

MILFORD CITY COUNCIL
MINUTES OF MEETING
September 8, 2008

On September 8, 2008, the City Council of the City of Milford held a Public Comment Session prior to the commencement of the official City of Milford Council Meeting to allow the public to comment about issues of interest that impact the City of Milford.

PRESIDING: Mayor Daniel Marabello

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

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

COUNSEL: City Solicitor Timothy Willard

Mayor Marabello declared the Public Comment Session open at 7:15 p.m.

Joe Palermo of 5 Misty Vale Court, Meadows at Shawnee, spoke about the replacement of three planning commissioners and specifically Paul Hayes and Sam Johnson. Mr. Palermo said that if you read the newspaper and read between the lines that they may have been removed because of their voting record on controversial cases. He knows Mr. Johnson well and he was a credit to the city and to the planning commission. He hopes that was not the case.

He said the people on this board have the power to control growth and other things whether they are right or wrong. According to Mr. Palermo, he is not opposed to growth but when someone votes for or against something he feels their voice should be heard.

Paul Hayes of 10 Causey Avenue said he enjoyed his brief period of service on the planning commission. He said he looked forward to every meeting and prepared extensively, as much as a reasonable person could prepare for each meeting. He had some different opinions from the people on the board but believes his opinions were always in his heart to represent the people of the city to the best of his ability. He said he never felt that the planning commission was only to serve the interests of the people who brought proposals before the commission. However, they certainly deserved the consideration and always believed their interests needed to be waived and balanced against the interest of the city and its residents.

Mr. Hayes said that unfortunately, council made a decision to not renew his appointment to the board. He is here tonight to ask why. He thinks that a reasonable person should know what the reason was why they were not reappointed to the board when by any reasonable estimate that reappointment was a reasonable continuation of what was done before. He said if a line was crossed, then a line was crossed.

Mr. Morrow arrived at 7:19 p.m. Ms. Wilson followed at 7:20 p.m.

Mayor Marabello said that council has the right to choose if they wish to answer Mr. Hayes' question. The mayor then asked council if anyone wished to comment in regard to the questions asked by Mr. Hayes.

Mr. Workman said he feels that if someone is taken off the planning commission, he agrees council needs to give them a reason and if it is job performance. He agrees it did not look good in the newspaper when two of the people who were removed from the planning commission voted against a project. The following week, those two people were removed from the commission. He understands why Mr. Hayes needs an answer though he is not saying any council member needs to respond. However, he advised that people in the public are also wondering how ironic it is that two people that voted against a large project that has been discussed for seven months are now off the planning commission.

Mr. Workman hopes that in the future, if someone is let go that person is informed directly. In addition, he feels the manner in which Mr. Hayes was informed was inappropriate and believes it could have been handled differently. Though Mr. Hayes did receive a call, he did find out from Mr. Workman because he thought it had been previously taken care of by the city.

Mayor Marabello said he did receive a phone call in addition to a letter from the city. The mayor asked for additional comments from council.

Mr. Spillane feels the city needs to explain why they were removed from the planning commission. He said we owe them why we chose to vote that way. He also agrees with Mr. Workman.

The mayor reiterated he cannot force the council to comment. The mayor then gave Mr. Hayes the opportunity for further comment.

Mr. Hayes said he said he has been in this position before with people who have judged him and have not given him the benefit of a personal talk or even looked into his eyes. His experience has been that after the situation was addressed and it went further down the road, the people afterwards did talk to him and did realize they made a mistake and he was not what he was representing to be. That has been part of his life experience and is suggesting it may be possible here as well. The situation was addressed and the people did make a mistake and it was not part of his experience. Having said that, Mr. Hayes said that doors close and doors open and it has come to his attention there is an open space on city council in his ward. He feels that perhaps because of what has happened in the past couple of weeks or in spite of what has happened, the truth of the matter is his heart is still where he would like to serve the people of Milford and would be honored to be appointed to fill in the term of the person who just left council.

Mayor Marabello directed Mr. Hayes to submit an informal letter stating we will keep it in a file to be seriously considered. The mayor said for the record, he would like to have seen Mr. Hayes remain on the planning commission but he is unable to vote.

Mr. Hayes said he also had another issue he wanted to bring before council in which they played a part. He said that three years ago, he came before council which was before Mayor Marabello and before the new city manager. At that time, he expressed a desire for the council to consider becoming part of the state energy program which would enable the citizens to earn alternative energy credits for projects they could undertake in their homes. He thanked council stating he is very pleased that council decided at a subsequent time after he spoke, to proceed and do the things necessary to become part of the state energy conservation program.

Mr. Hayes reported that as of March, he installed a geothermal energy system in his home which has saved him a lot of money on his electric bill which is good for the city as well. He also has an energy rebate coming back to him that is only possible because of the efforts council made on his behalf and the residents who purchased their electric through the city. When he first came here, the only residents that could benefit from this program were those customers of Delmarva Power. He commends council for its action and encourages council to continue to look forward because there will be many future challenges that will require people with courage and wisdom to meet those challenges.

With no other person signed up, Mayor Marabello closed the Public Comment Session at 7:25 p.m.

Respectfully submitted,



Terri K. Hudson, CMC
City Clerk/Recorder

MILFORD CITY COUNCIL
MINUTES OF MEETING
September 8, 2008

The Regular Monthly Meeting of Milford City Council was held in the Meeting Room of the Delaware Rural Water Association Facility at 210 Vickers Drive, Milford, Delaware on Monday, September 8, 2008.

PRESIDING: Mayor Daniel Marabello

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

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

COUNSEL: City Solicitor Timothy Willard

Mayor Marabello called the Monthly Meeting to order at 7:30 p.m.

INVOCATION & PLEDGE OF ALLEGIANCE

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

APPROVAL OF MINUTES

When asked if there were any comments regarding the approval of the minutes, Mr. Spillane stated the City Charter requires four votes to approve an item by council. He said there were votes taken in the past by a two to three vote or less. When the mayor asked how this related to approving the minutes, Mr. Spillane explained the minutes reflect that Mr. Spillane brought up Ordinance 2007-9 which dealt with the Isaacs farm and an invalid vote. He was told something new would have to be drafted. The question involved the two or three votes needed. Even though it was two to three, it was not enough to pass. The charter requires an affirmative vote of four.

Mayor Marabello said it had been on the previous agenda and discussed but is not on this agenda. Mr. Willard again asked Mr. Spillane to e-mail him his question and the date of the minutes Mr. Spillane is referring to. He agrees that in the past, the four affirmative votes was sometimes overlooked.

Mayor Marabello asked the solicitor to speak with Mr. Spillane after the meeting. If necessary, it can be placed on another agenda for further discussion.

Mr. Spillane said that because he does not agree with the two to three vote taken in December of 2007, he will vote no.

Mr. Brooks confirmed that the vote on the floor deals specifically with whether or not the minutes reflect what occurred at the previous meeting.

The city solicitor explained that Mr. Spillane has a substantive question but the vote on the minutes is whether they are correct or not.

Mr. Ambrose moved to accept the minutes; Mr. Starling then seconded the motion. Motion carried by unanimous roll call vote.

Mr. Spillane voted yes except for the area he does not agree with on the vote and still has concerns about whether it was a valid vote.

RECOGNITION

None.

MONTHLY POLICE REPORT

Mr. Morrow moved for acceptance of the monthly police report submitted by Chief Hudson, seconded by Mr. Brooks.

Mr. Workman commended the police noting they were in different areas at the Riverfest keeping a close on the people as well as the vendors. Mayor Marabello said he attended the fireworks display and everything was kept well under control with no problems. He attributes that to the presence of the police officers.

Chief Hudson thanked Mr. Workman and Mayor Marabello.

Motion carried.

CITY MANAGER REPORT

Mr. Baird presented the following report:

US113 Railroad Crossing Improvements

DelDOT has notified the City that Norfolk Southern will begin repairs and resurfacing to the rail crossing on US 113. As you are aware, this has been a public safety and nuisance issue for a number of years. The repairs are proposed to be permanent similar to the work that was recently completed on Lakeview Ave.

Comprehensive Land Use Plan Update

On Wednesday, September 3, 2008, Gary Norris and I presented the City's draft Comprehensive Plan Update to the Office of State Planning as required under the State's PLUS process. Comments are due back within twenty working days and following receipt of these comments, the Planning Commission and City Council will schedule public hearings on the plan.

USDA Rural Development Funding Announcement

On Monday, September 8, the City will be participating in an announcement with USDA/RD, Senator Carper and Rep. Castle that the City will be receiving federal loan funds up to \$5,000,000 for water system improvements. More importantly, the City is taking advantage of an interest rate reduction from 4.5% to 2.75% which will save the users of the City's water system over \$780,000 over the life of the loan. The funding and interest rate reductions would not have been possible without the assistance of our Congressional Delegation and the hard work of the Delaware Rural Water Association (DRWA) and the National Rural Water Association (NRWA). The announcement will be held on Monday, September 8, 2008 at 10:30 am at the Washington Street Water Plant.

Electric and Sewer Bond Issue

Preliminary work is continuing on the bond issue for the electric and sewer improvements. Calls were held with the City's bond counsel on August 21 to discuss details related to the preliminary offering statement and a call will be held on September 4 related to the City's bond rating. Everything continues to progress toward a bond sale in early October.

Residential Rental Operating License Amendments

Final comments have been received from the staff and a draft is being prepared for presentation to City Council. I anticipate the draft being prepared for review during your meeting on September 22.

City Hall

Final punch list items, furnishings, and decorating continue to be finalized at City Hall. Upon completion, the Mayor and City Council, City Administration, City Clerk, Billing and IT will occupy the building. Additional work will need to be completed under a separate building permit to fit-out the downstairs space for the billing department. We are working on a layout for the billing department which should be completed by September 12. The complete fit-out could take 60-90 days. Some of the furnishings have been shipped and should all be delivered by the end of September. I will continue to keep the Council updated on the status of this project as well as the details for a rededication and open house at each of your next Council meetings.

He also advised that Senator Carper and Representative Castle attended the USDA check presentation today.

The city manager then added his intent is still to move the billing department to city hall. They are still working through final floor plans with the billing department which will be completed under a separate permit. However, it will be difficult to fit all billing operations back at city hall.

It was then confirmed that the landscaping work has started at city hall.

Mr. Workman said he saw the plans for the downstairs before it went to the architect. He then saw something different after some changes were made on Friday. He asked why these changes were not included before it was sent to the architect. His concern is the amount of money all of these changes are costing. He feels the city manager should meet with Office Manager Denise Barnes so he is aware of her needs before the plan is submitted to the architect. He emphasized the importance of getting the billing personnel back to city hall.

Mr. Baird said the billing staff is working with the architect to ensure their needs are met. He confirmed that the administrative staff will move back to city hall prior to the lower level being completed for the billing department. He will provide those changes next month.

The mayor feels a sprinkler system is needed for the new landscaping and sod. Mr. Baird said he has discussed that with Mr. Emory and his staff. Their request was to handle it without irrigation due to problems they have experienced with previous equipment that in the past.

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

UNFINISHED BUSINESS

Ownership Dispute/Marshall Pond

Mr. Baird recalled this issue being brought before council by Steven Billings on behalf of the Sharp family. It was left for council to determine whether they had an interest in the ownership of the pond or not. He has spoken with individual council members and the general consensus is the city would like to clarify its position as the owner of Marshall Pond. He recommends this be discussed in executive session later this evening if council wishes to proceed as it will involve potential litigation.

Mr. Brooks said he has not heard anything new since Mr. Billings addressed council last month. Mr. Willard explained that an executive session may be in order because the question is the title status of this property. His firm did a title search and the results require a legal opinion which is appropriate for executive session. Once that is discussed, council can decide how to proceed.

Council agreed the matter should be discussed in executive session.

Clarification of Previous Resolution Adopted/Speakers at Public Hearing

Mayor Marabello said that a recent resolution was adopted by council to add a public comment session before the council meetings. Just prior to its adoption, Councilman Spillane found another resolution which he feels conflicts with the most resolution adopted.

Mr. Spillane referred to Section 4.11(8) of the City Charter says amend or repeal. He indicated there was something already in place so council should change it or accept something new. His opinion is a new law was passed without changing the old law. The original law was passed in April of 2002.

The solicitor asked this matter be tabled so he could review it. He encouraged Councilman Spillane to e-mail him in advance of the meeting in order to allow time to obtain the necessary information.

The mayor asked if a conflict is found with the two resolutions, would the new resolution override the older one. Mr. Willard said it would override it, but he will check to see if it is procedurally correct.

The mayor asked Mr. Willard to resolve this by the end of the meeting to prevent having to readdress it at future meetings

NEW BUSINESS

Carlisle Fire Company Enhancement Fund/Withdrawal

The city collects a percentage of building permits which are placed onto a fund for the Carlisle Fire Department. Of the \$134,000 collected, they have submitted the following request:

The Carlisle Fire Company is requesting your approval to withdraw funds in the amount of \$120,000 from the Carlisle Building Enhancement Fund currently held by the City of Milford. A balance of \$14,555.71 will remain in the account after the withdrawal is made.

The money withdrawn from this account will be utilized to purchase a residential unit and property adjacent to the fire company. The Board of Directors of the Carlisle Fire Company and the current owner of the property have negotiated and reached a verbal agreement on purchase price.

Currently the fire company is utilizing paid personnel to provide 24/7 ambulance coverage for our response area. Purchasing this property will allow us to move ambulance operations to that facility providing ample office, storage and sleeping quarters for the ambulance personnel as well as meeting our future expansion needs.

Mr. Brooks moved for approval of the request, seconded by Ms. Wilson. Motion carried by unanimous roll call vote.

Milford Ponds Phase 2/Extension of Final Major Subdivision

City Planner Gary Norris informed council that the planning commissioner voted to grant the following extension requested by Tim Metzner of Davis, Bowen and Friedel:

On behalf of WS Milford, LLC, we hereby request a six (6) month extension to the Final Subdivision Approval granted by City Council on April 28, 2008. As everyone is acutely aware in both the public and private sectors, the residential real estate market has experienced many changes over the past 2 years. Over the next 6 months, Milford Ponds' builders will start construction in Phase 1 and begin new home pre-sales, during which time they will be fine tuning their new home designs.

We would ask to extend the recordation date 6-months in order to confirm and/or adjust the Phase 2 Record Plan prior to its recordation in order to accommodate the latest market driven products. By way of example, we recently requested a 2' increase in the width of the interior lot in the Phase 1 Villa model building (increasing the width from 32' to 34'). Should this be favorably received by the market, it would be our intent to change some or all of the 32' Villas in Phase 2 to 34' widths. Other market driven adjustments may also be identified during the Phase 1 pre-sales period.

Mr. Norris advised the city solicitor recommended such extensions be for a two-year period. Mr. Willard noted that Sussex County recently changed their extension approvals to two years to allow enough time for the larger projects to get their DELDOT and soil conservation approvals.

City Manager Baird pointed out this request is for an additional six months to allow for the recordation process.

Though the length of the extension was again debated by council, it was agreed that one year was appropriate to allow council to keep apprised of the status of these projects.

Mr. Spillane asked that though there may not be active construction on these sites, the maintenance, which includes grass and weed control, be kept up in addition to all fees and taxes being kept current.

Mr. Ambrose agreed that fees and taxes must be current before an extension is granted.

Mr. Ambrose moved for approval of the six-month extension, seconded by Mr. Morrow. Motion carried by unanimous roll call vote.

Wexford/Extension of Preliminary Major Subdivision

City Planner Gary Norris informed council the planning commissioner voted to grant the following extension requested by Developer Robert Smith, Jr.:

This letter is to request pursuant to 200-4(B) (2) of Milford City Code, a one year extension for the project known as Wexford (formerly known as Bennett's Ridge). We received preliminary approval September 24th 2007 and have been working thru challenges with onsite soils, Fire Marshal and overall design of the project we need additional time for design to maintain the quality development our company is known for.

As it stands right now, we have Del-Dot letter of no objection, we have submitted to both Kent Conservation and the Fire Marshals office and received comments and are in the process of re-submitting. As these agency reviews take time, we cannot control when they will respond. As such, an extension is necessary.

Mr. Ambrose moved to accept the recommendation of the planning commission and approve the extension as submitted, seconded by Ms. Wilson. Motion carried by unanimous roll call vote.

Cypress Hall/Extension of Preliminary Major Subdivision

City Planner Gary Norris informed council the planning commissioner voted to grant the following one year extension as was requested by Tim Metzner of Davis, Bowen and Friedel:

On behalf of Shawnee Farms, LLC, we hereby request a one (1) year extension to the Preliminary Approval granted by the Planning Commission on September 18, 2007. We have submitted construction documents to all of the review/permitting agencies and are awaiting approval of the final documents.

Due to a backlog in the amount of projects the agencies are presently reviewing, we have been unable to obtain approvals in a timely manner. We expect to receive final approvals from these agencies in the near future.

Mr. Workman feels that there needs to be some sort of hardship for the extensions to be approved. Mr. Morrow does not believe a hardship needs to be proven, but voting down the extensions will only result in an empty field until someone later begins the process again. He would agree if it was a blatant effort to prolong construction, but in this case he feels it is economic times and the long and drawn out process required to obtain permits.

City Solicitor Willard explained that two of the requests are for one year extensions needed to obtain final approvals from these state agencies. Once the preliminary approval is granted, the final should be obtained within the year. He said that Milford's Code states that preliminaries will become null and void if the final application is not submitted to the planning commission within twelve months, unless an extension is applied for and granted by the commission.

Mr. Willard stated he asked why council is hearing these; the answer was council always has. There may be some ultimate authority to approve these, but the city code is unclear about whether council has final approval in these extensions. He agrees that most extension requests are the result of problems associated with an agency's backlog.

Mr. Brooks recalled requesting some type of chart or schedule showing each subdivision and its status. Mayor Marabello will follow up with the city planner.

Mr. Ambrose moved to accept the recommendation of the planning commission and approve the one year extension as submitted, seconded by Mr. Workman. Motion carried by unanimous roll call vote.

Adoption of Ordinance 2008-12/Chapter 200/Amendment to Subdivision Code

Mr. Baird advised this was reviewed and a favorable recommendation given by the planning commission. It is being presented for adoption with the options to approve it without amendments, consider any changes or deny it.

Mr. Spillane asked that adoption of the ordinance be postponed in order to discuss it with the city engineer. He is still concerned with the 50% open space minimum and recalled that he asked it be reduced to zero. Stormwater ponds and wetlands should not be included in the calculation for open space as he previously stated.

His other concern involves the six inch topsoil requirement and the proposal to change it. He has spoken with some topsoil experts who provided some ideas on topsoil which includes six inches of additional topsoil be added to a site in order for sod and/or grass to grow properly.

Once a final draft has been prepared, he wants to take it to the state so that a statewide rule could be adopted requiring topsoil. The mayor pointed out that is beyond what is being considered and this ordinance deals directly with Milford.

Ms. Wilson moved for adoption of Ordinance 2008-2 with the proposed amendment of the city planner. Mr. Norris clarified that his recommendation is to remove the 50% open space allowance (In section 200(3) the definition would be changed to read areas of land designated for public or private recreational use limited such as parks, plazas, landscaped areas, gardens, walkways, trails, organized sporting event areas and passive recreational areas).

The city planner emphasized that wetland or stormwater management facilities shall not be counted as open space.

Mr. Workman was concerned that the changes were not implemented and a revised ordinance presented for review. He agrees it should be postponed until a final draft showing the amendments is presented.

Mr. Spillane said he has a third concern regarding swales. He feels we have an ordinance in place that requires all developments to have sidewalks. The option for swales should be removed because there are areas where swales have not worked.

Council pointed out that some swales are allowed as approved though there is an ordinance that requires sidewalks.

Mr. Morrow feels there should be a swale option though council always has the ability to control it. Mr. Brooks added that sidewalks are mandatory in all new developments. Mr. Workman explained that any developments with approvals for swales that preceded this new sidewalk ordinance are permitted.

The city planner reiterated that his recommendation is that no wetlands, stormwater ponds, etc. be counted as open space to allow more density. Mr. Ambrose asked if that is appropriate when compared to ordinances in other towns. Mr. Norris added that no structure can be built in a wetland or stormwater areas. He is unfamiliar with other ordinances though when this was originally presented, he felt 50% was a reasonable percentage to start. Originally it was most likely 100% and that has been significantly reduced.

Ms. Wilson's motion died for lack of a second.

Mayor Marabello asked that action be deferred on this ordinance until the next meeting.

Mr. Baird recommended that when this ordinance is changed, it be referred back to the planning commission for another review. Mr. Workman suggested the amended ordinance be presented to council before it is sent to the commission to ensure the correct wording was included.

Mr. Workman moved that the city planner compare the zero percent open space calculation for wetlands/stormwater ponds to other municipalities, the ordinance be amended as he feels is appropriate and as was discussed this evening, it be presented to council for review without comment, and then revisited by the planning commission. It would then be sent back to council for final approval. Motion seconded by Mr. Morrow. Motion carried by unanimous roll call vote.

Adoption of Ordinance 2008-13/Chapter 230/Amendment to Zoning Code

City of Milford Ordinance No. 2008-13

Amends Chapter 230 of the City of Milford Code Zoning

AN ORDINANCE TO AMEND the Code of the City of Milford by amending Chapter 230, thereof, Zoning, which chapter classifies, regulates and restricts the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population and the location, use and extent of use of buildings, structures and land for residence, trade, industry and other purposes; creates districts for said purpose and establish a Board of Adjustment; and imposes penalties for violations, so as to lessen congestion in the streets; secures safety from fire, panic and other dangers; provides adequate light and air; prevent undue concentration of population and overcrowding of land; facilitates the adequate provision of transportation, water, sewage, school, park and other public requirements; conserves the value of buildings and encourage the most appropriate use of land; and promotes the health, safety, morals and general welfare of the City of Milford.

The City of Milford hereby ordains:

Section 1.

The Code of the City of Milford is hereby amended by amending Chapter 230, Zoning to read as follows:

Section 2.

§ 230-4 Definitions.

(Add) *BED AND BREAKFAST: A private owner/owner representative occupied residence with one to six guestrooms. The bed and breakfast is subordinate and incidental to the main residential use of the building. Individual guests are prohibited from staying at a particular bed and breakfast establishment for more than fourteen (14) consecutive days in any one-year period.*

R-1 District:

§ 230-9 (C)

(Add)

(12) *Bed and Breakfast, subject to the following requirements:*

(a) *The bed-and-breakfast establishment does not adversely affect the residential character of the neighborhood and such use is carried on in an existing residential structure.*

(b) *The building proposed for use as a bed-and-breakfast must have the owner of the bed-and-breakfast residing in the building as his/her principal residence*

(c) *The serving of meals shall be limited to breakfast and afternoon tea for overnight guests and customers.*

(d) *Rooms used for sleeping shall be part of the primary residential structure and shall not have been specifically constructed for rental purposes.*

(e) *No exterior alterations other than a sign and those required by law to ensure the safety of the structure shall be made.*

(f) *The Bed and Breakfast operation shall not use more than fifty (50%) percent of the floor area of the principal residence. Common areas such as the kitchen, foyer, living room or dining room, are not included in this calculation.*

(g) *No areas shall be floodlit. Drives and parking areas shall not be illuminated by lighting fixtures higher than twenty (20) feet. Sidewalks shall not be illuminated by lighting fixtures higher than fifteen (15) feet. Exterior lighting shall be so shaded as to prevent illumination off-site. All external lighting, except for demonstrated security needs, shall be extinguished by 10:00 P.M.*

(h) *All Bed and Breakfasts must be in compliance with the requirements of the Uniform Building Code and Uniform Fire Code as adapted and enforced by the state fire marshal. Requirements include smoke detectors centrally located on each floor with sleeping rooms and the basement stairway. They must have battery backup and be connected or have a sounding device to provide an alarm which can be heard in all sleeping areas. Every sleeping room must provide at least 50 square feet of floor area per guest and have an operable window of 5.7 square feet or more of clear opening or exterior door for emergency escape or rescue. The maximum distance to a fire extinguisher rated 2A and having a BC rating is 75 feet.*

(i) *Safe food handling is the responsibility of the "host." He/she must properly train employees and other household members in safe food handling procedures and requirements and secure the proper State Health permit if applicable.*

(j) *Parking requirements. One space per guestroom plus two spaces for residence. Spaces shall be located to the side and rear of the building and shall be screened from adjacent properties by a five-foot high wood or masonry fence or by sight-obscuring vegetation of the same height. The area of the parking lot, including driveways, shall be graded, surfaced with asphalt or other suitable material and drained to the satisfaction of the City Engineer to the extent necessary to prevent*

dust, erosion or excessive water flow across streets or adjoining properties.

(k) Signs. For each bed and breakfast, one small-unlighted announcement sign not exceeding three square feet in area may be attached to and parallel with the front porch or wall of the building.

§ 230-9 (D)

(10) Decks, subject to the following requirements:

(a) The deck cannot be located in the front yard.

(b) A minimum distance of 10 feet must be maintained from the deck to the rear property line.

(DELETE) (c) A deck attached to buildings located on the corner must not extend beyond the building line.

R-2 District:

§ 230-10 (G) 1

(Add)

(j) *Decks, subject to the following requirements:*

[1] The deck cannot be located in the front yard.

[2] A minimum distance of 10 feet must be maintained from the deck to the rear property line.

R-3 District:

§ 230-11 (B) 1

(Add)

[8] Decks, subject to the following requirements:

(a) The deck cannot be located in the front yard.

(b) A minimum distance of 10 feet must be maintained from the deck to the rear property line.

§ 230-50. Purpose.

The site plan review has a twofold purpose. It is to assure that the large-scale developments are in accord with the Comprehensive Plan and that such developments comply with the regulations of this chapter. Site Plans are required to assure good arrangement and appearance of new development; ensure harmony with existing structures, assure consistency with the City's adopted building and design standards, the Comprehensive Plan, and the City's (DELETE)

Standard Specifications for Utility Construction Projects and Subdivision Pavement Design (ADD) *Standard Specifications for Installation of Utility Construction Projects and Subdivision Pavement Design*; to provide an understanding of the impacts of proposed development on public facilities and services and ensure the availability and adequacy of the same; and to otherwise meet the purposes of this ordinance.

§ 230-52. Review procedure.

(DELETE) A. The proposed site plan shall first be referred to the Code Official. If the proposed site plan is one that this chapter automatically requires a site plan review for by the Planning Commission, such a site plan shall be referred to the Planning Commission. If the proposed site plan is not one enumerated in this chapter as a development that shall automatically require the Commission's review, the City Code Official, following guidelines listed by this chapter, shall determine if such a proposed development requires review by the Planning Commission. In case the Code Official determines that the proposed development requires a site plan review, he shall then refer copies of the site plan to the Planning Commission.

(ADD) A. *Preliminary approval.*

(1) A preliminary plan and documents, as specified by the Planning Department, shall be prepared by the applicant and submitted in accordance with the submission schedule as determined by the City Planner, along with the appropriate fees, as specified in §230-57.

(2) The Development Advisory Committee (DAC) shall review the application and plan. Comments from the DAC must be addressed via either submitting revised plans and/or necessary documents or via a narrative submitted to the City Planner. Upon confirmation by the City Planner that all DAC issues have been addressed satisfactorily, the application will then be scheduled to be heard by the Planning Commission.

(3) The Planning Commission shall review the application and shall approve the application with or without conditions, deny the application, or table the application.

(4) Preliminary approval from Planning Commission shall be void after one year, unless an extension is requested by the owner and approved for good cause by Planning Commission prior to the expiration.

B. *Final approval.*

(1) A final plat and documents, as specified by the Planning Department, shall be prepared by the applicant and submitted in accordance with the submission schedule as determined by City Planner, along with the appropriate fees, as specified in §230-57.

(2) The Development Advisory Committee (DAC) shall review the application and plan. Comments from the DAC must be

addressed via either submitting revised plans and/or necessary documents or via a narrative submitted to the City Planner. The final plan shall also be reviewed by the City Planner for confirmation that the application is designed in accordance with all subdivision, zoning and other land use regulations of the City. The final plan shall also be reviewed by the City Engineer for confirmation that the application is designed consistent with the preliminary plan, if applicable, and in accordance with the construction standards and specifications of the City. Upon confirmation by the City Planner and City Engineer that all issues have been addressed satisfactorily, the application will be scheduled to be heard by the Planning Commission.

(3) The Planning Commission shall review the application and shall approve the application with or without conditions, deny the application, or table the application.

(4) Within 90 days of final approval from Planning Commission, the applicant shall record the plat at the County Recorder of Deeds office and provide the City Planner a receipt of the recordation including the deed book and page number. Prior to recording the plat, five copies of the plat must be submitted to the City Planner for stamping and signing. Three sets will be returned to the applicant.

(5) Upon recordation of the plat, the applicant shall provide the Land Data Manager of the City a mylar copy of the plat including the deed book and page printed thereon.

(6) Failure to record the Plat within 90 days of Planning Commission approval will result in the approval being voided.

C. The site plan review by the Planning Commission shall be limited to those proposed developments enumerated by this chapter and to those proposed developments that require a site plan review as determined by the (DELETE) Code Official (ADD) City Planner. No other site plans shall be considered by the Planning Commission for review.

(ADD) D. Prior to Planning Commission holding a public hearing to review the application for the site plan, the City Engineer shall provide a copy of the signed Subdivision Agreement to the City Planner.

§ 230-57. Planning and zoning fees.

Planning and zoning fees shall be set by resolution by City Council and are maintained by the City Clerk's Office.

§ 230-61. (DELETE, SEE MEMO FROM CITY SOLICITOR) Effect of application; loss of status; extensions.

A. Every (ADD) zoning application, when approved by the City Council (ADD) or Planning Commission either as submitted originally or as (DELETE) submitted or resubmitted in modified form, shall constitute an agreement by the applicant that such improvement shall be made, completed and operated as shown on the plan as part of the project in accordance with the provisions of the particular zoning district (ADD) *within one year of said approval.* (DELETE) granted and that the (ADD) Any area which has been rezoned by the City Council shall lose that status and revert to its former zoning classification in the occurrence of any of the following events:

(1) If construction of approved buildings and improvements shall not be substantially undertaken within one year of the zoning change or within such additional time as may be authorized by the City Council.

(2) If, as a result of voluntary sale or conveyance or any other transfer of ownership whatsoever, the area shall cease to be held, in its entirety, in single or common ownership.

B. The City Council may, at its option, grant an extension of any approved zoning application that may have expired, provided that the applicant can show good reason and justification for such an extension.

230-57 (DELETE, SEE ATTACHED RESOLUTION)

A. Site plan: \$700.

(DELETE) B. Subdivision.

(1) Preliminary and minor.

(a) Minor, residential, noncommercial/industrial: \$300, plus \$50 per unit.

(b) Minor, small commercial/industrial: \$500, plus \$100 per lot. Commercial shall also include land development firms, such as might be involved with residential housing, and any other group as may be noted or determined by the Planning Official.

(c) Major, residential, large commercial/industrial: \$1,000 plus \$10 per unit. Commercial shall also include land development firms, such as might be involved with residential housing, and any other group as may be noted or determined by the Planning Official.

(2) Final.

(a) Major, residential, large commercial/industrial: \$1,000 plus \$10 per unit. Commercial shall also include land development firms, such as might be involved with residential housing, and any other group as may be noted or determined by the Planning Official.

(ADD) B. Subdivision.

(1) Minor residential: \$300 plus \$50 per unit

(2) Minor commercial or industrial, less than four acres: \$500 plus \$100 per lot

(3) Major residential: \$1,000 plus \$10 per unit

(4) Major commercial or industrial, in excess of four acres: \$1,000 plus \$100 per lot

(DELETE) C. Conditional use

(1) Residential, small commercial/industrial (one acre or less): \$700.

(2) Commercial (includes major residential developments): \$700.

(ADD) C. Conditional Use: \$700

(ADD) (1) Amendment to a Conditional Use: \$700

D. Variance/Board of Adjustment hearing:

(1) Residential: \$300.

(2) Commercial/industrial: \$1,000.

E. Rezoning: \$1,000, plus \$100 per acre.

F. Commercial maintenance agreement: \$500.

G. Interpretations of Subdivision or Zoning Code: \$300.

H. Application resubmission or rescheduling fee (required with each resubmission as a result of a revised design or a request for change in public hearing date): \$100.

I. Engineering review (ADD) *Project management* and infrastructure inspection fee: Four percent of any infrastructure improvement construction costs to include stormwater management, drainage, sanitary sewer and water systems, roads, curb, gutter and sidewalks, and other related systems shall be paid by the owner/developer.

J. Any constructions fees (i.e., grading, curbing, gutter, subbase, traveling surface, sidewalks, etc.) incurred by the City relative to the development of any property shall be paid by the owner/developer.

K. Annexation.

(DELETE) (1) Residential: \$2,500, plus \$100 per acre in excess of five acres (restricted to residential use).

(2) Residential: \$350 (less than one acre, restricted to residential use).

(3) Commercial: \$2,500, plus \$500 per acre.

(ADD) (1) Residential, less than one acre: \$350

(2) Residential, one acre to five acres: \$2,500

(3) Residential, in excess of five acres: \$2,500 plus \$100 per acre

(4) Commercial: \$2,500 plus \$500 per acre

L. Zoning inspection.

(1) Proposed use: \$200.

(2) Violation of use: \$200 for first visit; \$500 for each subsequent visit.

M. (DELETE) Utility agreement (ADD) *Subdivision Agreement*: \$2,500 per agreement.

N. Subdivision and Specifications Manual: \$30.

O. Zoning Code Manual: \$30.

(ADD) P. *Alley or Street Closing Petition*: \$300.

(ADD) Q. *Engineering Review Fees*:

1. Preliminary Major Subdivision: \$500.

2. Final Major Subdivision: \$1500.

3. Final Minor Subdivision: \$500.

4. Final Site Plan, 0 to 5000 square foot building: \$250.

5. Final Site Plan, over 5000 square foot building, add \$250 for each additional 5000 sq.

6. Sewage Pump Station: \$1500.

7. Revisions: \$100/sheet per revision.

Section 3: Dates

Planning Commission Review: August 19, 2008

Effective Date: Ten Days Following Adoption by City Council

SECTION 230-57 OF THE CITY OF MILFORD ZONING CODE PREVIOUSLY ESTABLISHED PLANNING & ZONING FEES; ORDINANCE 2008-13 AUTHORIZES CITY COUNCIL, THROUGH RESOLUTION, TO ESTABLISH ALL FUTURE PLANNING & ZONING FEES.
PLANNING AND ZONING FEES

WHEREAS, the City of Milford Planning Department needs to comprehensively update its existing land development application fee schedule; and

WHEREAS, the City Council wants fees for required land development applications and associated documents to keep pace with inflation, personnel, processing, and inspection requirements due to application and project complexities, and to maintain effective, quality and responsible service.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Mayor and Council of the City of Milford on this 8th day of September, 2008, that the City of Milford Planning and Zoning Fee Schedule be revised as reflected in the Proposed Fee Schedule and

BE IT FURTHER RESOLVED that the revised fee schedule shall be effective September 18, 2008.

A. Site plan: \$700.

B. Subdivision.

(1) Minor residential: \$300 plus \$50 per unit

(2) Minor commercial or industrial, less than four acres: \$500 plus \$100 per lot

(3) Major residential: \$1,000 plus \$10 per unit

(4) Major commercial or industrial, in excess of four acres: \$1,000 plus \$100 per lot

C. Conditional Use: \$700

(1) Amendment to a Conditional Use: \$700

D. Variance/Board of Adjustment hearing:

(1) Residential: \$300.

(2) Commercial/industrial: \$1,000.

E. Rezoning: \$1,000, plus \$100 per acre.

F. Commercial maintenance agreement: \$500.

G. Interpretations of Subdivision or Zoning Code: \$300.

H. Application resubmission or rescheduling fee (required with each resubmission as a result of a revised design or a request for change in public hearing date): \$100.

I. Project management and infrastructure inspection fee: Four percent of any infrastructure improvement construction costs to include stormwater management, drainage, sanitary sewer and water systems, roads, curb, gutter and sidewalks, and other related systems shall be paid by the owner/developer.

J. Any constructions fees (i.e., grading, curbing, gutter, subbase, traveling surface, sidewalks, etc.) incurred by the City relative to the development of any property shall be paid by the owner/developer.

K. Annexation.

(1) Residential, less than one acre: \$350

(2) Residential, one acre to five acres: \$2,500

(3) Residential, in excess of five acres: \$2,500 plus \$100 per acre

(4) Commercial: \$2,500 plus \$500 per acre

L. Zoning inspection.

(1) Proposed use: \$200.

(2) Violation of use: \$200 for first visit; \$500 for each subsequent visit.

M. Subdivision Agreement: \$2,500 per agreement.

N. Subdivision and Specifications Manual: \$30.

O. Zoning Code Manual: \$30.

P. Alley or Street Closing Petition: \$300.

Q. Engineering Review Fees:

(1) Preliminary Major Subdivision: \$500.

(2) Final Major Subdivision: \$1500.

(3) Final Minor Subdivision: \$500.

(4) Final Site Plan, 0 to 5,000 square foot building: \$250.

(5) Final Site Plan, over 5,000 square foot building, add \$250 for each additional 5,000 square feet.

(6) Sewage Pump Station: \$1500.

(7) Revisions: \$100/sheet per revision.

INSERT (Solicitor Willard's Recommendation):

230-52.1 Site Plan Expiration

If construction of approved buildings and improvements are not substantially undertaken within one year of final site plan approval, the site plan approval shall be void. The applicant may, however, request and the Planning Commission may grant a one year extension for good cause.

Mr. Norris recalled this ordinance has been reviewed several times by council. He did consider the limitation after the fourteen consecutive day stay and provided some language from comparable ordinances:

*Guest stays may not exceed 30 days during any 60-day successive day period.

*The length of stay in the bed and breakfast for any person shall be limited to no more 21 days cumulatively in any 90-day period.

When asked how the 14-day rule would be enforced, Mr. Norris answered on a complaint basis.

Mr. Norris said this was done to prevent a bed and breakfast from becoming a lodging/boarding house which would allow a person to continuously stay there. Mr. Morrow feels that generally, a boarding house is much less expensive than a bed and breakfast. If they were economically astute and planned to stay somewhere for an extended period of time, they would find a boarding house.

Mr. Norris confirmed that many of the ordinances found in Delaware had the 14-day rule. Mr. Workman and Mr. Morrow feel that though Bed and Breakfast Owner Dan Bond was the only one to respond to this amendment, other owners should be contacted for their opinions.

Following a lengthy conversation, council agreed to strike the 14-day consecutive stay rule.

Ms. Wilson moved for an amendment to Ordinance 2008-13 striking 'Individual guests are prohibited from staying at a particular bed and breakfast establishment for more than 14 consecutive days in any one year period', seconded by Mr. Morrow. Motion carried by unanimous roll call vote.

City Solicitor Tim Willard suggested another proposal removing Section 230-61 which is an antiquated provision in the code which made zoning decisions stale and inappropriate for land use or zoning decisions. That resulted in a concern that site plans need to be regulated, so this language was proposed.

When asked the solicitor to define good cause, Mr. Willard said a flood or a natural disaster or anything out of the builder's control. Mr. Workman asked if a good cause would be the economy; the solicitor said his interpretation is no. City Manager Baird said that when the extension is submitted, if the planning commission or city council feels the reason is a just or good cause, it can be extended. If not, it can be denied. Mr. Norris reminded council that the planning commission has jurisdiction over site plans and either grants or denies them.

Mr. Ambrose moved for approval of an amendment to Ordinance 2008-13, specifically adding a new Section 52.1 entitled A. Site Plan Expiration. which would read 'If construction of approved buildings and improvements are not substantially undertaken within one year of final site plan approval, the site plan approval shall be void. The applicant may, however, request the planning commission to grant a one year extension for good cause.' Ms. Wilson seconded motion. Motion carried by unanimous roll call vote.

No other amendments to Ordinance 2008-13 were proposed.

Ms. Wilson moved to adoption 2008-13 with the two proposed amendments previously approved, seconded by Mr. Workman. Motion carried.

Adoption of Resolution/Halloween Events

Mayor Marabello advised that this resolution is presented annually though council approves the date and time for the Halloween Parade in advance to allow enough time for the committee to plan and prepare.

Mr. Workman moved for adoption of the following resolution, seconded by Mr. Ambrose:

WHEREAS, it has been a custom for many years for children and adults to celebrate the Eve of All Saints Day by costuming, masquerading and fun-making; and

WHEREAS, we would like to continue the celebration in an orderly manner.

NOW, THEREFORE, BE IT RESOLVED, I, Daniel Marabello, Mayor of the City of Milford, do hereby request and urge the observance of this annual period as follows:

WEDNESDAY, October 22, 2008 starting at 6:30 p.m. and concluding by 9:00 p.m. shall be the time for the Annual Community Parade.

SATURDAY, October 25, 2008 shall be the official date for youngsters to make their annual UNICEF collections to be completed by dark.

FRIDAY, October 31, 2008 shall be the official date for youngsters to observe Halloween Trick or Treat Night.

AND, BE IT FURTHER RESOLVED, that only celebrants of 12 years and under will be permitted to engage in Trick or Treat between the hours of 6:00 p.m. and 8:00 p.m. All celebrants are requested to refrain from committing acts of vandalism or destruction.

Motion carried by unanimous roll call vote.

Waiver of Repurchase Option/Business Park Lot

The following request was received from Attorney Walter Feindt:

My office represents Dr. Roger Alexander, who is the present owner of Parcel E-2 of the Greater Milford Business Complex, Dr. Alexander having purchased the lot from the City of Milford on December 10, 2004. The restrictive covenants and conditions attached to the deed include all option for the City of Milford to repurchase the lot from the owner at any time prior to construction if the owner fails to build within two (2) years from the date of settlement, at the original purchase price paid by the owner.

Dr. Alexander did not commence construction within the two-year time period identified in the restrictive covenant, and now has intentions of selling the lot to another local doctor who has plans to begin construction of a doctor's office shortly after settlement. This settlement, however, cannot occur until the City of Milford either elects to exercise its option to repurchase the lot, or waives its right to do so in a form that can be recorded in the Recorder of Deeds Office in and for Kent County, Delaware.

Mayor Marabello explained the city sold a parcel to Doctor Roger Alexander back in 2004 for \$24,000. The deed contains a requirement that construction commence within two years. If that does not occur, the city reserves the right to repurchase the property at its original purchase price.

The city manager advised that Doctor Alexander does not intend to proceed with the construction but wants to transfer the property to another doctor. He is asking for a city to waive the repurchase option.

Attorney Walter Feindt was present to represent Doctor Alexander. Mr. Feindt said that Doctor Alexander does not have the ability to sell the property without something from the city waiving their right to repurchase.

Considering the 2004 selling price of \$24,000, the mayor asked the current value. Based on recent appraisals, the one-acre parcels in the Independence Commons Park were appraised at \$125,000 according to Mr. Baird.

The mayor feels council has a fiduciary responsibility to protect the assets of our city which the land in the business park

is. He said if this property is worth at least \$125,000 and the city has the legal right to purchase it back for \$24,000, the city cannot arbitrarily transfer this right.

Mr. Workman asked Mr. Feindt if Doctor Alexander would make a profit on the sale of this land; Mr. Feindt said he respectfully suggests to council the purchase price is irrelevant. He explained that if the seller makes a profit or if the purchaser buys it as a bargain, he does not think the city should get in a position of deciding who should benefit from the sale.

Mr. Feindt then added the doctors' intent is to break even which means he would cover the purchase price, the settlement charges and the other costs he has incurred since buying the property in 2004.

The city solicitor had Mr. Feindt verify the city can require the doctor to sell the property back to the city based on the deed restrictions.

Mr. Workman pointed out that these rules were put in place when this business park was developed. All buyers were aware of these restrictions when they purchased the land. The city allowed two years to build. If the city repurchases it, the city is able to resell it to another interested business.

Mr. Feindt noted those same restrictions were included with each property sold in the complex. He is curious if there are other lots with no construction within the required two-year time period. The city may want to consider a tickler system to alert themselves when that two-year period has passed so it can be addressed.

The city manager agreed there are approximately four properties that fall under that same situation. Earlier this year, he contacted those property owners to remind them of those restrictions. While some responded and others did not, the city has not taken any further action.

The solicitor added that if an owner builds on it, they build at their own risk. But if we give them a building permit, they may have an equitable estoppel argument.

Mr. Spillane thinks council owes the taxpayers to buy it back at the cost agreed in the deed restrictions.

Mr. Workman pointed out there is an account set up with funds to repurchase these parcels back as is required. Any property sold goes back into this fund.

Mr. Baird then stated that one side of the equation is the city has the option to purchase the property back at \$24,000. However, the goal of the park is to establish businesses and give businesses a place to locate. He said that regardless of whether the city is acquiring the property or if the doctor is allowed to sell the property to another party, that will be accomplished. In this case, Doctor Alexander has a party interested which fulfills the goal of the city to encourage business development.

If council agrees to waive the Alexander deed restriction, Mr. Willard said the language must be removed from that deed.

Council agreed that the vacant properties beyond the two-year window must be addressed. Ms. Wilson said it is important to handle all properties in the same manner. Council needs to be consistent to prevent any conflicts in the future.

Mr. Baird then added that he is meeting with another business park property owner who is also requesting the city waive this deed requirement.

The mayor then asked Mr. Willard if anyone with an existing office has the right to sell that property under their own terms. Mr. Willard believes they have met the conditions of the purchase.

Mayor Marabello has no objection to Dr. Alexander doing that though it may appear we are somewhat skirting around the agreement. He reiterated it is a fiduciary issue that council is responsible for and it is clear the value is much more than \$24,000 even if we held it for two years.

The mayor said he does not mind him holding on to the property and selling it at a later date because of the current economy, but council should not allow him to be a conduit to sell it to another party.

Mr. Spillane moved that the city repurchase the land at the original sale price as noted as a deed restriction.

The mayor then asked that it be noted there are other owners that are beyond the two-year window and need to be addressed as well.

Mr. Ambrose agreed that if the precedent is set not to allow a party to sell to another buyer, that must be done with any other vacant land in this same situation. The city should not act on the other land until they try to sell it. He said it should be our policy that if the landowner tries to sell it, the city will buy it back and a change he would support versus informing each property owner that has not developed that we are buying the land back after two years of no activity. However, if they try to sell it, the city will buy it back immediately.

Mr. Workman pointed out that this was brought before council because they wanted to sell it and though it has been overlooked, the deed restriction is clear that it cannot be sold by the buyer.

Mr. Willard agrees adding it is wise to do an inventory and address any other lot that has not been developed.

Mr. Baird then asked Mr. Feindt if the property is being offered for sale to the city; Mr. Feindt answered if the motion is for the city to buy it. However, he has a prospective arms-length buyer right now. If the city's actions preclude that settlement from occurring, he would need to consult with Doctor Alexander as to whether he would want to pursue deeding the property over to the city. He would suspect that Doctor Alexander could, though he is not suggesting he will, proceed to construct the building which exactly matches what the buyer wants, and resell the building to the buyer. That would meet the terms of the restrictions.

Mayor Marabello asked for a confirmation that all council members are in agreement with Mr. Ambrose that Doctor Alexander can hold onto the property. Mr. Ambrose stated he does not want the record to reflect he made any motion but only a clarifying statement.

Mr. Spillane then rephrased his motion and moved that Doctor Alexander's request for a waiver be denied, seconded by Mr. Workman. Motion carried by the following 5-0 roll call vote:

Yes-Spillane, Workman, Brooks, Starling, Wilson
Abstain-Ambrose, Morrow

Mr. Ambrose said he hopes his comments were generic as Doctor Alexander is his personal physician and he must abstain from voting.

Mr. Morrow said he is also abstaining for the same reasons Mr. Ambrose stated.

2nd Ward Council Seat Vacancy

Mayor Marabello then read a letter from Councilman Clifford Crouch into record advising that effective August 31, 2008, he is resigning his position as 2nd Ward Councilman.

The mayor advised that the charter states that if a councilperson resigns within one year of their term expiring, council may appoint a replacement. With the majority in agreement that the seat should be filled, the mayor recommended the media be used to advertise the opening so that interested persons could submit their names by September 16th. He feels it would be unwise not to fill it.

Mr. Workman added that he likes the idea of second ward citizens submitting their names for this seven-month period. It gives them an opportunity to try it and encourages anyone with the slightest interest to submit a letter. Once the letters have been submitted, he is suggesting interviews be conducted before council in an open session if that is the proper manner.

Council would then vote on the person they feel would best fill that seat.

Mr. Morrow agrees it is a good idea to announce the opening but feels council is not restricted to those persons submitting letters. The charter states council may appoint someone and prefers it be someone who has submitted an application. However, he feels this is a personnel matter and should be addressed in executive session in order to properly discuss a person's qualifications.

Mr. Workman feels that city council does not fall under personnel because they are elected officials elected by the citizens of Milford.

City Solicitor Willard said he will research that matter to determine whether or not council is considered personnel.

Mr. Morrow agrees that council is elected, but in this case, council is appointing a person based on their qualifications. He does not feel it is appropriate to discuss it in open session. He added this is not the first time this has happened and it has always been handled in executive session.

Mr. Starling asked if it is Mr. Workman's intent to interview the applicants would be in front of the public. He disagrees because it involves discussing the strengths and weaknesses of a person.

Mr. Willard will check FOIA law and get a response to council by the end of the week. He will e-mail his opinion to Mayor Marabello who could disseminate it to other council members via e-mail.

With tomorrow being primary day, Mayor Marabello asked Mr. Willard to provide the information sometime on Wednesday.

FINANCE REPORT

Mr. Ambrose advised that through the first month of Fiscal Year 2008-2009 with 8.3% of the year having passed, 15.34% of revenues have been received and 9.32% of the operating budget expended.

He explained that the revenues reflect a much higher percentage than is actually in the bank. That is the result of property taxes being billed, which the city treats as paid on the books. It is handled in that manner because if the taxes are not paid, the city has the right to place a lien on the property.

He noted that expenditures are higher than expected due to the cost of electric.

When asked for a total of all the city accounts, Mayor Marabello answered \$26.9 million. Mr. Spillane asked if it has been put in bonds; Mr. Ambrose answered it is invested and referred to the interest shown on the first page.

Mr. Workman moved for approval of the July 2008 report, seconded by Mr. Brooks. Motion carried.

Executive Session

Motion made by Ms. Wilson to go into executive session reference a land ownership issue, seconded by Mr. Starling. Motion carried.

Mayor Marabello recessed the council meeting at 9:23 p.m. to go into executive session to conduct a discussion regarding land acquisition.

Return to Open Session

City Council returned to open session at 9:39 p.m.

Ms. Wilson moved that the city solicitor proceed with the Marshall Pond ownership matter as was discussed in executive

session, seconded by Mr. Workman. Motion carried.

Adjourn

Motion to adjourn the Council Meeting at 9:41 p.m. made by Mr. Workman, seconded by Mr. Starling. Motion carried.

Respectfully submitted,

A handwritten signature in cursive script that reads "Terri K. Hudson".

Terri K. Hudson, CMC
City Clerk/Recorder