

MILFORD CITY COUNCIL
MINUTES OF MEETING
July 27, 2020

The City Council of the City of Milford convened in a Workshop Session by way of a video conferencing website on Monday, July 27, 2020 at 6:00 p.m.

PRESIDING: Mayor Archie Campbell

IN ATTENDANCE: Councilpersons Danial Marabello, Mike Boyle, Andrew Fulton, Todd Culotta, Brian Baer, Douglas Morrow, Jason James Sr. and Katrina Wilson

STAFF: City Manager Mark Whitfield, Police Chief Kenneth Brown and City Clerk Terri Hudson

COUNSEL: Assistant Solicitor James Sharp, Esquire

In an effort to adhere to social distancing protocols and best practices imposed by Governor John Carney's State of Emergency Declaration effective March 13, 2020, the City of Milford has canceled all public gatherings until further notice. See July 27, 2020 Council Meeting agenda for additional information.

*Roles and Responsibilities in the Council/Manager Form of Government
Larry Comunale and Steve Wiesner*

City Manager Whitfield recalled that during last year's retreat, one of the items recommended was a training session related to the roles of Councilmembers and the Mayor, as well as the City Manager, City Clerk and Police Chief, since those three officials also report to City Council.

Mr. Whitfield considered several options, which resulted in the selection of Mr. Comunale and Mr. Weisner after which he provided the following bios:

Mr. Comunale is from Chester Springs Pennsylvania has served three municipalities either as a township or borough manager over a 36-year time span from 1985 to date. He has developed classroom seminars for elected and appointed officials. Since 2004, he has served as an adjunct professor for the Department of Public Administration at Villanova University and is presently an adjunct professor of Graduate Studies, Masters of Public Policy at Delaware Valley University.

Mr. Weisner is from Newtown Square, Pennsylvania, and has served three municipalities over a 10-year time frame, both as a finance director and township manager. In 2001, he went into the consulting business, specializing in helping government organizations, as well as nonprofits, with personnel organizational procedural and fiscal management issues. He also developed curriculum for the newly elected officials' class of the Pennsylvania State Associations of Boroughs.

Mr. Wiesner began the presentation, pointing out the importance of the topic, and noting this is a subject that comes up frequently when consulting with municipalities.

He shared that the council/manager form of government works at its highest efficiency when all roles are clearly defined and everyone stays within their role. He will provide a sense as to how this form of government was created and some background from the National League of Cities, who first published the model city charter over one hundred years ago, who has given them permission to use the material.

Mr. Comunale provided a brief history stating it was a product of the prevailing modes of thought during the late 19th Century. It is similar to a publicly traded corporation in which an elected governing body is responsible for legislative functions such as establishing policy, passing local ordinances, voting appropriations, and developing an overall vision, similar to a corporate board of directors.

The legislative body appoints a professional manager to oversee the administrative operations, implement its policies and advise it. The manager position is similar to that of corporate chief executive officer, providing professional management to the board of directors.

He shared that the first managers were engineers who were needed to build streets, address pollution and so forth. As a result, Mr. Whitfield's background fits in well with the historical position of managers.

Today, the council/manager form is a predominant form of municipal government in 73% of the municipalities. An IBM report from 2011 states this form is 10% more efficient than other forms of government. In addition, 66% of municipalities with triple A bond ratings utilize the council/manager form.

Mr. Comunale pointed out there is a value set on professional nonpartisan management, which is widely recognized and respected. When reviewing Milford's Municipal Charter, as well as its strategic plan, the council/manager form was front and center in both documents.

From a metaphor overview, the city council members and mayor are at the 30,000-foot level. The manager is then at the 10,000-foot level, which he is referring to as the executive or execution level. At the ground level, are all other employees.

At the top level are the city council members and the mayor. On occasion, the manager may drift into that top level, when it comes to policy making. For example, when the manager is presenting policy alternatives to the council and mayor to solve problems.

Once that policy is set, that manager is responsible for executing the policies acted on by city council. This is important because the manager, along with the department heads, are responsible for the execution, along with those at the ground level.

He pointed out that despite the top level, all three levels are important as these policies are implemented.

Mr. Wiesner then spoke about the model city charter that was used to create many of the charters across the country. Looking at Milford's charter, they see a lot of similarities, as do many other municipal charters in Delaware.

The model city charter starts with all powers of the city shall be invested in the city council, except as otherwise provided by law or this charter, and the council shall provide an exercise thereof for the performance of all duties and obligations imposed on the city by law.

He emphasized that is the essence of where the power resides in the council/manager form of government and city council is the main entity. That dovetails well into Milford's City Charter and the general powers and duties under Section 3.09 that states all powers of the city shall be invested in the city council, except as otherwise provided by law.

Milford's Charter goes on to say in Section 4.01 the government of the city and the exercise of our powers conferred by this Charter, except as otherwise provided herein, shall be vested in an elective body called city council, consisting of a mayor and eight council members. When referencing this charter, whenever the word mayor is used, it solely refers only to the mayor. But the word city council refers to just the eight duly elected or appointed council members. It also makes a distinction and recognizes the mayor's role, but city council holds the balance power for legislative items.

He continued by stating the main goal of city council is to establish a vision for the City, as has been done in the Press Play: Vision 2023 that was mentioned earlier as the strategic plan. In that document, it reiterates this is the form of government.

Mr. Wiesner found one other thing in the document of great importance, is the reference that this document is a living document that can be changed over time, whether or not the specific vision is changed or a new one created. It recognizes that things change all the time. For example, Covid-19 is certainly going to change the landscape for all municipalities across the country. That flexibility, the consultants feel, is very, very important.

He continued by saying that city council also decides the services the municipality will provide and the tax rate necessary to provide those services. It also sets policy to address the issues of the city.

Mr. Comunale finds it interesting because both in the model city charter of the National League of Cities and the Charter of Milford, it's very important to mention that city council devolve authority to the manager. He had to look it up because he wanted to get it exactly right and the definition of devolve is to transfer or delegate.

He noted it is very important when talking about city council and the manager, that the manager's powers are derived directly from city council who empowers the city manager to conduct the day-to-day business of the city.

That is an important concept because, unlike the city clerk, who has specific powers in the Charter, the powers of the city manager are actually given to the manager by city council and are outlined very clearly in the charter.

Mr. Wiesner spoke about how the mayor is the public face of the community who presides at meetings, assigns agenda items, assigns committee members and facilitates communication and understanding between elected and appointed officials. It is a very important role as the 'ombudsman' for the city. The mayor is often the first person that residents will go to find out what's happening in the local government or if they have a problem. He is in a role of a communicator, which is very important in making sure everything happens according to how the city wants it to happen and according to what the plan for the city is. It is so widely known that the mayor has that role, and can be the determinant as to how well the City progresses through the vision for the future.

It was also stated by Mr. Comunale that the mayor is the only official elected citywide. That is also an indication the mayor is the focal point of City government and recognized as the city official that represents the entire city.

While the mayor is not an executive, as in the mayor/council form, they are uniquely positioned to be the political and policy leader of the city. Primarily, the mayor presides over meetings and appoints committees, which are two very important duties. The mayor keeps city council functioning at its highest capacity by facilitating that discussion and focusing attention on the city's most pressing issues.

The charter has some very specific and important duties the city clerk handles. The ones that really stick out are the maintenance of the city records, custodian of the city seal, the manager of city election and being responsible for posting meetings and notices to the city officials and the public.

She is the keeper of the records which is an extremely important function in the city. But again, city council has the ability to add other duties as desired. This position involves essential functions that are very clearly delineated in the charter.

They also acknowledged the city solicitor and chief of police who are both mentioned in the Milford City Charter, and like the city clerk, are appointed by the eight members of city council. Because they are appointed by council, they also report to city council.

Mr. Comunale also added that the International City Manager's Association Code of Ethics states that the manager must refrain from participation in the election of the members of the employing legislative body, including the mayor. As a professional manager, Mr. Whitfield lives by that code of ethics for this profession.

The city manager administers the day-to-day business of the city. As the leader of the management team, he enforces all municipal regulations, oversees all personnel matters and makes financial decisions and policy recommendations.

Mr. Comunale noticed that seven of the nine powers and duties listed in the Milford's Charter are either financial in nature or relate to personnel. It is very clear that the intent of the charter is to devolve/delegate the administration of personnel and financial decisions to the city manager.

The city manager serves at the pleasure of the elected officials and is charged with carrying out those policies adopted by the elected officials.

Mr. Wiesner then talked about the department heads and employees who report to the manager. That chain of command is very clearly defined in Milford's Charter, as well as in the model city charter. He feels it is extremely important to avoid sending mixed messages to the city's employees.

The manager is also in charge of carrying out legislative actions of the council. Regardless of whether or not the manager agrees with those legislative actions, they must be carried out with enthusiasm. The manager must convey that to the employees so that they can fulfill their duties and accomplish the objectives of council.

That is the reason for one chain of command that must go through the manager that includes all employees and department heads who report to the city manager. The only exception is those positions he mentioned earlier that are appointed by city council, such as the city clerk, chief of police and solicitor.

All other department heads must flow through the manager. They also reviewed the city's personnel policies that make that distinction. It allows a grievance procedure but the final say is with the manager and that is where it ends.

Mr. Wiesner said that is how it is supposed to be and how it is envisioned in the model city charter.

Next, they talked about pitfalls, and that miscommunications can sometimes be one. But in order for any city under the city manager form of government to function at their highest level, the department heads and employees must be managed by the city manager.

Mr. Comunale then referenced the manager's powers and duties. On the personnel side, the charter is also very clear that the manager has overall authority over personnel and words like direct supervisor, hiring, discipline is all part of the manager's powers as delegated by city council.

He believes that hiring is a key element of the manager authority. From his own personal experiences, if a city council member suggested someone for a position, his practice would be for that person to automatically get an interview, even if he or she was not qualified. But the final appointment has to rest with the manager for the council/manager system to work well.

Because the manager is not a hiring agent, it's obviously difficult for the manager to make sure that person is always doing their job. However, that does not relieve the manager of the responsibility for carrying out policy and instead, actually heightens that responsibility because that manager is now responsible for that employee as well.,

They agree that one of the important parts of the powers and duties of the city manager is to be able to put his/her staff together to carry out the policies of the city council and the mayor. That is reaffirmed in the charter that says the manager shall direct and supervise the administration of all departments.

Mr. Comunale shared that when he was a manager, a very important part of his authority was to be in charge of personnel. Though it was not an ego thing, it really goes with accountability. In order for the manager to be accountable, they must have the ability to put their team together. That doesn't mean if the policies are not being carried out, that city council don't have options because they do. This is another very important part of the manager's job to assign accountability for policy execution.

Mr. Wiesner also talked about some of the challenges to the council/manager plan. The one that is most often discussed is the unclear or undefined roles between the primary government functions—council, mayor and manager. By making those roles as clear as possible will allow the city to function in its highest capacity.

He recalled the earlier metaphor of 30,000 feet, 10,000 feet and down at the ground level, adding that unfortunately, there are no air traffic controllers in local government. There is a need in a municipality to watch itself and make sure everyone stays in their lanes. If everyone does that, the most will be accomplished.

The other challenge is remaining faithful to a long-range plan. They were impressed with the city's Vision 2023. The longer into the future that city council can look and grab hold of that vision, the easier it will be for the manager to manage to get there. If the plan includes specific steps over a longer period of time, the manager has the ability to rally the troops and get them behind that plan. The closer the plan is adhered to will create synergy and an atmosphere in which employees can truly thrive.

He recommends looking further and further and to modify the plan as needed. That will help the manager manage his employees and create that synergy by having employees that are enthusiastic about their roles.

They then presented several pitfalls, many of which they have seen and lived in their own careers. They felt it would be a good way to summarize some of these things discussed.

- The Manager believing that he/she is indispensable

No one is indispensable, certainly not managers and more times than not, there is a manager that thinks the city is going to fall apart if he/she leaves, but somehow the city always survives.

- The elected officials getting involved in hiring, directing or disciplining employees
- The Manager getting involved in the politics of City government

These go hand in hand and really go back to the need of staying and thriving in that role and staying in your lane. Elected officials should not be involved in the hiring, directing and/or disciplining of employees even though there is a strong desire to do so sometimes because the council and mayor want the best for the city as well,

The manager's role is to make sure those employees stay on track, while the manager stays out of the government side. When city council enacts legislation, the manager may not be 100% in harmony, but when the manager is out in the public role, he cannot express that displeasure and instead must express what was enacted in an appropriate and enthusiastic manner.

- Council members acting independently of the rest of Council

This is inevitable in every municipality, because there is never 100% harmony and council members are not going to agree with each other from time to time. It is okay to disagree and local government works best when there is disagreement at times because the issue may need to be fully discussed in order to come to a fair conclusion. But once council acts, it is set and each member must do their best to express that the legislation was enacted and what the plan was or overall objective was for council action.

- A Manager believing, he/she is accountable to the citizens and not the elected officials

It is important the manager recognize that he is responsible to the elected officials, which is self-explanatory.

- Individual elected officials setting the agenda for meetings

This is a common concern when they teach classes and setting that agenda is really important. All councilmembers should have the ability to provide input. But when that agenda is set, it is usually set by the manager, but capturing all of the city council members' desires and bringing forward those items ready for action, along with the input of the mayor. It is often a collaborative effort, between the presiding officer who in Milford is the mayor and the manager, to place items on the agenda.

- The Manager being disrespectful toward elected officials

This is something they have seen from time to time and can actually be observed more easily seen in today's Zoom meetings. In public meetings with video, that are available to the public, when something crazy happens, that video will be shared by many. Some of the managers they have encountered have somewhat of an adversarial relationship with their elected officials. That should not be, but as everyone knows, it happens so often there was a need to mention it though that does not appear to be a problem in Milford.

- The elected officials not respecting the Manager's position as the chief executive officer of the City

On the flip side, the elected official not respecting the manager's position. It's mutual respect that will get us through the day and get us to accomplish the most. There is a need to respect all your colleagues.

- Operating as independent actors rather than as a team

What authority does an individual councilmember have and the answer is none. The individual council member acts as part of a body and the entire council has to vote on items. In Milford, a vote of five is needed to adopt or authorize something. Individual members have to be very careful sometimes on their perception.

Mr. Comunale recalled serving as an interim manager, and a couple councilmembers wanted to go to an HOA meeting where some hot topics were being discussed. The city solicitor advised them not to go, feeling they would be encouraged to make statements that the HOA would end up thinking were the opinions of the entire city. He understands this is difficult, but something that is absolutely necessary to talk about. He emphasized that councilmembers must be aware of attending a meeting or becoming involved in a conversation they should not be part of. He asked council to keep that in mind and think about this type of how often this situation arises if you let it.

Upon conclusion, he asked if anyone has any questions.

Councilmember James thanked both of the presenters and Mr. Whitfield for putting this together. He recalled when this was discussed, he really stressed the need for it. The main reason was for the newer councilmembers, but feels it will be advantageous to councilmembers who have been in office for a while as well. Though anyone can read the charter, hearing it from an outside source, doesn't always align with your thoughts, or makes sense until you hear it from an impartial party. He is very grateful for the information.

Councilmember Fulton also thanked the presenters, noting that he is a newly elected councilperson. It was very helpful and he has been glancing through the Charter at the same time this was being discussed and appreciates the information.

After observing his military awards, Mr. Comunale thanked Councilmember Fulton for his service to this country and continuing desire to serve the public as an EMT.

They then thanked the City for having them adding they are very passionate about the council/manager form of government and appreciate the positive feedback.

When asked by Councilmember Culotta if council may contact them with any future questions, Mr. Comunale said he is bound by the Code of Ethics to contact City Manager Whitfield and let him know they were contacted. However, they are willing to take questions or comments though they prefer they go through Mr. Whitfield.

There being no further business, the Council Workshop concluded at 6:59 pm.

Respectfully submitted,

Terri K. Hudson, MMC
City Clerk/Recorder

MILFORD CITY COUNCIL
MINUTES OF MEETING
July 27, 2020

The City Council of the City of Milford convened their regular meeting by way of a video conferencing website on Monday, July 27, 2020. The meeting was available for public view and participation as permitted.

PRESIDING: Mayor Archie Campbell

IN ATTENDANCE: Councilmembers Danial Marabello, Mike Boyle, Andrew Fulton, Todd Culotta, Brian Baer, Douglas Morrow, Jason James Sr. and Katrina Wilson

STAFF: City Manager Mark Whitfield, Police Chief Kenneth Brown and City Clerk Terri Hudson

COUNSEL: Assistant Solicitor James Sharp, Esquire

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CALLED TO ORDER

Mayor Campbell called the meeting to order at 7:05 p.m.

INVOCATION AND PLEDGE

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

RECOGNITION

Introduction/City Employee

City Manager Whitfield introduced Charles (Freddy) Ellerbusch who began his employment as an Engineering Technician on July 13th. He currently resides in Harrington and spent 14 years with the State of Delaware as an Engineering Planning Survey Technician.

Mayor and Council welcomed Mr. Ellerbusch.

PUBLIC HEARINGS

Ordinance 2020-19

Jerry Embleton for a Conditional Use to allow a Mixed Use on 0.121 +/- acres in a C2 Zoning District. Property is located along the west side of N. Washington Street between NE Front Street and NE Second Street, addressed as 0 Washington Street, Milford, Delaware. Present Use: Vacant; Proposed Use: Two-story mixed-use structure containing first floor commercial space and a single second story apartment on second floor.

Tax Map: MD-16-183.10-03-57.01

Planning Director Rob Pierce reviewed the application, adding that the notice was published in the Milford Beacon on June 24, 2020 and all properties within 200 feet of the subject parcel were mailed a copy of the notice.

He commented how the applicant proposes to construct a 28 x 40-foot two-story mixed-use structure with first floor commercial and a single second-story apartment. They anticipate between one to five employees within the commercial area and will operate during normal business hours of 8am to 5pm. Because this is in the C-2 zoning district, no parking is required though they plan to provide two parking spaces for the residents who will live there.

Chapter 230-13(C)(10) states “all dwellings other than single-family with a maximum density of 12 units per acre in conjunction with nonresidential use” may be permitted subject to receiving a conditional use permit by the City Council.

Included in the packet is a survey showing the placement of the proposed building and all street parking. Also provided is a floor plan showing the first-floor commercial use area.

The staff report includes an analysis of the conditional use criteria based on Chapter 230(48).

The application was reviewed by the Planning Commission at their July 21st meeting during which time they recommended approval upon a unanimous vote with two conditions. The first condition in the commercial use is a limitation of five employees and the second condition is the hours of operation will be limited between 8am and 5pm.

Mr. Pierce concluded by stating that Applicant Jerry Embleton is on the line to provide additional information about his proposal.

When asked why there was no assigned street number on the address, Mr. Pierce explained that the number will be assigned once the building permit is pulled.

Mr. Embleton stated that what Mr. Pierce presented a good description of his plans for the site. If approved, the building will fit nicely within the character of the neighborhood and should actually enhance it.

He shared that the commercial space will be used as a light office type use such as a realtors or insurance office, or something of that nature.

Mr. Embleton concluded by pointing out this property will also bring in additional revenue to the City of Milford.

Councilmember Marabello then asked if limiting the hours of the business from 8am to 5pm is consistent with other commercial uses; Planning Director Pierce explained that is simply a recommendation of the planning commission that was part of their motion.

Councilmember Culotta then asked the purpose of the limitation and what happens if this ends up being a retail store, and whether they could be open later. He feels that is a consistent problem with Downtown Milford businesses because most residents prefer stores stay open longer.

Councilmember Fulton commented that the original application was submitted with the 8am to 5pm hours constraint and that the Planning Commission simply concurred with the request. As a result, it appears to him that the Planning Commission did not come up with the restrictions and instead agreed to what was submitted by the applicant.

Assistant Solicitor Sharp asked Mr. Embleton if he had an issue with those hours, or if he could provide some additional insight.

Mr. Embleton said he presently has no problem with that, however, it that was something his Engineer Michael Cotten had included in the original letter, that he had unfortunately, overlooked it at the time.

After some consideration, Mr. Embleton felt that the hours of 8am to 9pm would probably be more appropriate and would allow more opportunities. The question was asked what would be needed to change the recommendation of the Planning Commission, whether it would need to be again reviewed by the Commission, or if a super majority vote was required by Council to overturn the Planning Commission’s recommendation. Assistant Solicitor Sharp pointed out the super majority vote is needed to overturn a recommendation for denial at the Commission level, or to overrule a change to a zoning regulation. However, removing the conditions that were added is a unique situation.

Assistant Solicitor Sharp then asked Mr. Embleton if he heard and understood the comments of the Planning Director; he stated yes. Mr. Sharp asked if he had the opportunity to read the staff comments that were provided in the Council; he stated no.

Mr. Embleton then confirmed that the comments made by the Planning Director were, in fact, true and correct.

Assistant Solicitor Sharp then referenced the two conditions that were added and the hours of operation as had been discussed. The other condition was the limitation for up to five employees. He is of the impression that is something that was captured from the engineer's letter to the Planning Commission. He asked if Mr. Embleton had any comments regarding the limitation of five employees. Mr. Embleton believes that five is appropriate for that size building.

Assistant Solicitor Sharp also questioned, and Mr. Embleton confirmed, that two parking spaces will be provided for the residents of the apartment.

Mayor Campbell then opened the floor to public comments. No one responded and the floor was closed.

Councilmember Marabello expressed additional concerns related to the maximum number of five employees and any potential restriction for an insurance office or realty firm. Mr. Embleton then asked if he can request the removal of the five-employee restriction.

Councilmember Marabello has no problem with removing that restriction, adding that a real estate office can easily have many realtors, most of whom are working in the field throughout the day. Councilmember Culotta agreed the limitation came from his own engineer and that language is not needed.

Planning Director Pierce reiterated that because this is in the C2 zoning district, off-street parking is not required. However, two spaces are being provided for the residents, though normally that would be 2.5 spaces per unit.

An office building typically requires anywhere from one space for 100 to 150 square feet of office space. But the intent with this proposal would be for employees to use the city parking lot on the corner of Washington and Walnut or the former M&T Bank parking lot the city purchased a couple years ago.

Councilmember Boyle has concerns with telling somebody they cannot employ more than five people, even if they are not on site; Assistant Solicitor Sharp said he does not have the exact verbiage of what the condition imposed, but would seem to be a limit as to how many employees could be on site at one time.

Assistant Solicitor Sharp recommended if Council were so inclined to impose an employee number limitation, perhaps it would apply to the number of employees on site at any given time.

Councilmember Boyle said when he was on the Planning Commission, with the exception of employees dictating parking numbers, there was never any limit placed on the number of employees for any organization occupying or renting a space.

Councilmember James emphasized that it appears as those limitations were self-imposed by the applicant's engineer. As was spoken earlier, the Planning Commission simply concurred with what was written. His question remains that based on the size building, and available parking, is there a maximum number of employees that can be on site or can it be unlimited.

He then asked if Council can approve it without any restrictions without creating a parking requirement.

Councilmember Fulton again pointed out the C2 zoning district does not require parking for employees. The only limitation he is aware of would fall under the maximum occupancy allowed by the Fire Marshal's office.

Mr. Pierce stated that paragraph F of the conditional use evaluation allows the Planning Commission and Council to impose reasonable restrictions to safeguard from things such as traffic control parking screening and setbacks, even if it is beyond a code requirement.

Councilmember James asked if we have a guide for what is 'reasonable' because in his opinion, there is available and sufficient parking in the area.

Councilmember Culotta does not want to limit the developer to either condition and prefers to go with what the Fire Marshal says. Councilmember Morrow agrees with Councilmember Culotta, adding this is very unusual and needs to be removed.

A discussion followed with all of Council appearing to concur with the removal of the two conditions, and that they were only added because it was stated as part of the original application.

Councilmember Fulton also pointed out that the downtown area is what Council wants to thrive and not to be choked, which is the appearance in this situation.

The applicant confirmed he is in agreement with the direction Council is moving toward.

Councilmember Culotta moved to adopt Ordinance 2020-19, as recommended by the Planning Commission and to remove the restriction of five employees maximum and business hours limited from 8am to 5 pm, seconded by Councilmember Wilson.

Motion carried by the following unanimous 8-0 roll call vote:

Marabello: Yes, to the amended approval based on the fact the two conditions were not reasonable or necessary.

Boyle: Yes, with Councilmember Culotta's recommendation. Overall, it complies with the comprehensive plan, mixed use development and the central business district.

Fulton: Yes, it addresses our need for businesses to thrive in the central business district without placing undue burden upon those businesses.

Baer: Yes, I vote yes and believe it should not require any restrictions, including the number of employees or the hours, especially because we are trying to encourage people to go downtown for Third Thursdays and similar events.

Morrow: I also vote yes and think that the two add-ons were unnecessary burdens.

Wilson: Yes, we want to be business friendly as much as possible. And it was good observation of Council who recognized the restrictions and we definitely don't want to limit anyone from doing business downtown.

James: I vote yes with the amendment as stated by Councilmember Culotta, removing the unnecessary restrictions of the number of employees and hours and I concur with Councilmember Boyle that the building size itself will dictate the occupancy, which I think will be sufficient.

Culotta: yes, based on removing the things we talked about and I also want to congratulate Mr. Embleton for making the investment in our downtown. It takes a lot of risk and speculation and it will enhance our downtown with more business, which means more activity.

Ordinance 2020-20

R&S Construction LLC for a Conditional Use to allow a Single-Family Semidetached Dwelling on 0.19 +/- acres in an R2 Zoning District. Property is located along the south side of SE Second Street between Montgomery Street and Franklin Street, addressed as 212 & 214 SE Second Street, Milford, Delaware. Present Use: Vacant; Proposed Use: Single-Family Semidetached Dwelling. Tax Map: 3-30-7.17-275.00 & 3-30-7.17-276

Planning Director Pierce reviewed the application submitted for a single-family semi-detached dwelling (duplex) on a vacant lot. The applicant purchased and condemned the property at 212 SE Second Street and demolished the structure in May. A vacant parcel adjacent to the property was also purchased. The applicant proposes to replace the previous single-family detached dwelling with a semi-detached dwelling, as shown on the survey included in the packet.

According to Chapter 230-10(c), single-family semi-detached dwellings are considered a conditional use within the R2 zoning district and are subject to approval by City Council.

The packet includes the staff analysis, location and zoning map, along with a house placement survey and floor plans.

The public notice was published in the Milford Beacon on June 24, 2020 and all properties within 200 feet of the subject parcel were mailed a copy.

The Planning Commission reviewed this application at their July 21st meeting and recommended approval upon unanimous vote.

Arden Johnson representing R&S Construction LLC was in attendance. He shared their plans to put in a semi-detached home with a rated wall between the two units, similar to a townhouse. They are doing that because the narrowness of the lot allows this to be separated a little more from the adjacent existing properties.

He feels it will work well with the four-plex or four-unit apartment building across the street and is consistent with the neighborhood and looks forward to be part of it.

When asked about the parking situation, Mr. Johnson explained there are two parking spaces as required by the code in front of each unit as, as are shown on the drawings.

The proposed completion date will depend on the date of the approvals. He anticipates approximately 120 days to complete, once the permits are pulled. They will also need county permits, as well as the DelDOT approval due to the curb cuts, etc. He anticipates less than six months and plans to start as quickly as possible.

Assistant Solicitor Sharp then asked Mr. Johnson if he heard and understand the statements and comments made by Mr. Pierce and believed them to be true and correct; Mr. Johnson stated absolutely.

When asked if he read the staff comments in the packet, Mr. Johnson said he did not have a chance to read them.

The floor was then opened to public comment. No one responded by phone or video conferencing and no related emails had been submitted. The comment session was then closed.

Councilmember Fulton moved to adopt Ordinance 2020-20 authorizing the conditional use permit, seconded by Councilmember Boyle. Motion carried by a unanimous 8-0 roll call vote:

Marabello: Yes, I approve and agree with the Planning Commission and believe it will enhance the downtown area and provide additional housing that is needed.

Boyle: Yes, the application is permitted under conditional use within the area zoned R2, and I find it is an appropriate use and to be in compliance with the comp plan.

Fulton: Yes, it's in compliance with comprehensive plan and it also provides affordable housing.

Culotta: Yes, this was a spot where there was a fire sometime back, and I think the improvement with the new houses will be great for the community.

Baer: Yes, and I think it will be a great improvement for the community of Milford

Morrow: I also vote yes based on Planning Commission's recommendations.

James: Yes, it is consistent with the code and consistent with the surrounding dwellings.

Wilson: Yes, based on the recommendation of Planning Commission.

Ordinance 2020-22

Cosmo Properties LLC for a Conditional Use to allow a Daycare to be known as Triumph Youth Center on 2.08 +/- acres in a C3 Zoning District. Property is located along the north side of Milford-Harrington Highway, approximately 2,200 feet west of the Route 113 intersection, addressed as 350 Milford-Harrington Highway, Milford, Delaware. Present Use: Shopping Center; Proposed Use: Same with Daycare.

Tax Map: MD-16-173.00-01-08.00

Planning Director Pierce reviewed the application, stating this is a property that is currently improved with a strip shopping center, in an area zoned C3 highway commercial. The applicant proposes to convert a portion of the shopping center, approximately 2,400 square feet, into a daycare facility and will provide an outdoor fenced-in play area to the rear of the principal structure behind the parking lot.

He stated that Chapter 230-14(c)(12) states a daycare center is a conditional use within the C3 zoning district, and is subject to city council approval.

The packet includes a staff report, a location and zoning map showing the property in relation to areas, within the city and county surrounding it and aerial photograph showing the existing improvements on the site.

The location is the end unit, southeast of the building, which is the former location of a gas station/convenience store. Pumps, canopy, gas tank and similar items have been removed and the parking lot repaired within the last couple of years. The daycare will fill a vacant space within the shopping center.

Also provided by the applicant is a rough draft of some restriping that will occur and a more formal drawing that was submitted for the planning department to review after the submission deadline. Mr. Pierce plans to work through the details to make sure it complies with the drive aisle requirements and other items discussed at the Planning Commission meeting.

Also included is a copy of the area that will be leased out and used for the playground.

All properties within 200 feet were mailed a copy of the public notice and the notice was properly published in the Milford Beacon on June 24, 2020.

The Planning Commission reviewed the application at their July 21st meeting and recommended approval by a vote of 5-1 vote.

When asked the reason for the one dissenting vote, Mr. Pierce said that the commissioner was concerned about the proximity of an existing use within the strip center, being a liquor store, and felt the daycare was too close.

Councilmember Fulton referenced prohibitions, and specifically 230(44)(d) that states:

All establishments involving the sale of alcoholic beverages, either on or off premises, which are located within 1,000 feet of any public or private school, day-care or child care center or church, unless food is prepared and served for consumption on site or for takeout, or alcoholic beverages are produced in said location.

He then asked how that comes into play in relation to the liquor store and the child care child development center.

Mr. Pierce explained that provision of the ordinance was put in place to keep stores or others that sell alcoholic beverages, without serving food or producing them on site, from going into certain locations of the community that may detract from a school, church, daycare or similar facilities. It does not, however, prohibit or restrict a school church or daycare from going within a certain distance of an existing liquor store or existing alcohol establishment.

He believes the intent was to protect the existing uses from something coming in, but in this case, the daycare is well aware of the adjoining uses.

Councilmember Morrow asked if they have received all their approvals from the State of Delaware; Planning Director Pierce said they will be required to get those approvals from the state licensing office for the daycare, before they can open and operate.

It was confirmed that if the daycare currently existed and the liquor store wanted to open, that would not be allowed. Mr. Pierce added that a statement was made at the Planning Commission meeting, more for the applicant's knowledge, and to put it on the record, that if this gets approved and the liquor store closed for twelve months, it would become a non-conforming status according to our zoning code, and would not be permitted to reopen unless they sought a waiver under 230 (44)(d).

When asked if this is an inconsistency that is not reasonable, Mr. Pierce said that section of the City code is to protect existing uses from being encroached upon by an establishment that sells alcohol. It is not to prevent another establishment from coming into that area.

Councilmember Marabello asked the intent that prohibits a liquor store from opening in such a situation, Mr. Pierce said he can only go by the zoning code and he is unsure as he was here when that was added.

Councilmember Marabello believes it is an inconsistency.

Assistant Solicitor Sharp noted there is a provision in Delaware Code Title 4, Alcoholic Liquors, that allows the 'Commissioner to refuse a license to sell alcoholic liquor to any new establishment that will be located in the vicinity of a church, school or college. The Commissioner may issue a license to any establishment located in the vicinity of a church, school or college when such establishment has been located in a place prior to the time any church, school or college may thereafter be located in the vicinity of such establishment.'

He believes the code provision is somewhat consistent with what is seen in the State code. If you are going to put it there, Mr. Sharp said there is a heightened restriction, but we are not going to restrict what your neighbors can do on their lands.

The Assistant Solicitor does not know the intent either, though that is how the code says in regards to someone applying for that type of license.

Planning Director Pierce believes they were worried about it detracting from existing uses in the area. The daycare owner might have an issue with that use within a certain distance of their business. But in this case, the business owner is making a decision to go in a certain location. In that manner, it does not really detract from the business itself.

Mr. Pierce believes it is more to protect existing property uses and rights, versus anything else.

Councilmember James asked how close is the liquor store will be to the daycare; Mr. Pierce clarified it would be the adjacent suite.

Councilmember James said his initial thought is the spirit of the code is to keep liquor stores away from daycares, churches and schools. But after listening to the testimony, it sounds as though it could be interpreted as protecting existing property owners or businesses.

Planning Director Pierce feels the criteria that should be used, based on the zoning code, is found within Chapter 230-48 and is also outlined in the staff report. A lot of it deals with the proposed use detracting from existing uses and not existing uses detracting from the proposed use.

Councilmember Boyle asked Chief Brown to comment and if this liquor store area been a problem; Chief Brown stated no.

Councilmember Culotta appreciates the note from Planning and Zoning, from the idea that a liquor store is not ideal to have next to a school or in this case, a daycare center. But if you can't have one, then you can't have the other. Then if anytime a liquor store opens, nothing will be allowed around it. In this case, the applicant understands the location and has no problem with it.

Councilmember Fulton asked Assistant Solicitor Sharp if the Delaware code that was read states that the licensing would be looked at differently for a liquor store near a child care facility; Assistant Solicitor Sharp referenced Delaware Title 4, Section 543(c). In his opinion, it appears the Commissioner has the ability to refuse to grant a license for a liquor store within the vicinity of a church, school or college. The Commissioner, can also issue an updated license if the liquor store exists and something opens closer.

Again, he pointed out that is a similar situation to what Mr. Pierce is saying about Milford's code, is that you cannot put it there, if these other uses are nearby. But if you're already there, and other uses want to come near you, they are not going to tell them they are prohibited.

Councilmember Fulton asked if it would be a limitation or if it may impact Mike's Liquor Store, by a child care facility being right next door to them. Assistant Solicitor Sharp pointed out he has not reached out directly to the Commissioner's Office on this, but that language seems to imply that the Commissioner would look at it with a different lens, than he would if this liquor store was coming near an existing facility.

Councilmember Culotta pointed out that Romano's Pizza is the third and only other business in that shopping center. This portion of the shopping center has been empty for a long time, and previously was always a convenient store. This could remain an empty building if that is desired, and though he does not want to make it that complicated, this is another opportunity for a new business, which also fills a need for the community.

Councilmember Wilson reported she received two phone calls opposing this application. Their sole reason was because of the close proximity to the liquor store and specifically, they had concerns with individuals going in and out of the liquor store at the same time parents were going into the childcare center.

Assistant Solicitor Sharp stated that with all due respect, there is a need to ensure that any decisions that are made are based on the record of those people in attendance tonight and those that wish to speak. However, a decision cannot be determined by comments that are not in the record and he encourages those people to speak.

Councilmember Wilson said she informed them she would state their opposition. She is uncertain if they are on the phone or available, but did receive those calls over the weekend and wants them to know she listened to them.

Assistant Solicitor Sharp recommends Council disregard those comments, unless they wish to make those statements on the record tonight.

Mayor Campbell then called on the applicant to speak.

Phil McGinnis said he is representing Cosmo Properties LLC, who would be the landlord and Miss Hattie Harris is the person that picked out this location for her daycare knowing the liquor store was there. He also noted there is a hair salon in this shopping center, so there are actually four tenants.

He explained they all met together with the Planning Commission last week who gave them a couple of requirements, which were agreed to. One is they put a hatched crosswalk on the back of the property to where the playground will be. For those who are concerned about the proximity to the liquor store, he reminded Council, these are small children and not teenagers or drinking-age children. Instead they are small children, whose parents will drop them off and pick them up. The access to the daycare will be from the back and the children will be dropped off in the back, picked up in the back, and the parking lot will be in the back.

Mr. McGinnis pointed out they will not cross paths at any point with any patron of the liquor store. The liquor store business is completely through the front door and it appears to him, that they take deliveries in the front doors as well. These children will also be supervised at all times.

He thinks that if a daycare is located in close proximity to a liquor store, or any other objectionable use, then the parent would have the option and make the decision, of whether or not to choose to utilize this daycare facility. He thinks the applicant has conformed to the requirements of the city. In addition, they agreed to the requirements of the Planning Commission last week.

Councilmember James had Mr. McGinnis confirm, that the drop off for the kids will be in the rear and the playground is in the rear. Thereby, the exposure of the children to the liquor store patrons will be all but eliminated. Mr. McGinnis stated yes sir, he believes so.

Mayor Campbell then opened the floor for public comment. No one responded after several minutes and the comment session was closed.

Councilmember Boyle then stated that earlier this evening, he was handed a copy of what looks like an email to the city of someone from the public who was in opposition and asked if he could read his comments into the record.

Assistant Solicitor Sharp confirmed through Councilmember Boyle it is copy of an email that is simply addressed to the City of Milford and the person who wrote it, delivered it to him, at his door and asked that it be read into the record.

Councilmember Boyle believes he received it around four o'clock today, though he is unsure of the exact time and the copy is not date stamped.

Planning Director Pierce referenced the public notices that requires any written comments be submitted to the City Clerk's Office or the Planning Office, up until the start of the meeting, and would then be read into the record.

Assistant Solicitor Sharp understands the manner by which it should be submitted, though he knows we are being more flexible in light of Covid-19 and may not be stated in the normal fashion.

City Clerk Hudson confirmed that she did not receive any written comments or requests to speak. She also checked the email site people are directed to send comments and nothing had been submitted. Planning Director Pierce said he has not received any phone calls or comments at his office either.

Mayor Campbell confirmed that he received three phone calls from people with concerns as well.

Councilmember James said regardless of whether the comments were submitted or made verbally, because of Covid-19, they were not submitted to the City Clerk or Planning Director. He loves public comments, but wants to make sure it is done properly and in fairness to all parties, regardless of if they are verbal or written.

Assistant Solicitor Sharp believes the manner by which we've advertised for comments to be submitted has not been met so he is inclined to say no, though he will continue to research Milford's rules and regulations.

Councilmember Fulton asked if the site plan modification would be considered a complete site plan because of the late modifications. Planning Director Pierce explained the applicant submitted a cleaner version of the parking lot restriping plan for consideration which can be reviewed at the staff level to make sure it complies with the drive aisle requirements.

He explained it is not uncommon to review restriping plans from time to time without taking it before Planning Commission or City Council.

Councilmember Fulton asked if it is a requirement of the conditional to submit the complete site plan; Planning Director Pierce clarified that because this is in an existing strip center, he prefers to be flexible and work with applicant. This does not involve new or additional entrance improvements or utility modifications. Instead, they are essentially flipping the drive aisles and updating the restriping plan.

Planning Director Pierce agrees that is a section of the ordinance that may need to be modified in the near future.

After further review, Assistant Solicitor Sharp advised Council the reading of the email should be disallowed. He referenced a copy of the notice that provides the manner by which these comments shall be submitted, and in particular it is very clear how public comments must be submitted via email to the City Clerk. Therefore, they should be disallowed.

Councilmember Culotta then moved to adopt Ordinance 2020-22, based on the recommendation of the Planning Commission, seconded by Councilmember Morrow.

Motion carried by the following roll call vote:

Marabello: I vote no for the following reasons. I think the spirit of this decision is inconsistent with the intent of the original law, and the code regarding the proximity of a liquor store to schools or anything like that. I think that word the spirit has been violated so I vote no.

Boyle: Reluctantly, I'm going to vote yes. I think that the selection of this site probably wasn't the best decision made, although it's attractive. I, like Councilmember Marabello, question the real intent behind the restriction of keeping churches and schools away from liquor stores.

Fulton: I vote no because I don't believe it meets the intent of Chapter 230 Article 8, 230(44)(d). I also don't believe it meets Chapter 230 requirements for the conditional use because the site plan is incomplete. Those are my reasons for voting no.

Culotta: Yes, because daycares are something that are needed in this community. It has also come to my attention, actually now that I think about it, Air Park Plaza, which is the shopping center to the left of the entrance to Walmart, has a liquor store and a daycare.

Assistant Solicitor Sharp stated that what Councilmember Culotta is mentioning is not part of the record and cannot be considered as part of his decision.

Councilman Culotta reaffirmed his vote is yes.

Baer: I think I am going to vote no on this one, based on the comments that I have heard tonight.

Morrow: I vote yes, even though this is beside a liquor store, and affordable daycare is definitely needed in the City of Milford. What convinced me is the entrance and pick up and drop off will be in the rear of the building and everything is fenced in outside and they're inside the building. I think they should have a go at it, so I vote yes.

James: I reluctantly vote yes for this project, after hearing from the applicant explain that the drop off of the children and playground for the children will be adequately segregated or shielded from the patrons of the liquor store and the entrance to the liquor store. I vote yes because I do not think that it should be our position to impede a business owner to make decisions where they want to place their business. The economics and the patrons that would use the business will make that decision on their own.

Wilson: I, as well, am a little bit reluctant, but I vote yes. It did ease my mind a bit hearing about the entrance and exit being in the back of the building as well as the playground. And the delivery not being in the back of the building also made me feel better. But I want to make sure that happens. I agree with Councilman Morrow that there are not enough daycare centers, and we should always welcome more. We also welcome new businesses all the time so I'm happy about that. But I also am a tad bit concerned with it being next to a liquor store, but will vote yes.

Communication & Correspondence

Community Prayer Day

Councilmember Wilson reminded Council that at Bicentennial Park tomorrow evening at 6pm, several local ministers and residents have partnered to host a Prayer Day. She reminded everyone that all Covid-19 mandates will apply, including the wearing of face masks and social distancing.

City Clerk Hudson will email the flyer to Councilmembers this evening.

Employee Thanks

Councilmember Morrow wanted to publicly thank both Planning Director Pierce and City Manager Whitfield for their quick response to an electrical issue he had at Seawatch. He said this is a reflection on how they assist business owners in Milford, both small and large.

He also thanked Electric Superintendent Will Gallagher who actually resolved the matter on their behalf.

Even though he understands this is often done at the request of Milford funeral directors, Councilmember James thanked Chief Brown for providing several police officers to assist with traffic control for a family funeral that concluded at Barrett's Chapel Cemetery. His family members were very grateful.

Covid-19 Testing

Mayor Campbell gave a shoutout to Lieutenant/Governor Bethany Hall-Long who arranged for Covid testing at Milford High School within a few days after his phone call. Prior to that, Milford's residents had to travel to other towns for the testing. Even with the short notice, the event was extremely successful with almost 600 people tested.

Milford Post Office

Councilmember Morrow also expressed his appreciation to Mayor Campbell for his efforts in resolving the mail delivery issue. He reported that his mail had been delivered once this past week, though none was received the week prior.

Mayor Campbell said he has reached out to US Representative Lisa Blunt Rochester, US Senators Chris Coons and Tom Carper. He also noted this is occurring throughout the country and is not only a local problem.

Councilmember James shared that the USP workers were granted permission to work overtime beginning this past Friday. As a result, he has finally received all his mail as well.

UNFINISHED BUSINESS

No items.

NEW BUSINESS

Adoption/City of Milford Tax Warrant FY2020-2021

City Manager Whitfield announced the tax warrant this is part of the tax billing process. The City Charter charges City Council to direct the City Manager to collect taxes in order to offset the expenses anticipated within the budget.

Councilmember James moved to adopt the Fiscal Year 2020-2021 Tax Warrant, seconded by Councilmember Fulton:

Greetings:

The Charter of the City of Milford provides the following:

“Article VII, Section 7.12: Attached to said tax list shall be a warrant, under the Seal of the City of Milford, signed by the Mayor and Attested to by the City Clerk, commanding the City Manager to make collection of Taxes as stated in the Tax Lists.”

THEREFORE, YOU, THE CITY MANAGER, DULY APPOINTED BY THE COUNCIL OF THE CITY OF MILFORD, ARE HEREBY COMMANDED TO COLLECT THE TAXES AS LEVIED IN THE FOUR WARDS, AS FOLLOWS:

<i>Property Assessment Values Per Billing Register</i>	\$ 1,279,583,352
<i>Exemptions</i>	[\$ 355,126,000]
<i>Total Assessed Values</i>	\$ 924,457,352
<i>Tax Rate</i>	x \$0.0046
<i>Estimated Tax Collection</i>	\$ 4,252,503
<i>Senior Citizen Discount</i>	[\$ 30,728]
TOTAL TAX COLLECTION (Fiscal Year 2020-2021)	\$ 4,221,775

Tax Due Date: September 30, 2020

Motion carried.

Approval/Milford Public Library Agreement

City Manager Whitfield presented the new agreement between the City and Milford Public Library. It is very similar agreement to the previous agreement, however, he and the City Clerk rewrote various parts of the agreement. Under the terms and reporting, the agreement can now be extended by one-year increments, unless terminated by either party with notice given within thirty days.

Additionally, he recommends the reporting requirements be reduced to once per year to align with their funding request. Included they are asked to provide a report of how those funds were used in the previous year.

Councilmember Wilson moved to authorize the City and Milford Public Library agreement as submitted, seconded by Councilmember Fulton. Motion carried.

Approval/Friends of the Milford Museum Agreement

City Manager Whitfield then presented the agreement between the City and the Friends of the Milford Museum. This is similar, as far as terms and report, to that of the Milford Library. It can also be extended by one-year increments, unless terminated, as outlined in the termination clause. The museum will provide an annual report to the City, at the time they submit their funding request. Funding will be based on Council's decision with regard to the current financial situation as decided during the budget preparation period.

Councilmember Boyle moved to authorize the City and the Friends of Milford Museum Agreement, seconded by Councilmember Fulton. Motion carried.

EXECUTIVE SESSION

Councilmember Boyle moved to go into Executive Session reference the below statutes, seconded by Councilmember Morrow:

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 8:35 p.m. for the purpose as is permitted by the Delaware Freedom of Information Act.

Return to Open Session

Council returned to the public meeting at 8:46 p.m.

Council Appointee Evaluations

Chief of Police

Councilmember Fulton stated that based on his performance evaluation, he moved to authorize a 3% merit and 1.5% COLA increase, effective July 1st, for Chief Brown, seconded by Councilmember James. Motion carried by unanimous roll call vote.

City Clerk

Councilmember Wilson stated that based on the City Clerk's performance evaluation, she moved to authorize a 3.5% merit and 1.5% COLA increase, effective January 1st, seconded by Councilmember Culotta. Motion carried by unanimous roll call vote.

ADJOURNMENT

There being no further business, Councilmember James moved to adjourn the Council Meeting, seconded by Councilmember Wilson. Motion carried.

The Council Meeting adjourned at 8:50 p.m.

Respectfully submitted,

Terri K. Hudson, MMC
City Clerk/Recorder