

"A Historic Past"



"A Bright Future"

CITY OF DELAWARE CITY
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**MINUTES
CITY OF DELAWARE CITY
MAYOR AND COUNCIL MEETING
AUGUST 15, 2016**

CALL TO ORDER – MAYOR AND COUNCIL MEETING

The Honorable Mayor Green called to order the regular 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 Greene, Fitzwater, Titus, Malinowski and Barrett. City Manager Cathcart, City Treasurer Hartman, City Secretary Gwynn, Police Chief Baylor, Assistant City Clerk Clifton and City Solicitor Walton were also in attendance.

ACTION UPON THE TREASURER'S REPORT

City Treasurer Hartman explained that the Council would need to vote on an amended Treasurer's Report for the month of June 2016. She explained that she needed to write some additional checks for the last fiscal year but the checks were actually written in July. Consequently, she needed to revise the Treasurer's Report. *Council Member Barrett made a motion to approve the revised June 2016 Treasurer's Report, subject to audit. Council Member Titus seconded the motion. There was no discussion. A vote was taken, all ayes, motion carried.*

City Treasurer Hartman presented the Treasurer's Report for July 2016. *Council Member Greene made a motion to approve the July 2016 Treasurer's Report, subject to audit. Council Member Titus seconded the motion. A vote was taken, all ayes, motion carried.*

ACTION UPON THE MINUTES OF THE PREVIOUS MEETING

Council Member Greene made a motion to approve the minutes of the July 18, 2016 Mayor and Council meeting, as written. Council Member Barrett seconded the motion. There was no discussion. A vote was taken, all ayes, motion carried.

POLICE REPORT

Police Chief Baylor gave the statistics for the month of July 2016 and reported the following:

- Any residents who need assistance due to extreme temperatures should contact the police department. Please notify the police of anyone who needs help. The police want to be sure that everyone is helped if needed.
- Received a report that a black, unmarked Crown Victoria followed a woman, who was going to visit her mother, from the Valero to Front Street. The individual approached her and told her that the tinting of her windows was too dark and in violation of the law. She was told that she would receive a ticket if she returned to town with that vehicle. None of the Delaware City police officers were involved in this incident. This is being treated very seriously. It was a suspicious vehicle with an individual who was described as a light skinned black male with some peach fuzz on his chin. He asked anyone who sees the vehicle to get the tag number and give it to the police. Chief Baylor added that if anyone is asked to pull over by someone they feel is not a police officer, they have every right not to stop. They should put on their four-way flashers and dial 911. The dispatcher could tell them whether or not it is a legitimate police vehicle.
- There has been a spike in the number of abandoned vehicles. The police are stickering the car windows. If the stickered vehicle is not moved, it will be towed.
- There has been an increase in accidents, due to people not paying attention. More people are on cell phones, which is a violation, and are subject to being stopped and charged.
- There will be an increase in vehicles from Thursday to Saturday, due to the Circus Italia which is being held at Fort DuPont. There will be appropriate officers to make sure this is not a problem.
- Introduced Adam Poplos, the new Code Enforcement Officer. His schedule will be posted on the website. He will be working some evening hours in order to be available to answer citizens' questions.
- POKEMON GO has taken over in Delaware City, just as it has elsewhere. Please be aware of pedestrians as they may not be paying attention.

CITY SOLICITOR'S REPORT

City Solicitor Walton reported the following:

- There were quite a few FOIA requests for all different types of information.
- Worked on the lease for the Jefferson Street paper street.
- Worked with the Elsmere Police and Chief Baylor to see about getting a police officer trained there.
- Received notification from Assistant City Clerk Clifton that the governor signed a bill about certain residency requirements for voting. Will draft an ordinance regarding these requirements.
- New Code Enforcement Officer Poplos reviewed the City Code and made suggestions for improvements to the Code. Will put those into an ordinance.
- The Planning Commission has met and has some suggestions about the long-pending sign ordinance. Will put those into a revised ordinance and return it to the Planning Commission for their review.

CITY MANAGER'S REPORT

City Manager Cathcart reported the following:

- The gym floor at the Community Center was refinished and paid for by PAL. They also installed mats on the wall behind both baskets.
- Opened the bids for the Washington Street Flood Mitigation project last Monday. However, the bids were extremely high. Returning to the drawing board and will inform the Mayor and Council when the City hears from the engineer.

Discussion followed regarding the telephone company putting brown paper on the bottom of telephone poles on some streets. It seems that they are studying the condition of the poles to make sure they will be replaced if they are rotten.

Additional discussion occurred regarding trees in Battery Park that are dying. City Manager Cathcart said the trees in the park seem to be diseased. They will be posted in the fall if they need to be taken down.

APPOINTMENTS, ANNOUNCEMENTS, COMMUNICATIONS

There were none.

REPORTS OF COMMISSIONS, COMMITTEES AND ORGANIZATIONS

Main Street – Tim Konkus reported on Music in the Park that was held last week. He said Music in the Park this week, on Saturday at 5:00 pm, will be the final one for the season. The following week Music in the Park will be held at 4:00 pm, in the gazebo, and sponsored by Cool Cars.

The River Towns Ride and Festival will be held October 1st and Main Street is looking for volunteers. Discussion followed regarding parking issues.

OLD BUSINESS

Discussion of Jefferson Paper Street: Potential Vote on Lease

Mayor Green announced that, in order to make this topic transparent, he was going to share two pieces of communications that he received regarding this topic. He said he was also going to open the floor to public comment. He stated the rules for how this discussion was going to work.

Mayor Green read a letter from Jill Snow, writing as a representative for 800 Fifth Street, the Walton property. She expressed concern with protecting the value of the property located at 800 Fifth Street. She pointed out three points of interest: the view; the ability to change the lease to allow access to the property adjacent to the paper street in the event that the City would open the street; and the fact that all the parameters outlined by Council Member Malinowski were dropped from the lease as there is no zoning for storage in the Delaware City Code. Ms. Snow also expressed concern with the amount of money that has been spent on legal fees since this topic was first discussed in May 2012.

Mayor Green also read a letter from the Allegheny Boat and RV Storage, LLC. This letter, signed by Mr. and Mrs. Titus, expressed interest in expanding their minority owned business, that has been run for the last 14 years in Pennsylvania, into Delaware City. The business owners are long-time residents of Delaware City and plan to retire here. They proposed to pay \$400 per month for a period of five years with conditions similar to those being proposed by other bidders. They said this would net the City \$6,000 more than the current bidder is offering. They enclosed a check in the amount of \$800, earnest money, to show that they are sincere in their offer.

City Solicitor Walton explained, at the June 2016 meeting, a lease was proposed. He said he did not allow a vote to take place, as the issue was not noticed for FOIA. At the July 2016 meeting, an executive session was held, but the City Solicitor said he would not disclose the contents of that session. However, as the minutes of that meeting reflect, he had legal problems with the lease. He was instructed to work out those legal issues with the counsel for the proposed lessee, PSC, which he did to the best of his ability. He provided the provisions to Council, along with an attorney-client privileged memorandum. The lease which is before the Mayor and Council satisfies the issues which he had from a legality stand point. In Section 4(c), there should be a "to" so the phrase would read, "shall be permitted to install". He said he brought before them was a lease, after consultation and a small amount of negotiation which did not facially violate the Code. The prior lease did facially violate the Code.

Council Member Titus made a motion to open the Council discussion to the public for comment and discussion. Council Member Malinowski seconded the motion. A roll call vote was taken, with the Council Members voting as follows: Barrett – nay, Malinowski – aye, Titus, - aye, Fitzwater – aye, and Greene – nay. Motion carried.

Discussion followed as to whether Council Member Titus could speak about this topic, as she is an owner of Allegheny Boat and RV Storage, LLC. Discussion followed regarding: whether it was past time when bids were accepted; the steps that would be taken if the City should find a need to open the paper street; why this was an exclusive offer to Mr. Carden; why this lease wasn't offered to contiguous property owners at this time, since it had been done previously; the legal costs if the contiguous property owners could bring legal action against the City; if this lease could be appealed to the Board of Adjustment by any citizen because of the proposed use of the property or other concerns; the estimated cost of legal fees since this topic was first introduced about three or four years ago; how the residents feel about the road going through; and why Mr. and Mrs. Titus would consider renting this land if there is a possibility that the paper street would be opened.

RECESS MAYOR AND COUNCIL MEETING

Mayor Green called for a five minute recess at 7:10 pm, in order for the City Solicitor to research a question.

RECONVENE MAYOR AND COUNCIL MEETING

Mayor Green reconvened the Mayor and Council Meeting at 7:15 pm.

Discussion continued regarding whether a Council Member could participate in the deliberations about which he/she has a personal or financial interest. It was City Solicitor Walton's understanding that Council Member Titus should recuse herself. She can participate in the discussion as a member of the public. She has a right to speak, but cannot participate at the desk. Council Member Titus recused herself and took a seat in the audience.

Council Member Malinowski said he would like make some amendments. City Solicitor Walton said this would be a good time for Council Member Malinowski to present his amendments so the public is aware of the changes he would like to make. Council Member Malinowski proposed the following amendments:

- Section 4(c) – Permitted and Restricted Use(s) of Leased Property – Add to the landscape screen that the arborvitae pine trees “shall be at least 4’ in height”. The arborvitae pine trees “shall be placed to shield the adjacent R-1 properties from any subsequently fencing”.

- Section 8 – Liability Insurance, Casualty Insurance, Fire Insurance and Indemnification -
Add subsection C to read, “The tenant is liable for any loss, injury or damage to any person or property caused by the act or neglect of the tenant or the tenant’s employees. The tenant shall defend the landlord from, and reimburse the landlord for, any liability and all costs, including reasonable attorney fees resulting from any injury or damage due to the acts or negligence of the tenant or the tenant’s employees, invitees, successors or assigns”.
- Add Section 15 to be titled “No Cause Termination by Landlord. It shall read as follows: “Landlord shall have the right to terminate this lease agreement without cause at the sole discretion of the landlord for any reason or no reason, upon 90 days advance written notice to tenant”.

PUBLIC COMMENTS

Linda Heeren, 303 and 305 Jefferson Street and 800 Fifth Street, asked if this lease were to be approved, would it set a precedent for other paper streets in the City. *City Solicitor Walton replied that it would not, as each piece of property is unique and ultimately there would be nothing to force the City to lease other paper streets. It would always be at the discretion of Council.* Ms. Heeren asked why the City began this process to begin with. She said with the increased traffic, due to the annexation of Fort DuPont, it seems it would be in the City’s best interest to leave this so the street could be opened if needed.

Jill Snow, 212 Clinton Street, asked if the amendments were in the lease at this time. *City Solicitor Walton said if the Council decides to approve those amendments, they would be added to the lease and the City Manager would execute the lease after they’ve been added.* Ms. Snow said they are particularly interested in a bailout clause, to protect the property at 800 Fifth Street. To deny access to a public street would devalue their property and be a detriment to development. She said they would like to be able to work with the City and Preston Carden to allow access to the street.

Preston Carden, 704 Fifth Street, said he has owned 704 Fifth Street for twenty years. He gave a brief history of the property. He said they never called it a paper street, as it was just Jefferson Street and has always been used as a street. He said they parked there for years. He has installed stone, cut the trees down and generally maintained it for twenty years at his own expense. Mr. Carden said has a building right on the City street for which he will have access regardless. It’s a parking lot, a driveway, a street. He said he has increased the property value of 800 Fifth Street by maintaining Jefferson Street. He said he is going to have access to the street one way or another. He said no one can stop him from having access to his buildings. The City gave him a permit to build it and they can’t limit his access. He will sue if the City does not permit access to his buildings. He said he has 30 men who come into town each day to work, spend money in the City and some live here.

Megan Titus, 515 Clinton Street, gave a summary of the steps that have been taken over the last three to four years by the City, Mr. Carden and the Council regarding Jefferson paper Street. Ms. Titus said that today we have a lease negotiation that has been going on for four years, a cost to the City that is about \$10,000, a lease that would bring 2 cents per square foot and never be raised for fifteen years, a letter from Jill Snow, a life-long resident, asking for consideration for her family, a lease that does not include a bailout clause to allow access to contiguous property owners in the event of sale or development, a promise of a law suit from Ms. Snow because of devaluation of her property, a possible challenge of permanent uses which would be decided by the board and perhaps the Superior Court, possible cause for rezoning to accommodate Mr. Carden's wishes. She said if this is not enough, the City also has a lease from her company that would net the City more. She said if she were voting, which she is not because she recused herself, she would vote to table any lease and proceed with vacating the property. The property would be a perfect parking lot for the bike trail users. Now the public will be able to see who the Council work for. Do they work for the best interest of the City or do they work for Preston Carden.

City Solicitor Walton said he would like to clarify that the lease that was brought up on the 20th of June was a modification of the initial lease that was done by Mr. Carden's attorney. It was not a new lease. It was a modification of the terms the City had initially offered. Subsequently, there were negotiations.

Mayor Green asked if any Council Members were employed by Mr. Carden. Their unanimous response was "no".

City Solicitor Walton said he had no opinion as to whether the lease with Mr. Carden was in the best interest of the City, nor will he ever try to have one. That is the Council's job.

Tim Konkus, 302 Canal Street, said the last three speakers have brought up the best interest of the City. He said maybe it is time to stop the charade. It was designated as a street. Preston himself said he needs access to the street. The City should make it a street, which would be in there best interest of the City. If not, then the City should do an RFP from all interested parties, not just those who have interest in contiguous properties. He said the City should restart this as a sensible, systematic process that goes through the necessary steps requesting an RFP. If not, the City should just pave the street.

Jill Snow, Representing 800 Fifth Street, said she was not saying Mr. Carden or what he has on this property would devalue her property at 800 Fifth Street. She was saying that by having the City take a public street and lease it to Mr. Carden for five years, which would block access from their property would devalue the property. She said they could sue the City for compensation for loss of value. She said they are just asking to be treated fairly and be given access to the property if they need it.

Preston Carden, 704 Fifth Street, agreed with Mr. Konkus. He agreed that this should be turned into a street and he had suggested that. He said he had had a contract to purchase 800 Fifth Street from the Waltons. He said it would cost approximately \$400,000 to build a commercial street all the way through. He said that would allow plenty of parking for everyone. He said he has done everything that was requested of him.

END OF PUBLIC COMMENT

Mayor Green said the public comment time was ended. He said the meeting was being turned back to the Council for the business at hand.

Council Member Barrett made a motion to accept the lease between PSC and the City of Delaware City as written. Council Member Greene seconded the motion. Discussion followed. A roll call vote was taken, with the Council Members voting as follows: Barrett – aye, Malinowski – nay, Fitzwater – aye, and Greene – aye. Council Members Malinowski and Fitzwater stated their reasons for voting as they did. Motion carried.

NEW BUSINESS

Introduction and First Reading of Ordinance 16-0815-01 Relating to a Scrivener Error of City Code Chapter 54-28(c)(2)

City Manager Cathcart said the purpose of the ordinance was to correct some typographical errors in that chapter. *Council Member Fitzwater made a motion to accept the Introduction and First Reading of Ordinance 16-0815-01 Relating to a Scrivener Error of City Code Chapter 54-28(c)(2). Council Member Greene seconded the motion. A vote was taken, all ayes, motion carried.*

COUNCIL COMMENTS

Council Member Greene– No Comments

Council Member Fitzwater – Thanked the public for coming to this meeting and sharing their comments and time.

Council Member Titus – No Comments

Council Member Malinowski – No Comments

Council Member Barrett – No Comments

Mayor Green Comments:

- Thanked everyone who attended the meeting this evening. He thanked them for sharing their opinions. He said this is the way a democratic society works.
- Mayor Green asked the Honorable Richard Cathcart to come forward. He said Mr. Cathcart earned this title while serving as a Representative in the State Legislature for 18 years. During that time, he also served as the Majority Leader. Mayor Green gave Mr. Cathcart a Challenge Coin from

the Fraternal Order of Police Lodge 1, for a job well done, as the Delaware City Police Department reported to him. Mr. Cathcart was given a standing ovation. Mayor Green read a proclamation which he presented to Mr. Cathcart, who was given another standing ovation, in honor of his retirement.

CITIZENS COMMENTS

There were no Citizens Comments.

ADJOURNMENT

Council Member Malinowski made a motion to adjourn the Mayor and Council Meeting. Council Member Titus seconded the motion. A vote was taken, all ayes, motion carried. The meeting was adjourned at 8:03 pm.

Respectfully submitted,
Dawn K. Gwynn
City Secretary