

CITY OF MILFORD
COUNCIL WORKSHOP MINUTES
January 18, 2023

The City Council of the City of Milford convened in a Workshop Session on Wednesday, January 18, 2023, beginning at 6:06 p.m.

PRESIDING: Mayor Archie Campbell

IN ATTENDANCE: Councilpersons Mike Boyle, Todd Culotta, Brian Baer, Jason James Sr., and Katrina Wilson

STAFF: City Manager Mark Whitfield, Acting Chief Edward Huey, and Deputy City Clerk Katrina White

COUNSEL: Solicitor David Rutt, Esquire

Broadband/Community Wi-Fi Feasibility Study

Uptown Services, LLC
Dave Stockton & Neil Shaw, Principals

City Manager Whitfield recalled this study was brought before Council to consider during the Capital Improvement Plan discussion. Uptown Services out of Colorado who work with cities who own their own electrical services. They will provide the results of whether it is feasible for the city to supply broadband and public wi-fi throughout the city.

Mr. Shaw explained the scope of the study involves market research, product strategy, the operation of the business, the technology strategy, and what the financial performance of the proposed business is across different scenarios.

Mr. Stockton then summarized the study scope with the six key tasks performed to evaluate the financial feasibility to enhance the capacity of broadband infrastructure for residents and businesses:

1. Local Market Assessment and Product Strategy
2. Analysis of Business Models
3. Wireless Network Strategy
4. Conduct Market Research
5. Pro Forma Financial Analysis
6. Evaluate Financing & Funding Availability

Mr. Stockton shared there are mainly two buckets of wireless broadband today to residential customers—Verizon and Comcast with Comcast having the market share with cable modem. Their 1.2 gig services start at \$80 going up to over \$100, depending upon any promotional discounts and other factors including add ons. There is sufficient access today in terms of capacity relative what's going on, though the pricing is high.

Bloosurf has deployed fiber in some communities. But availability searches on their websites indicate that only fixed wireless service is available in Milford. Starlink is scheduled to become available next year but is expensive.

On the business side, a variation of models is found within municipal broadband today. All public private partnership deals seem to be customized. Four main models are seen consistently, starting on the wholesales side, with dark fiber where cities have installed conduit and/or fiber over time and then lease out that layer, one connectivity.

Next is a public private partnership, sometimes referred to as the three P's. They can also be public-public partnerships thought the idea typically is that a municipality would build out an extensive amount of fiber infrastructure and the investment either be shared or not shared with a private partner.

But typically the investment is shared and the private sector partner typically serves as the functional ISP and retails of service, and more or less does all the day-to-day activity.

There are also a couple of variants of the retail model. The own and operate model is where a city basically does everything and run the business day to day.

The own and operate with an operating partner is attractive when available. Clients have usually been proximate to another municipality that is already offering broadband. Usually they are new and will hire on board for at least five years and basically outsource some of the functions that that other provider is already performing. This is a very efficient win-win proposition to offload some of the early staffing needs and subsequent operating expenses as that new system is getting up and running and building up the revenue stream.

He also reviewed some typical financials though there are some variations with the dark fiber, public-private partnerships and by the retailer to the wholesale provider which is based on how many premises are passed.

On the own and operate model to an own and operate with an operating partner, the payment is usually made by the owner.

Depending on where Milford wants to go next, there are options in terms of forming partnerships or not. Mr. Stockton continued by stating a completed sample of 683 respondents was done in the survey out of 4,400 households selected. It showed that 96 percent of Milford households presently subscribe to internet service at home with 77 percent using a wired connection. About 8 percent use home internet, which is usually through a cellular plan, while about 6 percent use satellite and another 4 percent have no internet. Most households received broadband services from Comcast, though Verizon and T-Mobile were also represented, and a few additional residents connected via Bloosurf or Starlink.

The survey results indicated that lower income residents tended to select less pricey wired connections, though most Comcast and Verizon users were unaware that they could likely qualify for discounts to further reduce their costs. The Affordable Connectivity Program taps into federal funds that would lower the average user's bill by approximately \$30 per month. The savings on the existing plan appealed to many consumers who said they were fine with their current service and were not inclined to switch to something new. However, others said that they would be willing to switch to a city-owned fiber delivery system if it were the less expensive option.

Speed testing was also completed with 41% of households receiving more than what they were subscribing to. In comparisons, 48% of households stated they subscribe to between 100 and 250 Mbps, while lower income households are more likely to subscribe to lower capacity internet tiers.

The average spending is \$78 though most customers did not know the cost due to bundling packages.

Internet satisfaction levels are slightly above average compared to other markets, with price being the service attribute with the lowest satisfaction levels. Across all service attributes, the percentage of households that are 'very satisfied' with a rating of 9 or 10 is low at 17%.

The vast majority of 74% of Milford households feel that at the present time they have the ability to get the Internet speed that they desire.

Mr. Shaw then continued the review. He stated there are over 3,800 primary electric poles that could be used and there is available space available at the top of the communications zone. The pole owner is allowed to place fiber cable 30 inches below power which should significantly reduce pole make ready costs.

He also talked about the city's fiber network in relation to size and capacity. They believe the system will be well suited for use as the future broadband backbone. He then presented three wireless broadband options:

- 1) Macrocell Fixed Broadband
- 2) Microcell Licensed wireless ("5G")
- 3) Targeted Microcell Wi-Fi

Option 3 was recommended based on the targeted nature of the broadband need in Milford.

Also discussed was wireless deployment scenarios.

Milford Owned System Supported by Adding Resources to IT Department

- This scenario is not operationally feasible currently due to lack of resources and synergies

Milford Owned System Supported by New City Department

- Main approach for Uptown studies and municipal broadband deployments
- New department allows for focused attention by dedicated staff
- Stand-alone departments require greater scale to support higher overhead (management)
- Targeted Wi-Fi not likely to provide the level of cash flow required

Milford Owned System Supported by External Operating Partner (ISP)

- Emerging model for smaller broadband deployments
- Milford system can be supported remotely using cloud-based monitoring capabilities
- Proposed Wi-Fi network would only have 22 fiber gateways and 41 access points
- City would need to provide emergency truck rolls to provide “local hands and a toolbox”
- No in home customer service or repair would be assumed for the proposed service level

Third Party Retail Owner / Operator

- Private ISP builds, owns and operates Wi-Fi system
- ISP sets price and service levels
- Milford may choose to offer dark fiber on existing network

In conclusion, Mr. Shaw pointed out that in this study, the main issue in many households is the affordability of the Internet. Among households without an Internet subscription, 54% state the reason is lack of affordability and 63% are currently under-utilizing Internet capacity due to affordability issues; only 9% of households are aware of the ACP subsidized Internet program with 14% to 25% eligible for the ACP program, but only 11% participating.

The facilities-based Wi-Fi strategy isn't feasible nor is it close. It would have to be something that would be done as a substitute. The initial investment is doable though ongoing operating losses make the venture unsustainable. The target market is not large enough to support the minimum level of fixed expenses.

The next steps would be to try to tap in more to the Affordable Connectivity Program (ACP) benefits within the target community. Hopefully, collaborating with local providers to enhance their offerings and awareness campaigns for ACP. Also, partnering with a local school to gain a better understanding of student needs while providing some solutions would be helpful. He also asked the city to consider limited wi-fi in public spaces. It can be very powerful and a high value service.

Unfortunately for this scenario, it does not work.

Following a few questions by Councilmembers, it was noted there were no GEO codes included in survey. Mr. Shaw also explained that a user rate had not been established for the budget to break even. They would need to go back into the pro forma, to run a sensitivity to determine the price point. That would be need a follow up before that information could be provided.

Regarding subsidized cable and DSL, what speeds are offered, and Councilman Baer understood it was rather slow. He also asked the data cap per user; Mr. Stockton explained that Comcast employes a data cap and removing it adds another \$30 to the amount of the bill.

He also added the Affordable Connectivity Program requires that any service provider participating in that program and receiving federal funds offers that discount on every tier they offer to the residential market.

When asked if Comcast and Verizon, at the DSL level are the only services available in Milford, or if Fios is available, Mr. Stockton stated, yes, he indicated that FIOS is not available in city, though Verizon has it but it is not available in Milford.

It was agreed that only 9% are aware of the discounts available, and in terms of feasibility, this is not a business that in at least, in the City Manager's opinion of next steps, he believes the ACP is something the City needs to work with the school.

On the other side of where free Wi-fi should be considered publicly, he suggests partnership with Comcast to have it installed in the Riverwalk area. Both the library and Boys and Girls Club already offers it, that is a doable area. But rolling something out citywide is not feasible.

Councilman Culotta believes the city should wait for 5G to become more widely available and proceed at that point.

The consensus of Council was to do a public outreach to provide information on this resource to our resident.

The City Manager noted the information was provided in the newsletter several times, though that does not seem to be working. Instead, working with the schools and churches and providing the information that residents need to sign up for the discount.

Economic Director Blum confirmed the information is available and pamphlets available at City Hall. She will contact PIO Trish Gerken of the Milford School District to follow up.

A discussion followed regarding some municipalities providing fiber to residential customers.

The Broadband presentation by Uptown Services LLC concluded at this time.

The Workshop Session was temporarily recessed at 7:10 p.m., to allow for a Special Meeting and Executive Session of City Council.

City Council resumed the Workshop at 8:12 p.m.

Pedestrian Safety Ordinance

The City Manager stated that he presented the pedestrian safety ordinance for consideration back in November . At that time, it was recommended the ordinance be discussed at a workshop before Council takes final action during a regular meeting. He then asked for comments.

Councilmember James referenced section 197-5 which states that any violation of 197-5 will result in a fine of not less than \$100. When he goes to the proposed ordinance, section 4 states a violation of the above will result in a fine of not less than \$100 and if that is speaking to the violation of no one may park or leave standing a vehicle where prohibited or suddenly decreased the speed of the vehicle to respond to persons violating the above, or is referring to no operator of a vehicle shall park, stop or leave standing a vehicle on a street?

City Manager Whitfield said he is unsure and cannot answer it right now.

Councilmember James said he can understand that if it refers to section 3, but it is referring to section 2 loitering in a median for an excessive amount of time and it is considered prima facie evidence of the violation above. He feels there is a conflict with that.

Councilmember James believes that if the person is there, they are probably there soliciting money and by levying a fine And considering the position the person is in, that will put them in a worst condition. The reality of collecting a fine is probably zero. He provided some potential constitutional amendment violation examples that are unenforceable, adding that he prefers not to institute something that is irrational or unenforceable.

Solicitor Rutt said to make the ordinance conform with the proposed statute, the statute says violation of 197-5 which would be everything. To conform, it could say violation of the adopted ordinance or violation of the above sections, will result in a fine of not less than \$100.

City Manager Whitfield said this is a pedestrian safety order only and has nothing to do with panhandling. It also states that the individual cannot stand in the intersection for more than two signal changes.

Councilman James asked about the 200 feet of the intersection. City Manager Whitfield clarified that this ordinance will not prohibit people from standing within a right-of-way but will not allow them to be within the signalized intersections.

Councilmember Baer noted the comments regarding this ordinance being unconstitutional and asked how it has been corrected to be considered. He does not want something to be adopted that is unconstitutional.

Solicitor Rutt said this applies to health and safety and is not unconstitutional nor does it have anything to do with anyone soliciting money. The problem will be the cheerleaders or somebody similar out there with their cans running up and people dropping nickels in the can.

City Manager said Penn state had weekends where students would go out and can at intersection. There were several students that ended up getting struck by cars, and even students killed. They finally did away with it because it is was too dangerous.

When the \$100 fine was questioned again, City Manager Whitfield said there must be a penalty. Moving them out of the roadway will be difficult without a penalty of some sort and the reason it is in the ordinance.

When asked Acting Chief Huey's opinion, he said that he and the City Manager had this conversation very early in this process. It came up because of panhandling complaints. The Acting Chief determined the Supreme Court has held that the First Amendment covers charitable appeals for funds and that panhandling, solicitation, or begging are protected speech under that First Amendment.

However, after watching the panhandlers, he was concerned about the way they were standing in the roadways, especially at the Route 113 and Masten Circle intersection with their backs to the intersection when considering a high impact collision, They would hear it and naturally turn to look at the accident but not give themselves time to get out of the way of a car that may become out of control. But separating that from anything to do with panhandling is a wise choice and it cannot relate to the prevention of panhandling activities.

When asked if the 200 feet from the intersection helps mitigate the safety risk, Acting Chief Huey stated that normally, you might have a rear end collision 200 feet back, though they are rarer within the confines of the intersection and are typically 30, 50, 80 feet back from the intersection, though that can send a car out of control. He hopes that would create a safety zone to prevent these individuals from being hit by a vehicle.

Councilman Baer also mentioned that 2023 it is now unlawful for anyone to be on any city street and approach any vehicle in operation. He does not see any mention of signalized intersection there. It reads like someone is standing and approaching a car by the library on Washington Street for example.

Councilmember Baer also noted the number of streets that are state-maintained roads within the city and asked if that applies. Solicitor Rutt confirmed it would apply. DeIDOT has the maintenance, but in terms of public safety, the city patrols those streets within its boundaries.

Councilmember Baer said he was under the impression this involved signalized intersections. In his opinion, the ordinance as written, is much too general.

Solicitor Rutt said if this is something Council wants added to an agenda, these are the kinds of questions that can be addressed in terms of the language that would ultimately come before Council or discuss when it is before Council. Tonight, the City Manager is asking if this is something Council wants to consider.

The Solicitor also noted that this language tracks the Seaford ordinance with the exception of the fine. The Seaford ordinance does not have a fine.

City Manager Whitfield pointed out there has been no challenges to their ordinance.

Councilmember James asked that the language in ordinance subsections 5A-E is consistent with what will be reflected in the ordinance.

Planning Commission & Council Approval Requirements

Planning Director Rob Pierce recalled the last amendments to the City's Subdivision and Zoning Codes. Those updates have been effective for more than a year, and he wanted to give the Board of Adjustment an opportunity to review the codes and to provide recommendations as well. That was done in December after which the board did not feel there was a need for any additional updates.

He again went back to the Planning Commission to provide then another opportunity to make any changes to the two codes. After a general introductory discussion last night, he presented a couple of goals that he wanted to try to address.

There were some grammatical errors that have been caught and need to be fixed.

Planner Pierce also wanted the Planning Commission to look at the permitted and conditional uses in each zone without confusing everybody as occurred during the last code overhaul. Lastly, he wanted to know if there was any interest at the Council level or interest that City Council can provide to the Planning Commission on amendments to the land use application approval requirements.

The below presentation followed:

Types of Land Use Applications:

- ❖ Minor Subdivision
- ❖ Annexation
- ❖ Change of Zone
- ❖ Permitted Use Site Plan
- ❖ Conditional Use Site Plan
- ❖ Conditional Use
- ❖ Planned Unit Development
- ❖ Major Subdivision

Approval requirements.

- ◆ Minor Subdivision, Lot Line Adjustment, Lot Consolidation
 - ◆ Reviewed Administratively
- ◆ Annexation
 - ◆ Annexation Committee – Public Meeting
 - ◆ Planning Commission – Public Hearing
 - ◆ City Council – Public Hearing
- ◆ Change of Zone
 - ◆ Planning Commission – Public Hearing
 - ◆ City Council – Public Hearing
- ◆ Permitted Use Site Plan
 - ◆ Preliminary Plan - Planning Commission – Public Meeting
 - ◆ A by-right site plan cannot be denied if all code requirements are met.
 - ◆ Final Plan – Reviewed Administratively
- ◆ Conditional Use Site Plan
 - ◆ Preliminary Plan – Planning Commission – Public Hearing
 - ◆ Preliminary Plan – City Council – Public Hearing
 - ◆ Final Site Plan – Reviewed Administratively
- ◆ Conditional Use
 - ◆ Planning Commission – Public Hearing
 - ◆ City Council – Public Hearing
- ◆ Planned Unit Development
 - ◆ Preliminary Plan - Planning Commission – Public Hearing

- ◆ Preliminary Plan – City Council – Public Hearing
- ◆ Final Site Plan – Planning Commission – Public Hearing
- ◆ Major Subdivision
 - ◆ Preliminary Plan -Planning Commission –Public Hearing
 - ◆ Preliminary Plan –City Council –Public Hearing
 - ◆ Final Plan –Planning Commission –Public Hearing
 - ◆ Final Plan –City Council –Public Hearing

He asked Council to consider modifying the land use approval requirements to allow the Planning Commission to have the final determination for Conditional Use, Conditional Use Site Plan, Major Subdivision and Planned Unit Development applications.

In the meantime, the Planning Commission will meet over the next few months to review Chapter 230 Zoning and Chapter 200 Subdivision of Land, primarily focusing on the following:

- Land Use Application Review and Approval Process.
- Permitted and Conditional Uses within each zoning category.
- Reduction of the number of Conditional Uses within each zoning district by making some uses permitted with specific conditions to be met.

In comparison, Planner Pierce reported that in Kent County, a by-right major subdivision application stops at the Regional Planning Commission. It does not go before Levy Court because if it meets the code requirements, it gets approved.

The PUDs (planned unit developments)/conditional uses are still reviewed by the elected officials within the county.

In the town of Smyrna, all subdivision and conditional use applications go to the Town Council for final approval.

In conclusion, he stated the purpose is to speed up some of the meeting and reduce many of the public hearings and the burden on agendas that Council is presently dealing with.

Councilman James commented on preliminary plans that currently come before City Council. He would consider revising that and just seeing the final.

He would consider handling planned unit developments in the same manner.

He is contemplating any changes in conditional uses. He would rather have the Planning Commission review what is permitted as a use in comparison what requires a conditional use and if there really is an adverse impact or a use seems appropriate to fall under a certain zoning.

According to the City Planner, that is part of the scope the Planning Commission will be considering and whether certain conditional uses need to be moved as a permitted use and eliminate the conditional use hearing process in totality.

Councilman Culotta agrees with that for all of them. For a preliminary approval, that is something Council currently votes on. It should go to the Planning Commission for their recommendation, then it comes to Council. Once the preliminary approval is granted, unless there are major changes to the plan, it should not have to come back for final approval. The two-step process he does not think is necessary.

Councilman Culotta said he does not care how long it takes Council to give approval, that is not the problem. The issue is the speed and ease for investment to come into Milford and the cost to those developers to go through the approval process to ensure they receive a profitable investment.

He agrees that also applies to the PUD. However, it should come back to City Council. Council are the elected officials that are put in these seats by our constituents. Council needs to make the final decision.

Mr. Pierce pointed out we have robust preliminary plan review process. After receiving preliminary approval, he explains to the developers they have their marching orders going forward and know what is expected. If there is a significant deviation to either a site plan or a subdivision, he will make them come back for preliminary again. He does not want it to look different at the final step. He has the staffing, as well as consultants, to ensure there is compliance with the preliminary approval.

Like the site plans, it requires three signatures from city officials to authorize recordation.

Solicitor Rutt explained a site plan is a technical review and whether it meets the code. A conditional use application is a legislative matter that should have both hearings. The same applies to the PUD which is also a conditional use. That should have the redundant public hearings by the Planning Commission and City Council. As far as the final plan, that any major change could be left to the discretion of the planning direction to determine if an application needs to go back before Council.

Councilmember Boyle agrees with Solicitor Rutt. However, it is a subjective decision by the Planner. Things used to happen in this town, and he often hears things didn't used to be like that. He wants to tell them that we don't have those records either.

It was agreed to streamline the process for investors as much as possible, but there are some subjective matters that need deliberation and decisions by elected officials.

It was confirmed that presently Mr. Pierce authorizes the final plan.

The various applications were then reviewed and discussed again. It was noted that at the time of preliminary approval, not all agency approvals have been received.

Mr. Pierce was asked by Council for Planning Commission to focus mainly on the shift from conditional uses to permitted uses.

Councilman Baer pointed out that streamlining the process for developers is good, but he also does not want to eliminate the public hearing opportunity for our citizens.

The Workshop Session concluded at 8:55 p.m.

Respectfully submitted,

Terri K. Hudson, MMC
City Clerk/Transcriptionist