

CITY OF MILFORD
COUNCIL MEETING MINUTES
February 27, 2023

The City Council of the City of Milford met in Regular Session on Monday, February 27, 2023.

PRESIDING: Mayor Archie Campbell

IN ATTENDANCE: Councilmembers Daniel Marabello, Mike Boyle, Andrew Fulton, Todd Culotta, Nirmala Samaroo, Brian Baer, Jason James Sr., and Katrina Wilson

STAFF: City Manager Mark Whitfield, Police Chief Cecilia Ashe, and Deputy City Clerk Katrina White

COUNSEL: Solicitor David Rutt, Esquire

Per the Limited Public Health Emergency Declaration issued by Governor John Carney on March 1, 2022, and the virtual meeting provisions provided in Senate Bill 94, Milford City Council Meetings and Workshops are being held in the Council Chambers at City Hall, with attendees also participating virtually.

PUBLIC COMMENT PERIOD PRIOR TO MEETING

Kim Wills of 8061 Shawnee Road shared that a leasing company was called to clear off the homeless in Walmart Shopping Center. She expressed concern about the money being spent to clean up the trash and items left by the homeless on private property who are being provided with meals and funds.

CALL TO ORDER

Mayor Campbell called the meeting to order at 6:03 p.m.

INVOCATION AND PLEDGE

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

The agenda was rearranged to allow public comment at this time. See item prior to regular meeting agenda.

PUBLIC HEARING/PUBLIC COMMENTS

Ordinance 2023-07

Lands of Oak Forest Park, LLC/Change of Zone

3.93 +/- acres of land located along the west side of S. Rehoboth Boulevard

Comprehensive Plan Designation: Low Density Residential

Present Zoning District: R-2 (Residential District)

Proposed Zoning District: C-1 (Neighborhood Commercial) (Proposed Lot One only)

Present Use: Golf Course, Clubhouse and Restaurant

Proposed Use: Restaurant/Brew Pub (Proposed Lot 1)

Tax Parcel: 3-30-11.00-008.00 (portion)

Planning Director Pierce read the portions of the staff report into record.

The applicant proposes to subdivide parcel 3-30-11.00-008.00 into two parcels, separating the existing golf course operation from the former restaurant and pro shop. The applicant is requesting to rezone approximately 3.93 acres of land from R-2 (Residential District) to C-1 (Neighborhood Commercial) shown as "Proposed Lot 1" on the provided survey. The rezoned portion of the property currently contains the existing clubhouse and restaurant. The applicant would like to renovate the existing clubhouse and restaurant into a standalone restaurant and brewpub.

Staff would review the minor subdivision administratively per Chapter 200 Subdivision of Land.

Based on the information presented, the City of Milford Code, and the Comprehensive Plan, staff submits the following regarding the request to amend the Zoning Map:

The Change of Zone request is consistent with the adopted 2018 Comprehensive Plan Future Land Use maps. The Future Land Use designation for the property is Low Density Residential, for which C-1 (Neighborhood Commercial) is a suitable zoning designation. See attached Land Use & Zoning Link table from the comprehensive plan document.

Per the 2018 Comprehensive Plan, neighborhood commercial and office-type uses that do not detract from the residential character of the area may be found in this area as well. This land use is similar to the R-1, R-2, C-1, and OB-1 zoning districts found in the Milford Zoning Ordinance.

Chapter 230 states, the purpose of the C-1 district is to provide for limited commercial and professional services activities that can be compatible in a neighborhood setting to provide goods and services to local residents.

Restaurants, excluding fast-food service or franchised food service operated restaurants are permitted uses within the C-1 zoning district.

The provided plan provides adequate off-street parking for the restaurant on the C-1 zoned property per the City's off-street parking requirements found under Chapter 230-21. The zoning ordinance does not provide a specific parking calculation for a public golf course. The residual land containing the golf course would contain 81 parking spaces, which equates to more than four spaces per hole, which should be adequate.

Any future use of the property must comply with Chapter 230 and the C-1 (Neighborhood Commercial District) zoning use and area regulations. Enclosed is a copy of the current permitted and conditional uses within the C-1 District.

He identified each map in the packet and the public notice advertised in the Delaware State News on February 2, 2023, and advised that all owners of properties within 200 feet of parcel were mailed the notice. The property was posted with a public hearing notice sign.

The Planning Commission reviewed the application with a recommended approval by a vote of 5 to 0, with one abstention.

Property Owner Timothy Johnson of 119 Coursey Mill Road, Felton Delaware, stated he lives about ten miles outside of Milford, on Canterbury Road.

Matthew Johnson of 8028 Canterbury Road, Felton, also introduced himself, stating he also lives approximately ten miles from Milford.

T. Johnson stated he has been here since 1985 and is an electrical contractor. He met his wife here, adding that her family is from this area and she grew up in Milford and has been for 67 years and worked at Milford Hospital.

He has been here for the past 48 years.

One of his first projects was building Air Park Plaza out on the highway prior to Milford coming to Milford. They initially bought O'Neil's liquor store which was managed by his mother-in-law.

He then purchased the business park land that the city purchased from him in 2000. His goal back then was to build a golf course and a housing project in that area. The city came to him and informed him they wanted to build a business park in Milford, and he agreed with the need for more businesses in Milford. The city then purchased the land from him.

In the meantime, the Food Bank was looking for land, and he donated the land to them the current Food Bank is located on today.

Because they are building a new 67,000 square foot facility, he most recently purchased the Food Bank property back and the money paid for the property will be used for the cost of the new facility.

He has developed numerous properties in Milford. On McColley Street, he renovated a 100,000 square foot building there that was used by a medical facility. He purchased the old Dr. Graybeal's Office on the emergency room side of the old Milford Hospital. That was turned over to Brandywine Autism.

Mr. Johnson also purchased the old NutrienAg Solutions across from Perdue and has been more than two years getting a clean bill of health on that property. He hopes that the project will come before the city soon.

He is very excited about the golf course, noting that it has been closed for two years. His son, Mat, played golf there when he was in high school. It has been an asset to the community and the restaurant and golf course need to work hand in hand. That is the purpose of the rezoning which will allow the restaurant that his son will discuss.

M. Johnson stated that along with the packet submitted to the city for the rezoning from R2 to C1 included a detailed letter which he read into the record:

The existing Rookery North golf course, formerly known as Shawnee Country Club, has been vacant for the past 2 years. However, effective December 27, 2022, Tim and Matt Johnson t/a Oak Forest Park, LLC have purchased the golf course and former country club. Our plan is to reopen the golf course and country club after giving them both an extensive remodel. The golf course will remain a regulation 18-hole course with semi-private memberships, that will also be open to the public.

The old country club building will receive a much-needed facelift both inside and outside using the existing footprint. Our concept for the former country club is to open a restaurant and brewpub that will occupy the main building and former pro shop. This new restaurant and brewpub is expected to employ 75-100 people, not including the 15-25 employees for the golf course. Ample parking already exists to satisfy the needs of both the restaurant and golf course. Typical hours of operation for the restaurant will be comparable to other restaurants in town, which are approximately 8am-9pm. The plan is to have the restaurant and brewpub open to the public by September 1st 2023.

Currently, a restaurant and brewpub would be an approved conditional use in the R2 zoning as long as the golf course remains open. The potential tenant is going to make a substantial investment in the renovation of the former clubhouse and because of this, they would like the option to purchase their portion of the property in the future. Essentially, we would like to carve out 4 acres for the restaurant and rezone this to C1, which would be an approved use.

For the golf course, work has already begun to clean up the existing landscaping. We plan to have the first 9 holes, driving range, and pro shop open by September 1st 2023 to coincide with the opening of the restaurant. The final 9 holes, we will have open by June 1st 2024, if not sooner. Since the existing course layout will remain the same, all of our concentration will be on landscaping and refurbishing the greens, fairways, bunkers, and irrigation systems. The former pool house will be remodeled into a new pro shop which will provide services to both golf and pickleball activities.

Aside from the golf course, we know the City of Milford is looking to connect multiple properties going West towards Elks Lodge Rd. We have no problem with allowing the city to install a bike/walking path across our property to allow access to other adjacent properties in the future.

The future success of this property depends on the establishment of a new restaurant, which will be the anchor, and create an attraction for the golf course. We would hate to see the golf course fail once again and houses take its place. We are excited about the potential for this property and the great benefit it will once again provide for residents of the City of Milford and surrounding communities.

When asked for questions by the Council, it was confirmed the property would be leased to the restaurateur. When asked why a C-1 is requested, as long as the brewpub and restaurant are permitted if it continues to be operated with the gold course. M Johnson stated it is permitted, but only if the golf course is to remain open. As seen in the past, the community did not support the golf course and it was forced to close. In turn, that would force the restaurant to close and because of his substantial investment of \$2 million, no bank is going to lend him money on a property he cannot buy.

It was also pointed out they are making a substantial investment in the golf course itself.

When asked if the \$2 million investment would allow him to own the property; the answer was inaudible.

Councilman Marabello asked if the restaurateur would need to get his loan if he needs it for the restaurant based on his business plan and his net worth and asked if that is correct. That question will be asked of the potential restaurant owner.

It was clarified that the reference to the nonsupport of the golf course was related to the public, and not the City of Milford.

Jeff Hammer of Rehoboth Beach, Delaware, then addressed the Council. He stated he has been here since two years after graduating from college and has owned restaurants for more than 31 years. He started with Arena's Deli down here and sold it in 2005 to his employees. He has owned numerous coffee shops. He currently owns Fins Hospitality Group and as of today, has seven restaurants in Sussex County. He just purchased Just Hooked in Fenwick Island and will be opening that in April.

He will then begin working on this project if this is approved tonight and if the good citizens of Milford want them here. Fin's Hospitality includes Fins Ale House and Raw Bar, Claw's Seafood House, JR's Seafood Shack and Big Oyster Brewery at 1007 Kings Highway which is on approximately four acres. They have a canning building and a restaurant there as well. The canning building is their brew house and beer is also stored there.

His purpose is to come to Milford and provide an approximate 200-seat restaurant in the old clubhouse. The pro shop will be their brewery building, so substantial renovations are needed to the pro shop and the current clubhouse. That building has been unoccupied for several years. And it will need some mold and mildew remediation. It will require quite a bit of money and interior improvements, as well as electric and fire suppression system upgrades.

Mr. Hammer said it is basically a project that will start almost from scratch except the bones of the building are good. The roof and walls are in pretty good shape.

His response to the question about the need to rezone to C-3, is because he is going to put \$500,000 to \$600,000 of his own money into this and borrow the rest. The lender will want to see a long-term lease with a purchase option. The idea is the Johnson are going to make a substantial commitment as well on the exterior of the building, the parking lot, and landscaping. They will be leasing him approximately 3.9 acres and it will be his responsibility to maintain the parking lot in my zone area, the landscaping, but they will also have common area fees related to the paving, grounds, etc.

Mr. Hammer confirmed he will be leasing the entire 3.9 acres with the option to purchase it, which he hopes to do in five years. Otherwise, he will have a 15-year long-term lease. The banks will want to see a long-term lease in order to recoup their investment. Currently, the estimate includes the cost of renovating the property, redoing the pro shop, interior, electric, and plumbing, and the hope is to be open by September.

Currently through his restaurant group, he supports about 150 different charities. They work well in the community and have always done that. They have great partnerships with the police and fire departments and he believes they will be an asset to the community.

There will be an area for people to have weddings, birthday parties, family reunions, and somewhat pay homage to what it was when it was a clubhouse at the country club, were many of the local citizens here tonight probably grew up swimming at the pool there and playing golf the first time with their kids.

He thinks it is great to have a public course in the community and have those types of advantages such as playing golf with their kids, playing pickleball or using the walking path.

Mr. Hammer sees this as part of the whole redevelopment of the area and has talked with area folks about some walking paths that would extend down the roadway, around to the hospital.

At his Big Oyster location, there is the Breakwater Trail, he adds new places for bicycles every year. Because literally, he will have a hundred bicycles there on a Saturday because so many people bicycle around the community in Lewes. They have been blessed to be able to add to the old train tracks down. He noted most people are probably familiar with the area that goes out to almost Georgetown now.

He pointed it that has become a family outing with their kids in the carrier on the rear of their bikes. It has become a family atmosphere.

Mr. Hammer encouraged anyone concerned about a brewpub to visit the restaurant or go on the Instagram page to see their playgrounds with corn hole and bocce ball, as well as chalkboards for the children to color on and sandboxes for them to play in. Families enjoy going there who hang out and play with their kids while they eat.

Though they are a brewpub, they are 25% alcohol and 75% food. He emphasized they are not nightclubs and close early at 9 or 930 on the weekends.

He believes this will be a benefit to the community and does not want area neighbors to worry about noise. The Baptist Church is next to the Big Oyster in Lewes, and they were very nervous when he first moved there. They ended up part of their property later and are great friends and work well together.

Mr. Hammer concluded by stating that when he first moved into Lewes, he purchased .7 of an acre and it was zoned commercial. They had a plot for the restaurant and had parking. The Baptist Church was next door, and Pastor John and the Senior Pastor were very nervous about a brewpub moving in next to a Baptist Church.

Mr. Hammer asked if they were Southern Baptist, and they said they are not conservative enough for their church. So he didn't know what he was getting into at that time, but they fought him on it, and got some signatures, though he had a lot of signatures from residents on Kings Highway, and they ended up being granted their license.

He went to them afterward and said they are going to be neighbors and what can he do; they asked him to put up a fence and he installed a six-foot fence. They also asked if he would not have an early branch on Sundays during their church service. His response was he was happy to do that. And when they asked if he was open late at night, he again told them no, and he assured them he would not have loud music outside bothering them. He also offered his parking when the church has some big events that other churches attend. He also agreed to install a sign prohibiting his customers from parking on the church property.

They became friends and several years later, they approached him and asked if he was willing to buy some of their property, so they could rebuild their church further down on their property, which was better suited for their parishioners who were older and couldn't get up to the second floor, which is now the main portion of the building and hold their services.

Since that time, they have had many conversations and are very good friends, purchased their property which gave them the ability to rebuild their church.

His belief is that if someone stands by what they say they will do, then you're rewarded in that community, and he was blessed with that reward by doing what he said he was going to.

His goal is to be a good steward of this neighborhood in Milford, hopes to donate to local charities, and help with some of the missions here for both Kent and Sussex Counties.

Councilmember Marabello confirmed that Mr. Hammer will be asking for an option to purchase the property; Mr. Hammer stated in the lease that is correct.

Councilmember Marabello referred to the Johnson letter that states with the option to buy only Mr. Hammer's portion of the property and not the 3.9 acres. When asked about his loans, Mr. Hammer said it will be a predetermined price for a future price purchase. He added that he will already have \$2 million in the project before he purchases the property

He shared that most restaurants work on an approximate 4 to 6% margin. With the way labor has been lately and the cost of goods today, it is more on the 2 to 4% margin which is a very narrow business margin. Most prefer to purchase the properties if they are blessed enough to be able to do that from the landlord because that really is the asset.

At the end of the day, like other businesses, they will have used equipment, a building that is aging, and hopefully having a building they own will allow them to maintain it and be a good neighbor.

He also confirmed there will not be an option before the renovations are started, though that is the nature of the restaurant business and is why nine out of ten fail the first year.

Councilmember Marabello verified that Mr. Hammer will need to provide a business plan to the lender, which Mr. Hammer stated is already done, and includes assets.

Councilmember Marabello asked if the business loan will be contingent on the C-1 or an R-2. Mr. Hammer said in this instance yes because the bank is not going to lend the money. Their intention is to keep the golf course open, but the money will not be lent on a property that could close later, which would prevent his restaurant from being open because it would be contingent upon the golf course. As a result, he will not receive a business loan without the proper zoning.

Councilmember Boyle spoke to Mr. Johnson stating that shortly before the golf course was purchased, they had a long discussion about the rezoning. Perhaps the councilmember misunderstood, and asked if it was his intention to rezone the entire property along the front and adjacent to Rehoboth Boulevard. Mr. T Johnson confirmed only the restaurant and they spoke about the 3.9 acres, which was finally plotted out, that included the restaurant and the pro shop.

Councilmember Boyle informed both gentlemen that they had provided a lot of clarification that he wish had come out a lot sooner in the process.

Mr. T Johnson stated that is the reason he approached Council, adding that he did make phone calls to the Councilmembers because the news media often gets things out of text. He never made any public comments and the reason he called Council to speak to them and inform them that around December 27th they were approaching the property. He was going to take the old pool house and convert it into the pro shop and remodel the existing clubhouse with the brew portion in the old pro shop.

Councilman Baer said they know that fees are going to be charged for the golf course and asked if there would be a pickleball court fee. It was noted the pickleball courts are a substantial investment as well. What is out there now are the old tennis courts. Anyone driving by has seen the fence that is coming down and trees are being removed. So yes, there will be a fee structure that will be managed and schedule by the pro shop.

It was confirmed the actual brewing building will actually be in the footprint of the pro shop. The pro shop has not yet been measured though it will be expanded a little and most likely around 4,500 square feet, with the walk-ins, hop, grain and keg storage will all be inside.

Councilmember Marabello said that though he hopes not, he asked what will occur if the restaurant fails and what will be done at that point to safeguard the investment. Mr. T Johnson said when he was talking to Councilman Boyle, he pointed out that a convenient store could be built there with gas stations. Though the Planning Director can explain that would require a conditional use.

However, he has done other properties throughout Kent and Sussex Counties, that is not the right location for a gas station/convenient store. Because there is heavy traffic going to the hospital or to Route 1, it is not the correct place to put in that type of operation. He said the Planner will also say a shopping center can be placed there on 1.5 acres. But again, he pointed out a shopping center does not work well in the middle of a thru street/40 mile per hour road. It needs to be at an intersection or somewhere similar.

Mr. Hammer spoke again, stating he has a 100% track record. When he first started in the restaurant business and started doing larger restaurants and Arena's, people said don't go in there. They wanted Route 1 and were told don't put your Fins Ale House in the cursed shopping center that only has a rear entrance. That has turned out to be his busiest restaurant.

They told him not to go to the old Smitty McGee's because it would never survive the winters. He is doing great there and it is the third busiest restaurant.

He went to Kings Highway and was told he would never survive next to a Baptist Church and the property is too small. Now it is four acres and is his second busiest restaurant.

Fins has a record of always doing well wherever they are and he has been blessed not only because he has amazing employees, but because they are a good employer as well. They provide health, insurance, paternity/maternity leave, and paid vacations. They are a very progressive company and that goes is advantageous for the company, the community and

those that work with them, and hire people within the community. Those people, their friends, and families come and do events there and he believes they will prove they can succeed in this community.

Mr. Hammer continued by stating that failure can happen, but he will not let it happen.

When asked if anyone wishes to speak in favor of the application.

Gerald Esposito of 18 Victoria Drive, Milford read two letters of support into the record. One was signed by Chairman Joseph T. Conway, Sussex Economic Development Action Committee, and the other was written by Mr. Esposito. Both letters are available at the City Planning Department located at the Public Works Facility at 180 Vickers Drive.

Hunter Emory then spoke, stating his business is at 116 North Washington Street, Milford though he lives at 20417 Spangler Drive in Lincoln, Delaware, stated he was born and raised right here in Milford, Delaware. Generations go back so far we can't count anymore. He went to Milford School District and graduated from Milford High School and came back as a schoolteacher, and now I own a small business in both the Milford and Georgetown communities specializing in insurance.

He also sat on the Milford School Board for five years and now sits on the Delaware Co-Op Board of Electric. In full disclosure, he does rent a space out from Mr. Johnson at the Airpark Plaza. But he is not here on behalf on that nor on behalf of Mr. Hammer but is here on behalf of his children. They love Big Oyster and love the location on Kings Highway in Lewes. They go down on are regular basis to attend it and use the playground. The food is delicious, the beer is great, but the playground is the best part of the whole operation. On behalf of a lot of families in the community, he is speaking by saying they are very excited about the opportunity that this restaurant is coming to our community. He thinks that Mr. Esposito put it best that this could be a game-changing project for this community with open space and opportunities for families to have a meeting place to get together, to break bread and to watch the kids play—something that Milford appears to lack.

He is here in support of this project and thinks this is a great opportunity for this community and revitalizing the country club that has so much nostalgia for so many is a great opportunity for this community to grow and to thrive.

Butch Elzey of 199 Jenkins Pond Road, Milford, said he was six years old when his family jointed the country club. When he was twelve, he was allowed to ride his bike from Marshall Street through the Sharp Farm. He had a guy ask him if he would caddy eighteen holes for him. He did not know what a caddy was though he did. He then gave him \$20 which was a ton of money back then.

He became a member and loved golfing and his wife was a five-year champion golfer. They have done many events at Shawnee and did homecoming for the 198th Signal Battalion and the 153rd. They have done so much in that building. Milford needs this building and the country club. His two boys love to golf as do his granddaughters.

He also said that Timmy Johnson does not fail. When he had his business, he did a lot of business with Timmy. He painted heavy equipment and when Timmy brought a piece of equipment around, you better have your act together, because it has to be right. And that is how he is.

People do not realize how many jobs he's created in our town and how many businesses have been created because of Timmy Johnson. He said it is amazing and believes he is one of the best people he has ever met. He is not just blowing smoke because he is here, but it is a fact and is an amazing individual and he will not lose.

If Council approves this, it will help this community so much.

Someone told him that golfing is a thing of the past, but that is not the case. He said there is little for kids to do in Milford except to look at their cell phones. The Rookery/Shawnee Country Club will lighten the community and Timmy will do it right.

Bryan Shupe lives at 30048 Stage Coach Circle, Milford, stated he is a small business owner who recently rehabilitated the old Growmart building as well, so he knows a little bit about rehabilitating properties in Milford. Tonight he is here to speak in support of the rehabilitation of the old Shawnee Country Club and zoning the 3.9 acres to commercial.

The Rookery has been successful in the past, and it can be successful again. But he thinks almost everyone understands from this community that this restaurant will cement the success of the golf course, He just wanted to take this chance to personally and in public to thank Tim Johnson for putting another investment in our community and providing more jobs in our community, and for Jeff Hammer for taking this chance on Milford as well.

He said a little bit about Jeff Hammer, who speaks to Council's vote tonight. Usually, when voting on rezoning is usually an unknown as to what restaurant or business will end up there. But in this case, we do know and have the opportunity to consider the good quality of the person who is coming in and their experience. Jeff Hammer is an absolutely amazon CEO, an amazing businessperson, an amazing restaurateur. As he said before, his restaurant is 75% is food. When he and his wife go down to his restaurants with their children, they don't drink and look for places that have great food and have amazing atmosphere and amenities for their kids. His restaurants have it all and that is what is needed and he will bring to Milford to help with the rehabilitation of that golf course and property.

It speaks to something that was put into the Riverwalk/Rivertown plan ten years ago and that is the quality of life. This is to have a place where people can be outside. A place where families can meet and talk about their day, talk about their week, talk about their plans, and being a small business owner myself, who has invested in this community, it is projects like this that will reinventing what that course looks like and what the restaurant looks like. It will make people like himself invest more in this community and want to put more businesses here and want to employ more people because of the excitement surrounding our community. He urged Council to think hard and to please vote in favor of the rezoning.

Jason Weissberg and live at 115 Beufort Lane, Milford. He, his wife and family have been residents of Orchard Hill for over fifteen years. He comes here as a resident of Milford, a golfer, and for full disclosure, he is and has been lucky enough to have made a career in craft beer for the last 20 plus years. He started as a brewer back in 1999 when there were about 1,000 breweries. He is fortunate enough to still be in that industry and part of the more than 9,000 breweries. He is not going to rehash your instructions, what everybody said, but just to give an overview of what craft beer is and the potential of craft beer has on a community.

He stated that nationally, the 9,000 breweries that are in operation have an economic impact nationally, from 2021 data, \$76.3 billion dollars is what craft beer brings to the communities that it serves. It is also responsible for over 490,000 jobs on the national level. Locally, the jobs these breweries create are going to keep people in our community. They are a growing, feeding, learning, nurturing environment. The cooks, the dishwasher, the hosts, the bus boys, the wait staff who will become the next chefs, the next HR specialists, the next payroll administrators, the next managers, the next purchasing agents for their community.

The brewers and the folks that come in to help the process and want to learn a trade and want to learn a skill that will take them from continuing to work within the Big Oyster Brewery network to other local breweries, or they can open their own and provide more economic development in a community

There are a number of small breweries that have opened here recently that have grown and that have done nothing but bring people to our communities. Talking about why these people come here locally, there is an entire segment of tourism called beer tourism that is specifically the travelers motivated by visiting breweries. Brew pubs, going to beer festivals, going to visit places where they have beer events. From Delaware alone, that impact was \$405 million dollars to our small state.

While Delaware was 41st in the nation of per capita impact, we were 9th overall nationally. So that craft beer in Delaware, that \$405 million dollars was done by over 2,200 people working in the craft beer industry in Delaware alone, with an average wage of over \$62,000. These are real jobs and real opportunities to invest in the people in our community to keep people in our community who can benefit not only in their current jobs, but all the ancillary support systems and businesses that go along with it.

He is going to touch upon the crime because online, he has been reading about the fear of crime. Studies have shown that response, calls or emergency calls of all different types of alcohol serving establishments, whether it's just bars only, restaurants with beer and liquor and wine, brew pubs and tap rooms. The frequency of emergency calls to brew pubs and tap rooms is lower than the average of any other establishment.

It is his hope that Council will realize the benefits of allowing this group to move forward with their plans to bring a brew put to the property at the golf course. It will be a strong partnership that will both encourage golfers and craft beer

aficionados to visit Milford, and join not only the golf, but take advantage of everything our town has to offer. This will be another tourism amenity that our community can get behind and support and he hopes Council does the same.

No one else reacted to speaking in favor of the application. The floor was then opened to those opposed.

Joe Palermo, 5 Misty Vale Court, Milford, stated that at the Planning Commission meeting, Mr. Johnson and Mr. Hammer stated they had several lucrative businesses in Sussex County, as well as a new establishment in Fenwick Island and he comments them employing about 800 people. He commends them on that.

That is not the issue, and it is the fact as Councilman Marabella elaborated that if it fail, there are other options for the property. That is the concern of the residents of Milford. He finds it hard to believe that a financial institute requires you to get a change of usage from R-2 to C-1. Neighbors are concerned that if it flounders, considering there is no sure bet, that they can flip it, have a strip mall, a laundromat, and any other use in the C-1 category.

Gloria Markowitz of 8 East Thrush Drive, Meadows at Shawnee, stated the restaurant and the pub sounds wonderful, and she likes to eat. Her letter is in the packet and will not reiterate the entire letter. She is aware that five to six of the councilmembers have already decided on this but wants to give some food for thought.

She thinks it is amazing that WBOC, the Delaware State News, and the Cape Gazette have carried the new business story the next day after the Planning Commission meeting. That was quick and seems like this zone change is fast tracked and appears that way to simple people. The neighbors had a little time to get together for a meeting, plan to move, hire an attorney. They may have had eight or ten days after they found out.

She read a little excerpt from her letter reading that since the issue we nearby residents are having against this project is the zoning change, I propose that rather than change the zoning code. the title of the proposed brew pub be changed to accommodate the existing R-2 definition and call it "specialty brews, handcrafted libations, brewed on premises, brews and bordello". She doesn't care but it can be tweaked to fit the current R-2 definition. Changing the zone leaves this property open to many undesirable businesses if the proposed plan does not last, as has happened in the past. The 3.93 acres can be subdivided out without changing the zone.

The parties involved could also change their minds and spin it off as soon as it is sold as commercial property.

Two businesspeople are requesting this zone change. Many people in attendance are opposing the zone change. It could be 50 for and 50 against in their community. She is glad she is not sitting there and has to judge it. Finally, she asked if a traffic study had been done and do you think it's prudent that we should do a traffic study? She said traffic will adversely impact their neighborhood.

She is requesting Ordinance 2023 -07 be denied, or at least tabled so that more research can be done with the taxpayers most affected, and the neighbors living around this property.

No one else spoke in opposition. No one indicated they wanted to make a general comment.

In attendance virtually, Nina Pletcher of 428 South Walnut Street, Milford, said she has spoken to both of her councilmembers in advance of this meeting in favor of the project. She thinks it will be a wonderful service to the community. It is no secret that the brew pub has some serious roots in our family. She puts all the faith in the world in the folks that have brought this investment to our community and have been successful to this point in time.

She wishes the son Matt all the luck in the world because she understands it will fall to him to make it success. She urges the Milford community to step up and be Milford strong and support this because it will require the community's support for long-term and she hopes it does not fail in her lifetime, or anyone else sitting in the room tonight.

There being no one else wishing to speak, Mayor Campbell closed the floor to further comments.

Councilman James then spoke stating he appreciates all the comments for and against this project. If the change of zone is not approved, the clubhouse/brewpub still can function as a restaurant as an ancillary business to the golf course. The planner agreed that is correct.

Councilman James said if this property is zoned to C-1, and if the golf course fails, the restaurant could continue operating as a restaurant and brewpub. The planner clarified that if it is rezoned, it would be separate and not dependent on having the golf course operating.

The Councilman confirmed the brewpub/restaurant could operate in either situation. He does appreciate all the comments concerning the business plan and the ability not to fail. He said in his mind, that is really the risk that the investor will have to bear. And not a decision that he, as a Councilperson, is not going to make for anyone that comes before council, when they want to start a business. That is a lot of scrutiny and whether a business can succeed or fail. He cannot make those decisions.

However, Councilman James can decide on the fact presented, relative to the zoning request of an applicant. Talking about the risks to the citizens of Milford, if it is rezoned, the risk is that it could be flipped.

When questioned about other properties in the area zoned commercial, the Planner stated that within the city limits, about 1,200 feet to the north, the Deep Branch Plaza was approved though the construction has not yet begun. There is commercial extending north on Rehoboth Boulevard all the way up until it meets Route 113 and is intermixed with some industrial uses. Heading south, there is a 15-acre piece of land zoned commercial just before the overpass of Wilkins/Cedar Neck Road. Going further south below the overpass, there is about 40 to 50 acres zoned C-3 at the interchange.

He said there are also some commercial uses across the road that are in Sussex County.

Councilman Culotta said fundamentally, Rehoboth Boulevard has always been a commercial corridor. There have been some housing developments there overtime, but it is commercial for the most part. This is not a stretch when it comes to traffic or issues like that.

He pointed out this is a big deal and important for Milford. The open green space of a golf course is vital to activity in Milford. The improvement of the property includes other functions, including pickleball and the brewery. Jeff Hammer has been successful everywhere and anyone that has visited his facilities knows that. He wants to come to Milford and make an investment and speculate on our city. Whether he borrows the money, borrows from private businesses, or uses his own money is not his business.

It is vital to Milford and will bring a lot of jobs. It will create opportunities for people.

Everyone benefits from this project, and he looks forward to this happening in Milford and is excited about it.

Councilman Boyle reiterated that there has been a great deal of confusion about this request. In talking with nearby neighbors, most did not comprehend anything involving the scope of tonight's action. His reticence on this in the beginning really has been that Council is making a decision that does not appear to be ad hoc because there was so much confusion.

This represents a significant change in the nature of the community. He does not want to send a warning to other residential areas that this could happen to them. A process is needed and there is a need to be serious about the decisions and not make a decision because someone says it can be done.

Councilmember Boyle is very happy to hear the answers tonight by the applicants and in his opinion, settled a lot of unknowns and resolved a lot of confusion. His decision is going to be based on the sense that this Council will take anything that comes along like this, very seriously and that each of us understand that it will have an immediate impact on these neighborhoods. Commercials coming into residential areas can be very upsetting to people and can cause other reactions not anticipated.

He knows what the vote is going to be, but Council still needs to assure the community that these applications are taken seriously and not something that we want because it will be a fun establishment. There is a need to recognize there will be changes and they need to be accommodated by the city to help this succeed.

Councilwoman Wilson said she respects Councilman Boyle's comment about Council being serious, though she thinks Council is serious by just sitting here. She watched this town slowly grow with many considerations. She recalls when

Tim Johnson and City Manager Carmean were meeting about the business park. She appreciates what Mr. Johnson did for the City of Milford by allowing the transaction of that property.

She is also very happy Mr. Johnson wants to develop the property, and that Mr. Hammer wants to put the brewery/restaurant there.

Councilwoman Wilson said she has history of being the first black person to go to Shawnee Country Club, knowing that the only time you saw black people at Shawnee Country Club is when they worked in the kitchen. She is excited to know that this will provide equal opportunity for all of our families, citizens, and allow youth to come back here to get jobs to learn the trade and grow up that ladder, up to the point of starting their own brewery.

This is passionate about the economics about the economics in this town and growth is needed.

The Councilwoman referenced an earlier comment about New Milford—and she emphasized there is no New Milford. We are Milford and this is one town. Whatever goes on that side of town impacts everyone in Milford. She is excited about the project and especially thankful the golf course will be saved, and there will still be a restaurant. However, she is most excited that her husband will feel comfortable and go and play golf there. She is very pleased the old stigma at Shawnee Country Club is gone.

This will change the culture and thinks it will make beach residents comfortable in coming to Milford, and especially travelers. Anyone who traveled through this little town has to recognize the slow growth, though she calls it good management. She appreciates what these developers are going to do for Milford.

When the Planner was asked to again clarify his earlier statement, that in order to have the restaurant open, the course has to open, and all eighteen holes have to be open.

Mr. Pierce stated that in the R-1, a country club regulation golf course, including customary accessory uses, are permitted, provided that all buildings have a minimum setback of 120 feet from all street and property lines. This is an 18-hole golf course.

When asked if the golf course fails and the rezoning was denied and it stays an R-2, and the restaurant stayed the same. Councilmember Fulton asked how many houses could be built there; the Planner said depending on the acreage, 8,000 square foot lots are permitted, or four to five units per acre are permitted. Taking three-quarters of the 149 acres and multiplying it by four to five is the number of units that can be built on the property.

Mayor Campbell sees all his neighbors and buddies from the golf course in the audience. He knows each of them personally for the seventeen years he has been here. The golf course is needed, it is good for the community and brings money and visitors to Milford. The city looks a lot better with the gold course and it is a great place for people to meet. He belongs to Shawnee Country Club and now the Rookery and anyone that knows him knows he is an avid golfer. For him it is home.

Councilmember Marabello pointed out that knowing what the City knows about the property, he is unsure that number of homes would have been permitted there.

Councilmember Baer asked what the new Police Chief knows about brewpubs and if she has any experience policing them in the Wilmington area. Chief Ashe stated that in dealing with that, it is about the responsibility of the business, creating a good partnership with the owners, and having open communication with them. She would always promote that and not an individual or type of business, but promote open communication with any business owner and encourage it through every rank from the Chief down to a patrol officer. She welcomes any open communication with business owners.

Councilmember Fulton made a motion to adopt Ordinance 2023-07, approving the change of zone from R-2 to C-1, for lands of Oak Forest Park, LLC, seconded by Councilmember Culotta:

Motion carried by the following 7-1 roll call vote:

Marabello: I will preface my vote with some comments. I don't have any objections to a brewpub or renovating of the eatery. The synergy between the golf course and the brewpub would be great. What worries him is the unknown and if it

fails and a strip center can go there. I don't think we need a strip center because we have one approved right up the road and if we had a strip center which would detract from the residential character of the single-family homes. And I don't think for a big area, it is not really a commercial street and mostly single family homes. If the C-1 is approved and we have the unknown and that bothers me. Most importantly changing the zoning from R-2 to C-1 would set an unnecessary precedent. I believe the two parties, the builder, the property owner, and the restaurateur seem to be very confident this will be successful, and I have no doubt they have success stories. And I think they could borrow the money under the R-2 which is why I vote no.

Boyle: When I came in here I was very skeptical and I wasn't sure. I was tending to lean to vote no. But after listening to the presentation and the questions that were answered, I am reassured. I think that we don't know, and we don't know the future. We have to basically go on track records, and a person's pledge to do their best with the interest of the neighborhood. I am too concerned about the changes that will come about, simply because the neighborhoods will have to change and adapt it to that. But to be honest, I've been swayed, and I will vote in favor of the application.

Fulton: I vote yes, it is in accordance Chapter 230 and the Planning Commission voted 5 to 0. It's in accordance with the Comp Plan and is good for the city and good for recreation. It is good for a green space.

Culotta: I vote yes and I am excited about what is to come to Milford and he is excited about the people involved and have a lot of confidence that this will be a successful project.

Samaroo: I vote yes based on Chapter 230 and the 2018 Comprehensive Plan. The comments that the applicants made about whether this fails, that is the only concern I had. But based on clarification today with the property owners, I feel a little more confident that this will be successful.

Baer: I vote yes and thinks this will be good for the city, and commend the people who are willing to put up their money and hard work.

James: Based on the facts presented today, and what we know, and not what we can try and crystal ball for the future, I do vote yes for this project. I think it will be a great amenity for the City of Milford.

Wilson: I vote yes based on Planning and Zoning, based on economic growth, based on future diversity for business, and the product itself is well thought through and the track record of the individuals that presented it.

Mayor Campbell temporarily recessed the meeting at 7:41 p.m.

The meeting resumed at 7:54 p.m.

RECOGNITION

New City Employee Recognition

City Manager Whitfield introduced his new Executive Assistant Valerie Heritage who was Smyrna's former City Clerk for many years and was hired on February 1st.

Proclamation 2023-03/Black History Month

Acting City Clerk White read Proclamation 2023-03 into record. Please refer to the Council packet for the document.

Proclamation 2023-04/Captain Edward Huey's Retirement

Though Captain Huey was not in attendance, Chief Ashe asked that Acting City Clerk White read Proclamation 2023-04 into record. She will present the official proclamation to him at his Walkout on March 1st.

The complete document can also be found in the associated Council packet.

Mayor Campbell asked that all Councilmembers attend Captain Huey's Walkout at the Police Department on March 1, 2023.

*Ordinance 2023-08/Pedestrian Safety Ordinance
Chapter 197 – Streets, Sidewalks, Storm Sewers, and Other Public Places
Adds New Article entitled Pedestrian Safety*

Local Government Fellow Melody Barger presented the new section relating to Pedestrian Safety to address the issues created by people standing in medians for long terms, as well as approaching vehicles.

She explained this ordinance is almost identical to what was presented previously. However, it has now been made a separate article to make it easier to enforce. Clarifying language was added to include any pedestrian within 200 feet of a traffic signal is not permitted to approach a vehicle for their safety. The \$100 fine was also removed at the request of the City Council.

Councilman Fulton asked the ramifications, should someone violate the ordinance.

Chief Ashe confirmed there is no trespassing component of the ordinance because this is in a public space. She rephrased the question to Ms. Barger asking what the punishment for the violator is and is there going to be fine or what is the possible punishment.

Councilmember James explained that when he previously made reference to the removal of the fine, that was in consideration of the individuals who are frequenting the intersections. He felt that if there is a fine, it most likely would never be collected. He asked if there should be a punishment for someone in the vehicle who stops and may cause the intersection to become congested as a result. Maybe—but he is unsure though he agrees that any fine for the individual, in his opinion, would never be collected.

Councilmember Fulton feels this is a toothless wonder though there are a lot of words and no teeth. Without any repercussions, even though the ordinance states this is right, and this is wrong. But why would a person abide by it when there is no penalty.

Councilmember Culotta referenced the code that does not allow construction work to be done after a certain hour. If someone were to call in a noise complaint during that prohibited time, the police would respond and inform the contractor they were working when it is not permitted. In Rehoboth, the contractor would be shut down. Though he is unsure if his contracting license would be lifted or he would be fined.

Councilwoman Wilson recalled the need for the ordinance was just to provide the police the ability to make the individual move from the intersection. She does not believe the intent was to fine them, but simply to get them to move for safety reasons.

Chief Ashe explained there are several angles in which this can be addressed. She shared that it has been established by the courts that it's a constitutional right of an individual to be allowed to beg for money. Where the violation of the law can come into play is when they do it in an aggressive or disorderly manner which is enforced through Delaware law. Or if they enter into an intersection or step off onto the highway, there are traffic rules and laws that would prevent that currently under Title 21 and Title 11. Being covered under the state law, allows Milford's Police Officers to handle in that manner.

The Chief defers to the City Solicitor for any other angle as to why the ordinance is being created, or the thought behind it. She does agree with Councilman Fulton and if the job of the police officers is to enforce the law, that law has to be enforced with some of a penalty.

Solicitor Rutt referred to Chapter 1 of the city code 1-11 Standard Penalty states unless otherwise indicated in the Code of the City of Milford, or, unless otherwise provided by the Delaware Code, any violation of any Chapter, Article, or Ordinance of the City of Milford, shall be punishable by a fine of not less than \$100, no more than \$500.

He continued by stating that because this new ordinance does not include the language that there is no penalty, any violation of this code would fall under the Standard Penalty section of the City Code. It could be amended to give them a warning for the first violation, before going into the second penalty phase.

Council agreed there is a need for some type of penalty.

Chief Ashe explained the officers naturally have discretion in these enforcement efforts. As previously discussed, a lot of these people may be dealing with mental health or drug addictions. Police already have the components in place to be able to recognize and identify that when coming across those type of individuals. She would recommend that it starts at \$100 and stays at \$100 and not go to \$500. The responsibility of law enforcement officers is to enforce a law that's put into place, but there are already mechanisms built into the policing system here in Milford that identify those that have needs. The officers are very mature in what they do day in, day out, and have that discretion to give somebody a warning even at a traffic stop. Warnings are often issued on a case-by-case basis and are already done on a daily basis.

Mayor Campbell then opened the floor to public comment.

It was noted there is someone online, though there was no response to speak.

Councilmember Fulton moved to adopt Ordinance 2023-08, now that he understands there is some teeth behind it, seconded by Councilmember Boyle.

Motion carried by the following 7-1 roll call vote:

Wilson: Yes, for public safety.

James: Yes, it promotes public safety.

Baer: No, I don't think it's necessary.

Samaroo: Yes, based on safety reasons.

Culotta: I actually agree with Councilman Baer, but will vote yes because of the spirit is safety.

Fulton: Yes being an EMS I have seen a lot of people hurt in intersections hit by cars. I know Councilman Baer may not have, but it's pretty terrible body parts coming off. So in light of public safety and taking care of people and enforcing it, I vote yes.

Boyle: Yes, as a matter of public safety.

Marabello: Yes, I give something for the enforcement of parties to use when they ask them to move along.

MONTHLY FINANCE REPORT

Finance Director Lou Vitola addressed Council, stating that he will let the report stand as is included in the packet. He commented that cash remains strong as was reported in December. There is a very strong RTT In January even considering the current economy. However, most of that can be attributed to the sale of the Rookery.

On the O&M side, in both utilities and the general fund, there was a slight step back after seeing improvements in November and December related to capital projects, advancing debt service, and continuing to be fully staffed on the personnel side. He does not view it as a major problem.

As we get through February, March, and April, which is another short month with utilities, there is a need to keep an eye on things. An adjustment made be needed in the FY23 budget, though he is hoping we can get along with the existing budgets as they are.

When asked if the projections for the year show substantial surpluses, the Finance Director said that based on the last five pages, three that show expenses, he does not expect much carryover this year.

Councilmember James moved to accept the Monthly Finance Report, seconded by Councilmember Wilson. Motion carried.

COMMUNICATIONS

See packet for correspondence items.

It was confirmed that tomorrow is the first day of the transportation change/stop sign installation in the downtown area.

Mayor Campbell reported he will be presenting Douglas Gibson with a proclamation for his 100th birthday tomorrow at approximately 11:00 a.m. He invited councilmembers to attend and Councilmembers James and Marabello indicated they would attend.

Councilmember Fulton said he received a number of calls from Ward 2 residents supporting the rezoning change at the Rookery. Councilmember Boyle also reported that no one in the City of Milford received a letter with public notice. They instead were mailed to all property owners living in Sussex County's jurisdiction.

Planner Pierce said that any property within 200 feet received notices. Meadows at Shawnee HOA received a letter because their open space backs up to Cedar Creek Road. That was one of the causes of the confusion and chaos because so many residents nearby were unaware. He suggests that be considered in the future for properties within the city that are reasonably close.

Councilmember Baer thanked the City Manager for addressing the speeding issue and adding to the Milford app.

Councilmember James reported he met with the Milford School District Superintendent and the Fire Chief and Deputy Chief who are continuing to work on a curriculum in their Health Ways Pathway for EMT's and have made considerable process. This would provide Carlisle with more EMSs and firefighters.

Solicitor Rutt congratulated Mark on his recent certification as he had recently announced.

UNFINISHED BUSINESS

Cancellation/City of Milford Annual Election

The City Clerk's Office reported the following:

NOTICE OF ELECTION CANCELLATION CITY OF MILFORD 2023 ANNUAL ELECTION

Notice is hereby given that the City of Milford Annual Election scheduled for April 22, 2023, has been canceled.

Prior to the filing deadline of February 21, 2023 at 4:30 p.m., the following individuals submitted nominating petitions for the offices as indicated below:

Ward 1 Council---Daniel Marabello
Ward 2 Council---F. Todd Culotta
Ward 3 Council---Nirmala Samaroo
Ward 4 Council---Jason L. James Sr.

There being only one candidate for the Office of Council in Ward 1, Ward 2, Ward 3, and Ward 4, the above candidates are entitled to assume office without a formal election pursuant to 15Del.C. 7555(j).

Duly elected candidates will be sworn in at the Annual Organizational Meeting on Monday, May 1, 2023 that begins at 6:00 p.m.

Update/Milford Corporate Center

Mike Riemann of Becker Morgan Group provided an update on the Milford Corporate Center.

A lot of progress has been made since his last update. They completed surveys and have geotechnical activities going on. They have resolved one of the key issues with DelDOT which is the access to Church Hill versus Route 14 by putting that to bed. They are now moving forward with access on Routes 14 and 15.

The traffic study is still in the works and is in step two of the three steps and is ahead of schedule.

The preliminary plans have been filed and are currently under view and are targeting April Planning Commission and Council hearings to formally act on the preliminary plan.

As they continue, the plan is for October final approval.

According to Mayor Campbell, Planner Pierce has provided information for the name of the main roadway.

When asked if there has been any interest in locating there, Mr. Riemann explained that does not fall under his authority as they are handling the land portion of the project.

The City Manager said he has received several inquiries. Councilman James said he was contacted by interested parties.

NEW BUSINESS

Update/PD Project/Change Order Report

Finance Director Lou Vitola recalled the referendum approval to spend up to \$20 million. By the time it was bid, and refined the budgets, it is down to \$17.5 million. The city is going to self-finance \$1 million and received approval from USDA for financing up to \$16.5 million.

When Council approved the sixteen bids for a total of slightly more than \$13 million, which authorizes City staff to spend that exact amount to the penny. In the budget, there is another \$4.5 million approved and financed over and above the \$13 million. One half million of that is builder's contingency which contemplates construction change orders. However, it is unknown when, how much of which vendors that will involve.

From a contractual standpoint, he will need to cycle back to Council to get approval on what has been spent formally.

He said we have a critical mass from February of more than \$300,000 involving seven change orders and three vendors and referenced the following memo:

Staff recommend that Council approve the PD Facility project change orders arising in the field as recommended by Richard Y. Johnson & Son (RYJ) in the course of the Firm's daily construction management responsibilities. The change orders totaling \$0.3 million through February remain within the anticipated budget of \$0.5 million, so there is no change in the projected tax hurdle or funding requirements. Staff was consulted on all change orders arising in the field.

Builder's Contingency Budget \$ 520,062
Change Order Total 317,804
Builder's Contingency Remaining \$ 202,258

The reality / inevitability of changes arising during construction due to site conditions, changes to design City staff and consultants anticipated specifications and even regulatory compliance early in the planning process. The earliest PD Facility Project budgets drafted by Becker Morgan Group (BMG) reflected contingency budgets for construction activities ("builder's contingency") and other uncertainties driven by decisions to be made by the City, such as then-unknown permitting, financing, outfitting and other costs ("owner's contingency"). The contingency budgets were percentage-driven based on BMG's experience designing other buildings, and the Firm especially relied on its experience constructing police facilities in Delaware. The contingency budgets were finalized in January 2022 in connection with City Council approval of the 16 construction contracts following RYJ's bid process. The change orders identified through February remain within the anticipated budget, so there is no change to the property tax hurdle or financing requirements initially projected. Staff were consulted on all change orders, which total \$0.3

million as summarized by contractor below:

Filec Services – Electrical Contract A-16: \$ 257,530
Zack Excavating – Sitework Contract A-01: 37,384
J.F. Sobieski – Mechanical Contract A-14: (3,351)
RYJ/BMG Project Management & Design 26,241 \$ 317,804
Builder’s Contingency (Original & Remaining) 520,062 \$ 202,258

Public Works Director Mike Svaby reviewed the seven change orders listed in the memo. He shared that anytime there is a changed overall construction price, it falls under the domain of change that needs to be administered by the Construction Manager. After which, they assess their fee of 3%.

If it falls under the domain of the architect and engineering effort that went into the design, it falls under the 6% fee. Some are both and some only apply to the one fee.

The largest was \$151,250. Of the seven change orders, none were driven by any professional omission or mistakes. All the changes with this exception of the large one, were the result of dialing in further on a material specification. In one case, it was the result of the city's preference for electrical equipment. Another \$5,000 change order was somewhat a credit for pulling out the various types of material for piping and making it PVC where possible.

One involved two combined changes orders for the electrical subcontractor for a net positive change order of \$8,000. That allowed it to be stubbed out to some future time in a quazite box for the storage building.

Director Svaby again talked about the supply change issue involving a particular type of switch gear and the design which was related to the generator equipment. Engineers were asked to review a workaround or an alternative design with materials more readily available. That resulted in the additional cost of \$151,250 and prevents a dark building for three or more months.

He noted there has not been anything extraordinary with the exception of the \$151,250 change order and they do not anticipate any additional supply issues.

It was confirmed that the approval of the \$317,804 contingency fund of the \$520,062 will be depleted by that amount.

Finance Director Vitola noted that the majority of the City’s contingency will be capitalized interest. He anticipated that number to be around \$375,000 to \$400,000 though that may not hold. Other items not included are minor, including the security cameras and so forth. When two-thirds of that is spent, he will come back to Council with a recommendation.

Councilmember Fulton moved to authorize the change orders submitted in the amount of totaling \$317,804. Funding is available within the project budget, and the approved USDA community facilities loan funding, seconded by Councilmember James. Motion carried with no one opposed.

Authorization/Utility Extension Outside City Limits

Relative to the Colony West/Colony South and the Christiana Excavating utility extension requests presented at the last Council meeting, City Engineer James Puddicombe prepared two exhibits to answer Council questions at that time.

It was determined there are 5,683 electric meters within the City of Milford and 1,665 electric meters outside city limits. In addition, there are 3,987 water meters within city boundaries and 156 water meters outside city limits.

He shared that electric is driven predominantly by Delaware Co-Op and/or Delmarva Power. Often there may be a branch that stretches out and allows the city to provide services in an easier manner and does not follow city boundaries. Water is more aligned with city boundaries and most areas outside the city are within a pocket in the city area where there is either a single home or a small community that is generally within the city's area, but not annexed into the city.

Planner Piece then stated he has been unable to locate the previously approved utility agreement with Colony South, though he did ask the engineer who is overseeing the project.

Councilmembers felt that if we have nothing, nothing should be considered.

Planner Pierce then continued stating that if it is broken into two categories, the city already serves Colony West which is Phase One of the development. We also serve some row homes in the apartment complex to the north and Colony South is Phase Two of the development. Because the city had already made a commitment, he included an agreement to memorialize the arrangement that Interfaith Housing would annex if they became contiguous. This involves the one to the northern side, noting there is only one property between that is not included in city limits.

Councilmember Culotta hopes that the city never agrees to provide utility services to a new development in the future and not require them in the city. Once that is done, there is no reason to annex. In this situation, he is confident they will annex eventually.

Councilmember James referenced the older minutes, it includes the ability to continue the services when they develop Phase Two. He feels that having the minutes memorializes that intent.

Mr. Pierce stated that the noncontiguous property (IG Burton Car Dealership) between the city boundary and this property, is already commercially developed. It has city water but is on county sewer.

A discussion followed regarding the development of Colony West/South.

Interfaith Housing approached the city because they are planning to start developing again.

Councilmember James emphasized that often the Council is faced with making decisions about historical activities that were never documented, Council never voted on, nor were there minutes. In this case, Council took a vote and it is clearly stated in the minutes.

Councilmember Culotta moved to authorize the Mayor to sign the electric and water agreement with Interfaith Housing Delaware to provide electric and water utilities at the properties located outside the city limits, with the condition, that if and when the properties become contiguous, the owner would be required to annex, seconded by Councilmember Wilson.

The Solicitor asked if this involves rented apartments or are the selling the units; it was noted that apartment buildings exist today and townhouse that are in a condominium arrangements. There are also fee-simple lots that have been sold off. They would not be included in the agreement because they are no longer owned by Interfaith Housing.

Solicitor Rutt pointed out they would have to make a requirement on any conveyance to a third party, that they would have to annex. He asked if this would create 'spots' though there may be a common area still owned by Interfaith Housing, but also individual properties conveyed out.

Unless there are restrictions in the sale contract that says they have to be bound by this, this could create many issues.

The proposed agreement has a binding effect that states the agreement shall be binding upon any parties hereto their administrators, successors, interest or assigns, according to Planner Pierce. However, the language could be modified so that it would convey with ownership though his understanding is this would convey with any future ownership.

It was confirmed that the city provides water and electricity though the property is served by Kent County sewer. It was confirmed maintenance would be required by the city if it were in an easement area. The city will only install the utilities at their cost.

Motion carried by a 7 to 1 vote, with Councilmember Culotta casting the dissenting vote.

According to Planner Pierce, the Christiana Excavating request for utilities to be extended to the southern part of town, was deferred. This is shown as commercial development in the city's comprehensive plan, though this is also unable to be annexed due to one noncontiguous property.

When asked if there are any pre-existing conditions requiring the city to provide these services, Planner Pierce stated the city would serve the property with electricity regardless of the agreement.

City Engineer Puddicombe shared that Electric Director Tony Chipola verified it would be served with city electric because the next provider is a distance away.

It was confirmed the same conditions would apply as with Interfaith Housing and Mr. Pierce added that this is done primarily for septic or well elimination. However, there is a risk of the continuation of onsite well and septic which would prevent the property from being on the city system for thirty years or so.

It was confirmed the property is presently current, though Planner Pierce thinks it is zoned industrial within Sussex County. He pointed out that any change of zone would require a change of zone and a comprehensive plan amendment hearing by Sussex County Zoning Office.

Planner Pierce stated it is currently zoned industrial; Solicitor Rutt said the property owner could request a downzone from Sussex County because H-1 is the highest and most restricted industrial zone.

Several questions were asked, and the applicant was in attendance.

Chad Warren of Davis, Bowen and Friedel, representing Christiana Excavating, verified the plan is to build a large warehouse style storage facility.

It was confirmed that this involves 17.5 acres of undeveloped land. Councilmember Culotta said it will most likely be annexed in. Councilmember Boyle pointed out they also own an acre and a half of land just north of this, that is noncontiguous with this property.

His concern is we continue to repeat the same mistake over and over. It was also discussed that this property called the neighboring property to talk about annexation, but never heard back.

Councilmember Fulton pointed out the reason he favored extending utilities to Colony West/South, was because there were minutes that stated that Council had approved it. In this situation, there is nothing and even though there is only one lot prohibiting it, someone could purchase it, annex it and then Council would be more than willing to extend its sewer lines and water lines.

Councilmember Fulton moved to deny the matter and it can be reconsidered once the property becomes contiguous to the city, seconded by Councilmember Boyle.

Motion carried by the following 7-1 roll call vote:

Marabello-Yes to deny. It is too much of a precedent. He agrees with Councilman Fulton and if they really want to, they can buy the piece of box.

Boyle-Yes to deny extending services.

Fulton-Yes to deny.

Culotta-No only because it goes back to his economic development and they are putting something there that will create jobs and places for a business to run. That's the only reason though he does agree he doesn't like giving sewer and water away.

Samaroo-Yes to deny.

Baer-Yes to deny based on the comments from Councilmembers Fulton and Boyle.

James-Yes based on Councilmember Fulton's motion.

Wilson-Yes based on the reasons stated and going back to the days of the annexation committee and the reasons needed and why people wanted to come into the city.

EXECUTIVE SESSION

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

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

Motion carried.

Mayor Campbell recessed the Council Meeting at 9:25 p.m. for the purpose as is permitted by the Delaware Freedom of Information Act.

Return to Open Session

Councilmember Fulton moved to return to Open Session, seconded by Councilmember Wilson. Motion carried.

Council returned to Open Session at 9:32 p.m.

Potential Vote/Personnel Matter

No information provided.

ADJOURNMENT

There being no further business, the Council Meeting adjourned at 9:31 p.m.

Respectfully submitted,

Terri K. Hudson, MMC
City Clerk/Recorder