52nd Hospital Fair will be held this weekend with a Lasagna Dinner scheduled on Friday night at Milford Middle School. The mayor then announced he will be participating in the Tricycle Race on Saturday.

UNFINISHED BUSINESS

Third Party Inspection Proposals/Hearthstone Manor

The city manager referred to the proposal from George, Miles and Buhr, LLC for engineering services to prepare a fact finding report relative to the Hearthstone Manor development project. He explained the purpose is to define whether or not the public works infrastructure conforms to what was agreed between the City of Milford and the developer as represented in the annexation agreement, subdivision ordinance, approved construction plans, as-built record drawings, project permits and/or other similar documents. The fact finding report is intended to serve the interests of the City of Milford towards constructive and productive negotiations with the developer or, in the alternative, to support litigation. They plan to review the information and documentation conveyed by the city and will supplement the review with interviews or communications with persons having historical knowledge of the project planning and construction.

In attendance was GMB Executive Vice President Peter Bozick who prepared the \$20,000 proposal. Mr. Baird explained it was very difficult to anticipate the amount of time that would be involved; the \$20,000 is a starting point which he feels is our target moving forward though he wants council to be aware that is not a fixed contract price.

Mr. Brooks again asked if there was any proof of a final inspection; Mr. Baird said that is a major need of the proposal. Mr. Brooks feels that the city, Mr. Fannin or DBF should have the final approval though no one has stepped forward with the documentation and Mr. Baird agreed.

Mr. Morrow agrees with Mr. Brooks that all possibilities should be exhausted including subpoena powers if there is no possibility these documents exist. He is very uncomfortable spending taxpayers money to research something that has already been done. Mr. Morrow is particularly concerned the proposal comes with a \$20,000 starting point as he is unsure what the total costs will end up being.

Mr. Baird explained this is a starting point to do some fact finding to get some of these items together. As was discussed at the previous meeting, there will be a lot of dialogue taking place as this proceeds.

Mr. Workman agrees with the concern over the cost though this body made this decision in order to move forward and make some determinations. He still cannot understand why the city does not have these records and if a staff members signed off on the site plans, there should be a copy in our files. If an outside firm was hired to do this work and they do not have the documentation, the city needs to take action such as using subpoena powers.

Mr. Spillane recalled Mr. Baird asking the engineer firm that inspected Hearthstone for these records and they indicated they did not have the documents; Mr. Baird verified that was correct. Mr. Spillane asked if Mr. Baird had confirmed that a check was cut for those services; Mr. Baird said he has not gone to that level. Mr. Spillane said this has been going on for several years and they have already stated they do not have those records nor does the city. He then asked whether the city simply does not wish to provide the inspection records.

Mr. Baird said the same questions were asked a couple of weeks ago. The result is to proceed with the review by the third party. He believes it can be done more diligently than using our own staff many of whom were involved in the process. He feels it will take sometime to piece this process back together.

Mr. Spillane said he could understand if he came to the city manager today and informed him of a problem back in 2000. But in this case, this problem has been ongoing since 2005 and he does not know why there has been no attempt to find these files. Mr. Baird said there has been many discussions on this subject over the years and because we are aware there are gaps throughout this project, a third party was recommended to do an engineering review and an audit of the services provided and the work done to fill in those missing pieces.

Once we have a reliable document, the city can go ahead and speak with Hearthstone representatives to present the findings and then work toward some resolution. If we are unable to reach some resolution, the next step would be some sort of litigation. If that is the case, the city has done a lot of its due diligence up front and we will have that information to move forward.

In the meantime, Mr. Baird said that no one knows what the results will be, if anything. He believes there are no guarantees on any results. He does not feel we will receive a hard answer on anything because of the amount of activity occurring at that time. The city manager agrees that there may have been some things that slipped through the cracks both from the city and developer's end. However, the city needs to be prepared there could be some potential liability on the city's side which needs to be discussed from a legal strategy.

Mr. Spillane asked Mr. Baird to verify there are problems at Hearthstone; Mr. Baird said he is not disputing there are some deficiencies out there. Mr. Spillane asked why we cannot enforce our codes saying that anyone can come in and build something and not follow our codes without the city saying anything. Mr. Baird asked that council keep in mind that during this time, ordinances were changing, specifications were changing, subdivisions were started under one set of rules and continued under another which is what this proposal will determine.

Mr. Spillane believes many of the codes have not changed; Mr. Baird agreed that some have and some have not.

Mr. Workman said that if we had a standard operating procedure for everything, we would not need this discussion.

Mayor Marabello stated the question is whether to proceed with the proposal. Mr. Workman understands but wants to address what Mr. Baird said; the mayor informed him to proceed. Mr. Workman said he is not out to get anyone as he understands that people make mistakes, but he does not want new mistakes to be made. We are aware of many problems but do not know what else is out there. He wants us to learn from our mistakes and grow from them.

Mr. Baird referred to a number of improvements that have been made since the Hearthstone project started. Since then, our standard specifications were updated, ordinances have been changed not only as a result of the Hearthstone project, but because of other projects and subdivisions. He believes the city learned from many of these mistakes. Some aspects have been incorporated into our current structure today, but we still have a ways to go.

Mr. Workman advised there is still no SOP's in place; Mr. Baird disagreed noting there are a number of SOP's in place. Mr. Workman said he would like to see them this week.

Mr. Spillane feels mistakes are still occurring out there such as the ditch that was built in front of a house in the third ward. He asked if that is being held up; Mr. Baird said no further activity has taken place there.

Mr. Spillane responded by saying if we have codes in place, why can't we enforce them because we would not need a third party to enforce our codes that are written in black and white. He cannot understand why the process is taking so long. He asked Mr. Baird to explain.

Mr. Morrow believes we are just going around in a circle and asked for council to vote on the question. Mr. Workman said if we vote not to approve the proposal, what happens then.

Mr. Brooks explained the purpose is to find out where the mistakes are which includes what errors the city made. Then the corrections can be made. Mr. Workman said his concern is the money being spent to do this.

Mr. Adkins then asked if one or two issues brought about this process; Mr. Workman answered there are many issues which

is why this was brought before council. He added that one problem is enough, but this involves a variety of issues.

Mr. Starling then asked how much further the city can go because it appears we are running into a deadend. He feels that if we can't go any farther, then we need to hire someone to settle it.

Mr. Morrow asked Mr. Baird if any of his staff has been assigned the specific task and given a significant amount of time to physically get out of the office, go out there and really examine this. Mr. Baird said that City Engineer Mallamo spent approximately three days on the swale issue at Clearview Drive in Hearthstone.

Mr. Baird said if council decides not to go with this option, the city will need to exercise its powers in some way, either through subpoena power or further investigatory issues. The other option is to sit down with the property owner again and try to work through some sort of resolution. The mayor said that has been done previously.

When asked for the solicitor's opinion, Mr. Willard explained that the power of subpoena is pretty powerful which would require someone to come to court or to a deposition. Generally, that does not exist until litigation is initiated as is the same with discovery. Once the suit is filed, production documents and interrogatories seek disclosures of information though that does not kick in until litigation begins. Someone can oppose it and quash a subpoena which determinations will be made by the court.

Mr. Willard only saw this proposal for this first time though he feels it is very broad. Because he is not an engineer and unable to get all the procedural facts and engineering facts, he believes the best approach may be to have the city engineer identify the substantive issues and bring them back to council with his report.

He referred to the zoning code which allows the code enforcer to file complaints with monetary penalties if land or buildings are being used in contradiction to that chapter. The subdivision code does not have a penalty provision per its chapter though the city could go to Chancery Court and asked for some kind of declaratory relief in relation to the subdivision code and what was done. That can be considered, according to the solicitor, if the facts are in order but is something that should not be considered lightly.

In order to get some kind of court relief, those would be the actions, however, it appears to Mr. Willard this is still in the fact finding stage.

Mr. Baird confirmed the city was unable to resolve this internally which is why the third party was recommended.

Mr. Morrow prefers the proposal be more specific and believes it is somewhat generic in nature. The solicitor suggested the city manager talk to the engineer and asked that the proposal be narrowed in scope.

Executive Vice President Peter A. Bozick, Jr., P. E., advised that a week and a half ago, he along with Bob Stickels sat down with the city manager and city engineer to discuss the matter. He was provided the history of the project and some of the players involved. He took notes to get a sense of what the situation was and at the conclusion, they believed that some type of a fact finding report was needed giving the position that the town was in, the developer was in and the engineering firm was in. He understands this report may facilitate negotiations toward the resolution or could support some potential litigation in the future.

When Mr. Bozick went back and tried to estimate the number of hours, knowing they did not have any documentation whatsoever, they got the sense the amount of their effort would be related to the quantity and quality of the documentation they had. Their approach was to take a first cut review of the documentation furnished by the public works department, followed by a field visit. He advised that of the two persons assigned to the project, one had special expertise in storm

drainage and the other engineer has a long history as a public works engineer dealing with municipalities.

It is Mr. Bozick's intent to come back and sit down with the city manager and engineer and provide the significant issues they perceive, then try to prioritize and finally follow up with more detailed information. He added it is possible to come back in short order and be done because they are unable to answer the questions or find the situation is very clear and no additional work is needed.

He added they had to start somewhere with the number, but their intent is to look at the documents the city has, take a site visit and use the expertise and experience of these two engineers and provide a sense of the issues and attempt to prioritize the project well before they get to the \$20,000 mark.

Mr. Workman said that according to the city manager, the city has very little documentation and the purpose of this review is to obtain some information. He asked if the firm has been involved in similar situations. Mr. Bozick said they have at different phases of a project had to determine whether the developer did what was required in which case the developer had one understanding and the municipality another.

Mr. Spillane said that without any documentation, the codes and ordinances would need to be reviewed and asked if the site would be checked in comparison to any plans they are able to obtain. Mr. Bozick said that is correct and at a minimum, they would look at the subdivision ordinance before annexation and then the revised subdivision ordinance post annexation. He understands there are significant discrepancies between the plans approved and what was actually built and discrepancies between what was built and the as-builts. He added another significant change was the philosophy of the state and DNREC from the standpoint of closed pipe systems to open swale systems and the approach to storm drainage and its affect on the environment.

When asked about the problems with the roads and the lack of shoulders, Mr. Bozick said that should be clear cut from the drawings approved or the as-builts. The next step would be to look at the documentation the builder or developer may have such as a waiver or some rationale as to why they were not built.

Mr. Brooks confirmed the city has a lot of documents on this project; Mr. Baird said there are documents that would need to be pieced together though in his opinion, the city does not have a complete set which is why assistance was requested.

Mr. Bozick said that a matrix or a spreadsheet may be provided listing the documentation or trail from annexation to plan approval, construction, and then each phase. Also included would be the permits and any other approvals to ensure the paper trail follows the changes or development of the project.

When asked the time frame, Mr. Bozick expects that this could be done between June and July with a projected report by early August. Within three weeks to a month, he would expect to meet with the city manager and city engineer.

Mr. Spillane referred to the known problems out there and asked if we needed confirmation from a third party. Mr. Baird said that has been a moving target and has gone from storm drainage at the entrance, to swales, to the shoulders, to curbing to road widths, etc. He noted that we are attempting to capture those key issues so we can proceed to address those specific items.

Mr. Adkins said it appears that this \$20,000 proposal is really only setting up a basis for litigation that would follow. He would personally rather have Mr. Mallamo go out there and identify any major issues and extend the offer to the developer to try to work with the city. If they are planning future projects, they are probably as sick of this as the city is. If that does not work, then council could again consider this, but he would rather try anything than start with a \$20,000 bill in addition to any potential litigation costs that may follow.

Mr. Baird asked how long the proposal is good for; Mr. Bozick answered easily 30 days though it can be revisited at that point.

Mr. Spillane moved to accept and proceed with the proposal as presented, seconded by Mr. Workman.

Mr. Workman asked what will happen if the proposal is not accepted. He said he is tired of talking about this and he understands what Mr. Adkins is saying. He said the city has sat down and has tried to work something out with the developer. However, it did not happen which is why this is still being discussed. If the proposal does not go through, council needs to know where we are going tonight and not two weeks from now.

Motion to accept the proposal and proceed passed by the following 4-2 vote:

Yes-Spillane, Workman, Brooks, Starling

No-Adkins, Morrow

Mr. Spillane confirmed this proposal will review all of Hearthstone and not just a portion; Mr. Baird said yes. Mr. Spillane said he votes yes.

Mr. Workman feels this is a hard decision because of the money involved. He hates spending taxpayers money because there is enough wasted on this council. He wants to say no, but at the same time he wants to say yes. He wants to get to the bottom of this and will vote yes though it is not the best decision he may make.

Mr. Adkins votes no and prefers to address it as he discussed earlier.

Mr. Brooks votes yes mainly because he has heard about this over and over and over. At this point, he wants to determine which mistakes were made and which mistakes were made by the city and the developer. He hopes the report comes back great, but if not, we will have learned from it and hopefully those mistakes will not be made again in the future.

Mr. Morrow feels we will end up in court in the end and he is uncomfortable spending \$20,000 which he believes will increase before this is resolved and votes no.

Mr. Starling knows money will have to be spent either way and is also very tired of this project. He also understands it has gone about as far as it can. If someone can take this further, even though \$20,000 is being spent, we will have some kind of conclusion and votes yes only so we can proceed.

City Hall Lower Level Issue

Mr. Workman recalled the discussion two weeks ago when he asked council to give his committee some kind of direction on how to proceed with the lower level of city hall. He sat down with the city manager who provided him some ideas which he feels were good ideas.

He asked each council member for their opinion so he can move forward.

When asked to relay the ideas provided to Mr. Workman, Mr. Baird said the one option was to move the finance department to city hall with some staff going downstairs and modifying the finance office to meet the needs of the billing department. But that would still include a fit out downstairs and also require modifications to the finance office. However, it would allow the billing department to be at ground level for customers.