

*MILFORD CITY COUNCIL*  
MINUTES OF MEETING  
*May 26, 2009*

A Meeting of Milford City Council was held in the Joseph Ronnie Rogers Council Chambers of Milford City Hall, 201 South Walnut Street, Milford, Delaware on Tuesday, May 26, 2009.

PRESIDING:                   Honorable Mayor Daniel Marabello

IN ATTENDANCE:       Councilpersons Steve Johnson, Michael Spillane, John Workman, Jason Adkins,  
Owen Brooks, Jr., James Starling, Sr. and Katrina Wilson

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

COUNSEL:                 City Solicitor Tim Willard

Mayor Marabello called the council meeting to order at 8:21 p.m.

*Reconsideration/Third Party Inspection Proposals/Hearthstone Manor*

City Manager Baird said there has been a request by council to reconsider this matter based on new information that had come forth. He also reported that City Engineer Mark Mallamo did an overview of the files and is present to provide some preliminary findings.

City Engineer Mark Mallamo explained he has completed a cursory review of the documents provided and because of the amount of paperwork, was unable to complete a thorough review at this time.

Mr. Mallamo reported that Hearthstone started back in 2000 and a lot has occurred over the past nine years including a number of changes to the codes. He explained that when the property was annexed, it was clear the developer never intended to install sidewalks and a waiver was provided up front. As they came back for final plan reviews, the codes were changed to include the planned unit developments and open swale drainage systems. He noted this was occurring fast track and was being designed and built practically the next day. As a result, there was very little time to find flaws and errors that may have occurred during construction.

The city engineer believes there were errors made by the developer, the city, staff and the contractors. He feels that everyone was trying to do their best even though there were issues unforeseen on paper that sounded like good ideas though the overall purpose was to get it done. Mr. Mallamo said that when the shovels were put in the ground, it simply did not match.

The city engineer feels that those issues will take a little more time to determine which direction to take. However, council will see that everyone was doing the best they could, including the designers, to make this place a nice place to live and environmentally friendly. This caused unforeseen issues such as the swale issue at Hearthstone. The issues came out through the construction though they were not seen during the review because on paper it all seemed to match up and the plans looked great. But errors occurred when things were built, either out of phase or slightly ahead of time, that seemed to multiply or create other problems.

Mr. Mallamo then provided the following synopsis:

The property was annexed in 2000 and the utility agreement signed the next day. That agreement stated no sidewalks but the plan included curb and gutter. Since that time, the code was changed to allow the open swale drainage. Plans were then resubmitted without curbs and gutters but with open swales. The plans were denied twice in July and August of 2001 by council. Then the code was changed and under some pressure from state government to accept open swale drainage as an environmentally friendly option, the city was convinced it was an option to consider. It was then added to the code. In April of 2002, the conceptual plan was approved with swales. Council did not see all the details of the swales though they understood the concept of swales with no sidewalks, etc.

The plan then proceeds to construction. During the plan reviews by the engineers, issues were found which they tried to hash out. Mr. Mallamo emphasized there was a tremendous amount of documentation from special progress meetings. He advised that during this time, they went from monthly progress meetings to biweekly progress meetings with extra meetings, between because issues were arriving so quickly.

Mr. Mallamo said he personally has some background noting he was on the planning commission from 2001 through 2005 when he was hired by the city. At that time, he was a member of a body reviewing those plans as they were submitted. He attended the presentation by DNREC when they were encouraging the open swales. He felt it made sense as an environmentally minded person and thought it would protect the water resources. However, no one could see some of the side effects it may have as far as denser developments. Those things did not come together at the initial stages of this planning. There was a great deal of discussion in the progress meeting minutes concerning the dedication of phases, at what point the streets would be taken over by the city, when was the water system being turned over to the city, etc. There were a number of arguments between the developer, the city and city representatives saying we are not ready to take this over, it is not done, or the developer saying I have it in the ground and I don't want to be responsible for it and you need to take care of it. The city would respond it is not a complete phase and we do not take incomplete phases. A lot of those issues were never executed, taken to final completion in a firm agreement or a revision or an amendment done to the utility agreement. He feels those gaps will exist even when the thorough review is completed and he can provide a report.

There was a discussion, an apparent agreement on what direction to take, but no signed documentation is available. Mr. Mallamo's recommendation is to delay the award of this contract for a third party review and give him two weeks to do some additional review and put together a more detailed report with dates and a better outline of how we got to this point. He emphasized it is very detailed and very time consuming. Though council may not be satisfied with those results, the third party option may still want to be hired to dig deeper and take it to the next level. However, he feels a lot of answers can be provided and background provided by him.

Mr. Baird said that though Mr. Mallamo has touched on a few highlights, there are many issues out there. He agrees it is not necessary to rescind councils' action on awarding this contract, but he does feel it is appropriate to allow Mr. Mallamo to finalize his report. At that time, if council wishes, they can proceed and go deeper or take action based on Mr. Mallamo's report.

It is Mr. Baird's recommendation to hold the award of the contract at this point. When asked, Mr. Baird recalled that at the last meeting, Peter Bozick from George, Miles and Buhr indicated the proposal was good for 30 days.

Mr. Baird then asked Robert Stickels to comment. Mr. Stickels, Director of External Affairs for GMB, reported they have also completed a cursory review and agrees with Mr. Mallamo there are some gaps and then provided council with his report as follows:

It appears to be a disagreement between the developer and the city regarding utility, roads, drainage systems and the coordination on annexation, utility agreements, subdivision ordinance, pre-annexation subdivision ordinance, post-annexation, Milford utility standards, pre-annexation and post-annexation, approved plans not meeting the requirements of utility agreements, construction not complying with approved plans and information on drawings in conflict with the utility agreements and approved plans. The engineer at the beginning of the project was DC Group and Ken Christenberry and later McCrone. DBF provided the plan review and part-time field inspections but there have been changes in personnel with both DBF and the city.

Mr. Stickels said they would appreciate it if there was more information provided to assist in a complete review. They are more than willing to work for the city but understand the city wants to take more time to review this in order to give council more information though they are also willing to work with Mr. Mallamo.

Following the conclusion of Mr. Stickel's report, Mr. Spillane again confirmed there are problems at Hearthstone. Mr. Baird agreed noting that has never been in question. Mr. Spillane feels there are issues that need to be addressed as soon as possible for the safety of the people at Hearthstone. He asked if council can address a couple of issues that are

problems today and correct them and then continue with the complete review because of the many other problems. Mr. Baird said that could be done, but if a final report can be submitted in two weeks, he would prefer council see this in its entirety. He does not want to propose a fix on the swales, as an example, that only addresses part of the problem.

Mr. Spillane feels the road shoulders need to be addressed because it is a safety issue and wants it put on the fast track instead of staying on the slow track before everything can be figured out.

Mr. Baird explained that some of those items may be addressed in the final report along with a clear outline of how to fix them and whether it is the city or developer's responsibility.

Mr. Spillane said the blame game is over and the city needs to acknowledge the mistakes and have them corrected for the people.

Mr. Workman indicated that he understands Mr. Spillane's frustrations, but explained that Mr. Mallamo will provide a report with some ideas. In the meantime, there is an option to hire this third party. He prefers having the entire picture because there seemed to be previous problems when trying to address one issue after another without any resolution on any of them. He agrees the best way to handle this is to look at the entire picture. Then we can decide who is at fault and we can go from there.

Mr. Starling said that at the last meeting, he was one of the votes favoring the 3<sup>rd</sup> party review but now agrees that Mr. Mallamo should proceed whether it takes two weeks or a month. Allow him enough time to come back with a complete report. In the meantime, he does not feel there is a reason to spend that amount of money. Nothing should be done until council sees the city engineer's complete report.

Mr. Workman stated that the decision to hire this third party was based on information that the city did not have any documents available. He then thanked Randy Duplechain of Davis, Bowen and Friedel for providing that.

Mr. Baird clarified that the city did not have the field inspection reports; Mr. Workman disagreed stating that council was told they did not have any documents. Mr. Brooks said he asked and was told at three different meetings that the city, engineer nor Mr. Fannin had any of the inspection documents and was told all three times they did not.

Mr. Baird responded that the city now has those records.

Mr. Johnson recommended that Mr. Mallamo be given a month to review as much of the paperwork he can in order to provide the best possible answers to council. He also suggests that council be given an additional two weeks to make a decision on where to go.

Mr. Workman recalled that he suggested more than once to subpoena them to get the documents though the information was available the entire time. He said council only acted on the information provided by the city manager. He cannot see waiting another month. The city engineer has already agreed to two weeks.

Mr. Mallamo said he believes he can provide the information in two weeks.

Randy Duplechain of Davis, Bowen and Friedel then apologized to council. He explained they were requested by Mr. Mallamo back in January through an email to check for any inspection reports during a certain period of time. The time period fell within phase two of the project. The engineer, who received that email, looked into the phase two file and found the inspection reports were not in the file. He informed Mr. Mallamo they did not have the inspection reports. The city manager followed up about a month ago and Mr. Duplechain was under the same impression. It was not until the last council meeting when Mr. Duplechain heard about the controversy and then proceeded to look for the records which he found in the phase one file for both phases.

Mr. Duplechain then explained that the monthly progress meetings turned into bimonthly meetings and then weekly meetings because it was a very difficult project to administer. He concluded minutes were taken at all of the meetings

and the city was provided with copies of those minutes.

From his brief look at the information, most of the activity occurred when the city, the contractor, the developers and the DBF engineers were present and a lot of the decisions were made and issues were being brought up. He believes that most of the answers to many of the issues being discussed are in the meeting minutes associated with the project.

Mr. Duplechain emphasized the project was administered very tightly though it involved a difficult contractor. He was not directly involved with the project and unfortunately is not familiar with the project as well some of the other engineers in his office including his predecessor. Overall, he feels it was administered very well on the city's behalf as well as DBF's side.

He feels Mr. Mallamo will see the difficulties of the project and offered any assistance to get through the information and present a good, detailed report to council.

Mayor Marabello announced the consensus of council is to proceed with Mr. Mallamo's review so he can present his report at the June 8<sup>th</sup> meeting and to place a hold on the contract for 30 days.

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

Ms. Wilson moved to go into Executive Session Pursuant to 29 Del. C. §10004(b)(9) Personnel Matters, seconded by Mr. Workman. Motion carried.

Mayor Marabello recessed the Council Meeting at 8:51 p.m. to go into a closed session to discuss a personnel matter as permitted in the Freedom of Information Act.

*Return to Open Session*

City Council returned to Open Session at 9:42 p.m.

City Solicitor Willard requested an executive session be scheduled for the next meeting to discuss litigation involving Key Properties.

No action was needed as a result of the discussion that occurred in Executive Session.

*4<sup>th</sup> Ward Meeting*

Ms. Wilson requested a 4<sup>th</sup> Ward Meeting to discuss some matters of mutual concern to be scheduled within the next couple of weeks.

ADJOURN

Mr. Workman moved to adjourn the Council Meeting, seconded by Mr. Adkins. Motion carried.

The Council Meeting was adjourned at 9:42 p.m. by Mayor Marabello.

Respectfully submitted,



Terri K. Hudson, CMC  
City Clerk/Recorder

*MILFORD CITY COUNCIL*  
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*May 26, 2009*

The City Council of Milford met in Workshop Session on Tuesday, May 26, 2009 in the Joseph Ronnie Rogers Council Chambers of Milford City Hall, 201 South Walnut Street, Milford, Delaware.

PRESIDING:           Honorable Mayor Daniel Marabello

IN ATTENDANCE:   Councilpersons Steve Johnson, Michael Spillane, John Workman, Jason Adkins,  
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COUNSEL:           City Solicitor Tim Willard

Mayor Marabello convened the Workshop Session of City Council at 7:29 p.m.

*Discussion on Governance*

Mayor Marabello advised this is being presented as a result of the code enforcement problems in some of the developments that are trying to be resolved. The question is could we have done that better which is where the governance comes into play. This will help us go forward by doing a better job in the future. The question is where do we want to go and what is our road map and how do we implement that road map while letting the key people we hired do that work with the least amount of involvement from council. He emphasized that council's job is only to oversee management to make sure their job is done. There needs to be some accountability a way to evaluate ourselves.

City Manager Baird asked where are we going? One of the things we need to address is the basic framework of how the city operates from a council-manager form of government with councils' primary role being to develop policy and set goals with the manager and police chief implementing those and taking the city in the direction council wants to establish.

He is presenting this proposal to better define that role so council has a full and comprehensive understanding of why each of the council members are elected to public office and how the meetings can be productive in setting the direction the city wants to go. At the same time, council is giving the city manager and police chief some direction on where to go. The manager and chief would then take that, develop an implementation strategy and deliver that to the people who work for them in order to produce results.

Mr. Baird reported this is the basic framework but most important, what needs to be defined is something that clearly establishes the roles of city council and the rules under which council will operate. He said someone may think they have a clear understanding of the rules we are operating under but someone else may have a different interpretation. Currently there are no clearly defined rules of how council operates. Having a clear-cut governance policy will allow city council to not only define its role, but define the rules under which it operates. In that manner, there is no question over what councils' responsibilities are or the way in which business should be conducted on behalf of the city.

Secondly, he explained it clearly defines the expectations of the city manager and the police chief. His understanding of those expectations is they are to implement the policies as directed by city council. Presently, that is not easy because it has not been clearly defined by city council. By moving toward a formal governance policy, it allows that. Council will clearly establish rules which will allow the city manager and police chief to be directed on how to proceed.

This provides a clear understanding from all parties involved on what the councils' job is, as well as what the city manager and police chiefs' responsibilities are. Then it needs to be determined how it will all be evaluated. His feeling is that each council member should see the progress being made on the goals established from the standpoint that every item on the agenda is directly tied into one of the goals. He explained it is as simple as the award of a contract or the adoption of an ordinance being in line with one of the goals. During that time, the city manager and police chief are taking the city from point A to point B as council has directed. That follows with feedback which allows council an opportunity to evaluate the job that council is doing and the job the city manager, police chief and their staff are doing in implementing those

processes.

Mr. Baird advised the reason for raising this is to focus city council on the most important duty to the public which is to set the overall direction for the city. He stressed that is the most important job council has. It is their job to determine whether the city will invest in parks and infrastructure and recreation, or if we are going to make an investment in economic development or housing, though sooner or later our resources are spread very thin. If we can focus on what is important for this body, it allows us to also focus on those resources so we are actually getting a few things done versus dabbling in a number of different areas. That is where councils' leadership and guidance comes into play by saying this is what is important.

The city manager said once council does that, he will have a clear direction on how to prepare the annual budget which can be presented for consideration and then approval. The spending plan should be in line with councils' priorities. The top priorities will be funded first and the secondary priorities addressed if money is left. Once that spending plan is approved, it is very easy for him to sit down with his department heads and provide them with the clear expectations of how their role fits into the overall direction the city is moving in. He said the important thing is that starts at the top which is everyone sitting around the table tonight.

He feels council was elected to bring those ideas to the table and to provide clear direction for where the city is moving. Mr. Baird referred to the documents and background material included in the packet which he hopes council has read once though he encourages them to read it more in order to become accustomed to it.

Mr. Baird believes that to focus on something directly related to the long term vision for this city is in councils' hands to shape and mold for the next couple of years. That is the role and responsibility of city council.

Mr. Baird asked that if council is comfortable with making a commitment for governance, establishing a formal governance policy on behalf of the city and making that a priority in order to move forward in a more organized fashion that will produce greater results. He said that once that commitment is made and the city starts to establish that commitment and governance policies by putting them in place, council will have the opportunity to not only review it at their meetings, but make a commitment annually to revisit those formal commitments and constantly keep yourselves aware of those goals by keeping your eye on the ball and allow the opportunity to educate and train yourselves as members of city council. This will allow council to continue that focus to prevent getting lost in the issues that come up on a daily basis. He understands that those things will continue to happen and there will be the ability to address them, but it is this body's most important responsibility to keep their eye on the big picture which is where the city is going long term not only a month from now, but five and ten years from now.

He asked that we go back and build our foundation, which are the governance policies in which we operate, and allow us to move into the future.

Mr. Spillane said that after a thorough review of the charter, he feels that many of the responsibilities are spelled out in the charter. In addition, a number of changes have been made. Mr. Baird said the charter clearly states and establishes that the form of government is a council-manager form of government. He feels that each council member has a different interpretation of the council-manager form of government and what the roles and responsibilities of individual council members are. He prefers that council members collectively establish the roles of management which to him is the city manager and the police chief. He prefers that be defined in the form of a general policy established by city council. Mr. Baird prefers the charter be best left in a broad term as it is currently written. A written policy, adopted by this body, would serve as the more specific framework.

Mr. Spillane feels that type of information should be included in the charter; Mr. Baird disagrees noting the charter should be written in a much broader fashion.

Mr. Brooks said he agrees with this policy but also agrees that each councilperson needs to read both the charter and Roberts Rules. Then they would better understand the city policies as well as meeting procedures. In particular, it would help everyone understand that the mayor runs the meeting and calls on council to speak and council members are not supposed to interrupt other council members. In addition, they need to be familiar with the ethics law. He feels if all three

things are included in this policy, council would be much more effective.

Mr. Adkins asked if Mr. Baird is looking for some general direction of where council would like to go or trying to determine councils' duties at each meeting; Mr. Baird feels it goes hand in hand because it is the responsibility of the governing body which is city council. He added that councils' most important responsibility is to set the overall direction of where the city wants to go. It is then the city manager and chief's responsibility to see that is implemented.

Ms. Wilson feels Mr. Baird is summing this up in a nice way. She believes this is coming out because of various activities, behaviors and/or concerns that council has had which has weighed heavily on our city manager and perhaps even our police chief because he is also included in this. He feels the charter and rules have always been in place. She agrees with Mr. Brooks that council needs to review the charter and it continuously needs to be reviewed. However, this is being presented because of some inappropriate situations that have occurred. Prioritizing our projects and short and long term goals have always been done in the city. The growth took precedence over a lot of these things the past few years but we learned to work through it because things still got done. However, council is currently in a situation where there seems to be a great deal of division which she feels is the reason this is being presented. She does not disagree with the need for some policies, but to her it seems as though the police are policing the police. It appears that this policy is only going to police the charter. Personally, she feels we have all these departments in place and though council may somewhat over see the work is being done, those employees are working under the direction of city management and city management is working under the direction of council. All the time, the charter, ordinances, comprehensive plan, ethics law and other things are playing a major part and they are already in place. To her, this will only be another piece of paper.

Ms. Wilson feels that if we are professional and respectful and truly represent our constituents and all citizens, then personal agendas can be set aside. To her, those personal goals are what is destroying this council and has made her, as a council member, very ashamed at times.

Ms. Wilson believes those council members representing the City of Milford need to become more supportive of our city by supporting the employees. She agrees they do not take orders from council. Council sits down as a group and makes decisions and policies that eventually trickle down to the employees, but they do not take direct orders from council which she feels would be ridiculous. She said she is not qualified to be a city manager. The city searched for a city manager, for a planner and qualified people were hired.

She feels it is outrageous to think she has sat in this seat all these years and simply allowed things to happen without any thought. Ms. Wilson emphasized that did not happen and agreed that some mistakes have been made over the years, but after considering and reviewing what happened, changes were made. It was a learning experience. But council and the city must continue to move forward in order to grow and improve and get better.

Ms. Wilson does not think she needs someone to tell her to be in check. If she is really trying to do what is right and is following the charter and other policies in the city, then it will work and everything will be in order. She recalled the wonderful retreat and then council came back the following week and it was like nothing ever happened.

She told the city manager he is doing a good job and is trying hard. But she thinks he needs to stand firm and for those times people are being inappropriate, they need to be informed. She thinks that things are already in order and she thinks he has the support of the council. In addition, she thinks that more of the public should come to our meetings so that input is received from many citizens and not just one group. She would like for all citizens to stand up and be a part of Milford.

Mr. Workman agrees with Ms. Wilson noting she hit the point. What he sees is Mr. Baird asking council to try to find a goal. We sat down for almost eight hours at a retreat where a lot of good information was provided. Council was supposed to get some feedback from either the city manager or the facilitator. However, that was never received. He feels that brought council closer as a group, but he never sees anything come to a conclusion. Directions are given and nothing ever completed. Anything council asks for should be completed within a reasonable time which he feels are many of the shortfalls right now.

Mr. Workman said after the last meeting, he was embarrassed. Someone attending the meeting made a remark that it was like a circus and the only thing missing was the dancing bear. He thinks that since the retreat, council actually came

together more because everyone worked hard to come up with some goals and objectives not only in the future but long term as well. But nothing happened after that. That is something that frustrates him. Council has had many good ideas but he does not like talking about the same subjects over and over because there is never an end. Council directs the city manager or the police chief to do something and expects them to take care of it. If it is not possible, then it needs to come back to council. Council needs to stay on top of the city's problems to make sure our employees are taking care of those issues through the city manager or police chief. Council is unable to say something directly to those employees, but any ideas can be given to the police chief or the city manager.

He also agrees there are problems with the lack of control of the meetings and how council are interrupting one another. Mr. Workman admits he is guilty of that, but that is the reason the mayor is in charge of the meeting. He feels the mayor needs to control the meetings and be more forceful. He pointed out the mayor is an elected official and though the mayor does not make the number of decision council does, he does break ties and most importantly runs the meetings. With a stronger effort of running the meetings when council is out of line, he agrees that more things would get accomplished.

Mr. Workman says this governance policy may be great, but in his opinion, it is just another document and he does not agree with it. We already have the charter, ordinances and laws that council took an oath on. He also agrees there are varying opinions and some people have more opinions than others, but he wants his point made just like the person next to him.

He understands why Mr. Baird brought this up, but personally, he does not agree with it because council has been directing the city in a way they feel is proper and best for the citizens. The attorney is present to advise if something is being done incorrectly.

Mr. Workman referred to the many times when things were done incorrectly in the past. He feels that if we know it was wrong, it needs to be sorted out and the problem identified so that it can be fixed and not happen again in the future.

The city manager agrees with a lot of what was said though he disagrees with some and challenges each council member to collectively tell him the top priorities of this city. He does not think that answer can be provided this evening. Mr. Baird does not think that anybody at this table should hesitate to say to each other or say to our constituents these are the three or more important top priorities for this community. Because we are unable to do that, he feels we are failing in our responsibilities. He said this discussion will focus on those type things which is the rationale for putting this forward.

Mr. Spillane said his top priority is the city and bringing the downtown back to life again, second is to make sure we follow our codes and charter and the third is to follow through and have goals for the city for thirty days, five years or ten years. Mr. Baird said he appreciates that, but his response is the point of this issue. Those were Mr. Spillane's priorities, not the priority of the entire body.

Mr. Spillane argued that Mr. Baird challenged each council member to come up with priorities; Mr. Baird disagreed stating collectively. Mr. Spillane said it can be done if a time out is taken and it is discussed. Mr. Baird's point is at any given time, any council member should be able to provide these specific goals which will be the reason we are meeting as council and are able to move forward.

Mr. Brooks believes that most council members have more than three or four.

Mr. Workman said each council members' priorities may be different depending on the situation or the pertinent issue facing the city at that time. For example, it could be the comprehensive plan. He questions if that is the top priority, should everything else be shoved aside; he agrees there are different priorities. He believes this was presented because Mr. Baird is again looking for some direction. It is Mr. Workman's opinion that is a problem Mr. Baird has had since he came on board. He feels Mr. Baird does not know the direction to proceed and needs to reach out to council. He recalled this same issue being discussed during the retreat.

Ms. Wilson said she is not looking at this policy from her personal view. Instead she is looking at it from the city standpoint or the city manager's objectives. She feels one of the top priorities should be financial stability, city employees and managed growth. She feels all three of those things already fall under the city management and Mr. Baird agreed.



Mr. Brooks said another priority in this city is the safety of the citizens. He feels we need to take care of our citizens and our town.

The mayor said he thought the previous retreat went well and another retreat was recommended though it was agreed it should not be scheduled until after the election. He feels that these goals can be discussed at that time and that we should work toward those goals both short and long term.

Mr. Workman feels that before time is spent at another retreat, council should be assured they will get something out of it. He does not think council got much from the last retreat. He feels council may have tried to work together better, but the guidance the city manager was looking for suddenly stopped. There needs to be something gained at the retreat and some type of result. The mayor said he does not think one day is sufficient and recalls council's vision not being discussed which he feels is an important topic.

Mr. Brooks recalled the emergency e-mail from DEMEC that interrupted the afternoon session which took priority over the balance of the discussions.

Mr. Spillane feels retreats should be held on a regular basis regardless of any changes on council at election time.

The mayor feels council has made a great deal of progress this year.

No one else wished to comment on the Governance Policy presented by the city manager.

#### *Homeowners Association/City of Milford Responsibilities*

Mayor Marabello advised the Meadows at Shawnee is preparing to take over their Homeowners Association (HOA).

The mayor explained that HOA's are responsible for common area maintenance, open spaces, retention ponds, community centers and recreational facilities. The mayor advised that initially, the developer sets up the initial rules of the HOA and makes up the board. Eventually, the HOA is turned over to the residents.

Mayor Marabello said the questions are whether the city should have a voice in approving the HOA documents; should the city determine when residents have some say in an HOA; should there be a time limit when residents can become involved in administering the HOA; should the city monitor the HOA to ensure the proper maintenance of the retention ponds are being done and that reserve funds are in place and secure; how does the city ensure the maintenance continuity of all retention ponds in the city. He said these ponds are basically extensions of the stormwater sewers which the city is responsible for and referred to those on Airport Road the city maintains because it is mutually beneficially to do that for a fee.

Mr. Brooks asked for some clarification on whether HOA or city rules trump the other; both the former city manager and Mr. Baird have informed him the city supersedes the Homeowner Rules. However, only one kind of fence is permitted at the Meadows at Shawnee though the city allows any type fence.

Mr. Brooks asked what the city is doing about fences not permitted in a development as a result of the homeowners' rules. Mr. Baird explained that is an issue between the homeowners' association and the private property owner. Mr. Brooks confirmed that the city does not have a say in the matter; Mr. Baird stated that is correct.

Mr. Spillane feels that homeowners should be required to follow the city codes and not the individual rules in each subdivision. He feels that when they asked to come into the city, they should be required to abide by Milford's rules. Instead, each subdivision has their own set of rules and none are following the laws and rules of the city which includes those involving trash and the police. Mr. Baird explained the city does not dictate that at all. He explained that as Mr. Brooks' alluded to, the homeowners' association requirements are much stricter than the city. The city will allow any type of fence up to the size and height as permitted in the zoning district. If the homeowners' association wishes to have more restrictive rules in place, they are permitted though the rules cannot be more lenient.

Mr. Spillane asked how the city verifies rules are not overboard as he feels is the responsibility of the city to check each HOA out.

Mr. Baird explained that if a homeowner wants to put a fence up, they must apply for a permit. The city will only issue a permit in accordance with its requirement; it is up to the homeowners association to implement the requirements of that HOA. Mr. Spillane asked who looks over that; Mr. Baird said that is determined by the structure of the HOA. Mr. Spillane said the contractor puts his own terms and rules in; Mr. Baird advised that as long as those rules meet the minimum requirements of the city, the city has no objection.

Mr. Spillane asked who checks it out; Mr. Baird said there is a code requirement when the residential subdivision is submitted that restricted covenants are included in the application. The more detailed items such architectural, fencing and landscaping are entirely up to the homeowners association and how they wish to govern themselves.

Mr. Spillane asked if the speed in a homeowners' association is followed and whether it falls under the state, town or homeowners association. Mr. Baird explained there is a minimum 25 miles per hour speed limit in city limits. However, the police do not have the authority to regulate traffic regulations on privately maintained roads. There may be a possible bill to change that state law, but he has not seen a formal draft.

Mr. Spillane advised that if the homeowners' association sets a certain speed and Mr. Baird says the city has a set speed of 25 miles per hour. Chief Hudson explained that 25 miles per hour is the speed limit in a residential zone; Milford does not have a separate law and follows the speed limits outlined in Title 21. Mr. Spillane asked who enforces the speed if the HOA says it is 10 miles or 15 miles per hour and someone is going more than 15. Chief Hudson explained that if the streets were turned over to the city, the speed limit would become 25 miles per hour because it is a residential district.

Mr. Spillane said that because the streets are private property, the city needs to step in and address it because the people in the city have to follow the codes of our city.

Mr. Workman feels that if the city decides to become involved in the HOA's, it will only affect any new homeowners from the time council makes this decision into the future. The city will not be able to make this retroactive and change any rules currently in place under an HOA. He feels it is important to emphasize that should council decides to become involved, it will not have any impact on past rules and those already in an HOA. He understands that because he used to live in a community with an HOA which is why he purchased a home that was not part of an HOA when he moved to Milford because he understood their restrictions. Any good realtor should have informed the home buyer of these rules. He feels potential home buyers should have asked questions about this matter.

The city solicitor added that when the property is settled, the buyer should be provided with the restricted covenants from their attorney. They have an obligation to present those restrictions after a title search is done. He also agrees that in the past there has been very little oversight though the city is unable to turn back the clock and impose new rules.

Mr. Willard explained that a homeowners' association empowers the residents. The Court of Chancery has streamlined their process and it is not so prohibited that homeowners are unable to take that HOA to court and get a quick mediation. His suggestion is to draft an ordinance to beef up the requirement for homeowners' association in the subdivision code. In that manner, when they get approval for a homeowners' association, they would have to submit the document which would address certain fundamental requirements such as mandatory participation, ownership and maintenance of conservation open space and common areas. He is willing work on a draft ordinance.

The solicitor said when he hears participate in a homeowners' association, he feels that is the opposite of what they are intended for. He explained they are intended to empower the residents though he will need to do some additional research particularly on those that say the developer will have control until a certain percentage of the lots are sold.

Mr. Spillane said the people want the city to have a set of ten or fifteen rules for all HOA's. For example, the homeowners have the right to see where the dues are being used. Also, when a subdivision is turned over to the city, at what point is it turned over to the city. If the HOA wants to make the rules stronger, that is up to the town, but he wants the city to step in when these rules are being developed so they become standard for all HOA's in Milford.

Mayor Marabello said his subdivision had three builders. According to the mayor, many of the homeowners were unsure what they were signing when it came to the HOA rules. His salesman glossed over the rules and many did not understand them. He added that often the declarations are very outdated. They have one that prohibits solar panels in this day and age when people are looking for alternative energy sources. He agrees that someone needs to review them to make sure they are kept updated.

The city solicitor will draft an ordinance on this subject. The mayor said he wants to make sure that a resident in an HOA does not mean they lose their right as a citizen and is only asking for a sense of fairness to everyone.

With no further workshop items, the Workshop concluded at 8:21 p.m.

Respectfully submitted,

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

Terri K. Hudson, CMC  
City Clerk