COUNCIL COMMITTEE OF THE WHOLE

The Council Committee of the Whole Meeting was held on February 23, 2016, at 6:00 p.m., with Council President Slavin presiding. Members of Council present were Mr. Sudler, Mr. Neil, Mr. Cole, Mr. Hosfelt (departed at 6:09 p.m. and returned at 6:11 p.m.), Mr. Hare, and Mr. Hutchison. Mr. Anderson and Mr. Lewis were absent. Civilian members present for their Committee meetings were Mr. Blakeman and Mrs. Stewart (*Utility*), and Ms. Maucher (*Legislative, Finance, and Administration*). Mr. Shevock (*Legislative, Finance, and Administration*) was absent.

UTILITY COMMITTEE

The Utility Committee met with Chairman Hutchison presiding.

AGENDA ADDITIONS/DELETIONS
Mr. Sudler moved for approval of the agenda, seconded by Mr. Cole and unanimously carried.

Energy Management Contract Extension and Integrated Resource Plan (IRP)
During the Regular Council meeting of November 23, 2015, Councilman Hutchison, Chair of the Utility Committee, requested that the Electric Department Integrated Resource Plan (IRP) Information Discussion be referred back to the Utility Committee for further discussion. The request was unanimously approved by City Council.

Mr. Kirk Betts, the City's Power Supply Attorney, Betts & Holt, LLP, advised members that The Energy Authority (TEA) had been handling the City's power supply management for nearly five (5) years and members must consider whether to authorize Mr. Betts and his firm to negotiate a three (3) year extension of the City's contract with TEA. Mr. Betts explained that additional services that the City had acquired through the employment of Mr. Harry Maloney, Electric Director, had reduced the level of costs that TEA had incurred in serving the City. As a result, preliminary discussions had been held about having TEA conduct and prepare an IRP for the City. Mr. Betts noted that an IRP had been discussed in the past in relation to changes in the PJM marketplace, as well as at the customer and consumer level. For example, he explained that for the first time in recent memory, in looking at power supply planning for the City, PJM was predicting no growth. This was not because the City was not growing but because there were substantial changes in the way energy is being used, such as significant changes in daily and overnight loads due to the impact of compact fluorescents and LEDs. Mr. Betts stated that an IRP would look at all of the changes in the marketplace, such as requirements for renewable energy growing to 20% and its effect on how energy is bought and used, as well as the potential introduction of batteries, which was moving at an accelerated rate, allowed a lot more renewables, and could also affect planning for the future. He stated that the idea would be to take into account what is happening on the consumer, generating, and PJM market sides when planning to see what would be the best proposal going forward for the City. He expressed the desire not to overstep by building a power plant that is too large or that does not have the right type of fuel for the future, noting that these are big decisions that incur a lot of liability over time.

Mr. Betts advised members that part of the transaction that had been proposed with TEA was to extend their contract to allow enough time to prepare an IRP and to see how viable the City's plant is going into the future and to consider the changes that were occurring.

Staff recommended that Mr. Kirk Betts, Betts & Holt LLP, be authorized to negotiate up to a three (3) year extension of the TEA agreement, but amended to adjust the monthly fee to reflect a modified scope of services, redefine the services, and to negotiate such other terms as may be in the best interest of the City of Dover for the extended term. The final negotiated extension will be brought back to the Utility Committee and City Council for consideration.

Noting that PJM was projecting no growth, Mr. Blakeman questioned if other financial forecasts or supplemental studies were available with the same findings. Responding, Mr. Betts stated that, although he could not cite specifics, everything that he had been reading nationally supported these findings, with the exception of the deep South where there was much more population growth. The Northeast and Midwest showed relatively flat growth, again not because of population but because of the way energy was being used today. Mr. Betts indicated that most people are not projecting any significant growth and no new capacity requirements, other than those being seen in the shift between coal and natural gas. He stated that new appliances were using less energy and changes in lighting, which is a significant part of the City's daily load, were also contributing to the flatness. Mr. Betts explained that significant growth of 3% or 5% had always been counted on in designing plans for revenue purposes; however, this had not been happening over the past three (3) or four (4) years. He stated that originally it was felt that the decline had been caused by the recession; however, a far greater movement was actually happening. This type of information was coming from consulting firms and the press all over.

Mr. Blakeman stated that historically when electric service prices went down, the demand went up. He noted that the current drop in fuel prices should result in decreases in electric charges, which historically had increased sales. Responding, Mr. Betts stated that houses being built today have different insulation standards, window standards, types of manufactured pipes, and heating systems, whether they have electric furnaces, heat pumps, or gas furnaces. For example, he informed members that he worked with a facility that just installed a heat pump that goes down to 28 degrees before kicking into emergency power, noting that this used to be closer to 40 or 45 degrees, which makes a big difference in terms of how load is managed. Mr. Betts felt that the flatness and some of the reductions were the result of movement toward more saturation of those changes and was not money-driven any more.

Mr. Blakeman acknowledged this transition; however, he stated the desire for confirmation so as not to rely on just one (1) report to make a decision, suggesting possibly State-wide and regional economic forecasts for the next 10 years. Responding, Mr. Betts stated his belief that the IRP would try to integrate this type of information so that planning is done properly and efficiently by considering what is happening, as opposed to what the City would like to do, and developing the best recommendation from there.

In response to Mr. Hutchison as to whether the City had ever done an IRP in the past, Mr. Betts explained that the City had done power supply planning, which is the supply and generating side, as opposed to a fully integrated look.

Mr. Neil questioned how this might help the City to drop its commercial rates to keep its commercial customers happy. Responding, Mr. Betts explained that this would not be a rate study, such as that conducted by Burns & McDonnell that looks at the cost of service for each type of customer, loads, voltages used, and where they take delivery. The IRP is a different type of study that would be valuable in helping customers by looking at trends, such as whether there is growth in the residential sector, reductions in the commercial or industrial sectors, and how energy is used. This would allow the City to properly plan going forward and prevent it from stepping into a power supply service plan that does not serve its customers well financially. As an example, Mr. Betts recalled standing in the Council Chambers before Calpine built its plant when it was being said that the City needed to build a new plant. Had the City entered into a brand new type of construction for the size plant that it would be allowed to build with the tax laws, etc., he felt it would probably have been a relatively inefficient plant, causing its customers to pay significant amounts of money well into the future for something that would be essentially obsolete. Mr. Betts advised members that an IRP would help avoid the mistakes of doing something before having the information on what should be done, explaining that there would be several steps to the process. Data would be collected about the marketplace and customers and what is happening with power supply around the City and with customers. It would then be looked at to determine the best way to serve customers and provide supply at the least cost going forward, considering regulatory changes and the influence of the renewable resources, potentially including batteries and solar-run homes. Mr. Betts noted that this would be a way to get the right answers but it could not be promised that it would fix commercial customers' rates. The IRP process would provide assurances that the City would not end up making a mistake that results in higher than necessary charges.

Ms. Stewart questioned if the IRP would take into consideration the needs of other members of the Delaware Municipal Energy Corporation (DEMEC) and other municipalities and how they do their purchasing with the increasing renewable requirements. She asked if there was any chance for economies of scale working with other municipalities. Responding, Mr. Betts stated that the first question would be what the issues are in the City's own service territory and the second would be to bring TEA into this, since TEA works with a large variety of municipal utilities and is probably the largest of any of the consulting firms that performs this type of work. Mr. Betts indicated that the City was counting on TEA to bring their institutional knowledge to the City's table and apply that knowledge, as they do with their monthly reports, so that the City would not be trying to recreate the wheel. He felt that economies of scale could be seen by using TEA. Mr. Betts noted an additional economy in that TEA knows the City's loads well after working with the City and managing its load, and would bring an instantaneous data resource that another entity would have to build. As for whether a DEMEC type of approach would work, Mr. Betts stated his understanding that DEMEC had done its own studies collectively and was willing to provide information to the City as to the City's relationship with DEMEC, and this would be an information resource that TEA would use.

Mr. Hare questioned if the IRP would advise members whether the City should be in or out of the power business or build a new plant. Responding, Mr. Betts stated that an IRP is not generally about whether or not to be in power supply but provides data and the information that leads to making a decision about whether or not to do this. The intent of the study would not be to make a decision or make a recommendation one way or another.

In regard to Mr. Hare's question as to whether TEA was the best entity to do this, Mr. Betts expressed his opinion that it was. Noting his and staff's desire to be competitive about what the City does, Mr. Betts stated that there was a question of timeliness since TEA's contract would expire in six (6) months or less. In addition, he indicated that there was money left on the table because of Mr. Maloney's presence and the integration of the work that Mr. Maloney had done at the power plant. This was money that had not been spent, and TEA agreed it should applied to the City's contract in a different way. Mr. Betts felt there was an opportunity to extract that value through the IRP and stated he would hate to see the City lose the value of the money on the table with TEA by getting another firm. Mr. Betts encouraged members to look at this seriously because there was a value that could be negotiated to not only get a study but a lower rate because of the presence of Mr. Maloney and his power plant experience. He felt these two (2) factors made it worth looking at TEA's services rather than going out to bid.

In response to Mr. Hare, Mr. Betts confirmed that TEA is experienced in doing IRPs, noting that his firm had reviewed their IRPs and found them reasonable.

Noting that Mr. Betts would be compensated, Mr. Blakeman asked if there was a range of compensation for the study. Responding, Mr. Koenig stated that Mr. Betts is paid through an hourly rate and his compensation is identified as a line item under legal expenses in the Electric budget. He indicated that he did not bring those numbers with him tonight; however, they were basically the same as his services had been in the past. Mr. Koenig advised members that Mr. Betts is paid well but the City has high expectations, stating his belief that $100,000 was identified for legal-related expenses for the Electric Fund and this would fall into that category.

Responding to Mr. Hare, Mr. Koenig stated that the anticipated range for the value of an IRP was estimated at between $100,000 and $200,000.

Mr. Betts stated that his firm had kept its fees at the same level for almost 15 years, and would challenge anybody else to do so. He estimated that it would probably take no more than 20 hours to negotiate this contract, noting that there was already a form of the contract and the concepts had been discussed with TEA. Mr. Betts noted that Betts & Holt had raised the question of pulling the value of Mr. Maloney's work out of the contract, since it essentially involved doing what TEA's engineer used to have to do, and Betts and Holt had already started in many ways pulling the value together for the City in order to be able to negotiate. He did not believe that the amount would be protracted, estimating the cost at less than $10,000 to negotiate this and probably even much less than that to pull the contract all the way through. Mr. Betss indicated that the money for this service was already in the existing contract because Mr. Maloney had saved the City approximately $100,000 of value by taking over parts of the contract. The goal was to pull this out of the existing

contract and roll it into an IRP; therefore, $100,000 had already been paid. Mr. Betts indicated that the estimated value was $178,000; however, Betts & Holt was working on obtaining the IRP at no additional cost to the City.

Mr. Neil moved to recommend approval of staff's recommendation that Mr. Kirk Betts be authorized to negotiate up to a three (3) year extension of The Energy Authority (TEA) agreement, amended to adjust the monthly fee to reflect a modified scope of services, redefine the services, and to negotiate such other terms as may be in the best interest of the City of Dover for the extended term. The final negotiated extension will be brought back to the Utility Committee and City Council for consideration. The motion was seconded by Mr. Sudler and unanimously carried.

Annexation Request - 1102 South State Street, Owned by Capitol Cleaners and Launderers, Inc.

Mrs. Ann Marie Townshend, Director of Planning and Community Development, reviewed a Petition to Annex and Rezone Property located at 1102 South State Street consisting of 6,331 S.F.$^{+/-}$ and owned by Capitol Cleaners & Launderers, Inc. She explained that this is a developed property located across from the Carroll's Corner Shopping Center in the City's Category 1 high priority annexation area with a proposed zoning classification of C-2A, Limited Central Commercial. Mrs. Townshend advised members that the property line goes through the building, and the front portion of the building is on the property proposed for annexation. The remainder of the building on the rear property has a different owner and is not proposed for annexation. Mrs. Townshend indicated that the subject property currently is served by City of Dover electric and water utilities. The property owner wishes to extend sanitary sewer service to the property, which is available from the neighboring property, and the property owner is working with the owner to the north to get easements in place to extend the sewer service. Mrs. Townshend indicated that staff was supportive of the annexation because the property is located in the City's high priority annexation area and the City has the capacity to provide utility services.

Staff recommended proceeding with the annexation.

Mr. Hare moved to recommend approval of staff's recommendation, seconded by Mr. Blakeman and unanimously carried.

Mr. Neil moved for adjournment of the Utility Committee meeting, seconded by Mr. Blakeman and unanimously carried.

Meeting adjourned at 6:32 p.m.

LEGISLATIVE, FINANCE AND ADMINISTRATION COMMITTEE

The Legislative, Finance, and Administration Committee met with Chairman Hare presiding.

AGENDA ADDITIONS/DELETIONS

Mr. Sudler moved for approval of the agenda, seconded by Mr. Cole and unanimously carried.

Proposed Ordinance #2016-11 Amending Chapter 102 - Taxation, Article VI - Exemptions; Board of Assessments Appeals, Section 102-182 - Authority to Exempt Real Property from Taxation

Mr. Scott Koenig, City Manager, advised members that he was present on behalf of Mrs. Cheryl Bundek, Tax Assessor, to discuss administrative issues related to delinquent taxes. He noted that the City had a substantial delinquent tax list and he and Mrs. Bundek and Mrs. Ann Marie Townshend, Director of Planning and Community Development, met with Mr. William Pepper, Deputy City Solicitor, last fall to discuss ways to help reduce this outstanding balance. It was found that there had been a number of subdivisions with Limited Liability Corporations (LLCs) that were disbanded or developers who went defunct during development.

Mr. Koenig explained that there were areas of community or private open space in the City that had never been dedicated to homeowners' associations (HOAs) and were currently on the City's tax rolls. Staff was looking for a path forward to make these properties tax-exempt, which would have occurred had the developers followed through with dedicating them to the HOAs. Mr. Koenig advised members that proposed Ordinance #2016-11, amending Sec. 202-182, included language that Mrs. Bundek and Mr. Pepper had provided that stated, "The City Assessor shall be empowered to grant tax exemption to and waive delinquent taxes on real property which has been required by the City of Dover to be set aside for public parkland or open space once the subdivision/phase of subdivision has reached 80% completion and/or street dedication, whichever occurs first, in concurrence with the City Manager. Any outstanding penalty or interest incurred as a result of unpaid taxes on said property shall be forgiven."

Mr. Koenig stated that this amendment would provide an administrative path going forward to forgive delinquent taxes on these types of properties. Referring to the "Open Space Delinquent Accounts" report, he advised members that the ordinance would relate to properties in Westover and Heatherfield East, a small joint venture in Fox Meadows, as well as property owned by Robino-Sea Chase, LLC, with a total of just under $42,000 in outstanding taxes on these properties. With the adoption of this ordinance, these taxes could be wiped clean, the delinquent tax burden on the City of Dover could be reduced, and there would be an administrative remedy to take care of this problem in the future. Mr. Koenig stated that staff considered this to be an administrative clean-up of a longstanding problem.

Mr. Neil stated his understanding that this land was supposed to be parkland or used for recreation and questioned if it was being used for this purpose. Responding, Mr. Koenig stated, for example, that in the early 1990's, a planned neighborhood design was completed for the Village of Westover which required a substantial amount of open space. This encompassed an estimated 20 plus acres

of private open space that included walking paths, stormwater management ponds, and buffer areas between subdivisions that was intended to be dedicated to the HOA. Because the developer went bankrupt at some point, several pieces of the private open space were never turned over by deed to the HOA. Mr. Koenig stated his belief that the HOA was mowing the grass and cleaning up the trash; however, they felt they had no responsibility for associated taxes, noting that private open space is exempt from taxes once turned over to the HOA. The proposed ordinance would not resolve the issue of actual ownership by deed but would resolve the associated delinquent tax issue. Mr. Koenig stated his belief that Heatherfield East had a small area of private open space that was less than one (1) acre, and other open spaces were very small residual pieces of land that may have trees but no associated maintenance. The Stoney Creek land included the stormwater management pond area. He informed members that these were pieces of land that cannot be built on by the ordinance or the plat of the subdivision and were just sitting and being taxed, indicating that this was a ghosting of taxes.

Responding to Mr. Neil, Mr. Koenig stated that the communities or associated properties were maintaining these areas but not paying taxes on them.

In response to Ms. Maucher as to whether the provided list included all of the properties that would fall under this exemption, Mr. Koenig stated that these were all the properties that would currently qualify. By adopting this ordinance, these properties would be wiped off the list. If a new subdivision started construction and met the criteria for the property to become tax exempt, this could be done administratively from this point forward with the adoption of the ordinance.

Responding to Ms. Maucher, Mr. Koenig confirmed that when a subdivision is built, it is private property owned by the developer who is responsible for taxes on the open space until such time as it is moved to the HOA. For example, he stated that if a new 40-lot subdivision had five (5) acres of private open space that included stormwater management ponds and park areas, staff would recommend that it stay taxable until the developer reaches 80% completion or turns the development over to the HOA. The developer would have a financial reason to want to progress in the development of the community since they have to pay taxes for the raw land. If the developer did not have to pay for the private open space, he would only be paying for platted lots, and the City wants to compel completion as soon as possible. Mr. Koenig noted that roads and utilities are not dedicated until a subdivision is about 80% complete under most circumstances. Staff's intent was to try to tie the tax exemption to the time when the utilities and roads would typically be dedicated to the City of Dover.

Ms. Maucher expressed concern that writing in the possibility for an exemption for forgiveness would encourage the developer not to pay because that exemption exists. In response, Mr. Koenig indicated that the exemption only exists from an administrative standpoint. If the developer did not pay on open space for which he had been carrying multiple years of delinquent property taxes, when he went to dedicate the infrastructure the City would require payment of all the back property taxes. He assured members that the City has a collection method as long as the developer stays a viable entity.

Staff recommended adoption of proposed ordinance #2016-11.

Mr. Neil moved to recommend adoption of proposed Ordinance #2016-11 Amending Chapter 102 - Taxation, Article VI - Exemptions; Board of Assessment Appeals, Section 102-182 - Authority to Exempt Real Property from Taxation. The motion was seconded by Ms. Maucher and unanimously carried.

Acknowledgment of Freedom of Information Act (FOIA) Violations - Dover Youth Advisory Committee

Mr. Hare stated, for the record, that there had been Freedom of Information Act (FOIA) violations by the Youth Advisory Committee.

Mr. Slavin informed members that the City had self-reported these FOIA violations in the past.

Mr. Hare moved for adjournment of the Legislative, Finance, and Administration Committee meeting. The motion was seconded by Mr. Neil and unanimously carried.

Meeting adjourned at 6:42 p.m.

Mr. Neil moved for adjournment of the Council Committee of the Whole meeting. The motion was seconded by Mr. Sudler and unanimously carried.

Meeting adjourned at 6:42 p.m.

Timothy A. Slavin
Council President

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