

EXCERPT OF AUGUST 12, 2019 REGULAR CITY COUNCIL MEETING MINUTES

The Regular Council Meeting was held on August 12, 2019 at 7:30 p.m. with Council President Hare presiding. Council members present were Mr. Anderson, Mr. Sudler, Mr. Neil, Mr. Cole, Mr. Polce, and Mr. Taylor. Mr. Lindell and Mr. Slavin were absent.

Staff members present were Major Stump, Ms. Peddicord, Mrs. Mitchell, Mr. Hugg, Deputy Fire Chief O'Connor, City Solicitor Rodriguez, and Mrs. McDowell. Mayor Christiansen was also present (departed at 7:43 p.m.).

COUNCIL COMMITTEE OF THE WHOLE REPORT - JULY 23, 2019

The Council Committee of the Whole met on July 23, 2019 at 6:00 p.m., with Council President Hare presiding. Members of Council present were Mr. Anderson (arrived at 6:02 p.m.), Mr. Neil, Mr. Cole, Mr. Taylor, and Mr. Lindell. Mr. Sudler, Mr. Slavin, and Mr. Polce were absent. Mayor Christiansen was also present. Civilian members present for their Committee meetings were Mr. Garfinkel (*Safety Advisory and Transportation*), and Mr. Contant and Mr. Shevock (*Legislative, Finance, and Administration*). Mr. Shelton (*Safety Advisory and Transportation*) was absent.

SAFETY ADVISORY AND TRANSPORTATION COMMITTEE

The Safety Advisory and Transportation Committee met with Chairman Taylor presiding.

Bicycle and Pedestrian Subcommittee Recommendation - Adoption of By-Laws

Mrs. Donna Mitchell, City Manager, informed members that the Bicycle and Pedestrian Subcommittee had drafted a set of by-laws which they adopted in May 2014. She stated that the City would prefer not to have by-laws for a subcommittee but to revert back to the original motion for the approval of the subcommittee by Council. Mrs. Mitchell advised that Council approved the creation of a Bicycle and Pedestrian Committee consisting of five (5) City residents that would be advisory to the City, Dover/Kent Metropolitan Planning Organization (MPO), and Safety Advisory and Transportation Committee (SA&T), with participation from City departments, Delaware Department of Transportation (DelDOT), and the Dover/Kent MPO. She explained that she thought that the City needs the input of the Bicycle and Pedestrian Subcommittee; however, preparing agendas and minutes for the formal meetings in compliance with the Freedom of Information Act (FOIA) and attending the meetings requires a lot of extra staff time. Mrs. Mitchell asked that it be an advisory committee as originally intended and approved by Council in 2012, without having separate by-laws. She noted that she was not aware of any other City committees with separate by-laws, only separate 501(c)(3)'s that the City had established that have by-laws.

Mr. Anderson noted that other City organizations and commissions, including the Dover Human Relations Commission, have their own by-laws which were approved by Council. Responding, Mrs. Mitchell advised that the difference was that those

groups were not subcommittees of a Council Committee of the Whole (CCW) Subcommittee like the Bicycle and Pedestrian Subcommittee.

Mrs. Mitchell informed members that the City was the only community in Delaware with a committee like this. She noted that Newark has two (2) bicycle groups that are separate 501(c)(3)'s that serve in an advisory capacity but are not part of a council subcommittee. Mrs. Mitchell explained that the groups hold their own meetings and then go to the city to discuss their transportation projects.

In response to Mr. Anderson, Mrs. Mitchell explained that the by-laws state that the Subcommittee will have seven (7) members who are a mix of people who are frequent bicyclists or pedestrians; however, Council approved a subcommittee of five (5) members that are city residents, to be appointed by the SA&T chair after discussion with staff and never approved the by-laws. Mr. Anderson noted that even though Council did not approve the by-laws, they approved the individual appointment of the members. He asked if she would have any objection to Council changing the number of members to seven (7) in order to keep all of the current active members. Responding, Mrs. Mitchell stated that she did not have any objection to the number of people if Council doesn't, noting that her concern is that all of the members are city residents and that the Subcommittee go back to Council's original intention. Mrs. Traci McDowell, City Clerk, noted that Subcommittee members are appointed by the SA&T chair and the appointments are not brought to Council for approval.

Mr. Anderson asked if city resident would apply to someone within the corporate limits of Dover or a Dover address. Responding, Mrs. Mitchell explained that city resident would mean within the corporate limits of Dover.

Responding to Mr. Hare, Mrs. Mitchell confirmed that no other subcommittees have by-laws or can dismiss members.

Mr. Gerry Pennington, Bicycle and Pedestrian Subcommittee Chair, informed members that when he was appointed to the Subcommittee they were operating under the by-laws adopted by the Subcommittee on May 6, 2014 and he was not aware that they had not gone before Council.

Mr. Chris Asay, Bicycle and Pedestrian Subcommittee member, stated that he had served on the Subcommittee since its creation. He recalled that staff had initially suggested five (5) members and a subsequent public meeting was held regarding the bicycle committee that was so well attended that it was suggested to increase the number of members to seven (7); however, according to the minutes, there was no formal motion. Mr. Asay stated that shortly after that time, those who volunteered to serve received an email from the former Director of Planning and Community Development, Mrs. Ann Marie Townsend, announcing that the Subcommittee would consist of seven (7) members and listing them. He explained that the Subcommittee

had always had seven (7) members unless there was a vacancy, and the purpose of formulating by-laws was simply to provide a mechanism for replacing members who were no longer active. Mr. Asay informed members that one of the original members only attended the first couple of meetings and then stopped attending but did not resign, so they had trouble obtaining a quorum.

In response to Mr. Taylor, Mr. Asay stated that he did not recall whether or not they used the mechanism in the by-laws for removing that original member. He advised that since that time, they had not needed to use it because members had formally resigned. Mr. Taylor explained that the by-laws were not approved by the City, and if the mechanism were used, the liability could be devastating.

Mr. Asay stated that he thought that the Bicycle and Pedestrian Subcommittee had been able to achieve their accomplishments over the past six (6) years because they were a subcommittee of SA&T. He explained that in 2013, they began meeting twice a month in order to meet the League of American Bicyclists' application deadline for status as a bicycle-friendly community. Mr. Asay noted that they were able to submit that application because of their connection to the City and, although the application was not approved in 2013, they were provided feedback for improvements and were awarded bike-friendly status in 2017. He stated that they were also able to develop pedestrian and bicycle plans because of the connection to the City. Mr. Asay informed members that their bicycle plan helped further their goals towards becoming a bike-friendly community and set significant priorities for the construction of bicycle paths that were conveyed through the City to DeIDOT and the Dover/Kent MPO.

Responding to Mr. Neil, Mr. Asay explained that when there is a need to replace a member of the Subcommittee, they make a recommendation to the SA&T chair and the chair usually selects that individual. Mr. Taylor noted that he had attended a Subcommittee meeting and this process had occurred; however, upon submitting an individual's name to City staff, it was determined that the Subcommittee consisted of five (5) members, not seven (7), so there was not technically a vacancy.

Mr. Neil asked whether the Subcommittee needs the help of City staff for their clerical work or if they could function without it. In response, Mr. Asay stated that he would leave that to the judgement of the City Clerk or someone else who understands FOIA requirements. He noted that City staff attends their monthly meeting which lasts one (1) hour, prepares the minutes, creates the agenda for the next meeting, and archives the information in the City records.

Mr. Anderson stated that he thought a positive good had been accomplished because they are a subcommittee that reports to the CCW/SA&T Committee and Council and has kept members informed in ways that an advisory committee might not. He noted that he is very skeptical of committees that keep their own records because it creates issues and he did not think the City should go that way. Mr. Anderson stated that he

thought that the City should continue to recognize the importance of the Subcommittee and work out the details.

Mr. Lindell moved to recommend the acceptance of staff's recommendation to go back to Council's 2012 intent for the Subcommittee, seconded by Mr. Neil.

In response to Mr. Taylor, Mr. Lindell clarified that the intent of his motion was for five (5) members. He explained that he thought the more members you add to a committee, the more you get away from the purpose and overall productivity of a committee, and since the Subcommittee has open public meetings, anyone can attend and comment on the agenda items if they are interested.

Mr. Hare asked if Mr. Asay was attending meetings on behalf of the City, noting that the Dover/Kent MPO and staff from various state agencies had contacted him to ask whether Mr. Asay was representing the City. Responding, Mr. Asay explained that he is also a member of the MPO Public Advisory Committee (PAC) and when he attends the MPO meetings, he does so as a member of the MPO PAC and speaks as a citizen.

Mrs. Mitchell clarified that the Subcommittee had done a lot of work and she did not want to discount it; however, she explained that the good work would have been done whether or not they were connected to the City because their goals and accomplishments are included in the City's Code, Comprehensive Plan, and Council's goals.

Mr. Taylor noted that Mr. Asay stated that the Subcommittee utilizes City staff for one (1) hour per month and asked whether staff had exceeded that hour. In response, Mrs. Mitchell stated that staff had exceeded one (1) hour per month and they've asked to allow more overtime. She noted that she was unsure whether it was necessary to have monthly meetings since some of the items were repetitive and she wasn't sure if the Subcommittee was subject to FOIA requirements. Responding, Mrs. McDowell stated that she would have to check with the City Solicitor, because she was not sure the Subcommittee is subject to open meeting laws since the members are not confirmed by Council.

Mr. Taylor advised members that he had communicated with Mr. Hare, Mr. Pennington, and Mr. Asay and it had been made clear that Mr. Taylor would be the individual to represent the City in any necessary meetings. He stated that Mr. Asay agreed to keep him informed and take him with him whenever there is something of importance to be done.

Mr. Anderson moved to amend the motion to allow up to seven (7) members with the filled positions counting as quorum, seconded by Mr. Cole.

Mr. Neil stated that he did not know how essential it was to have seven (7) members since they have open meetings and anyone can participate.

Mr. David Moses, Bicycle and Pedestrian Subcommittee member, noted that he had also served on the Subcommittee since its creation and they had always worked with seven (7) members. He stated that every member had contributed a unique set of skills that enabled the Subcommittee to accomplish what they had for the City. Mr. Moses noted that the Subcommittee had achieved bicycle-friendly status in the City, partnered with Capital School District to teach bicycle safety, and held events in coordination with the City's Parks and Recreation Department. He stated that he had personally donated resources, funding, and tuition, and all of the Subcommittee members had donated thousands of hours in the past seven (7) years to do good things that bring value and taxpayers into the City. Mr. Moses informed members that he thought that having 10 members on the Subcommittee would better serve the City; however, with seven (7), they are able to divvy up the responsibilities and come back to every meeting better prepared. He noted that their former chairman was not a City resident; however, he brought a lot to the table and helped them accomplish a lot, which Mr. Moses thought was more important. Mr. Moses expressed his concern that instead of looking at the value of the Subcommittee, the cost to the City and whether members are City residents were becoming issues. He explained that the City has the potential to earn additional revenue through the bicycle-friendly status and the safer communities for pedestrians and bicyclists that members of the Subcommittee work on tirelessly with no compensation.

Mr. Lindell stated that he did not think anyone was questioning the worth of the Subcommittee, noting that the successes could be seen all around the City. He explained that if reaching a quorum was a concern, having five (5) members would make it easier to obtain the quorum requirement and he was looking at it as a best practice to keep it the way it was intended. Mr. Lindell stated that if there was a decrease in productivity as a result, then members could reconsider the number of members.

Mr. Jayce Lesniewski, Bicycle and Pedestrian Subcommittee member, noted that he had also served on the Subcommittee since its creation. He stated that former Councilman Hutchison presented the idea of increasing the number of Subcommittee members to seven (7) during the SA&T Committee meeting of January 30, 2013 because of the level of interest expressed. Mr. Lesniewski explained that although the proposal to increase the number of members was not approved by the Committee, there had always been seven (7) members dedicated to the Subcommittee and he did not think the City should reduce it to five (5).

The motion to amend the original motion to allow up to seven (7) members with the filled positions counting as quorum was carried with Mr. Lindell voting no.

By consent agenda, Mr. Neil moved for approval of the Committee's recommendation, seconded by Mr. Cole and carried by a unanimous roll call vote (Lindell and Slavin absent).

Mr. Hare asked whether the Subcommittee had thought of becoming a corporation like the Newark bike committee, so they could control all the money they earn and what they do with it. He stated that if they formed a 501(c)(3), they would no longer be affiliated with the City but could still make recommendations. He explained that they would be able to adopt by-laws and have complete control over the number of members. In response, Mr. Moses indicated that the Subcommittee had not thought about that because they did not think there was anything wrong with the current structure. He stated that he thought that the Subcommittee had been very valuable to the City, noting that it was certainly much more valuable than the time it takes to pay a clerk to make sure that they are doing things the right way and their time and efforts are documented properly. Mr. Moses advised that the Subcommittee had only had a problem obtaining a quorum once or twice and the benefit of having seven (7) people with different abilities and skill sets to divvy the work among was much more important than obtaining a quorum.

In response to Mr. Moses comments, Mr. Neil explained that if they have dedicated people who want to volunteer, they do not have to be members to be involved. He reminded them that anyone is welcome to attend public meetings and if they put people to work who are interested in helping, then they will be ready to step in if a vacancy occurs.

Mr. Hare stated that he thought the Subcommittee had done a lot of good things but reminded them that they cannot do things on their own without Council approval. Responding, Mr. Taylor advised that he had communicated with everyone on the Subcommittee, so they are all aware that any information that needs to be disseminated to Council should be provided to him.

The motion to recommend acceptance of staff's recommendation to go back to Council's 2012 intent for the Subcommittee, as amended to allow up to seven (7) members with the filled positions counting as quorum was carried with Mr. Lindell voting no.

By consent agenda, Mr. Neil moved for approval of the Committee's recommendation, seconded by Mr. Cole and carried by a unanimous roll call vote (Lindell and Slavin absent).

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