

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

January 8, 2007

Those present at 7:30 p.m.:

Presiding: Vance A. Funk III, Mayor
District 1, Paul J. Pomeroy
District 2, Jerry Clifton
District 3, James O'Neill
District 4, David J. Athey
District 5, Frank J. Osborne
District 6, A. Stuart Markham

Staff Members: City Manager Carl F. Luft
City Secretary Susan A. Lamblack
Assistant to the City Manager Carol S. Houck
City Solicitor Roger A. Akin
Planning Director Roy H. Lopata
Public Works Director Richard M. Lapointe
Water & Wastewater Director Roy A. Simonson
Acting Finance Director Wilma Garriz

1. The meeting began with a moment of silence and pledge to the flag. Mr. Funk asked that Chief Nefosky be kept in everyone's thoughts and prayers.

2. MOTION BY MR. OSBORNE, SECONDED BY MR. CLIFTON: THAT THE AGENDA BE AMENDED BY ADDING THE FOLLOWING ITEMS: 9-A-2, RECOMMENDATION TO THE GOVERNOR OF MALCOLM COBIN FOR APPOINTMENT AS DEPUTY ALDERMAN FOR CITY OF NEWARK; 9-B-4, RESIGNATION/APPOINTMENT TO DOWNTOWN NEWARK PARTNERSHIP; AND 10-D, REQUEST FOR EXECUTIVE SESSION RE PENDING LITIGATION.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Pomeroy, Osborne, Athey, Funk, Markham, Tuttle, Clifton.
Nay - 0.

3. **2. CITY SECRETARY'S MINUTES FOR COUNCIL APPROVAL**
A. Regular Council Meeting of December 11, 2006

There being no additions or corrections to the minutes, they were approved as received.

4. **2-B. SPECIAL COUNCIL MEETING OF DECEMBER 13, 2006**

There being no additions or corrections to the minutes, they were approved as received.

5. Mr. Funk suggested that Item 9-A-1 be heard at this time and there were no objections.

9-A-1. RESOLUTION 07- : RETIREMENT OF DWIGHT HERNANDEZ

Ms. Lamblack read the resolution in its entirety.

MOTION BY MR. CLIFTON, SECONDED BY MR. OSBORNE: THAT THE RESOLUTION BE APPROVED AS SUBMITTED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Pomeroy, Osborne, Athey, Funk, Markham, Tuttle, Clifton.
Nay - 0.

(RESOLUTION 07-A)

6. 3. ITEMS NOT ON PUBLISHED AGENDA:

A. Public

Richard A. Menton, III, MPI Mechanical, Inc., as a follow up to last month's meeting, said he still had concerns with the safety of the reservoir and asked for an independent commission to look at just the safety, his main focus. He advised that he got a response from the City after his presentation last month, which he labeled a "two-page attack" on his credibility. Mr. Menton then did his own research beginning with a phone call to the Federal Bureau in Baltimore for the USGS. They explained to him that the Army Corp of Engineers was not responsible nor had any jurisdiction over the dam (reservoir) for the City of Newark. Their explanation was that they were responsible for dams in navigable waterways. He was then directed to the State of Delaware where he talked to the Delaware geologist located in Newark who directed him to the State of Delaware Department of Dam Safety (DNREC). They advised Mr. Menton that it was a new agency, with a director, but there were no regulations in place so they had no oversight whatsoever on the City's dam. He was told that the City of Newark was responsible for the dam and it was their jurisdiction and felt he reached a dead end.

Mr. Menton then decided to go to *Newark Post*, which, although it was a good local newspaper, he thought the technical aspect of the safety issue was beyond their comprehension. He then went to the *News Journal* to see what they had on this subject. He found that a previous reporter, Michelle Besso, did an article on how the City handled this case that was not very complimentary to the City. The editor of the newspaper quashed her article and Ms. Besso was no longer working for them which Mr. Menton found interesting. He also learned from the *News Journal* that there was a 100-page report by a Dr. Richardson that was about two years old that he was unable to obtain from the *News Journal*. He claimed they were going to provide him with that information but eventually his request was quashed by the editor. They told him they could not release the report because they needed a legal means to acquire it from the City of Newark. Mr. Funk interjected that it was actually Durkin's report, not the City's report, and the City was in possession of the report.

Mr. Menton asked Council if they were familiar with the report to which some members nodded, and Mr. Markham said he read the report and had an opinion on it. Mr. Menton questioned if Mr. Markham attacked Dr. Richardson's credibility the same way his credibility was attacked by the City. Mr. Markham thought there was equal engineering expertise on both sides, and asked Mr. Menton if he read URS's responses and Dr. Calabria's report. Mr. Markham pointed out that when he read through the file it was like children talking back and forth saying "you're right, you're wrong, you're right, you're wrong." Mr. Menton said that was exactly why he wanted an independent commission to get to the bottom of everything.

Mr. Funk said he read the Richardson report over two years ago and before he became Mayor he talked to Paul Logan, the attorney for Durkin, and asked him who would be a good person to independently review that report. Dr. Calabria was recommended and by accident was who the City selected to review the report.

Mr. Menton asked if it was true that the independent expert witness on safety for the City was not called to testify because he was prepared to testify for the plaintiff. Mr. Funk said he did not know the answer to that.

(Secretary's Note: Mr. Menton's five-minutes expired and Council agreed to let him continue with his comments.)

Mr. Menton continued by saying he went online and found a coalition called Dam Safety located in Washington, DC. Their website claimed that owners were not cognizant of the potential safety and the possible dam failures and the liability and responsibility to the downstream public and the environment. That coalition claimed that dam failures were most likely to happen for one of five reasons. The reason he gave that pertained to Newark was piping—when seepage through a dam was not properly filtered and soil particles continue to progress and form sinkholes in a dam. Mr. Menton claimed there was a 2' x 2' sinkhole that somebody needed to look at and investigate. He discovered six more wet spots and wondered how many more were out there. Mr. Funk assured Mr. Menton that the City was looking into it.

Roy Simonson advised that the reservoir was inspected on a regular basis. The City has a monitoring system that was checked several times a day that looked at all of the instrumentation at the reservoir. The wet spots mentioned have been identified and inspected. Many of the wet spots existed before the reservoir was filled. The wet spots being monitored responded to rainfalls—they get wetter when it rained and in many cases they have dried up completely in the middle of the summer. The reservoir instrumentation of the various items the City was watching showed that same trend. When it rained, where there was indication of water, it comes up and when it stops raining and there was a dry spell, those flows or levels in the wells go down. The water tested from the drains under the reservoir and also from one of the wet areas around the reservoir were uncharacteristic of the water in the reservoir, further leading him to believe it was ground water

Mr. Funk asked Mr. Simonson if he had recently met with DNREC. Mr. Simonson said DNREC had visited the site and they were in the process of developing a regulatory basis on which to review and regulate reservoirs. DNREC had no problem with what the City was doing at the reservoir, they understood the nature of reservoirs, agreed there would be wet spots, and agreed there were ways to monitor the wet spots.

Mr. Markham asked since the reservoir was in his district if there was anyway they could put this to rest. It seemed to him there would always be an expert saying the reservoir was not safe even with 500 people saying it was safe.

Mr. Funk was he was very comfortable about the safety of the reservoir especially because of the fact that Dr. Calabria, as recommended by the plaintiff's lawyer, said the safety level to be achieved was one or above and the safety of the reservoir was slightly above one.

There were no further comments.

7. Stephanie Lane, 61 Kennard Drive, Terry Manor, spoke about the University of Delaware students who lived in her neighborhood. Several residents were concerned about the University's plan regarding the policing of their students and the possibility of buying out some of the residents who have lived there for a long time. Mr. Funk interjected that he used to be the real estate attorney for the University prior to becoming Mayor so he was very familiar with their 10-year plan on houses they wanted to buy and the University had no plans to buy houses in Terry Manor.

Ms. Lane said she and her neighbors were hoping there would be something in the University's plans to buy homes in their neighborhood because half of it was populated by University students, and it was very difficult to live amongst those students. They crowd the neighborhood with their cars, they party all night long, and they go unpoliced by the University of Delaware and by the City

of Newark Police Department. Mr. Funk advised that the University police had very little jurisdiction over students living off campus.

Ms. Lane said her concern was that the students were going unpoliced completely and it did not matter to her who policed them as long as they were policed.

Mr. Funk said if there was a problem they should call the Newark Police Department. He believed students thought the Newark Police were being overly aggressive.

Ms. Lane claimed they contacted the police on various occasions when the noise was enormous. The students party until 4:00 am and the residents have to listen to the noise all night long. The next day after a party the neighborhood was full of trash. Mr. Funk asked Ms. Lane to call him the next time that occurred and he would clean up the trash and contact the police.

Mr. Luft suggested that Ms. Lane contact Acting Chief Potts at 366-7104 and describe the problem.

Ms. Lane said the residents felt they were being treated indifferently because of the fact that they consistently were ticketed by the Newark Police for not having the proper parking permit which they knew they were responsible for, but sometimes won't get because they have lived there a long time. The University students were allowed to park there all night long and sometimes the next day after a party the cars were still there and parked in the wrong direction. The residents have had boots placed on their cars. Ms. Lane's daughter received a summons on her job for a parking ticket. On one occasion she contacted the Newark Police regarding a car that was parked along side of her house in the wrong direction three days in a row. The police said they would give the students time to come back and get their cars. Ms. Lane reiterated that she was concerned with what the University's plans were and asked how the City could interact with the University to get them to do more for the students. Just this past weekend two students were standing in front of their house with a cardboard sign that read "you honk, we drink." Another house around the corner of her in which University students lived in had a cardboard sign that read "alcoholic beverages permitted." Ms. Lane felt the University needed to provide more for the students because students were falling into the party trap.

Mrs. Caffee, 60 Kennard Drive, Terry Manor, shared the same concerns expressed by Ms. Lane. She asked what ordinances there were to address the conduct of the students who lived in their neighborhood. Mr. Luft advised that he would set up a meeting with Ms. Lane, Mrs. Caffee and the Police Department to discuss their concerns and problems in their neighborhood.

8. Mayor Funk suggested moving Item 9-A-2 to be heard at this time and there were no objections.

9-A-2. RECOMMENDATION TO THE GOVERNOR OF MALCOLM COBIN FOR APPOINTMENT AS DEPUTY ALDERMAN FOR CITY OF NEWARK (RESOLUTION SUBMITTED)

Mr. Funk explained there was a recommendation from the Alderman that Council nominate Malcolm Cobin for appointment as Deputy Alderman. The recommendation would be forwarded to the Governor's office for approval by the Senate and final appointment by the Governor.

MOTION BY MR. CLIFTON, SECONDED BY MR. OSBORNE: THAT COUNCIL RECOMMEND MALCOLM COBIN FOR APPOINTMENT AS DEPUTY ALDERMAN AS REFLECTED IN THE RESOLUTION SUBMITTED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Pomeroy, Osborne, Athey, Funk, Markham, Tuttle, Clifton.
Nay - 0.

(RESOLUTION 07-B)

9. 3-B. UNIVERSITY
1. Administration

There were no comments forthcoming.

10. 3-B-2. STUDENT BODY REPRESENTATIVE

There were no comments forthcoming.

11. 3-C. COUNCIL MEMBERS

Mr. Pomeroy wished everyone a Happy New Year and said his thoughts and prayers were with Chief Nefosky and his family for a very positive outcome in '07.

12. Mr. Pomeroy thought the way Council addressed the audit at the end of last year was encouraging and applauded the prompt response from staff. During that time Council discussed how important it was to have an independent outside objective audit of the finances and that it be transparent to the public. Along those same lines, he and other Council Members started talking about whether there would be some value to having an independent audit of the City's operations. He noted that many organizations, both in the public and private sector, do such audits. Such an audit would point out operating efficiencies and potential efficiencies. He claimed this idea was not predicated upon any one individual act or action, but in aggregate. He thought it was what good organizations did to make an organization better.

MOTION BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT AN OUTSIDE MANAGEMENT CONSULTING FIRM WITH SPECIFIC EXPERTISE IN MUNICIPALITIES BE SOUGHT TO DO AN INDEPENDENT REVIEW OF CITY COUNCIL OPERATIONS AND PROCEDURES WITH SPECIFIC EMPHASIS PLACED ON A REVIEW OF OPERATING EFFICIENCIES, FISCAL RESPONSIBILITY, ORGANIZATIONAL STRUCTURE, CUSTOMER SERVICE, AND EMPLOYEE MORALE.

Mr. Pomeroy clarified that his motion would be a momentum to research who would do the study and the cost involved for the study. Mr. Clifton commended Mr. Pomeroy for bringing this forward and thought when a consulting firm did a management survey, every aspect needed to be investigated from the public body to the staff to every other aspect that was included in the motion.

Mr. Funk advised that Council had already discussed something like this and everyone believed it was necessary.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Pomeroy, Osborne, Athey, Funk, Markham, Tuttle, Clifton.
Nay - 0.

13. Mr. Pomeroy said he got a lot of compliments on the lights on the trees on Main Street during the holidays and questioned whether they could be kept on until daylight savings occurred. He thought the lights created a wonderful ambience downtown. Mr. Luft said there was talk about keeping the lights on year round but

he got outvoted on that idea because the Parks Department said it affected the growth of the trees and affected the leaves. Also, replacing the bulbs was an issue because it was very labor intensive. Mr. Luft said he would discuss it again with the Parks Department.

14. Mr. Pomeroy asked if a piece of property in the County, with an existing structure that got its electricity from Delmarva, was annexed into the City did the City automatically obtain the right to provide electricity to that structure. Mr. Funk said Delmarva would continue to provide the electricity unless the City or the homeowner bought Delmarva's right to service the electricity. Mr. Lopata interjected that there was a cost to disconnect from Delmarva and Delmarva had a formula to determine the cost that tended to get expensive. He also noted that it was a disincentive for the City to annex developed properties, and it was a disincentive for developed properties to come in the City because of the cost.

15. Messrs. Osborne and Clifton had nothing to bring up at this time.

16. Mr. Athey wished everyone Happy Holidays.

17. Mr. Athey advised that last January Council held a workshop dealing with traffic calming, pedestrian safety, etc. that led to the formation of a special ad hoc traffic committee chaired by Heather Dunigan of WILMAPCO. Ms. Dunigan is nearing completion of a report and felt by February she would be ready to present it to Council. Therefore, he requested that it be tentatively scheduled for the February 12th Council meeting.

18. Mr. Athey referred to the November Council meeting where Ms. Jean White noted there were inconsistencies across-the-board with the City's fine structure. He would like to see a summary of all the fines in the Code. He credited Ms. White for bringing the inconsistencies to their attention because some fines were pretty expensive and some were not for offenses that should have higher fines.

Mr. Luft said he was looking at some of the isolated examples Ms. White gave in November. Mr. Athey said he would like to see the whole gamut of the City's fine structure and see where to go from there.

19. Mr. Athey referred to the fact he learned at the budget hearing that garden apartments currently did not pay to have their refuse picked up. He would like to see how that came to be and whether they should try to recoup that expense. Although it may not be a huge amount of money, he thought every penny counted.

20. Mr. Markham complimented Santa's Workshop at Lieberman's Book Store on Main Street.

21. Mr. Markham asked about the City's website and was told it had been launched. Staff planned to give a demonstration of the new website at the next Council meeting. It was noted that people were directed to the new website from the old website.

22. Mr. Markham commented on the Hamburger Helper Program that was pledging \$15,000 a month to local cities. The Parks Department has made application for two grants. One was for pedometers for a Newark walking club and one was for coaches' manuals. He encouraged everyone to go online and add a blurb supporting these requests because the more feedback, the more likely the City would receive the grants.

23. Mr. Markham referred to the DeIDOT workshop and asked if a follow up letter was sent to the Secretary or did everyone have to send an individual letter. Mr. Funk advised that he sent a thank you letter to the Secretary of Transportation for attending the workshop. Mr. Athey said he sent an email to the Secretary because he wanted to clarify an issue. Mr. Pomeroy said he was sending his own letter because there was something specific he wanted to address.

24. Mr. Markham referred to the residential survey that he thought was a few years out-of-date and asked when it would be done again. Mr. Lopata advised that it was done every five years and it was last done in 2003. It used to be done every two to three years but he found the results were almost identical so they changed it to a five-year cycle. Mr. Markham noted that a sample of 100 residents per district was done and when he looked at the results, he found there were a lot of questions that did not have 100 answers. Therefore, statistically he said the results were below the anticipated threshold for being significant. Mr. Lopata said each year when they get ready to do the survey they solicit comments from Council Members and he would be glad to hear any suggestions at that time.

25. Mr. Markham referred to the 2% holdback Council approved along with the 2007 General Operating Budget. There were two capital projects in his district that he hoped the City would still move forward on. One was the sidewalk at the reservoir in which half the money was already committed from the State. The second project was Curtis Paper Mill, the eyesore of District 6. Mr. Luft advised that there were some capital projects itemized in the list but he did not have it in front of him to know whether those projects were included. Mr. Markham pointed out that since the beginning of the reservoir project the City promised a sidewalk along the reservoir. Mr. Luft suggested when Council met with the legislators later in the month that they ask for additional money for that project.

26. Mr. Markham asked for a litigation update from Mr. Akin on the reservoir lawsuit. Mr. Akin explained that the City has filed post trial motions seeking a new trial and various other forms of relief. The City has retained new litigation counsel to pursue those matters post trial. The City's opening brief on its motion was due at the end of the month, thereafter the *Durkin* attorneys would be permitted to file an answer brief, and then a reply brief would be filed after that. Presumably after that, Judge Sleet would hear oral argument in the court perhaps as early as this spring. Mr. Funk added that the Judge extended the briefing schedule. Mr. Akin said that was done because the City retained new counsel. Mr. Collins J. Seitz from the firm of Connoll, Bove, Lodge & Hutz, the City's lead counsel on the post trial matters, was introduced.

27. Mr. Tuttle commented on the National League of Cities meeting he attended in November. He thought there were a lot of interesting sessions, but specifically he wanted to comment on the University Communities caucus, a group of folks who represented communities much like Newark all over the country who dealt with many of the same university student problems. It became clear to him that Newark had a resource available to the community that most people in the country didn't in terms of awareness of the crime in our community. Colleges and universities were under a Federal obligation to warn members of their community about crimes that posed a threat to students and staff and that included crimes in the community and not just crimes on campus. When the Newark police do a press release for a robbery, for instance, it shows up promptly on the University of Delaware's web home page. The University of Delaware allows anyone to subscribe to an email service that sends a notice directly to their email the moment it was posted on the University's website. He believed over 90% of the crime alerts posted were crimes in the community, not crimes on the campus. For example, there was a robbery on Saturday at the Exxon station that was posted on the University's website. He got an email telling him about it a half hour before it showed up on the *News Journal* site. He noted that you did not have to be a member of the University community to subscribe. This was a free resource to the community so there would be no reason for the City to undertake the cost of duplicating that service. He hoped the City's website would make this information available so that the community could take advantage of it.

28. Mr. Funk reported that last week he spent about two hours with Bill Nefosky on two different days. Today the Chief was to spend some time in a research program in Philadelphia. Mr. Funk asked everyone to keep Bill in their prayers.

29. Mr. Funk complimented Lieberman's Book Store for the great job they did with their store over the holiday season.

30. **4. ITEMS NOT FINISHED AT PREVIOUS MEETING:** None

31. **5. RECOMMENDATIONS ON CONTRACTS & BIDS:** None

32. **6. ORDINANCES FOR SECOND READING & PUBLIC HEARING:**

A. Bill 06-38 - An Ordinance Amending Ch. 32, Zoning, By Revising the Notification Requirements for Special Use Permits

Ms. Lamblack read Bill 06-38 by title only.

MOTION BY MR. OSBORNE, SECONDED BY MR. CLIFTON: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 06-38.

The chair opened the discussion to the public. There being no comments forthcoming, the discussion was returned to the table.

Mr. Markham asked if they could expand the distance from 300' to 500'. Mr. Funk thought the County used a distance of 500' for notification. Mr. Lopata explained that this proposal was modeled after the zoning distance which was increased from 100' to 300' a few years ago. Mr. Markham asked if this had been the law when the Perfinski daycare issue came up, how many people would have been notified. Mr. Lopata said they would have notified at least three people behind, next to, and across the street from the Perfinski's. He pointed out that there has never been a problem with the zoning notification and people in the community knowing about a project. Mr. Markham pointed out that there had not been a problem with special use permits until recently. Mr. Lopata said people knew about it but just did not register their concerns early enough.

Mr. Athey was comfortable with the 300' and thought the word would get out.

Mr. Lopata added that he did not believe the County notified people on zoning; rather they advertised and posted the hearing on the site. They actually have different rules they follow. For instance they notify for zoning variances. He reminded Council that the special use permit request would be advertised in the local newspaper and be on the City's website.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Pomeroy, Osborne, Athey, Funk, Markham, Tuttle, Clifton.
Nay - 0.

(ORDINANCE NO. 07-1)

33. **7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS:**

34. **8. ORDINANCES FOR FIRST READING**

A. Bill 07-1 - An Ordinance Amending Ch. 11, Electricity, By Amending Electric Rates

Ms. Lamblack read Bill 07-1 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. OSBORNE: THAT THIS BE THE FIRST READING OF BILL 07-1.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Pomeroy, Osborne, Athey, Funk, Markham, Tuttle, Clifton.
Nay - 0.

(2ND READING 1/22/07)

35. **8-B. BILL 07-2 - AN ORDINANCE AMENDING CH. 26, STREETS, BY INCORPORATING ADA (AMERICANS WITH DISABILITIES ACT) STANDARDS FOR SIDEWALKS IN THE CITY OF NEWARK**
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Ms. Lamblack read Bill 07-2 by title only.

MOTION BY MR. TUTTLE, SECONDED BY MR. CLIFTON: THAT THIS BE THE FIRST READING OF BILL 07-2.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Pomeroy, Osborne, Athey, Funk, Markham, Tuttle, Clifton.
Nay - 0.

(2ND READING 1/22/07)

36. **9. ITEMS SUBMITTED FOR PUBLISHED AGENDA:**
A. COUNCIL MEMBERS:

See item #5.

37. **9-B. COMMITTEES, BOARDS & COMMISSIONS:**

1. Appointment of Memorial Day Parade Committee – One-Year Terms

MOTION BY MR. FUNK, SECONDED BY MR. OSBORNE: THAT THE MEMORIAL DAY PARADE COMMITTEE BE REAPPOINTED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Pomeroy, Osborne, Athey, Funk, Markham, Tuttle, Clifton.
Nay - 0.

38. **9-B-2. APPOINTMENT TO NEWARK HOUSING AUTHORITY**

Mr. Funk did not have an appointment at this time.

39. **9-B-3. APPOINTMENTS TO NEWARK ELECTION BOARD**

MOTION BY MR. TUTTLE, SECONDED BY MR. CLIFTON: THAT BETTY MCHALE, 411 ARBOUR DRIVE, BE REAPPOINTED TO THE NEWARK ELECTION BOARD FOR ANOTHER THREE-YEAR TERM; SAID TERM TO EXPIRE JANUARY 14, 2010.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Pomeroy, Osborne, Athey, Funk, Markham, Tuttle, Clifton.
Nay - 0.

MOTION BY MR. FUNK, SECONDED BY MR. OSBORNE; THAT SAMUEL BURNS, 113 ELM AVENUE, BE REAPPOINTED TO THE NEWARK ELECTION BOARD AS THE CHAIR FOR ANOTHER THREE-YEAR TERM; SAID TERM TO EXPIRE JANUARY 14, 2010.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Pomeroy, Osborne, Athey, Funk, Markham, Tuttle, Clifton.
Nay - 0.

MOTION BY MR. MARKHAM, SECONDED MR. OSBORNE: THAT JANE CRESWELL, 26 PROSPECT AVENUE, BE REAPPOINTED TO THE NEWARK ELECTION BOARD FOR ANOTHER THREE-YEAR TERM; SAID TERM TO EXPIRE JANUARY 14, 2010.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Pomeroy, Osborne, Athey, Funk, Markham, Tuttle, Clifton.
Nay - 0.

40. 9-B-4. RESIGNATION/APPOINTMENT TO DOWNTOWN NEWARK PARTNERSHIP

Mr. Funk advised that Council was notified that Sally Miller would be retiring from Wilmington Trust Company and from the DNP. He recommended that Katrine E. Hutchison, who has worked for Wilmington Trust Company for 22 years, and will replace Ms. Miller, be appointed to fill the vacancy on the Board.

MOTION BY MR. POMEROY, SECONDED BY MR. OSBORNE: THAT COUNCIL ACCEPT THE RESIGNATION OF SALLY MILLER FROM THE DNP AND THAT KATRINE E. HUTCHISON BE APPOINTED TO FILL THE VACANCY; SAID TERM TO EXPIRE JULY 27, 2009.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Pomeroy, Osborne, Athey, Funk, Markham, Tuttle, Clifton.
Nay - 0.

41. 9-C. OTHERS: None

42. 10. SPECIAL DEPARTMENTAL REPORTS:
A. Special Reports from Manager & Staff: None

43. 10-B. ALDERMAN'S REPORT

MOTION BY MR. OSBORNE, SECONDED BY MR. CLIFTON: THAT THE ALDERMAN'S REPORTS DATED DECEMBER 20, 2006 AND JANUARY 2, 2007 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Pomeroy, Osborne, Athey, Funk, Markham, Tuttle, Clifton.
Nay - 0.

44. 10-C. FINANCIAL STATEMENT

MOTION BY MR. OSBORNE, SECONDED BY MR. MARKHAM: THAT THE FINANCIAL STATEMENT ENDING NOVEMBER 30, 2006 BE RECEIVED.

Mr. Markham referred to pagethree of the report and the fact that it showed a \$5.5 million operating surplus deficit, and asked if that was to be expected.

Ms. Garriz explained that the operating surplus deficit was before the operating transfer from the electric fund. That number was also reflected on the last financial statement. Mr. Tuttle interjected that that was one of the comments from the auditor—that the City had not been budgeting those transfers so it looked like we didn't have any money in one account and more money than needed in the

other account because the City moved the money back and forth to balance them out.

Mr. Funk referred to page two of Ms. Garriz's memorandum to the City Manager, dated December 14, 2006, where she said that parking meter revenue was 2.68% below budget project because a Parking Enforcement Officer was out on disability. He questioned what that position had to do with the money in the parking meters. Mr. Luft responded by saying that the PEO enforced the meters, and also noted that the ticket numbers were included in the meter line.

Ms. Garriz added that the City did get another \$50,000 in revenue in, so at the end of December Council would see \$418,000 in parking meter revenues.

Mr. Luft added that the City hired a temporary person to fill the PEO position and would hire another temporary person(s) in the near future.

Mr. Funk asked if the reason the Parks Department was over budget was because it was seasonal and if they would catch up at the end of the year. He also referred to page three, line item 'Taxes & Business Licenses' which showed a difference of over one million dollars and questioned why the difference.

Mr. Luft and Ms. Garriz said they would look into it and get back to Council with an explanation.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Pomeroy, Osborne, Athey, Funk, Markham, Tuttle, Clifton.
Nay - 0.

45. 10-D. REQUEST FOR EXECUTIVE SESSION RE PENDING LITIGATION

MOTION BY MR. CLIFTON, SECONDED BY MR. OSBORNE: THAT COUNCIL ENTER INTO EXECUTIVE SESSION WITHOUT THE PRESS TO DISCUSS PENDING LITIGATION.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Pomeroy, Osborne, Athey, Funk, Markham, Tuttle, Clifton.
Nay - 0.

Council entered into Executive Session at 8:35 pm and returned to the table at 9:12 pm. Mr. Funk announced there was no action necessary.

46. Meeting adjourned at 9:13 pm.

Susan A. Lamblack, MMC
City Secretary

/pmf