

**City Council of the Mayor and Council of New Castle**  
**Regular Council Meeting at Town Hall – 201 Delaware Street – New Castle**  
**Tuesday – July 12, 2011 – 7 p.m.**

**Present:**

Council President William Barthel  
Councilperson John Cochran  
Councilperson John Gaworski  
Councilperson Ted Megginson  
Councilperson Teel Petty

Also present: Mayor Reese, Treasurer Janet Carlin, City Administrator Cathryn Thomas, City Solicitor Daniel Losco, Police Chief Kevin McDerby, Building Official Jeff Bergstrom

**Approval of Minutes by Date**

A motion was made by Councilperson Cochran to approve the minutes of May 31, June 3, June 7, June 9, June 14, June 21, June 22 and June 23. Councilperson Megginson seconded the motion. The minutes were approved unanimously as amended.

**Approval of Treasurer's Report**

Treasurer Carlin reported that, as of June 30, 2011, total petty cash on hand, \$1,100; total in checking and savings accounts, \$511,258.45; total certificates of deposit, money market and Delaware Government Investment Pool, \$1,139,957.45; total cash on hand, \$1,650,957.45.

The report was approved as presented unanimously.

**Report from the City Administrator**

Administrator Thomas added one item to her written report: apologies to any residents who were trying to reach the City administration office on July 11 by e-mail or by phone. A squirrel chewed through the City's underground fiber-optic cable line. Mrs. Thomas displayed a piece of the damaged material with teeth marks on it. She thanked MSC and the specialty company Tri-M for their work and assistance.

President Barthel said the report was accepted.

President Barthel said staff reports were accepted as submitted.

**Grant Review**

Councilperson Cochran provided the review. Grant Income: MSC Appropriations \$112,500; Separation Day, \$80; Separation Day, \$1,258.60.

**Communications**

Councilperson Petty said staff of the Summer Recreation Program were at the meeting.

The staffers introduced themselves: Recreation Program Coordinator Dana Sedlik attending the University of Delaware for graduate school; Camp Counselor Tim Lynch, who attends Salisbury University; Camp Counselor Jeong Shin, University of Delaware; Camp Counselor Brittany Brooks, Wesley College.

Councilperson Petty thanked them for coming to the meeting and for their service to the City.

### **Business from the Mayor**

Mayor Reese thanked City Council for all of its work in May and June on the budget, and for keeping the tax rate the same and still providing great service. He also thanked state Sen. Dori Connor and state Representative Michael Mulrooney for securing State money for work on the dikes. There is also a raise in the amount of State money for Separation Day next year.

### **Business from the Floor**

Albert Gaither, pastor of Buttonwood United Methodist Church, said the community has a concern about the residents at 120 Buttonwood Ave. that is housing some sex offenders. The church had not been aware of it until recently although the residents had been there a couple of months. The community is concerned about children and parents in the community. The community is hoping there is another solution. He stated the individuals in the home are not supervised around the clock. The community is uneasy and not everyone was aware of their presence.

President Barthel said the matter is an agenda item and the Council will discuss the matter later in the meeting.

### **Unfinished Business**

1. Motion, Discussion and Vote on Resolution No. 2011-26, to Approve Placement of a STOP sign on 8th Street at its Intersection with Tremont Street in both directions.

Councilperson Petty made a motion to approve the resolution. Councilperson Gaworski seconded the motion. The motion passed unanimously.

2. First and Second Reading of Ordinance No. 483, to enact a No Smoking Ordinance for a portion of Battery Park and for all other neighborhood City parks.

President Barthel read the ordinance.

3. First and Second Reading of Ordinance No. 484, to change the City Code in accordance with the Housing Plan contained in the Comprehensive Plan, which would provide specific goals and priorities to incentivize and facilitate redevelopment of small, run-down residential properties to increase aesthetics and property values throughout the City.

President Barthel read the ordinance.

### **New Business**

1. Discussion of a residence in the Buttonwood neighborhood which is rented by the St. Vincent DePaul Society.

Councilperson Petty said these individuals are high risk and her concern is the children in the area who may not know that these individuals are living in the area. She has contacted state representatives to see if the individuals can be relocated somewhere where there are no schools nearby.

President Barthel said he had asked Solicitor Losco to research the matter and also asked Chief McDerby to give an update.

Mr. Losco said he has done some research but needs to do more as it is an evolving area of the law. There are questions of constitutional law and federal housing discrimination

laws. There are some laws prohibiting where sex offenders can reside based on schools and similar places within a certain distance and also some legislation regarding group homes requiring them to obtain special exceptions. The key is being even-handed. He would like to do more research and then propose an ordinance. There is little that can be done retroactively.

Councilperson Petty said it seems organizations are picking low-income areas to house their individuals in. That does not seem fair. The individuals living in the home have no restrictions.

Councilperson Cochran said he believes these group homes are throughout the county.

Mr. Losco asked whether a distance from schools and similar areas would be helpful.

Pastor Gaither said yes. He added a big problem is the lack of communication and the community not knowing about it.

President Barthel asked Mr. Bergstrom if the home has a rental license. Mr. Bergstrom said he believed they did.

Chief McDerby addressed community concerns over communications. He was accompanied by Detective Edward Dempsey. Chief McDerby said the house is not just for sex offenders. There is one Level 2 and one Level 3 (high risk) offender. Level 3 offenders require police to give notice to residents, which the department did. Level 2 requires notification of day-care facilities, but the police also notified residents in the area. He said where there is a lack of communication is that there is an organized effort on behalf of a church to place these individuals. There is a similar situation in Dobbinsville with a private owner. Detective Dempsey has reached out to the Catholic Church, which has not responded. Chief McDerby said the Catholic Church should have notified the City ahead of time, out of common courtesy. He suggested Council draft and send a letter to the Bishop stating its displeasure with the lack of community involvement.

President Barthel asked about security and how the Police are handling it.

Chief McDerby said they are alerted to it and that there is a Bible school going on. He assured the reverend that there would be additional patrols. There are also probation officers who go in and visit.

Detective Dempsey discussed curfews, which may or may not be in place for the offenders. Level 3 offenders usually have curfews. Probation/parole officers make checks of the house and employment. All the Police can do is monitor. The offenders have the same rights to live there as anyone else.

Solicitor Losco reiterated he needs to do additional research and outlined some options.

President Barthel said in the meantime the Police should remain on alert about the situation there.

2. Discussion of a proposal to amend Section § 230-11, "Gradual elimination of certain uses", in the City Code, and to schedule a public hearing to consider said proposal.

President Barthel said that during the process of approval of the proposed Gateway District it was brought to Council's attention about this section. The proposed code states a 3-year phase-out of certain uses. He stated at the time of the hearing that he had a problem with taking someone's business after three years. The issue found itself before the Planning Commission in March. President Barthel read a section of the Commission's minutes. The Commission wanted to eliminate any phase-out period and instead require screening within a 12-year period.

Administrator Thomas pointed out the section refers to a very specific group of non-conforming uses: a junkyard, a non-conformity that is not enclosed within a structure and off-site signs. All other existing non-conforming uses will be allowed to continue.

President Barthel said he believes the Planning Commission's recommendation is appropriate but the City should not give 12 years to get the screening. He believes it should happen with 120 days.

Solicitor Losco expressed concerns about enforcement in the future as fences can fall and trees can die. The requirements for the type of screening must be well spelled out.

The Council is going to send the matter back the Planning Commission regarding standards for the screening.

3. Discussion with Municipal Services Commission (MSC) representatives concerning their proposal to change the MSC Charter.

Chip Patterson, Secretary to MSC, said that in 2008 MSC approached Council about changing the MSC charter. He outlined the five changes proposed at that time. Two involved changes of some language and wording. One was to allow for the condemnation of lands through the Mayor and Council Charter within the City limits for electrical purposes. Another was to change the publication date of its year-end report from a specific month (July) to annually.

Mr. Patterson said the most controversial matter was to grant the Commission the authority to borrow money on the revenues of the Commission, with conditions that a) the Commission notify Mayor and Council, b) the instruments shall not be backed by the full faith and credit of the City; and c) the debt of the Commission cannot exceed its annual revenues.

MSC at that time got the endorsement of Council at the time, but not the support of then Mayor Jack Klingmeyer, so it did not go forward.

MSC is back again seeking support with a different Council and a different Mayor. The resolution is the same as in 2008. He cited an example of how lacking the ability to borrow has harmed the City. MSC, if it had the ability to borrow in its own name, would have been eligible to get funding assistance for planned projects. The Town of Smyrna, for example, through the State Revolving Fund for Water was able to secure \$3.8 million in a grant. Fifty percent of it was principal forgiveness through the federal stimulus money.

He asked Council for its endorsement and will be asking Mayor Reese for his support.

President Barthel asked what role would Council play in the process if the Charter was changed to allow borrowing.

Mr. Patterson said Council, the Mayor and the Trustees always have input, but it does not provide for a veto.

A discussion was held about the condemnation expansion for electric.

Councilperson Cochran asked if MSC would have a problem with Council being involved in the decision-making on borrowing. He said Council should be involved.

Mr. Patterson asked why the City has an MSC setup to provide for everything to do with electric and water and pay for its needs. If you are not on top of all the issues are you able to make an informed decision on whether it meets the MSC's long-range goals of the City? He does not believe it should be a veto. The MSC was set up so that it could have a long-range view to protect the citizens' interests.

President Barthel said they would give it consideration and put it on a future agenda.

Mayor Reese said the Commission raises electric rates and the City trusts them to do that. They are really borrowing from the people to raise money for projects now.

4. Discussion of the request from the County for the City to contribute to an Economic Development study to be created by a professional consultant and also utilizing grant funds, if awarded, to develop strategies for retention and recruitment of businesses to the area, which study area includes the City of New Castle, and in particular the downtown retail area and the outlying industrial park areas.

President Barthel explained that Karl Karlbacher from the County gave a presentation during the budget process and requested a contribution and support from the City for the Route 9/Route 13 Corridor Economic Development plan.

Administrator Thomas said they requested \$5,000. The County is putting in \$30,000. They asked for \$10,000 from the state and did receive \$5,000 from DRBA. Mrs. Thomas said it seems disproportionate for the City to contribute \$5,000 considering the relative budgets of the other organizations. She does think it is a great project and would be good to participate, but it does not have to be at the level they requested. They also have asked for a letter of support include in the grant package.

Councilman Cochran recommended \$2,500.

President Barthel said he thinks it would be beneficial in the long run.

Councilman Gaworski said he did not think the City should contribute any money.

Administrator Thomas said there is a lot of potential for this particularly with the industrial parks and downtown. There are a lot of businesses in the industrial park but also a lot of empty space. It would allow the City to plug into the County's efforts. It could help attract and also retain businesses.

Councilperson Petty said she did not support it.

President Barthel said the City should take a closer look.

The City would go forward with a letter of support.

5. Discussion of the City's proposed road and street repair program for this construction season.

Councilperson Megginson said Mr. Bergstrom and the City Engineer drove through the City and looked at some of the streets that should be worked on this year. The proposed projects involve sections of Ninth Street, The Strand, 14th Street, Oak Street, 13th Street, Cherry Street and alleys in Dobbinsville. The total estimate for the work was \$360,000. He said this was the wish list.

Administrator Thomas said the City would get more money than budgeted for Municipal Street Aid because the State increased that funding statewide. There is currently a balance of roughly \$200,000 in current Municipal Street Aid account of the City, so all of that could go toward this year's work. The City also had budgeted to receive \$86,000 in the new fiscal year, but that should increase to \$108,000. The other source of funding is the Community Transportation Fund. Of the items on the list, the City can pick one or two items to request funding for.

A resident said in Buttonwood there are Streets in bad condition mainly related to construction of homes. She said that construction has stopped, nearly a year ago and the streets are still torn up and there is construction debris. The damage is as a result of the trucks going in and out.

Building Official Bergstrom said there is a rebuild of Buttonwood Avenue. There is a storm sewer going in there. The contractor is essentially rebuilding there.

6. Discussion of engineering issues relative to a property and street repair program for this construction season.

Solicitor Losco said there has been a series of administrative complaints against an engineering firm involved in the design and construction related to a warehouse at 400 Ships Landing Way. The complaints are alleging some serious charges that Mr. Bergstrom may have been misled intentionally or that the engineers acted in a negligent way not in conformance with the International Building Code. A hearing has been postponed until August. The City contacted the owner who hired an independent engineer. The engineer indicated there is no imminent danger.

The next thing is to wait for a decision. He suggested the City engage a professional engineer that has been located for consulting purposes.

The consensus of the Council was engaging the consultant would be a wise move.

7. Motion, Discussion and Vote on a Bank Resolution to pay AmeriHealth \$31,302.04 for the first installment for the City's workers' compensation coverage for the new policy year.

Councilperson Gaworski made a motion to approve the resolution. Councilperson Petty seconded the motion. The motion passed unanimously.

8. Comments from the floor.

Earl Carpenter of 6th Street said the intersection of Washington Street and 7th Street is in failure.

Councilperson Gaworski said he has sent four e-mails to DelDOT and nothing has been done.

A Buttonwood resident reiterated her concerns about the construction debris on Buttonwood Avenue. It has turned into a garbage dump.

President Barthel told Mr. Bergstrom something has to be done about it.

Mr. Bergstrom said the company is going to address the issues.

Councilperson Megginson made a motion to adjourn the meeting. Councilperson Petty seconded the motion. The motion passed unanimously.

The meeting adjourned at 8:43 p.m.

Respectfully submitted,

Michael Dickinson  
New Castle City Clerk