

MILFORD CITY COUNCIL  
MINUTES OF MEETING  
June 24, 2019

The City Council of the City of Milford met in Workshop Session on Monday, June 24, 2019 in the Joseph Ronnie Rogers Council Chambers at Milford City Hall, 201 South Walnut Street, Milford, Delaware at 6:32 p.m.

PRESIDING: Mayor Arthur Campbell

IN ATTENDANCE: Councilpersons Christopher Mergner, Mike Boyle, Lisa Ingram Peel, Todd Culotta, Owen Brooks Jr., Douglas Morrow and Katrina Wilson

STAFF: City Manager Eric Norenberg, Police Chief Kenneth Brown and City Clerk Terri Hudson

COUNSEL: Solicitor David Rutt, Esquire

Council was reminded of the obligation that any organizations supported financially by the City of Milford, is required to provide a quarterly status report to City Council.

*Quarterly Update/Downtown Milford, Inc.*

DMI Board President Sara Pletcher reported that this will be the last time she presents as her term ends on June 30<sup>th</sup>. She noted that as of July 1<sup>st</sup> the following new officers will take office:

President: Peggy Reilly  
Vice President: Don Vaughn  
Secretary: Shelley Moore  
Treasurer: Sandra Gullede

President Pletcher reported the following:

Executive Director Murrie Zlotziver is no longer with DMI but will remain at the apartment until July 31<sup>st</sup>. Joey Phillips has accepted the Interim Executive Director position until a permanent Director can be hired.

Tod VanEyken and David Pickrell resigned from the board; Don Vaughn from Not Too Shabby, Shelley Moore from Irish Rose and Sandra Gullede from Tax Chicks are the newest board members.

During this quarter, DMI's volunteer hours are estimated to be 1,542, with a value of \$38,056.56. Those volunteers will be recognized on August 18<sup>th</sup> at an Appreciation Picnic.

The fiscal year was changed to July 1<sup>st</sup> to align with the City of Milford's budget year.

A search continues for a new volunteer coordinator who will manage all elements of volunteering including recruitment, placement and retention of workers.

The 2019 Farmers Market season began on Saturday, May 4<sup>th</sup>, which was the day of the Bug and Bud Festival. A fall market is planned for November just prior to Thanksgiving. Associated each week with the market are an estimated 400 people, \$5,500 in sales and 20 vendors.

The downtown brochure continues to be updated with changes in businesses and services. New businesses include Nancy's Café (old Petite Sweets building) and Lady Maggie's Boutique (the previous Red Bandana moved to a larger space for the third time in eighteen months.)

Two new businesses are preparing to move to Milford though their plans are not yet final.

The Vinyard Project continues to move forward while pursuing funding. The first invoice was paid with \$15,000 received from the City of Milford and \$15,000 from Kent County. Unfortunately, Sussex County declined though they are seeking crowdfunding through IOBY.

DMI participated in the ribbon cutting for the new Milford-Branded Overpass on May 18. They appreciate the City of Milford's effort to make that happen.

The Entrepreneurs' Network has been suspended at this time due to lack of attendance.

In lieu of the \$50,000 field ad costs at DE Turf, DMI is instead working with the Kent County Tourism Office who will be distributing promotional items at various tournaments this spring and summer. Included will be DE Turf/Milford branded bags and buttons. Persons wearing those buttons in Milford's businesses will be rewarded with select items.

The bag will have a list of participating merchants, along with Farmer's Market info, to attract DE Turf participants to our downtown area.

Work continues on the Ladybug Festival in hopes of obtaining new sponsors. Though they had hoped to increase this year's budget, it was reduced to the same budget and the number of venues were reduced by one this year due to rising production costs. An IOBY crowdfunding campaign went live last Friday with a \$10,000 goal in hopes of bringing the festival back with a no-cost fee to enter.

Third Thursday continues though participant numbers are low.

The Bug and Bud Festival was successful with an approximate \$6,000 profit for both DMI and the City of Milford Parks and Recreation Department.

Merchant interest continues in hopes of obtaining a billboard on Route 1. Digital boards show six ads every ten seconds at a cost of \$950 per month and static boards are \$1,200 per month. Because of the cost, DMI is unable to purchase advertising in this format.

With the Easter Plant Sale relocated to the Santa House location on Walnut Street, plants sold out a day early which resulted in a profit of \$1,627.70. Inventory will increase as a result in 2020.

DMI has partnered with Parks and Recreation to apply for the 2020 Delaware Forest Service Tree Grant.

Thirty plus volunteers planted flowers on City street poles and in other baskets throughout downtown this past spring. Parks and Recreation has hired a part-time person to handle the watering duties.

The Sail Banner Project was unveiled on May 25. Through a Milford Lions Club grant, the banners were manufactured by First State Manufacturing and art supplies and banners distributed to local businesses, Milford School District students and other local artists.

Letters were sent to businesses and property owners reminding them of DMI's small revolving loan relative to a Sign, Awning and Façade Enhancement Grant Program. To date, no businesses have applied.

Building and ground maintenance continues on a regular basis.

President Pletcher then discussed the low numbers which she feels the rainy weather and cancelation of the Life Cycle lot party impacted.

Incoming President Peggy Reilly then spoke, adding that the weather was extremely hot though they had originally anticipated a larger crowd. However, with school getting out a few days earlier, a lot of families were away on vacation would could have had a bearing as well.

Councilman Marabello questioned the -0- estimate noted on the short year budget (November 2018 thru June 30, 2019). Ms. Pletcher believes that was a result of receiving last year's funding prior to November 2018.

*Quarterly Update/Milford Museum*

Executive Director Claudia Leister presented the following report:

Speaker Series (April): Joan Lofland and Claudia Leister presented "lantern slides" showing newly discovered Milford photographs.

Speaker Series (May): Dan Griffith presented "Seventeenth Century Indian Towns in Sussex County".

South Milford Walking Tour (May): David Kenton hosted with seven people attending.

Dr. Amanda Gaglione, Gifted & Talented Teacher for Elementary School Programs, brought seven classes of students from Ross, Banneker, and Mispillion to visit the Museum.

Museum maned a booth at the Bug & Bud Festival.

Fifth Annual Roaring 20's Lawn Party at Causey Mansion realized a profit of \$2,695.50.

She noted that she has put an emphasis on working with the schools and feels it is important to have those students visit the museum and in hopes those students will learn about the town they live in.

In addition, Dr. Gaglione has agreed to participate as a board member for the museum.

They are working on a new fundraiser "Hippy Fest" in recognition of the 50<sup>th</sup> Anniversary of Woodstock. The event will be held on the grounds of Causey Mansion with participants encouraged to bring their own blanket, beach chair and groovy attire.

The Ladybug and Kennedy Silver exhibits replaced the Doll exhibit.

In honor the State of Delaware's Ladybug, which was the result of the efforts of Milford School District's own second grade class, she has ordered a three-foot high, four-foot long and three-foot wide fiberglass lady bug statute that will be placed on the landing of the museum and align appropriately with the upcoming Ladybug Festival.

Two new exhibits were installed. The 1920's Toy Collection and a wall of information on the Milford Air Park.

The Museum has loaned Milford Art League twelve pieces of artwork by well-known Delaware artists to be exhibited during their June exhibit.

She continues to work on getting an inventory of the collections in the museum.

Visitation from June 1, 2018 to December 30, 2018 - 2,151 visitors:

January	165
February	310
March	165
April	280
May	440

The museum received five large section labels from Bayhealth for our History of Milford Hospital exhibit.

A new website is also being created.

She again encouraged Council to attend the exhibits at the museum.

*Carlisle Fire Company Update*

No report.

There being no further business, the Workshop concluded at 6:57 p.m.

Respectfully submitted,

Terri K. Hudson, MMC  
City Clerk/Recorder

MILFORD CITY COUNCIL  
MINUTES OF MEETING  
June 24, 2019

A Meeting of Milford City Council was held in the Joseph Ronnie Rogers Council Chambers at Milford City Hall on Monday, June 24, 2019.

PRESIDING: Mayor Archie Campbell

IN ATTENDANCE: Councilmembers Daniel Marabello, Mike Boyle, Todd Culotta, Owen Brooks Jr., Douglas Morrow, Jason James Sr. and Katrina Wilson

STAFF: City Manager Eric Norenberg, Police Chief Kenneth Brown and City Clerk Terri Hudson

COUNSEL: Solicitor David Rutt, Esquire

ABSENT: Councilmember Lisa Peel

#### CALL TO ORDER

Mayor Campbell called the Council Meeting to order at 7:00 p.m.

#### INVOCATION AND PLEDGE

The Pledge of Allegiance followed the invocation was given by Councilmember Wilson.

#### RECOGNITION

##### *Light Up Navajo/Electric Crew*

Retired State Senator Gary Simpson and IBEW Local 126 Business Representative Rick Fridell were in attendance.

City Manager Norenberg shared a report given at DEMEC's Annual Dinner last fall, on Navajo Nation, the largest Native American territory in this country located in northern Arizona and parts of Utah and New Mexico. Among the 55,000 homes located on the 27,000 square mile reservation, approximately half do not have electricity. At that meeting several officials, including Retired State Senator Gary Simpson and Mayor Campbell, rallied to provide assistance to that public power entity from across the country.

Two of Milford's electric employees and two from the Town of Smyrna, joined community-owned utilities from Illinois, Ohio, Arizona, Oklahoma, New Mexico, California, Texas, Arkansas, Massachusetts and Utah this past April to power homes that have never had electricity. More than 100 volunteers from 24 utilities in 12 states took part in the American Public Power Association initiative, in support of the Navajo Tribal Utility Authority.

Public Works Director Mark Whitfield then provided a video related to the project.

He commented that Senator Simpson, the IBEW (International Brotherhood of Electrical Workers) and DEMEC generously donated toward the endeavor, lessening the financial burden on the local municipalities.

He then introduced City of Milford's representatives, Linemen Gary Johnston and Rob Palladino who provided details and pictures of the week-long project. They talked about the horrid living conditions at the reservation, as well as the precision work that was done under the direction of the Navajo Tribal Utility Authority. They also described the vast desert-type areas that had to be traveled between where power existed and where it was needed.

Mr. Whitfield reported that collectively, over the six-week period, crews provided power to 232 homes of the 15,000 homes without it.

The Public Works Director then read a plaque which was presented to each of the power companies that participated from the Navajo Nation for the support of the 2019 Light Up Navajo Pilot Project that helped connect 232 families to the grid for the very first time.

The linemen then thanked the City for giving them the opportunity to participate in this rewarding project.

When asked if the City will participate again next year, Mr. Whitfield explained our linemen were not able to take a City truck due to the conditions in the area. Because of the equipment and material issue, there is a limitation on how many homes can be connected at one time. However, he feels that APPA and the City are both committed to continuing this work and that we can again participate by providing future assistance.

Mr. Norenberg added that in addition to Mr. Paladino and Johnston, there were two other electric department employees that have volunteered to go.

He also thanked Senator Simpson and Mr. Fridell for their generous donations. Retired Senator Simpson also thanked the City for participating stating he is extremely grateful he attended the DEMEC meeting where a representative of the Navajo Nation Electrical Authority provided such a moving presentation. He believes it is particularly special that the City reached beyond Milford to do something so valuable to those that are less fortunate.

#### *Electric Superintendent Will Gallagher*

Mr. Whitfield then introduced Mr. Gallagher as the new Electric Superintendent as of May 20, 2019. Mr. Gallagher is from Long Island, New York and is planning to purchase a home here and bring his wife and young son to join the community.

Mr. Gallagher then spoke briefly, stating that this presentation and the efforts of these two linemen confirmed his believe that he made the right choice to move here. He looks forward to meeting everyone and working for the City.

#### COMMUNICATIONS & CORRESPONDENCE

Councilman Boyle reported that a recent Homeowners Association was held for the Meadows at Shawnee residents. Both Mr. Whitfield and Water and Wastewater Operations Supervisor Steve Ellingsworth attended. He stated that both spoke for about ten to fifteen minutes, followed by a question and answer session, until everyone in attendance was satisfied.

He commended Mr. Whitfield who was away for training, and landed in Philadelphia at 4:30 pm and arrived at 7:00 pm in time to make the meeting.

#### UNFINISHED BUSINESS

##### *Adoption/Ordinance 2019-21/Authorization/Chesapeake Utilities Franchise*

Mr. Norenberg recalled the introduction of this ordinance at the June 10<sup>th</sup> meeting. The memo outlines the relative sections of the charter related to franchises. Within the past month, the previous franchise agreement was reviewed with amendments presented to Chesapeake Utilities.

Information from other communities was also sought. Franchises from Middletown, Seaford and Georgetown were received though it was determined several other communities were also in the process of negotiating renewals.

Several key issues were identified during the review:

- Exclusive vs. Non-Exclusive: Our current franchise is exclusive however, Seaford, Middletown and Georgetown are non-exclusive. Because of the areas of Milford that are still unserved by natural gas in spite of many requests, staff felt that a non-exclusive agreement (or one with a first-right-of-refusal clause) would enable alternative providers to enter those markets.

- Revenue: The City currently receives “a volumetric franchise fee in the amount of \$0.010 per 100 cubic feet of gas delivered to customers through the Company's distribution system within the limits of the City of Milford.” This is projected to provide the City with about \$43,000 in revenue for FY19-20. Georgetown charges the same rate. It is proposed that the fee remain the same.
- Extensions: The rules governing extensions of the distribution system in Milford are subject to the jurisdiction of the Public Services Commission. The City and Chesapeake Utilities partnered last year to secure a grant to offset some of the cost to extend gas service along Northwest and Northeast Front Streets. Otherwise, we could not require the franchise extension into areas that did not meet the financial requirements set out by the State.
- Buyout: The agreement that is about to expire, provided for the unilateral right to purchase the system five years into the term at 225 percent of net book value. Chesapeake Utilities proposed that the City would have to pay 500 percent of the net book value to buyout the distribution system under certain circumstances in the new agreement. This amount has been negotiated down to 300 percent.
- Indemnification: The Middletown agreement had a more current and complete indemnification section that was substituted for the 20-year old version.
- Non-Discrimination: A new, non-discrimination section was added.
- Term: The last franchise was 20 years while others in the State are 15 to 25 years. Extending for another 20 years will hopefully provide a window of opportunity to justify expansion into unserved areas.

In attendance were Chesapeake Utility Representatives Dean Holden and John Martin.

Mr. Holden stated they are pleased with the expansion over the last twenty years and understands the related challenges. Unlike other towns with a gas and light utility that have gas mains installed through the old portions of downtown, Milford does not have that. That is the reason most infrastructure is around the peripheral that follows new construction more frequently than not, though they have been able to extend the gas mains into pre-existing developments.

They are excited to move forward with the gas main extension across North Front Streets with the assistance of State grant monies.

When considering a natural gas extension, the PSC requires an economic model of those customers who are willing to pay for the infrastructure. As a result, they are prohibited from using monies from customers' existing rates to pay for expansion. When serving a new development, an agreement stating that a specific number of homes will be serviced must be in place. When looking across Northeast Front Street, they are trying to gain applications from a sufficient number of potential customers to ensure it will be a prudent, economic model.

In addition, Mr. Holden said they also obtain historical customer data that has been added after a gas main is installed within a footprint over a ten-year period. If that conversation percentage can be proven, it can be utilized.

That ties into the exclusivity term or non-exclusive term of the franchise. The PSC places a greater hurdle on a non-exclusive franchise to prove the future potential customers will become Chesapeake's customers, making it a little more difficult to show. That is why an exclusive franchise gives the ability to prudently claim the expectations of future customers.

It was also noted that unlike Verizon or Comcast, there is no other competing natural gas utility below the C&D Canal.

They agree with the other terms in the current draft being presented to City Council and are excited to continue working with the City of Milford.

When asked about feedback from potential customers in Milford, Mr. Holden explained that municipalities vary as far as residents who are interested in natural gas; he finds Milford to be about average.

He explained from a customer who is interested in natural gas, may find the expansion rate to be frustrating. They often grow very slow because they need enough customers to commit in certain areas.

When asked how many residents in Lakelawn Estates would be needed to commit to becoming natural gas customers, Mr. Holden said each project is different. Lakelawn would be considered a conversion community and prefer a 60%

response rate in a survey. Once that is acquired, a final-for construction design is then priced by a contractor. That sets a target number of applications needed to make it an economic project. Or, what additional future load might be reasonably expected. For some developments, that number is 110% of the homes though other times it can be 60% of the existing residences willing to commit and work with municipalities and private developers to get this accomplished in many cases.

Mr. Holden offered to leave his business cards though a sales rep oversees this process.

Mayor Campbell then opened the floor to public comment.

Stephanie McDonough of Lakelawn Estates said she has been talking to Chesapeake since 2013 trying to get gas extended to their development. She stated the development is bordered by Lakeview Avenue, Kings Highway and are in close proximity to Route 113 northbound. Chesapeake has lines on Seabury, School Place, Lakeview Avenue, West Clarke Avenue and Williams Street.

She has worked with a previous customer representative and the first thing they did was door hangers though they received very little interest. At one time, they were hoping to bring Milford Manor on board though that did not happen.

A year later, Ms. McDonough distributed a letter for a neighborhood meeting. Several interested residents attended though nothing happened afterward. She was told that if construction began on the new homes on Route 113 south next to Milford Place, Chesapeake would come through Lakelawn.

In 2015, another survey was sent though the responses were still low compared to the number needed. Later that year, the Chesapeake rep sent a letter stating he was working with Brookstone Trace's developer about the potential use of gas and would follow up. Because the Lakelawn development was built beginning in the last 1950's, early 1960's, most of the homes are older. In the meantime, a lot of the homeowners are no longer interested because their systems needed to be replaced.

Ms. McDonough purchased her home in 1973 and she is now of need of replacing that system as well.

When she called Chesapeake, the rep informed her they decided to go in a different direction to get to Brookstone Trace which eliminated the need to come through Lakelawn. She now understands that Chesapeake gas is being extended into downtown Milford by way of North Front Street and a section of Walnut Street.

She asked if there is ever going to be a possibility of Chesapeake extending lines into Lakelawn Estates.

It was noted that neither representative in attendance were involved in the past efforts though Mr. Holden will circle back to both representatives that have been involved. The challenges are very common and unfortunately, they have heard the same concerns expressed in other areas, including the changing of residents who may be interested and newer ones that have other interests. However, 90% of their customers are residential and expanding into communities like Lakelawn Estates is very important. He said the closer they get and the more infrastructure around the neighborhood will make it possible.

Roy Smith, also of Lakelawn Estates, said he echoes what Ms. McDonough's stated. He, too, is in the same situation and will need to make a decision on replacing his furnace in his home, which is also failing. However, he had hoped to do that with natural gas though nothing has occurred over the past five years and they will be making a decision in the very near future. He is not hearing what he wants to hear tonight, but understands it is a challenging business decision.

It was also noted that when a home is going thru HVAC upgrades regardless of the type of system, and is in a community that natural gas will eventually be extended, the homeowner can work with the contractor to identify equipment that can fit the homeowners' needs and structure the system so it can later be converted to natural gas.

No other persons wished to comment and the floor was closed by Mayor Campbell.

Councilman Boyle moved to adopt Ordinance 2019-21 approved the Chesapeake Franchise as submitted, seconded by Councilman Culotta:

CITY OF MILFORD  
ORDINANCE 2019-21

AN ORDINANCE OF THE CITY OF MILFORD, DELAWARE GRANTING TO CHESAPEAKE UTILITIES CORPORATION, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE GAS SUPPLY AND DISTRIBUTION SERVICES FRANCHISE AGREEMENT WITH THE CITY OF MILFORD; PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID FRANCHISE MAY BE EXERCISED; PROVIDING AN EFFECTIVE DATE; AND REPEALING AND REPLACING THE PRIOR ORDINANCE AND FRANCHISE AGREEMENT.

WHEREAS, Chesapeake Utilities Corporation and the City of Milford desire to enter into a franchise agreement for a period of twenty (20) years commencing from the date provided herein; and

WHEREAS, Ordinance 2019-21 repeals and replaces Ordinance 2-1999 adopted by City Council on June 28, 1999; and

WHEREAS, the Council of the City of Milford finds that it is in the public interest of its citizens to enter into an updated franchise agreement with Chesapeake Utilities Corporation.

## Section 1.

NOW, THEREFORE, the City of Milford hereby ordains as follows:

AGREEMENT BETWEEN  
THE CITY OF MILFORD AND CHESAPEAKE UTILITIES CORPORATION

THIS AGREEMENT ("Agreement") is entered into as of July 4, 2019 between the City of Milford ("City of Milford"), an incorporated municipality located in the State of Delaware and Chesapeake Utilities Corporation ("Company"), a corporation organized under the laws of the State of Delaware.

## Section 2.

Upon the effective date, and subject to the terms and conditions set forth herein, the City of Milford hereby grants to Chesapeake Utilities Corporation a non-exclusive franchise agreement within the City of Milford.

## Section 3. Dates.

City Council Introduction: June 10, 2019

City Council Adoption: June 24, 2019

## Section 4. Effective Date.

This Ordinance shall be effective July 4, 2019.

See packet or City website for complete ordinance/agreement.

Motion carried.

*Adoption/Resolution 2019-07/Approval of 2019-2020 Fiscal Year Budget & Capital Plan*

The City Manager recalled that at the last meeting, City Council agreed in the FY 2019-20 budget to increase the employee base pay adjustment from 2.0 percent to 2.5 percent, effective July 1st. That was based on the increased received by members of the Milford Police Union.

He reported that the additional half percent increase for non-union employees' base pay totals \$27,313; of that, \$15,566 is in the General Fund and the remainder in the various enterprise funds, as follows:

Water - \$1,895  
Sewer - \$1,895  
Electric - \$5,995

Solid Waste - \$1,962

Mr. Norenberg also spoke on behalf of Chief Brown, stating that the Chief applied for and received a grant to partially cover the cost of the new K-9 dog and related equipment. As a result, that item has been reduced in the general fund by \$10,800, which will partially offset the costs of the wage adjustment in the upcoming year.

To accommodate the impact of the additional base pay increase and in order to keep the Solid Waste increase to \$1.00, additional cuts were made in the advertising and printing line item.

Councilman Marabello noted that in the past, there has been a transfer from the Realty Transfer Tax fund of \$500,000 and asked if increasing that transfer, as is being done this year, will become the norm. Mr. Norenberg explained that in order to maintain a balanced budget and prevent a property tax increase, some additional money had to be pulled from the transfer tax fund for the Police Department's use. There is also a slight increase from the Economic Development Fund, which now includes the lodging tax revenue, to help cover the additional support for outside organizations and purchases related to attracting and serving visitors.

The City Manager confirmed there is no intent to continue that trend on a long-term basis, but it helps with the forthcoming budget as we prepare to build the new police department and remain conservative on tax increases at this point in time.

It was confirmed that City Council also approved a police enhancement fund fee that will be included in the monthly finance report within the next couple months.

Finance Committee Chairman James was thanked for his thorough examination of the budget. Councilman James then thanked Council stating he feels we had a healthy process and believes all of Councils' questions were answered. He has a better understanding of the input and makeup of the budget at this point and also thanked City Accountant Suzannah Frederick who has been very responsive to the many questions presented her.

Mayor Campbell opened the floor for public comment. No one responded and the floor was closed.

He said he has reviewed the annual and capital budget in good detail. With no further questions, Councilman James moved to adopt Resolution 2019-07 adopting the annual budget for fiscal year 2019-2020 as presented, including the \$1 per month increase for solid waste services, seconded by Councilman Boyle:

RESOLUTION 2019-07  
ADOPTING THE CITY OF MILFORD  
FISCAL YEAR 2019-2020 BUDGET & CAPITAL PROGRAM

WHEREAS, the operating and capital budgets of the City of Milford for the Fiscal Year 2019-2020 were prepared and submitted to the City Council by the City Manager in accordance with Article VI 'Financial Procedures' of the City Charter; and

WHEREAS, the City Council was presented with the proposed budget following a comprehensive study and review while meeting in public sessions on June 3, 2019 and June 4, 2019; and

WHEREAS, in the opinion of the City Council, the budget accurately, as possible, reflects the city's anticipated revenues and expenditures for the fiscal year beginning July 1, 2019 and ending June 30, 2020.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MILFORD, that the City of Milford's Operating Budget for Departments shown under General Fund as Administration, Planning and Zoning, Code Enforcement and Inspections, Finance, Information Technology, Police, Streets Division, Parks and Recreation and Council; and the Water, Sewer, Sanitation and Electric Divisions was adopted and approved as the budget of the City of Milford for Fiscal Year 2019-2020 in the following amounts:

Operations and Maintenance - \$41,544,072  
Debt Service - \$1,109,160

Capital Program - \$2,621,744  
Total Expenditures - \$45,274,976

Motion carried with no one opposed.

#### *Board of Adjustment Vacancy*

Mr. Norenberg referenced the recent resignation of BOA Member Chad Carter, in addition to information from the City Zoning Code and Delaware Code, regarding qualifications of board members.

He noted that State law stated that members shall be residents of the city or incorporated town and who shall have knowledge of and experience in the problems of urban or suburban or rural development.

#### NEW BUSINESS

##### *Update/City Hall Basement*

Public Works Director Whitfield provided background details regarding the history of the water issues in the lower level of City Hall, which became a much more urgent matter last September during a heavy rainfall. That flooding resulted in the relocation of the Planning and Code/Inspections Departments to the Public Works Facility. EDIS was eventually hired to investigate the water infiltration matter in an attempt to provide a recommendation for the remediation of the water infiltration.

Project Manager Leon Thompson Jr. provided the following information:

Last November, a meeting was held to get an understanding of the issue and the frequency of the water infiltration into the City Hall basement. A few heavy rain events had caused significant water damage to the Lower Level area. One event was contributed to water infiltration through one of the existing masonry chimneys. (This water infiltration issue is not a part of this investigation). A video of the existing underground storm water management piping along with an associated sketch format as-builts was also performed.

The findings from the video taken of the existing rain water conductor drain piping and the existing perimeter foundation drain piping were intact and performing without any obstructions. The video taken to and from the existing catch basins confirmed showed no obstructions from the existing parking lot area to the existing storm sewer piping at South Washington Street.

It was also determined the existing infrastructure below the parking lot and the sizing of the existing piping is adequate to handle the storm water capacity. A factor that could be contributing to this issue is the discharge of the stormwater into the Mispillion River. The discharge can become restricted during extreme high tide situations, which in turn, could cause a back-up into the existing storm water piping preventing the proper discharge from the City Hall property.

It is a challenge without being able to replicate the situation, though they have been here during several heavy rain events and were never able to observe that amount of water collecting on the property in any location.

Jim Di Guglielmo of EDis added the following:

It was noted the relation of the bottom of the catch basin is too low to drain off the bottom of the stairwells and the foundation drain. The September event occurred during an extreme high tide. All stormwater management, downspouts and foundation drains go into the City system down into the Mispillion River. During the high tide, an extremely rain event made all the water from surrounding streets dump into the same system. With six inches above, catch basin #1 confirms that all the water to that level also came back to this building and was percolating up through the downspouts. A foundation drain had been installed at an incorrect level and was actually designed two feet higher than it should be. As a result, it will not take any water away. It was installed at that height because that is the lowest it could be placed and still get positive drainage to catch basin #1 at the bottom of the steps.

The most cost-effective solution is to abandon all the piping from the building to the stormwater system, dump the downspouts and slash them out onto grade and install a new foundation system.

EDiS was asked to break the project into two; exterior and interior. A new foundation drainage system would have its own pumping system to pump water out to the front of the building to grade. This would delete any return from the stormwater system.

If the three-foot catch basin had six inches of water, all pipes that were supposed to be discharging into the catch basin were already full and coming back to the building which may have been the reason for that occurrence.

In addition, there may also be a problem with the chimney which is a separate matter and could be the reason for the smaller water infiltration. It is unfortunate they could not witness a big water event though they can see on paper what occurred.

With City Hall's stormwater is discharged into the river, they have not been able to gain access. When the pipe going into the river is blocked, it starts to come back once the water exceeds its own level. That is the result of the street water and City Hall's water going into the river.

He noted that one street does not have a catch basin and instead flows down the street.

Mr. Di Guglielmo also noted there is very little green areas and the water coming back to City Hall as a result of what they feel is a perfect storm scenario that occurred with high tides and torrential downpours.

A proper designed drain is needed at the top of the footing. In that manner, when water comes in, it is trapped, and goes into the path of least resistance, into the drain and then travels out.

He further explained that the perimeter drain that was installed seven or eight years ago, is two to three feet higher than it should be. That was done because that elevation was needed to get positive gravity flow to the catch basin though it was not deep enough. The only water it picks up is what happens to fall into it because it is not being trapped by the footing. The wall section should have a large base of stone with a pipe and any water would go to the path of least resistance, go in and travel out. If not falling dead center of the top of the circle, the water is going around the pipe.

Though it was thought that the various water infiltration issues are related, he feels there has also been a problem with the two chimneys which could be part of the smaller water problems.

#### Recommended Action

1. Isolate the rain water conductor piping discharge and the perimeter drain discharge to catch basin #1. This will be accomplished by having the existing rain water conductors discharge to grade and ensure proper drainage away from the building. The existing inlets to catch basin #1 for both the existing rain water conductors and the existing perimeter drain will be infilled at the catch basin #1. The existing perimeter drain system is not effective due to the location of the perimeter drain piping. Due to the existing elevations of the inlets into catch basin #1, the perimeter drain piping had to be installed at an elevation higher than the existing footing elevation. This decreases the effectiveness of the perimeter drain performing to the greatest extent. The method of controlling the water in the stairwell landings will be as follows. A catch basin will be installed at each stairwell landing area outside the existing doors. This catch basin will be piped to the interior of the building into a sump pit. This pit will have a sump pump which will pump the water out above the ceiling to the existing exterior grade. The budget estimate cost for this scope of work is \$51,850.00.
2. Fit-Out Lower Level: Complete fit out to restore the lower level back to original condition along with a new perimeter drain system at the existing exterior walls, as well as, a trench drain (tied into the perimeter drain system), at each existing exterior door. The building material for the partitions, from existing floor level to 3' -0" above the finish floor, will be materials that are resistant to water absorption. Above the 3'-0" mark to the ceiling line will be conventional building materials. Existing finishes will be restored to include acoustical ceiling system,

paint, casework and a water-resistant carpet. The existing lights and HVAC grilles and diffusers will be re-installed to their original locations. The budget estimate cost for this scope of work is \$263,595.00.

To date, EDiS is approximately has spent \$15,000.00 of the \$29,000.00 budgeted fee for the evaluation.

It was confirmed there would be a lesser chance of flooding with solution #1 in the same situation. Mr. Di Guglielmo stated that if they disconnect the piping and isolate it, it cannot flow back. However, anything six inches or above will still come up in the parking lot.

He also noted that related common mistakes include landscaping with mulch beds a foot higher than they should be.

Mr. Di Guglielmo also talked about the second option with includes replacing current building materials with inorganic wall materials from three feet down.

To summarize, they have provided two options. The exterior is one project which will keep the water away from the building. The secondary system could then be installed inside the foundation drain and include a separate pumping system for the stairwells because they are even lower and need to be pumped.

Mr. Di Guglielmo said the first recommended action would be to separate catch basin #1 from the rain water conductors and City Hall's foundation drain to completely isolate that path backwards. The other challenge is the handicapped ramp and anything below grade has to be removed. However, that is not cost effective when considering the costs of reinstalling it and the amount of concrete involved.

An in-depth discussion of the work followed and estimates were reviewed.

In regard to the projected numbers, Mr. Di Guglielmo stated they have proposals and believes they can tighten the budgeted numbers up. He also explained it was priced from a general contractor's standpoint, but currently they are retained by the City as consultants and reiterated that only half of the approximate \$29,000 has been used. He feels the City would save money hiring EDiS as a construction manager versus a general contractor.

Councilman Culotta stated that option 1 repairs the exterior before anything is considered inside. He understands the basement needs to be repairable though he is unsure if it should be office space or some other use. He suggests tabling that at this point, and in conjunction with the new police facility, consider a potential City office complex. He does not believe it makes sense to add another \$264,000 back into a building this old with many unknowns.

Councilman Morrow agreed adding all options need to be weighed including moving these offices to a new facility.

Councilman Culotta also recommends option 2 be further discussed at the committee level and a determination made of whether to spend additional monies on City Hall.

When asked if the downspouts are in the correct position, Mr. Di Guglielmo said he brought a consultant in. With this being an older building, there is an internal drainage system, so the gutters are not on the exterior. To make modifications will be very costly.

He said that currently, there is one downspout that goes down the stairwell that will need to be diverted. They found signs of efflorescence and it appears there was an attempt to remedy it using a dry Lok paint, but that has bubbled. Regardless, the drains need attention.

It was confirmed that the repair of the unknown chimney issues was not included in the estimate.

Mr. Di Guglielmo did share that the proposals are based on multiple prices by outsider contractors' scopes of the work.

Councilman Culotta recommends putting the unspent \$14,000 toward the \$51,850.00 estimated cost of option 1. Councilman James prefers adding the chimneys to the scope of work.

It was suggested to start with option 1, and add an option 3 for the chimneys.

Public Works Director Whitfield said the intent was to give the report, but not take any action at this point. He agrees the project should be added to the next Public Works Committee agenda so it can be determined how to move forward.

Councilman James asked that the chimney work be investigated and an estimate provided. However, if this work needs to be done, before it is determined how this building will be used in the future, he does not believe any further discussion is needed and wants to proceed with option 1.

Councilman Culotta said he also recommends adding a \$5,000 to \$10,000 contingency for cost overrun. Councilman James pointed out that once they conclude with their examination of the chimneys, the \$14,000 will be reduced. But he feels we can pull funds to cover the contingency.

Mr. Norenberg believes that if Council wants to move forward with option 1, it will need to be bid because it is over the threshold and a funding source determined.

Mayor agrees with Mr. Whitfield that the matter should be brought to the Public Works Committee. Councilman Boyle feels the chimneys cannot be overlooked because that is water is still migrating into the building. Until that is fixed, we will continue to have water problems.

Several options were then discussed, though the general consensus of Council was to have the chimneys repaired.

Councilman Culotta does not feel the Public Works Committee needs to discuss option 1. Mayor Campbell disagreed.

Councilwoman Wilson feels we are moving too far ahead. She prefers getting the total number and present the entire scope, including the chimneys, so Council knows exactly what is being voted on, though the number will change with the additional work.

Councilman Boyle pointed out the chimney work could be a separate contract.

It was agreed to wait for the final numbers, then bring it back to City Council. Councilman Culotta agreed to wait but does not favor sending it the Finance and Public Works Committee.

When asked for some direction, Mr. Norenberg said Council wants to obtain the best price possible to move forward with option 1, bring that back with a recommendation on funding, get a quote from EDiS for examining the chimney situation and obtain a solution as another option. More time can then be spent on option 2 at the committee level, as was discussed tonight.

Council concurred.

Mr. Whitfield publicly thanked EDiS stating it is also rewarding to find a contractor that truly helps with what can be a very serious situation, in addition to coming in at half the price originally quoted.

*Approval/Kent County Levy Court/Sewage Disposal District 1/Revised Contract User Agreement  
Connection to Harrington Force Main and Service & Treatment for Northwest Milford*

Mr. Whitfield reported that about a month ago, the City received a request from the developer of the Hickory Glen Subdivision to tap onto the Harrington force main for sewer service rather than the existing City gravity lines along Route 14 and the US Cold Storage pump station.

Both the City and Kent County evaluated the request and deemed to be in the City's best interest of the City to connect to the Harrington force main. That will also preserve capacity within the City's existing infrastructure along Route 14 and the Truitt Avenue Pump Station.

The connection at the Harrington force main will require an additional metering point that will need to be maintained. However, that far outweighs any other potential issues.

It was confirmed there is no cost to the City other than the maintenance and calibration of the meter. The developer will install the infrastructure.

Councilmember James moved to approve the Kent County Levy Court/Sewage Disposal District 1/Revised Contract User Agreement, seconded by Councilmember Wilson. Motion carried.

*Approval/First State Inspection Agency, Incorporated/Plan Review & Inspections Agreement*

Planning Director Pierce recalled that a line item was included in the recently adopted budget, to allow assistance from First State Inspection Agency, should the City continue seeing an increase in permits issued over the next fiscal year. They would be on retainer should their services be needed for building permit planned reviews and inspections.

This will be an extension of the same contract from the same two and a half years, at the same rates.

It was confirmed we have a full-time inspector in house and they will only be called when necessary.

Councilmember Boyle moved to approve the First State Inspection Agency, Incorporated agreement for one year, seconded by Councilmember Morrow. Motion carried.

*Approval & Appropriations/Street Improvements/Design Services*

*Approval & Appropriations/Water Lead Service Line Replacement/Design Services*

Mr. Whitfield shared that as part of the Capital Improvement Plan requests submitted by the Department, several streets are slated for improvements for 2019 and 2020.

In 2017, the Department utilized engineering interns to complete a street Pavement Condition Report, which identified all streets. In the 2018-2022 Capital Improvement Plan, all streets rated poor, very poor or serious condition were slated for improvements over the duration of the plan, with approximately \$825,000 required each year.

He recommends the program be funded through a combination of general fund reserves, municipal street aid and real estate transfer tax.

Presently, Merestone Consultants is under contract for the reconstruction of Mispillion Street between Columbia Avenue and Fisher Avenue, Marshall Street, between Southeast Front Street and the Milford Dog Park and McColley Street between Southeast Front Street and Mispillion Street.

This project is scheduled for construction in the fall 2019.

Additionally, the design work for improvements that need to take place on Southeast Second Street before DelDOT repaves, is under contract with KCI Technologies. Improvements include curbing, sidewalks and water and sewer utility work. The work is scheduled for construction in fall of 2019.

Funding authorization is requested for the contracting of professional services and the remainder of streets listed for 2019 which includes Fisher Avenue, Roosa Road, Plum Street, Masten Circle and Southeast Fifth Street. The anticipated cost for engineering design services for these streets is expected to be \$60,000.

Additionally, streets slated for 2020 will be completed in conjunction with the Lead Service Line Replacement project. Funding for that project is through the Delaware Drinking Water State Revolving Fund and Department of Health and Social Services. The street rehabilitation work will be funded through Municipal Street Aid and Real Estate Transfer Tax.

It is recommended that both projects be completed by the same design professional. One of the issues with the Lead Service Line Replacement project is the quicker it is done, the quicker the loan becomes a grant, with the City only paying the interest.

Councilmember Wilson moved to authorize funding from Municipal Street Aid for design services for the following street improvement projects, seconded by Councilman James:

\*\$60,000 for Fisher Avenue, Roosa Road, Masten Circle, Plum Street and Southeast Fifth Street

\*\$72,000 for Northwest Third Street, Northeast Fourth Street, Northwest Fifth Street, North Street, Northeast Second Street, Mill Street, Kings Highway, Barker Street and Church Street.

Motion carried.

Councilmember Wilson moved to authorize \$75,000 funding from Water Reserves for design services for the Lead Service Line Replacement project, funds to be transferred from the loan to pay back Water Reserves, seconded by Councilmember James. Motion carried.

Councilmember Wilson moved to authorize the contracts to KCI Technologies for engineering service, to be paid from Municipal Street Aid, for:

\*\$14,500 for the paving of Roosa Road, Masten Circle and Southeast Fifth Street;

\*\$19,000 for the design and paving of Plum Street

\*\$11,635 for the survey and concept plan for Fisher Avenue

Motion seconded by Councilman James and carried.

#### *Approval/FY18-19 Budget Adjustment/Administration Salaries*

Mr. Norenberg reported that at the end of the fiscal year, we are experiences shortages in a few line items.

As a result of the change in handling compensation related to meeting transcriptions, funding needs to be moved from the City Council budget to Administration. To cover approved increases and an under budget in the payroll line, a supplemental appropriation is required.

Councilmember Boyle moved to authorize transferring \$7,000 from the City Council payroll to the administration payroll line item, seconded by Councilmember Wilson. Motion carried.

Councilmember Boyle moved to appropriate \$17,256 from the general fund reserves into the administration payroll line item, seconded by Councilmember Wilson. Motion carried.

#### *City Solicitor/Council Salary Interpretation*

Solicitor Rutt recalled being requested to render an opinion on what compensation a Milford City Councilmember is paid based on the current code. Currently Councilmembers receive a salary of \$50 per meeting and the question is what constitutes a meeting.

Reviewed were sections of the Milford City Charter, as well as the Milford City Code. Additionally, sections of the State of Delaware Code, Delaware Case Law and the Rules of Procedure for Kent and Sussex Counties were also considered.

Following are portions of a memo submitted by Solicitor Rutt in response:

Charter Section 4.03 - Compensation and Expenses: The City Council may determine the annual salary of Councilmembers and the Mayor by ordinance, but no ordinance increasing such salary shall become effective until the date of commencement of the terms of Councilmembers elected at the next regular election, provided that such election follows the adoption of such ordinance by at least six (6) months. Councilmembers and the Mayor shall receive their

actual and necessary expenses incurred in the performance of their duties of office, in accordance with a policy established by City Council by Resolution.

Charter Section 4.08 – Meetings: (a) Meetings. The City Council shall meet regularly at least once in every month at such times and places as the City Council may prescribe by Rule. Special meetings may be held in compliance with State Law and may be on the call of the Mayor or of four (4) or more members. All meetings shall be public; however, the City Council may recess for the purposes of discussing in a closed or executive session as permitted by State Law.

Code Section 41-1 – Regular and Special Meetings: The regular meetings of the Milford City Council shall be held on the second Monday in each month at 7:30 p.m. in the Council Chambers. Special meetings may be called by the Mayor or by four (4) or more members and, whenever practicable, upon no less than 12 hours' notice. All meetings, regular and special, shall be open to the public.

Code Section 63-1 – Definition and Word Usage:

Council Meeting – The monthly Council meeting, workshop meetings and all other executive meetings called to order by the City Manager or Mayor.

Code Section 63-2 – Salaries Established:

2A. Each City Councilmember shall receive a salary of \$50.00 per meeting.

B. The Mayor shall receive a salary of \$400.00 per month.

Code Section 230-58 – Procedure:

D. No proposed amendment, change, modification or repeal of any zoning regulation, restriction or boundary shall become effective until after a public hearing shall have been held by the City Council at which parties in interest and citizens shall have an opportunity to be heard.

The Delaware State Code does not directly address compensation for municipalities. It does give a definition in Title 29, Section 10002(g) of a Meeting as following: "Meeting means the formal or informal gathering of a quorum of the members of any public body for the purpose of discussing or taking action on public business either in person or by videoconferencing." Additionally, under Title 9 regarding counties, the State Code addresses change of zone procedures. The State Code requires that any change of zone application that comes before the County Council or Levy Court must be the subject of a public hearing. The public hearing requirement is similar to what is stated above for the City of Milford. That is, there must be an opportunity for the applicant and the public to be heard on the application. It does not indicate whether the public hearing must be part of the regular agenda of the public body or that they be held in a separately called meeting.

Case law was also reviewed.

Kent County and Sussex County have both adopted procedural policies. The procedural policy for Sussex County is quite clear in how public hearings are stated as an agenda item. Sussex County adopted rules of procedure on January 8, 2019 and under Rule 1 Order of Business, public hearings are a specific agenda item at the Sussex County regular meetings. The policy for Kent County is not as clear. However, in reviewing various agendas Kent County Levy Court also puts public hearings as an agenda item on their normal agenda. For both counties, the Rule of Order is as follows: Call to Order, Invocation, Pledge of Allegiance, Adoption of the Agenda, Approval of Prior Minutes, Public Hearings. The public hearings appear on the agendas before old and new business and before other things such as committee reports. Public hearings are specific agenda items for the normal meetings of both county governmental bodies.

The compensation to which Councilmembers and the Mayor are entitled is established by ordinance. Code Section 63-2 states that the Councilmembers will be entitled to \$50.00 per meeting and the Mayor is entitled to \$400.00 per month. The distinction was specifically made for payment to Councilmembers on a meeting by meeting basis. The Milford Code Section 63-13 clearly distinguishes council meetings both regular and special, from workshops. It does not distinguish public hearings or committee meetings as a separate meeting. 29 Del C. §10002(g) in its definition of meeting clarifies that to be compensated for a meeting a council person must be in attendance either in person or by videoconferencing.

Since Milford does not have the videoconference option, to be paid the \$50.00 for a meeting, the Councilmember must be present. The Milford Code also does not provide for a payment of \$50.00 per month for services as a councilmember.

Payment is solely based on attendance at a meeting.

The question arose regarding payment for the public hearings. In my opinion, the public hearing is not a separate meeting for which a Councilmember can be compensated. Milford is unusual in that it separates the public hearings from the normal Council agenda. This is different than the agendas as noted for both Kent and Sussex Counties as well as agendas for other municipalities that I am aware of. The typical procedure is to have the public hearing as an agenda item after the Call to Order, Invocation, Pledge of Allegiance, and so forth.

I am not certain how the procedure has evolved to have the public hearings called to order, conducted and then the meeting called to order. I would suggest that the City Council review its procedure and adopt a process where the meetings are officially called to order and then the public hearings are part of the agenda.

On February 12, 2018, Council adopted Rules of Procedure that specifically sets forth the ordering of the agenda. It basically follows the order set out above for Kent and Sussex counties and places public hearings after approval of the minutes and before other Council business. The fact that public hearings should be part of the normal agenda and not a separate item is bolstered by Delaware case law. Public hearings are typically heard on matters requiring adoption of a new ordinance or an amendment of an existing ordinance. In all cases involving ordinances, the ordinance to be adopted or amended must be introduced at a regular Council meeting and it is then scheduled for public hearings. The public hearing on the proposed ordinance is then to be part of Council action at a scheduled meeting. Since the public hearings are all conducted as part and parcel of the required monthly meetings, there should be no distinction between the public hearings and the regular Council agenda and meeting. See *O'Neill v. Town of Middletown*, 2006 WL 205071 (DE Chancery, January 18, 2006).

Since zoning matters are legislative functions, Council is obligated to conduct a public hearing to hear from the interested parties without adversarial proceedings after which council must weigh the evidence, pass or deny the ordinance seeking the zoning change and must state the reasons for the vote. *Conner v. Shelburne, Inc.*, 281 A.2d, 608 (DE, 1971). *Tate v. Miles*, 503 A.2d, 187 (DE, 1986). Both of those cases also note that the Council has the right not to immediately vote on an application but to defer the vote. In that case, as is the common practice for Milford City Council, any deferred application comes back to be placed on a future agenda under old business. Therefore, it is unquestioned that public hearings are not separate compensated matters but are part of the normal meeting agenda and any compensation would be paid for as a regular meeting under the Milford Code.

If City Council wishes to amend the compensation to which it is entitled, it must be done by ordinance. Charter Section 4.03. That would require in itself that the ordinance amendment 4 be introduced and that a public hearing be held. It would be an amendment to Code Section 63-2. No amendment would be effective until after the next Council election provided that the ordinance was adopted within six (6) months of the next election. Currently, the Milford City Code provides that the Councilmembers are paid \$50.00 per meeting. The meeting definition includes regular or special meetings of Council and workshops. Thus, there is a distinction between a workshop which is held prior to a Council meeting and the Council meeting itself. Both would be compensable at the rate of \$50.00 per meeting. It is also clear under State Law that to be compensated there must be actual attendance at the meeting by the Councilmember for the member to be compensated.

There is also no provision for compensation for committee meetings. The Milford Code is clear that a compensable meeting is one called to order by the City Manager or the Mayor. See Code Section 63-1. It does not include committee meetings which are called to order by a Councilmember Committee Chair. Committee meetings are not separately distinguished and would be viewed as part of the Council persons obligations as an elected representative. Efforts should be made to have the committee meetings coincide with the regular meetings of the City Council.

It is also my understanding the Councilmembers have been routinely paid \$50.00 for a first meeting each month whether they have attended or not, and an additional \$50.00 if they attend a second regular meeting. The first payment is contrary to the Code and State Law.

Payment should only be paid for meeting actually attended.

Lastly, Councilmembers and the Mayor are entitled to reimbursement for actual and necessary expenses incurred in the performance of their duties. See Charter Section 4.03. Any expense incurred should be fully documented in accordance with the policy which has been adopted. If there are questions on the reimbursement, that should be reviewed with the Finance Department.

Solicitor Rutt stated that his recommendation is for public hearings to be added to the Council Meeting agenda. In addition, the Mayor continues to receive \$400 a month as a salary. City Council receives \$50 per meeting which includes 'called to order' meetings and workshops. However, Council also has the right to amend the code though it would not become effective until after the next election provided that change was done six months prior to the election.

Councilman James suggests the City execute the code as currently written with Council meetings, workshop and all other executive meetings called to order by the Mayor. If the meeting procedure is followed as was previously voted on, the public hearings would be part of the meeting.

Solicitor Rutt pointed out that ordinance reads that Council holds meetings on the second Monday at 7:30 p.m. The City Clerk pointed out that is one of a number of ordinances that needs to be removed and/or updated.

Councilman Boyle asked if these ordinances can be cleaned up in house; Solicitor Rutt stated yes.

When asked if a vote is necessary, Councilman Culotta stated that there is no need for a vote because the language is already there and there is a need to adhere to it.

Solicitor Rutt agreed adding that the clarification has been made and Council would be paid as Code states.

#### *Update/Sidewalk Project*

The Public Works Director asked for clarification in regard to the City paying a portion of the project. He asked if the plan is to provide funding to all property owners, or accommodate those people who choose to have the City oversee the work and are willing to pay for it within the thirty days of invoice.

His reasoning is based on the fact that if no interest is charged for anyone paying for the work over a period, he does not anticipate anyone paying for the work upfront. However, that is a decision of City Council.

Councilman Culotta recalled that on September 10, 2018, Councilmember Peel moved to return the sidewalk repair project to the Public Works and Finance Committee for additional review. He asked if that ever happened and felt that would be an appropriate review. He does not want it being pushed forward by City management and allow for questions to be emailed or discussed in that manner.

He emphasized the need to discuss and debate Council items in a public forum.

Council questioned the number of times the matter has been discussed. Councilmember Wilson believes that Council has discussed it at least three to four times.

There were several dates presented and Solicitor Rutt finally determined it was discussed at the committee level on October 8, 2018.

Councilman Culotta said he appreciates the beautification efforts of City management and City Council, but he does not agree with the manner this is being handled.

The sidewalk process and meeting discussions were then discussed at length.

It was noted that the next Finance and Public Works Committee meeting is scheduled in August. If it were postponed until that time, the project would not be completed again this year.

The Public Works Director commented that the bidding takes at least a month.

Councilman Culotta confirmed that contractors are required to provide a bid bond; he added that has to be purchased through their insurance companies and he has been told by the contractors that is one of the reasons the City only had one bid.

Mr. Whitfield explained that is the reason the lowest bid was rejected.

Councilman Culotta said it makes sense to him that any company bidding on the project that provides the bond fee can demonstrate what that fee was. If Council decides not to move forward, then the City needs to credit the contractor that fee for at least making the effort.

Solicitor Rutt remarked that is a general stipulation of a contract. However, they could post a cash bond and assuming they perform without any issues, it is then returned to them. He explained they do not post a bond unless they win the bid. A letter of credit would be required as part of the bid package that would state they will post the cash bond if successful.

The Public Works Director recalled that in the last Council packet when this was discussed, the minutes of the October 8, 2018 were included. The last paragraph states "City Manager Norenberg confirmed there were no additional concerns. He stated that he will proceed with the changes in the letter, research low income program criteria and review the 10% fee and its cost in relation to one or more blocks of repairs. Chairman Morrow agreed and thanked the City Manager and Public Works Director for the work that has been put into this".

Councilman Boyle referenced the prepared letter to residents, stating that this is at least the third proposal, following separate discussions by City Council. To him, it makes sense. He read it to several residents who were excited and felt that 15% was a great deal. They had no problem and felt the 60-month repayment was very generous and benefited homeowners. The only question was if the lien may impact their credit rating, even though it was agreed to.

Council then referenced the notice:

#### ***SIDEWALK NOTICE***

*The City of Milford strives to be a safe, walkable community. To this effect, the City has launched a Sidewalk Repair Program. The Public Works Department has developed a schedule to inspect sidewalks in the City over a 4-year cycle, with different areas being inspected each year. For the first year of the program, sidewalk inspections were completed along collector streets and streets serving public schools.*

*During a recent inspection of your sidewalk deficiencies were found. City Ordinance Chapter 197 requires property owners to keep public sidewalks along City streets abutting their property in good repair. A satellite photo of your sidewalk is included with this letter depicting the location of the deficient blocks.*

*Property owners have until October 31, 2019 complete the repairs of their sidewalks. If you choose to complete the repairs, please call the City Engineer's office at 302-422-1110 or email [sidewalks@milford-de.gov](mailto:sidewalks@milford-de.gov) to schedule a reinspection of the sidewalk once the work is complete. A pamphlet is enclosed with information on how to complete the sidewalk repairs. Sidewalks not completed by the property owner by October 31, 2019 will be completed by the City's contractor and will be billed as noted below.*

*Please note that the City will repair any sidewalk blocks found to be deficient that contain a water meter box, sewer manhole/clean-out, street sign, fire hydrant, or utility pole at no cost to the property owner. Property owners do not need to complete the repair of those blocks.*

*Property owners can opt to have the City complete the repairs and be billed for the repair cost. Property owners will have 30 days to make payment for the repairs.*

4" thick \$ \_\_\_\_\_ per square foot, or approximately \$ \_\_\_\_\_ per 5' x 5' block  
6" thick \$ \_\_\_\_\_ per square foot, or approximately \$ \_\_\_\_\_ per 5' x 5' block (driveways)

*Property owners who want the City to repair the sidewalk must contact the City Engineer's office at your earliest convenience at [sidewalks@milford-de.gov](mailto:sidewalks@milford-de.gov) or 302-422-1110. Property owners electing to have the City repair the sidewalk, and make payment within 30 days of invoice, will receive a 15% discount. Property owners may finance the sidewalk repair costs completed by the City over a 60-month period at no interest. You will receive a coupon payment booklet to use to make your monthly payments.*

*Property owners who are financially unable to pay for the repair costs may opt for the City to complete the repair and have a lien filed against the property that will be satisfied at the time the property is sold.*

*It is important that City of Milford be a safe, walkable community, and we appreciate your effort in being part of that initiative.*

Councilman Culotta said we only had one bidder which is a problem. Councilman Boyle said the objection of the bidder was they were unaware of the scope of the bid. However, until the project is bid, no one knows until it is advertised. At this point, we at least we know what the City needs to take care of.

Councilman James confirmed that the City is still paying a portion of the owner's cost; Mr. Whitfield said his recommendation is to provide that discount to those property owners who agree to have the City handle the work and pay it within the thirty days of invoice. If they choose to use the 60-month payment plan, they would pay 100%.

Councilman Culotta asked if there is a threshold for the financing because he feels that this will be a stress to anyone's finances regardless of what their income is.

Mr. Whitfield said the option is to allow a lien to be placed on the property and satisfied at the time of the sale of the property.

Mr. Norenberg then explained the process adding that if Council decides to move forward, the project can be completed this year. The more people who choose to finance, is more money the City has to pay upfront. In addition, it is costing our staff more time to handle the financial documents and collect payments. Customer Service staff will have to track and follow up on every homeowner to ensure they are paying on time which will become someone's job on a regular basis. There is no way to automate it within our current system but may be able to do something with the upgraded software system in the next year or so.

The consensus of Council was the letter to the residents seemed appropriate. Councilman James added that Mr. Whitfield did was Council asked him to do.

Solicitor Rutt then reiterated that if a homeowner cannot repay the loan, a lien would be added to the property. For someone who wants to do a 60-month payment plan, a note can be prepared with a Confession of Judgment. That says as long as the person is paying, the note will not be reduced to judgment. However, if you miss two or so payments, the City has the right to automatically place the lien. That provides the incentive to make those payments without the lien, though the lien will attach if payments are missed.

Councilman Culotta asked what a property owners' recourse is to disagreeing with the City that sidewalk repairs are needed.

Mr. Whitfield explained that anyone can appeal the decision through the staff level. The ordinance is very clear with regard to what is a safety hazard and the criteria for safe sidewalks. For example, if there is a 1.5-inch difference they are arguing and the ordinance states a specific number, that number is the evidence. The main thing they are looking for is safety in the sidewalk.

Councilman Culotta asked what happens if they grind their sidewalk down. Mr. Whitfield feels if the homeowner is able to meet the criteria, by all means they can do that. Again, it is all about having a safe City.

Solicitor Rutt added there is another process through the Board of Appeals which falls under the construction code.

Councilman Morrow feels everyone needs to know there is an appeal and recommends adding that to the letter. Council agreed.

Councilmember Boyle moved to accept the draft proposal of the letter to the Property Owner regarding the Sidewalk Repair Program and incorporate a paragraph explaining an appeal process for anyone that feels the judgment of the Public Works Department is incorrect, to move forward with soliciting the bid and to mail the letters as quickly as possible, and to complete the project this year, seconded by Councilmember Wilson.

Councilmember Marabello confirmed that the City will complete any City sidewalk repairs first; Public Works Director stated that is correct and the work is underway.

Public Works Whitfield also clarified that Council asked that City sidewalks be repaired first. This does not include repairs caused by water, sewer meters, poles, etc. City-owned property has been inspected and the contractor is moving forward. There may be 20-25 blocks that will be repaired in relation to damages as a result of City-equipment.

Councilmember Brooks stated that he has 120 feet one way and 120 feet the other way. All his neighbors have grass. People step off the sidewalk in the grass and asked how that is safer than his sidewalk with a little crack. He asked if everyone is being treated equal considering he has 120 feet and 120 feet and his neighbors have nothing.

Councilmember Wilson recalled the reason the ordinance was created was to require all properties to have sidewalks.

Councilmember Morrow explained that Councilman Brooks is asking if the other residents with no sidewalks should they be required to add sidewalks. Mayor and Councilmembers all responded by stating no.

Councilmember Culotta asked what would happen if someone wanted to take their sidewalks out. Councilman Brooks said it is cheaper to have grass and not sidewalks like his neighbors. He said the code does not say that someone cannot break their sidewalk up.

Mr. Norenberg read the sidewalk code which states:

...property owners shall be responsible for maintaining, repairing, or replacing sidewalks and for keeping sidewalks in good repair, in safe condition.

Councilman Culotta said this is a problem but mandating everyone to do this is going to open a can of worms. A conversation followed relative to City ordinances, property maintenance, right of ways and affordability.

It was agreed that Council should be familiar with the process and legal aspects if they are questioned. Councilman Brooks said no one knows what to say because Council will not make a final decision.

Motion carried by following 6-1 vote:

Yes-Marabello, Boyle, Brooks, Morrow, James, Wilson

No-Culotta

Councilman Boyle asked to make a statement. There is an ordinance that requires property owners to install a sidewalk. Since he has been on the Planning Commission, there have been a number of developments who have had sidewalks waived. Most of the developments in his ward have no sidewalks, many of which were approved before he moved here.

Councilmember Wilson agrees adding she has fought that for many years.

Councilman Boyle recommends Council reject any further requests for the waiver of sidewalks and adhere to what we want this town to look like in addition to the safety factors.

EXECUTIVE SESSION

Councilmember Marabello moved to go into Executive Session reference the below statute, seconded by Councilmember Boyle:

*Pursuant to 29 Del. C. §10004(b)(9) Personnel Matter*

Motion carried.

Mayor Campbell recessed the Council Meeting at 9:30 p.m. for the purpose as is permitted by the Delaware Freedom of Information Act.

*Return to Open Session*

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

*Council Appointee Goals*

Mayor Campbell announced that no action was needed as a result of the Executive Session discussion.

ADJOURNMENT

There being no further business, Councilmember Morrow moved to adjourn the Council Meeting, seconded by Councilmember Brooks. Motion carried.

The Council Meeting adjourned at 9:55 p.m.

Respectfully submitted,

Terri K. Hudson, MMC  
City Clerk/Recorder