

"A Historic Past"



"A Bright Future"

CITY OF DELAWARE CITY

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**MINUTES
CITY OF DELAWARE CITY
MAYOR AND COUNCIL MEETING
PUBLIC HEARING AND BOARD OF APPEALS**

**FEBRUARY 1, 2016
RESCHEDULED FROM MONDAY, JANUARY 25, 2016
(Due to Inclement Weather)**

CALL TO ORDER – PUBLIC HEARING

The Honorable Mayor Green called to order the Public Hearing at 6:00 pm. The following Council Members were present: Konkus, Titus, Malinowski and Barrett. Also present were Mayor Green, City Treasurer Hartman, City Solicitor Walton, Chief of Police Baylor and Assistant City Clerk Clifton.

**ORDINANCE 15-1221-01 RELATING TO PROPERTY OWNER REQUESTED
REZONING PROCEDURES – ORDINANCE TO AMEND CHAPTER 46,
SECTION 46-137 OF THE CITY CODE TO MODIFY AND FURTHER CLARIFY
THE PROCEDURES FOR CERTAIN ZONING CLASSIFICATION CHANGE
APPLICATIONS**

City Solicitor Walton explained that the ordinance details the procedures to be followed in the case of a property owner requesting property rezoning. He said the Council shall determine if the petition for zoning classification change should be referred to the Planning Commission for review. If the Council does not refer it to the Planning Commission, no further action would be taken regarding the petition. He also explained that a majority vote of Council to refer the petition does not obligate the Council to adopt the zoning change. It just allows the process to go forward. The City Solicitor stated that if a Preliminary Land Use

Service Review (PLUS) is required, the applicant would bear the costs and expenses incurred by the City for PLUS review. Questions from Council followed. Mayor Green asked if there were any questions from the audience. There were none.

ORDINANCE 15-1221-02 RELATING TO SUBDIVISION CODE PROCEDURES – ORDINANCE TO AMEND CHAPTER 54 SECTIONS 54-8 AND 54-28 OF THE CITY CODE TO ADD A DEFINED TERM AND TO CHANGE THE SUBMISSION REQUIREMENTS RELATING TO MAJOR AND MINOR SUBDIVISIONS

City Solicitor Walton explained that this ordinance was recommended as there were certain ambiguities in the City Code regarding the process for review and approval of minor subdivisions. He added that the ordinance breaks out the process for review, approval and definition of the differences between, Major and Minor Subdivisions. Questions from Council followed. Mayor Green asked if there were any questions from the audience. There were none.

406 WASHINGTON STREET – PORT PENN HOLDINGS – SUBDIVISION OF 1 LOT - 100' X 200' INTO 3 LOTS – LOT #1 – 92' X 100'; LOT #2 – 54' X 100' AND; LOT #3 – 54' X 100'

City Solicitor Walton asked Mr. Whittaker to come forward and summarize the subdivision plan and variances. He said that there would be two new single dwellings built, one on lot 2 and one on lot 3. He said lot 1 has an existing home. He also stated that there would be off-street parking. City Solicitor Walton explained that the proposed variances were approved by the Board of Adjustment, however, their written decision has not yet been issued. Questions from Council followed. Mayor Green asked if there were any questions from the audience. There were none.

RECESS PUBLIC HEARING

Mayor Green said that he would recess the Public Hearing until 6:25 pm as there were no questions or comments from the public. The public Hearing was recessed at 6:17 pm.

RECONVENE PUBLIC HEARING

Mayor Green reconvened the Public Hearing at 6:25 pm. He listed the items on the Public Hearing agenda. Mayor Green asked if there were any questions from the Council or audience. There were no questions.

ADJOURN PUBLIC HEARING

Council Member Malinowski made a motion to adjourn the Public Hearing. Council Member Titus seconded the motion. A vote was taken, all ayes, motion carried. The Public Hearing was adjourned at 6:29 pm.

CALL TO ORDER – MAYOR AND COUNCIL MEETING

The Honorable Mayor Green called to order the Meeting of the Mayor and Council at 6:30 pm.

PLEDGE OF ALLEGIANCE

Mayor Green led the Pledge of Allegiance to the Flag.

ROLL CALL

Present were The Honorable Mayor Green and Council Members Konkus, Titus, Malinowski and Barrett. City Treasurer Hartman, Police Chief Baylor, City Solicitor Walton and Assistant City Clerk Clifton were also in attendance. City Solicitor Walton introduced a colleague who was attending her first municipal meeting.

ACTION UPON THE TREASURER'S REPORT

City Treasurer Hartman presented the December 2015 Treasurer's Report. *Council Member Titus made a motion to approve the December 2015 Treasurer's Report, subject to audit. Council Member Malinowski seconded the motion. A vote was taken, all ayes, motion carried.*

ACTION UPON THE MINUTES OF THE PREVIOUS MEETING

Council Member Konkus made a motion to approve the minutes of the December 21, 2015 Mayor and Council meeting, as written. Council Member Titus seconded the motion. A vote was taken, all ayes, motion carried.

POLICE REPORT

Police Chief Baylor gave the statistics for the month of December and reported the following:

- The monthly activity spreadsheet, listing year-to-date totals, will be placed on the City website in the future.
- There was one offensive touching incident where the suspect was identified; however, no prosecution was desired by the victim.
- There were two thefts, one misdemeanor and one felony. Suspects were identified and arrests were made.

- There were four drug offenses. A suspect was identified and an arrest was made.
- In addition to the 14 traffic stops listed in the activity report, there was one notable traffic violation in Old Harbor Estates. A resident drove over the sidewalk and passed a stopped school bus. The driver was identified and arrest warrants were obtained.
- There was a terroristic threatening incident. A suspect was identified; however, the victim has not signed the warrant.
- The police were present in town during the snow storm, from Friday until late Sunday night. They slept in the police station and patrolled the town. Chief Baylor said kudos were in order for his police department and The Cutting Edge. The streets in town were kept clear but there were calls to rescue drivers stranded on Route 72 near the refinery.
- The police have been working to identify drug houses within the City. He said they are trying to eradicate the drug problems. Chief Baylor asked residents to report to the police any suspected drug houses.
- The code enforcement officer has been doing well, issuing yellow tags on residences with violations.
- The police have received complaints of recreational vehicles, boats/trailers and commercial vehicles parked on lawns. Discussion followed. Chief Baylor said it is a code violation for any vehicle to be parked on the grass, rather than on gravel or concrete. The police are researching the Code, with the possible assistance of the City Solicitor, and will return to the next meeting of the Mayor and Council with a report.

Mayor Green said he liked the Monthly Status Report and felt the residents would find it very informative. He thanked Council Member Konkus for volunteering to pick up essential personnel during the blizzard. He also thanked Council Member Titus for baking cookies, and his wife, Connie Green, for making a huge pot of soup for the employees who worked during the blizzard.

CITY SOLICITOR'S REPORT

City Solicitor Walton reported a conversation he had with City Manager Cathcart on the Monday following the blizzard. He said City Manager Cathcart praised The Cutting Edge for the snow removal and pump management, the city employees, and the police officers. He was very proud of how the whole City worked together.

City Solicitor Walton reminded the Council of a FOIA complaint he spoke about nine months ago. He said he received notification from the Attorney General's Office, late in December, stating that they did not rule on the matter. They just closed the matter, so there was no violation found.

The City Solicitor said, for the record, that this meeting was rescheduled, due to inclement weather. Under the FOIA code, a meeting can be rescheduled in less

than seven days. All protocol was followed, as this is technically not a regular meeting, but rather a rescheduled meeting.

City Solicitor Walton attended the Board of Adjustment on the variance application with respect to the subdivision on the agenda this evening.

He said he has been following up on zoning issues that were presented to him regarding the Fifth Street property. It appeared as if the City's demand letters have been complied with. He added that he received an inquiry from a Council Member asking about having the fence removed. He said the fence may have been there prior to the fence code coming into play, which means there may be no violation. However, he is still researching this issue.

CITY MANAGER'S REPORT

There was no City Manager's Report as City Manager Cathcart was not present.

APPOINTMENTS, ANNOUNCEMENTS, COMMUNICATIONS

Mayor Green said he would like to appoint the members of the Election Board as follows: April DeBenedictis – Chairperson, Kate O'Donnell and Bonnie Hanna. *Council Member Barrett made a motion to accept the appointment of April DeBenedictis – Chairperson, Kate O'Donnell and Bonnie Hanna. Council Member Titus seconded the motion. There was no discussion. A vote was taken, all ayes, motion carried.*

Mayor Green said he would like to appoint the Election Officers as follows: Virginia Monroe – Inspector, Jean Bonner and Connie Howard. *Council Member Barrett made a motion to accept the appointment of Virginia Monroe – Inspector, Jean Bonner and Connie Howard. Council Member Malinowski seconded the motion. There was no discussion. A vote was taken, all ayes, motion carried.*

Mayor Green said he would like to re-appoint Tim Konkus to the Board of Ethics for an additional three year period. *Council Member Malinowski made a motion to accept the appointment of Tim Konkus to the Board of Ethics. Council Member Titus seconded the motion. There was no discussion. A vote was taken, all ayes, motion carried.*

Mayor Green said he would be looking for two additional appointees to the Board of Ethics by the February meeting. He said he would also wait to make appointments to the Delaware City Day Committee, as Council Member Johnson, chairperson, was not present.

REPORTS OF COMMISSIONS, COMMITTEES AND ORGANIZATIONS

Main Street – Tim Konkus, Main Street President, reported the following:

- The next Main Street meeting will be held on Monday, February 8, 2016 at 6:30 pm. The meeting will be held in Town Hall and all are invited to attend.
- Completion of the 2016 Calendar of Activities.
- Heather Fox, a member of Main Street, will serve on the Blue Print Communities Organization. She is the proprietor of the Pea Patch Studio located in the Central Hotel.
- Undertaking project management tasks associated with a new trail to be constructed from the Michael B. Castle Trail, across Fort DuPont to the C & D Canal.

OLD BUSINESS

Second Reading and Adoption of Ordinance 15-1221-01 Relating to Property Owner Requested Rezoning Procedures

Mayor Green stated that this ordinance was introduced at a prior Mayor and Council Meeting and a Public Hearing was held.

Council Member Konkus made a motion to accept Ordinance 15-1221-01 - Relating to Property Owner Requested Rezoning Procedures. Council Member Malinowski seconded the motion. There was no discussion. A roll call vote was taken, all ayes, motion carried.

Second Reading and Adoption of Ordinance 15-1221-02 Relating to Subdivision Code Procedures

Mayor Green stated that this ordinance was introduced at a prior Mayor and Council Meeting and a Public Hearing was held.

Council Member Titus made a motion to accept Ordinance 15-1221-02 – Relating to Subdivision Code Procedures. Council Member Konkus seconded the motion. There was no discussion. A roll call vote was taken, all ayes, motion carried.

NEW BUSINESS

406 Washington Street – Port Penn Holdings – Subdivision – 1 Lot into 3 Lots (#1 – 92' x 100'; #2 – 54' x 100' and; #3 – 54' x 100')

Mayor Green stated that this went before the Board of Adjustment and the Planning Commission. It was approved by the Planning Commission and the Board of Adjustment. The property owner is waiting for the written decision from the Board of Adjustment.

Council Member Malinowski made a motion to accept the subdivision contingent upon the written decision of the Board of Adjustment. Council Member Titus seconded the motion. Discussion followed regarding the facts that there will be two additional single family dwellings with off-street parking. A roll call vote was taken, all ayes, motion carried.

Certification of the 3rd Quarter Supplemental Tax Assessment FY16

Council Member Barrett made a motion to accept the Certification of the 3rd Quarter Supplemental Tax Assessment FY16. Council Member Titus seconded the motion. Discussion followed regarding the appealed assessment to New Castle County by Atlantic Broadband, causing the City to lose \$20,753.57 in taxes. A roll call vote was taken, all ayes, motion carried.

COUNCIL COMMENTS

Council Member Barrett – Asked the City Solicitor about the sign that was located in front of a home on Fifth Street. The sign was advertising Kathy's restaurant. Council Member Barrett said the resident was told to remove the sign as it violated the sign ordinance. Mayor Green added that the sign had been on that resident's yard for years. The sign was removed when Kathy moved and was posted again when Kathy returned. There was a complaint to the code enforcement officer regarding the sign. Chief Baylor spoke with Kathy. Kathy called Mayor Green who then visited her restaurant and spoke with her about the sign. He said he gave her "his interpretation" of the ordinance and asked her to remove the sign until it this could be resolved. She very graciously agreed. He then went to the City Manager and Chief Baylor and said they needed to determine the legal interpretation of the ordinance. They called the City Solicitor who said he was downstate when he received the call, asking him to interpret the Code. He said the question that was presented to him was whether the 90 day time frame for removal of a sign, as stated in the zoning code, applies for a violation or if the five day time limit, in the property maintenance code, applies. He said his opinion was that the 90 day notice for the removal of an illegal sign applied. Discussion followed describing the sign as a portable, directional sign. City Solicitor Walton recommended that the Planning Commission review, in general, the Sign Code, as it is currently drafted, and return to the Mayor and Council with a recommendation for this sign. Council Member Barrett said she would like to have this placed on the agenda for the next Council Meeting. The City Solicitor said he could return to Council with a short presentation on the U. S. Supreme Court case that was decided regarding signs. Council Member Malinowski asked if the sign could be reinstalled since the sign was removed before the 90 day limit. City Solicitor Walton added that if there is any question about whether the interpretation of the Code was correct, the proper procedure would be to ask for an interpretation and take it to the Board of Adjustment, as they are the appellate body. City Solicitor Walton said there would be a fine after the 90th day. Mayor Green asked how much right-of-way the State of Delaware has on Fifth Street. Council Member Malinowski asked if the sign was on the

State right of way, would the City still have jurisdiction. City Solicitor said he did not know the answers to these questions. Chief Baylor said the police are in the position of trying to enforce an ambiguous code. He said he doesn't feel comfortable enforcing this until they get further clarification. City Solicitor Walton said he agreed and that is why he recommended that the sign ordinance undergo a second look.

Council Member Malinowski – no report

Mayor Green – Reported the following:

- Extended very gracious thank you to the Council for pursuing the work that was needed on the playgrounds.
- Has attended the Babe Ruth Baseball League meetings.
- Has held the Mayor's Ball meetings and determined that the benefactors of the ball will be the Babe Ruth League, Fort Delaware, Delaware City Main Street, Delaware Humane Association and PAL of Delaware City.
- Presented an Eagle Scout award to William Keiper, V, and represented Governor Markell, Senator Poore and Representative Longhurst in giving out proclamations to him along with a flag that was flown over the Capitol.
- Attended the Fort DuPont Redevelopment Corporation meetings
- Attended the Delaware League of Local Government meeting.

Council Member Titus – no report

Council Member Konkus – no report

CITIZENS COMMENTS

Preston Cardon, Fifth Street, said he owns the Fifth Street property that has been discussed at this meeting. He said his opinion is that the town picks and chooses who they want to work with. He said he has been doing business in this town for twenty years. He is here to complain about two non-conforming uses. Mr. Cardon said he has thought long and hard about this because he knows how it affects people and their lives. He said Mr. Malinowski ran a crabbing business out of his residential lot for 30 years and just recently came into compliance because he decided he wasn't going to do it any longer. He added that Mr. Malinowski's son Robert and his grandson run a full-blown crabbing business on Washington Street, with three big commercial boats, hundreds of crab pots and refrigeration. He said the town should treat the Malinowski's the same way Mr. Cardon has been treated.

Kate O'Donnell, 109 Washington Street, said she was sorry Mr. Konkus was no longer present as her comment refers to Main Street. She said Mr. Konkus failed to report, in the Main Street report, that Esther Lovely was dismissed from the position of director. She said she did not know Ms. Lovely well, but her understanding was that Ms. Lovely was extremely well qualified. Ms. O'Donnell said she accidentally found out about the dismissal when she emailed Ms. Lovely and was told to remove her email as she had been dismissed. Main Street really needs transparency. She said there have been different reports of the amount Ms. Lovely earned and whether she worked half-time or full time. Ms. O'Donnell

said she hopes the Main Street Board of Directors can work without their only paid staff member. Good luck to the Board.

ADJOURNMENT

Council Member Titus made a motion to adjourn the Mayor and Council Meeting. Council Member Konkus seconded the motion. A vote was taken, all ayes, motion carried. The meeting was adjourned at 7:20 pm.

Respectfully submitted,
Dawn K. Gwynn
City Secretary