

MILFORD CITY COUNCIL  
MINUTES OF MEETING  
December 8, 2008

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, December 8, 2008.

PRESIDING: Mayor Daniel Marabello

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

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

COUNSEL: City Solicitor Timothy Willard

CALL TO ORDER

Mayor Marabello called the Monthly Meeting to order at 7:32 p.m.

PLEDGE AND INVOCATION

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

APPROVAL OF PREVIOUS MINUTES

Mr. Ambrose advised that the minutes from the November 18, 2008 City Hall Assessment and Needs Committee Meeting did not reflect his attendance. The minutes will be amended accordingly.

Mr. Ambrose moved for approval of the October 31, 2008, November 10, 2008 and November 18, 2008 minutes as amended, seconded by Ms. Wilson. Motion carried.

POLICE REPORT

Mr. Morrow moved for acceptance of the monthly police report submitted by Chief Hudson and seconded by Mr. Oechsler. Motion carried.

CITY MANAGER REPORT

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

*Kent County Sewer Force Main Damage*

*On Monday, December 1, the City was notified by the Kent Co. Department of Public Works that the Sewer Force Main connecting the City to the Kent Co. WWTP was damaged and needed immediate repair. The City assisted Kent Co. crews by requesting residents limit water and sewer usage and manually operating the City's sewer pumping stations. To facilitate the repairs, Kent County officials, in coordination with DNREC made the decision to divert sewer flow into the Mispillion River. It is estimated that over 2 million gallons of sewer was diverted into the river. Kent Co. personnel continue to work on the repairs at the time this report is being prepared.*

*Mispillion Art League Display at City Hall*

*The City has partnered with the Mispillion Art League to use the lobby of City Hall as a gallery to display the work of local artists. The City and the Art League view this as an opportunity to feature and inspire artistic talents of the Milford Community by contributing to community art appreciation and providing another venue to exhibit artwork.*

*Electric Tariff*

*Staff is working with Jay Kumar to finalize revisions to our electric tariff. It is anticipated this will be presented to City Council in early 2009 for its consideration along with the Final Rate Design Study and Annual Report.*

#### *Annual Financial Audit*

*The annual audit of the City's financial statements has been completed for the year ending June 30, 2008 and has been distributed to each City Council Member. In accordance with the City Charter, City Council will need to accept the audit. This is tentatively planned for your agenda on December 22, 2008.*

#### *SE Front Street Improvements*

*The City continues to work with DelDOT on proposed improvements to SE Front Street from Walnut Street to Rehoboth Blvd. The work would involve new sidewalk, curbing and surface restoration. The City has engaged DBF to provide survey and engineering services for the project and I expect design to continue through the winter months. It is anticipated there will be a number of easement/right-of-way issues along the route that will need to be addressed as part of the project. Further updates will be provided to City Council as information becomes available.*

Mr. Workman commended the streets and sanitation department for the job they have been doing in picking up leaves, particularly in the second ward.

Mr. Brooks asked the status of the new purchase power contract; Mr. Baird said we are close and are currently locking in rates for the next three years. DEMEC is intending to purchase approximately 90% which they are approaching.

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

#### COMMITTEE REPORTS

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

Chairman Workman informed council he is waiting for the city manager to provide him with some information by the end of this week or early next week. Once he obtains that information, he will schedule another committee meeting. His goal is to bring the information to council for vote in January.

Mr. Ambrose moved to accept the committee report, seconded by Mr. Oechsler. Motion carried.

#### COMMUNICATIONS

All correspondence was included in the council packet.

#### UNFINISHED BUSINESS

##### *Introduction of Ordinance 2008-18 Zoning Code Amendment/C-1 & C-2 Density*

Ordinance 2008-18 was officially introduced to city council at this time.

The city manager advised this was discussed at the previous workshop. The amendment originated with the planning commission.

Mr. Norris explained this provides a maximum density for multi-family dwelling units of twelve per acre. His prefers a square footage per dwelling unit of 3,630 per unit which he has expressed to the city solicitor.

Mr. Oechsler confirmed this will close the loophole in the C-3 zone that goes back to the R-3 issues. Mr. Willard said that is the intention because there was a question about the density for multi-family in the C-3 zone. The only place it is applied is in the R-3. When he and the city planner reviewed it, they felt it should be clarified and a maximum density established in all three commercial zones. The only exception is in the C-2 that requires multi-family units to be in conjunction with

a commercial use which would include a 2 to 1 ratio.

Mr. Willard has considered Mr. Norris' recommendation with regard to square footage, but is trying to envision how it would work. If a parcel was being developed and the units would be limited in size, it would also give a density control by limitation, depending on the size.

Mr. Norris explained there may be an instance where a single family dwelling unit or a duplex is desired, to be built, in the commercial zones. Instead of requiring language that states the maximum density allowed would be 12 dwelling units to the acre, my recommendation is that this be changed to the minimum lot size of 3,630 square feet per dwelling unit.

Mr. Willard noted the proposed ordinance does not change the minimum lot size for each district. The lot size would remain 3,630 square feet, but only allows 12 units per hundred (acre) if it was divided into the 3,630. A public hearing is scheduled for the next council meeting.

He will discuss this in more detail with Mr. Norris before that time.

#### *Adoption of Ordinance 2008-19/Rezoning of McColley Lands*

Mr. Baird recalled the annexation request from Lynn and Karen McColley. He then read the tax parcel numbers and acreage into record noting that parcels 1 and 2 were requested to be zoned C-3 and parcels 3 and 4 zoned R-2.

City Planner Norris verified the parcels are in conformance with the comp plan and the planning commission recommended the zoning as requested for each parcel.

Final action was previously postponed pending the acceptance of the plan of services by the State Planning Coordination Office. The city received that letter from Principal Planner David Edgell dated November 18, 2008.

Mr. Morrow confirmed the agreement for the easement was included. Mr. Baird advised that the resolution includes a condition that requires the petitioners to enter into an annexation agreement dedicating an easement or right-of-way as determined by the city and/or the state. He said further details will follow with specifics on the easement or right-of-way and this confirms it is the city and petitioners' intent to work together on the service road from Tenth Street to Front Street and the possible interchange, if and when, the overpass is constructed by DELDOT.

Lynn McColley was present and confirmed that he and his wife are in agreement with the condition as explained by Mr. Baird.

Mr. Oechsler asked if there is a use to substantiate the C-3 zone versus the property being zoned R-3. Mr. Baird said nothing has been discussed at this time and is only the request of the petitioner. However, the proposed comp plan shows the property as commercial.

Mr. Brooks moved to adopt Ordinance 2008-19 rezoning the McColley lands, MD-16-174.00-02-49.01 and MD-16-174.00-02-49.00 to R-2 (residential) and MD-16-174.00-02-51 and MD-16-174.00-02-53 to C-3 (commercial), seconded by Ms. Wilson:

#### Ordinance 2008-19

Annexation/Land of Lynn A. and Karen K. McColley

Tax Map MD-00-174.00-02-51.00-000 (10 +/- Acres) C-3 District

Tax Map MD-00-174.00-02-53.00-000 (1 +/- Acre) C-3 District

Tax Map MD-00-174.00-02-49.01-000 (1 +/- Acre) R-2 District

Tax Map MD-00-174.00-02-49.00-000 (14 +/- Acres) R-2 District

An Ordinance to Amend the Zoning Designation of certain tracts of land, owned by Lynn A. & Karen K. McColley and located in Milford Hundred, Kent County, State of Delaware as shown on a survey by Douglas J. Annand, Professional Land Surveyor, dated March 1, 2008, comprising some 22.367 acres, more or less, to be annexed into the City of Milford by resolution hereafter adopted by the City

Council of Milford, Delaware.

WHEREAS, the land hereinafter described is contiguous and adjacent to the City of Milford and the owners thereof have petitioned the City Council to annex the same into the City of Milford, and

WHEREAS, it appears to the Mayor and City Council of the City of Milford, Delaware, that the hereinafter described property will be annexed to and become part of the City of Milford and a zoning classification is required, and

WHEREAS, the land owned by Lynn A. and Karen K. McColley, to be annexed, Tax Parcel(s) MD-00-174.00-02-51.00-000; MD-00-174.00-02-53.00-000; MD-00-174.00-02-49.01-000; MD-00-174.00-02-49.00-000 are currently zoned by Kent County as "RS-1" Single Family Residential, and

WHEREAS, the City Council referred the zoning of the affected territory for report and recommendations to the Planning and Zoning Commission and that after a due hearing as provided by law, the Zoning Commission made its recommendation to City Council, and

WHEREAS, after a Public Hearing held on September 22, 2008, and after considering the previous recommendation of the City Council Annexation Committee, the City Council has determined the proper classification under the zoning ordinance of the City of Milford for the property to be annexed.

NOW, THEREFORE, THE CITY OF MILFORD HEREBY ORDAINS:

*That the following described land situated in Kent County, Delaware:*

*Tax Map No. MD-00-174.00-02-49.01*

*Beginning at a point, said point being situated on the southerly right-of-way line of North East Tenth Street (30' Wide), being a corner of this parcel and other lands of McColley (D/464/039) (Tax map No. MD-00-174.00-02-49.00), and being distant S 68°36'22" W, 712.35', from the center line of the Southbound lane of Delaware Route 1, thence with said right-of-way line N 68°36'22" E a distance of 210.00' to a found concrete monument at a corner of lands of Silicato-Wood Partnership, LLC (D/3212/210, D/3210/100, D/3210/134); thence with said Silicato-Wood Partnership, LLC, S 35°17'00" E, a distance of 239.43' to a point in line of other lands of McColley (Tax Map No. MD-00-174.00-02-49.00); thence with said McColley the following two courses and distances: 1) S 68°36'22" W a distance of 210.00' to a point, 2) N 35°17'00" W a distance of 239.43' to the point of beginning. Contained within these metes and bounds are 1.121 acres of land more or less.*

*Tax Map No. MD-00-174.00-02-49.00*

*Beginning at a point, said point being situated on the southerly right-of-way line of North East Tenth Street (30' Wide), being a corner of this parcel and other lands of McColley (D/464/039) and also being a point on the Milford City limits line and being distant S 68°36'22" W, 973.47' from the centerline of the Southbound lane of Delaware Route 1, thence with said right-of-way line N 68°36'22" E a distance of 261.12' to a corner of other lands of McColley (D/605/195) (tax map No. MD-00-174.00-02-49.01); thence with said McColley the following two courses and distances: 1) S 35°17'00" E a distance of 239.43' to a point, 2) N 68°36'22" E a distance of 210.00' to a point in line of lands of Silicato-Wood Partnership, LLC (D/3212/210, D/3210/100, D/3210/134), thence with said Silicato-Wood Partnership, LLC, S 35°17'00" E a distance of 1236.37' to a found concrete monument in line of lands of NKS Distributors Inc. (D/2788/271); thence with said NKS Distributors Inc. S 11°41'58" W a distance of 100.74' to a set iron pipe at a corner of other lands of McColley (D/631/171) (Tax Map No. MD-00-174.00-02-51.00) thence continuing with other lands of McColley S 11°41'58" W a distance of 238.10' to a point on the Milford City limits line and a corner of other lands of McColley (D/464/039) (Tax Map No. MD-00-174.19-01-01.00); thence with other lands of McColley and the Milford City limits line N 41°51'11" W a distance of 1832.08' to the point of beginning. Contained within these metes and bounds are 12.359 acres of land more or less.*

*Tax Map No. MD-00-174.00-02-51.00*

*Beginning at a found iron pipe situated on the Northerly right-of-way line of North East Front Street, said point being a corner of these lands and lands of NKS Distributors Inc. (D/2788/271) and being distant S 41°07'48" W 440.24' from the centerline of the Southbound lane of Delaware Route 1 and distant 75' from the centerline of North East Front Street; thence with said right-of-way line S 41°07'48" W a distance of 420.23' to a found iron pipe at a corner of other lands of McColley (D/695/040) (Tax Map No. MD-00-174.00-02-53.00); thence with other lands of McColley the following two courses and distances: 1) N 57°03'08" W a distance of 157.45' to a found concrete monument, 2) N 56°40'23" W a distance of 83.64' to a point on the Milford City limits line at a corner of other lands of McColley (D/631/171) (Tax Map No. MD-00-174.19-01-02.00); thence with other lands of McColley and the Milford City limits line N 41°51'11" W a distance of 827.50' to a point at a corner of other lands of McColley (D/464/039) (Tax Map No. MD-00-174.00-02-49.00); thence with other lands of McColley N 11°41'58" E a distance of 238.10' to a set iron pipe at a corner of aforesaid NKS Distributors Inc.; thence with said NKS Distributors Inc. S 55°55'07" E a distance of 1185.98' to the point of beginning. Contained within these metes and bounds are 8.706 acres of land more or less.*

*Tax Map No. MD-00-174.00-02-53.00*

*Beginning at a found iron pipe situated on the Northerly right-of-way line of North East Front Street, said point being a corner of these lands and other lands of McColley (D/631/171) (Tax Map No. MD-00-174.00-02-51.00) and being distant S 41°07'48" W 860.47' from the centerline of the Southbound lane of Delaware Route 1, and being distant 65' from the centerline of North East Front Street; thence with said right-of-way line S 30°35'26" W a distance of 65.74' to a point on the Milford City limits line and a corner of other lands of McColley (D/695/040)(Tax Map No. MD-00-174.19-01-03.00); thence N 41°51'11" W a distance of 252.63' to a point in lines of other lands of McColley (D/631/171) (Tax Map No. MD-00-174.00-02-51.00); thence with other lands of McColley the following two courses and distances: 1) S 56°40'23" E a distance of 83.64' to a found concrete monument, 2) S 57°03'08" E a distance of 157.45' to the point of beginning. Contained within these metes and bounds are 7873 square feet of land more or less.*

*shall be, upon final approval of its annexation into the City of Milford, classified under the Zoning Ordinance of the City of Milford and zoned as follows:*

*Tax Map MD-00-174.00-02-51.00-000 - C-3 Zone*

*Tax Map MD-00-174.00-02-53.00-000 - C-3 Zone*

*Tax Map MD-00-174.00-02-49.01-000 - R-2 Zone*

*Tax Map MD-00-174.00-02-49.00-000 - R-2 Zone*

*Date Adopted: December 8, 2008*

Mr. Workman recalled the concerns about the C-3 zone expressed by the annexation committee at their meeting on July 24, 2008. He said that according to a previous statement, the zoning will not be consistent with the comp plan until it is adopted. Mr. Norris verified the zoning is consistent with the future land use that was part of the 2003 Certified Comp Plan. The 2008 Comp Plan shows the entire area as commercial. Mr. Brooks confirmed that all contiguous properties are commercially zoned.

Motion carried by unanimous roll call vote.

#### *Adoption of Resolution*

Mr. Morrow moved to adopt the following resolution, seconded by Mr. Oechsler:

#### *City of Milford*

*Annexation/Land of Lynn A. and Karen K. McColley*

*Tax Map MD-00-174.00-02-51.00-000 (10 +/- Acres) C-3 Zoning*

*Tax Map MD-00-174.00-02-53.00-000 (1 +/- Acre) C-3 Zoning*

*Tax Map MD-00-174.00-02-49.01-000 (1 +/- Acre) R-2 Zoning*

*Tax Map MD-00-174.00-02-49.00-000 (14 +/- Acres) R-2 Zoning*

#### **RESOLUTION**

*Whereas, the Milford City Council having considered the advantages and disadvantages of annexing into the City as described herein:*

*Tax Map No. MD-00-174.00-02-49.01*

*Beginning at a point, said point being situated on the southerly right-of-way line of North East Tenth Street (30' Wide), being a corner of this parcel and other lands of McColley (D/464/039)(tax map No. MD-00-174.00-02-49.00), and being distant S 68°36'22" W, 712.35', from the center line of the Southbound lane of Delaware Route 1, thence with said right-of-way line N 68°36'22" E a distance of 210.00' to a found concrete monument at a corner of lands of Silicato-Wood Partnership, LLC (D/3212/210, D/3210/100, D/3210/134); thence with said Silicato-Wood Partnership, LLC, S 35°17'00" E, a distance of 239.43' to a point in line of other lands of McColley (tax map No. MD-00-174.00-02-49.00); thence with said McColley the following two courses and distances: 1) S 68°36'22" W a distance of 210.00' to a point, 2) N 35°17'00" W a distance of 239.43' to the point of beginning. Contained within these metes and bounds are 1.121 acres of land more or less.*

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*and having considered the recommendation of the Annexation Committee appointed to investigate said annexation; having held a Public Hearing on September 22, 2008 on said annexation; having considered the zoning recommendation of the Planning Commission subject to compliance with Chapter 230 of the City of Milford Code and whether or not to proceed with the proposed annexation; having received acknowledgment of the accepted Plan of Services by the State of Delaware as required of Title 22, Section 101, Delaware Code; the City of Milford, hereby determines as follows:*

*Now, Therefore, Be It Resolved, that this land is hereby annexed into the municipal boundaries of the City of Milford and the description and plot of said lands are to be recorded in the Office of the Recorder of Deeds in said County where said lands are situate.*

*Be It Further Resolved, the Petitioner and the City of Milford enter into an annexation agreement for the purposes of the petitioner dedicating an Easement and/or Right-of-Way to the City of Milford or State of Delaware for future utility, roads or other public improvements as determined by the City of Milford and/or State of Delaware.*

*I, Daniel Marabello, Mayor of the City of Milford, do hereby certify that the foregoing is a true and correct copy of a Resolution passed by the affirmative vote of two-thirds (2/3) of all the elected members of the City Council of the City of Milford at a meeting held on December 8, 2008, at which a quorum was present and voting throughout and that the same is still in full force and effect.*

*Mayor Daniel Marabello*

Motion carried by the following 7-1 vote:

Yes-Ambrose, Spillane, Oechsler, Brooks, Morrow, Starling, Wilson  
No-Workman.

Mr. Workman stated that in consideration of the annexation committee recommendation, he feels all four parcels should be zoned R-2 when annexed and votes no.

*Ordinance 2008-8/Chapter 180 Residential Rental Operating License-Revised*

Mr. Baird advised that based on council recommendations, five changes were made to the ordinance since the proposal was originally presented. The modifications were noted in the draft.

If adopted this evening, the effective date will be December 18, 2008 which is on schedule for the 2009 calendar year.

Mr. Brooks confirmed that if this ordinance is adopted, there will be results and improvements; Mr. Baird stated that is the intent of the ordinance.

Mr. Brooks also asked if a report can be provided after the first of the year detailing what action has been taken and the overall results. Mr. Baird confirmed that he would have a report prepared by the code official. Mr. Ambrose agrees with Mr. Brooks considering the amount of time, work and aggravation this proposal has created. He agrees we need to see some very positive results and would like to see a report that everyone could access.

Mr. Ambrose then moved to adopt Ordinance 2008-8, seconded by Mr. Oechsler. Motion carried by the following 7-1 vote:

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

Mr. Spillane said he votes no because it is not the right time.

Mr. Workman agrees that economic times are very difficult right now. However, there is a need for this ordinance and feels it is important for the overall city. In addition, he said it has worked in other towns he has lived. He agrees that no one likes change, but believes that in the long run, it will pay for itself. He said that taking into consideration the economy and though it is being adopted tonight, it may be appropriate to become effective at a later date, but votes yes.

Mr. Oechsler said that as a landlord in the city, he believes we need the ordinance. He also agrees with Mr. Workman that if it is possible, we might consider deferring the fee until 2010, but feels it needs to be adopted and votes yes.

Ms. Wilson explained that this ordinance came about because of the living conditions within our city. She said we all wish we could say that all landlords in the city are caring and keep their properties decent, but everyone knows that is not true. In her mind and in her heart, that is why this ordinance was needed. In the fourth ward alone, she has had major concerns and complaints which have caused her to contact the city planner and code officials many times. The purpose was not to cause a hardship on anyone especially during hard times, but was something council was forced to do. The intent was not just to hire a new person, whenever that will happen, if it ever happens. The ordinance was needed and she votes yes.

NEW BUSINESS

*FY 2008-09 Budget Amendment/Transfer of General Fund Capital Reserves*

Mr. Baird presented the following budget amendment request to finalize the work done at city hall and, in particular, the late invoices that included modifications to the parking lot and the security and fire alarm system:

*In order to complete the current renovations at City Hall, a request that \$35,000 be transferred from the General Fund Fund Balance Account #101-0000-399-10-00 and placed into the Capital Building Account #101-1010413-70-20 is hereby presented.*

Mr. Ambrose asked Mr. Workman the costs of reconfiguring city hall to accommodate the staff returning to city hall. Mr. Workman advised that he is waiting on a report from the city manager. Mr. Baird reported that he received a draft and depending on the option selected, will range in costs from \$150,000 to \$200,000.

Mr. Workman then asked for reassurance the \$35,000 will cover the balance of the bills for the city hall renovation and nothing else will be requested at a later date. Mr. Baird explained that is the reason he postponed bringing the matter before council to ensure everything had been finalized.

Mr. Brooks asked for a clarification of the \$200,000 proposal. Mr. Baird explained that is to cover the costs of modifying the lower level to accommodate the billing, planning and zoning and code and building departments.

Mr. Oechsler moved to transfer \$35,000 from *Account #101-0000-399-10-00* into *Account #101-1010413-70-20*, seconded by Ms. Wilson. Motion carried by unanimous roll call vote.

*Milford High School Football State Championship*

Mayor Marabello informed council a proclamation has been prepared in honor of the Football State Championship that will be presented to the team during an assembly at Milford High School on Friday, December 12<sup>th</sup>.

The Mayor also advised that Contractor Richard Johnson had requested financial assistance from the city toward the purchase of championship rings for the team. The total cost is \$11,000 of which \$10,000 has been raised. He is asking for \$1,000 as a form of support to this team.

When asked if they can act on this now, the mayor said yes. Mr. Ambrose moved to support the Milford High School Football team in the amount of \$1,000 to be paid from the city manager's contingency fund, seconded by Ms. Wilson. Motion carried by unanimous roll call vote.

Mr. Ambrose then reported he had sent out e-mails regarding a recommendation to place at least three signs at city limit entrances recognizing the football team's championship. He suggested Parks and Recreation Director Gary Emory be contacted and signs, something to the effect of "This is Milford—Home of the 2008 Division II Football State Champions", be purchased. He is recommending they be placed at the Route 1/Route 113 split going south in the location of the service organization sign, north of Route 1 and north from Georgetown on Route 113 at the city boundary line. He asked for suggestions from other council members.

The mayor directed the city manager to contact Mr. Emory to make the necessary arrangements.

*City of Milford Board of Adjustment Composition*

Mayor Marabello reminded council a committee is in the process of reviewing the charter. It was discovered there are some inconsistencies in the makeup of the Board of Adjustment and it does not totally comply with Title 22 of Delaware Code which addresses municipal laws.

City Solicitor Willard recalled a similar inconsistency with the Planning Commission in relation to Title 22. He explained that there are also charters which are passed by the general assembly by two-thirds majority vote which give the town the



ultimate authority. At the same time, the legislators pass general statutes. Often, there is a question about which trumps which. The charter says council shall by ordinance establish a Board of Adjustment which was done in Section 230-35. It states the BOA consists of the mayor, city manager and city solicitor. It also says 'may' be established as provided in Title 22. At that time it was adopted, the Board of Adjustment was established by council which included the mayor, city manager and city solicitor. But they also said it could be done in accordance with Title 22.

Mr. Willard explained Milford is a home rule city. If a town is not, Title 22 says the Board of Adjustment should be the chief engineer, mayor and city solicitor. It also says that if you are a home rule, which Milford is, then you can appoint five members/citizens (four members and one to serve as chair) that have knowledge in that area.

He advised the next section says that if you are a home charter city, but choose not to select the five citizens, then you revert to paragraph 'A' which is the engineer, mayor and solicitor.

Mr. Willard said the conflict is Milford's Board of Adjustment consists of the mayor, city manager and solicitor, but not the city engineer. The question is should it be corrected by replacing Mr. Baird with City Engineer Mark Mallamo.

He feels that when the Board of Adjustment was established, Milford did not have a city engineer and the city manager was added.

He is unsure if it is necessary to change and if so, how it should be corrected. Mr. Willard spoke with Mr. Baird and former city manager Jim Fuqua about this. Their firm also represents the City of Seaford whose Board of Adjustment also consists of the mayor, city solicitor and city manager. He added that different towns do different things.

Mr. Willard would be more comfortable providing advice to the board of adjustment and planning commission. There are potential conflicts when he advises the planning commission or code official on legal issues because any appeals go to the board of adjustment. Therefore, he has no problem changing it and instead becoming an advisor to both bodies.

He then read the following paragraph from Title 22: "Notwithstanding heretofore, the city can appoint a minimum of three to five members". He pointed out that Milford did appoint three members, however, there is a residency requirement. He said if council feels there is a conflict, Ordinance 230-25 can be changed or it can be changed entirely and the board substituted with citizens.

Mr. Baird added there are currently some conflicts in cases where either the solicitor or Mr. Baird, as city manager, has advised the code official. Unfortunately, the appeal goes to the Board of Adjustment which both the city manager and solicitor sit on.

Mr. Spillane says he is concerned because of the people steering the employees. He would feel better if there were five people from the city because that makes the people do more with the town. He said people are the owners of the city if you have more citizens participate.

When asked if action needs to be taken tonight, Mr. Baird said it was put on the agenda to make council aware of the situation and to possibly come up with a solution. The charter review committee determined that council needs to make this decision.

Mr. Workman said that because there is an obvious conflict because of the advice given, he would prefer it be made up of the city engineer and two citizens. Council will still have control because they appoint the two citizens. He feels that the board should be made up of five people--two from council, one employee and two citizens.

Mr. Willard said that is a good idea, but the section of Title 22 that deals with citizens requires them to be residents and not employees. Therefore, it is all or nothing. However, he still questions whether Milford's Charter trumps Title 22.

Mr. Ambrose said if we define the makeup as Mr. Workman suggests and the charter is approved, would that work. Mr. Willard advised he works in the senate and the charter requires a two-thirds or super majority vote. On the other hand, two-

thirds is not needed for a regular statute if it applies to all municipalities. That may trump the charter. Mr. Willard is unsure if there is any case law related to this. If council prefers to do a hybrid board which would include an employee, an expert and a few citizens, he feels that is worthy of further investigation.

Mr. Ambrose has no problem with including citizens in general, but feels they would need guidance from a professional from the city who is extremely versed on our codes and laws. Even with five citizens who may include various professionals such as builders, engineers, etc., they still may not have the knowledge needed to review these matters. As a result, he would favor a hybrid.

Mr. Oechsler is reading from paragraph B where it states an elected official or an incumbent, but not a city employee. He asked why the city engineer is unable to be in charge of the committee with four residents, one from each ward.

Mr. Morrow agrees we need to include more citizens but feel that technical expertise is needed to ensure the specific codes and ordinances are followed. Mr. Brooks recommends the solicitor attend for guidance.

Mr. Willard referred to paragraph B, that states that appointees cannot be candidates-elect or incumbent of an elected office. Mr. Oechsler said it appears the city engineer could chair the board with four citizens serving. Paragraph D(1) appears to apply to home rule and non-home rule cities which appear to be the difference.

When asked if we are currently in violation of state law, Mr. Willard feels that because the charter was approved by the general assembly, we are not in violation though that may have been the result of not having a city engineer at the time. Our current engineer was hired in August of 2005; the current charter became law in 1999.

Mr. Workman confirmed that once it is adopted by the state, it becomes law.

Mayor Marabello says what happens because it is a conflict of Title 22. Mr. Willard feels it needs to be corrected which is why it is being brought before council.

The mayor advised we have a Board of Adjustment meeting on Thursday and asked if it should be deferred. Mr. Spillane recommends it be deferred until this is cleared up.

Mr. Willard said that two people can be a quorum if the city manager is not a legitimate member. He explained we have been operating under this system and does not feel a court would invalidate our decisions based on this statutory scheme. However, we are doing the responsible thing by addressing it.

Mr. Workman agreed the board was established based on a law passed by the general assembly. He does not feel it would be appropriate to postpone a Board of Adjustment meeting scheduled for this week. That applicant did what they were asked and their case should be heard.

Mr. Willard said once council gives him some direction or wants more information, he will follow up.

The mayor asked if a decision made Thursday can be challenged. Mr. Willard said the question often comes up if something is constitutional. His answer is that it is, until a court says it is not. He believes Mr. Workman's sentiment hits on what the law is. The city has the authority to do this by virtue of the history.

The mayor asked if we can legally substitute and appoint the city engineer and still conform to the law. Mr. Baird said that the ordinance spells out who the members are. Therefore, the zoning code would have to be amended to remove him and add the city engineer.

It was agreed the Board of Adjustment would continue as it currently exists, until the charter or ordinance can be changed. The manner in which it is changed will depend on the information provided by the solicitor though council seems to favor a hybrid type board which would include the city engineer.

Mr. Willard pointed out the language in the charter does not have to be amended because it states the Board of Adjustment will be established by city ordinance. The composition of the Board of Adjustment can be done through an ordinance amendment which can be handled by city council. However, the ordinance also states that it can also be established in accordance with Title 22. Therefore, the solicitor said it can be reconstituted by resolution if it is consistent with Section 322 (Delaware Code).

Mr. Spillane reiterated that because we know we are not proceeding under the law, should we put things on hold until we get them corrected. Mr. Willard responded that would be wrong because the charter gives the authority to constitute the Board of Adjustment which the general assembly approved.

Mr. Baird added that any member of council can propose an amendment to the zoning code changing the composition of the Board of Adjustment and have that considered by city council.

Mr. Oechsler confirmed that if an amendment is proposed, that can include a recommended effective date which would allow time to find four qualified members. He also asked if the morning meeting time could be moved to the evening to allow more citizens to attend. He said that people that work have a difficult time speaking for or against an application if they are working during the day.

The mayor said that can be later discussed during the charter review.

*DBF Engineering Proposal/N.E. Front Street Streetscape Improvements Project*

Mr. Baird referred to the Proposal from David, Bowen and Friedel, Incorporated for the N.E. Front Street Streetscape Improvements Project which will be completed in coordination with Downtown Milford Incorporated. DMI has received a \$250,000 grant through the Community Redevelopment Fund for streetscaping improvements on N.E. Front Street from the east side of Washington Street approximately 1,800 feet to N.E. Fourth Street. There is a local match requirement for the total amount though they feel it can be met during the construction phase of the project.

The city manager advised that in addition, the city is also considering an I&I study and possible sewer main replacement along the same section of roadway which would be done under a separate contract.

DMI President Scott Angelucci then addressed council. He said considering the current condition of the state budget, the funding is being made available but if the project has not been started by June, they will most likely lose the money. Therefore, it is important to expedite the project.

President Angelucci said this proposal does not include the burying of the electric utilities and are requesting this be added to the project. Mr. Baird advised that was considered on the South Front Street side. Electric Superintendent Rick Carmean determined it would cost over \$6 million which made it prohibited. However, if it is deemed feasible, they will propose an amendment to this engineering contract to include that work.

Mr. Workman asked if the surveying of the sidewalks and streets was included because that is part of streetscapes. Mr. Baird said he will ensure everything ties together from the road improvements to curbing to business entrances to properties lines and where the sidewalks will go. It will be determined what will be on public property and what, as well as how much, will be on private property and whether easements or right-of-ways will need to be acquired to make it a continuous project.

Mr. Workman said there is no sense during a survey of the sidewalk if we are not going to do the road. It has to be a project that ties together and one cannot be done without the other.

Mr. Baird said if the sewer work is done as has been planned for sometime, there will be road restoration needed in those sections and both projects will be coordinated together.

Mr. Ambrose confirmed the sewer work is part of the bond issue.

The city manager advised the total contract is \$31,600. Mr. Ambrose also confirmed this money will come from the DMI community redevelopment funding. Mr. Angelucci explained that the money coming through DMI is from the state and DMI is not actually providing the funding. Mr. Ambrose said he understands, but DMI has no problem using part of that money they have semi control for this proposal.

President Angelucci said it is his understanding there are specific guidelines for the state funds. The only thing he wants to clarify is if the funding was not available, DMI would not be held responsible for any incurments. He said as far as the funding itself, which is a matching fund, that can be applied to a number of different areas; Mr. Ambrose confirmed engineering is one and that DMI would not oppose applying for that money to be used for the engineering study.

Mr. Angelucci stated that is correct.

Mr. Workman said that DMI received this money to help the city and the city worked with DMI on this. He asked what guidelines need to be followed to make sure the money is spent the way it is supposed to be. He knows burying utility lines is one of the main objectives of streetscapes. As was mentioned earlier, that is not part of this proposal. Mr. Baird added it is not included at this time.

Mr. Angelucci said his understanding of state guidelines is that they only cover burying utility lines in the event it is a requirement for public access as with a handicapped access. The portion of money coming from the state will be used at some level for the project. They would prefer the city bury the utility lines as part of the overall scope of the project. Whether or not the state's money pays for that would be questioned though the money would be used for some aspect of the overall scope of the project.

Mr. Ambrose agrees the funding DMI has needs to be used as quickly as possible before it is lost. He feels it should all be going into a big pot because the city is aware of the costs and that DMI has access up to \$250,000 which should be used before anything else. Mr. Angelucci explained it is a matching fund so the city would have to spend the same amount. Mr. Ambrose said the city is prepared to do that.

Mr. Angelucci reiterated that timeliness is the question because in order to receive this money, the roads must be reopened by June. They need the complete drawings, the bid process completed and the requests to the landowners for the use of their properties both permanently and temporarily during construction. There are a lot of things that must occur between now and June. Davis, Bowen and Friedel have provided a time line which he requested be included in the packet. As it stands, that time line will be a challenge because it has a bid award date of June 15<sup>th</sup> though construction must be underway by that date. He feels they would lose the funding if the roads are not open by that date.

Mayor Marbello said we must accelerate things so that this happens. Mr. Workman expressed concern that the funding has been available for sometime but has still not gone anywhere. Now we are pressed for time and there is a possibility we could lose the money particularly with the way the economy is right now.

Mr. Angelucci said that the recent break in the sewer line is proof the sewer lines are going to be an issue so that work will need to be started as soon as possible.

Mr. Baird announced the preliminary estimate by the engineers for the total project is \$851,000 though the money available through DMI from the state is \$250,000. He said the city will move forward as best as we can in an attempt to get certain aspects done, but the reality is we are unable to award a contract valued at \$851,000 with only \$250,000 in hand. Funding will be an issue for when the project proceeds because there is no way he is able to bring it to city council for approval and say we already have a contract for \$851,000.

Mr. Angelucci responded by saying the award from the state requires the job to be completed by that date. If some stages were finished after that time, he believes the funding would be allocated. If the project was started and the roads opened by June, that would prevent losing the \$250,000.

Mr. Baird pointed out that the project would need to be awarded for the full amount with the funding at least identified.