

*MILFORD CITY COUNCIL
MINUTES OF MEETING
January 14, 2013*

The 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, January 14, 2013.

PRESIDING: Mayor Joseph Ronnie Rogers

IN ATTENDANCE: Councilpersons Steve Johnson, Garrett Grier III, S. Allen Pikus, Dirk Gleysteen, Owen Brooks, Jr., Douglas Morrow, Sr., and James Starling, Sr.

City Manager Richard Carmean, Police Chief Keith Hudson and City Clerk/
Recorder Terri Hudson

Assistant Solicitor James P. Sharp, Esquire

CALL TO ORDER

Mayor Rogers called the Monthly Meeting to order at 7:02 p.m.

INVOCATION AND PLEDGE

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

APPROVAL OF MINUTES

Motion made by Mr. Pikus, seconded by Mr. Brooks to approve the minutes of the December 10, 2012 and December 26, 2012 Council Meeting as presented. Motion carried.

RECOGNITION

Mayor Rogers acknowledged Assistant Solicitor James Sharp of Moore and Rutt who was attending in the absence of City Solicitor David Rutt who was out of state.

MONTHLY POLICE REPORT

After Police Committee Chairman Morrow presented the monthly police report on behalf of Chief Hudson, Mr. Pikus moved to accept the police report as submitted, seconded by Mr. Grier. Motion carried.

CITY MANAGER REPORT

Mr. Carmean presented the following report:

ADMINISTRATION

The radio system upgrade is well underway. We have fitted approximately 50% of the vehicles with the new broadband capabilities. We have approval from the FCC regarding our radio system improvement timeline. However, the final approval will be received after completion of the entire changeover including the new tower.

I am advising Mayor and Council that I intend to have our Finance Director start the process of refinancing some general obligation bonds from 2005. These bonds were used to build the Public Works Complex and at that time the interest rate was much higher than it is today. By refinancing we will save approximately \$353,000.00 over the remaining life of the issuance.

ELECTRIC

The solar field is completely energized and operating to all expected specifications. I included in the Council packets an aerial photograph.

I will need Council to vote on a DEMEC proposal concerning the state's mandate for Delaware electric providers to purchase certain quotas of sustainable energy for their portfolios. This is our proposal that meets that mandate.

SEWER AND WATER

The contractor has completed the water main extension on the east side of Rt. 1. The bore under Route 1 may be finished by tonight's meeting, but in all probability it will be early February. However, it has been determined it was not completed. The work with the entire Wilkins Road water main extension is going according to scheduled timeline.

I will meet with the owners of Wickersham Development tomorrow to discuss our plans on proceeding with the water tower planned at that location. We will also begin the process of deciding the best way to serve the development with sewer. The developer will be responsible for the sewer extension to serve the project, but we will be involved in the engineering of the system including the pump station.

The Washington Street sewer pump station project will have bids opened around the second week of February. At the present time the station is operating, and while not as efficient as we would like, it is keeping up with the required needs.

STREETS AND SOLID WASTE

The Washington Street Bridge is open and soon to be finished completely. The concrete will receive a sealer of some type, and the decorative lights remain to be installed. We had the lights delivered some time ago, but discovered they were too tall to fit on top of the bridge. The height of the lights was miscalculated because the heads added an additional three feet. I plan to have a local metal worker cut the posts to a length that will work.

FINANCE

Mr. Portmann brought to my attention that a bond issuance from 2005 can now be refinanced. The funds from the sale of these bonds were used primarily for the building of the public works facility. We will save in excess of \$300,000.00 through a much better interest rate than we receive on the initial offering.

Mr. Pikus moved to accept the city manager report, seconded by Mr. Grier. Motion carried.

*COMMITTEE & WARD REPORTS**Finance Committee Meeting*

Mr. Pikus invited council members to attend the finance committee scheduled for tomorrow evening at 5:30 p.m.

*COMMUNICATIONS & CORRESPONDENCE**St. Paul Free Christmas Dinner*

City Clerk Hudson read the following letter into record:

It is with heartfelt thanks that the pastor and members of St. Paul send a letter of gratitude to you for providing free hams to support our Free Christmas Dinner on Christmas Day. This is a major outreach ministry for St. Paul. Christmas is such a time for giving and you helped. Because of your support, we were able to feed over 200 people in the Milford Community and beyond.

Lives were touched because of you. We even received calls from a local motel informing us about residents with no food. Because of your continued gifts to us, we extended our outreach. With God's help, we will continue this annual Christmas outreach ministry.

Once again, we thank you,

Rev. Dr. Jeanel D. Starling, Pastor and Members of St. Paul United Methodist Church

Mr. Starling thanked everyone for the cards and prayers during his recent illness.

Mr. Brooks thanked the city manager and city employees for taking care of the sewer backup on Tenth Street last week.

UNFINISHED BUSINESS

River Art Center/Endowment Fund Committee/Appointment

Matter will be addressed at a future council meeting.

NEW BUSINESS

Request for Abandonment of Right of Way/Harold Roberts

Mr. Carmean explained that Clarke Avenue runs in front of Milford Hospital and where it meets Lakeview, it crosses Lakeview and extends between the Roberts home and his neighbor. Initially, the city's intent was to extend Clarke Avenue into Lakelawn Estates. At some point, a home was built on Lakelawn Drive which prevented the street from extending into Lakeview. As a result, it dead-ended on the parcel next to Mr. Roberts' home.

Over the years, Mr. Roberts has maintained the property and used the right-of-way as a driveway. Approximately a year ago, he submitted a request for the city to consider abandoning the property for his use. At the time, Mr. Carmean explained that he would need to offer half the property to the adjoining neighbor. He has since received a letter from neighbor Henry Saunders stating he had no interest in the property and wishes to convey the property to Mr. Roberts.

He said we have done this numerous times with alleys and dead-end streets that were no longer useful to the city.

It is Mr. Carmean's recommendation that the city abandon the property for use by Mr. Roberts. However, where Jean Chodowski's property on Lakelawn Drive butts up to the parcel at the rear of the Roberts' right-of-way, there is an accessory building. As a result, the surveyor subdivided that portion to be offered to Ms. Chodowski.

Mr. Carmean said the city never blacktopped or maintained the right of way in any manner appropriate for use as a street.

Mr. Pikus said that because this is a non-usable street and is only used by the two property owners, and the fact that Mr. Saunders does not want a portion, he moves that the properties are deeded to Harold and Mary Roberts and Jean Chodowski as shown on the survey. Mr. Gleysteen seconded motion.

Attorney Sharp then explained the process for abandoning public property. He explained that Superior Court would have to be petitioned. A written notice of the intent to file the petition would be mailed to the neighbors, the petition then filed and DelDOT, Sussex County and adjoining land owners notified. A sign would then be posted noting the hearing. The court would then hold the hearing.

When questioned by council, Mr. Sharp explained this process is outlined in Title 17 of the Delaware Code noting it is not as simple as deeding the property over.

Mr. Pikus asked if over the years the city acted illegally by giving away a number of coal alleys. Mr. Brooks said the people receiving the property paid for any related expenses.

Mr. Carmean said this land would have to be sold through public auction otherwise.

Mr. Sharp does not envision this to be a complex matter. The drafting of the petition is straightforward and the hearing would be similar to a Rule to Show Cause type hearing where anyone with an objection would attend. He would expect it would be on the routine motions calendar day in Superior Court. Therefore, he does not anticipate a long or expensive process. He believes it will only involve a presentation of the facts before the court.

The city manager said if it were contested, he would have to appear. Otherwise, no one from city will need to attend.

Mr. Starling suggests sending Mr. Roberts a letter explaining the process and let him proceed and advising him there will be associated costs. It was agreed the city has no use for the right-of-way.

The city manager said it was his intention that Mr. Roberts would be responsible for any related expenses. Mr. Pikus said he is willing to look at the costs before making a decision on the payment of the expenses.

Motion carried.

Request for Abandonment of Portion of Evans Street/Seawatch

City Manager Carmean advised that Seawatch's CFO Jerry Gordon informed him they are purchasing the Bailey Lawnmower property for a future warehouse. It was noted that Evans Street crosses South Rehoboth Boulevard and extends into the Seawatch property. Previously, the city abandoned Charles Street on the opposite end when Seawatch initially expanded.

Mr. Brooks recalled around 1985, all truck traffic entered Seawatch from Charles Street. John Frederick was city manager when council decided to relocate the entrance off Rehoboth Boulevard. That is why the street was abandoned.

Mr. Carmean noted that a survey has not been done. He said the same procedure will be followed as Mr. Sharp explained during the Roberts' request.

Mr. Brooks moved to proceed with the abandonment of the portion of Evans Street as discussed, in the same manner as is being followed with the Roberts' abandonment, seconded by Mr. Starling. Motion carried with Mr. Morrow abstaining due to a personal conflict.

DEMEC/RPS Compliance Plan

Mr. Pikus moved to adopt the RPS Compliance Plan, seconded by Mr. Gleysteen. Motion carried.

Approval of Buyback of Alexander Property/General Fund Reserves

Mr. Carmean said he discussed this matter with council several months ago. He explained that Dr. Roger Alexander has owned this lot in the business park for a number of years. All purchasers sign a deed of covenants and one states that if the property is not developed within two years, the city will repurchase the property at the original price.

He recalled that council approved Dr. Alexander be paid \$35,000 for the acre. Today, one acre is selling for \$125,000 though in the year 2000, Dr. Alexander purchased the property for \$24,000. He came up with a figure of \$35,000 to compensate Dr. Alexander for property taxes and maintenance costs over that period of time.

Mr. Pikus moved to proceed with the buyback of the Alexander property to be paid from General Fund Reserves, seconded by Mr. Gleysteen. Motion carried.

Adoption of Resolution 2013-1/USDA Loan Term Resolution/USDA \$5 Million Closing

Mr. Carmean recalled council directing him to move a number of projects along, including this one which involves tower treatment and water main improvements.

Referencing the 2008 referendum, the city manager reported that he has been getting a lot of pressure from the USDA to use the money because it has 'aged'. He said now that he has started the process, the city can proceed with selling the bonds which cover the cost of the tower, the treatment facility and water mains. He said that some of it could have been used for the purchase of the land, but Wickersham is signing the agreement tomorrow to donate land for the water tower.

When asked if the city will be spending the entire \$5 million due to the land being donated, Mr. Carmean said there is a possibility another \$200,000 could be spent, based on recent estimates, though that will come out of reserves where there are sufficient funds.

Eric Retzlaff of Davis, Bowen and Friedel was present and confirmed the interest rate will be 1.87%. The city manager noted that by waiting longer, we have received a better interest rate.

Mr. Grier moved to adopt Resolution 2013-1, seconded by Mr. Pikus:

APPROVING ISSUANCE OF A GENERAL OBLIGATION BOND TO THE UNITED STATES DEPARTMENT OF AGRICULTURE - RURAL UTILITIES SERVICE, AS REGISTERED OWNER, TO FINANCE IMPROVEMENTS TO THE CITY OF MILFORD'S WATER FACILITIES, AS APPROVED BY THE ELECTORS; DETERMINING THAT THE BOND WILL BE SOLD BY PRIVATE SALE AND AUTHORIZING EXECUTION OF LOAN DOCUMENTS; PLEDGING THE FULL FAITH, CREDIT AND TAXING POWER OF THE CITY FOR THE BOND; AND AUTHORIZING OTHER NECESSARY ACTION.

WHEREAS, the City Council of The City of Milford, Delaware (the "City") pursuant to Section 8, 72 Del. Laws Ch. 148 as amended (the "City Charter"), proposed to the electors of the City by Resolution dated November 26, 2007 (the "First Resolution") to borrow up to Fifteen Million Dollars (\$15,000,000) which may be used in order to fund, among other things, capital improvement programs of the City, including up to Five Million Dollars (\$5,000,000) in upgrades and improvements to the water facilities of the City, specifically, improvements associated with the development of new wells, a production and treatment facility, a storage tower and system mapping (collectively, the "Water Project") and properly placed notice of hearing on the First Resolution as required by the City Charter; and

WHEREAS, the City Council thereafter passed a second resolution on January 14, 2008 (the "Second Resolution") ordering and directing a special election to be held not less than thirty (30) days and not more than sixty (60) days after the hearing to borrow the said money, for the purpose of voting for or against the proposed borrowing. The passage of the Second Resolution calling the special election was considered the City Council's determination to proceed in the matter at issue as authorized by the City Charter; and

WHEREAS, a special election was held on February 23, 2008 (the "Special Election"), and notice was properly given for the Special Election, whereby a majority of the electors approved the borrowing by voting in the Special Election which was conducted and certified in accordance with the provisions of the City Charter; and

WHEREAS, the United States Department of Agriculture - Rural Utilities Service (the "Department") has authorized a loan to the City in an amount not to exceed Five Million Dollars (\$5,000,000), for a term not to exceed forty (40) years at an interest rate to be determined per the Department's current interest rate policy, but which in no case shall exceed 5%; and

WHEREAS, pursuant to and in accordance with the City Charter, the First Resolution, the Second Resolution and this Resolution, the City now proposes to issue its General Obligation Bond (the "Bond") in a principal amount not to exceed \$5,000,000 to finance the Water Project and the costs of issuance of the Bond, as approved by the electors in the Special Election; and

WHEREAS, the City Council desires to formalize, ratify, and confirm such action by adoption of a formal written resolution.

NOW, THEREFORE, BE IT HEREBY RESOLVED AND DETERMINED by the City Council of the City of Milford, Delaware, as follows:

Section 1. Authorization of the Incurrence of Indebtedness as Approved by the Electors. The City shall borrow an amount not to exceed Five Million Dollars (\$5,000,000) as approved by referendum of the electors in the Special Election held on February 23, 2008 by the issuance of the Bond.

Section 2. Authorization of Issuance of the Bond. The City shall issue, pursuant to the City Charter, the First Resolution, the Second Resolution and this Resolution, up to \$5,000,000 aggregate principal amount of its General Obligation Bond to provide funds for the Water Project and the costs of issuance of the Bond.

Section 3. Form and Terms of the Bond. The Bond shall be substantially in the Form of Bond provided in Exhibit A with appropriate omissions, insertions and variations. The actual Bond will contain the terms of the Bond as required by Section 8.05 of the City Charter. The Bond will be issued for a term not to exceed forty (40) years at an interest rate not to exceed 5% per annum per the current interest rate policy of the Department.

Section 4. Sale of the Bond. The Bond shall be sold at a private sale by negotiation to the United State Department of Agriculture - Rural Utilities Service pursuant to the terms of the Bond and pursuant to loan documents to be entered into by the City and the Department (the "Loan Documents").

Section 5. Covenant to Pay Debt Service - Pledge of Full Faith, Credit and Taxing Power. The City hereby covenants with the Department pursuant to this Resolution as follows: that the City will include in its budget for each fiscal year during the life of the Bond, the amount of the debt service on the Bond issued hereunder which will be payable in each such fiscal year so long as the Bond shall remain outstanding; that the City shall appropriate such amounts from its general revenues to the payment of such debt service; that the City shall duly and punctually pay or cause to be paid the principal of the Bond and the interest thereon at the dates and places and in the manner stated in the Bond according to the true intent and meaning thereof; and for such budgeting, appropriation and payment, the City hereby pledges its full faith, credit and taxing power. The covenant contained in this Section 5 shall be specifically enforceable.

Section 6. Authorization of Loan Documents. The Mayor and the City Clerk are hereby authorized to execute and deliver the Bond and any Loan Documents by and between the City and the Department setting forth the terms of the loan and the City's obligation to repay the loan, which will be evidenced by the delivery of the Bond.

Section 7. Reimbursement Declaration of Intent. The City reasonably expects to reimburse itself from proceeds of the obligations authorized by this Resolution for capital expenditures initially paid for from current or other available funds of the City. This constitutes a declaration of "official intent" within the meaning of Treasury Regulations §1.150 2. The City hereby certifies that this declaration is reasonable on the date hereof in that (i) it is consistent with the budgetary and financial circumstances of the City, (ii) no funds (other than the proceeds of the obligations authorized by this Resolution) are, or are reasonably expected to be, reserved, allocated on a long term basis, or otherwise set aside by the City pursuant to its budget or financial policies with respect to the capital expenditures to be reimbursed, and (iii) the City does not have a pattern of failing to reimburse itself for capital expenditures actually paid and for which an official intent was declared, other than due to unforeseeable extraordinary circumstances beyond the City's control. Once a series of bonds are issued, the City shall allocate Bond proceeds to reimburse a prior expenditure by making the allocation on its books and records maintained with respect to the Bond; provided that such costs to be reimbursed were paid not more than sixty (60) days prior to the date hereof, except to the extent that such costs constitute preliminary costs within the meaning of the Treasury Regulations. Such allocation shall specifically identify the actual original expenditure to be reimbursed. Such allocation shall occur not later than eighteen (18) months after the later of: (i) the date on which the original expenditure is paid, or (ii) the date the Water Project is placed in service or abandoned, but in no event more than three (3) years after the original expenditure is paid.

Section 8. Further Action. The proper officers of the City are hereby authorized and directed to take all such action, execute, deliver, file and/or record all such documents, publish all notices and otherwise comply with the provisions of this Resolution and the City Charter in the name and on behalf of the City.

Section 9. City Charter Applicable to Bond. This Resolution is adopted pursuant to, and the Bond issued hereunder shall be subject to, the provisions of the City Charter and all of the mandatory provisions thereof shall apply hereunder whether or not explicitly stated herein.

Section 10. Contract with Bondholder. This Resolution constitutes a contract with the Department as registered owner of the Bond and shall be enforceable in accordance with the provisions of the laws of the State of Delaware.

Section 11. Severability. In case any one or more of the provisions contained in this Resolution or in the Bond issued pursuant hereto shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Resolution or of said Bond and this Resolution or said Bond shall be construed and enforced as if such invalid, illegal or unenforceable provisions had never been contained therein.

Section 12. Repealer. All Resolutions and parts of Resolutions heretofore adopted to the extent that the same are inconsistent herewith are hereby repealed.

Section 13. Effective Date. This Resolution shall take effect on the date this Resolution is adopted by the City Council.

ADOPTED AND RESOLVED this 14th day of January 2013.

Motion carried.

MONTHLY FINANCE REPORT

Chairman Pikus reported that through the fifth month of Fiscal Year 2012-2013 with 42% of the fiscal year having passed, 49.89% of revenues have been received and 40.22% of the operating budget expended.

Mr. Pikus referenced the \$33,751 credit on the Real Estate Tax line item. He explained that is the result of an administrative adjustment in the assessment of the Milford Plaza Shopping Center. Their assessment was decreased which reduced the overall percentage from 102.94% to 101.98%.

To date, all but \$261,000 has been collected in taxes according to Mr. Pikus.

He also reported that building permits are 24% over what was budgeted which is proof people are building in Milford.

Income is higher than expected for this time of the year and expenses are down. Thereby, the overall financial picture remains favorable.

Mr. Carmean added that he met with University of Delaware representatives who are compiling numbers in Milford. They reviewed the growth rate in comparison to our general fund costs which includes police, administration, parks and recreation and streets. They found that considering the growth that has occurred between 2000 and 2010 and inflation, the city is operating today at less money than we did in 2000.

Mr. Brooks noted the 42% increase in population during that time span.

He advised the current police department was built for 22 officers in 1978 at which time there were 18 full-time officers and two part-time officers.

The city manager also pointed out the population numbers noting that when we had 6,500 residents, he thinks there was approximately 22 police officers. With the 30 to 40% increase, we added about 30% which aligns with the increase in growth.

EXECUTIVE SESSION - Pursuant to 29 Del. C. §10004(b)(9) Personnel matters in which the names, competency and abilities of individual employees or students are discussed.

Mr. Grier moved to go into Executive Session reference a personnel matter, seconded by Mr. Pikus. Motion carried.

Mayor Rogers recessed the Council Meeting at 7:38 p.m. for the purpose of an Executive Session as is permitted by Delaware's Freedom of Information Act.

Return to Open Session

City Council returned to Open Session at 8:08 p.m.

Executive Session Matter

Mr. Grier made a motion to act on the items discussed in executive session and that City Manager Carmean move forward as recommended. Mr. Morrow seconded motion.

Mr. Gleysteen stated that based on the city manager's recommendation, he was voting yes.

Motion carried by unanimous roll call vote.

ADJOURN

With no further business, Mr. Pikus moved to adjourn the Council Meeting, seconded by Mr. Starling. Motion carried.

The Council Meeting adjourned at 8:10 p.m.

Respectfully submitted,



Terri K. Hudson, MMC
City Clerk