



CITY OF DELAWARE CITY

407 Clinton Street - P.O. Box 4159  
Delaware City, Delaware 19706  
302-834-4573

**MINUTES  
CITY OF DELAWARE CITY  
MAYOR AND COUNCIL MEETING AND  
PUBLIC HEARING  
DECEMBER 19, 2016**

**CALL TO ORDER – PUBLIC HEARING**

The Honorable Mayor Green called to order the Public Hearing at 6:10 pm. The following Council Members were present: Greene, Fitzwater, Titus, Malinowski and Barrett. Also present were Mayor Green, City Manager Cathcart, City Treasurer Hartman, City Secretary Gwynn, Assistant City Clerk Clifton, Police Chief Baylor and Chris Griffiths, acting on behalf of City Solicitor Walton.

**ORDINANCE 16-1121-01 – ORDINANCE TO AMEND THE CITY OF DELAWARE CITY CODE CHAPTER 26 TO GOVERN NOISE NUISANCES**

City Manager Cathcart said this ordinance was being tabled as it still needed work relating to legal issues. He said it would be presented to the Mayor and Council at the January meeting.

**ORDINANCE 16-1121-02 – ORDINANCE TO AMEND DELAWARE CITY PROPERTY MAINTENANCE CODE SECTION 52-2 XX 302.15.1 TO REGULATE THE PARKING OF BOAT TRAILERS AND OTHER SIMILARLY SIZED TRAILERS IN PUBLIC RIGHTS-OF-WAY**

City Manager Cathcart said this came about because of conversations with the fire company in which there were some deep concerns about getting through the streets in Harbor Estates when there are cars parked on both sides of the street. This is actually a public safety concern. He said getting through there with fire equipment, including a big box ambulance has been challenging. Ed Kalinowski,

speaking on behalf of the fire company, said it has been an ongoing battle since day one. He said it is bad enough with one car on each side of the street, but when you add a boat trailer to this it makes it almost impossible to get through. City Manager Cathcart said trailers with boats can legally be parked on a hard surface on resident's property. Ed Kalinowski said it would be ideal if parking on one side of the street was not allowed. Discussion followed. The Council reached consensus to remove the phrase "similarly sized". This could be amended from the floor when a motion is being made.

**ORDINANCE 16-1121-03 – ORDINANCE TO ADOPT THE CITY OF DELAWARE CITY CODE CHAPTER 22-9 TO REGULATE RESIDENTIAL RENTAL PROPERTIES INSPECTIONS**

City Manager said there have been some complaints about the condition of rental properties in town. Most municipalities have an annual inspection of rental properties. He said there are health/safety concerns. This ordinance puts in place a requirement that all rental properties be inspected annually for things such as: working smoke detectors, easily opening and closing windows, bedroom egress, safety of handrails and stairways, no overcrowding, etc. The state has no inspection. Chief Baylor said there is one property in town that has been carved up in such a way that it would be deemed to be unsafe if the City could inspect it. Council Member Titus said she was going to recuse herself because she owns rental properties so she can't discuss this or vote on it. Discussion followed relating to the invasion of privacy and the Landlord Tenant Code.

Ed Kalinowski, 304 Madison Street, gave the Council a copy of the Landlord Tenant Code, saying that this ordinance would be a huge violation. He then explained why. He talked about other towns that have rental property inspections. Discussion followed. Council Member Malinowski said he had an amendment regarding the fees relating to these inspections. Acting City Solicitor Griffiths said that at Section 22.9C #2 he would add a specific citation to the Delaware State Code to allow the City to go in and do these inspections. Additional discussion occurred. Council Member Fitzwater recused himself also as he owns rental properties.

Mayor Green asked for any public comments.

Toby Williams, 403 Hamilton Street, asked if the City is planning to update the means of egress on existing properties so they comply with today's codes, as opposed to accepting the existing small windows. Ed Kalinowski said that would be up to the Delaware State Fire Marshall. The only way they inspect is after an event.

Ed Kalinowski, 304 Madison Street, said the biggest problem he has with this ordinance is Section 22.9Di, the last word says violation. He said under the Delaware Landlord Tenant Code an eviction can take months. He said this

ordinance needs to say "conviction" rather than "violation". He said there may be an issue with the Class A misdemeanors.

Megan Titus, 515 Clinton Street, said maintaining the property is a requirement in the Landlord Tenant Code. There is also protection for a tenant if the landlord retaliates against a tenant who reported them. City Manager Cathcart said there are landlords in town who threaten tenants with eviction if they complain about the condition of their rental unit. Discussion followed.

#### **ADJOURN PUBLIC HEARING**

*Council Member Fitzwater made a motion to adjourn the Public Hearing. Council Member Greene seconded the motion. A vote was taken, all ayes, motion carried. The Public Hearing was adjourned at 6:37 pm.*

#### **CALL TO ORDER – MAYOR AND COUNCIL MEETING**

The Honorable Mayor Green called to order the regular Meeting of the Mayor and Council at 6:40 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 Chris Griffiths, acting on behalf of City Solicitor Walton, were also in attendance.

#### **ACTION UPON THE TREASURER'S REPORT**

City Treasurer Hartman presented the November 2016 Treasurer's Report. *Council Member Barrett made a motion to approve the November 2016 Treasurer's Report, subject to audit. Council Member Malinowski seconded the motion. There was no discussion. A vote was taken, all ayes, motion carried.*

#### **ACTION UPON THE MINUTES OF THE PREVIOUS MEETING**

*Council Member Barrett made a motion to approve the minutes of the November 21, 2016 Mayor and Council meeting, as written. Council Member Titus seconded the motion. There was no discussion. A vote was taken, all ayes, motion carried.*

## **POLICE REPORT**

Police Chief Baylor reported the following:

- Arrested Brady Rickards, a Washington Street resident, for a series of burglaries last month. He is still incarcerated and his hearing will be coming up soon. Upon a conviction, going to request from the Attorney General that Mr. Rickards, who is a renter, find housing somewhere else.
- Through an extensive investigation, able to identify the individual who sold numerous stolen batteries at Fort DuPont. Are in the process of moving to arrest him. He is also a person of interest with the New Castle Police, Wilmington Police and Delaware State Police.

Chief Baylor asked Sergeant Kerr to come forward. He announced that Sergeant Kerr had been promoted to Lieutenant. He is the longest standing individual in the Delaware City Police Department. The Chief said Lieutenant Kerr has been a tremendous help to him during his transition as Chief of Police and has been a great help to the young officers also. He came to Delaware City with a lot of experience from the Newark Police Department and the Capital Police.

Chief Baylor called Officer Keith Parlier to come forward. The Chief said the department has made great of strides with the assistance of the Council, City Manager Cathcart and Mayor Green to get the department where it is today. They now have four full time officers with two part time officers. He said they are doing everything they can to make the town safe and a destination for people to come and visit. With the Fort DuPont project underway we hope to make it even a better place. He recognized Keith Parlier as the first Officer of the Year. He gave Officer Parlier, Officer of the Year for 2016, a plaque "in appreciation for his dedicated service to the Delaware City Police Department and the City of Delaware City". Mayor Green thanked both officers for the work they do. He said it is greatly appreciated.

## **CITY SOLICITOR'S REPORT**

Acting City Solicitor Chris Griffiths reported the following:

- Worked on the ordinances before the Mayor and Council this evening.
- Spent some time working on the issues related to the Jefferson Street paper street.
- Worked to answer several zoning questions for the City.
- Worked on the Auditor's response letter.
- Participated in the search for the next City Manager.

## **CITY MANAGER'S REPORT**

City Manager Cathcart reported the following:

- The Washington Street Flood Mitigation design prepared by Landmark Engineering has been reviewed by Duffield Associates. As a result Duffield has come up with a re-design concept that will significantly reduce

the cost of construction. The current estimate to construct the design is around \$700,000, including engineering service. We currently have around \$624,000 remaining in grant money to finish the project, which means the City would have to find the difference of around \$76,000 to complete the project. We are exploring some potential grant opportunities to cover the short fall; however, if these efforts fail the City would have to cover the cost. He said he would like to get a motion tonight to enter into a contract with Duffield Associates for engineering/design services in the amount of \$78,800. Mayor Green said City Manager Cathcart has done his due diligence, not only on the financial side, but also for the integrity of the project. He added that this flood mitigation is a primary concern to all of us. *Council Member Malinowski made a motion authorizing the City Manager to enter into a contract with Duffield Associates for engineering/design services in the amount of \$78,800. Council Member Titus seconded the motion. There was no discussion. A roll call vote was taken, all ayes, motion carried.*

- Related to the above, the City has requested an extension of the grant for an additional 12 months. The request was submitted December 12, 2016.
- Will be submitting a grant for \$46,000 to cover consulting fees to help prepare an application for a Downtown Development District (DDD) designation that will be submitted next year. This DDD designation will make substantial funds available that business and residential property owners can use to make improvements to their properties, help in the planning of strategies to reduce crime, and support planning that is consistent with Healthy Communities principles. The City Manager said this will be for the whole city. There will be several meetings for public input, similar to the meetings that were held regarding the Fort DuPont project. They will have to designate a specific area, which will be based on public input.
- Fort DuPont Redevelopment and Preservation Corporation has selected Artesian Water as the company to sell their water treatment, water distribution, waste water distribution, and storm water infrastructure to.

#### General Meetings

- Fort DuPont Board Meeting
- African Union Church Cemetery Friends Board Meeting
- Planning Commission Meeting

#### Project Updates

- Fifth Street Bridge Replacement: The steel beams have been placed as of last week. Met with the Army Corps of Engineers who indicated that there will be a problem pouring concrete now, which means they would need an extension of their contract, allowing them to pour concrete at the beginning of April. City Manager Cathcart asked for them to return to the contractor to see about pouring concrete now with tenting over the job. It is more expensive but not impossible. The Army Corps will return to the City with the contractor's response.
- Washington Street Flood Mitigation Project : See Above

## **APPOINTMENTS, ANNOUNCEMENTS, COMMUNICATIONS**

Mayor Green said he would like to be appointed as the chairperson for the Delaware City Day Committee. *Council Member Fitzwater made a motion to accept the appointment of Mayor Stanley Green to the position of chairperson of Delaware City Day. Council Member Barrett seconded the motion. There was no discussion. A roll call vote was taken, all ayes, motion carried.*

## **REPORTS OF COMMISSIONS, COMMITTEES AND ORGANIZATIONS**

Delaware City Fire Department – Paul Johnson, newly elected president of the fire department, thanked the Mayor and Council and the town for the cooperation and partnership during 2016, and extended that open door policy through 2017. He said they stand ready to help the town in any way possible. He said Cheryl Dennis will remain the liaison for communications and Mike McMichaels can speak on behalf of the fire department whenever he attends Mayor and Council meetings.

## **OLD BUSINESS**

### Second Reading & Adoption of Ordinance 16-1121-01 Relating to a Noise Ordinance

City Manager Cathcart reminded everyone that this ordinance was tabled as it needed additional work.

### Second Reading & Adoption of Ordinance 16-1121-02 Relating to Boat Trailer Parking

Mayor Green said this was introduced at a Mayor and Council meeting and a Public Hearing was held. City Manager Cathcart reported that the City Solicitor said an amendment could be taken on the floor. *Council Member Greene made a motion for the Second Reading and Adoption of Ordinance 16-1121-02 Relating to Boat Trailer Parking, with an amendment to remove the words “similarly sized”. Council Member Fitzwater seconded the motion. There was no discussion. A roll call vote was taken, all ayes, motion carried.*

### Second Reading & Adoption of Ordinance 16-1121-03 Relating to Residential Rental Properties

Mayor Green said this was introduced at a Mayor and Council meeting and a Public Hearing was held. Council Members Titus and Fitzwater recused themselves as they own rental property and took seats in the audience. *Council Member Malinowski made a motion for the Second Reading and Adoption of Ordinance 16-1121-03 Relating to Residential Rental Properties. Council Member Barrett seconded the motion. Council Member Malinowski amended his motion to adopt Ordinance 16-1121-03 Relating to Residential Properties with amendment as follows: Add Section 22-10F entitled Fees. Initial*

*fee for application and inspection shall be seventy-five dollars (\$75.00). Subsequent fee for annual inspection shall be seventy-five dollars (\$75.00). After an initial re-inspection further re-inspections shall be fifty dollars (\$50.00). Discussion followed with Council Member Malinowski clarifying that there would be no charge for the first re-inspection. Council Member Barrett seconded the motion. A roll call vote was taken, with Council Members voting as follows: Greene – nay, Malinowski – aye, and Barrett – aye.*

Discussion & Vote to Rescind the Jefferson Paper Street Lease

Acting City Solicitor Griffiths informed the Council that if they voted to rescind the Jefferson Paper Street lease they would need a motion to initiate a court action to effectuate the voiding of the Jefferson Street paper street lease. He said the decision of the Board of Ethics just came out today, which would require three people to recuse themselves from deciding that particular issue. However, if they recused themselves, there would not be a quorum. Consequently, under Delaware Law the Rule of Necessity would apply for small towns, which means each Council Member would need to vote and state their conflict or bias. He added that Section 128F says voiding a contract is permitted if you find the contract violated the law. They should also take into account how any third parties would be affected by the decision.

Discussion followed with Council Member Titus stating that she asked to have this added to the agenda as she had filed an ethics complaint against Council Members Barrett, Fitzwater and Greene. She said they were found by the Board of Ethics to be partial to Preston Carden and therefore unethical. She would like to start the legal process to rescind the unethically executed lease, giving these Council Members the chance to right the wrong that they made. Acting City Solicitor Griffiths asked to have the Board of Ethics opinion appended to the record for this meeting. Discussion followed.

*Council Member Titus made a motion to initiate court action to rescind the lease. Council Member Malinowski seconded the motion. There was no discussion. A roll call vote was taken, with the Council Members voting as follows: **Greene – Nay** – She is not a personal friend of anyone involved with this lease and she continues to believe that her original decision was correct; **Fitzwater – Nay** – He was found guilty of not being impartial and he does know Preston Carden. He said he doesn't feel that he was persuaded either way despite the Board's finding. He said he doesn't know how the Board arrived at a decision as the Code of Ethics states the Board shall consist of five members, and no complaints shall be accepted by the City Secretary in relation to any violation of this ordinance until after the Board has been appointed. It has never been a board as there have never been five members. His father is friends with Preston Carden. He has seen Preston Carden and they have sat at the same table. Since the Board of Ethics hearing they have even had a beer together. He said he knows he was not biased; **Titus - Aye; Malinowski – Aye** – with no conflict or bias; and **Barrett – Nay** – The first Board of Ethics hearing was*

*dismissed and she disagreed with the results of the second hearing (which she has yet to see). She believed she did the right thing the first time. The final vote was three nays and two ayes. Motion denied. Council Comments followed.*

## **NEW BUSINESS**

### **FY16 Audit – Vince Barbone, Haggerty & Haggerty**

Mr. Barbone said this report is for the year ending June 30, 2016, as compared to June 30, 2015. He said he was happy to report that Haggerty & Haggerty issued unmodified opinions, which means clean opinions with no reservations. The total assets were \$7.8 million as of 6/30/2016, with liabilities of \$1.3 million. Of the \$1.3 million, approximately one million is long term debt, such as mortgages and general obligation bonds for street/water system improvements. Approximately \$70,000 was paid down during FY2016.

Mr. Barbone said the fund balance is \$581,967 or close to \$600,000 to balance future budgets. The general fund sustained a deficit of \$73,000 which was much less than the \$350,000 that was budgeted as a deficit. That is because the City brought in more revenue than anticipated and the City was able to curtail projected costs. He said the Water Fund lost \$82,000 which is to be expected as the General Fund supports the Water Fund.

He said there were no new findings and the majority of the findings reported for FY15 were resolved. He said the ones that were not resolved, approximately 20%, were of an accounting nature and should be resolved during the next fiscal year.

*Council Member Greene made a motion to accept FY16 Audit. Council Member Titus seconded the motion. There was no discussion. A roll call vote was taken, all ayes, motion carried.*

### **Resolution 16-1219-01 – Relating to Charter Revisions**

City Manager Cathcart said in order to do any Charter Revisions, the Council must approve a resolution allowing the Delaware State Legislature to introduce a bill. This would make changes in the following areas: Voter qualifications, stating that in order to vote, one must be a registered voter with the State Department of Elections at least 30 days before a scheduled or special election; allows the City to eliminate the requirement of calling a special meeting within 10 days of the election to swear in the new Council Members (allowing them to be sworn in at the next Mayor and Council meeting); deletes the 7:00 to 9:00 pm time frame for the Board of Appeals; and extends the appointment of Planning Commissioners with a two year term to a three year term. *Council Member Malinowski made a motion to approve Resolution 16-1219-01 – Relating to Charter Revisions. Council Member Greene seconded the motion. There was no discussion. A roll call vote was taken, all ayes, motion carried.*



Introduction & First Reading – Ordinance 16-1219-01 – Amending Sections 46-91 & 46-93 of the Sign Code

*Council Member Malinowski made a motion to table this Ordinance because the ordinance contained very little of the amendment he made. Assistant City Clerk Clifton explained that this ordinance had nothing to do with the Sign Ordinance which they approved last month. She said this is bringing these two sections of the Code in compliance with Sign Ordinance already approved. Discussion followed with some confusion. Council Member Fitzwater made a motion to table the Introduction and First Reading of Ordinance 16-1219-01 – Amending Section 46-91& 46-93 of the Sign Code. Council Member Malinowski seconded the motion. A roll call vote was taken all ayes, motion carried. City Manager Cathcart asked Council Member Malinowski to get in touch with Acting City Solicitor Griffiths before the next meeting to resolve this.*

**MAYOR & COUNCIL COMMENTS**

Council Member Barrett – No Comments

Council Member Malinowski – Attended the Fort DuPont Redevelopment & Preservation Board of Directors' Meeting

Council Member Titus – No Comments

Council Member Fitzwater – Said he takes this very seriously. He said he read the entire Ethics Code several times before and after the hearings. He said they need to start moving forward. He said after the paper street vote, a picture of him with Preston Carden was taken. He said Mr. Carden was in Key West at the same time he was and they have mutual friends. He said that he had said under oath that he and Mr. Carden are friends. He said they took different flights and were in different cars. They just happened to be sitting at the same table when the picture was taken. He said he feels like he is under scrutiny, causing him to stop going to Crabby Dicks and Lewinski's. He said it has to stop.

Council Member Titus – Said, commenting on Council Member Fitzwater's comment that the picture was taken before the hearing and before the vote.

Council Member Greene – No Comments

Mayor Green – Wished everyone a very Merry Christmas and Happy New Year.

**CITIZENS COMMENTS**

Allen "Toby" Williams, 403 Hamilton Street, said there is a lot of new construction that is going to be happening in Delaware City soon. He said Artesian came to his house and installed a 39" piece of pipe to connect him to Delaware City water which cost him \$7,210. He said there is a new house being built on Hamilton Street and their bill has gone up to \$9000 in less than two years. He asked for the City to open this to bid. He said it took six months to get his water hooked up and Artesian said it slipped through the cracks. City Manager Cathcart said the City is under contract with Artesian for our water system. He said that until that contract is up, those are the fees. City Clerk Hartman said that amount

covers the labor, materials, installation of the meter pit, the meter the connection and the pipe. Mayor Green asked Mr. Williams to talk with City Manager Cathcart at Town Hall.

**ADJOURNMENT**

*Council Member Barrett made a motion to adjourn the Mayor and Council Meeting. Council Member Malinowski seconded the motion. A vote was taken, all ayes, motion carried. The meeting was adjourned at 7:45 pm.*

Respectfully submitted,  
*Dawn K. Gwynn*  
City Secretary

**DELAWARE CITY BOARD OF ETHICS**

**IN RE: BETTY BARRETT,** :  
**NATALIE GREEN, and** : **Case No. 2016-001**  
**PAUL D. FITZWATER, III, in their official** :  
**Capacities.** :

**DECISION OF THE DELAWARE CITY BOARD OF ETHICS**

**I. NATURE OF THE PROCEEDINGS**

The matter before the Delaware City Board of Ethics (“Board”) is a complaint filed by Megan Titus (“Councilwoman Titus”) in which she alleges her fellow City Council Members Betty Barrett, Natalie Green, and Paul D. Fitzwater, III (“Respondents”) violated various provisions of Article IV, Ethics for Officials and Employees, of the Delaware City Code (“Code of Conduct”). The Code of Conduct violations allegedly occurred in conjunction with the City Council’s vote on August 15, 2016 to lease an undeveloped portion of Jefferson Street to PSC Properties, LLC (“PSC”). Councilwoman Titus filed a complaint with the Board on September 13, 2016 (“Original Complaint”), and she subsequently filed an amended complaint on September 22, 2016 (“Amended Complaint”). Respondents, through their counsel Max Walton and Lauren DeLuca, filed Respondents’ Motion to Dismiss Amended Ethics Complaint on September 30, 2016 (“Respondents’ Motion to Dismiss”).

At a hearing held on October 5, 2016, the Board granted Respondents’ Motion to Dismiss by a vote of 2 to 1. On October 13, 2016, Councilwoman Titus filed a letter with the Board to further clarify her allegations against Respondents. This submission is being treated as a second amended complaint (“Second Amended Complaint”).

The Board held a hearing on November 16, 2016 (“November Hearing”) to consider the merits of the Second Amended Complaint. Chairman Tim Konkus and Board Members Tim Dilliplane and Ray Fruytier were present, along with Barrett Edwards, Esq. representing the Board. Max Walton, Esq. and Lauren DeLuca, Esq. appeared on behalf of Respondents. Councilwoman Titus represented herself at the November Hearing.

**II. STATEMENT OF FACTS**

1. Background Information

Councilwoman Titus’ complaints involve an undeveloped portion of a street known as Jefferson Street (“Jefferson Street Property”). After several rounds of negotiations, the City Council for Delaware City approved leasing the Jefferson Street Property to PSC at a council meeting held August 15, 2016.<sup>1</sup> Prior to the lease’s approval, Councilwoman Titus submitted a competing lease for the City Council’s consideration.<sup>2</sup> As a result of the City Council’s vote to

<sup>1</sup> See Respondents’ Delaware City Ethics Hearing Exhibits, Exhibit 10.

<sup>2</sup> See Second Amended Complaint, Exhibit A, sub-exhibit 11 (unmarked).

approve the lease, Councilwoman Titus filed a series of successive complaints against the Respondents, culminating with the filing of the Second Amended Complaint.

## 2. Lease Negotiations

The Jefferson Street Property lease (“Lease”) has been periodically considered by Delaware City for several years. Most recently, Councilwoman Barrett brought the Lease forward for Council consideration at the June 20, 2016 council meeting. She testified that prior to the June 20 meeting, Preston Cardon gave her a copy of the Lease at the gas station where she worked. Without discussing the Lease details with Mr. Cardon, Councilwoman Barrett agreed to present the Lease to the City Council for consideration, which occurred at the June 20 council meeting. The Lease was brought forward at the June meeting, but at the suggestion of the City Solicitor Max Walton, the discussion was tabled until the following meeting. Councilmembers Barrett, Green, and Fitzwater all testified that at no time prior to the June meeting or after this meeting did they discuss the terms of the Lease amongst themselves. Councilmembers Barrett and Green testified that they never met with Preston Cardon to negotiate the Lease. Councilman Fitzwater testified to discussing the Lease with a handful of people outside of council meetings, including Mr. Cardon.

The propriety of obtaining public bids to lease the Jefferson Street Property was debated by Councilwoman Titus and the Respondents. Based upon the evidence presented, the City Code of Delaware City does not require the City to go through a formal request for proposals (“RFP”) process prior to leasing property. It was undisputed at the November Hearing that the City Council never went through the RFP process and no evidence was presented to indicate the City Council offered to lease the Jefferson Street Property to anyone else. Councilwoman Titus alleged in her Second Amended Complaint that failing to use the RFP process violated section 1-27(a) of the Code of Conduct.<sup>3</sup> She testified that while not legally required, the use of the RFP process was a general practice followed by the City and failing to do so in this situation was unethical.

Councilwoman Titus alleged the Respondents interfered with the City Manager’s duties to negotiate the Lease and that the Lease negotiations occurred in violation of the Delaware Freedom of Information Act (“FOIA”). In an affidavit of the City Manager submitted by Councilwoman Titus, City Manager Richard Cathcart stated that he was responsible for negotiating leases “as authorized by City Council.”<sup>4</sup> In an affidavit submitted by Respondents, Mr. Cathcart stated that he had instructed the City Council that he “was not going to take any further action on [the Lease] and that any resolution of the issue would have to be an action of Council.”<sup>5</sup> No evidence of FOIA violations was presented at the November Hearing.

## 3. Conflicts of Interest

The relationship between the Respondents, Mr. Cardon, and PSC is central to the allegations at hand. Councilwoman Barrett denied having any personal or financial relationship

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<sup>3</sup> See Second Amended Complaint, ¶ 5.

<sup>4</sup> Complainant’s Affidavit of Richard Cathcart, p. 2.

<sup>5</sup> Respondents’ Affidavit, Richard Cathcart.

with Mr. Cardon or PSC. Councilwoman Green acknowledged receiving money from Mr. Cardon for her campaign and putting campaign signs on his property, but she testified that she was not friends with Mr. Cardon and did not have a family, business, political, or romantic relationship with him. Councilwoman Titus testified that placing a campaign sign on someone's property would not necessarily create a disqualifying conflict of interest between the councilmember and the property owner.

Councilman Fitzwater openly acknowledged having business and social dealings with Mr. Cardon. He worked for Mr. Cardon for a brief period of time in 1999, and he leased a bar from Mr. Cardon from approximately 2001 to 2004. No evidence was presented of any business dealings between Councilman Fitzwater and Mr. Cardon after 2004. Councilman Fitzwater did not receive campaign contributions from Mr. Cardon, but he did place one or more campaign signs on Mr. Cardon's property. Although Mr. Cardon had been a friend of the Fitzwater family for many years, Councilman Fitzwater testified that he did not have a close relationship with Mr. Cardon.

### **III. STANDARD OF REVIEW AND DISCUSSION**

#### **1. Standard of Review**

The Code of Conduct requires the Board to find by a preponderance of the evidence that the Code of Conduct has been violated. Section 1-29(E)(4)(n) requires the Board to be satisfied, "by a preponderance of the evidence, that Delaware City's ethical standards have been violated by [the Respondents]." Preponderance of the evidence "has been defined to mean the side on which 'the greater weight of the evidence' is found." *Taylor v. State*, 748 A.2d 914 (Table) (Del. 2000). The findings of the Board are made based on the preponderance of the evidence.

The Board has jurisdiction over violations of the Code of Conduct. Section 1-29(E)(3) of the Code of Conduct expressly states that "[i]t shall be the function of the Board to administer the ethical standards adopted by the Council for public officers and employees." Any allegations made against Respondents that do not implicate a Code of Conduct violation are not within the jurisdiction of the Board.

#### **2. Fair and Equal Treatment – Impartiality**

The Code of Conduct requires city officials and employees to act fairly and impartially when dealing with the public. Section 1-27(a) states, "No official or employee shall grant or make available to any person any consideration, treatment, advantage or favor beyond that which it is the general practice to grant or make available to the public at large." Councilwoman Titus alleges this section was violated by failing to go through a formal RFP process. Although the RFP process was not a legal requirement, Councilwoman Titus testified that the general practice of the City was to use the RFP process to lease property. No evidence was submitted to the Board to indicate that the opportunity to lease the Jefferson Street Property had been presented to any other parties.

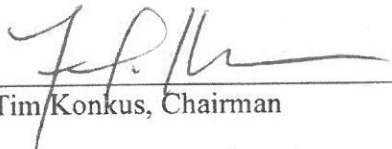
Based on this evidence, the Board finds the Respondents violated section 1-27(a) of the Code of Conduct. The Board finds that because no one else was given an opportunity to submit a proposal to lease the Jefferson Street Property, and because there was a deviation from the City's regular practice of using the RFP process to lease property, Respondents granted to PSC an advantage "beyond that which it [was] the general practice [of the City] to grant or make available to the public at large."<sup>6</sup> Respondents' failure to question the wisdom of leasing the Jefferson Street Property to PSC without seeking other proposals further evidenced a violation of section 1-27(a). For the foregoing reasons, the Board finds, by a preponderance of the evidence, that Respondents violated section 1-27(a) of the Code of Conduct by leasing the Jefferson Street Property to PSC.

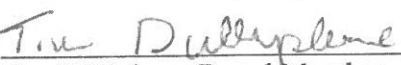
### 3. Remaining Allegations

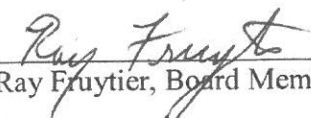
Councilwoman Titus alleged various other ethical violations in the Second Amended Complaint including, *inter alia*, inappropriate encroachment on the duties of the city manager and violations of the Delaware Freedom of Information Act. No motions were made by the Board to find violations of any other claims alleged by Councilwoman Titus.

## IV. CONCLUSION

For the reasons outlined herein, the Board has determined by unanimous vote that Respondents violated section 1-27(a) of the Code of Conduct by leasing the Jefferson Street Property to PSC. The Board has not found any other Code of Conduct violations in connection with Respondents' dealings with the Lease. The Board unanimously approved a recommendation to have the Board's written decision and a copy of the Code of Conduct sent to Respondents with a cover letter instructing Respondents to review the Board's written decision and Code of Conduct in order to avoid future Code of Conduct violations.

  
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Tim Konkus, Chairman

  
\_\_\_\_\_  
Tim Dilliplane, Board Member

  
\_\_\_\_\_  
Ray Fruytier, Board Member

Date of filing the Delaware City Board of Ethics' written decision with the office of Delaware City and mailing the Decision to the Parties: 12-19-16

<sup>6</sup> Delaware City Code of Conduct, § 1-27(a).

**EXHIBITS PROVIDED TO THE  
DELAWARE CITY BOARD OF ETHICS**

**Complainant' Exhibits**

Exhibit A – Second Amended Complaint (including exhibits), October 13, 2016.

Exhibit B – Letter from Councilwoman Titus to Board of Ethics (including exhibits), November 9,  
2016.

Exhibit C – Affidavit of Richard C. Cathcart, November 14, 2016.

**Respondents' Hearing Exhibits**

Exhibit A – Delaware City Ethics Hearing Exhibits