

FORT DUPONT REDEVELOPMENT AND PRESERVATION CORPORATION
BOARD OF DIRECTORS MEETING

The Fort Dupont Redevelopment and Preservation Corporation Board of Directors meeting was held December 13, 2023 at the Delaware City Fire Hall, 815 5th Street, Delaware City, with Chair John McMahon presiding.

CALL TO ORDER

Chair McMahon called the Fort DuPont Redevelopment and Preservation Corporation (FDRPC) Board of Directors meeting to order at 8:33 a.m.

BOARD MEMBERS PRESENT

Mr. David Edgell (Office of State Planning Coordination)
Mr. Doug Eriksen (Delaware City Resident)
Mr. Michael Graci (Fort DuPont Resident)
Senator Spiros Mantzavinos (Chair, Bond Bill Committee) (arrived at 8:43 a.m.)
Ms. Wendy Rogers (Fort DuPont Resident)
Mr. Bert Scoglietti (designee of Controller General of the State of Delaware)
Dr. Courtney Stewart (Office of Management and Budget)

BOARD MEMBERS ABSENT

Mr. Rony Baltazar-Lopez (Secretary of State)
Mr. Kurt Foreman (Delaware Prosperity Partnership)
Secretary Shawn Garvin (Department of Natural Resources and Environmental Control (DNREC))
Mr. Harry Hill (Delaware City Manager)
Representative Sean Matthews (Co-Chair, Bond Bill Committee)

STAFF MEMBERS PRESENT

Mr. Tim Slavin, FDRPC Executive Director
Ms. Janice Moturi, Deputy Director/Controller
Mr. Richard Forsten, Saul Ewing Arnstein and Lehr LLP.
Ms. Pam Scott, Saul Ewing Arnstein and Lehr LLP.

OTHERS PRESENT

Mr. Jeff Flynn of Applied Bank
Mr. Tim Konkus

APPROVAL OF MINUTES – FORT DUPONT REDEVELOPMENT AND PRESERVATION CORPORATION (FDRPC) BOARD MEETING OF NOVEMBER 8, 2023

Mr. Graci moved for approval of the FDRPC Board meeting minutes of November 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: Budget FY 24, P&L Draft 1 – FY24 P&L for July 2023 - June 2024 as of October 31, 2023 and noted the following:

- 4010 State Appropriation – \$775,000 has been drawdown of \$2.25M. The next drawdown, in the amount of approximately \$700,000, is planned for December or January.
- 4400 Sales – This line item represents the sale of a truck.
- 4900 Other Revenue – This line item represents a drawdown from Lennar for expenses.
- 6711 Building 20-PX – This line item reflects the new roof on the PX building.
- 6712 Building 24-Theater – This line item represents remediation work done at the Theater.
- 6716.30 Roads/Utilities – This line item represents payment for the entrance/dip project.
- 6700 Total Improvements – The improvement number of \$455,595 is below the \$1,850,000 budget for various improvements. It was noted that the amount is \$390,000 over what had been reported in September.
- 7105 Lawn Care – Expenses are up as expected in the fall and should trend downward heading into winter.
- 7200 Debt Expense – This line item is up \$20,000 for regular payments on existing loans and an adjustment for the September loan payments.
- 7700 Payroll Expenditures – This line item is tracking well within budget.
- Total Expenses are up approximately \$530,000 over September's reported expenses, with approximately \$400,000 being related to capital projects, of which \$300,000 is related to the entranceway/dip project.

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

EXECUTIVE DIRECTOR'S REPORT

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

Capital Projects

- **Old Elm Avenue** – The Old Elm Avenue project is now complete and that side of the campus is all done and looking very nice. The striping and signage are on hold until warmer weather, and that will be done at the expense of Delaware City. The Memorandum of Understanding to transfer the streets to Delaware City has been requested of their legal counsel.
- **Environmental permitting status:**
 - Operable Unit 10: Brownfield – Brownfield remediation for Operable Unit 10 is complete. There are 13 operable units on the campus and Operable Unit 10 goes through Battery Lane out to the archive building. The environmental covenant has been executed and has been filed with the property deed and will carry with the property in perpetuity.

- Old Battery Lane: Erosion and Sediment Control Permit – The application and all supporting documentation are in and they expect a quick turnaround. When that occurs, they will move very fast on this project to open up that side of the campus and bring water and sewer down portions of Old Battery Lane.
- Branch Canal Revetment – Opening of this project was anticipated this fiscal year and mobilization is still possible; however, it may be later in the fiscal year than originally thought.

Responding to Dr. Stewart, Mr. Slavin stated that the mechanism for reimbursement of the FEMA grant, which is just short of \$900,000, is weekly, monthly, quarterly or by invoice.

- **Other Capital Project Activities:**

- Capital projects are not typically opened when the weather is the worst, especially exterior capital projects. Exteriors have been secured and they are ready for the Old Battery Lane project. A second project that will likely open later in January is the porch replacement on the old duplex on Old Battery Lane and re-mothballing it with the proper boarding up of the windows. They are also looking at the design of possible window and door replacement on the Post Exchange building as well as the brickwork and soffit work.

Two very large capital projects on the horizon are the connection project on Old Battery Lane and the canal bank revetment. There will be a lot of activity once those projects are open and they will be sensitive to coordinating the projects on both sides of the campus.

Other Activities

- **Cultivation** – Cultivation of FDRPC sites continues with bringing people through the sites and measuring their interest. One, if not 2 letters of intent are anticipated on a couple of the properties in the next 30 to 60 days. They have toured the DEMA Bunker, the Governor Bacon building, the Painter building, the Southfield lands, the Bakery, and the office of state surplus property administration building on Old Battery Lane.
- **Announcements** – Mr. Slavin made the following announcements:
 - Terry Buchanan, who has been working with the FDRPC as its communications person as a contractor has decided to take a step away from consulting and focus on her very successful business in Old New Castle. Ms. Buchanan's last day with them will be December 31, 2023. Mr. Slavin thanked Ms. Buchanan for all the help she had given the corporation, as well as him personally, noting that she was very instrumental in making sure they kept things going.
 - At the conclusion of the meeting, Ms. Janice Moturi and Mr. Slavin will be gathering with other FDRPC colleagues at the Christiana Mall for volunteer gift wrapping to benefit UNICEF.
 - FDRPC staff member, Mr. Larry MacLaren, and his wife had their first child, Everly Margaret McLaren, on November 18, 2023.

Mr. Edgell moved for acceptance of the Executive Director's Report, seconded by Mr. Eriksen and unanimously carried.

COMMITTEE REPORTS

FDRPC Finance and Audit Committee Meeting of October 9, 2023

Dr. Stewart moved for acceptance of the FDRPC Finance and Audit Committee Report of October 9, 2023. The motion was seconded by Mr. Graci and unanimously carried.

FDRPC Executive Committee Meeting of October 30, 2023

Dr. Stewart moved for acceptance of the FDRPC Executive Committee Report of October 30, 2023. The motion was seconded by Mr. Graci and unanimously carried.

PROPOSED MEETING SCHEDULE FOR 2024

Mr. Tim Slavin, Executive Director, reviewed the proposed meeting schedule for 2024. He noted that the meeting time was being changed from 8:30 a.m. to 9:30 a.m. to address commuting issues.

Dr. Stewart moved for approval of the Meeting Schedule for 2024, seconded by Mr. Edgell and unanimously carried.

RESOLUTION RECOGNIZING SERVICE OF KEVIN WHITTAKER TO FDRPC

Mr. Tim Slavin, Executive Director, advised members that Mr. Kevin Whittaker resigned from the Board because he no longer met the Delaware City residency conditions of his appointment. Mr. Slavin read the Resolution into the record, as follows:

WHEREAS, Kevin Whittaker has served the Fort DuPont Redevelopment and Preservation Corporation since 2022, and has served with distinction until November 27, 2023; and

WHEREAS, during his years of service to the Fort DuPont Redevelopment and Preservation Corporation he has served in the position of Chair of the Maintenance Committee; and

WHEREAS, throughout his tenure, Kevin Whittaker has displayed a professional approach to his duties and responsibilities as a Board member; and

WHEREAS, the Fort DuPont Redevelopment and Preservation Corporation has benefited from Kevin Whittaker's insight and knowledge and character.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Fort DuPont Redevelopment and Preservation Corporation express their gratitude to Kevin Whittaker for the many hours of public service he gave and express their sincere appreciation to him.

ADOPTED: DECEMBER 13, 2023

Mr. Eriksen moved for adoption of the Resolution, seconded by Mr. Graci and unanimously carried.

REFINANCING OF EXISTING DEBT

Mr. Bert Scoglietti, Treasurer, requested a slight modification to the refinance terms that were approved at the August 9, 2023 Board meeting. He noted that the FDRPC has two outstanding notes with Applied Bank. One note is for the renovation of seven units, including 1303 Officers Row, as well as six duplex units, four on Officers Row and two in the Quartermaster District. The other note is for the renovation of the two duplexes on Old Battery Lane. Those were originally construction and renovation loans that were set to expire in September 2023. In August, the Board accepted the refinance terms and authorized moving forward with Applied Bank.

The Old Battery Lane loan currently has a \$612,000 balance. The Board also authorized a \$273,000 one-time payment to buy down the loan from \$885,000 to the current balance of \$612,000. The second loan currently has a balance of approximately \$870,000. Both loans, prior to refinance, were prime plus either 1.5% or prime plus 2%. The effective interest rate was anywhere between 10 and 10 1/2 percent because of the hikes in interest rates. The terms that the Board approved in August to refinance both of those loans were estimated at 6.75%.

The Board meeting in August was just after the Fed increased rates by 1/4 percent. Working with the bank, they have made adjustments to take those rates from 6.75% to a firm commitment of 7%, so basically a 25-basis point increase. The rest of the terms of the loans remain the same.

Mr. Scoglietti advised that they felt it prudent to bring this item back to the Board to approve the loan refinancing with a slight modification in the terms.

Dr. Stewart moved for approval of the refinancing as presented. The motion was seconded by Mr. Graci and unanimously carried.

BRANCH CANAL OWNERSHIP BRIEFING (MAY RESULT IN AN EXECUTIVE SESSION)

The transfer of ownership of the Branch Canal from the US Army Corps of Engineers (USACOE) to the Fort DuPont Redevelopment and Preservation Corporation (FDRPC) remains pending. The Board of Directors of FDRPC has never formally voted to accept the transfer of the parcel. Options for the Board of Directors range from accepting ownership, to modifying the terms of the transfer, to declining the transfer.

Mr. Tim Slavin, Executive Director, reviewed the Branch Canal memorandum dated December 6, 2023 which included background and context of the 2018 Water Resources and Development Act (WRDA), descriptions of the parcels proposed for transfer, a history of the FDRPC's discussions related to the proposed transfer, risks and mitigations of FDRPC ownership, a timeline and implementation plan, and four options for the Board's consideration.

Mr. Slavin advised that he reached out to Senator Carper's office and subsequently met with staff members of the Senate Environmental and Public Works Committee, which Senator Carper chairs. This committee develops the Water Resources Development Act language. The initial meeting was to determine if the act was still valid given that the 18-month window had passed; if parcel one and parcel two could be decoupled from a single transaction (the USACE was requiring everything to be done as one transaction); and if it was possible to amend parcel one, the North Branch Canal area, to a smaller amount to exclude the canal. The initial feedback received from the USACE after that meeting was that they would vet those

issues, but that if they proceeded with the transfer as is, the timeline to complete that transfer administratively was approximately 40 weeks.

Mr. Slavin noted that there was a follow up meeting Monday, December 11, 2023 with staff members from the Senate Environmental Public Works Committee and the USACE. The answers he received were as follows:

- The 2018 Water Resources and Development Act (WRDA) is still valid.
- The parcels can be decoupled from each other so that the transfer of the 5th Street bridge to DelDOT will now proceed on its own and does not need to wait for FDRPC resolution of the issue.
- It is possible to reduce the size of parcel one, the North Branch Canal area, in one of two ways. The preferred way would be administratively through a technical process in the transfer. The second would be to have language inserted in the 2024 Water Resources and Development Act redefining the parcel.

Mr. Slavin advised that he attempted to verify statements in the minutes and reporting and some of the understanding of the parties that the USACE was under the impression that the canal would be transferred to the FDRPC, who would then immediately transfer ownership to the state of Delaware. He stated that he could find nothing in the public record that proves that agreement was reached nor discussed with any certainty. The second was that if the FDRPC were to play a role in this, then Delaware City would accept a shared responsibility for the liability and maintenance costs related to the canal. Mr. Slavin advised that there are no supporting agreements in any of the documentation.

Mr. Slavin noted that the USACE is the owner of the canal and the uplands area, the land on Fort DuPont's side of the canal that is above the boat ramp to the mouth of the river. They have determined that this is surplus property for them and when asked specifically if they needed the uplands area for spoils, they said they have no need for it, otherwise they would not be surplusizing it and they have no projects. The USACE will remain the owner of the canal and the uplands until they have completed either a direct transfer or their normal surplusizing process, which goes through the General Services Administration (GSA) and is likely a very lengthy process that requires the receiving party to take ownership of the canal and the uplands area.

Mr. Slavin outlined Options A-D for Board consideration as follows:

Option A

Await action by Army Corps of Engineers. FDRPC would allow the language of the 2018 WRDA to remain in place and await any further action by the ACOE. This option would likely require some type of decision by the Board at a date to be determined. Per the ACOE schedule, FDRPC would be expected to bear the costs associated with the preparation of the transfer.

Mr. Slavin advised that the time for Option A had passed and, based on the last meeting, this now has the attention of the Senate committee and Senator Carper, chairman of that committee. He noted that the parcels are in Senator Carper's home district and they are prepared to move forward with the transfer

either of the entire parcel, if that is what the Board wishes, or an amended parcel. They would, however, need a signal from the FDRPC.

Option B

Approve the transfer authorized in the 2018 WRDA. FDRPC would accept Parcel one North Branch Canal Area and become owner of the Branch Canal. Per the ACOE schedule, it is estimated that the transfer would be ready for action by ACOE approximately 40 weeks after FDRPC communicates its approval.

Mr. Slavin advised that there is some risk involved with the ownership of the Branch Canal which pushes the corporation beyond its current capacity, both operationally and financially, and would drain resources away from improvement of the land portion of the campus. Ownership of the canal would also present operational and legal issues as they would be responsible for owning a viable waterway 365 days a year. That waterway is used by not only a private business in the Delaware City Marina, but also the state police fire boat, Delaware City fire, fish and wildlife, and the state park has a ferry system. Mr. Slavin noted that they would bear significant liability and maintenance issues with little revenue streams.

Option C

Decline the transfer authorized in the 2018 WRDA. FDRPC would decline the transfer of Parcel two. This would leave the current ownership of Parcel one North Branch Canal Area with ACOE.

Mr. Slavin advised that Option C would put them in a position of waiting for the surplusing process to take place and hope that FDRPC is in a position to own the uplands, but that may not be the case because the GSA surplusing goes through other federal agencies, then state agencies, then local government agencies, then non-profit agencies.

Option D

Modify the parcel to be transferred. Amend Parcel one North Branch Canal Area to a reduced amount of acreage to FDRPC which excludes the Branch Canal. The amended parcel would be the lands on the northeast corner of FDRPC property, bounded by the Branch Canal to the north, the Delaware River to the east, Wingate Road to the west, and the northern edge of the service road to the New Castle County water treatment plant to the south. This may require a legislative solution (through the proposed 2024 WRDA) or may be handled administratively by the ACOE.

Mr. Slavin advised that the preferred option from his point of view was option D, signaling to the USACE that FDRPC wants to amend the parcel for the uplands area. The two very viable reasons to choose Option D are that this land is contiguous to the Fort DuPont campus, is an in holding on the campus that could otherwise slip into ownership by another entity, and the land has been planned for use by the FDRPC since before the Corporation's existence and was a part of the original Sasaki plan. Mr. Slavin stated that the second, and perhaps more important reason, is that they just went through the strategic planning process. They listened to the community and the residents and one of the things that came back was access to the water. They have built out a nice residential community but the people do not have direct access to that water. They have a boat ramp, but what they heard was the people want viewshed access, passive recreational access with walking along the waterfront, a possible kayak launch, and areas of respite where people can sit and view the water. Mr. Slavin noted that it is a wonderful piece of property and FDRPC would do well to take advantage of this opportunity.

Mr. Slavin advised members that Senator Carper is scheduled to visit the campus on Monday, December 18, 2023 to see the uplands area specifically.

Responding to Mr. Scoglietti, Mr. Slavin stated that approximately 7.5 acres of the Branch Canal shoreline to the shoreline of the river to the water treatment facility to the boat ramp would be carved out for the FDRPC. He noted that it contained a large pile of spoils.

Mr. Edgell stated that the perception is that the land is a part of the Fort DuPont campus and it was a surprise to him last year to learn that it was not. He agreed with Option D and asked what action by the Board was necessary. Mr. Edgell stated that he thought there was a great liability to owning the canal and he did not think it was something the Corporation was structured to own. He mentioned that the Land Use Planning Committee has been restarted relook at the master plan and that area was planned to be a Marina in the original plan. Mr. Edgell noted that the land is a benefit to the campus and he would hate to see it under other ownership with a use that was not compatible with the plans for the rest of the campus.

Mr. Forsten reminded members that if another party owned that parcel and went to develop it, they were probably going to have the right to cross Fort DuPont from Route 9 to get to it, otherwise it is landlocked. He stated that there could be several issues when dealing with a third party and recommended that the FDRPC try to get control of the property. Mr. Forsten also recommended, as with the acquisition of any property, doing due diligence.

Responding to Mr. Scoglietti, Mr. Slavin advised that parcel one would be redrawn to just include the bank and the upland area on the Fort DuPont side. The balance of the land of Parcel one would remain with the USACE.

Mr. Slavin noted that a motion in support of an amended parcel would be the necessary next step. He advised that it would be communicated to Senator Carper at the meeting on Monday.

Mr. Tim Konkus, 302 Canal Street, noted that there had been no discussion of the disposal of the spoils site if the FDRPC takes it. He stated that the state uses the spoil site to keep the Delaware City dock downtown dredged and without the site close to that location it will add an awful lot of cash to dispose of those spoils. Mr. Konkus thanked Mr. Slavin for a wonderful presentation on a very complicated issue spanning many years with many involved parties.

Mr. Edgell, referring to the spoils site, asked what the environmental characteristics of the spoils were and what they could be used for. He thought the FDRPC should know before owning them.

Mr. Edgell moved to endorse Option D with the appropriate due diligence. The motion was seconded by Mr. Graci and unanimously carried.

DELAWARE CITY UPDATES

Due to the absence of Mr. Harry Hill, City Manager – Delaware City, no updates were provided.

PUBLIC COMMENT

None.

NEXT MEETING DATE

The next meeting is scheduled for January 10, 2024 at 9:30 a.m.

ADJOURNMENT

Dr. Stewart moved for adjournment, seconded by Mr. Graci and unanimously carried.

Meeting Adjourned at 9:25 a.m.

APPROVED: February 14, 2024