

City of Harrington
MINUTES
City Council Meeting
March 18, 2013

Public Comments

There were no Public Comments.

A meeting of the Harrington City Council was held on March 18, 2013 and was attended by the following: Mayor Robert E. Price, Jr.; Vice Mayor Cheryl Lahman; Council Member Duane E. Bivans; Council Member Fonda Coleman; Council Member Amy Minner; Council Member Kenneth Stubbs; Norman Barlow, Chief of Police; William Pepper, City Solicitor; Teresa Tieman, City Manager; Faye Smith, Finance Director; and Kelly Blanchies, Clerk of Council.

Also present: Tom Wilkes, Remington, Vernick, & Beach; Anthony Moyer; George Scuse, Delaware State Fair; and Mark Downes, Cabe Associates.

Council Member Wayne Porter was absent.

Mayor Price called the meeting to order at 7:01 p.m.

The Pledge of Allegiance was given.

Minutes

February 19, 2013 City Council Meeting

Council Member Bivans asked what happened to the business from Texas that was interested in a property on Cluckey Drive. Vice Mayor Lahman stated that there was a problem with the environmental testing.

Council Member Bivans asked about the additional cost of inflow and infiltration (I & I) to the wastewater system. The City Manager stated that she meant because of rainfall from the previous month, the Kent County sewer bill was an additional eight thousand dollars (\$8,000), and if that rate continued, the sewer bill would be an additional ninety-six thousand dollars (\$96,000) a year. Tom Wilkes was referring to the difficulty in estimating cost savings by fixing I & I. The amount of rainfall has a big impact.

Council Member Bivans asked for clarification about Vice Mayor Lahman's statement that it is the responsibility of Council to take care of problems

even without the passing of the referendum. Vice Mayor Lahman stated that the voters rejected the borrowing of additional funds, but the voters might not know the impact of the problems as well as the Council Members. Council should start corrective actions anyway. Council Member Stubbs stated that something must be done. Council Member Bivans stated that the projects are important, but the public needs to understand that. Mayor Price stated that a lot of the City money is in special funds that are restricted.

Council Member Bivans asked if a lot of homes qualified for the Community Development Block Grant (CDBG). The City Manager stated that a lot of homes qualified but funding is limited, so they must go through an evaluation process. Vice Mayor Lahman asked if the CDBG program would be effected by the sequester. The City Manager stated that it may.

Council Member Minner asked if Tom Wilkes checked into the shrub planting and re-inspection for the Brown's Branch outfall rehabilitation project. Mr. Wilkes stated that he would check into it.

A MOTION was made by Vice Mayor Lahman, seconded by Council Member Minner, to accept the February 19, 2013 City Council Meeting Minutes as presented. The MOTION passed unanimously.

March 4, 2013 City Council Workshop

A MOTION was made by Council Member Stubbs, seconded by Council Member Coleman, to accept the March 4, 2013 City Council Workshop Minutes as presented. The MOTION passed unanimously.

March 4, 2013 City Council Special Meeting

A MOTION was made by Vice Mayor Lahman, seconded by Council Member Stubbs, to accept the March 4, 2013 City Council Special Meeting Minutes as presented. The MOTION passed unanimously.

Police Chief's Report

The Chief of Police stated that the Police Department has some equipment that was obtained through the LESO program over a year ago that he would like to sell at auction. Council Member Bivans asked if there would be a cost to participate in the sale. The Chief of Police stated that there is a commission and a small fee if the item does not sell.

A MOTION was made by Vice Mayor Lahman, seconded by Council Member Bivans, to accept the Police Chief's Report as presented. The MOTION passed unanimously.

A MOTION was made by Vice Mayor Lahman, seconded by Council Member Stubbs, to allow the Police Department to sell surplus equipment acquired through the LESO program. The MOTION passed unanimously.

City Manager's Report

The City Manager stated that the Public Works Department has some trucks that they would like to sell at auction as well.

Council Member Minner asked the City Manager to elaborate on the Greater Dover Committee Economic Roundtable. The City Manager stated that the City put together projects such as the new well, water tower, and I & I improvements, and the Economic Roundtable would like to combine those projects with ones from other towns and the County and present them to the State for funding.

Council Member Bivans asked if there was a reason for an increase in interior furniture outside on the Code Enforcement Report. The City Manager stated that there is no particular reason for the increase; there will be an article in the newsletter about code enforcement, an article can also be placed on the website, and clean up week will be soon.

Council Member Bivans asked about 29 Clark Street on the Code Enforcement Report. The City Manager stated that tires were being used as scaffolding so were not debris.

Council Member Bivans stated that trash cans are being left out after the day of collection. He asked what can be done about shopping carts throughout town. The City Manager stated that the grocery stores collect them. Council Member Bivans stated that it is goodwill if Public Works picks up a cart they come across and drop it off at the store.

Council Member Minner asked to what extent chipping paint is enforced. The City Manager stated that it would be exposed wood that would cause deterioration of the building.

A MOTION was made by Vice Mayor Lahman, seconded by Council Member Minner, to accept the City Manager's Report as presented. The MOTION passed unanimously.

A MOTION was made by Vice Mayor Lahman, seconded by Council Member Coleman, to allow the City Manager to sell surplus equipment. The MOTION passed unanimously.

Financial Report

Mayor Price stated that although the City receives a lot of tax revenue at one time, that money has to last all year. The City Manager stated that taxes are not due until October, so money has to be saved the previous year to operate the City for the first four months. Vice Mayor Lahman stated that there are also bills that are due once a year.

Council Member Bivans asked if the revenue for the library is a concern. The Finance Director stated that it is not. Vice Mayor Lahman stated that they will probably receive additional funds from the State and exceed the budgeted amount.

Council Member Bivans asked if the drug seizure money can be used to pay for K-9 expenses. The Chief of Police stated that it cannot.

A MOTION was made by Vice Mayor Lahman, seconded by Council Member Minner, to file the Financial Report for audit. The MOTION passed unanimously.

Departmental Reports

Public Works

Council Member Stubbs asked how many water meters are left to install. The City Manager stated that only the difficult ones that require digging out are left.

The City Manager stated that there was an issue with a water meter showing that a resident had high usage. A letter was sent to the resident who had their house pressure tested and determined that there was not a leak. After investigating further, the meter that is located closest to the house is actually the neighbor's meter, so it was the neighbor that had the leak. Situations like these will occur since metering is new and will be worked through. Mayor Price stated that meter reading is working like it should and letting people know of high usage before bills are based on usage and detecting problems.

The City Manager stated that the reports the City is able to get from the new meters are incredible; we were able to view the hourly consumption for twenty-nine days.

The City Manager stated that she would like to refund the customer that did not have the leak for the bill from the plumber. Mayor Price asked if a motion is required to approve the refund and if it has to be listed on an agenda for a future meeting. The City Solicitor stated that it should because there was no notice that it would be discussed. Vice Mayor

Lahman asked if the refund could be issued without Council approval. The City Solicitor stated that he is unsure that authority is given as part of the budget. The City Manager stated that she had that authority at Dover.

Council Member Bivans asked if the five hundred eighteen dollars (\$518) bill is from the City. The City Manager stated that the charge is from the plumber to pressure test the house.

The City Solicitor stated that it is not unusual to give the City Manager that kind of authority, but the Council has previously had to authorize expenditures of that amount. Mayor Price stated that it a policy is needed to know how to handle these situations in the future. The City Manager stated that the Council authorized a budget and as long as the total amount does not change then there should be the ability to change some items. People should not have to wait a month to be paid. Adjustments are made to people's accounts all the time, and this is a similar situation.

Council Member Bivans stated that a precedent was established with the tax ditch reimbursement. The City Solicitor stated that issue was not a line item part of the budget so could be considered something different.

Library

There were no questions.

Parks and Recreation

There were no questions.

Fire and Ambulance

There were no questions.

A MOTION was made by Council Member Bivans, seconded by Vice Mayor Lahman, to accept the Departmental Reports as presented. The MOTION passed unanimously.

City Planner's Report

Council Member Minner asked about the expiration of the final site plan for Harrington Retail Center. The City Manager stated that with the new staff, we were unaware that we should send a letter prior to the expiration of a final site plan approval. The City Solicitor stated that it is not a Code requirement to send a notice. The City Manager stated that a letter was sent about the expiration date and that fees are still owed and must be paid before an extension is entertained.

Council Member Bivans stated that it appears that two businesses has had issues in getting sign permits. The City Manager stated that the church placed a sign without consulting the City that was not Code compliant and were given some options to bring it into compliance. The Stargate sign permit was not submitted properly then the square footage exceeded what is allowable in the Code. The applicant was given options, and the permit was resubmitted and approved.

A MOTION was made by Council Member Stubbs, seconded by Council Member Coleman, to accept the City Planner's report as presented. The MOTION passed unanimously.

City Engineer's Report

A MOTION was made by Council Member Stubbs, seconded by Council Member Minner, to accept the City Engineer's report as presented. The MOTION passed unanimously.

Old Business

Second Reading of Ordinance 13-03 – Amending Chapter 314, Rental Properties, relating to crime free leasing addendum

Mayor Price stated that this ordinance has had a first reading and public hearing.

Vice Mayor Lahman asked if a lease would be requested only if there is a problem. The City Manager replied yes.

Vice Mayor Lahman asked about leases signed prior to the adoption of the ordinance. The City Solicitor stated that upon renewal, the crime free leasing addendum will have to be added.

Council Member Minner asked if this ordinance will be upheld in court. The City Solicitor stated that he believes so.

Council Member Bivans asked if someone would have to be convicted or only arrested for this ordinance to apply. The City Solicitor stated that an arrest and conviction is not required under this ordinance; usually criminal activity will result in an arrest.

Council Member Bivans stated that he is concerned about criminal activity that may occur in front of a residence by someone unknown to the resident. The City Solicitor stated that is why there has to be a nexus between the tenant and the criminal activity. The distance can be shortened from five hundred feet if Council would like.

Council Member Bivans asked if people are committing crimes then why wait until three occurrences a year to evict them. The City Solicitor stated that some of the criminal acts listed are less than Class A Misdemeanors. The City Solicitor stated that three indicates a pattern. The Chief of Police stated that amount gives a cushion to those that may have something occurring at their house that they are unaware of.

Council Member Minner asked if criminal activity occurred away from the property it would have no effect on the lease. The City Solicitor replied it would not.

Vice Mayor Lahman asked if a meeting should be held with landlords. Council Member Bivans asked if this issue was brought up during the landlord training class. The Chief of Police stated that this program is being done in other municipalities. The City Solicitor stated that he expects most landlords will not have a problem with the ordinance because it gives them another tool to deal with problem tenants.

A MOTION was made by Council Member Stubbs, seconded by Council Member Coleman, to accept Ordinance 13-03. Roll was called: 4 Yes, 1 No, 1 Absent (Lahman – Yes, Bivans – No, Coleman – Yes, Minner – Yes, Porter – Absent, Stubbs – Yes). The MOTION passed by majority.

New Business

Resolution 13-R-04 – Requests that the General Assembly adopt the amended Charter as shown in Exhibit A

Vice Mayor Lahman asked the City Manager to explain why the Charter was looked at. The City Manager stated that it was requested to compare the City's borrowing limits to other municipalities. It was discussed at the Budget and Finance Committee meeting that the short term borrowing limits are inadequate. The City Solicitor stated that the 1935 Charter did not allow borrowing at all; in the 1950s it was changed to allow a small amount of short term borrowing; the last time this section was addressed was in the 1980s and costs have increased since then. Most municipalities have gone with a percentage of the assessed value of the properties rather than a dollar figure.

The City Manager stated that if there was an emergency, short term borrowing can be used to cover the costs. The debt service on repaying five hundred thousand dollars (\$500,000) within five years is cost prohibitive so really it is for emergencies only.

The City Manager stated that there are provisions in the Charter for long term borrowing that require a referendum. Proposed in addition to the

referendum is long term borrowing up to three and a half percent of the total assessed value of non-tax-exempt properties without voter approval that requires a super majority vote of Council.

The City Manager stated that it is also proposed to increase the debt limit to twenty-five percent of the total assessed value of non-tax-exempt properties.

The City Manager stated that with the failed referendum, several options were explored. When the Charter was reviewed, we felt it needed to be updated. The Council has to look at the whole section at one time because the Legislature will not entertain a series of small changes.

Vice Mayor Lahman stated that her primary concern was the limit on short term borrowing in case of an emergency.

Council Member Minner asked if the proposed changes were in effect in February, would the City of had a referendum. The City Manager replied that the Council could have decided to have one but would have had the option not to. There would still be a public hearing process and super majority vote of Council.

Vice Mayor Lahman stated that the City would have been better served had the borrowing issue been looked at a year ago. It is obvious that it needs to be reviewed. The referendum brought the issue to the forefront.

Council Member Minner stated that she would like more time to review the changes and discuss it.

A MOTION was made by Council Member Minner, seconded by Vice Mayor Lahman, to table Resolution 13-R-04 to the April 1, 2013 Workshop. Roll was called: 5 Yes, 0 No, 1 Absent (Lahman – Yes, Bivans – Yes, Coleman – Yes, Minner – Yes, Porter – Absent, Stubbs – Yes). The MOTION passed unanimously.

Vice Mayor Lahman stated that it is important to submit the Charter to the General Assembly soon because of their schedule. The City Solicitor suggested adding this resolution to the special meeting agenda on April 1, 2013 as well.

FY2013 Street Program

The City Manager stated that Representative Outten has provided funding for the construction costs of paving, curbing, and ADA ramps for portions of Simmons Street and Dickerson Street. The engineering costs associated with this project are nineteen thousand eight hundred seventy-

four dollars (\$19,874). The City Manager stated that she recommends allowing Remington, Vernick, and Beach to provide the engineering services and approving that the funds be taken from the Municipal Street Aid Fund.

Vice Mayor Lahman asked how the streets were picked. The City Manager stated that there is priority list that was submitted for funding.

A MOTION was made by Council Member Stubbs, seconded by Council Member Coleman, to allow Remington, Vernick, and Beach Engineers to provide engineering services for the 2013 street program at a cost of nineteen thousand eight hundred seventy-four dollars (\$19,874) paid from the Municipal Street Aid Fund.

Council Member Bivans asked about the priority list. The City Solicitor stated that the legislatures can fund specific streets.

Roll was called on the MOTION to allow Remington, Vernick, and Beach Engineers to provide engineering services for the 2013 street program at a cost of nineteen thousand eight hundred seventy-four dollars (\$19,874) paid from the Municipal Street Aid Fund: 5 Yes, 0 No, 1 Absent (Lahman – Yes, Bivans – Yes, Coleman – Yes, Minner – Yes, Porter – Absent, Stubbs – Yes). The MOTION passed unanimously.

Delaware State Fair wastewater contract

Mayor Price stated that this problem needs to be rectified in a timely manner, because it is almost time for another utility bill. Council Member Stubbs asked how much is owed. The City Solicitor stated that the amount is around sixty thousand dollars (\$60,000) with interest and penalties.

Council Member Stubbs stated that Council would like the bill to be paid then the City will negotiate. Mayor Price stated that the Delaware State Fair would like to look at the current bill and the future of their billings concurrently.

Vice Mayor Lahman asked who the Delaware State Fair would like to meet with. Mayor Price stated that it has been the City Manager, City Solicitor, and City Engineer. The City Solicitor stated that it was discussed at the last workshop to add at least one member of Council to that group but that was based on the existing bill being paid first. Council Member Minner asked if it can be more than one member from Council. The City Solicitor stated that he does not recommend more than two Council Members.

Council Member Bivans asked if the Fair is suggesting that none of the bill should be paid. The City Manager stated that the Fair's opinion has changed. The have offered to pay everything from July 1, 2011 up to February 29, 2012 in the amount of thirty-three thousand six hundred sixty-six dollars and seventy cents (\$33,666.70). George Scuse stated that the Fair offered to pay from July 1, 2011 up to the point when Kent County took over the sewer. The issue is the true-up fee. The City Manager stated that the Fair's letter stated that it is time to consider a third amendment to the contract for wastewater services. Council Member Bivans stated that he would have liked to see the undisputed amount paid by the Fair then the disputed amount could be discussed.

Council Member Stubbs asked if all the dates listed on the Fair's March 15, 2013 letter are when the contract was discussed. The City Manager replied that the fats, oils, and grease ordinance was discussed on those dates. The Fair mention contract negotiations but was never clear about what that was until November 30, 2012.

Council Member Stubbs stated that when impact fees were discussed, Bill DiMondi came in and waved a contract around and that cost the City a considerable amount of money on those impact fees. Mr. Scuse stated that the Fair paid over two hundred fifty thousand dollars (\$250,000) for those EDUs. The Fair had the obligation to pay for what was not being used or lose the EDUs. There is no longer a capacity issue.

Council Member Minner stated that the Fair would like to retain their EDUs. Council Member Bivans stated that can be part of the contract negotiations.

Council Member Bivans stated that the amount of thirty-three thousand six hundred sixty-six dollars and seventy cents (\$33,666.70) would not be considered payment in full. The City Solicitor stated that the Fair would have to pay what is unquestionably due before the City will consider an amendment to the agreement. Mayor Price stated that it will still be a decision for the whole Council as to the balance of the invoice and the contract amendment.

The City Solicitor stated that there is all the time from March 1, 2012 to June 30, 2012 that was billed and also the time from July 1, 2012 to now to consider. We told them in December that they should probably opt out, but they have not done that either. Mr. Scuse stated that part of the Fair's stance is that those EDUs are paid for, and the Fair should keep them. Capacity is not an issue now. The City has the capacity for a million gallon flow to the County and does not pay anything if less is used. The Fair does not want to pay for something it does not use.

Council Member Stubbs asked who arrived at the figure of thirty-three thousand six hundred sixty-six dollars and seventy cents (\$33,666.70). Vice Mayor Lahman stated that figure needs to be checked.

A MOTION was made by Vice Mayor Lahman, seconded by Council Member Bivans, to accept the payment from the Delaware State Fair for usage through February 29, 2012 and form a committee consisting on the City Manager, City Solicitor, City Engineer, and two Council Members to renegotiate the wastewater contract with the Delaware State Fair. Roll was called: 4 Yes, 1 No, 1 Absent (Lahman – Yes, Bivans – Yes, Coleman – No, Minner – Yes, Porter – Absent, Stubbs – Yes). The MOTION passed by majority.

Appointment of Election Board and workers

Mayor Price stated that the people for the Election Board and workers have all worked at previous elections. There will need to be additional appointments.

A MOTION was made by Council Member Minner, seconded by Council Member Coleman, to approve the appointment of Joan Knaub and Jean Miller to the Election Board and Viva Poore as Inspector and Joyce Dyer as Clerk. The MOTION passed unanimously.

Bearing contract resolution for force main project

The City Manager stated that Bearing was awarded the contract for the pump station upgrades, which included the demolition of the wastewater treatment plant building at two hundred forty-four thousand seven hundred two dollars and seventy cents (\$244,702.70). Unbeknownst to the City, this cost included mobilization fees for the entire project. The County wanted to keep the building so the demolition was removed from the project. The actual cost for the demolition was estimated at seventy thousand seven hundred two dollars and seventy cents (\$70,702.70). There have been negotiations about how much should be paid for mobilization. There was a tentative agreement reached for a final contract amount of one million two hundred seventeen thousand seven hundred three dollars and ninety-three cents (\$1,217,703.93), a savings of two hundred four thousand eighty-eight dollars and five cents (\$204,088.05). The project is under budget.

Council Member Stubbs asked if the whole issue was over mobilization fees. Mr. Wilkes stated that mobilization fees were not included as a line item in the bid. The contractor usually splits those between the various items, but this one placed most of the mobilization fee in one particular line item, so once that item was removed, most of the fees went with it.

Vice Mayor Lahman asked why Bearing thought they should get any of it if they were not going to demolish the building. Mr. Wilkes stated that mobilization is moving man power and equipment to the site along with subcontractors and insurance, which they did. The City Manager stated that the mobilization was also for the pump station. The amount was questioned because Bearing requested the full amount of that line item.

Council Member Stubbs asked if Bearing is satisfied with the compromise amount. Mr. Wilkes stated that they are not but are willing to settle. The City Manager stated that arguing over it is not productive, and they are entitled to some mobilization fee.

A MOTION was made by Vice Mayor Lahman, seconded by Council Member Coleman, to settle the contract with Bearing for one million two hundred seventeen thousand seven hundred three dollars and ninety-three cents (\$1,217,703.93). Roll was called: 5 Yes, 0 No, 1 Absent (Lahman – Yes, Bivans – Yes, Coleman – Yes, Minner – Yes, Porter – Absent, Stubbs – Yes). The MOTION passed unanimously.

Executive Session

There was no Executive Session.

There being no further business, a MOTION was made by Council Member Minner, seconded by Council Member Stubbs, to adjourn the City Council Meeting. The MOTION passed unanimously, and the meeting adjourned at 9:03 pm.

Respectfully Submitted,

Kelly Blanchies
Clerk of Council