

**City Council of the Mayor and Council of New Castle**  
**Regular City Council Meeting at Town Hall**  
**201 Delaware Street – New Castle**  
**Tuesday – April 10, 2012 – 7 p.m.**

**Present:**

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

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

**Approval of Minutes by Date**

A motion was made by Councilperson Petty to approve the minutes of February 28 and March 13, 2012. Councilperson Gaworski seconded the motion. The minutes were approved unanimously.

**Approval of Treasurer's Report**

Treasurer Carlin reported that, as of March 31, 2012: petty cash on hand was \$1,100; total monthly deposits, \$230,227.35; total cash in checking and saving accounts in the M&T Bank, \$787,584.99; total certificates of deposit, money market and Delaware Government Investment Pool, \$1,516,350.65; and total cash on hand, \$2,303,935.64.

A motion was made by Councilperson Cochran to approve the Treasurer's Report. Councilperson Petty seconded the motion. The report was approved unanimously.

**Report from the City Administrator**

Administrator Thomas said in addition to her written report, the City is starting to prepare its budget for its next fiscal year, which starts July 1. City Council will have a series of budget workshops coming up. The City encourages people to attend.

President Barthel said the report was accepted as presented.

**Staff reports**

President Barthel said the staff reports were accepted as presented.

**Grant Review**

Councilperson Cochran provided the review. Grant Activity: Banks Building, \$4,000; Coastal Flood Grant, \$100,000; Broad Dike Wetland protection, \$800,000; ARRA Green Project Storm & Water Pond Retrofits, \$1,710,627; Recycling grant, \$21,600; and Tobacco grant, \$17,683.94.

**Communications**

No communications.

**Business from the Floor**

Michael Heyman, Second Street, said, regarding item No. 5 on the application for funding for the pier, he was led to believe that there was going to be no taxpayer money used.

President Barthel said item No. 5 is not going to be considered at this meeting.

Arleen Harris said she had a couple concerns. On item No. 4 related to the Police Department, she hopes they grant the employee his money. On No. 5, she said she opposes it and believes money from taxpayers is already being spent. Regarding Municipal Services and the rate changes, she said that the information that MSC sent out, if you sat down and figured it out, it actually costs 47 cents more in that example. It also is not comparing apples to apples, when truly the

summer rates you use more water and more electricity, so it is not a fair comparison. She also asked why you now have to pay for public fire hydrants and never had to before.

President Barthel said Councilperson Cochran will address the MSC rates and the changes. Council can address those concerns at that time. A lot of what he will speak about are items that are passed along to Council from MSC and determined by MSC. MSC asked Councilperson Cochran present them. If residents disagree with the numbers after they are presented, it is something that probably would have to be presented back to MSC.

Ms. Harris then asked if there was nothing under Grant Review under the dikes.

Administrator Thomas said that is correct. Council did take a resolution a recent meeting to request money through the State Bond Bill for the dikes. The City does not know if that will be granted.

Ms. Harris asked if it was attached to the request for funding for the pier.

President Barthel said they were two separate requests. Council said that it did not want the request for pier money to impede its ability to get money for the dikes. The City's priority is to get the money for the dikes. Sen. Connor clarified it was not an either/or. The City passed a resolution that said it requested the money for repair of the dikes.

Administrator Thomas added the City made two separate requests, both for money from the Bond Bill. The priority item for the City is the dike repair.

President Barthel said the request from the Planning Commission was for \$120,000. The money for the dikes would be in the millions of dollars.

Joseph Octavio said they used to be the owner of Antonio's Bar and Cirillo Brothers bought it. On item No. 3, he thinks it is a good idea. He lived on the street for 40 some years and a lot of his family still lives there. They think it is a good idea. He said Cirillo's do good work.

Jeff Taylor, from New Castle Jaycees, asked about Item No. 2 under New Business regarding Rita's Water Ice. He said one of the organization's fundraisers at Separation Day is selling Rita's Water Ice.

Administrator Thomas said the company wants to sell, to set up by the New Castle Sailing Club. Council may permit the application but they would not be able to do it on Separation Day.

An unidentified resident asked why Item No. 5 was dropped from the agenda.

Administrator Thomas said because the City is still awaiting a definite answer from the State as to whether the City is eligible to apply for that grant.

Marie Abrams said regarding the project on item No. 3 she thinks it would be great for the community. They do good work.

Dan Plumley suggested the owner of the property on 9<sup>th</sup> Street should seed something there until they are ready to build.

### **Business from the Mayor**

Mayor Reese thanked Kim Burgmuller for a great resolution on a great person.

### **Resolution in Memory of Mr. Pasquale Marinelli**

Councilperson Megginson made a motion to approve the resolution. Councilperson Petty seconded the motion.

President Barthel read the resolution for former City Councilperson Pasquale Marinelli who has passed away.

Councilperson Gaworski said he served with him in the National Guard and he was a nice man.

Councilperson Megginson also served with him in the National Guard, and said he knew Mr. Marinelli well when he had a gas station. He was an honest and giving man.

President Barthel said he served with Mr. Marinelli on St. Peter's Parish Council and listened to storyies about him serving in Patton's Tank Army. He learned a lot from Mr. Marinelli about service to family, community and parish, which Mr. Marinelli loved.

The motion was passed unanimously.

### **Unfinished Business**

1. Third Reading and Motion, Discussion and Vote on Ordinance No. 486 concerning proposed changes to the New Castle City Code covering the issuance of building permits and certificates of occupancy.

President Barthel read the proposed ordinance.

Councilperson Megginson made a motion to approve the resolution. Councilperson Cochran seconded the motion.

Solicitor Losco said the City has in the past run into situations where the Building Official had no grounds to withhold a building permit or certificate of occupancy even though the City was aware there were either State orders, or Federal, County or other government objections against the developer. It is an important to tool to control development that may be in compliance with the City Codes but not other government regulations.

The motion was passed unanimously.

2. First and Second Reading of Ordinance No. 487, which proposes changes to Chapter 122 – Firearms, of the New Castle City Code.

President Barthel read the proposed ordinance.

### **New Business**

1. Discussion of a request from Toby Hagerott of Bayberry Farms to perform vending of fresh produce, from a truck on Market Street.

Toby Hagerott said last year was the first year for selling his farm-raised items in the City. Bayberry Farms is located in Middletown. It is a naturally grown farm. Last year he drove up each Saturday evening and sold produce grown on the farm in New Castle, at the corner of Market and Delaware streets. He plans to be at the same location.

President Barthel said it was great Mr. Hagerott was here last year and it seemed to be a big success.

Mr. Hagerott plans to put out door hangers, and plans to advertise it more this year.

2. Discussion of a request from Rita's Water Ice to perform vending in a location in Battery Park.

John Finney, the owner of Rita's Water Ice, said he and his family bought Rita's Water Ice two years ago. They are looking to reach out deeper into communities and offer people an opportunity to share in some of its treats. He is looking to locate a cart at Third and South streets near the tennis courts. He is addressing the two issues the City had.

Councilperson Gaworski asked if he would have trash cans.

Mr. Finney said yes and in addition he will have some check the area for litter in case a customer left the cart area and littered with Rita's materials. It would be picked up and disposed of.

Administrator Thomas said one issue was whether the State Health Department has approved the cart and that the insurance covers the City for the cart and cart sales.

President Barthel said it sounds like Mr. Finney is set to go once those items are addressed.

3. Motion, Discussion and Vote on Resolution No. 2012-14, approving a Minor Subdivision for 200-202 W. 9th Street into six lots and to construct six townhouse units in accordance with the City's Redevelopment Ordinance.

Shawn Tucker represents Mr. Cirillo who has made an application under the residential redevelopment ordinance that City Council adopted last year. It has been presented before the Planning Commission, which gave a recommendation in favor of the application. The applicant's goal was to present an architectural design that meets the code. If City Council would like to see changes to that design the applicant is OK with that.

Mr. Tucker went through the project and outlined where he believes it complies with the code. The ordinance generally calls for the architecture to adequately protect the surrounding properties and be harmonious with character of the community. One specific aspect deals with height. There was some confusion regarding that for this property. They are going with the lower height to avoid any confusion. They are going with the height for single-family attached units which is 35 feet—a revision to the plan tonight. That has been provided to Building Official Bergstrom.

Mr. Tucker said the architecture is consistent with the surrounding area. The ordinance calls for massing and external treatments to be considered. He said they looked at lot sizes in a two-block radius. They believe they are within the character of the area. Regarding embellishments, they considered peaks but chose to use offsets in height. They also added other features, such as keystones above the windows. He said if Council would like some of this to change, the applicant is willing to. Lastly, no commercial use is permitted and none is proposed.

Mark Hitchcock, architect on the project, said he looked around the area. The site does slope slightly, which is why they decided it best to break up the roof. He thinks the brick matches the area. They also tried to keep it simple. He believes it is a great improvement. It would have vinyl siding on the side facing School Street, which he said was consistent with what was there.

Councilperson Cochran said he liked the breaks in the roof. He asked if shrubbery will go in front of the building.

Mr. Tucker said they made some modifications to the landscaping at the recommendations of the Planning Commission.

Mark Ziegler said previously it was all paved in front. Now there is a significant area in front that they can do some landscaping and they can provide a landscaping plan. They have been talking about bringing in flowers, bushes and trees.

Councilperson Cochran said he would like to see street trees.

Mr. Tucker said the ordinance calls for 10,000 square feet lot or less. This is 7,244, so it meets that threshold. The property to qualify also had to meet, which it does, only two of the following: be a public nuisance, be a safety hazard, an attractive nuisance, presented unsafe structures, unfit for human habitation, lack of maintenance resulted in an accumulation of trash and debris.

Mr. Ziegler said the primary nonconformity for the building was setbacks. The existing buildings went into the rights-of-way. Also there were no rear setbacks. They are mitigating those. They have gone from zero feet to 18 feet from West Ninth Street; on the sides it will be on the property at least a half-foot; and a rear setback of 14 feet.

Mr. Tucker said they are proposing six units, which is consistent with what the concepts shown to Council and the Planning Commission. The client's architect confirmed that there had been five apartments there. Under the ordinance Council has the authority to approve up to an additional two units. Lastly, in terms of total building footprint cover it is limited to 50 percent.

Mr. Ziegler said it is at 48-49 percent.

Councilperson Cochran said he is happy to see an eyesore go away. Councilperson Megginson concurred.

President Barthel asked Mr. Losco if he believes the applicant has met all the conditions of the ordinance.

Mr. Losco said they did. He pointed out if they had had to start over from scratch it likely would not have allowed a sixth unit. But the idea behind the ordinance was to provide an incentive and take a nuisance property and make it a productive part of the tax roll. It is in Council's discretion to add a sixth unit.

Councilperson Cochran asked if the sidewalks are brick there.

The applicant's representative said they were concrete now and in the plan, and nearby.

President Barthel said he agreed that it is a huge improvement over what was there before.

Councilperson Megginson made a motion to approve the resolution. Councilperson Cochran second the motion. The resolution allows for six units. The resolution passed unanimously.

4. Motion, Discussion and Vote on Resolution No. 2012-15, to provide retired Police Department employee Zachary Bascelli with payment for accumulated unused sick leave under the same terms and conditions of the FOP Union Contract as if he had served for 10 or more years prior to his retirement from the City.

Councilperson Petty made a motion to approve the resolution. Councilperson Gaworski second the motion.

Administrator Thomas said Council wanted a resolution to make this approval. It is boilerplate that whenever the City does something outside the norm the City requires the appropriate union agree that the City is under no obligation to do something like this again unless it deems it wants to at that time, but it does not set a precedent.

President Barthel said the agreement is contingent on the union signing that agreement.

The motion passed unanimously.

5. Item 5 was withdrawn
6. Discussion and review of the new rates for water and electric services from the Municipal Services Commission.

Councilperson Cochran said the MSC passed along changes in the electric rates. On the electric rates there is about a \$20 difference. On the water it is about \$10 difference. If residents have any questions on the rate, they can contact Chip Patterson at MSC directly and he can answer the questions.

Ms. Harris asked what the basis is of changing the rates.

Bob Appleby, a commissioner of MSC, said MSC did a cost of service study and found the water rate was too low and the electric rate was too high. They decided to adjust the rates in one year. The net effect on 99 percent of the people will be a lower overall bill, with a higher water rate and lower electric rate. It was a based on a consultant's report.

Ms. Harris disagreed with the MSC's numbers and said it was untrue they would pay less.

Mr. Appleby asked her to come into the MSC office and they would sit down with her and go over the numbers. She agreed to do that.

7. Motion, Discussion and Vote on a Resolution confirming appointments of the Mayor to the Planning Commission, as follows:

Fulfilling the unexpired term of Dr. Jack Norsworthy: Joseph DiAngelo, term ends 4/1/14;

Filling a new term, term ending 4/1/15: William Simpson;

Filling a new term, term ending 4/1/15: Josephine Moore.

Mayor Reese said the Mayor gets to make appointments to the Planning Commission. He said it is one of the hardest working commissions. Dr. Norsworthy decided not to complete his term due to business concerns. Mr. DiAngelo, who was not planning to come back, agreed to fill Dr. Norsworthy's term. Mr. Simpson also had business concerns but was impressed with what the Planning Commission has done and agreed to serve three more years. Josephine Moore is a newcomer and is being appointed to a full term.

Councilperson Petty made a motion to approve the resolution. Councilperson Megginson second the motion. The motion was approved unanimously.

8. Discussion of revising Section 230-46 of the City Code relative to the City requiring reimbursement from developers and applicants for certain plan reviews.

Administrator Thomas said she brought this up to Mr. Losco. The Planning Commission has voiced concerns it does not get credit in its budget for reimbursements coming into the City for the time the City Planner spends. There has not been a lot of reimbursable items. Mrs. Thomas also set up a form to give applicants advance notice that they might incur charges in the review of their project.

Mr. Losco said it is a great idea that the applicant signs something in advance acknowledging it before they submit their plans for review and before the City hires outside consultants that they are responsible for the bill. Importantly, he would like to make that a contractual agreement and provide the option of requiring them to pay deposit. Right now the ordinance says they are responsible but there is no teeth to it in that there are contractual liabilities for non-payment.

Administrator Thomas said it could be written so that if the project is approved and no payment has paid they would not be able to get a building permit until they settled.

Mr. Losco said making it a contractual agreement would have an impact also for someone who is turned down and does not want to pay. It would provide more leverage to get payment.

Administrator Thomas said they wanted to let Council know where it is heading. Mr. Losco would draw up some proposed language for the revision and it would go through the City's normal process.

9. Discussion of revising Chapter 177, Peddling and Soliciting, of the City Code.

Administrator Thomas said it has been a long time since the City has looked at this section of the City Code. Some parts of it are not proper. She and Mr. Losco have been talking about the need to revamp. She provided some sample code and he found an Elsmere code that can be modified. The current City Code is not entirely constitutional.

A brief discussion was held about some aspects a revised Code could include, such as an opt-out provision for residents. The City will look at holding a hearing at a future meeting.

10. Discussion of a request to have a Temporary Storage Unit in place for more time than is allowed under the City Code, so a contractor for DelDOT may execute historic brick sidewalk rehabilitation on State property fronting on Market Street.

Administrator Thomas said the City has an ordinance regarding temporary storage units that sets regulations for time and placement. The State has hired a contractor to rehabilitate the sidewalks. They are going to re-lay the bricks they take up. The contractor would like to have a unit to keep the bricks secure. They are worth about \$9 a piece. They won't be able to do the job in one week. She is seeking consensus from Council to allow it for a longer time than allowed by code—not later than May 18 so it will be gone in time for Day in Old New Castle.

City Council gave the go ahead for the extension.

#### 11. Comments from the floor.

Sally Denton, of Second Street, pointed out to Council the article in this day's newspaper about the dikes. She asked why this was never taken care, by previous Councils and previous Mayors. It has been 15 to 20 years in the making. And now it is real trouble. Second Street will be the first street to go, and then the Strand. She asked how did this happen? It is ridiculous this has happen.

President Barthel said Mrs. Thomas provided copies of the article to all the members of Council. He said it is something that is urgent and needs to be addressed, and City is trying to address it. The hope is that the money from the State and other things the City is trying to do will come to fruition.

Mrs. Denton said she understands all the efforts the current Council is making. She is concerned that all it is going to take one or two more bad storms (to create major problems).

President Barthel said the City is trying to raise awareness as well with the articles Mrs. Thomas has been putting into the weekly newspaper on the dikes.

Chief McDerby thanked Council on behalf of the City Police Department for its action at this evening's meeting where Zack Bascelli will be reimbursed for cumulative sick time.

Earl Carpenter expressed concerns about water coming at the City from the back side on Sixth and Seventh streets. There is no reason why water could not inundate those areas too, with the marshes and the dikes.

Ms. Harris asked if the City does not get funding for the dikes or does not get enough money is there a contingency plan.

President Barthel said that was part of the reason behind the Charter changes, if funding becomes available for shovel-ready projects. The City does not know what funding will become available or in what form. It has been working for two and one-half years with DelDOT in trying to determine where the priority is with which dikes to fix first, and where it can get the money. The City has asked the State for it and continues to do that. The City is frustratingly looking for answers.

Ms. Harris said she has budget concerns. She asked how she should address them.

President Barthel said she can do so at the meeting, future meetings or address them individually with Council.

Ms. Harris asked what the City is using \$12,000 for from Homeland Security.

Chief McDerby said every year the City gets money from the Federal Government. The line item was set up to have a place in the budget for that money to go. He does not expect to get that much this year.

Ms. Harris suggested putting an alert on the website when an item is not going heard.

Administrator Thomas said the City could take it off the agenda posted online. She said that can raise questions about why something was taken off at the last second. It is often better to explain it at the meeting.

Ms. Harris said it would be nice suggestion that vendors use biodegradable materials since there are not trash cans at the park anymore.

Mr. Hagerott said biodegradable materials will not break down for at least a year so it is still considered litter. Also biodegradable items add costs, which will reduce the number of vendors who will come into New Castle if you make it a requirement.

Councilperson Megginson made a motion to adjournment the meeting. Councilperson Petty seconded the motion.

The meeting adjourned at 8:40 p.m.

Respectfully submitted,

Michael Dickinson  
New Castle City Clerk