

Mayor and City Council of New Castle
Public Hearing (6:30 PM) and Regular Council Meeting (7:00 PM)
New Castle Town Hall–Delaware Street–New Castle
Tuesday, November 9, 2004

President Castagno called the regular meeting of the New Castle City Council to order at 7:00 PM and led those assembled in the pledge of allegiance. He asked attendees to sign in and to take an agenda. He then asked for a show of hands of those who had come to discuss Ordinance 424, the Tree Ordinance. The show of hands was almost unanimous. President Castagno then announced that the second reading of Ordinance 424 concerning trees had been tabled.

Tom McDowell asked if the ordinance had been tabled so that it could be discussed behind closed doors. President Castagno replied that a public hearing would be held early in December and that the date would be posted two weeks in advance.

Ned Hutchinson expressed concern about property rights, since trees have been cut down without prior notification to owners. He complained that, like other property owners, he pays taxes, but has no voice in what happens in the City. He noted that there is no coordination among committees. President Castagno responded that the Council was not prepared to discuss the issues at the Council meeting, and promised that there would be opportunities for more discussion at public hearings.

Penny Fields asked when and where the public hearing notice would be posted. President Castagno replied that it would be posted at the City Office 15 days before the event.

Roll Call

Present: President Castagno Councilperson DiAngelo
Councilperson Padmalingam Councilperson Miller
Councilperson Reese

Others Present: Treasurer Janet Carlin, Senator Dori Connor, Finance/Human Resources Director Marian Delaney, Mayor Klingmeyer, Tree Commission Representative Chip Patterson, Jacquelyn Seneschal, AICP, of KCI Technologies, Code Enforcement Officer Herb Swanson, Planning Commission Member Tom Wilson

Approval of Minutes by Date

Councilperson DiAngelo noted that on Page 12, the name Payne should be changed to Painter, and Washington Street to West Ninth Street. President Castagno called for the approval of the amended minutes by date. Councilperson Miller moved to accept the minutes as corrected.

Councilperson Reese seconded the motion. Councilpersons DiAngelo, Miller, Padmalingam, and Reese approved the minutes. The motion carried.

Approval of Treasurer's Report

Treasurer Janet Carlin reported that as of October 31, 2004:

- Cash on hand totaled \$270
- Monthly deposits totaled \$309,299.48
- Wilmington Trust Accounts totaled \$176,984.94
- Certificates of Deposit totaled \$889,963.58
- Cash on hand totaled \$1,066,948.52

Councilperson Reese moved to accept the treasurer's report. Councilperson Miller seconded the motion. Councilpersons DiAngelo, Miller, Padmalingam, and Reese approved the motion. The motion carried unanimously.

Department Directors' Reports

Police Chief McDerby was absent.

Public Services Director Jim Weldin was absent as a result of illness.

Finance/Human Resources Director Marian Delaney reported on the following.

Finance

- A total of 58.5% of the budget has been collected; 37.5% has been expended. Year to date revenue collected equals \$2,357,772. Expenditures equal \$1,512,673; revenue over expenses equaled \$845,099. The October budget of 2003 listed revenue collected as 52.5% and revenue expended as 34.8%
- The yearly audit was posted in the *Wilmington News Journal* from October 22, 2004, through October 25, 2004, and in the *New Castle Weekly* for the week of October 18, 2004, through October 25, 2004.
- The City's Main Street financial software was upgraded on October 14, 2004.
- Software 2005, the City's property tax software, will be upgraded. The prior version is no longer supported.

Human Resources

- There was one Public Service Department worker compensation claim in October. The employee is back at work and did not suffer any lost wages.
- After working with the IRS reviewing taxable employee benefits, the City has revised its Premium Only Plan.
- David Skupien, HR Benefits Coordinator, has completed his second season of Municipal Clerk Training.

Councilperson Miller moved to accept the report. Councilperson Reese seconded the motion. Councilpersons DiAngelo, Miller, Padmalingam, and Reese all approved the motion. The motion passed unanimously.

President Castagno reported that the City's recycling project had saved \$11,000 in dumping fees, resulting in environmental as well as financial savings. The yard waste collected will be used as mulch in City parks.

Communications

Councilperson Reese reported that the railroad had cleaned all tracks. The railroad will spray vegetation killer instead of cutting in March 2005. Councilperson Miller wants to involve DNREC in plans for the area.

New Castle residents have written to petition the Council to approve Ordinance 428 for changing the zoning of Bull Hill property from Historic Residential (HR) to Open Space and Residential (OS&R).

President Castagno read a letter from **Clifford Hearn, City Solicitor**, in response to a letter from Keith R. Brady, Assistant State Solicitor, concerning a complaint related to Council meetings on the City's budget. Mr. Hearn said that because the meetings on June 23 and 25, 2004, were posted and advertised, they were in compliance with FOIA. He also noted that 29 Del. C. 10004(f) requires that "the minutes reflect only those present and any recorded votes." The minutes for June 23, 2004, reflect this although no vote was taken. The June 25, 2004, meeting minutes also reflect "who was present and what was discussed. Resolution #2004 to adopt the budget was voted on and the minutes reflect the recorded vote." The letter ends with the Mr. Hearn's hope that Mr. Brady has provided sufficient information to address the complaint.

Business from the Floor

President Castagno called for business from the floor on agenda items. None was raised.

Business from the Mayor

Mayor Klingmeyer reported that he and several others had spoken with DelDOT representative Dan Rose to discuss pedestrian and bikeway treatments along Washington Street. Mayor Klingmeyer, Planning Commission Chairman Jim Steele, Director of Public Services Jim Weldin, and City Planner Jacquelyn Seneschal met with the DelDOT representative to review plans for the improvements. Ms. Seneschal noted that DelDOT's proposals are consistent with other urban design initiatives in the City's Comprehensive Plan. Jim Steele will present a copy of the plans to the Planning Commission. The Mayor will have a copy of the plans at his office. Ms. Seneschal noted that the committee also considered establishing an urban committee to deal with

the City's problems in general. Jim Steele will present a copy of the plans to the Planning Commission to review their findings. The Mayor will have a copy of the plans at his office.

Business from the President

There was no business from the president.

Opening of Ninth Street Bid

Only one bid was received for Contract 4003, concerning Ninth Street reconstruction and repairs. Some of this work includes culvert heads, an aggregated sub-base, and storm intakes. Cirrillo submitted a bid of \$279,318. President Castagno said that the City Engineer must review the contract to ensure that it complies with required specifications. Councilman DiAngelo questioned the \$279,318 figure since only \$150,000 had been allotted to the project. President Castagno explained that the \$279,318 figure encompasses the entire project.

Unfinished Business

First Reading of Ordinance 428: Ordinance 428 changes the zoning of the City property at Bull Hill Park from Historic Residential (HR) to Open Space and Recreational (OS&R). President Castagno asked the City Planner Jacquelyn Seneschal to clarify the issues involved in the rezoning. Ms. Seneschal said that she has two main concerns:

1. Clarification of the meaning of structure; that is, whether or not a building qualifies as a structure
2. Specific language on whether or not marinas are permitted as boating facilities.

She noted that playgrounds are permitted in all other zones, but not specifically permitted in OS&R zones.

President Castagno also reviewed the current OS&R text and recommended using national standards for the terms used in the Ordinance. He made four other recommendations:

1. Use a definition for structures other than buildings.
2. Use a definition for boating facilities other than marinas.
3. Decide whether or not playgrounds are to be included.
4. Determine what kind of construction is permitted in OS&R zones.

He also noted that the ordinance does not rule on setbacks except to state that setbacks are allowed if appropriate. He thinks the ordinance should be written to permit setbacks if rigidly defined, controlled, and restricted.

President Castagno asked if the changes should be made in the zoning ordinance and suggested that two ordinances are involved, one to approve the zoning change and one to amend the text. Ms. Seneschal noted that simplest way to address the issues is in separate ordinances.

President Castagno then summarized the ordinance and defined the portion of land affected.

Councilperson Miller noted that OS&R zoning has not yet been adequately defined. She advised addressing both options before the third reading. Councilperson Reese agreed. Councilperson DiAngelo promised that if the problems were not resolved by the third reading, the ordinance would not pass. Councilperson Miller wants the "Is dotted and the Ts crossed" before approving the reading. Councilperson DiAngelo moved to accept the first reading of Ordinance 428 with the condition that the text be amended. Councilperson Padmalingam seconded the motion. Councilpersons DiAngelo, Padmalingam and Reese approved the motion. Councilperson Miller opposed the motion. The motion carried with one dissenting vote.

Ms. Seneschal said that a new public hearing would be scheduled on the zoning change. Councilperson Reese asked if the amendment would change the definition of OS&R.

Appointment to the Board of Appeals President Castagno called for nominations to the Board of Appeals. No nominations were received. Councilperson Reese revealed that he had approached someone about the position, and that person is determining whether or not he can serve.

Resolution 2004-18, Adopting a Hazard Mitigation Plan for New Castle: President Castagno read the signature page of the resolution for adopting a hazard mitigation plan for the City. The Mayor revealed that the City will receive \$1,000 for agreeing to "develop and adopt natural hazard mitigation plans." An experienced consulting firm was hired to work with the local Hazard Mitigation Advisory Committee to devise a comprehensive plan for the County and the City. A copy of that plan is available at the City Office.

Councilperson Reese moved to accept Resolution 2004-18. Councilperson DiAngelo seconded the motion. Councilpersons DiAngelo, Miller, Padmalingam, and Reese all approved the motion. The motion passed unanimously.

Second Reading of Ordinance 429, Amending Chapter 230: President Castagno briefly summarized the ordinance and reminded those assembled that the amended chapter has been two or three years in the making and that a comprehensive copy is available at the City Office.

Councilperson Reese moved to accept the second reading of Ordinance 429, Chapter 230. Councilperson Miller seconded the motion. Councilpersons DiAngelo, Miller, Padmalingam, and Reese approved the motion. The motion passed unanimously.

Second Reading of Ordinance 424, Chapter 74, Article 1: The Green Infrastructure: President Castagno announced that the second reading had been tabled.

Councilperson Reese apologized and explained that the tree ordinance had been introduced at the last minute and that Council members were told that problems had been eliminated. However, he later noted that the Tree Commission's 21 objections had not been addressed. He promised never to vote on anything without time to review it carefully. His apology was received with loud clapping.

President Castagno disclosed that another public hearing would be scheduled, with ample time for notification of interested parties.

New Business

Opening of Sealed Bid for the City Audit for Fiscal Year Ending 6-30-2004. Ms. Delaney disclosed that the City had solicited sealed bids for the City audit for fiscal year ending 6-30-2004. The only bid received was for \$5,850 That bid was submitted by Belfint, Lyons, and Sherman, situated on New Business Center Road in Wilmington. President Castagno advised that the bid must comply with City standards before it can be awarded.

Resolution 2004-19 for One-Time Lump-Sum Pension Benefits: Councilperson Reese read Resolution 2004-19, which provides one-time pensions benefits of \$600 to each of four New Castle retirees. These retirees are Charles R. Burris, Charles L. Bowen, John T. Cini, and Eugene C. Petty. The lump sum payments will be paid from the 2004–2005 budget. Councilperson Reese noted that the State gives back 75% of the pension amount.

Bank Resolution of \$37,000 contribution to Pay Good Will Fire Company for the First and Second Quarters for Fiscal Year 2003-2004: Councilperson Miller read the Bank Resolution to pay Good Will Fire Company \$37,000 for fiscal year 2003-2004. Councilperson Miller moved to accept the Bank Resolution. Councilperson Reese seconded the motion. Councilpersons DiAngelo, Miller, Padmalingam, and Reese approved the motion. The motion passed unanimously.

Resolution 2004-20 Approving the Encroachment of a Building at 216 Delaware Street: President Castagno read the resolution revealing that WIK Central, LLC, had applied to the "Mayor and Council for authorization to continue an encroachment of a building located at 216 Delaware Street at the corner of 3rd and Delaware Streets." According to the firm, East Coast Survey, the front wall encroaches +/- 0.5 feet on the sidewalk on Delaware Street. The Resolution reflected the "City's lack of objection to the structure remaining on the public right-of-way."

Councilperson Miller moved to approve Resolution 2004-20. Councilperson Reese seconded the motion. Councilpersons DiAngelo, Miller, Padmalingam, and Reese all approved the motion. The motion carried unanimously.

Comments from the Floor

Thomas Wilson asked about the **wetlands behind the Industrial Park** (behind Carpenter Hall). He complained that a company was filling in these wetlands. He observed that the City has spent much money protecting wetlands. Councilperson Reese disclosed that the Industrial Park filled in the wetland only after they traded wetlands they own for two acres downstate, which they bought and donated to the State.

Senator Connor announced that she had emailed Secretary Hayward about the **Route 9 bridge flooding**. As a result, a study will be conducted as a preliminary to replacing the bridge with a higher bridge.. The current bridge is flooded after heavy rains. President Castagno observed that the process could take five years. Senator Connor advised the Council to continue to contact Senator Hayward to urge him to expedite the study. She also believes that the bridge cannot support the amount of truck traffic using it, and that developers who use the bridge should assume some of the responsibility for repairs.

President Castagno reminded those in attendance of the upcoming **Trustee election**. Candidates are William Emory and C.H.Gephart.

Mayor Klingmeyer introduced **Chip Patterson** of the Tree Commission and of the Municipal Services Commission. Mr. Patterson asked for a meeting to be held with the joint attendance of the Council, the Tree Commission, and the insurance company to discuss the issues involved in **the currently proposed tree ordinance** (Ordinance 424, Chapter 74, Article 1). He wants the Tree Commission to be involved in all such meetings. The insurance company stated in a letter that 43 trees needed to be removed. A second letter mentioned trees threatening the sidewalk. Mr. Patterson expressed his belief that the problem can be solved without removing the trees.

Councilperson DiAngelo revealed that the insurance company had not expressed concern about the trees until a City employee wrote to them and identified the trees as a problem. Councilperson Miller said that something must be done to protect the trees to maintain the City's historic character She wants to reach an agreement that will save the trees.

Mr. Patterson reported that he has sent Tree Commission reports to the Council, and that he considers trees a part of the City's assets. Some private owners take down trees on City property, though this is illegal even for a tree planted by the owner. He was especially concerned that someone on Clayton Street had drilled holes in a tree and poured poison into the holes. He wants those responsible to reimburse the City for trees illegally cut or killed. Councilperson Miller said reimbursement should not be based on the cost of a replacement tree.

Mr. Patterson said that the Tree Commission wants to deal with the City as the Tree Commission, not on a person-to-City basis. He emphasized that Tree Commission members have tremendous experience working with trees and that they do so with a limited budget. He pointed out that the Commission takes down trees when necessary, and that they had removed diseased trees on Fifth Street. He also revealed that the Tree Commission has strategies for dealing with roots. He reiterated that the Tree Commission and the City Council must form a viable group to solve the problem. He wants action, not just talk.

He also expressed the necessity for the City to talk with people who have been cited for sidewalk problems caused by trees. He reported that although he asked Jim Weldin to talk with them, Mr. Weldin had not yet done so.

Councilperson DiAngelo reported that the Planning Commission wants to participate with the Tree Commission on the Tree Ordinance.

Councilperson Miller wants to consider all aspects of the problem.

Kerstin Almquist urged retaining the trees because they contribute so much to the historic and esthetic mood of the City. She pointed out that New Castle is not like Newark and that no one should try to make it so. She advised viewing the trees on Second Street in back of the Reed House to see what can be done with large trees. She also urged the City to hire a horticulturalist to help maintain the City's flowers and trees. The audience indicated their agreement with prolonged clapping.

Darcy Mozer revealed that she visited a town in Maryland that had **solved their problems with large trees without removing them**. In fact, the Maryland Forestry Department forbids the removing of any healthy tree. Ms. Mozer has since contacted the County's inspector in charge of trees. He provided the name and telephone number of the State's Tree Supervisor and said that he and the State's Tree Supervisor would help in any way they can. She has forwarded their names and addresses to Jim Weldin, Council members, Jacqueline Seneschal, Mayor Klingmeyer, and Bob Briggs who represents the insurance company hired by the City.

Chief Eugene Petty asked about the project for cleaning the ditch in Buttonwood. President Castagno revealed that the Conservation District project has been expanded and that \$174,000 was appropriated for the project. Currently, the project is out for bids.

Chief Petty also asked about plans for the Buttonwood playground. President Castagno informed him that a City-owned parcel is being considered as a site for the playground. The Council is waiting for a proposal after research is complete.

Dorsey Fiske advised looking at other cities like New Castle. She emphasized that other cities do not cut down their stately trees. She pointed out that even if removing the trees would result in lower insurance premiums, retaining the trees is well worth the extra cost.

Councilperson Padmalingam expressed his strong support for keeping the trees. He feels that the trees are important, that healthy trees should be protected, and that only diseased trees should be removed. However, he also pointed out that the dead trees in the riverbed constitute a decided health hazard.

President Castagno noted that the importance of a continuing dialogue. He asked everyone to "please stay involved."

Meeting Adjourned

President Castagno called for a motion to adjourn the meeting. Councilperson Miller moved to adjourn the meeting; Councilperson DiAngelo seconded the motion. Councilpersons DiAngelo, Miller, Padmalingam, and Reese all approved the motion. The motion carried unanimously. The meeting adjourned at 8:33 PM.

Next Scheduled Meeting

The next City Council meeting is scheduled for December 2004.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Darcy Mozer", with a long horizontal flourish extending to the right.

Darcy Mozer, City Clerk