



CITY OF DELAWARE CITY

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

**CITY OF DELAWARE CITY
MAYOR AND COUNCIL MEETING & PUBLIC HEARING
MARCH 4, 2015**

CALL TO ORDER – PUBLIC HEARING

The Honorable Mayor Green called to order the public hearing at 6:30 p.m. Present were Council Members Konkus, Titus and Malinowski. Also present were City Manager Cathcart, City Secretary Gwynn, Assistant City Clerk Clifton and City Solicitor Walton. Council Members Johnson and Buchheit were not in present.

PUBLIC HEARING OVERVIEW

Mayor Green said the seven ordinances that are open to discussion during the public hearing were previously introduced by a first reading at the Mayor and Council Meeting held on 12/15/2014. He reported that the Special Mayor and Council Meeting would immediately follow the close of this public hearing.

City Manager Cathcart reiterated that there were seven ordinances open to discussion at the public hearing. These ordinances will be brought before Council for the second reading and adoption. There are some amendments for some of these ordinances that will be covered. There are specific procedures that have to be followed.

City Solicitor Walton said his job at this meeting was to create a record that the City needed to create for rezoning. These rezoning ordinances were very different from ordinances that would normally be presented. He informed the Mayor and Council that anything they say will be part of the record. He added that there were a lot of exhibits that would be introduced. He gave a brief rundown of the ground rules that would be followed during the public hearing. He

said he would make a presentation about what was addressed in the ordinances. This would be followed by any Council questions, which he would answer to the best of his ability. Following Council questions, the public would have an opportunity to speak. Each speaker would have a five minute time limit. He said the time limit would only be extended if a Council Member or the City Solicitor needed to address a question. He asked that comments not be repetitive. City Solicitor Walton said any Council Member would be permitted to speak at any time during the public hearing. He said that once everyone had a chance to speak, the record would be closed.

RECORD

Exhibit 1 – Ordinance 14-0915-01 Comprehensive Plan Update 2014

- City Solicitor Walton said the main thrust of the Comprehensive Plan Amendment was to allow change to the City's Comprehensive Plan and the City's Comprehensive Plan maps. City Solicitor Walton pointed out on the maps the area that is known as the Governor Bacon Health Center. He added that when the Fort DuPont Redevelopment Preservation Corporation was formed, the area of the complex became much broader. The purpose of the amendment to the Comprehensive Plan maps was not to change any zoning of any property within the City of Delaware City as it currently exists. Rather it was to expand what is known as the future annexation area which would allow the town to annex the whole area that is known as Fort DuPont, if in fact the voters decide they want to do that. In other words, there is no annexation that occurs because of this.
- City Solicitor Walton said the second piece is, under State law, no property can be annexed unless it is in the future annexation area. The second map changes the future annexation area.
- He added that there has to be a zoning designation attached with the area. He pointed out on Exhibit 7 (the map of Governor Bacon Health Center) that there was no grid that allowed a mixed use or Historic Preservation Redevelopment Code. That code was added to the map. Under Delaware Code, in order to do zoning, it must be in the Comprehensive Plan. No development is permitted unless consistent with the Comprehensive Plan. The Comprehensive Plan Ordinance which is Exhibit 1 and the Zoning Ordinance which is Exhibit 2, work together.

Exhibit 2 – Ordinance 14-0915-02 Omnibus Zoning Update 2014

- City Solicitor Walton said that there are a number of changes in Exhibit 2. It does more than just change the zoning code provisions. Many things in the language of the Code had to be changed so it worked in all sections affected by these revisions. The main change is to create a new zoning classification, Historic Preservation Redevelopment (HPR) zone, which would only be applied to the Fort DuPont complex, if it were to be annexed.

- He added that there is what is known as a Clean Hands provision, which means if a property owner has a violation on a particular property, that property owner can't get a permit to do something on that property or another property.
- The City Solicitor stated it also institutes a beneficial use appeal which is an appellate procedure set up through the City of Delaware City, so if Council passed a law or ordinance that denies someone all or economically viable use of their land, through something called a regulator takings, there would be an administrative process to be able to fix it as it applied to a particular property.

Exhibit 3 – Mayor's Certification (Required by Delaware City Code)

Exhibit 4 – Meeting Agenda (Posted at least seven days in advance)

Exhibit 5 – Proof of the newspaper publication which ran on February 6, 2015 and February 13, 2015 (Notice is required 15 days in advance of a zoning ordinance hearing, per State of Delaware Code)

Exhibits 6, 7 & 8 – Comprehensive Plan Maps (Displayed for Mayor and Council and public to view)

Exhibit 9 –Comments of the Preliminary Land Use Service (PLUS)

- City Solicitor Walton reported that Exhibits 1 and 2 went through the Planning Commission process. The Planning Commission held a public hearing and referred the proposed ordinances to PLUS for review. A PLUS review is a process in which representatives, on behalf of the State, look at proposed zoning changes and Comprehensive Plan changes. City Solicitor Walton presented the ordinances at a hearing in January. The PLUS agencies commented on the ordinances. No PLUS agency objected to the adoption of the ordinances presented. However, there were comments made regarding sea level rise, the character of the area as a former army facility, and hazardous waste issues. The majority of those comments were for the property owner, e.g. DNREC.

Exhibit 10 – City Solicitor Walton's response to PLUS

Exhibit 11 - First Proposed Amendment to Ordinance 14-0915-01

- City Solicitor Walton stated that while undergoing the PLUS review, the City was advised that because the proposed amended Comprehensive Plan is a five year update and not a new plan, certification of the amended Comprehensive Plan by the Governor is not required. This amendment eliminates reference in the pending ordinance to certification by the Governor. Therefore, if Council passes the amendment to the proposed Comprehensive Plan, it will be effective immediately, rather than waiting for a certification.

Exhibits 12 & 13 – Planning Commission's Written Recommendation and Planning Commission's Reasons in the Record for the Vote (Findings of Fact)

- City Solicitor Walton said at the Planning Commission meeting on March 2, 2015, the commissioners voted unanimously to recommend approval of both ordinances. Following the vote, they provided a written

recommendation to the Mayor and Council and gave reasons for their vote.

Exhibit 14 – Ordinance 14-1215-01 Procedures for Building, Plumbing, Mechanical, & Other Codes (Chapter 23)

- City Solicitor Walton said this establishes building codes and property maintenance codes, for all of Delaware City, that are independent of New Castle County and are designed so the City, rather than New Castle County, would be responsible for these. He said they tried to make this consistent with New Castle County so there would not be major changes when the City assumed these responsibilities. The City will use standard codes whenever possible.

Exhibit 15 – Proposed revision to correct a numbering error in Ordinance 14-1215-01.

Exhibit 16 – Proposed revision to Ordinance 14-1215-01, which exempts the requirements for sprinkler systems for residences of one- and two-family dwellings, which was presented at the request of the Home Builders' Association.

Exhibit 17 – Ordinance 14-1215-02 Stormwater Management

- City Solicitor Walton said this provides details of how the City is going to meet the standard for Sediment and Stormwater Management. The ordinance, for the most part, names DNREC for Fort DuPont, and Conservation District for what is considered today as Delaware City, as the ruling authorities. This adopts the State of Delaware sediment and stormwater management regulations as the proposal that would apply.

Exhibit 18 – Ordinance 14-1215-03 Enforcement Procedures for Property Maintenance

- City Solicitor Walton explained this adopts the International Property Maintenance Code as a standard for property maintenance in Delaware City.
- Modeled as closely as possible after the New Castle County Code.

Exhibit 19 – Proposed Amendment to Exhibit A of Ordinance No 14-1215-03

- City Solicitor Walton thanked Council Member Malinowski for pointing out inconsistency in the appeal process.
- He explained it changes the appeal process to require appeals to go before the Board of Adjustment rather than as stated to the Mayor and Council.

Exhibit 20 – Ordinance 14-1215-04 Creating a Department of Building Inspection & Code Enforcement

- Establishes the positions of Building Inspector and Property Maintenance Inspector.

Exhibit 21 – Ordinance 14-1215-05 Implementing a Subdivision of Land Code

- City Solicitor Walton explained that they tried to create a procedure that is more complete than the one currently in place.

City Solicitor Walton said he had made his record. He asked if there were any questions from the Council.

COUNCIL QUESTIONS

Council Member Konkus said Ordinance 14-1215-03 appeared to have a good amount of “boiler plate” language. She asked where the section that referred to graffiti originated. City Solicitor Walton said he was pretty sure it came from the City of Newark.

Mayor Green asked if there was a state code that referred to graffiti. City Solicitor Walton replied that he didn't know. Council Member Konkus said she felt that prohibiting merchants to sell spray paint and/or magic markers to people under 18, and requiring that these customers be carded, seemed extreme.

Council Member Titus said that she didn't see provisions for vehicles likely leaking oil and/or antifreeze in Ordinance 14-1215-03. She said that is a serious issue, as these vehicles tear up the streets. City Solicitor Walton said this was addressed in the International Property Maintenance Code. City Manager Cathcart said it is also covered under DNREC laws and regulations.

Council Member Konkus pointed out an error on page 11, section 106 where it refers to the “City of Delaware”. City Solicitor Walton said that would be corrected.

CITIZENS QUESTIONS AND COMMENTS

Tim Dilliplane, 118 Clinton Street, said that in response to the earlier discussion regarding the graffiti, municipalities with denser populations have a big problem with graffiti. He said these regulations are not uncommon. Mr. Dilliplane said his comment had to do with property maintenance. He said he would like to see the initial time to respond to a code violation increased from five days to ten days.

Kevin Whittaker, 610 Front Street, speaking on behalf of the Home Builders' Association of Delaware, which is a state wide association that reviews all these codes, said he is hopeful that the proposed amendment to Ordinance 14-1215-01, exempting the sprinklers in the building code, goes forward. He said in many cases, these codes are passed on a national level. This organization then works with the counties and municipalities to make sure the codes actually work the way they should in the field. New Castle County just passed this code and exempted mandatory fire sprinklers. Mr. Whittaker said anyone can choose to have a sprinkler system put in a home, existing or new.

City Solicitor Walton asked Mr. Whittaker if he was actually advocating for the adoption of the proposed amendment to Ordinance No. 14-1215-01. Mr. Whittaker stated that was correct.

Tim Dilliplane, 118 Clinton Street, asked if there was any language in the code requiring the installation of sprinkler systems to be retro fitted. Mr. Whittaker replied that the ordinance referred to new construction.

PUBLIC HEARING CLOSING STATEMENT

City Solicitor Walton reminded the attendees that this was public hearing and that anyone who wanted to comment would be permitted to do so. He added that once the public hearing was closed, the public could no longer comment. He asked if anyone else wanted to comment. When no one else wanted to speak, he said Mayor Green should adjourn the public hearing.

ADJOURN PUBLIC HEARING

Mayor Green said he would like to adjourn the public hearing. *Council Member Konkus 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 7:08 p.m.*

CALL TO ORDER SPECIAL MAYOR AND COUNCIL MEETING

The Honorable Mayor Green called to order the Special Mayor and Council Meeting at 7:08 p.m.

PLEDGE OF ALLEGIANCE

Mayor Green led the Pledge of Allegiance to the Flag.

ROLL CALL

Present were The Honorable Mayor Green, Council Members Konkus, Titus and Malinowski. City Manager Cathcart, City Secretary Gwynn, City Solicitor Walton, and Assistant City Clerk Clifton were also in attendance. Council Members Johnson and Buchheit were not in present.

SPECIAL MAYOR AND COUNCIL MEETING OVERVIEW

Mayor Green reiterated that the seven ordinances under consideration at this meeting were previously introduced by a first reading at the Mayor and Council Meeting held on 12/15/2014. Mayor Green reviewed the procedures that would be followed under the direction of City Solicitor Walton.

Second Reading & Adoption of Ordinance 14-0915-01 Comprehensive Plan Update 2014 (Exhibit 1)

Council Member Malinowski made a motion to bring Ordinance 14-0915-01 before Council for a second reading and adoption. Council Member Titus seconded the motion. A voice vote was taken, all ayes, motion carried.

Council Member Titus made a motion to amend Ordinance 14-0915-01 consistent with Exhibit 11. Council Member Konkus seconded the motion. A voice vote was taken, all ayes, motion carried.

Discussion followed. Council Member Titus said she read the proposed Findings of Fact (Exhibit 12) and agrees with them and agrees with the Planning Commission in recommending that the Council adopt Ordinance 14-0915-01.

A roll call vote was taken with the Council voting as follows:

- Council Member Konkus voted yes, as she agreed with Council Member Titus on the Findings of Fact; and because the master plan prepared by the state properly establishes a mixed residential, commercial, historical and open spaces for the Fort DuPont complex; and that the updated Comprehensive Plan fosters much needed improvements to the area in and around Fort DuPont and the City. She incorporated the Planning Commission's Finding of Facts as part of her vote.*
- Council Member Titus voted yes, as she agreed with the reasons given by Council Member Konkus, including the Findings of Fact and the Planning Commission's recommendation. (Exhibit 12).*
- Council Member Malinowski voted yes because the revised Comprehensive Plan promotes the health, safety and welfare of the City by, among other things, authorizing the HPR district which allows the City to grow along with the Fort DuPont complex, which will be beneficial for the economic development of the City as a whole; and creating the HPR district will allow for an increased tax base and revenue for the City if annexation of the Fort DuPont complex is approved; and it will encourage additional and needed business and recreational opportunities for Delaware City and allow for the diversification of housing stock by allowing mixed uses; and it will also foster needed improvements to the area and the Fort DuPont complex.*

Motion carried.

Second Reading & Adoption of Ordinance 14-0915-02 Omnibus Zoning Update 2014 (Exhibit 2)

Council Member Titus made a motion to bring Ordinance 14-0915-01 before Council for a second reading and adoption. Council Member Konkus seconded the motion. There was no discussion. A roll call vote was taken, with the Council voting as follows:

- *Council Member Konkus voted yes, as she agreed with the Planning Commission's Recommendation (Exhibit 13); and for the reasons that the master plan prepared by the state properly establishes a mixed residential, commercial, historical, and open spaces for the Fort DuPont complex; and that the updated Comprehensive Plan fosters much needed improvements to the area in and around Fort DuPont while preserving the historical character of the City and Fort DuPont. She incorporated the Planning Commission's recommendation as part of her vote.*
- *Council Member Titus voted yes for the same reasons as Council Member Konkus voted yes; and agreed with the Planning Commission's recommendation for the Findings of Fact (Exhibit 13).*
- *Council Member Malinowski voted yes because by the deletion of the current section of the Delaware City Code related to subdivisions, building codes, mechanical and property maintenance codes, Delaware City will be safer upon the adoption of new, updated ordinances; and by the adoption of modern codes and through the allowance of the modernization of public facility and building requirements at Fort DuPont, the safety of the property, residents and buildings will be preserved; and the ordinance promotes the health, safety and welfare of the City by preserving the open spaces and historical character of Fort DuPont while needed improvements are to be made to the area; and a mixed use concept as outlined in the master plan encourages the most appropriate use of the land while it allows the semi-depressed area full of historic and recreational potential to be revitalized, which upon connection to Delaware City will be beneficial to the City as a whole; and property values throughout the City as a whole should be increased through the adoption and implementation of the HPR district.*

Motion carried.

Second Reading and Adoption of Ordinance 14-1215-01 Procedures for Building, Plumbing, Mechanical and Other Codes (Chapter 23)(Exhibit 14)

Council Member Konkus made a motion to bring Ordinance 14-1215-01 before Council for a second reading and adoption. Council Member Titus seconded the motion. There was a voice vote, all ayes, motion carried.

Council Member Titus made a motion to accept Amendment 1 (Exhibit 15) to Ordinance 14-1215-01. Council Member Malinowski seconded the motion. There was no discussion. A roll call vote was taken, all ayes, motion carried.

Council Member Titus made a motion to bring Amendment 2 (Exhibit 16) to Ordinance 14-1215-01 before Council for consideration. Council Member Malinowski seconded the motion. There was no discussion. A roll call vote was taken, all ayes, motion carried.

Council Member Konkus made a motion to adopt Ordinance 14-1215-01 as amended. Council Member Titus seconded the motion. There was no discussion. A roll call vote was taken, all ayes, motion carried.

Second Reading & Adoption of Ordinance 14-1215-02 Stormwater Management (Exhibit 17)

Council Member Titus made a motion for the second reading and adoption of Ordinance 14-1215-02 (Exhibit 17). Council Member Malinowski seconded the motion. There was no discussion. A roll call vote was taken, all ayes, motion carried.

Second Reading & Adoption of Ordinance 14-1215-03 Enforcement Procedures for Property Maintenance (Chapter 31) (Exhibit 18)

Council Member Malinowski made a motion to bring Ordinance 14-1215-03 before Council for a second reading and adoption. Council Member Titus seconded the motion.

Council Member Titus made a motion to amend Ordinance 14-1215-03 consistent with Exhibit 19. Council Member Malinowski seconded the motion. There was no discussion. A roll call vote was taken, all ayes, motion carried. Discussion followed.

Council Member Konkus made a motion for the second reading and adoption of Ordinance 14-1215-03 (Exhibit 18) as amended. Council Member Titus seconded the motion. Discussion followed.

Council Member Konkus made a motion to amend Ordinance 14-1215-03 by increasing the time limit to respond to a code violation from 5 days to 10 days. Council Member Titus seconded the motion. Discussion followed with Council Member Malinowski saying that some things are best addressed as soon as possible. To drag them out 10 days may create a larger problem that there was originally. Council Member Konkus rescinded her previous amendment.

Council Member Konkus made a motion to amend Ordinance 14-1215-03 by increasing the time limit to respond to a code violation from 5 days to 5 business days. Council Member Titus seconded the motion. There was no discussion. A roll call vote was taken, all ayes, motion carried.

Council Member Konkus and Council Member Titus discussed the section of the Ordinance regarding the sale of spray paint and markers, saying that Delaware City is small enough and the town really doesn't have a problem with kids buying spray paint and magic markers. She said she really doesn't want to require the businesses to have signs stating that people under 18 can't purchase these

items. Council Member Titus said she doesn't think the businesses should be required to have surveillance equipment.

Council Member Konkus made a motion to amend Ordinance 14-1215-03, Section pp302.9, to omit Sections b & c. Council Member Titus seconded the motion. There was no discussion. A roll call vote was taken, with the Council voting as follows: Konkus – aye, Titus – aye, and Malinowski – nay. Motion carried.

Council Member Titus made a motion for the second reading and adoption of Ordinance 14-1215-03 as amended. Council Member Malinowski seconded the motion. A roll call vote was taken, all ayes, motion carried.

Ordinance 14-1215-04 Creating a Department of Building Inspection & Code Enforcement (Chapter 53)(Exhibit 20)

Council Member Malinowski made a motion for the second reading and adoption of Ordinance 14-1215-04, Exhibit 20. Council Member Titus seconded the motion. There was no discussion. A roll call vote was taken, all ayes, motion carried.

Ordinance 14-1215-05 Implementing a Subdivision of Land Code (Chapter 54)(Exhibit 21)

Council Member Malinowski made a motion for the second reading and adoption of Ordinance 14-1215-05, Exhibit 21. Council Member Titus seconded the motion. There was no discussion. A roll call vote was taken, all ayes, motion carried.

There was no additional business.

ADJOURNMENT

Mayor Green asked for a motion to adjourn the meeting. *Council Member Malinowski made a motion to adjourn. Council Member Titus seconded the motion. A voice vote was taken, all ayes, motion carried.* The meeting was adjourned at 7:40 p. m.

Respectfully submitted,
Dawn K. Gwynn
City Secretary