



Fort DuPont Redevelopment and Preservation Corporation Board of Directors Meeting

May 10, 2023 8:30 a.m.  
Delaware City Fire Hall  
815 5th Street  
Delaware City DE 19706

**AGENDA**

1. Call to Order
2. Roll Call
3. Approval of Minutes - Fort DuPont Redevelopment and Preservation Corporation Board Meeting of April 12, 2023
4. Treasurer's Report
5. Executive Director's Report
6. Committee Reports
  - a. Design and Historic Preservation Committee Meeting of April 10, 2023
7. Request of Mark Donaldson, 815 Crawford Lane, to purchase parcel 20-009.00-205
8. Update on the Branch Canal Ownership Issue
9. Informational item: Declaration of Covenants (Richard Forsten and Pam Scott)
10. Delaware City updates
11. Public comment
12. Executive Session – Legal Matters
13. Actions to be voted upon from Executive Session – Legal Matters
14. Next meeting date: June 14, 2023 at 8:30 a.m.
15. Adjourn

*Please note: Pursuant to 29 Del. C 10004(e)(2), this Agenda may be changed to include additional items including executive sessions or to delete items that arise at the time of the meeting.*

*Potential executive session pursuant to 29 Del. C. 10004(b)(9) (“Personnel matters in which the names, competency and abilities of individuals employees...are discussed.”)*

*Potential executive session pursuant to 29 Del. C. 10004(b)(2) (“discussions regarding sales or leases of real property) and 29 Del C. 10004 (b)(6) (discussion of the content of documents, excluded from the definition of “public record,” where such discussion may disclose the contents of such documents).*

*Potential executive session pursuant to 29 Del. C. 1004 (b)(4) (“Strategy sessions, including those involving legal advice or opinion from an attorney-at-law...”)* and 29 Del. C. 10004(b)(6) (discussion of the contents of documents, excluded from the definition of “public record,” where such discussion may disclose the contents of such documents.

**FORT DUPONT REDEVELOPMENT AND PRESERVATION CORPORATION**  
**BOARD OF DIRECTORS MEETING**

The Fort Dupont Redevelopment and Preservation Corporation Board of Directors meeting was held on April 12, 2023 at the Delaware City Fire Hall, 815 5th Street, Delaware City, with Chair John McMahon presiding. Board members present were Secretary Shawn Garvin (Department of Natural Resources and Environmental Control (DNREC)) (arrived at 8:37 a.m.), Mr. Bert Scoglietti (designee of Ruth Ann Jones, Controller General of the State of Delaware), Dr. Courtney Stewart (Office of Management and Budget), Mr. Kurt Foreman (Delaware Prosperity Partnership)(arrived at 8:33 a.m.), Mr. David Baylor (Delaware City Manager), Mr. Kevin Whitaker (Resident of Delaware City), Senator Spiros Mantzavinos (Capital Improvements Committee)(arrived at 8:39 a.m.), Mr. Michael Graci (Resident of Fort DuPont), Mr. Douglas Eriksen (Resident of Delaware City), and Ms. Wendy Rogers (Resident of Fort DuPont). Mr. David Edgell (Office of State Planning Coordination), Mr. Rony Baltazar-Lopez (Department of State), and Representative Sean Matthews (Capital Improvements Committee) were absent.

Staff members present were Mr. Tim Slavin – Executive Director, Ms. Janice Moturi – Deputy Director/Controller, and Mr. Richard Forsten and Ms. Pam Scott of Saul Ewing Arnstein and Lehr LLP.

Members of the public present were Mr. Jack Guerin.

**CALL TO ORDER**

Chair McMahon called the Fort DuPont Redevelopment and Preservation Corporation (FDRPC) Board of Directors meeting to order at 8:30 a.m.

**APPROVAL OF MINUTES**

Executive Committee Meeting of February 27, 2023

**Mr. Whitaker moved for approval of the Executive Committee Meeting minutes of February 27, 2023. The motion was seconded by Dr. Stewart and unanimously carried.**

Fort DuPont Redevelopment and Preservation Corporation Board Meeting of March 8, 2023

**Mr. Whitaker moved for approval of the Fort DuPont Redevelopment and Preservation Corporation Board Meeting minutes of March 8, 2023. The motion was seconded by Dr. Stewart and unanimously carried.**

**TREASURER’S REPORT**

Mr. Bert Scoglietti, Treasurer, reviewed the Fort DuPont Redevelopment and Preservation Corporation Budget vs. Actuals: FY2022-2023 - FY23 P&L for July 2022 – February 2023 and noted the following:

- 4010 State Appropriation – the entire state appropriation has been drawn down as a result of the flexibility given in the mini bond bill in January. They were able to draw down some other reserve money that the corporation had for some capital projects to be applied to the roundabout project in the amount of \$900,000.

- 4100 Rental Income – this line item is up \$23,000 over last month and that amount should be dispersed based on the rents that have been received from those buildings. Next month's report will reallocate some of those funds to show the true rental income for those buildings.
- 6460 Environmental – this line item is up about \$6,000 from last month.
- 6500 Professional Fees – this line item is up \$23,000 since last month with Professional Engineering Fees (6505) being up \$9,000 from last month.
- 6721 Roundabout - \$1,041,227.79 – this line item is up by \$350,000 since the last report based on continuing payment for that particular project. There is another payment scheduled for \$260,000 which will probably show up in the next report, hopefully closing out the expenditures for the roundabout.
- 6741 Building 30 – Stable for DNREC – this line item is up about \$33,000 since last month.
- 6800 Site Utilities – this line item is up about \$20,000 since last month's report.
- 7000 Operating Expenses – this line item is running well below budget.
- 7200 Debt Expense – this line item summarizes the debt expense. 7225 Truck Loan – WSFS has been paid off and a payment was mistakenly posted at last month's meeting so that number is actually down \$8,885.
- 7740 Salary and Wages – this line item is up \$50,000 over last month; however, it is tracking pretty well on budget.
- Total Expenses – page 5 - \$3.7 million – this item is up about \$565,000 since last month mostly due to continued payments for the roundabout.

**Mr. Baylor moved for acceptance of the Treasurer's Report, seconded by Mr. Eriksen and unanimously carried.**

### **EXECUTIVE DIRECTOR'S REPORT**

Mr. Tim Slavin, Executive Director, introduced Ms. Janice Moturi, the new Deputy Director/Controller for the Corporation. He advised that Ms. Moturi comes to them from 10 years working for JP Morgan and she holds bachelor's and master's degrees from Goldey-Beacom College.

Mr. Slavin reviewed the Executive Director's Monthly Report for the period March 1 to March 30, 2023 and noted the following:

- Entranceway. The Entranceway roundabout is now fully open. They were able to beat some deadlines on this project and opened the Reedy Point Bridge with DelDOT on March 20, 2023, five days earlier than anticipated. The roundabout was finished Monday afternoon, April 10, 2023, when A-Del Construction finished the roundabout and opened it early and it is working well.

Mr. Slavin recognized the work of Mr. Shane Martin, project manager, and A-Del Construction for a phenomenal project and a phenomenal outcome.

- Old Elm Avenue Connection. The issue of the dip that takes place from Old Elm Avenue into the roundabout will be addressed after July 1, 2023. This work was not part of the roundabout project and will be bid out and finished off with top coat and asphalt all the way down Old Elm Avenue.

- Branch Canal issues. The open issues related to the possible transfer of ownership of the Branch Canal to the Fort DuPont Redevelopment and Preservation Corporation remains unresolved. Secretary Garvin and Executive Director Slavin spoke by phone about the issue and agreed that clarification was needed from the US Army Corps of Engineers (USACE) on three matters:
  - Has the provision to transfer the Branch Canal been invalidated because it has not occurred within the 18-month period cited in the Water Resources Development Act of 2018?
  - If the provision is still valid and FDRPC declines ownership, can the transfer of ownership of Parcel #2 (5th St Bridge) to DelDOT still occur?
  - Is it possible for FDRPC or another entity to lease the lands identified for a future marina and make improvements?

Mr. Slavin advised that they look to have that conversation with the USACE. Secretary Garvin stated that, as a member of the FDRPC, he had a brief exchange with the USACE to put it on the radar screen that they were looking to re-engage that conversation. He noted that some of the unresolved issues from 2018 were the ownership of the boat ramp, who is responsible for dredging and the existing disposal site, and property maintenance.

Mr. Baylor stated that Delaware City also needs to be involved in those discussions so that they do not find themselves in a position where things were done and they had no say. He noted that Delaware City has a vital interest in what happens to the waterway. Mr. Baylor advised that the boat ramp is a jurisdictional nightmare between DNREC, the State, and Delaware City when there is an incident and he would like definitive answers on property issues going forward. He suggested that the Delaware City Solicitor, the attorney for the FDRPC, and the State's attorney from DNREC sit down and iron it out once and for all. Mr. Baylor expressed concern with the land being sold to the highest bidder and ending up in a third party's hands. Chair McMahon agreed that they ought to make it a concern and get the right people in the room to get some resolution one way or the other. Mr. Baylor suggested getting the congressional delegation involved.

Secretary Garvin stated that the USACE is ready for the conversation. It was the FDRPC that stopped pursuing the discussions because it was not sure what it wanted to do and what it was asking the USACE for. Secretary Garvin said that he saw no scenario where Delaware City was not at the table for those conversations.

Mr. Baylor recalled that originally the FDRPC did an end around and initiated this legal maneuver to get Congress to pass it and to have the president sign it so that the corporation could take over the waterway and the land adjoining it. It was also his recollection that the Executive Director at the time, and the board was aware, was getting financial work done to assume what the cost would be for the turnover of the property. Mr. Baylor noted that DelDOT was also involved because the 5th Street bridge was going to be granted to them. He noted that Delaware City did not initiate this and was brought in at the last minute once everything was done.

Mr. Baylor moved that the legal representatives of the Fort DuPont Redevelopment and Preservation Corporation, the proper legal representative of the State, and the legal representative of Delaware City schedule a meeting with the US Army Corps of Engineers to discuss the property transfer issues. The motion was seconded by Mr. Whitaker.

Mr. Whitaker suggested that the FDRPC Board should determine what it wants out of the canal before approaching all the other agencies. He thought maybe a special meeting was necessary. Mr. Baylor stated that they could not determine what they want until they know what is on the table. He stated that there were three parcels of property under consideration with the agreement and, in order to make an educated decision, they have to understand what the parcels are and how they will impact the decision of any separation of those parcels. Mr. Baylor advised that there is an element of land that abuts the Branch Canal near the Mobile Home Park, there is the bridge, there is the Branch Canal on the end that empties into the Delaware River and to the river's edge at Fort DuPont, and there is a part of the canal that will impact a current business owner. Before they can make any educated decision, they have to understand what the complexity of all that is and what the impact is then they can make a strategic plan on how to move forward.

Mr. Whitaker stated that he would like to preserve the opportunity to build a marina without owning the canal for the good of the neighborhood, but he thought it would be a private investor or public/private partnership building it. He again suggested having a separate meeting that is just on the Branch Canal and starting from the very beginning because of some of the moves that were made years ago. Chair McMahan thought that they needed the lawyers to tell them exactly what they thought they were doing then so the Board can make a decision on what it ought to do. Responding to Mr. Foreman, Mr. Baylor stated that his intention was for the attorneys to do fact finding and report back to the board on the legal status of the property transfers. Mr. Forsten stated that he thought they all need to understand precisely what the law provides, whether it is still effective, and what their options are. He advised that he could meet with the attorneys and come up with what their understanding of the law means, what they could do under the law, and if there was an option to do something different. Mr. Forsten said that he would then bring that report to all of them to inform their decision about how to move forward. Mr. Baylor requested that each entity be appropriately represented so they can each make the best decision for their interest.

Mr. Slavin noted that a month ago he presented some of the documents and reports that had been commissioned and he stated then that, in his opinion, they did not yet have enough information to make an informed decision and the decision, yes or no, is complicated with either option, that it leads to other things. If they don't want to own that property, who will? If they do want to own it, what then becomes of the availability of spoil sites. There are all kinds of issues that come up and this initial conversation with the USACE is really designed to see if there are any full stops before they get any further, if this legislation is no longer valid, if that action is no longer valid then they really don't have a decision to make. Mr. Slavin advised that he was happy to assist in any way with that discussion among lawyers.

Secretary Garvin stated that he thought the conversation with the USACE was going to happen from a legal standpoint and, even if it is determined that the 18-month clock does not exist anymore, the USACE has other abilities to transfer properties to other entities so they have to have the conversation of what other options they have to inform the board moving forward.

**The motion that the legal representatives of the Fort DuPont Redevelopment and Preservation Corporation, the proper legal representative of the State, and the legal representative of Delaware City schedule a meeting with the US Army Corps of Engineers to discuss the property transfer issues was unanimously carried.**

- **Marina Village.** The request for a Special Use Permit for the next phase of residential development will be considered by the City Council on Monday, April 17, 2023. Amended drawings have been issued which address the concerns raised by city officials related to reducing the number of stacked townhomes in any one cluster (not to exceed four consecutive units), reconfiguring parking, reconfiguring stormwater management areas, and ensuring no encroachment on riparian buffers. The revised plan includes 130 duplexes and stacked townhomes and exceeds the number of parking spaces required by ordinance. FDRPC has contracted with Verdantas to assist in the proposed transferring of Land and Water Conservation Trust protections (6f). The Special Use Permit received the unanimous recommendation of the Planning Commission.
- **Declaration of Covenants.** The Declaration of Covenants requires that FDRPC establish two committees to ensure that all covenants are being met by land owners: a design committee and a maintenance committee. The Design Committee is currently active in the form of the Design and Historic Preservation Committee. Design guidelines have been issued previously, and the committee reviews proposed additions and alterations to properties covered by the covenants. The residential properties are deed restricted inside of Fort DuPont and that includes assessment of fees for common area maintenance that has been suspended for about a period of two years. They are legally obligated to restart that process and it is anticipated that there will be a briefing from legal counsel about a path forward at the next board meeting. The Maintenance Committee will be appointed by Chair John McMahon.
- **Real Estate Update.** Offers were received for three lots on Officers Row from two separate buyers, all within the authorized range. All three offers have been accepted and will close by the end of June. Additionally, the property at 1605 Maple Boulevard has been rented by Emory Hill at market rate for \$2,900 per month.
- **Cultivation Meetings.** They have begun the process of holding cultivation meetings looking for interest in the real estate development community for some of their larger buildings on campus, specifically the former Governor Bacon site, the Tilton building, and the Paynter building. They will be looking at what the potential reuse for those buildings is. Originally the vision was that they would be office buildings that would house companies that would relocate; however, they are not very hopeful that that is part of their scenario so they may be looking at an adaptive reuse.

**Mr. Foreman moved for acceptance of the Executive Director's Report, seconded by Secretary Garvin and unanimously carried.**

## **NEW BUSINESS**

### **RESOLUTION GRANTING SIGNING AND AUTHORITY TO CERTAIN PERSONS**

Mr. Tim Slavin, Executive Director, advised that the proposed resolution granting signing and authority to certain persons would allow two signatures on their accounts, John McMahon and Bert Scoglietti. Documentation is required to present to different financial institutions that say they are who they are.

**Mr. Baylor moved to waive the reading and adopt the Resolution. The motion was seconded by Mr. Whitaker and unanimously carried.**

**DELAWARE CITY UPDATES**

Mr. David Baylor, City Manager – Delaware City, advised that the Special Use Permit would be considered by the mayor and council during their meeting on Monday, April 17, 2023 at 6:00 p.m. There will be a public hearing for anyone who wants to make comments.

Mr. Baylor advised that he and Mr. Tim Slavin, Executive Director, have been working together with the police chief on some traffic safety issue at Fort DuPont. The next step is to get a small sample of residents involved to make sure that they are aware of what they are considering and then they would push it out to the community at-large and, hopefully, that will address some of the traffic safety concerns. Mr. Graci requested that he and Ms. Rogers be included on the committee regarding traffic within Fort DuPont because a lot of those comments come to them with regards to enforcement of some of the bigger violators, such as school buses, garbage trucks, and boaters.

Mr. Baylor noted that as the weather gets warmer, they will start to see more activity at the boat ramp with boaters. That increases the volume of traffic on Fort DuPont, which increases some safety issues, especially with speeding and running the stop signs so that the Police Department has been instructed to be zero tolerance and to write everyone a ticket to get that under control because there are now kids over there playing and there are residents walking their dogs and they should not have to jump out of the way of vehicles.

Mr. Baylor announced that the community yard sale is coming up at the end of the month.

Mr. Baylor gave kudos to the FDRPC Board on the traffic circle. He stated that it has turned out much better than he thought it would and, so far, they have had no issues. Mr. Baylor stated that he thought it had slowed traffic down and, from an aesthetic concept, it has added to that part of town.

**PUBLIC COMMENT**

Mr. Jack Guerin of FightDECORruption.com asked if the FDRPC Board had received a response from the Department of Justice regarding the property management audit that was referred to them last December. Responding, Mr. Forsten advised that they were still looking at it as of two or three weeks ago when he had the last conversation. Mr. Baylor advised that it would probably be better for Mr. Guerin to ask the Department of Justice because if they decide to move forward, they are not going to share that information with the FDRPC Board.

**NEXT MEETING DATE**

The next meeting is scheduled for May 10, 2023 at 8:30 a.m.

**ADJOURNMENT**

**Mr. Whitaker moved for adjournment, seconded by Mr. Foreman and unanimously carried.**

Meeting Adjourned at 9:15 a.m.

APPROVED: \*May 10, 2023



	A	B	C	D	E
1	<b>Fort DuPont Redevelopment and Preservation Corporation</b>				
2	<b>Budget vs. Actuals: FY_2022_2023 - FY23 P&amp;L</b>				
3	<b>July 2022 - March 2023</b>				
4					
5		<b>Total</b>			
6		<b>Actual</b>	<b>Budget</b>	<b>over Budget</b>	<b>% of Budget</b>
7	<b>Income</b>				
8	4005 Carryforward	0.00	250,000.00	-250,000.00	0.00%
9	4010 State Appropriation	2,575,000.00	2,250,000.00	325,000.00	114.44%
10	4100 RENTAL INCOME	67,564.04	0.00	67,564.04	
11	4100-15 Building 15	5,760.00	17,280.00	-11,520.00	33.33%
12	4100-25 Building 25	14,800.00	42,000.00	-27,200.00	35.24%
13	4100-36 Building 36	0.00	8,000.00	-8,000.00	0.00%
14	4100-42 Building 42	0.00	30,360.00	-30,360.00	0.00%
15	4100-43 Building 43	11,600.00	34,800.00	-23,200.00	33.33%
16	4100-45 Building 45	9,650.00	46,800.00	-37,150.00	20.62%
17	4100-46 OBL Duplexes	0.00	20,000.00	-20,000.00	0.00%
18	4100-DH DHSS	0.00	8,400.00	-8,400.00	0.00%
19	4100-DN DNREC	0.00	10,500.00	-10,500.00	0.00%
20	4100-OM OMB	9,315.00	9,315.00	0.00	100.00%
21	4100-S Storage	0.00	3,600.00	-3,600.00	0.00%
22	4110 SPECIAL EVENT REVENUE	0.00	0.00	0.00	
23	4111 Misc Events	5,250.00	6,700.00	-1,450.00	78.36%
24	<b>Total 4110 SPECIAL EVENT REVENUE</b>	<b>\$ 5,250.00</b>	<b>\$ 6,700.00</b>	<b>-\$ 1,450.00</b>	<b>78.36%</b>
25	4130 CAM REVENUE	0.00	0.00	0.00	
26	4131 Lawncare - CAM (State Tenants)	3,200.00	16,040.00	-12,840.00	19.95%
27	4132 Snow/Ice - CAM (State Tenants)	12,514.00	25,112.00	-12,598.00	49.83%
28	<b>Total 4130 CAM REVENUE</b>	<b>\$ 15,714.00</b>	<b>\$ 41,152.00</b>	<b>-\$ 25,438.00</b>	<b>38.19%</b>
29	4150 TENANT REIMBURSEMENTS	0.00	0.00	0.00	
30	4151 Utility Reimbursements	62,428.96	100,000.00	-37,571.04	62.43%
31	<b>Total 4150 TENANT REIMBURSEMENTS</b>	<b>\$ 62,428.96</b>	<b>\$ 100,000.00</b>	<b>-\$ 37,571.04</b>	<b>62.43%</b>
32	<b>Total 4100 RENTAL INCOME</b>	<b>\$ 202,082.00</b>	<b>\$ 378,907.00</b>	<b>-\$ 176,825.00</b>	<b>53.33%</b>
33	4200 REAL ESTATE SALES	0.00	0.00	0.00	
34	4202 Officers Row Ph1A	0.00	120,000.00	-120,000.00	0.00%
36	<b>Total 4200 REAL ESTATE SALES</b>	<b>\$ 0.00</b>	<b>\$ 120,000.00</b>	<b>-\$ 120,000.00</b>	<b>0.00%</b>
37	4500 HISTORIC TAX CREDITS			<b>\$ 0.00</b>	
38	4500-30 OBL Duplexes	\$ 0.00	\$ 185,000.00	-\$ 185,000.00	0.00%
39	<b>TOTAL 4500 HISTORIC TAX CREDITS</b>	<b>\$ 0.00</b>	<b>\$ 185,000.00</b>	<b>-\$ 185,000.00</b>	<b>0.00%</b>
40	4800 BANK LOANS - BUDGETED PROCEEDS	0.00	0.00	0.00	
41	4811 OBL Duplexes	545,911.21	623,426.00	-77,514.79	87.57%
42	<b>Total 4800 BANK LOANS - BUDGETED PROCEEDS</b>	<b>\$ 545,911.21</b>	<b>\$ 623,426.00</b>	<b>-\$ 77,514.79</b>	<b>87.57%</b>
43	<b>Total Income</b>	<b>\$ 3,322,993.21</b>	<b>\$ 3,807,333.00</b>	<b>-\$ 484,339.79</b>	<b>87.28%</b>
44	<b>Gross Profit</b>	<b>\$ 3,322,993.21</b>	<b>\$ 3,807,333.00</b>	<b>-\$ 484,339.79</b>	<b>87.28%</b>

	A	B	C	D	E
5		Total			
6		Actual	Budget	over Budget	% of Budget
45	Expenses			0.00	
46	6030 Bank Charges	4.83	0.00	4.83	
47	6400 Building Improvements{77}	2,900.00	0.00	2,900.00	
48	6409c 09c Painting-Interior	-99.71	0.00	-99.71	
49	6417 Supplies & Materials	2,085.77	0.00	2,085.77	
50	Total 6400 Building Improvements{77}	\$ 4,890.89	\$ 0.00	\$ 4,890.89	
51	6460 ENVIRONMENTAL	78,056.61	0.00	78,056.61	
52	6464 Soil Analysis	8,810.25	50,000.00	-41,189.75	17.62%
53	Total 6460 ENVIRONMENTAL	\$ 86,866.86	\$ 50,000.00	\$ 36,866.86	173.73%
54	6480 SPECIAL EVENT EXPENSES	500.00	0.00	500.00	
55	6500 PROFESSIONAL FEES	1,117.50	0.00	1,117.50	
56	6505 Prof Fees - Engineering	4,601.50	0.00	4,601.50	
57	6505-01 Marina	1,500.00	200,000.00	-198,500.00	0.75%
58	6505-02 Master Planning	22,899.25	50,000.00	-27,100.75	45.80%
59	6505-03 Canal District	1,571.08	0.00	1,571.08	
60	6505-04 Roads/Utilities	940.50	100,000.00	-99,059.50	0.94%
61	6505-05 Bike Path	92,262.25	0.00	92,262.25	
62	6505-06 Survey	0.00	10,000.00	-10,000.00	0.00%
63	6505-08 Geotechnical	17,055.90	0.00	17,055.90	
64	6505-09 Round-a-bout	47,578.25	25,000.00	22,578.25	190.31%
66	6505-11 Subdivisions	0.00	15,000.00	-15,000.00	0.00%
67	6505-12 OBL Duplexes	685.00	15,000.00	-14,315.00	4.57%
68	6505-13 Section 6F/106	0.00	10,000.00	-10,000.00	0.00%
69	6505-14 Marina Village	38,204.25	0.00	38,204.25	
70	6505-15 Park & Recreation	1,850.00	50,000.00	-48,150.00	3.70%
71	6505-20 Branch Canal	4,057.00	0.00	4,057.00	
72	Total 6505 Prof Fees - Engineering	\$ 233,204.98	\$ 475,000.00	-\$ 241,795.02	49.10%
73	6515 Prof Fees - Architectural	240.00	10,000.00	-9,760.00	2.40%
74	6520R Prof Fees - Legal	215,863.63	250,000.00	-34,136.37	86.35%
75	6525R Prof Fees - Accounting	39,479.00	50,000.00	-10,521.00	78.96%
76	6535R Prof Fees - HR	0.00	2,500.00	-2,500.00	0.00%
77	6536 Community Association	0.00	6,000.00	-6,000.00	0.00%
78	6545 Roadways/Utilities	7,886.75	0.00	7,886.75	
79	Total 6500 PROFESSIONAL FEES	\$ 497,791.86	\$ 793,500.00	-\$ 295,708.14	62.73%
80	6535 PERMITTING	3,924.00	0.00	3,924.00	
81	6600R FEES - OTHER	4,749.50	0.00	4,749.50	
82	6606 Permit Fees	5,487.04	5,000.00	487.04	109.74%
83	6610 Bank Fees	115.72	4,000.00	-3,884.28	2.89%
84	6620 HTC Fees	0.00	9,500.00	-9,500.00	0.00%
85	6625 Bank Charges	4.95	0.00	4.95	
86	6627 Applied Bank Fees	8,045.90	0.00	8,045.90	
87	Total 6625 Bank Charges	\$ 8,050.85	\$ 0.00	\$ 8,050.85	
88	6631 Del City Rental Tax	2,694.82	0.00	2,694.82	

	A	B	C	D	E
5		<b>Total</b>			
6		<b>Actual</b>	<b>Budget</b>	<b>over Budget</b>	<b>% of Budget</b>
89	<b>Total 6600R FEES - OTHER</b>	\$ 25,021.93	\$ 18,500.00	\$ 6,521.93	135.25%

	A	B	C	D	E
5		Total			
6		Actual	Budget	over Budget	% of Budget
90	<b>6700 IMPROVEMENTS</b>	18,695.67	0.00	18,695.67	
91	6704 Building 45-1308 Officers Row	19,567.00	0.00	19,567.00	
92	6706 Building 15-Post Headquarters	0.00	0.00	0.00	
93	6712 Building 24-Theater	826.00	0.00	826.00	
94	6716 Canal District	24,354.00	0.00	24,354.00	
95	6716.30 Roads/Utilities	139,000.00	0.00	139,000.00	
96	<b>Total 6716 Canal District</b>	<b>\$ 163,354.00</b>	<b>\$ 0.00</b>	<b>\$ 163,354.00</b>	
97	6717 Site Utilities	2,330.56	0.00	2,330.56	
98	6721 Roundabout	1,426,322.46	0.00	1,426,322.46	
99	6724 Marina	23,517.50	0.00	23,517.50	
100	6734 Building 23-Band Barracks	5,090.00	0.00	5,090.00	
101	6735 Landscaping	120.00	0.00	120.00	
102	6738 Duplexes on OBL	0.00	623,426.00	-623,426.00	0.00%
103	6738-01 Building 26	278,612.90	0.00	278,612.90	
104	6738-02 Building 27	258,467.37	0.00	258,467.37	
105	<b>Total 6738 Duplexes on OBL</b>	<b>\$ 537,080.27</b>	<b>\$ 623,426.00</b>	<b>-\$ 86,345.73</b>	<b>86.15%</b>
106	6741 Building 30-Stable	370,818.27	0.00	370,818.27	
107	6744 Maintenance Shop	1,825.00	0.00	1,825.00	
108	6748 Building 52-Tilton	19,892.22	0.00	19,892.22	
109	6759 Community Garden	700.92	0.00	700.92	
110	6766 Old Battery Lane	2,586.75	0.00	2,586.75	
111	6767 Building 82-POW Building	575.00	0.00	575.00	
112	6768 DNREC Magazine	0.00	100,000.00	-100,000.00	0.00%
113	6770 DNREC Maintenance Bldg	13,785.08	500,000.00	-486,214.92	2.76%
114	6772 Park & Recreation Amenities	6,000.00	0.00	6,000.00	
115	<b>Total 6700 IMPROVEMENTS</b>	<b>\$ 2,613,086.70</b>	<b>\$ 1,223,426.00</b>	<b>\$ 1,389,660.70</b>	<b>213.59%</b>
116	6700X Site Evaluation (deleted)	0.00	0.00	0.00	
117	6735x Site Design (deleted)	365.00	0.00	365.00	
118	<b>Total 6700X Site Evaluation (deleted)</b>	<b>\$ 365.00</b>	<b>\$ 0.00</b>	<b>\$ 365.00</b>	
119	6769 DNREC Relocation	0.00	0.00	0.00	
120	6769-05 Repository	22,271.23	0.00	22,271.23	
121	<b>Total 6769 DNREC Relocation</b>	<b>\$ 22,271.23</b>	<b>\$ 0.00</b>	<b>\$ 22,271.23</b>	
122	<b>6800 SITE UTILITIES</b>	210.15	0.00	210.15	
123	6810 Electric	137,395.67	85,000.00	52,395.67	161.64%
124	6815 Gas	3,466.37	50,000.00	-46,533.63	6.93%
125	6820 Water	10,418.61	5,000.00	5,418.61	208.37%
126	6825 Sewer	9,594.80	5,000.00	4,594.80	191.90%
127	6835 Trash	2,619.00	5,000.00	-2,381.00	52.38%
128	<b>Total 6800 SITE UTILITIES</b>	<b>\$ 163,704.60</b>	<b>\$ 150,000.00</b>	<b>\$ 13,704.60</b>	<b>109.14%</b>

	A	B	C	D	E
5		Total			
6		Actual	Budget	over Budget	% of Budget
129	<b>7000 OPERATING EXPENSES</b>	0.00	0.00	0.00	
130	7005 Museum	0.00	5,000.00	-5,000.00	0.00%
131	7009 Computer Support	0.00	2,500.00	-2,500.00	0.00%
132	7010 Office Supplies	5,415.01	15,000.00	-9,584.99	36.10%
133	7020 Travel	0.00	2,500.00	-2,500.00	0.00%
134	7025 Meals and Entertainment	0.00	2,000.00	-2,000.00	0.00%
135	7030 Utilities - Office	6,170.59	5,000.00	1,170.59	123.41%
136	7035 Phone/Internet - Office	5,940.90	7,500.00	-1,559.10	79.21%
137	7040 Repairs & Maintenance	2,551.00	5,000.00	-2,449.00	51.02%
138	7045 Discretionary Expenses	0.00	2,500.00	-2,500.00	0.00%
139	7050 Equipment and Furnishings	0.00	20,000.00	-20,000.00	0.00%
140	7051 Uniforms	1,928.31	5,000.00	-3,071.69	38.57%
141	<b>Total 7000 OPERATING EXPENSES</b>	<b>\$ 22,005.81</b>	<b>\$ 72,000.00</b>	<b>-\$ 49,994.19</b>	<b>30.56%</b>
142	<b>7100 COMMON AREA MAINTENANCE</b>	18,526.10	0.00	18,526.10	
143	7105 Lawn Care	88,158.20	125,000.00	-36,841.80	70.53%
144	7110 Storm Water Management	3,065.00	30,000.00	-26,935.00	10.22%
145	7115 Pest Control	1,660.00	5,000.00	-3,340.00	33.20%
146	7120 Fire & Security Monitoring	1,750.55	20,000.00	-18,249.45	8.75%
147	7125 Snow & Ice Removal	0.00	20,000.00	-20,000.00	0.00%
148	7130 Building Repairs & Maintenance	0.00	25,000.00	-25,000.00	0.00%
149	7135 Road Repairs	0.00	5,000.00	-5,000.00	0.00%
150	7140 Landscaping Maintenance	37,706.49	75,000.00	-37,293.51	50.28%
151	7141 Auto	2,216.71	15,000.00	-12,783.29	14.78%
152	7145 Equipment Expense	17,810.18	40,000.00	-22,189.82	44.53%
153	7146 Supplies	17.99	15,000.00	-14,982.01	0.12%
154	7830 Utilities	18,128.34	7,500.00	10,628.34	241.71%
155	<b>Total 7100 COMMON AREA MAINTENANCE</b>	<b>\$ 189,039.56</b>	<b>\$ 382,500.00</b>	<b>-\$ 193,460.44</b>	<b>49.42%</b>
156	<b>7200 DEBT EXPENSE</b>	0.00	0.00	0.00	
157	7205 Officers Row - Applied Prin/Int Loan 0380	62,389.80	64,344.00	-1,954.20	96.96%
158	7210 DMHEF Repayment	0.00	9,996.00	-9,996.00	0.00%
159	7215 OBL Duplexes - Applied Prin/Int Loan 0810	35,413.37	53,100.00	-17,686.63	66.69%
160	7225 Truck Loan - WSFS	8,885.40	17,771.00	-8,885.60	50.00%
161	<b>Total 7200 DEBT EXPENSE</b>	<b>\$ 106,688.57</b>	<b>\$ 145,211.00</b>	<b>-\$ 38,522.43</b>	<b>73.47%</b>
162	<b>7500 MARKETING EXPENSES</b>	400.00	0.00	400.00	
163	7510 Advertising & Promotion	128.37	24,000.00	-23,871.63	0.53%
164	7520 Graphics/Branding/Messaging	0.00	2,500.00	-2,500.00	0.00%
165	7525 Marketing Collateral	0.00	10,000.00	-10,000.00	0.00%
166	7550 Website & Social Media	11,184.27	25,000.00	-13,815.73	44.74%
167	<b>Total 7500 MARKETING EXPENSES</b>	<b>\$ 11,712.64</b>	<b>\$ 61,500.00</b>	<b>-\$ 49,787.36</b>	<b>19.04%</b>

	A	B	C	D	E
5		<b>Total</b>			
6		<b>Actual</b>	<b>Budget</b>	<b>over Budget</b>	<b>% of Budget</b>
168	<b>7700 PAYROLL EXPENDITURES</b>	0.00	0.00	0.00	
169	7710 401k	7,005.22	10,000.00	-2,994.78	70.05%
170	7720 Employee Benefits - Health	57,300.10	84,000.00	-26,699.90	68.21%
171	7721 Employee Benefits - Dental	100.80	0.00	100.80	
172	7730 Payroll Tax Expense	39,399.18	44,327.00	-4,927.82	88.88%
173	7740 Salaries & Wages	395,431.68	554,084.00	-158,652.32	71.37%
174	<b>Total 7740 Salaries &amp; Wages</b>	<b>\$ 395,431.68</b>	<b>\$ 554,084.00</b>	<b>-\$ 158,652.32</b>	<b>71.37%</b>
175	7750 Payroll Service Fees	1,661.14	3,000.00	-1,338.86	55.37%
176	<b>Total 7700 PAYROLL EXPENDITURES</b>	<b>\$ 500,898.12</b>	<b>\$ 695,411.00</b>	<b>-\$ 201,207.18</b>	<b>72.03%</b>
177	<b>7850 INSURANCE</b>	2,333.52	0.00	2,333.52	
178	7851 General Liability	13,445.62	13,446.00	-0.38	100.00%
179	7852 Flood Insurance	5,768.00	0.00	5,768.00	
180	7853 Property	17,199.92	45,000.00	-27,800.08	38.22%
181	7854 Builder's Risk	0.00	3,610.00	-3,610.00	0.00%
182	7855 Workers Comp Insurance	5,822.00	14,000.00	-8,178.00	41.59%
183	7856 Auto	18,680.95	13,000.00	5,680.95	143.70%
184	7857 D & O/ E&O Insurance	8,070.00	2,515.00	5,555.00	320.87%
185	7858 Business Owners	3,747.14	1,410.00	2,337.14	265.75%
186	7859 Pension & Crime	0.00	150.00	-150.00	0.00%
187	<b>Total 7850 INSURANCE</b>	<b>\$ 75,067.15</b>	<b>\$ 93,131.00</b>	<b>-\$ 18,063.85</b>	<b>80.60%</b>
188	Administrative Expenses	1,250.00	0.00	1,250.00	
189	Legal Fees - Operating	14,113.00	0.00	14,113.00	
190	Property Management	0.00	0.00	0.00	
191	7880 Repair & Maintenance	3,900.00	0.00	3,900.00	
192	7890 Payroll	0.00	0.00	0.00	
193	7894 Payroll Taxes	-4,536.25	0.00	-4,536.25	
194	<b>Total 7890 Payroll</b>	<b>-\$ 4,536.25</b>	<b>\$ 0.00</b>	<b>-\$ 4,536.25</b>	
195	7900 Security	210.00	0.00	210.00	
196	<b>Total Property Management</b>	<b>-\$ 426.25</b>	<b>\$ 0.00</b>	<b>-\$ 426.25</b>	
197	<b>Total Expenses</b>	<b>\$ 4,334,852.50</b>	<b>\$ 3,685,179.00</b>	<b>\$ 649,673.50</b>	<b>117.63%</b>
198	<b>Net Operating Income</b>	<b>-\$ 1,011,859.29</b>	<b>\$ 122,154.00</b>	<b>-\$ 1,134,013.29</b>	<b>-828.35%</b>
199	Other Income			0.00	
200	Reimbursed Expenses	1,789.79	0.00	1,789.79	
201	<b>Total Other Income</b>	<b>\$ 1,789.79</b>	<b>\$ 0.00</b>	<b>\$ 1,789.79</b>	
202	Other Expenses			0.00	
203	ASK MY ACCOUNTANT	70,201.26	0.00	70,201.26	
204	<b>Total Other Expenses</b>	<b>\$ 70,201.26</b>	<b>\$ 0.00</b>	<b>\$ 70,201.26</b>	
205	<b>Net Other Income</b>	<b>-\$ 68,411.47</b>	<b>\$ 0.00</b>	<b>-\$ 68,411.47</b>	
206	<b>Net Income</b>	<b>-\$ 1,080,270.76</b>	<b>\$ 122,154.00</b>	<b>-\$ 1,202,424.76</b>	<b>-884.35%</b>
207					
208					
209					
210	Tuesday, May 02, 2023 11:31:29 AM GMT-7 - Accrual Basis				



## Executive Director Monthly Report

For the period April 1, 2023 to April 30, 2023

Our board meeting will be held on May 10, 2023 at 8:30 a.m. at the **Delaware City Fire Hall**. Board packets will be distributed via email (as a pdf attachment).

### Capital Projects

- **Entranceway.** The light poles for the entranceway have been received by the local supplier and are now scheduled for installation on Monday, May 8<sup>th</sup>. Following installation, a final inspection by DeIDOT will be conducted. The design for the second phase of the project—to address the connection to Old Elm Road—is complete and will be bid during the month of June, with an anticipated award on or about July 1<sup>st</sup>. We anticipate that the project will mobilize in August. The project schedule calls for a four-week construction period.
- **Branch Canal issues.** A meeting is scheduled with the legal representatives of FDRPC, DNREC, Delaware City, and the Army Corps of Engineers for Monday, May 8<sup>th</sup> to continue discussions about the issue of the proposed transfer of ownership of the Branch Canal to FDRPC. Executive Director Tim Slavin received inquiries from DeIDOT and the Office of the Governor about the issue.

- **Marina Village.**
  - a. **Special Use Permit granted.** The Delaware City Council granted a Special Use Permit to FDRPC for the Marina Village on April 17, 2023. FDRPC now proceeds with multiple approvals related to the Plan of Record submission.
  - b. **Remediation of area.** FDRPC has been clearance by DNREC to proceed with the remediation of a small 'hot spot' of soil contamination in Operational Unit 7 (OU-7) which includes the Marina Village area. The contamination is naturally-occurring arsenic and the remediation is to remove the contaminated soil and replace with clean soil.
  - c. **Test surcharge.** FDRPC has received approval from DNREC to proceed with a test surcharge area for the Marina Village project.
  - d. **Section 6f application.** FDRPC has contracted with Verdantas to prepare all supporting materials necessary for the proposed removal of Land and Water Conservation Fund section 6f protections on 27.22 acres comprising the Marina Village location. The protections would be transferred to 27.56 acres immediately adjacent to Marina Village. The newly-protected lands would include the Parade Grounds. The National Park Service approves all such transfers; DNREC serves as the applicant for the proposed transfer.

## Operations

- **Real estate update.**
  - a. Sold: Lots at 1304 and 1306 Officers Row were sold on April 20, 2023 for a total of \$225,000.
  - b. Under contract: FDRPC is under contract for 1311 Officers Row with an expected closing date of no later than July 31, 2023.
  - c. Leasing: All residential properties are leased and being managed by NAI Emory Hill.



- **FOIA Officer.** There were no FOIA requests received during the month of April. All FOIA requests received prior to April 30, 2023 have been fulfilled.
- **Audit.** The audit of FDRPC financials for the fiscal year ending June 30, 2022 is continuing with Belfink, Lyons and Shuman.
- **A Request for Proposals** for lawn-cutting service was initially issued on March 3, 2023. Only one company attended the mandatory pre-bid meeting. FDRPC Executive Director Tim Slavin then canceled the RFP citing the potential for a non-competitive bid. The RFP was revised and re-issued on March 17, 2023 with a response date of April 7, 2023.
- **Landscape Improvement.** Larry MacLaren of FDRPC designed and led a volunteer planting of native plantings in the grove next to the Chapel building. The plantings included a stand of river birches. A total of ten (10) native species were planted in the design completed by MacLaren. The volunteer event included legislators Sen. Nicole Poore, Rep. Melissa Minor Brown, and board member Michael Graci.

**FORT DUPONT REDEVELOPMENT AND PRESERVATION CORPORATION**  
**DESIGN AND HISTORIC PRESERVATION COMMITTEE MEETING**

The Fort Dupont Redevelopment and Preservation Corporation (FDRPC) Design and Historic Preservation Committee meeting was held on April 10, 2023 at the Delaware City Library, 250 5<sup>th</sup> Street, Delaware City, Delaware with Chair Doug Eriksen presiding. Committee members present were Ms. Laura Lee, Ms. Roberta DeLeo, Mr. Rob McPherson and Mr. Richard Forsten.

Staff members present were Mr. Tim Slavin – Executive Director and Ms. Janice Moturi – Deputy Director/Controller.

**CALL TO ORDER**

Chair Eriksen called the Fort DuPont Redevelopment and Preservation Corporation Design and Historic Preservation Committee meeting to order at 3:36 p.m.

**OLD BUSINESS**

Chair Doug Erikson stated that part of the old business would be to determine what the committee is, what it does, how it fits into everything, and then how it interfaces with Delaware City.

Mr. Richard Forsten provided a review of the role of the Fort DuPont Redevelopment and Preservation Corporation (FDRPC) Design and Historic Preservation Committee (DHPC) as it pertains to the declaration of covenants on the properties in Fort DuPont and a brief history of the declaration, noting the following:

- The initial declaration was revised after a year and a half to include special provisions related to the Grassdale project.
- Residential subdivisions typically have deed restrictions. Those deed restrictions typically include an architectural review committee which has to approve any exterior modifications and, ordinarily, that committee also has the first pass at enforcing deed restrictions.
- If somebody does something that is prohibited, the DHPC is then charged with saying yes, it is, or no, it is not, a violation. If the violation is not remedied, ultimately the DHPC can go to court to force compliance.
- Initially, deed restriction complaints, changes to architecture, and design and historic preservation issues are heard by the DHPC.
- The declaration calls for the DHPC to set up a whole series of architectural guidelines, which has been done.
- There is a carefully defined historic overlay district in Delaware City and Delaware City has its own Historic Preservation Commission (DCHPC) that approves things; however, its jurisdiction is, in theory, limited to that overlay.

Members discussed at length conflicting standards and restrictions between Fort DuPont and Delaware City and the difficulty those conflicts present in terms of following approval processes. For example, Ms. DeLeo explained that Delaware City required fences to be either a white wooden fence or a black iron fence. She obtained approval from the FDRPC DHPC to install a white PVC fence, which was preferable

due to maintenance concerns. When she went to City Hall in Delaware City, she was told that she could not install a PVC fence in Delaware City.

Mr. Forsten clarified that the DCHPC has jurisdiction over architectural details in its zone of influence and Delaware City may have a blanket prohibition on PVC fencing. He advised that since Fort DuPont has been annexed into the city, it is subject to all of the normal Delaware City rules and regulations. If Delaware City passed a law banning flagpoles anywhere in the city, that ban would also apply in Fort DuPont, although existing flag poles might be grandfathered.

Mr. Forsten advised that there was a difference between what the DCHPC could do and where it can have a say, but the town itself has broader powers that affect everything. He noted that they could make an argument with the city that some of its rules and regulations just do not apply to Fort DuPont, based on language in Fort DuPont's charter. Mr. Forsten stated that it was not a fight that the FDRPC had chosen to pick because that could lead to other repercussions. He also advised that the General Assembly could change the charter at any time. Mr. Forsten noted that if Delaware City passes general zoning regulations, they will apply to Fort DuPont because they are in Delaware City. He stated that if a ban on PVC fences in Delaware City is in their code, it is enforceable in Fort DuPont.

Ms. Laura Lee advised that the change to allow PVC fencing was approved because the wood fences were rotting. She noted, however, that they would not be supportive of PVC fencing in the more historic district. Ms. Lee pointed out that if the Delaware City Historic Preservation Commission had jurisdiction over those decisions, they do not have any knowledge of the Fort DuPont Design and Historic Preservation guidelines and this is the forum to protect the guidelines. She stated that she did not think their missions were the same.

Mr. Forsten advised that the FDRPC's legal obligation was to appoint the DHPC and the DHPC has certain charges that it has to conduct that are not part of the overall Historic Preservation Commission for Delaware City. He also noted that Delaware City does not want to be in the business of enforcing the deed restrictions, reviewing the architecture, or approving plans in Fort DuPont. There is a committee under the declaration that was specifically formed to do those two things.

Chair Eriksen noted that, as a committee, they needed to be cognizant of any Delaware City code considerations and guidelines so that they do not approve something that is prohibited. He noted that they had the ability to recommend variances. Mr. Forsten advised that any variance request would be heard by the Board of Adjustment.

Mr. Rob McPherson asked if the DHPC's role was to enforce restrictions and ensure that the standards were being met or if it was preservation and advisory for building updates. Responding, Mr. Eriksen stated that he thought it was both.

Mr. McPherson suggested that they begin work on the standards because some of those standards were not followed by previous leadership. He noted that his own house did not meet the standards.

Ms. Roberta DeLeo suggested that fencing and wooden window surrounds should be considered when reviewing the standards.

Mr. McPherson reminded members that some of the houses were built before the new standard went into place so they needed the updates.

Mr. Eriksen suggested meeting monthly to update the document.

Mr. McPherson thought that tying this document to the declaration was important because they contradict each other on placement the placement of things and what you can and cannot do.

Members agreed that the standards document should be updated to be in line with the corporate charter and the Delaware City codes.

Mr. Slavin advised members that they currently have a few violations that they have to discuss with a new homeowner and he is hoping that it could be done in a collegial way. He noted that a lot of staff decisions were made without being brought to the committee and they waived things that are now causing problems that are going to come to the DHPC and it is going to be after the fact enforcement. Mr. Slavin stated that there were half a dozen violations coming before the DHPC.

Mr. Slavin stated that they were entering into the next phase in the next 6 to 12 months where they will have to formalize the DHPC and form an Annual Maintenance Committee. The Annual Maintenance Committee will review the charges for common area units, which have not yet been assessed to the homeowners. Mr. Slavin noted that this will not be a popular topic and people are going to have violations, and that is not going to be a popular topic either. He summarized the next steps as being appointment of the maintenance committee, determining the scope and membership of the maintenance committee, and holding a community meeting to explain upcoming changes. Mr. Slavin advised members that he requested Ms. Janice Moturi, Deputy Director/Controller, to begin work on a pro forma for maintenance costs on the campus, which would be assessed against the common area maintenance fee. He noted that there are companies that handle this and they will likely rely on a company to collect the assessments.

Mr. McPherson advised that when he signed the contract to buy his house, it was stated right in the contract that it could be up to \$500 per year and no more. Ms. DeLeo added that it was in perpetuity because they had faith in the development.

Mr. Slavin stated that, within six months of the end of the calendar year, they are supposed to present what the list of charges was and, prorated, what that would be against the property owners for the common area maintenance fees. He noted that it was not simple math because they have tenants, some of who are state agencies, and they have to figure out how they are going to calculate all that. They also have to determine what is maintenance versus improvement and what is maintenance versus infrastructure. Mr. Slavin advised that they will need to be able to explain it all the way through. They will also need to determine those definitions with other people and residents involved. He stated that one criticism was paying common area maintenance on areas that are open to the public and the answer is that it is in the declaration. Mr. Slavin noted that district common areas are only for use by residents of that district and that the boat ramp is open for everyone, in perpetuity.

Ms. DeLeo stated that another criticism was paying property taxes that should cover everything. Mr. Slavin advised that it was early on when they were being charged for streets. He noted that the streets have been dedicated and those costs will go away and will not be added to the proforma.

Mr. Forsten advised that he was asked to join the DHPC committee when the corporation was first set up and, since that time, their firm represents Fort DuPont. He stated that he did not think it was appropriate that he sit as a committee member and also as the attorney for the corporation. Mr. Forsten advised that if someone appeals a decision of the DHPC to FDRPC, he will have been a committee member and then he will be the attorney for the board trying to advise them. He noted that he was happy to continue attending the meetings, at least for a while, on a pro bono gratis basis, just to help with the transition.

#### **NEW BUSINESS – DECK DESIGN REVIEW - 918 REYNOLDS STREET (YVONNE FLAGG)**

Chair Doug Eriksen advised members that they had received a request for a deck design review from Ms. Yvonne Flagg at 918 Reynolds Street. He noted that they would like to build a wraparound porch. Mr. Eriksen stated that he looked at the plans and they seem to be in keeping with other porches/decks that people have put on the back of adjacent properties, except for the fact that it wraps around the whole corner and has an awning. He advised that Ms. Flagg will need to get a building permit from Delaware City, but as part of that, because she is within The Fort DuPont Historic District, she needs the approval of the Fort Dupont Design and Historic Preservation Committee.

After a lengthy discussion regarding deck dimensions, setback requirements, and placement members scheduled a meeting for April 24, 2023 at 3:30 p.m. at the Fort DuPont Administrative Office to review the deck plans.

#### **PUBLIC COMMENT**

None.

#### **NEXT MEETING**

The next meeting is scheduled for Monday, April 24, 2023 at 3:30 p.m. at the Fort DuPont Office, 260 Old Elm Avenue, Delaware City.

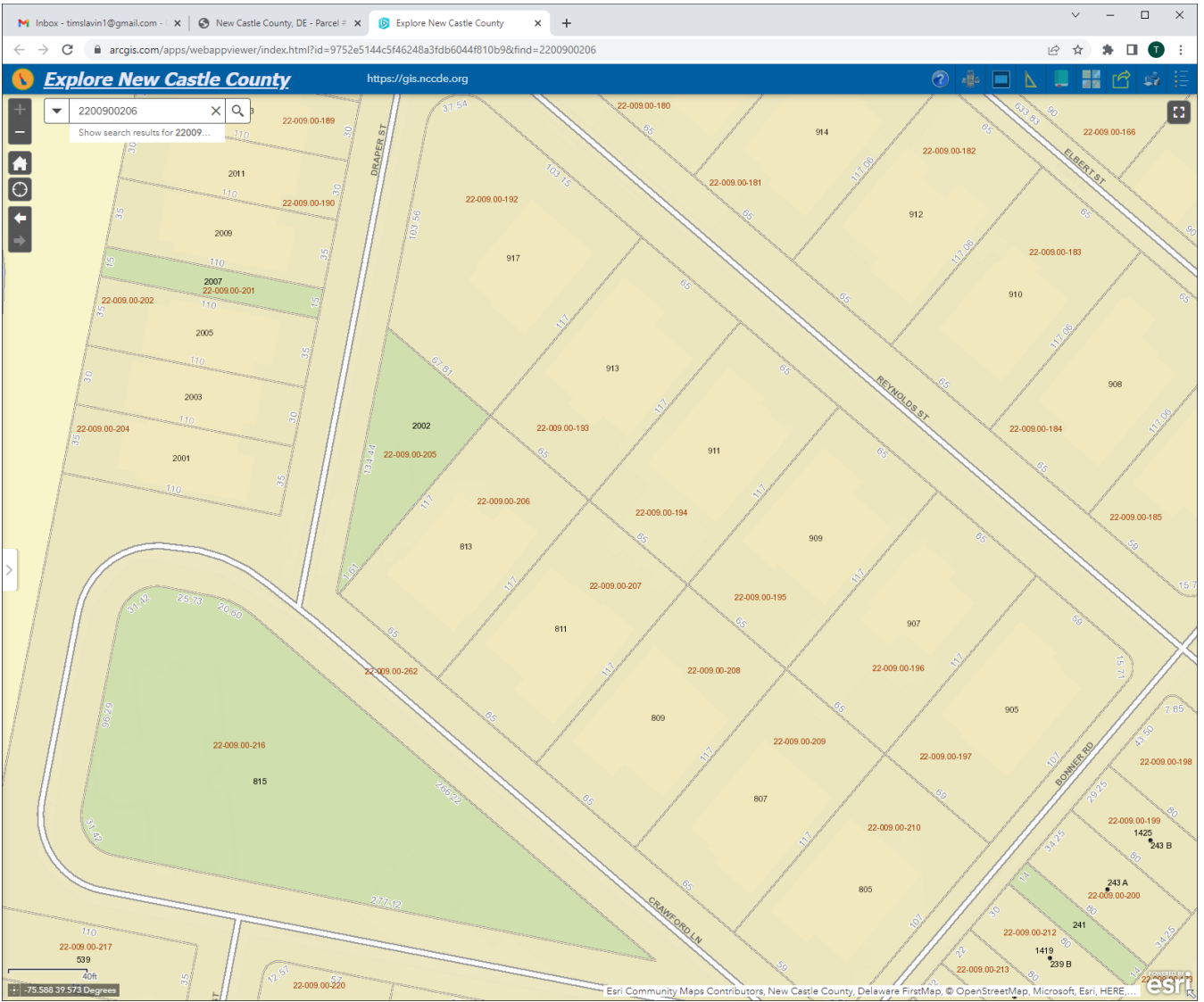
Members discussed future meetings and agreed to meet the fourth Monday of each month at 3:30 p.m.

#### **ADJOURNMENT**

**Mr. Forsten moved for adjournment, seconded by Ms. Lee and unanimously carried.**

Meeting Adjourned at 4:17 p.m.

APPROVED: April 24, 2023



**MEMORANDUM**

To: Tim Slavin  
Executive Director

From: Richard A. Forsten, Esquire  
Pamela J. Scott, Esquire

Date: May 5, 2023

Subject: Amended And Reinstated Declaration of Covenants, Conditions,  
Agreements, Restrictions and Licenses for the Fort DuPont Complex

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This memorandum is written to provide a brief overview of the Amended and Reinstated Declaration of Covenants, Conditions, Agreements, Restrictions and Licenses pertaining to the Fort DuPont Complex (“Fort DuPont”)(the “Declaration”), which does three primary things:

- (i) imposes various deed restrictions on different parts of Fort DuPont;
- (ii) requires all property owners to contribute to the maintenance of open space and other amenities at Fort DuPont;
- (iii) requires architectural approval from a special committee created by the Declaration before any structures are constructed.

The Declaration contains other pertinent provisions as well. All of this is discussed in greater detail below.

**General Background**

Like many real estate projects, including both residential and commercial projects, Fort DuPont, in addition to being subject to applicable laws and regulations, is also governed by a recorded declaration, setting forth certain additional requirements to which individual property owners must adhere, enforcement mechanisms for those requirements, maintenance obligations for various community amenities, contribution requirements of property owners towards maintenance and upkeep of the community amenities, rules and regulations as to permitted uses and a number of other issues. This memorandum is written to summarize the key terms and general working procedures for the Declaration. Capitalized terms not otherwise defined in this memorandum are defined in the Declaration.

Generally speaking, the main provisions of the Declaration are as follows:

- Article 1 – Definitions
- Article 2 - General
- Article 3 – Use of, access to, and maintenance of common areas
- Article 4 – Common area expenses

Article 5 – Restrictions on use of complex

Article 6 – Architectural control

In addition to these provisions, there is an introductory section setting forth the background to the creation of the Fort DuPont Redevelopment & Preservation Corporation (the “Corporation”), and various other provisions typical of a declaration for a real estate project. Each of the main provisions is discussed in further detail below.

As a preliminary matter, though, we note that unlike a typical residential subdivision, there is no homeowners’ association or “HOA” established for Fort DuPont. Rather, the Declaration establishes the Corporation as the owner of all common areas and amenities, and it is the Corporation which has responsibility for all such common areas and amenities. As will be discussed below, the cost of maintenance and the right to use common areas varies, depending on whether the amenity is for the entirety of Fort Dupont, or only a subset of residents such as those residing in the Canal District.

Further, the Declaration establishes the obligation of the Corporation to create two committees: (i) a Maintenance Committee, charged generally with overseeing maintenance and collection of dues/assessments from property owners within Fort DuPont, and (ii) the Design and Historical Preservation Committee (“DHP Committee”), charged with approving architectural requests/issues and otherwise approving proposed development at Fort DuPont.

The Maintenance Committee members are appointed by the Corporation Board and include at a minimum: one representative from the Grassdale District, one representative who resides in a Residential District, and one individual who is an owner or employee of a business within a District comprised solely of Non-Residential Lots within Fort DuPont. As of the date of this Memorandum, the Maintenance Committee has not yet been constituted.

The DHP Committee members are also appointed by the Corporation Board and consist of roughly the same mix of members as the Maintenance Committee. The DHP Committee was constituted some time ago and has been serving in its role to review architectural requests and proposed development. The current members of the Committee are as follows: (1) Bonnie Bonner (a former resident of Fort DuPont); (2) Brendan Mackie; (3) Dave Turley (a resident of Delaware City); (4) Douglas Eriksen (a resident of Delaware City and member of the Corporation Board); (5) Laura Lee (Laura wrote the book on Fort DuPont and is considered the “historian in residence” on the subject); (6) Roberta Deleo (a resident of Fort DuPont); and (7) Robert McPherson (a resident of Fort DuPont). Further information concerning the role of the DHP Committee is set forth below in the discussion of Article 6 – Architectural Control.

The balance of this memorandum briefly describes those articles of the Declaration which establish the framework of the Declaration and its applicability to the Lot Owners and the Corporation.

**Article 1 – Definitions.** This article sets forth various definitions used in the Declaration. Two of the important definitions are set forth below and define “Common Areas” and “Common Area Improvements”, and “Common Area Expenses:”

“Common Areas” and “Common Area Improvements” are defined as those areas of Fort Dupont together with any improvements to be Constructed and Maintained thereon as designated by the Corporation from time to time, including but not limited to recreation areas, parklands,



walkways, berms, stormwater facilities, lawns (including the parade ground), landscaping, and buildings and areas open to the public at Fort DuPont, and divided into two classifications as further defined in the Declaration (i) District Common Areas and (ii) Shared Common Areas. The Common Areas and Common Area Improvements shall be Constructed and Maintained by the Corporation and are intended for the general non-exclusive use, convenience and benefit of the Corporation, the Lot Owners and Permittees subject to the terms, covenants and conditions of the Declaration together with the Fort DuPont Rules and Regulations. The Common Areas expressly exclude any and all Lots which are owned by anyone other than the Corporation (and/or a Developer for the purpose of developing and selling such Lots to third parties) as well as any walkways or sidewalks located on a particular Lot.

“Common Area Expenses” or any variation thereof are all reasonable and appropriate sums, costs and expenses incurred by the Corporation for the best interests of Fort DuPont and the Lot Owners in connection with the Construction and Maintenance of the Common Areas (or any additions thereto) as well as certain insurance coverage obligations with respect to such areas, with respect to and including the costs and expenses of: (i) Construction and Maintenance of the storm water management infrastructure inclusive of bio-basins and levee, sanitary sewer, water, electrical, gas, steam, telephone, lighting (including poles, bulbs, and fixtures), other utility systems and facilities and services supplied for use within or in connection with the Common Areas, together with usage, reservation, connection and other fees, rents and charges therefore, including transition fees or other fees paid in connection with the termination, addition or change of Utility Providers by the Corporation; Maintenance of pylon, monument, directional and other traffic signals, markers, controls, signs (including identification signs) both on and off site serving Fort DuPont (excluding individual Lot Owner sign faces and any other significant fixtures or components Maintained by individual Lot Owners); ducts, conduits and similar items; (ii) snow, ice, pest control and cleaning, painting, sweeping, striping and repaving all parking surfaces, roads, services areas and other portions of the Common Areas as reasonably required; (iii) Maintenance of heating, ventilating and air cooling, sprinkler, security, emergency, life safety systems, all escalator and elevator systems (if any) (excluding such systems exclusively serving individual Lot Owners) and any other items, facilities, equipment and systems furnished by the Corporation as part of the Common Areas; (iv) premiums and other charges for insurance to the extent provided by Fort DuPont, including liability insurance for personal and bodily injury, death and property damage; insurance covering the Common Areas against fire and extended coverage perils; theft or casualties; workers’ compensation; plate glass insurance for glass exclusively serving the Common Areas, if applicable; boiler insurance (if carried); (v) Maintenance of fencing and similar items located within the Common Areas and interior and exterior planting, replanting and replacing of all flowers, shrubbery, plants, trees and other landscaping within the Common Areas; (vi) Maintenance of structures forming part of the Common Areas; (vii) Maintenance and depreciation of all machinery and equipment used solely in the operation or Maintenance of the Common Areas (including all escalators, elevators and other vertical transportation (if any)), Maintenance of security vehicles and equipment used solely for the Common Areas, and all personal property taxes and other charges incurred in connection with such machinery and equipment; (viii) all license and permit fees for the Common Areas, and any and all parking surcharges that may result from any Laws or Permits applicable to the Common Areas; (ix) the cost of Maintenance of cable television systems or similar audio or video transmission systems for the Common Areas; (x) the cost of security personnel and equipment for the Common Areas, including uniforms as well as transportation and surveillance equipment and Maintenance thereof; (xi) reasonable reserves for replacement of fixtures and improvements in and equipment servicing the Common Areas; (xii)

administrative and management fees; and (xiii) holiday and seasonal decorations and assorted Maintenance thereof as reasonably determined by the Corporation.

As the two foregoing definitions demonstrate, there is a plethora of Common Area Expenses for which the Corporation and individual Lot Owners are responsible. However, as further discussed below, there is a \$500 cap (subject to inflation) which applies to the annual charge for individual Lot Owners and Unit Owners.

**Article 2 – General.** It should be noted that the Declaration provides that each Lot Owner, by acceptance of a deed thereto, obligates and binds itself, its successors, heirs, executors, administrators and assigns, to be bound by the provisions of the Declaration and to be subject to all of the duties and obligations imposed by the Declaration as well as the Fort DuPont Rules and Regulations upon each Lot Owner. And, as a result, each Lot Owner is also deemed to covenant and agree to pay to the Corporation, when necessary, all charges, fees and assessments in accordance with the provisions of the Declaration.

**Article 3 – Use of, Access to, and Maintenance of Common Areas.** The Declaration divides the Common Areas in Fort DuPont into two categories, Common Areas associated with a particular district (“District Common Areas”) and Common Areas for the entirety of Fort DuPont (“Shared Common Areas”). The parade grounds and the walking trails are two examples of Shared Common Areas. Open space in the Canal District itself would be an example of a District Common Area. All residents (and the general public) are allowed access to the Shared Common Areas. Only residents of a particular district are allowed access to the Common Areas in their district. The Corporation retains the discretion to modify Common Areas as it believes necessary or appropriate. The Declaration sets forth specific maintenance obligations which are placed upon the Corporation for the Common Areas.

**Article 4 – Common area expenses.** While the Corporation is tasked with maintaining and keeping up all Common Areas, residents of the individual districts pay the cost of maintenance and upkeep of the Common Areas in their particular district. All of the property owners in Fort DuPont contribute to the cost of the maintenance of the Shared Common Areas. The manner in which the allocation is determined is set forth in Schedule 1 attached to the Declaration. For residential property owners, there is a \$500 cap on the annual Common Area expense, which may be increased by up to 3% each year. Each year, no later than 180 calendar days after December 31st, the Corporation is to provide a Common Area Expense Reconciliation Statement to Lot Owners detailing the expenses incurred and monies collected along with a calculation of each Lot Owner’s expense allocation. It is our understanding that because the Corporation has not been collecting from Lot Owners for the past several years, it has not been providing such statements. When the Corporation is ready to again begin collecting assessments, it will need to again begin providing the reconciliation statements. The Declaration provides audit rights for residents, as well as a list of expenses which may not be included in the Common Area charges. As might be expected, and as is typical in these arrangements, if a Lot Owner doesn’t pay his or her charges, the charges become a lien against their property, and the Corporation may take legal action to collect the sums owed. In addition to the regular assessment for Common Area maintenance, the Corporation can also levy, in any year, a special assessment against any Lots for the purpose of defraying in whole or in part (i) the cost of any unforeseen or unbudgeted Common Area Expense, (ii) general or specific reserves for Maintenance, repair or replacement, or (iii) the reconstruction or replacement of the Common Areas, subject to certain additional limitations as to any Lot located in the Officer’s Row District or the Canal District. The special assessment is subject to majority

recommendation in favor of such special assessment by the Fort DuPont Maintenance Committee and the Corporation Board.

**Article 5 – Restrictions on Use of Complex.** Like any declaration, the Declaration here prohibits certain uses on Residential Lots and Non-Residential Lots as well as for the RV Park. For example, home-based businesses are prohibited in residences (other than homeowners may keep business records and engage in telecommunications related to their jobs). Above-ground pools, TV antennas or aerials or disks for television or radio, and other exterior improvements are prohibited. Fences are limited. Architectural changes require prior approval.

One of the important restrictions of Article 5 is set forth in Section 5.3. That Section states in part that: “The Grassdale District [that is, the property sold for an RV Park] shall be used . . . exclusively as an RV Park unless otherwise approved by the Declarant.” Thus, the Corporation can take comfort in the fact that the Grassdale property, which was sold, cannot be used for other purposes, such as residential housing or an office complex, without the Corporation’s consent. At the same time, though, no changes to the Declaration can be made which would directly affect the Grassdale property without the Grassdale owner’s consent.

**Article 6 – Architectural Control.** The Declaration calls for the Corporation to adopt architectural guidelines and for those guidelines to be administered by the DHP Committee, which Committee is, essentially, subject to the control of the Corporation. If a Lot Owner is disappointed by a DHP Committee decision, they may appeal to the full Board of the Corporation which may reverse or modify such decision by a 2/3rds vote of the total membership of the Board.

The process for review by the DHP Committee is that requests relating to the initial development or redevelopment of any Lot or other area of land within Fort DuPont shall be directed to the Executive Director of the Corporation who shall forward the request to the DHP Committee. The DHP Committee shall consider approvals of requested changes and modifications to the exterior elements of any developed and/or improved Lot in accordance with the DHP Guidelines, based upon written application to and written approval from the DHP Committee. The DHP Committee has established Rules and Procedures for how they operate, and has adopted a set of Guidelines and Standards for Fort DuPont, which guidelines were adopted September 16, 2020. Both of these documents can be found on the Fort DuPont website. In addition to reviewing and approving architectural requests and proposed development in Fort DuPont, the DHP Committee is also charged with enforcing the restrictions and the rules and regulations within Fort DuPont. Therefore, if there is a complaint that a resident is doing something within Fort DuPont that is not permitted, this complaint should be submitted to the DHP Committee for review and determination. The Declaration provides that the Corporation is entitled to recover all attorneys’ fees and costs of enforcement from the property owner causing or permitting violations, whether or not a legal action is started. Such attorneys’ fees and costs shall be a lien against the property owner’s property and a personal obligation. Similarly, if a resident is proposing additions or other changes to the exterior of their property, they must seek review from the DHP Committee before proceeding with any construction.

In addition, Schedule 3 of the Declaration, which contains the Rules and Regulations for the Residential Lots within Fort DuPont, also contains an enforcement provision as set forth in Article 18. Pursuant to this provision, failure to comply with the Rules and Regulations will subject a Lot Owner to a hearing by the Corporation and penalty assessments of \$50.00 for each day of non-compliance. Upon such non-compliance, for a first offense, a warning letter is sent to the Lot Owner. Thereafter, if the violation is not corrected and a second notice is sent, a cost of

\$50.00 is assessed which then increases by \$50.00 for each subsequent notice to be sent. For subsequent violations by prior offenders, the Corporation shall determine the manner of enforcement following a show cause hearing, as well as the costs to be imposed upon the violator as a result thereof. Anyone wishing to report an alleged violation of the Rules and Regulations may do so by contacting the Corporation, in writing. The identity of the person reporting the violation will not be disclosed to the parties involved.

Enforcement beyond what is provided in the Declaration can be by way of pleadings filed with the Court of Chancery to enforce compliance with the Declaration. The provisions of 10 *Del. C.* §348 establish a process whereby a Master in Chancery or their designee can mediate disputes involving the enforcement of deed covenants or restrictions. Upon the filing of an action involving the enforcement of deed covenants or restrictions, the Court schedules a mandatory mediation hearing to be held within 60 days of the filing of the complaint. If the parties are unable to resolve the dispute, the Court schedules a trial to be held within 120 days of the failed mediation. The nonprevailing party at a trial must pay the prevailing party's attorneys fees and court costs unless the Court finds that enforcing this requirement would result in an unfair unreasonable or harsh outcome.

**Miscellaneous issues/items.** There are a host of other provisions set forth in the Declaration, and we do not propose to list each and every one of them in this Memorandum; however, we do note that the Corporation otherwise has very broad powers to amend the Declaration and to change the configuration of the various "districts" that make up Fort DuPont.