

**City of New Castle Delaware**  
**Special Council Meeting at Town Hall**  
**201 Delaware Street, New Castle**  
**Friday, June 5, 2015**  
**10:00 a.m.**

Call to order: 10:00 a.m.

Roll Call:

Councilperson Megginson  
Councilperson Vannucci  
Council President Ratchford  
Councilperson Petty  
Councilperson Di Mondì

Also present:

William Barthel, City Administrator  
Donald Reese, Mayor  
Janet Carlin, City Treasurer

Council President Ratchford opened the meeting stating that the two MSC agenda items would be considered first. The first order of business being **Resolution 2015-22**, authorizing the City Administrator to negotiate a lease with Verizon to place a cell phone antennae on the water tower located on Gray Street.

Council President Ratchford reviewed the history thus far; the City is interested in allowing an antenna to be mounted on a Water Tower on Gray Street. MSC has looked at it and declined. Council would like to understand MSC's reasons for declining, and Council also needs a legal opinion as to who can negotiate a lease pertaining to this water-tower, and a better understanding of how this will impact the residents of the City. There is new information from Verizon that the City is under-served due to lack of Verizon antennae in the area. This will play into the decision process, along with looking at the benefits and concerns for the City and MSC, the impact on residents will be considered.

President Ratchford stated that the City typically signs the franchise agreements, and asked City Solicitor Dan Losco for a legal interpretation on who would be allowed to sign a contract relating to this water tower.

Mr. Losco stated that the question comes down to who owns the water tower. Mr. Losco stated that as he understands it, the tower was constructed by MSC, it is on City property, and MSC is an agency of the City. It may not be direct in terms of the City's ability to manipulate the usage of the tower, but there is certainly indirect means of doing so.

President Ratchford asked MSC to address their concerns. Pam Patone, General Manager of the Municipal Services Commission stated that MSC contacted other water companies with Cell antennae on their water towers to try to understand the advantages and disadvantages. She said that Artesian Water Company was one of the companies that responded to MSC and they emphatically felt that antennae on water tanks had caused them significant issues specifically in residential areas. They are

moving towards not allowing installations in residential areas at all. Part of the reasoning is the public's sentiment about the appearance of the water tower, but there are also concerns with safety issues.

Last year a worker from one of the phone companies that has an Antenna on an Artesian water tower had an accident, the worker fell off the tank. As a result Artesian continues to be investigated by OSHA.

Ms. Patone stated that she has also talked to operation and finance groups in the cities of Newark, Dover, Middletown, and Lewis to understand what they saw as the advantages and disadvantages of having the antennae on the tanks. All of them agreed that the industry is moving away from having antennae on water tanks, that monopoles are the preferable way to house the antennae. Some of the reasons were the responsiveness of the carriers. When you need to perform maintenance on your tower, it is hard to get the company to come out in a timely manner to remove the antennae to allow tower maintenance to move forward.

The cellular companies call on the municipal operations groups to get access their equipment, incurring overtime. The City of Newark had a smaller company go bankrupt, therefore they were unable to collect on the revenue, and they also had to remove the equipment themselves. Middletown had an agreement with a carrier, and had not put into the contract an appendix regarding disposal of a replaced tank. Now they have to maintain an unused tank due to a lease agreement.

Ms. Patone said she has also spoken to these cities regarding the payments received from the Cellular companies, stating that in all cases the proceeds went to the water company. The water company is the company that has to handle the issues when they arise. For all these reasons the MSC commissioners felt that as this was something that the industry was getting away from, way start allowing it at this point.

Ms. Patone stated that there is also a concern about appearance; it is advisable to alert the residents, and get their input on having these antennae put on a tower that is in their neighborhood.

Mrs. Ratchford stated that it was her understanding that there are limited places in the City where an antennae can be located due to zoning issues; one being Municipal Blvd. and the other would be the location of the water tower that they are discussing.

The City Administrator agreed there are limited areas where the towers can go, but the other issue is where Verizon needs the towers for complete coverage. Verizon needs to place antennae at both locations to get full service for the City. At this point Verizon has low coverage in the City. Councilperson Vannucci stated that he cannot receive calls, and loses calls within the City limits, and that coverage is an issue in various areas throughout the City.

President Ratchford asked Mr. Barthel if he had discussed economics with Ms. Patone. Mr. Barthel stated that they had not had any additional discussions, Verizon had made an offer of \$24,000 a year but there had been no other negotiations with Verizon.

President Ratchford stated that there was the opportunity that there could be up to 3 other carriers in the location.

President Ratchford asked the City Solicitor if there were any legal issues regarding this Resolution. City Solicitor Daniel Losco said there were not any legal issues; the Resolution is drafted to

authorize negotiations only, not execution. Verizon would have to come back to Council with a final proposal.

Councilperson Di Mondri stated that he would have more concerns if it was not Verizon, a company the size of Verizon is not going to go bankrupt, and we can state maintenance guidelines in the contract. Mr. Di Mondri also stated that as MSC would be performing maintenance, there could be arrangements to give MSC a percentage of the revenues. Mr. Di Mondri said he has asked the surrounding neighbors, and they don't seem to have any issues with the antennae.

Mayor Reese said that when the City had negotiated a cell tower lease in the past, the City had hired an attorney with an expertise in this type of contract.

Council President Ratchford asked Ms. Patone if MSC has had discussions with Verizon in terms of accommodations that they would need to make.

Ms. Patone said there have been discussions with Verizon in terms of MSC's needs would be in terms of locations. She also said she agreed that Verizon would probably not go bankrupt, but Verizon is the company that had the fall from the tank and their size does make them less accessible. She said she does understand that cell coverage is an issue and will take that back to the commissioners.

President Ratchford stated that the cellular coverage issue is the point they are looking at, citizens are not getting adequate cell phone service.

A motion was made by Councilperson Megginson and seconded by Councilperson Vannucci to approve **Resolution 2015-22**. President Ratchford read the Resolution, suggesting it be amended to read that the lease should be negotiated with the assistance of MSC. The City solicitor suggested it read "in consultation with MSC."

Council President read the revised Verizon as "Now therefore be it resolved that the City Administrator is hereby authorized and instructed to negotiate a lease for the installation of a cell phone antennae on the Gray Street Water tower with Verizon's authorized representatives in consultation with MSC."

A motion was made by Councilperson Megginson and seconded by Councilperson Vannucci to approve the amended Verizon of **Resolution 2015-22**. The Resolution passed unanimously.

**Discussion concerning MSC's rejection of and counter-proposal to, the City's appropriation request for the 2016 fiscal year and the City's response thereto.**

Council President Ratchford asked Councilperson Di Mondri to give a brief synopsis of the history of this agenda item.

Councilperson Di Mondri stated that he had advised City Council that the problem in the City budget was not its expenditures, but its stagnant revenues and a low return on the City's investment in our Utility Company, MSC. Adding to this is the expense over revenue due to the annexation of the Farmers Market properties. As a result Council has decided to act so it can move forward with the demand for under structure repairs and street overhauls without adding to the tax rate.

Council met with MSC in May to present a plan to move forward, and to request an increase in the allocation, based on a compromise based on industry standards. Council asked to replace the formula initiated by MSC of basing the allocation on the City's budget. Mr. Di Mondì stated that the industry standard is based on the utility's revenue; MSC rejected City Council's proposal with a counter proposal.

Council has counter proposed a compromise which offers a 50% reduction in our initial appropriation request by making concessions for the City to pay for its electric usage which this year totals \$85,000.00. To initiate this according to the agreement between MSC and DEMEC and the Governor, the City would have to notify these groups that we are seeking an exception before the end of the fiscal year.

Councilperson Di Mondì proposed sending a letter of Memorandum of Understanding with a notice of need, per the agreement. This letter would be sent to DEMEC and the Governor.

President Ratchford stated that as background she had set up a meeting with MSC and had asked Councilperson Di Mondì to develop some scenarios regarding the revenues and ways to change the basis of the calculation. The current calculation is based on the City's budget. President Ratchford asked MSC for their perspective on how things were set up.

Ms. Patone stated that MSC has a separate State Charter; they were not formed by the City of New Castle. MSC was formed by the State of Delaware; this allows MSC full control of their revenue. The appropriation to the City is discretionary, it is not a requirement. MSC has voluntarily provided funds to the City, for many years it was based on inquiry or request. Around 2011 the Commission decided it would be better to use some kind of calculation, this calculation better allowed both MSC and the City to determine their budgets.

On October 19, 2011 MSC voted to appropriate 10% of the City budget as the annual appropriation. In the beginning of 2012 the Governor approached all of electric utilities and municipalities with concerns regarding the appropriations. One of their concerns was economic development, with electric prices being too high and inflated due to general fund transfers. Since that time the appropriation has remained the same.

Ms. Patone said that there had been a meeting with Council President Ratchford, Councilperson Di Mondì, Mayor Reese, and Mr. Barthel to discuss and revisit the calculation. The information was discussed along with the City's and MSC's financial concerns. MSC has several financial issues this year including updating the water system. They also need reserves to be able react to any issues with the water or electric service. MSC had already set their budget for the year, so adding an additional \$200,000 was something they wanted to take their time considering.

Ms. Patone said that as a good faith gesture, MSC had offered to continue a \$37,000 payment while they gathered information regarding the rest of the requested appropriation. They felt this was a positive response, and using user rates was also looked at as a way of determining the appropriation.

President Ratchford said her understanding of the DEMEC agreement was to avoid possible action by the State, making all the Municipalities under the jurisdiction of the Public Services Commission. The utilities prefer to work on an independent basis within their municipalities. The agreement was put into place because some utilities have not been as responsible as new castle, causing some economic development problems within the State.

President Ratchford asked for comment on our rates in relation to Delmarva and other municipalities. Ms. Patone stated that the residential rates utility rates for the City have consistently been second to the lowest in the State; the commercial is higher, which is typical. MSC's rates are significantly lower than Delmarva and Artesian, and comparable to the co-op and the lower municipalities in the state.

President Ratchford asked if Ms. Patone had information on what other utilities paid out in appropriations. Ms. Patone said she did not have that information, but that in the case of Newark, their tax base is lower because the City gives tax breaks to certain non-profits, so their appropriation is higher, the City of Lewis in 5%. New Castle's has been approximately 5% of the user rates, acknowledging that the industry standard has risen to 4% to 8%.

President Ratchford asked for questions from Council. Councilperson Di Mondri stated that he thought that MSC did have an obligation to give the City a certain amount of money after operating expenses, and sufficient reserve.

President Ratchford stated that we might need clarification; she said her understanding of MSC's charter only related to bonds. President Ratchford asked Mr. Losco for clarification. He stated that there is no obligation; the only financial control is for borrowing. There are no contractual or charter based obligations for MSC to give the City money.

Councilperson Di Mondri stated that it comes down to the City's financial investment, a last resort is selling MSC and putting the money in a financial instrument for a permanent annuity. Councilperson Di Mondri said nobody wants to do that, but there might come a point where we would no longer be able to afford keeping MSC. We are the 2nd highest taxed municipality in the State, and we can't afford to fix our streets.

Councilperson Di Mondri stated that he felt MSC could be leaner, stating he appreciates that the City has great service. But there are savings MSC could introduce. He said he felt the City should pay for its own electric costs. We should be conserving to keep our costs down, just like a resident would. The cost of the City's electric usage would come off the original proposal bring it down to \$593,000.00 which he felt was within their means. 10:51

President Ratchford asked Mr. Losco for a legal interpretation of what the City and the Commission can do. Also how these changes would occur, and if we would need a charter change. Mr. Losco stated that a Charter change is a legislative endeavor, requiring sponsorship in Dover. A Charter change is what would be required if Council would seek to dissolve MSC.

Mr. Losco stated that the memorandum of understanding with Governor Markell is not a legally binding contract, it is a morally binding document. The Governor has stated he will not support legislation that would seek to open up choice in electric providers for the citizens of New Castle.

Mr. Losco said it comes down to what Council can negotiate with MSC. An arrangement can be negotiated or Council would have to go back to the State Legislature to seek dissolution. President Ratchford said Council could also request a Charter Change requiring a different amount or formula for the appropriation. Mr. Losco said that was correct, but if you fix a certain dollar amount, percentage or formula then if circumstances changed, you would have to go back to the Charter and

change it again. A Charter change can take a year even if you are successful. President Ratchford pointed out that the Governor would have veto powers over any legislation, and has shown strong feelings about why the original DEMEC correspondence was implemented.

Robert Appleby, former MSC Commissioner said he always felt that it was better to raise taxes than it was to raise the utility costs. People can deduct their property taxes; they cannot deduct their water or electric costs. This gives people a tax break and does not punish people who cannot afford an increase in their utility bills.

Councilperson Di Mondì stated that the last thing he wants to do is break up MSC, it is a good organization, but they need to control their costs. Ms. Patone invited and citizen or Council to come to MSC and she will answer any questions they have regarding their expenditures.

President Ratchford tabled the discussion on MSC finances, and stated she felt the \$37,500.00 was a good faith effort on the part of MSC. She said Council and MSC should continue their negotiations. The question of cost of service and predictability is very important. She stated that she agrees that going through the legislature is not a step to be taken lightly, and that the City and MSC need to continue to work together day to day and in emergency situations as they have in the past. It is valuable for the citizens to have their own municipal electric and water service. President Ratchford said that the initial proposal of \$37,500.00 has been assumed into the City budget calculations, and Council will continue discussion with MSC as to the proper level of contribution. President Ratchford thanked Councilperson Di Mondì for the work he had done on his proposal.

Councilperson Di Mondì stated that he did not want to accept the \$37,500.00 as a final solution. Council President Ratchford said it was not the final solution; it was the first step in the negotiation process, and has been incorporated into the City budget. Councilperson Di Mondì asked for a vote of confidence on his proposal.

Councilperson Di Mondì made a motion for a vote of confidence on his proposal of 6% MSC revenue payable in quarterly installments, electric consumption of the City be deducted at cost of purchase, and yearly appropriations after Council's yearly approval will be based on a similar formula.

Second from Councilperson Megginson, the motion passed unanimously.

Motion, Discussion and Vote on **Resolution 2015-23** accepting the \$20,000 Surface Water Matching grant, as presented to Council by City Engineer David Athey on May 26th, and approving/disapproving, the required \$20,000 City match for inclusion in the 2015/2016 fiscal year's budget.

Motion from Councilperson Megginson and second from Councilperson Vannucci to accept amended Resolution 2015-23. Amended to include "2015-2016 fiscal year" wording.

On a motion from Councilperson Megginson, second from Councilperson Vannucci, the meeting was adjourned to executive session at 11:15 a.m. President Ratchford read the Resolution.

Respectfully Submitted,  
Kim Burgmuller