

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

November 9, 2009

Those present at 7:30 pm:

Presiding: Mayor Vance A. Funk, III
District 1, Paul J. Pomeroy
District 2, Jerry Clifton
District 3, Doug Tuttle
District 4, David J. Athey
District 5, Ezra J. Temko
District 6, A. Stuart Markham

Staff Members: City Manager Kyle Sonnenberg
City Secretary Patricia Fogg
City Solicitor Roger Akin
Assistant to the City Manager Carol Houck
Finance Director Dennis McFarland
Planning & Development Director Roy Lopata
Assistant P&D Director Maureen Feeney Roser

1. The meeting began with a moment of silent meditation and pledge to the flag. Mr. Funk asked members of the audience to remember the soldiers at Fort Hood.

2. MOTION BY MR. POMEROY, SECONDED BY MR. TEMKO: THAT LABOR NEGOTIATIONS BE ADDED TO ITEM 10-C, REQUEST FOR EXECUTIVE SESSION RE POTENTIAL LITIGATION.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

3. **2. CITY SECRETARY'S MINUTES FOR COUNCIL APPROVAL**

00:47 A. Regular Council Meeting of October 26, 2009

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

4. **3. ITEMS NOT ON PUBLISHED AGENDA**

01:22 A. Public

Frank Tolomeo, Newark resident, suggested the City consider installing SmartMeter equipment which provided a rate structure that differed based on time of day of electric consumption.

Mr. Tolomeo questioned whether DEMEC's peaker plant in Smyrna was a profit-making venture. He asked if Mr. Sonnenberg could obtain and report on the cost and kilowatt hour usage at the facility.

Mr. Tolomeo also requested a future report on where the City's stimulus funding has been spent.

5. **3-B. UNIVERSITY**

1. Administration

There were no comments forthcoming.

6. **3-B-2. STUDENT BODY REPRESENTATIVE**

There were no comments forthcoming.

7. **3-C. COUNCIL MEMBERS**

05:45

Mr. Clifton – thanked Mr. Armitage for the University of Delaware enrollment report.

8. **Mr. Markham** – rode along with the Police Department on 10/31 and was impressed with their efforts; asked how the proposed DSWA rate changes might impact the budget – Mr. McFarland reported the increase was factored into costs for 2010; recognized military veterans and those who were actively serving in the military.

9. **Mr. Temko** – issued a reminder for the Community Clean Up on 11/14 from 9 a.m. to 11 a.m.

10. **Mr. Athey** – discussed student issues on homecoming day and suggested consideration be given to having portable restrooms available that weekend; questioned the status of the Bicycle Committee, and Mr. Lopata reported the Committee had not yet established a formal meeting schedule; noted that the second audible traffic signal was installed at the corner of South College and Park Place.

11. **Mr. Tuttle** – thanked Mr. Sonnenberg for his participation in the Delaware Institute for Government Leaders as part of a panel discussing the response of municipalities to fiscal stress; urged attendance at the information meeting on a proposed Stormwater Utility fee scheduled on 11/16 at 7:00 p.m.

12. **Mr. Pomeroy** – said several experiences at events he attended recently highlighted the important role localities played in defining their local community and shaping it into a welcoming area.

13. **Mr. Funk** – spent time with public officials from Italy who visited the City and were struck by the friendliness they experienced. He felt the City had a good thing going and need to preserve it.

14. **4-A. ITEMS NOT FINISHED AT PREVIOUS MEETING**

None

15. **4-B. FINANCIAL STATEMENT**

18:35

Mr. McFarland reported the September 2009 Financial Report demonstrated the negative trends experienced through most of the spring and summer months with respect to the utility revenues. The month of September was \$345,000 under budget with year to date \$3.7 million under budget. Electric revenues were past the peak usage period, so it would be difficult for the electric utilities to be very volatile for the remainder of the year. The City will receive a \$671,000 refund from DEMEC in November since expensive spot market power was not needed with the temperate summer weather.

Non-utility revenues showed the same trends with lagging transfer tax revenues, somewhat higher property tax revenues and all other revenue streams going up and down, netting to a negligible effect.

Operating expenses were \$1 million under budget due to cost containment efforts undertaken earlier in the year.

The cash position improved to \$12.8 million primarily due to the receipt of the property tax revenues which were due at the end of the third quarter. Approximately \$1.6 million cash was lost since the beginning of the year. Mr. McFarland estimated ending the year with an operating deficit between \$2.3 and \$2.7 million.

Regarding the sewer margin, Mr. Pomeroy questioned the significant increase in the toxicity of sewage flows over the last few quarters incurring increased charges from the County. Mr. McFarland reported that Mr. Simonson had investigated and taken remedial action that would hopefully rectify the issue.

Mr. Markham asked what percentage of property tax had been collected at this point. Mr. McFarland said there were still some delinquent accounts but it appeared to be a fairly typical year with the exception of Chrysler.

Mr. Temko questioned the decrease in recreational fees, and Mr. McFarland replied this was based on lower participation rates somewhat offset by higher fees.

Regarding the delinquency rates for utilities, Mr. Clifton believed the default rate was around \$500,000. Mr. McFarland thought that figure was a little high and said about \$350,000 was written off in 2008. That figure should go down over the next several years since the City had gotten better at the collections process.

MOTION BY MR. CLIFTON, SECONDED BY MR POMEROY: THAT THE SEPTEMBER 2009 FINANCIAL REPORT BE RECEIVED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

16. 5. RECOMMENDATIONS ON CONTRACTS & BIDS

25:52

- A. Recommendation to Waive the Bidding Requirement and Extend Contract 06-01 Electric Line Tree Trimming Contract for One Additional Year

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT CONTRACT 06-01 FOR ELECTRIC LINE TREE TRIMMING BY ASPLUNDH TREE EXPERT COMPANY BE EXTENDED FOR A ONE-YEAR PERIOD BEGINNING 1/30/10 THROUGH 1/29/11.

Ms. Houck summarized her memo of 11/2/09 wherein it was recommended to extend Asplundh's tree trimming contract for one additional year. Asplundh agreed to maintain labor prices from the previous contract, and funds in the amount of \$167,000 were available in the operating budget.

Mr. Athey noted the rate table listed prices for 2006 and 2007 and asked which labor rate was applicable. Ms. Houck said the original contract was for two years, and they were holding the prices from the second year (2007) of that contract.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

17. 5-B. RECOMMENDATION TO WAIVE THE BIDDING REQUIREMENT AND EXTEND CONTRACT 07-01 – MOWING OF RESERVOIR AND BASIN/OPEN SPACE AREAS

MOTION BY MR. TUTTLE, SECONDED BY MR. CLIFTON: THAT CONTRACT NO. 07-01 BE EXTENDED AND AWARDED TO TRI-STATE LAWN CARE FOR TWO ADDITIONAL YEARS AT A TOTAL COST OF \$28,027 PER YEAR.

Ms. Houck summarized her memo of 11/2/09 wherein it was recommended to extend Contract No. 07-01 for an additional two-year period at a total cost of \$28,027 per year. The contract provided for mowing, trimming and clean up at City-owned and maintained areas, and funds were available in the Parks and Recreation budget.

Mr. Pomeroy referred to a previous proposal to cut back on the amount of cutting and trimming at City-owned parklands and asked if this change was reflected in the contract. Ms. Houck said it was not because the contract covered basin-type areas requiring special equipment, and the reduced cutting plan was limited to areas maintained by the City.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

18. 6. ORDINANCES FOR SECOND READING & PUBLIC HEARING

None

19. 7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS

29:48

- A. Request of Mark D. Sisk, Esquire, Agent for Claire and Andrew Scott Lawing, for a Special Use Permit Required for a Home Occupation Assembling “Custom Guitar Pickups” for Electric or Electric/Acoustical Guitars at 416 Paper Mill Road

MOTION BY MR. MARKHAM, SECONDED BY MR. CLIFTON: THAT THE SPECIAL USE PERMIT BE GRANTED AS REQUESTED WITH THE FOLLOWING RECOMMENDATIONS FROM THE PLANNING AND DEVELOPMENT DEPARTMENT:

1. This customary home occupation be strictly limited to the assembly of custom guitar “pickups,” as described by the applicants in their supporting materials.
2. If during any continuous period of one year the assembly of such materials is not conducted at the site following its approval by the City, the use will be no longer permitted.
3. If the property is sold or leased, the proposed use would no longer be permitted.

Mark Sisk, Esquire, said the applicants sought permission to manufacture and sell custom guitar pickups from their home which was located in an RH zoning district. He noted that the Planning Department did not think the business qualified as a customary home occupation. However, in a hearing before the Board of Adjustment, it was determined that the Code definition was applicable in this case.

Mr. Sisk explained there would be no retail sales, and the small items would be sold primarily through the internet. The Lawing's goal was to get the manufacturing and marketing of the pickups to the level where leased space would be required for the business.

A petition signed by property owners at 410 and 413 Paper Mill Road and 13 and 15 Wynclyff Lane stated the neighbors had no objection to the request as presented. The applicants agreed to the three conditions recommended by the Planning Department: termination of SUP upon sale of the property; assembly limited to these items; and if operation was abandoned for more than one year, the SUP would terminate.

Mr. Athey asked what kind of assurance the City would have that the business would be moved to a more appropriate facility as it grew. Mr. Lawing believed the Code restricted the scope of the business while it was contained in the home and emphasized that he planned to maintain the primary use and appearance of the house as a single-family residence.

Mr. Pomeroy questioned the regulations for signage. Mr. Lawing said they had no intention to post any signs as the business would be limited to internet sales.

The Chair opened the discussion to the public.

Frank Tolomeo, Newark resident, suggested the applicants take adequate safety precautions in the home for manufacturing activities involving soldering, gluing, etc.

Jean White, Newark resident, did not favor or object to the application. Her comments related to the special use permit conditions that if the home occupation ceased for one year or if the house was sold, the special use permit was terminated. She thought they were good conditions and should be applied to all future special use permits.

There being no further comments, the discussion was returned to the table.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

**20. 7-B. REQUEST OF KEITH AND MICHELLE JONES, 7 NEW CASHO
42:44 MILL ROAD, FOR A SPECIAL USE PERMIT REQUIRED TO EXPAND
THEIR EXISTING ASPHALT DRIVEWAY WITHIN THE OPEN
FLOODWAY DISTRICT (100-YEAR FLOODPLAIN)**

MOTION BY MR. POMEROY, SECONDED BY MR. ATHEY: THAT THE SPECIAL USE PERMIT BE GRANTED AS REQUESTED WITH THE PLANNING AND DEVELOPMENT DEPARTMENT RECOMMENDATIONS #1, #2 and #3:

1. The 4" thick sidewalk should be replaced with a 6" thick sidewalk at the location of the new driveway.
2. Depending on the entrance width, the Public Works Department may require a depressed curb.

3. Any building permit plans must take into account the very large tree located immediately adjacent to the proposed widened driveway and drainage at the location.

Keith and Michelle Jones wanted to expand their existing asphalt driveway to 20 ft. by 40 ft., and a Special Use Permit was necessitated by the property's floodplain classification. Mr. Jones felt having their vehicles on the street in this high traffic area was a safety concern and moving them to the driveway would provide better visibility for the neighbors at 5 and 9 New Casho Mill Road when pulling in and out of their driveways (both of which were double driveways). There would also be easier access to clean out the existing storm drain thereby increasing the flow of water runoff.

Mr. Funk asked if the applicants had any objections to the stipulations recommended by the Planning and Development Department. Regarding the recommendation to replace the 4" thick sidewalk with a 6" thick sidewalk, Mr. Jones was told by the contractor the work would not affect the existing sidewalk.

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

In regard to the other recommendations, the applicant did not understand recommendation #3 about taking the large tree into account. Mr. Lopata said two departments commented about drainage concerns relative to the tree, and this was more of a reminder for the applicants. Mr. Pomeroy said since recommendations #1, #2 and #3 were non-issues, he assumed the applicant would not object to having them included in the motion. Mr. Lopata said the issue depended upon how the driveway was laid out. If the existing curb cut and the existing sidewalk were used, there should not be an issue because, in effect, this was a grandfathered situation. However, if in expanding the driveway the curb was widened, Public Works wanted the sidewalk built to standards, and it was understood the applicant would have to abide by recommendations #1 and #2.

Mr. Athey felt recommendation #4 for "gap graded" stone with a filter fabric would have such a small impact it would be insignificant, and Mr. Pomeroy agreed there was no need for this requirement. Mr. Temko felt this might be a good recommendation on larger projects, including those outside the floodplain, perhaps with an added incentive similar to the LEED program.

Mr. Markham was curious why Council had not seen any special use permits for other driveways. Mr. Lopata said the floodplain in that area had been updated several times and, presumably, the building permits issued were for homes not in the floodplain.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

21. 8. ORDINANCES FOR FIRST READING

54:36 A. Bill 09-37 - An Ordinance Amending Ch. 32, Zoning, Article XXI, Amendment, Code of the City of Newark, Delaware, By Amending Amendment Procedure to Require Site Postings

Ms. Fogg read Bill 09-37 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. POMEROY: THAT THIS BE THE FIRST READING OF BILL 09-37.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

(2ND Reading 12/14/09)

22. 8-B. BILL 09-38 - AN ORDINANCE AMENDING CH. 25, SEWERS, 55:03 BY REVISING THE SEWER CHARGES FOR ALL CUSTOMERS EFFECTIVE FEBRUARY 1, 2010 AND PROVIDING AUTHORIZATION TO STAFF TO AUTOMATICALLY ADJUST SEWER SERVICE UNIT CHARGES WHEN NEW CASTLE COUNTY IMPOSES RELEVANT ADJUSTMENTS

Ms. Fogg read Bill 09-38 by title only.

MOTION BY MR. TUTTLE, SECONDED BY MR. CLIFTON: THAT THIS BE THE FIRST READING OF BILL 09-38.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

(2ND Reading 11/23/09)

23. 9. ITEMS SUBMITTED FOR PUBLISHED AGENDA

- 55:45** A. Council Members:
1. Resolution 09-__: Amending Rules of Procedure

Ms. Fogg explained the resolution would amend the Rules of Procedure by allowing Council to adopt a Consent Agenda as requested by Mr. Tuttle.

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT THE RULES OF PROCEDURE BE ADOPTED AS AMENDED.

Mr. Athey noted that Mrs. White suggested reversing items 2 and 3, so **Items Not on Published Agenda** came before **Approval of Consent Agenda**. The intent was to allow members of the public to comment on an item on the Consent Agenda which he felt was a more logical flow.

The Chair opened the discussion to the public.

Amy Roe, Newark resident, requested that the issue of abbreviated vs. comprehensive summary minutes be addressed because Council had not voted on this issue. Ms. Fogg reported that summary minutes were included in the Rules of Procedure voted on and adopted by Council in April. She believed Ms. Roe referred to Council's decision for summary minutes that were more abbreviated. Ms. Fogg said since it was the consensus of Council and there was no disagreement, it was assumed that Council accepted the new format proposed for the minutes. Ms. Fogg said the discussion was based in part on the fact that audio minutes were now available on the City's website and would be there in perpetuity. Ms. Roe appreciated the availability of the audio minutes but remarked on their poor quality.

Mr. Temko stated that in comparison to the Planning Commission minutes which were a verbatim transcript, the current abbreviated version and the previous format both came under the category of summary minutes.

Ms. Roe also requested that the monthly Financial Statement be available to the public, and Council agreed the statement should be made accessible on the City's website.

Frank Tolomeo, Newark resident, recommended the City consider purchasing a compressor expander which he felt would make the audio easy to understand at all levels.

AMENDMENT BY MR. ATHEY, SECONDED BY MR. TUTTLE: THAT **ITEMS NOT ON PUBLISHED AGENDA** BE ITEM 2 AND **APPROVAL OF CONSENT AGENDA** BE ITEM 3 ON THE COUNCIL AGENDA AS STATED IN THE AMENDED RULES OF PROCEDURE.

AMENDMENT PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

Question on the Motion was called.

MOTION AS AMENDED PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

(Resolution 09-T)

24. 9-B. COMMITTEES, BOARDS & COMMISSIONS

- 1:05** 1. Resignation and Appointment to Conservation Advisory Commission – District 2

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT THE RESIGNATION OF STEVE BEARD FROM THE CONSERVATION ADVISORY COMMISSION BE ACCEPTED AND THAT NADINE BANGERTER, 23 TYRE AVENUE, BE APPOINTED TO FILL THE UNEXPIRED TERM OF STEVE BEARD; SAID TERM TO EXPIRE MARCH 13, 2011

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

25. 9-B-2. PLANNING COMMISSION MINUTES OF OCTOBER 6, 2009

1:06

MOTION BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT THE PLANNING COMMISSION MINUTES OF OCTOBER 6, 2009, BE RECEIVED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

26. 9-C. OTHERS

None

27. 10. SPECIAL DEPARTMENTAL REPORTS

1:06

- A. Special Reports from Manager & Staff:
1. Setting the Date for the Presentation and Public Hearing of the 2010 General Operating Budget (**Proposed Date: 11/23/09**)

MOTION BY MR. POMEROY, SECONDED BY MR. ATHEY: THAT THE PRESENTATION AND PUBLIC HEARING OF THE 2010 GENERAL OPERATING BUDGET BE HELD ON 11/23/09.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

28. 10-A-2. REAL ESTATE TAX ASSESSMENT QUARTERLY SUPPLEMENTAL ROLL

1:07

Mr. Markham questioned the taxable assessment reductions, and Mr. McFarland explained the reductions resulted from adjusting assessments downward at the County level.

MOTION BY MR. ATHEY, SECONDED BY MR. CLIFTON: THAT THE REAL ESTATE TAX ASSESSMENT QUARTERLY SUPPLEMENTAL ROLL DATED 10/26/09 BE RECEIVED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

29. 10-A-3. BUDGET AMENDMENT TO SUPPORT DNP ACTIVITIES

1:07

Ms. Roser reported the Downtown Newark Partnership raised monies throughout the year to support their activities, and these funds were held in a DNP revenue account for their use. Income this year was better than anticipated, and the transfer of \$26,000 was requested from the revenue account to cover the cost of projects already underway.

Mr. Clifton questioned the possibility of a change in the subvention from the University of Delaware, and Ms. Roser indicated she had not heard what the University intended to do with the Partnership's part of their subvention.

MOTION BY MR. CLIFTON, SECONDED BY MR. POMEROY: THAT FUNDS IN THE AMOUNT OF \$26,000 BE TRANSFERRED FROM THE DOWNTOWN NEWARK PARTNERSHIP REVENUE ACCOUNT TO THE 2009 OPERATING BUDGET DOWNTOWN NEWARK PARTNERSHIP ACCOUNT.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

30. 10-B. ALDERMAN'S REPORT

1:11

MOTION BY MR. TUTTLE, SECONDED BY MR. ATHEY: THAT THE ALDERMAN'S REPORT DATED NOVEMBER 3, 2009 BE RECEIVED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

31. 10-C. REQUEST FOR EXECUTIVE SESSION RE LABOR NEGOTIATIONS AND POTENTIAL LITIGATION

1:11

MOTION BY MR. POMEROY, SECONDED BY MR. MARKHAM: THAT COUNCIL ENTER INTO EXECUTIVE SESSION WITHOUT THE PRESS TO DISCUSS LABOR NEGOTIATIONS AND POTENTIAL LITIGATION.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

Council entered into Executive Session at 8:41 p.m. and returned to the table at 9:48 p.m.

MOTION BY MR. CLIFTON, SECONDED BY MR. TUTTLE: TO APPROVE THE TENTATIVE AGREEMENT WITH THE CWA AS PRESENTED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

32. Meeting adjourned at 9:50 p.m.

Patricia M. Fogg, CMC
City Secretary