

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

The Fort Dupont Redevelopment and Preservation Corporation Board of Directors meeting was held on May 10, 2023 at the Delaware City Fire Hall, 815 5th Street, Delaware City, with Chair John McMahon presiding. Board members present were Ms. Ruth Ann Jones (Controller General of the State of Delaware), Dr. Courtney Stewart (Office of Management and Budget), Mr. David Edgell (Office of State Planning Coordination), Mr. Rony Baltazar-Lopez (Department of State), Mr. David Baylor (Delaware City Manager) (arrived at 8:48 a.m.), Mr. Kevin Whittaker (Resident of Delaware City), Mr. Douglas Eriksen (Resident of Delaware City), and Ms. Wendy Rogers (Resident of Fort DuPont). Board members absent were Senator Spiros Mantzavinos (Capital Improvements Committee), Representative Sean Matthews (Capital Improvements Committee), Secretary Shawn Garvin (Department of Natural Resources and Environmental Control (DNREC)), Mr. Kurt Foreman (Delaware Prosperity Partnership), and Mr. Michael Graci (Resident of Fort DuPont).

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

Ms. Lynn Dilliplane, Chair of the Delaware City Historic Preservation Commission, was also present to speak.

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 – FORT DUPONT REDEVELOPMENT AND PRESERVATION CORPORATION (FDRPC) BOARD MEETING OF APRIL 12, 2023

Dr. Stewart moved for approval of the FDRPC Board meeting minutes of April 12, 2023. The motion was seconded by Mr. Eriksen 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 - March 2023 and noted the following:

- **4100 Total Rental Income** – this line item is up about \$27,000, which is normal for the month.
- **4202 Officers Row Ph1A** – this line item will show a fairly large increase in next month’s report from the sale of two lots on Officer’s Row that occurred in April. The gross proceeds were \$225,000 and the net proceeds after costs were about \$207,000. That money has been deposited in the FDRPC’s accounts.
- **6460 Total Environmental** – this line item is up about \$15,000 from last month and reflects ongoing expenses, including soil analysis.

- **6505 Total Professional Fees – Engineering** – this line item, although it is still trending below budget, is up about \$13,000 from last month, with those expenditures occurring in the area of the bike path, as well as Marina Village. They are working on getting reimbursement on some of the expenses for Marina Village from Lennar, as per the contract with them.
- **6721 Roundabout** – this line item is up about \$295,000 from last month.
- **6741 Building 30-Stable** – this line item is up about \$37,000 from last month.
- **7000 Total Operating Expenses** – operating expenses continue to trend well below budget and is up only about \$1,500 from last month.
- **7100 Total Common Area Maintenance** – this line item is up about \$15,000. Progressing through the spring, there are increasing expenditures for lawn care and equipment maintenance.
- **7700 Total Payroll Expenditures** – this line item is trending with budget and is up about \$45,000 from last month.
- **Total Expenses (line 197)** – this line item is up about \$566,000 since last month, with over half of that due to expenses for the roundabout.

Mr. Whittaker moved for acceptance of the Treasurer’s Report, seconded by Mr. Eriksen and unanimously carried.

EXECUTIVE DIRECTOR’S REPORT

Mr. Tim Slavin, Executive Director, reviewed the Executive Director’s Monthly Report For the period April 1, 2023 to April 30, 2023 and noted the following:

Capital Projects

- **Entranceway.** The light poles for the entranceway were installed on Monday, May 8, 2023. The traffic camera will be installed by DeIDOT and the final inspection has been scheduled. Once it passes inspection, the project will be closed out. The second phase of the project will address the connection from the roundabout onto Old Elm Avenue. The final designs are being made now with a plan to bid the project out in June and be ready for mobilization in August. It is a three-to-four-week project that involves remediating the dip and then putting top coat asphalt all the way down Old Elm Avenue.
- **Branch Canal Issues.** A meeting was held on Monday, May 8, 2023 with the legal representatives that the board had asked for. Mr. Richard Forsten attended, along with legal representatives from DNREC and Delaware City. They continue to identify the issues that are involved, such as whether the language that was in the federal legislation is valid and if so, what that means and if not what that means. They are not in a position to add any additional information.

Capital Projects (Continued)

- **Marina Village.**
 - **Special Use Permit granted.** The Delaware City Council granted a Special Use Permit to FDRPC for the Phase Two Residential for Marina Village on April 17, 2023. FDRPC now proceeds toward getting the plan of record recorded and approved and obtaining environmental, transportation, fire and public safety, Planning Commission, and City Council approvals.
 - **Remediation of area.** FDRPC has received approval from DNREC to proceed with the remediation of two small ‘hot spots’ of soil contamination in Operational Unit 7 (OU-7) which includes the Marina Village area. The contamination is naturally-occurring arsenic and the two options for remediation were to either remove the soils and give the contaminated soil to New Jersey or Pennsylvania and put clean soil back in its place or leave it in place and monitor it until the end of time. The former was chosen because it was a cleaner approach.
 - **Test surcharge.** FDRPC has received approval from DNREC to proceed with a test surcharge area for the Marina Village project to learn how much they have to compact that land with additional soil and how long it will take to settle. This is a small project in size, but a long project in time.
 - **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.**
 - Lots at 1304 and 1306 Officer’s Row were sold on April 20, 2023 for a total of \$225,000 and 1311 Officer’s Row is under contract with an expected closing date in July 2023. Mr. Slavin thanked Ms. Grace Mudrick of NAI Emory Hill for their efforts to market the properties.
 - All residential properties are leased at market rate.
- **FOIA Officer.** There were no FOIA requests in April. There is one open request that was submitted in May.
- **Audit.** The audit of FDRPC financials for the fiscal year ending June 30, 2022 is continuing with Belfink, Lyons and Shuman. It is anticipated that the audit will come back with commentary from the auditor since it has been somewhat of an uphill climb to get the documentation in place. The documentation that was inherited was erratic, inaccurate, and sometimes just not present. They

will have a good template for what is expected in the next audit. Ms. Janice Moturi, Deputy Director/Controller will be the point person for all audit related issues.

- **Request for Proposals for Lawn Cutting Service.** An amended Request for Proposals for lawn-cutting service was completed. The initial RFP attempted to keep the business and the economic impact of FDRPC spending as close to Delaware City as possible. The RFP was criticized as being too skewed and only one response was received and 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 to open the proposals up to anyone who wanted to submit and removed the requirement for the pre-bid meeting and the RFP was re-issued. There were 20 firms that were interested and eight to nine companies attended a pre-bid meeting or came to the site and walked through it. There were three formal submissions and the contract was awarded to Cutting Edge, which is a Delaware City business.
- **Landscape Improvement.** A sustainability ethic for all of the land management on the site is being established. Mr. Larry MacLaren, FDRPC Landscape Maintenance Manager, designed and led a volunteer planting of an area now called Chapel Grove, which is a small area immediately adjacent to the chapel. The planting was 90% native plants, including a stand of river birches that will eventually replace the older trees that are likely going to age out. The University of Delaware Extension Office has been invited to do demonstration projects related to invasive species and pollinator gardens that they may introduce.

Mr. Whittaker moved for acceptance of the Executive Director's Report, seconded by Dr. Stewart and unanimously carried.

COMMITTEE REPORTS

Design and Historic Preservation Committee Report of April 10, 2023

Mr. Douglas Eriksen, Chair of the Design and Historic Preservation Committee, reviewed the Committee's report of April 10, 2023.

Ms. Jones moved for acceptance of the Design and Historic Preservation Committee Report of April 10, 2023, seconded by Ms. Rogers and unanimously carried.

REQUEST OF MARK DONALDSON, 815 CRAWFORD LANE, TO PURCHASE PARCEL 20-009.00-205

Mr. Tim Slavin, Executive Director, requested that this item be deferred due to the absence of Mr. Donaldson.

By unanimous consent, the Request of Mark Donaldson, 815 Crawford Lane, to Purchase Parcel 20-009.00-205 was deferred until June 14, 2023.

UPDATE ON THE BRANCH CANAL OWNERSHIP ISSUE

Mr. Richard Forsten of Saul Ewing Arnstein and Lehr LLP, Fort DuPont Redevelopment and Preservation Corporation's (FDRPC) legal counsel, advised that, as directed at the previous meeting, he met with the attorney from Delaware City and the attorney from the Department of Natural Resources and

Environmental Control (DNREC) by phone to discuss the Branch Canal legislation passed by Congress in 2018 (Water Resources Development Act (WRDA) 2018).

Mr. Forsten reviewed the details of the legislation and advised that the three participants on the call agreed that the legislation was still in force because when a legislature directs an agency to do something within a certain time period, it is considered directory and not mandatory in the sense that if, for whatever reason, the agency was not able to accomplish that task within the time period, the task could still be performed. He noted that there is a long and rich history of judicial decision to that effect and the courts recognize that agencies sometimes cannot get to things in a timely fashion. Mr. Forsten also advised that if you had a rogue agency that just did not like what the legislature was telling it to do, it would drag its feet and then just say they could not do it. He stated that the case law was clear that the Army Corp of Engineers still had the authority to transfer the properties.

Mr. Forsten noted that DNREC's attorney, Mr. Will Kassab, recalled in 2018 and 2019 talking to the U.S. Army Corps of Engineer's (USACE) attorney about this and they said the 180 days was not mandatory. Mr. Forsten advised that Mr. Kassab is reaching out to the Corps' current attorney then he, Mr. Kassab, and the attorney for Delaware City will get back together by phone in another week and a half to update themselves on the Corps' position.

Mr. Forsten advised that the question of how they want to proceed still remains. It appears that they can proceed with the transfers but there is a fair amount of work to be done, assuming they want to proceed.

Mr. David Baylor, Delaware City Manager, stated that since it was apparently initiated by the FDRPC, the onus was on either the FDRPC, the state or Delaware City. He recalled that the former FDRPC executive director, Jeff Randol, moved forward to get an evaluation or appraisal of the property, which came back at around \$500,000 to \$600,000. Mr. Baylor asked if the Board wanted to move forward with the acquisition of the canal.

Mr. Forsten stated that the Army Corps had decided that, from its point of view, the Branch Canal was surplus, meaning if they could dispose of it, they would, and that Jeff Randol's timing was happenstance or a happy coincidence because it gave the Corps somebody to give the ground to. The Corps' attorney commented that the process set forth in the statute was also easier or less time consuming and cleaner than the surplus process the Army Corp normally uses to dispose of surplus land. Mr. Forsten reminded members that Secretary Garvin advised them at the previous meeting that even though the statute had expired, the Corp always has the ability to dispose of surplus land. Mr. Forsten advised that if the Marina is going forward, they will at least need that part of the property because the area where they would like to put the Marina is owned by the Army Corp. Mr. Baylor stated that he would like to see the state acquire that property because it would be the cleanest thing for all parties involved. He noted that any private entity owning the canal would be problematic to both the residents of Delaware City and the FDRPC.

INFORMATIONAL ITEM: DECLARATION OF COVENANTS (RICHARD FORSTEN AND PAM SCOTT)

Ms. Pam Scott of Saul Ewing Arnstein and Lehr LLP, Fort DuPont Redevelopment and Preservation Corporation's (FDRPC) legal counsel, reviewed the memorandum which provided 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"). She noted that the Declaration does the following:

- Establishes a set of deed restrictions for the properties that make up the Fort DuPont complex

- Divides those properties between residential and non-residential uses
- Addresses the Grassdale parcel
- Includes a set of rules and regulations about uses and other things that would include conflicts that that can take place

Ms. Scott noted that the main goal of the Declaration of Covenants was to address the common areas within the Fort DuPont complex. Similar to purchasing a home in a development that has open space, a homeowner's association or maintenance corporation is usually established to take care of that open space and collect a fee from the homeowners to maintain it on an annual basis. The Fort DuPont Redevelopment and Preservation Corporation (FDRPC) does not have a homeowner's association, but rather the FDRPC is responsible for maintaining all the common areas within the complex. Ms. Scott advised that the common areas are divided into district common areas which are open space areas within the particular districts within the complex. There are also shared common areas within Fort DuPont, such as the playgrounds, the walking trail, etc. She advised that the document essentially sets up the ability for the Corporation to maintain these areas, to collect from the lot owners and the non-residential owners charges that are determined every year in order to cover the costs associated with maintaining these areas.

Ms. Scott stated that the declaration also establishes two committees. One is the Maintenance Committee, which essentially is charged with overseeing the maintenance of these areas and determining what the fees are going to be every year for the homeowners and the non-residential owners. The fee is based on a formula that is set forth in the declaration. The maintenance committee has not yet been established.

Ms. Scott noted that once the maintenance fee is determined, notices will be sent to all of the property owners within a certain time frame that sets forth all the costs associated with the maintenance and how that determination was made. The corporation has not been charging that fee for a number of years and there may have been some confusion and misunderstanding as to how all of this worked.

The other committee is the Design and Historic Preservation Committee (DHPC) which has been in existence for some period of time and, as required by the declaration, that group has been meeting and has set up their own guidelines with respect to what their obligations are. The committee's role really is to review the architectural controls associated with development within Fort DuPont. If a homeowner wants to make improvements to the exterior of their property, they would need to obtain approval through DHPC. The committee also could be charged with addressing any violations of the rules and regulations reported to them.

Mr. Tim Slavin, FDRPC Executive Director, thanked Ms. Scott for preparing the information. He noted that it was the first step in communicating it to the community, the property owners, and the people who will be affected by it. It is a complicated issue that requires repeated messaging and the opportunity for questions and answers. Mr. Slavin advised that they would be scheduling a public meeting for the residents who will be affected. He noted that this was the first step towards being transparent. This activity was paused a few years ago and is about to resume and they want to make sure everyone understands that.

Mr. Baylor indicated that there was some confusion around the role of Delaware City and the role of the FDRPC with respect to the historic preservation element. He suggested that Mr. Forsten get in touch with

Delaware City's legal counsel because they have a totally different understanding of anything being done over at Fort DuPont with respect to following the Delaware City process, making sure that it comes before our HBC and, where appropriate, it goes through the other elements of either Planning Commission or our Board of Adjustments. He thought those things needed to be ironed out before having the public meeting because they have always aspired to be as one city and they cannot have multiple processes within one city. Mr. Baylor thought it would eliminate a lot of confusion going forward and help smooth the process.

DELAWARE CITY UPDATES

Mr. David Baylor, Delaware City Manager, announced that the Mayor and Council meeting would be held Monday, May 15, 2023 at 5:30 p.m. at the Delaware City Fire Hall. He noted that there were two ordinances on the agenda, one is to allow mobile businesses like food trucks to operate within the town and the other is a special events permit. Mr. Baylor advised that the agenda is posted for those to review on their website and designated areas around town.

Mr. Baylor announced that Artesian Water would provide a presentation Thursday, May 18, 2023 at 5:30 p.m. at the Delaware City Fire Hall. He noted that this is the next phase of Artesian's acquisition of the Delaware City water system and the information is necessary to help people understand the transition. Mr. Baylor advised that the connectivity between Fort DuPont and Delaware City is going to raise the pressure in Delaware City, which is currently significantly lower than it should be. He noted that it is important primarily for the Delaware City residents because the increased pressure in their houses is going to cause some issues when it goes from 30PSI to 60PSI. Mr. Baylor said that, to his understanding, there would be no impact on service for the residents at Fort DuPont. Mr. Baylor advised that this also creates a redundancy system within the city that, in case any well went down within the city or Fort DuPont, there is a backup system so water service will not be disrupted.

Mr. Baylor announced that the Delaware City Day Committee meeting would be held Thursday, May 11th and there are monthly HPC meetings, planning meetings, and Board of Adjustment meetings that are posted on the website.

PUBLIC COMMENT

Ms. Lynn Dilliplane, Chair of the Delaware City Historic Preservation Commission (DCHPC), stated that it was nice to see a procedure being used that they put in order when this was initiated from the very beginning. She noted that they had guidelines for the Corp to follow with design issues when somebody wanted to add a patio to their house, a staircase or whatever they needed to do. The FDRPC Design and Historic Preservation Committee has the guidelines and can approve within those guidelines. She advised that no one had to come back to the DCHPC for every change. Ms. Dilliplane stated that this was the first time she had seen it being used and the procedure that they set up so many years ago actually does work. She stated that she really appreciated it because a lot of work went into that original document of guidelines of designs.

RECESS INTO EXECUTIVE SESSION – LEGAL MATTERS

Mr. Baylor moved to recess into executive session, seconded by Mr. Whittaker and unanimously carried.

Meeting recessed at 9:10 a.m.

RECONVENE

Mr. Eriksen moved to reconvene the FDRPC Board meeting, seconded by Ms. Jones and unanimously carried.

Meeting reconvened at 9:50 a.m.

ACTIONS TO BE VOTED UPON FROM THE EXECUTIVE SESSION – LEGAL MATTERS

There was no action to be taken as a result of the executive session.

NEXT MEETING DATE

The next meeting is scheduled for June 14, 2023 at 8:30 a.m.

ADJOURNMENT

Mr. Baylor moved for adjournment, seconded by Mr. Whittaker and unanimously carried.

Meeting Adjourned at 9:51 a.m.

APPROVED: June 14, 2023