

"A Historic Past"



"A Bright Future"

CITY OF DELAWARE CITY

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

**CITY OF DELAWARE CITY
BOARD OF APPEALS &
MAYOR AND COUNCIL MEETING
MAY 19, 2014**

CALL TO ORDER – MAYOR AND COUNCIL MEETING

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

PLEDGE OF ALLEGIANCE

The Honorable Mayor Green led the Pledge of Allegiance to the Flag.

ROLL CALL

Present were Council Members Konkus, Titus, Malinowski and Buchheit. Also present were City Manager Cathcart, City Secretary Gwynn, City Treasurer Hartman, Assistant City Clerk Clifton and Police Chief Baylor.

ACTION UPON THE TREASURER'S REPORT

City Treasurer Hartman presented the April 2014 Treasurer's Report. *Council Member Titus made a motion to approve the April 2014 Treasurer's Report subject to audit. Council Member Konkus seconded the motion. A vote was taken, all ayes, motion carried.*

ACTION UPON THE MINUTES OF THE PREVIOUS MEETING

April 21, 2014 Regular Mayor and Council Meeting Minutes

Council Member Titus made a motion to approve the minutes of the April 21, 2014 meeting as written. Council Member Malinowski seconded the motion. A vote was taken, all ayes, motion carried.

May 7, 2014, Special Mayor and Council Meeting Minutes – Council Member

Titus made a motion to approve the minutes of the May 7, 2014 meeting as written. Council Member Konkus seconded the motion. A vote was taken, all ayes, motion carried.

POLICE REPORT

Chief Baylor reported the police activity statistics for the month of April 2014 with 1 Assault, 1 Burglary, 13 Alarm Calls and 14 Domestic Disputes. He also reported the following:

- During the past week received a report of a suspicious vehicle, a white van with Delaware tag CL6. According to information received, but unsubstantiated, two white males offered money to children in order to lure them into the vehicle. The alleged incident reportedly took place on Sunday, May 11th between 2:00 pm and 4:00 pm at the intersection of Washington and Fifth Streets. During the last week, the Delaware City Police Department and New Castle County Police Department have patrolled the area in an effort to locate the suspicious vehicle and/or any suspicious activity. In addition they followed school buses in the morning and afternoon to insure the safety of our youth. There has been no additional information received regarding this vehicle, nor has the original report been validated. Chief Baylor asked anyone with additional information to contact the Delaware City Police Department and to report and suspicious activity to 911 immediately.
- Have received reports of people running stop signs. Chief Baylor said there will be no warnings. He will be issuing tickets, as running stop signs and speeding is the quickest way to get our youth seriously hurt.

Discussion followed.

CITY SOLICITOR'S REPORT

At the request of the Mayor and Council, City Solicitor Walton was not present.

City Manager Cathcart gave the solicitor's report as follows:

- Reviewed and provided analysis of House Bill 333.
- Researched and drafted a public indecency ordinance for the commercial district.
- Prepared a memorandum regarding the viability of an ordinance requiring public utilities to remove unused wires from building and homes. The memorandum basically said that the City could pass any ordinance but the

- enforceability of such an ordinance would be questionable because it falls under the Public Service Commission.
- Received a list of property owners who are delinquent in their property taxes. The City will be filing lawsuits in the near future.
 - Assisted with the Fort DuPont project, the legislation that is written to create the redevelopment corporation.
 - Worked with the City Manager regarding a few miscellaneous issues which have been resolved.

CITY MANAGER'S REPORT

City Manager Cathcart reported the following:

- Along with Michelle Hartman, Dawn Gwynn and Dave Baylor we completed the National Incident Management System (NIMS) training in Incident Command System presented by the Delaware Emergency Management Agency (DEMA).
- Met with DNREC officials concerning the locating of an air monitoring van in the area of the river end of Washington Street for the purpose of monitoring the air in that area. This placement would be temporary, not a permanent location and is part of the Bucket Brigade grant.
- Met with Tom Gordon, Rep. Longhurst, Councilman Buchheit and others concerning the building inspection and code enforcement services currently being provided by New Castle County. The County has been providing these services since the early sixties. The County will be phasing out of these services over the next six months.
- Met with the Governor's attorney, the House of Representatives attorney, Rep. Longhurst, Max Walton and the Mayor concerning issues with the Fort DuPont Redevelopment Corporation raised by the Governor's attorney. I believe all issues have been resolved and we will see action on the bill in early June.
- Met with Speaker Schwartzkopf about serious concerns with HB 333 (see attached article) he introduced last week. The bill as introduced could have had a serious impact of municipality's ability to implement taxes and fees. We were successful in negotiating a compromise on the legislation. Mayor Green and Max Walton also attended that meeting.
- Met with DeIDOT concerning the location of a "Welcoming" sign on Cox Neck Road. Council Buchheit participated in the meeting with DeIDOT for the location of the sign.
- Met with Kevin Donnelly, New Castle County Conservation District, for an update on the construction of the Branch Canal Trail. Because of bad weather in the late fall, winter and early spring; re-engineering; and permit

modifications, the trail completion has been pushed out considerably. We are now looking at mid fall of 2015. (with Mayor Green and Dave Baylor).

- Director of Public Safety Baylor has full police powers. Should be fully certified by the end of the summer. Working hard on his own time to take courses.
- First vacant property letters go out this week. Please let town hall know of any vacant properties you are aware of.
- In the process of reanalyzing the cost of providing services to the mobile home park. Will report next month.
- A blog has been reporting that the City of Delaware City will gain land and that Richard Cathcart will gain land get property also as a result of the legislation that will create the redevelopment corporation. He said he is not getting any land at Fort DuPont, nor is Delaware City. The property will remain in the State's possession until they turn it over to the redevelopment corporation. The redevelopment corporation will retain possession of the land until they turn it over to the developer. The developers will own it until they sell it to people who are purchasing homes and other properties. The City of Delaware City is not involved in any of those transactions, nor does the City have any control of those transactions. Once people own that property as personal property, the City would get the tax base. That is it. Mayor Green said he is not getting any property either.

GENERAL MEETINGS

- Friends of the AUCC Board Meeting. The Friends Group was awarded a \$50,000 grant from The Longwood Foundation.
- Rivers Ride Committee Meeting
- Middletown Police Department (with Dave Baylor)
- White Clay Creek Running Club (with Dave Baylor)
- Budget Workshop
- Senior Center Fort DuPont presentation (with Mayor Green)
- Community Center/Dragon Run Steering Committee
- Delaware City Day Committee

PROJECT UPDATE

- Street, Sidewalks, Curbs should re-start this week.
- Community Center/Dragon Run Master Plan is coming together. The Steering Committee will review a final draft in the next several weeks.

Discussion followed regarding HB 333, the vacant property, delinquent taxes and the vacant property letters. Additional discussion occurred regarding how code enforcement will change going forward.

RECESS MAYOR AND COUNCIL MEETING

The Honorable Mayor Green said he would like to recess the Mayor and Council meeting at 7:00 pm. *Council Member Titus made a motion to recess the Mayor and Council Meeting. Council Member Konkus seconded the motion. A vote was taken, all ayes, motion carried.*

CALL TO ORDER – BOARD OF APPEALS – FY15 ANNUAL TAX ASSESSMENT

The Honorable Mayor Green called to order the Board of Appeals at 7:05 pm. He asked the court reporter to state her name and who she represented for the record. She said her name was Ellie Corbett and that she worked for Veritext. The mayor asked if anyone was present to appeal their FY15 tax assessment. There was no one present to appeal their tax assessment.

RECESS BOARD OF APPEALS

The Honorable Mayor Green said he would like to recess the Board of Appeals at 7:07 pm. He said the Board of Appeal would be reconvened just prior to the end of the Mayor and Council meeting to see if there was anyone present at that time to appeal their taxes. *Council Member Titus made a motion to recess the Board of Appeals. Council Member Konkus seconded the motion. A vote was taken, all ayes, motion carried.*

RECONVENED MAYOR AND COUNCIL MEETING

The Honorable Mayor Green reconvened the Mayor and Council Meeting at 7:08 pm.

APPOINTMENTS, ANNOUNCEMENTS, COMMUNICATIONS

Mayor Green said he would like to appoint James Brady, who currently sits on the Board of Adjustment, for a three year term. *Council Member Buchheit made a motion to appoint James Brady to the Board of Adjustment for a three year term. Council Member Malinowski seconded the motion. A roll call vote was taken, all ayes, motion carried.*

City Treasurer Hartman announced that she had a \$20,000 donation to Fort Delaware from the Mayor's Ball proceeds. She reported that \$20,000 was also donated to the playground fund, bringing the fund total to \$31,970.69. Mayor Green thanked City Treasurer Hartman for all her hard work. He gave accolades to Representative Longhurst and Jill Snow for selling so many Mayor's Ball tickets.

REPORTS OF COMMISSIONS, COMMITTEES AND ORGANIZATIONS

Main Street – Mark Chura reported that the first movie night of the year was held on April 12th in the park. There is another one scheduled for June 14th. He said they are partnering with Spree for a haunted walking tour.

He said the yard sale was a success. He thanked Jackie Nye, Doris Grant and Sunny Whitlock who worked so hard to get ads in a lot of newspapers, periodicals, etc.

Mr. Chura said there were questions regarding the status of Main Street at the last meeting. He said he spoke with Council Member Johnson who said he was looking for something he could pass along to constituents about Main Street. Mr. Chura handed out 5 copies of a programmatic update to each Council Member. He said this will be posted on the website and Facebook page. He said it is just an overview of Main Street's mission and programs.

He said there has been some talk about extending the trail. Discussed with City Manager Cathcart and Mayor Green about extending the trail to Battery Park, along the old rail line and along Dragon Run. He said there was a \$25,000 add-on to have that work done. He presented a \$25,000 check to Mayor Green to pay for that work.

OLD BUSINESS

There was no Old Business

NEW BUSINESS

Introduction and First Reading – FY15 Budget

Mayor Green stated that this is just the Introduction and First Reading and according to the City Solicitor, requires neither a motion nor a vote. City Manager Cathcart said Council has the Budget before them that was discussed at the Budget Workshop. He said they are now separating the Operating Reserve and the Capital part of the Budget. About two and a half years ago, the Council voted to put a 95% spending cap on revenues. The 5% that is not spent goes toward the Capital Budget. The same ordinance created an Operating Reserve Account which read that any surpluses the City experienced at the end of the fiscal year would go the Operating Reserve Account. That Operating Reserve Account has a current balance of approximately \$535,000.

Discussion followed regarding the State grant to study the condition of the canal lock.

Introduction and First Reading – Ordinance 14-0519-01 relating to Public Indecency

City Manager Cathcart gave a brief overview of this ordinance. He said the ordinance came at the request of Council Member Buchheit as it relates to men walking in the park and in the commercial district with no shirts. He did not feel this action was appropriate. The ordinance prohibits both genders from going without shirts/tops. City Manager Cathcart said he met with Council Member Malinowski who had some suggested changes which will be introduced in June as an addendum to the ordinance. Discussion followed. City Manager Cathcart asked the Council to contact him with any suggestions for the addendum to the ordinance and he would pass them along to the City Solicitor.

Dragon Run (Flood) Adaptation and Sea Level Rise Presentation and Public Comment

City Manager Cathcart reminded the attendees that there had been flooding issues on Madison and Monroe Streets and Solomon Place. The City recently got a grant which the refinery matched with additional funding from the Soil Conservation District to look at that problem as it relates to adapting to climate change and sea level rise. There has been considerable work done on that. Soil Conservation District's Kevin Donnelly came to a previous meeting and discussed this area as well. The Secretary of the Department of Natural Resources has promised the City some money to fix this problem. Keith Rudy from Landmark made a presentation, which is part of the process to fix the flooding problems. He said they have simplified the root cause of the flooding at Dragon Run and what the risks and vulnerabilities are and also some possible steps that can be taken to address the future impending sea level rise.

COUNCIL COMMENTS

Council Member Konkus – reported the Dart bus stop on Fifth Street is badly in need of a shelter for people who are waiting for the bus. She said she had tried to contact Semia Hackett but found that she is no longer with Dart. City Manager Cathcart said the City had requested these shelters from Dart on numerous occasions. Representative Longhurst said she would take care of that and also a shelter on Washington Street. She asked Council Member Konkus to email her.

Council Member Titus – presented a \$500 check for the Christmas lights from Pampered Pets. City Manager Cathcart said the City is looking at putting Christmas lights down Clinton Street as a project that is basically being funded by Delaware City businesses. Preston Carden has volunteered to do the electrical work. So far \$2000 has been donated.

Council Member Titus reported that she applied for the "Cat" grant and is providing additional information. The grant will take care of 250 cats and she will need volunteers to help trap and/or transport the cats. She said as soon as she gets the grant, Delaware City "Kitty" will be in full swing.

Council Member Malinowski – Nothing to report

Council Member Buchheit – thanked Representative Longhurst for providing the welcome sign on Cox Neck Road. He asked her if she would be willing to provide a sign on Route 1.

He reported that Crabby Dick's did better on the yard sale day than any Delaware City Day. He asked the Council to think about doing this more than once a year.

Council Member Buchheit reported that the Good Humor ice cream truck has been parking in front of the Ice Cream Parlor every day. He said there is nothing to stop these vendors. City Manager Cathcart said there is a draft ordinance in the works, but he would like feedback from the Mayor and Council. He said the City could prohibit transient vendors if the Council chose to do so. Discussion followed.

Mayor Green – reported that he attended the HB 333 meeting. He also met with the group of residents regarding Fort DuPont annexation proposal. He met with the Governor's attorney regarding language pertaining to Fort DuPont. He attended the refinery CAP meeting and NIMS training. Attended the Antique Truck Show and selected a truck to receive the Mayor's Trophy. He said he received many accolades regarding our new Chief of Police, David Baylor, especially for the recent case with the activity regarding the suspicious van.

Mayor Green thanked all past and present elected officials for all the time they spend working for the good of the community. He thanked Representative Longhurst and Senator Poore for all they do for the community. He thanked the residents for attending the meetings as it is very important. He thanked the City staff.

CITIZENS QUESTIONS AND COMMENTS

The Honorable Mayor Green reminded the citizens that the Mayor and Council want to hear their comments. He said they are not there to enter into a debate, but rather to listen and then follow up as requested or as needed. He asked the citizens to keep their comments to three minutes.

Natalie Greene, 202 Seventh Street, spoke as being opposed to the ordinance that would prohibit people from going shirtless. She also said the kids in Delaware City love the ice cream man who drives around town but there should be something to prohibit those vendors from parking in front of a business. She suggested that the vendor be told not to park there and if they continue to do so, they should be prohibited from going down Clinton Street.

RECESS MAYOR AND COUNCIL MEETING

Mayor Green said he would like to recess the Mayor and Council Meeting at 8:20 pm. *Council Member Buchheit made a motion to recess the Mayor and Council Meeting. Council Member Malinowski seconded the motion. A vote was taken, all ayes, motion carried.*

RECONVENE THE BOARD OF APPEALS

Mayor Green asked if anyone was present to appeal their tax assessment. There was no one present to appeal their assessment.

ADJOURN BOARD OF APPEALS

Council Member Malinowski made a motion to adjourn the Board of Appeals. Council Member Buchheit seconded the motion. A roll call vote was taken, all ayes, motion carried. Board of Appeals adjourned at 8:21 pm.

RECONVENE MAYOR AND COUNCIL MEETING

The Honorable Mayor Green reconvened the Mayor and Council meeting at 8:21 pm.

ADJOURN MAYOR AND COUNCIL MEETING

Council Member Konkus made a motion to adjourn the Mayor and Council meeting. Council Member Titus seconded the motion. A vote was taken, all ayes, motion carried. Meeting adjourned at 8:22 pm.

Respectfully submitted,

Dawn K. Gwynn

City Secretary

TAXATION AND FEES

Local, state officials at odds over new bill

By Melissa Nann Burke and Jonathan Starkey

The News Journal

Cities and towns across Delaware came together swiftly last week in opposition to a bill in the state Legislature that they say could curtail their ability to recoup fees for municipal services.

Sponsored by House Speaker Pete Schwartzkopf, House Bill 333 seeks to limit the towns' authority by clarifying that municipalities may only impose a tax within their jurisdiction if that tax is specifically authorized by an act of the General Assembly.



Pete Schwartzkopf

"No matter how you read it, it's one of those subtle impositions on the powers of local government," Smyrna City Manager Dave Hugg said. "We're a separate unit of government. Our leaders were elected by our constituents to do what they deem best, and we're held accountable for that. And here's the Legislature saying, 'You can't do this or that without our OK.'"

A number of towns say they may impose a tax through an "all powers" clause in their charters, which are issued and amended only at the approval of the Legislature.

Schwartzkopf believes municipalities should have the approval of state lawmakers to institute a new tax.

At a hearing last week, he said the bill merely reinforces language in the Delaware Constitution that says, "No tax ... may be imposed or levied except pursuant to an Act of the General Assembly, adopted with the concurrence of three-fifths of all members of each House."

"We're reaffirming what we think the General Assembly's role in taxation is. When our forefathers said three-fifths of two chambers, nowhere did they say, we're going to give taxing authority to three people sitting on town council," Schwartzkopf said.

His comments indirectly referred to Dewey Beach and its business license fees, which have been challenged in court as an illegal tax by businessman Alex Pires.

The Court of Chancery dismissed Pires' lawsuit in December after concluding Dewey's charter (as approved by the General Assembly) conveyed broad taxing authority to the town, and it had the power to levy business-license taxes. Pires has appealed to the state Supreme Court, where the case is pending.

The official synopsis of HB 333 indicates the bill was introduced in response to the Chancery ruling.

"I've been accused of doing this for Alex Pires. I have not done this for Alex Pires. He said if this bill did pass, he would drop his lawsuit," Schwartzkopf said. "Without Subsection C, I don't know what he'll do."

After meeting with representatives of several municipalities and the Delaware League of Local Governments, Schwartzkopf agreed last week to strike Subsection C from bill. That provision would have permitted municipalities to license and collect fees from businesses, but only if the fees are "reasonably related" to the cost of administering the licensing program.

"That was the piece that was giving us the most heartburn," said Dick Cathcart, city manager of Delaware City and a former state lawmaker.



In regards to the provision, Newark City Council warned of the "unintended consequence of putting into question various fees outside of business licenses that the City of Newark relies upon to balance its budget every year," Councilman Stu Markham wrote to lawmakers last week.

Under Delaware law, fee amounts are supposed to be generally proportionate to the cost of service provided by the government. Those fees that are grossly disproportionate to the cost of service provided could be considered a tax, potentially subjecting the municipalities to expensive lawsuits such as those filed against Newark's rental permit fee and New Castle County's land-use fee.

Attorneys representing the towns noted that fees set at fixed percentages - for example, building-permit fees set at 3 percent of the estimated cost of construction - could be subject to challenge as not related to the cost of the government service.

Dozens of municipalities have building-permit fees of 3 percent. The lawyers said that, if the fee provision of HB 333 were adopted, a number of towns could be sued over their fees or face significant financial hardship as a result of refunds and other costs.



Diane Hanson

HB 333 was voted out of the House Administration Committee last week. Cathcart said he expects changes to the draft bill this week, including language that would "grandfather in" existing municipal taxes and fees.

But Dewey Mayor Diane Hanson says the bill encroaches on the autonomy of towns.

"What problem is there? I see it as an end run around our court system," Hanson testified during a hearing last week.

Contact Melissa Nann Burke at (302) 324-2329, mburke@delawareonline.com or on Twitter @nannburke.