

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

March 8, 2010

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
Finance Director Dennis McFarland
Planning & Development Director Roy Lopata
Assistant to the City Manager Carol Houck
Police Chief Paul Tiernan
Captain John Potts

The meeting began with a moment of silent meditation and pledge to the flag.

1. MOTION BY MR. POMEROY, SECONDED BY MR., SECONDED BY MR. CLIFTON: THAT ITEM 8-A-4, DISCUSSION – TRANSFER TAX PROPOSAL RE BUDGET PLANNING, BE ADDED TO THE AGENDA.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

2. MOTION BY MR. CLIFTON, SECONDED BY MR. TUTTLE: THAT ITEM 8-A-1, RESOLUTION 10-_: RETIREMENT OF LT. JOHN DEGNETTO, 8-A-2, RESOLUTION 10-_: RETIREMENT OF SGT. ROBERT AGNOR, AND 8-A-3, RESOLUTION 10-_: RETIREMENT OF CPL. DAVID KERR, BE MOVED TO ITEM 2.

Mr. Clifton read the resolutions which were unanimously endorsed by Council.

(RESOLUTION 10-G: Retirement of Lt. John DeGhetto)
(RESOLUTION 10-H: Retirement of Sgt. Robert Agnor)
(RESOLUTION 10-I: Retirement of Cpl. David Kerr)

3. 1. ITEMS NOT ON PUBLISHED AGENDA

08:39 A. Public

Amy Roe, a Newark resident, commented on the budget workshop scheduled for 4/12/10. She asked that the workshop agenda be posted on the City's website, that the meeting be held in the Council Chamber, be audio recorded, and that minutes be prepared from the meeting.

4. 1-B. UNIVERSITY

1. Administration

10:31

Mr. Armitage returned after a long absence but had nothing to report.

5. 1-B-2. STUDENT BODY REPRESENTATIVE

10:47

Dina Tews had nothing to report but looked forward to attending future meetings.

6. 1-C. COUNCIL MEMBERS

11:32

Mr. Clifton – said the City hosted the Joint Sunset Committee’s public hearing for the Newark Housing Authority; thanked the Police Department for a service call at the Post House on Main Street which he felt was very well handled.

7. Mr. Markham – hoped some beneficial recommendations came out of the Joint Sunset Committee meeting; encouraged residents to complete their census forms; reported good feedback on the Curtis Paper Mill meeting held 3/4.

8. Mr. Temko –one of the concepts for the Paper Mill included a dog and skate park which he most often heard were missing from the City; was pleased the Joint Sunset Committee hearing was held in the City so the public could attend; recognized 250 teams who participated in the Odyssey of the Mind competition held in Newark; regarding Ms. Roe’s comments about the workshop, he agreed the meeting should be held in the Council Chamber and wanted to discuss the format for public involvement at the 3/22 Council meeting; asked Mr. Sonnenberg to explain how the \$350,000 budget gap was closed – Mr. Sonnenberg reported this was accomplished by the new Sunday parking charges, increased parking enforcement, delaying several capital projects and some vacancies in staff positions.

9. Mr. Pomeroy – researched renewable energy as a product of the budget discussion and the Solar City report from the Center of Energy and Environmental Policy at UD. As a provider of electric service, he thought the City should be more forward thinking about the issue of sending money outside for green energy. He noted there were grants available to private entities which provided a large portion of the capital expenses for solar and other renewable systems for public entities. Research was done by the University which the City could tap into to see if there was any value in engaging in its own solar power pilot program. He asked Council to consider engaging in a series of investigatory meetings to see if there were any compatible areas for addressing green energy in the City.

Mr. Clifton agreed staff should look into the options and report back to Council.

Mr. Temko believed there was a lot of public interest in this area and once staff feedback was received, he thought the staff report should be publicly presented.

10. Mr. Tuttle – issued a reminder about Green Wednesdays as a great service to aid in storm clean up; Mr. Tuttle thought the 4/12 budget workshop meeting should be held in the Council Chamber to allow public access and that tables should be arranged on the floor to enhance discussion. He thought there should be some form of notes covering the discussion. Ms. Fogg said in the past there was a one page summary of workshop meetings. She explained there might be difficulty in the quality of audio recording with Council seated on the floor. Mr. Tuttle believed public comment (if invited) should be limited as the workshop was intended to be a meeting of Council rather than a public hearing.

11. **Mr. Athey** – thanked Mr. Clifton for getting the Sunset Committee to meet in Newark instead of Dover; a constituent commented on the lack of visual displays at the public hearing for Candlewood Suites, and Mr. Lopata agreed to insure that future applicants for rezonings and major subdivisions have visuals set up in the Council Chamber prior to Council meetings; regarding a decision for an earlier start time (7:00 pm vs. 7:30 pm) for Council meetings, it was agreed this would be discussed at the 3/22 meeting.

12. **Mr. Funk** – was surprised to read in the Traffic Committee report that the City hired an engineer to study crosswalks and yields in front of the Deer Park since it was a state road. Mr. Sonnenberg said Council discussed having more systematic processes regarding issues that came before the Traffic Committee and part of that effort was to obtain professional assistance from a consulting engineer.

13. **2. APPROVAL OF CONSENT AGENDA**

42:34

- A. Approval of Regular Council Meeting Minutes – February 22, 2010
- B. Reappointment of Katherine Sheedy, Ajay Prasad, & Carol Riggs to the Conservation Advisory Commission – 3-Year Terms to Expire March, 2013
- C. Receipt of Planning Commission Minutes – February 2, 2010
- D. Cancellation of Regular Council Meeting – April 12, 2010 – (Council Workshop re Budget to be Held April 12, 2010 at 7:00 pm)
- E. Pension Plan Performance Report – 4th Quarter 2009
- F. Receipt of Alderman’s Report dated March 1, 2010
- G. **Resolution 10-_:** Final Approval of the Development Known as Briarcreek, Acceptance of Streets and Public Open Space, Incorporating the Streets and Open Space onto the Official Map of the City, and Release of the Surety Bond

(RESOLUTION 10-J)

Ms. Fogg read the Consent Agenda in its entirety.

MOTION BY MR. ATHEY, SECONDED BY MR. CLIFTON: THAT THE CONSENT AGENDA BE APPROVED AS SUBMITTED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

14. **3. ITEMS NOT FINISHED AT PREVIOUS MEETING** – None

15. **4. FINANCIAL STATEMENT**

44:17

Mr. McFarland introduced the Financial Report for January 2010. With only one month into the year, it was difficult to detect any trends in the actual results compared to budget projections. He pointed out that the financial statements were reformatted for 2010. Primarily, this would result in financial reports more directly comparable to the budget format and would allow the focus on particular funds rather than viewing the City as a whole. Mr. McFarland said a good bit of attention would be given to the General Fund which was the accounting entity that housed general City services such as public safety, refuse collection and Parks and Recreation. The fund also housed the general municipal revenues – property taxes, fees for services, etc. The Enterprise Funds which were the three utility funds and the Parking Fund would be segregated. Thus, when financial issues cropped up through the year, it would be readily apparent where those issues resided within the family of accounting funds managed by the City.

The general Financial Report would be split into the Governmental Fund, which included the General Fund itself, the Capital Projects Funds and numerous smaller funds such as the CDBG Fund and the Debt Service Fund. Most variances would be in the General Fund. The Capital Projects Fund did not have much activity in it until year end, and the other funds tended to zero out by year end.

January results on a consolidated basis were about \$1 million below budget. Of that amount, \$600,000 resulted from operating expenses that were over budget. Mr. McFarland said this was typical in the first months of the year as various departments made annual payments for maintenance of equipment, contractual commitments or replenished inventories, and he did not expect the overage to be an ongoing trend.

The Governmental Funds on the revenue side were about \$270,000 under budget, primarily due to the timing and receipts of some grant funds.

The General Funds currently were about \$588,000 under budget. In the Enterprise Funds, expenses were about \$300,000 over budget for annual contractual payments, and the margins across all the funds were about \$180,000 below budget. There were no worrisome trends at this point, although Mr. McFarland said the electric rate would have to be closely watched to make sure the existing rates produced the budgeted margins. For the month of January, the cash balance was essentially unchanged at about \$12.5 million.

Mr. Funk questioned the January transfer taxes. Mr. McFarland explained the books were left open at year end for a month longer, and January transfer tax revenues of \$200,000 were pulled back into 2009. Annual transfer taxes of \$880,000 were recorded for 2009, but the external financials would be closer to \$1 million. Mr. Clifton asked the accounting and control benefit in doing it that way. Mr. McFarland said the City reported externally once a year in December. Internals were on a cash basis where externals picked up more accruals from the previous year. For example, cash might flow in January although it related to business activity that took place in the prior year, so for external reporting purposes, it was pulled back in (following Gasby financial reporting rules).

Mr. Markham clarified that the stormwater fee would be its own Enterprise Fund once it was implemented. He asked if the City's current bond rating affected the interest rate on the \$5 million in bonds from the reservoir and the water treatment plant. Mr. McFarland confirmed that last year's change in the bond rating did not impact the interest on that debt.

MOTION BY MR. CLIFTON, SECONDED BY MR. TEMKO: THAT THE JANUARY 2010 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

- 52:47** A. Recommendation to Waive the Bidding Requirements and Purchase Vehicles from State of Delaware Awarded Contract

Ms. Houck summarized her memo of 3/1/10 wherein it was recommended to waive the bidding process and authorize the City Manager to purchase ten City vehicles from State of Delaware awarded contracts. This was in accordance with the annual vehicle replacement review. Funds were available from the 2010 Capital Program, and the total cost of all replacement vehicles would be \$214,985.

Mr. Funk commented that there were no energy-efficient vehicles being purchased. Ms. Houck reported that in the past when she tried to negotiate contract pricing for the Prius, Toyota would not offer any discount pricing.

Mr. Athey referenced previous discussions about the variety of vehicles available from the state contract. Ms. Houck said there were not many options for the top three vehicles listed (Jeep Cherokee, Dodge Ram and Ford Pickup), and the Crown Victorias were chosen based on the types of vehicles available to accommodate all the equipment needed in a police vehicle. According to Ms. Houck, it had been reported that 2011 might be the last year for the Crown Victoria, although that fact had not been confirmed.

Mr. Clifton was not comfortable with waiving the bidding process and accepting the state contract as the best value. In the context of the budget, he thought it was time to look into other brands of vehicles and other sourcing streams where the vehicles could be competitively purchased. He also discussed cost-saving alternatives such as replacing engines and transmissions to extend the life of the vehicles.

Ms. Houck said she relied on recommendations from the maintenance staff in determining the vehicles to be replaced. When the maintenance department replaced engines and transmissions, those vehicles would be kept longer and put back into the yearly evaluation pool. She said it was the viewpoint of the Police Department that the Crown Victoria was the best car available at this point in time for law enforcement. Chief Tiernan echoed Ms. Houck's comments that the Crown Vic was most suitable for their needs. He said in the past they had tried refurbishing some cars, but this did not work out very well. In addition, purchasing different types of vehicles would necessitate new cages and new interior equipment, adding considerable cost to the price of the vehicles.

Mr. Tuttle asked when the state contract expired. Ms. Houck said Mall Chevrolet's deadline was 3/12. She added that the state contract normally came out in November, and in January she looked at vehicle purchases for the future year. In light of the City's current financial situation, she waited until March to make sure she purchased only the vehicles needed. At this point, timing was an issue based on the possibility that order deadlines could be moved up at any time. She also pointed out that the number of replacement vehicles had been reduced drastically since 2006 and felt the City could not afford to get any further behind. Mr. Tuttle agreed the timing could be problematic for obtaining other competitive bids, as March typically was the end of the line for state contracts.

Mr. Pomeroy did not understand why there were no other competitive bids for the contract outside of the state bidding process. Ms. Houck explained the state contract was open to bid but said police vehicles were not readily available at many dealerships. Further, she felt it would be difficult to find more competitive pricing elsewhere because of the bulk discount realized by the state.

Mr. Markham asked how many vehicles were pushed from last year to this year. Ms. Houck said there were four, and noted one vehicle was totaled. Of the police vehicles, all but #912 was in traffic or patrol and in constant use.

Mr. Athey felt the City should be assessing the appropriate cars to purchase in anticipation of the Crown Vic's discontinuation.

Mr. Clifton thought this was a matter of public process and public confidence and that it was Council's responsibility to safeguard the City's pocketbook. Further, he felt Council sent a message that staff needed to explore all available options to make an informed decision for the taxpayers.

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: TO WAIVE THE BIDDING PROCESS AND AUTHORIZE THE CITY MANAGER TO PURCHASE TEN VEHICLES FROM STATE OF DELAWARE AWARDED CONTRACTS IN THE TOTAL AMOUNT OF \$214,985.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

17. 6. ORDINANCES FOR SECOND READING & PUBLIC HEARING

1:22 A. **Bill 10-06** – An Ordinance Amending Chapter 11, Electricity, Code of the City of Newark, Delaware, By Increasing Green Energy Fees

Ms. Fogg read Bill 10-06 by title only.

MOTION BY MR. MARKHAM, SECONDED BY MR. TEMKO: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 10-06.

Mr. McFarland said the ordinance was suggested by Mr. Temko during the preparation of the 2010 Operating Budget. All electric customers were currently charged a green energy surcharge of \$.0178 cents per kilowatt hour. The proposed ordinance would double the surcharge to \$.0356 cents. The funds were used to finance the green energy grant program whereby residents of the City could apply for grant funds to install renewable energy technology. The rate change would almost double the available funds to about \$120,000 per year. The program was popular, and there were more approved grant applications than could be funded, with a backlog in the range of 18-24 months. There were other permissible uses of the monies collected by the surcharge such as conservation projects and general promotion of conservation awareness within the City.

Mr. Athey asked the average cost of the fee, and Mr. Temko said it was currently about \$3 per year per residential customer and \$22 per year for commercial customers and would double next year.

The Chair opened the discussion to the public.

Amy Roe, a Newark resident, asked if the City paid into the green energy fund. Mr. McFarland said the City did not. Ms. Roe believed if there was a possibility that the City would draw funds out of the green energy fund that they should be paying into it. She referenced the Delaware Energy plan which contained information on the fund and highlighted the program as a high priority for state policy making. She encouraged a larger increase in the City's funding amount and said other states and countries had a much higher contribution level which demonstrated their commitment to alternative energy.

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

Mr. Markham questioned if the City received any credit for the renewable energy credits when people installed solar in the City. Mr. McFarland said only the resident who installed the system received the credit. Mr. Markham asked the total cash amount of the backlog in the green energy fund which Mr. McFarland reported was \$252,000. Mr. Markham supported increasing the fee but felt the program should offer benefits that were accessible to more residents.

Mr. Clifton asked if there was an option in the program for funding other energy-saving improvements for the average home owner. According to Mr. McFarland, state regulations dictated the eligible renewable technologies for the grant program. However, it allowed municipalities who collected the funds to use them for conservation programs if they chose to do so. Mr. Pomeroy added as part of the 2010 budget, funding was allocated for energy efficiency programs

and an emergency fund. Mr. Clifton said he would support the increase since it was a small amount, although he felt it was another electric rate increase.

Mr. Pomeroy thought the funding should be more readily available to the entire community as most projects funded such as solar power were out of reach to many City residents.

Mr. Temko asked the status of the other funding set aside in the budget. Mr. McFarland said there had been discussions with Catholic Charities who administered both the energy conservation and the energy assistance funds, and he anticipated a viable proposal by June 1. Mr. Temko believed the Department of Health and Human Services would be willing to administer the City's program and would pass this information on to Mr. McFarland.

Question on the Motion was called.

MOTION PASSED: VOTE: 7 to 0.

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

(ORDINANCE 10-10)

18. 7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS

1:43

A. Request of EDDAN, LLC, for a Revision to the Approved Subdivision Agreement for the Development Known as Sutton Place, Located at 711 Barksdale Road, In Order to Modify the Deed Restriction that Provided for a Maximum Occupancy in Each Unit of One Family or a Maximum Occupancy of Two Unrelated Occupants. The Request is to Allow a Temporary (6/1/10 to 6/1/13)

MOTION BY MR. TUTTLE, SECONDED BY MR. TEMKO: THAT THE SUBDIVISION AGREEMENT BE AMENDED TO ALLOW A TEMPORARY (6/1/10 TO 6/1/13) MAXIMUM OCCUPANCY OF FOUR UNRELATED TENANTS IN SIX UNITS.

Dan Kanda, owner and builder of Sutton Place, requested Council to modify the development's subdivision agreement to allow a temporary three year maximum occupancy of four unrelated tenants in six units. He reported that sales remained at a standstill for 16 months in spite of offering customers free finished basements, upgraded appliances and \$30,000 in credits. He said he had no more money to invest in the project, and the banks he contacted would not further invest in the project in its current form. Renting to students would help him stay afloat and get the project moving forward again. His intent was to try to rent the units to more mature students, and he would accomplish this by moving two tenants from North Street Commons to Sutton Place. He felt this would keep the nuisance factor to a minimum.

Mr. Clifton noted other developers in the City were having similar issues and believed by modifying the deed restriction, there would be a number of similar requests to Council. He predicted if this was approved that Mr. Kandra would be back to Council because he would not be able to sell any units at the site.

While Mr. Pomeroy understood this was a difficult situation for Mr. Kandra, he heard a number of concerns about changing the complexion of the area with a different type of housing product. He believed constituents deserved consistency and continuity in decisions made by Council and felt agreeing to this change would set a bad precedent.

Mr. Markham struggled with the question of when it would be feasible for the City to consider how changes to an approved development would affect the

City's finances and its economic health. Mr. Pomeroy felt the City's decisions relating to revenue generation needed to be counter-balanced against the context of the long-term goals for the community.

The Chair opened the discussion to the public.

Bess McAneny, a Newark resident and owner of properties in the Barksdale Professional Center, said when this project was approved by Council, they were assured there would not be student rentals. From an investment viewpoint, she was concerned that student rentals raised unknown risk factors and felt they would bear the brunt of any related problems. She offered suggestions for improving the marketability of the property and encouraged Mr. Kandra to explore other options.

Tom Fairchild, an owner of a unit in Barksdale Professional Center, expressed his concerns about parking and student rentals and asked Council to deny the request.

Mr. Temko noted in Mr. Kandra's letter to the City Secretary he mentioned that, depending on economic conditions, he might want to ask for another three year extension at the end of the initial three-year period. Mr. Kandra said he was willing to forego that option at this time. When asked if he attempted any outreach to the neighbors before coming to Council about his ideas, Mr. Kandra said he did not.

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

Ms. Fogg stated that a letter was received from Linda Bankoski, a Barksdale Road resident, in opposition to the project.

Question on the Motion was called.

MOTION FAILED. VOTE: 0 to 7.

Aye – 0.

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

19. 8. ITEMS SUBMITTED FOR PUBLISHED AGENDA

A. Council Members:

1. Resolution 10-___: Retirement of Lt. John DeGhetto
2. Resolution 10-___: Retirement of Sgt. Robert Agnor
3. Resolution 10-___: Retirement of Cpl. David Kerr

(See Item # 2)

20. 8-A-4. DISCUSSION – TRANSFER TAX PROPOSAL RE: BUDGET PLANNING

2:26

Mr. Pomeroy noted that the City's cash position remained a constant challenge and asked Council members to review his memo and be prepared to discuss it at their April workshop.

21. 8-B. OTHERS

1. Presentation by COMCAST re Impact of Digital Changes to Newark Residents

2:20

Kevin Broadhurst, Senior Director of Government Affairs at Comcast, reported they would be offering additional, more advanced services with a digital upgrade including more HD channels and faster Internet speeds. The transition would allow Comcast to remain competitive and offer more products to their customers.

The upgrade would require customers to obtain digital boxes prior to the end of March to continue receiving current channels. Each customer may obtain three boxes at no extra charge, and additional boxes would be \$1.99 per box per month. Boxes will be shipped to customers who call 1-800-COMCAST or picked up at the Penn Mart Shopping Plaza Customer Service Center. The boxes come with a self-install kit or can be installed for a fee by Comcast.

- 22. 9. SPECIAL DEPARTMENTAL REPORTS**
 - A. Special Reports from Manager & Staff – None
- 23. Meeting adjourned at 9:57 p.m.**

Patricia M. Fogg, CMC
City Secretary

/av