CITY OF NEWARK
DELAWARE

COUNCIL MEETING MINUTES

May 10, 2010

Those present at 7:00 pm:

Presiding:	Mayor Vance A. Funk, III District 1, Paul J. Pomeroy District 3, Doug Tuttle District 4, David J. Athey District 5, Ezra J. Temko District 6, A. Stuart Markham
Absent:	District 2, Jerry Clifton
Staff Members:	City Manager Kyle Sonnenberg City Secretary Patricia Fogg City Solicitor Roger Akin Assistant to the City Manager Carol Houck Assistant to the City Manager Charles Zusag Finance Director Dennis McFarland Planning & Development Director Roy Lopata Water & Wastewater Director Roy Simonson

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

1. **1. ITEMS NOT ON PUBLISHED AGENDA**

A. Public - There were no comments forthcoming.

2. **1-B. UNIVERSITY**

1. Administration

Mr. Armitage will provide Council with a summary of upcoming construction projects in the near future.

3. **1-B-2. STUDENT BODY REPRESENTATIVE**

There were no comments forthcoming.

4. **1-C. COUNCIL MEMBERS**

00:52

Mr. Temko – issued a reminder that the Christina School District referendum would be held on 5/25; requested Ms. Fogg to add the City's Resident Survey to a Council agenda in May or June.

5. **Mr. Athey** – attended the White Clay State Park Creek Fest recognizing the tenth anniversary of the Wild & Scenic Program; reported Newark received recognition as a bicycle-friendly City; was pleased that a trial recycling program would be implemented downtown; congratulated Mr. Pomeroy for excellent work at the Greater Newark Network event.

6. **Mr. Tuttle** – announced WILMAPCO will hold a public workshop in the Council Chamber on 5/19 to solicit public input on transportation needs and opportunities in the City.

7. **Mr. Markham** – announced the fourth annual "U Don't Need It" program on 5/22 through 6/5 and the City's Memorial Day Parade on 5/16.

8. **Mr. Pomeroy** – thanked those who attended the Greater Newark Network event; requested adding the PPCA issue to a future Council agenda.

9. **2. APPROVAL OF CONSENT AGENDA**

7:01

A. Approval of Regular Council Meeting Minutes – April 26, 2010
B. Receipt of Planning Commission Minutes – April 6, 2010
C. Receipt of Alderman's Report – April 21, 2010
D. ***First Reading* – Bill 10-12** – An Ordinance Amending Chapter 32, Zoning, Code of the City of Newark, Delaware, By Establishing a New Center Village Overlay (NCV) Zoning District ***– 2nd Reading June 14, 2010***
E. Setting Date & Place for Display of Assessment Rolls & Appeals Day for 2010-2011 Real Estate Taxes
F. Recommendation from Community Development/Revenue Sharing Committee re Target Funding for 2011 Revenue Sharing Program
G. Receipt of Pension Plan Performance Report – 1st Quarter

Ms. Fogg read the Consent Agenda in its entirety.

Mr. Temko requested that Item 2-F, Recommendation from CD/RS Committee re Target Funding for 2011 Revenue Sharing Program, be removed from the Consent Agenda.

MOTION BY MR. MARKHAM, SECONDED BY MR. POMEROY: THAT THE CONSENT AGENDA BE APPROVED AS AMENDED.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

10. **2-F. RECOMMENDATION FROM COMMUNITY DEVELOPMENT/ REVENUE SHARING COMMITTEE RE TARGET FUNDING FOR 2011 REVENUE SHARING PROGRAM**

8:40

Mr. Temko commented there were numerous discussions by Council regarding whether the funding amount should be adjusted with the National Consumer Price Index by a 2.1% increase. He thought an increase was necessary given the current economy and the financial situation of the non-profit organizations who worked for the welfare of the community. Mr. Tuttle noted a 2.1% increase would change the funding level to $61,310. Mr. Markham felt it would be difficult to single out this fund for an increase since funding had been held and cut in many other areas. Although he believed all Council members would like to see a funding increase, Mr. Pomeroy preferred to hold the amount to $60,050. Mr. Athey concurred and added that sooner or later Council would have to start laying the ground work for saying no to funding increases. Mr. Markham said if the budget situation improved, Council could consider increasing the funding level. Mr. Tuttle hoped the extra funding could be found prior to the 2011 budget discussion but understood the reservations expressed by Council.

AMENDMENT BY MR. TEMKO, SECONDED BY MR. TUTTLE: THAT THE TARGETED FUNDING LEVEL FOR THE 2011 REVENUE SHARING PROGRAM BE INCREASED TO $61,310.

AMENDMENT FAILED. VOTE: 3 to 3.

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

MOTION BY MR. ATHEY, SECONDED BY MR. MARKHAM: THAT THE TARGETED FUNDING LEVEL FOR THE 2011 REVENUE SHARING PROGRAM BE APPROVED AT $60,050.

MOTION PASSED. VOTE: 5 to 1.

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

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

12. **4. FINANCIAL STATEMENT** – None

13. **5. RECOMMENDATIONS ON CONTRACTS & BIDS**

A. Recommendation Regarding the Disposition of Department of Energy, Energy Efficiency & Conservation Block Grant (EECBG) Stimulus Funding

16:24

Ms. Houck reported that the City was awarded Energy Efficiency & Conservation Block Grant stimulus funding totaling $147,800. Quotes were obtained and options evaluated for energy efficient lighting and window retrofits for the Municipal Building. Eight vendors provided written quotes for the necessary components of the lighting retrofit. The material cost for the lighting will be $14,351, and Electric Department personnel will install the lighting retrofits and occupancy sensors on a straight-time basis.

Funds will also be utilized for low-E double pane energy efficient replacement windows for the Municipal Building at a total replacement cost of $65,591. Three commercial window companies submitted quotes.

The two expenditures totaled $107,400 of the $147,800 stimulus funding. With the $40,000 balance, the purchase of LED street lights will be explored.

It was recommended that Council authorize use of the EECBG funds as detailed in Ms. Houck's memo dated 4/30/10.

Mr. Tuttle was asked by a constituent to relay concerns regarding the University's experience in converting to motion sensors in private offices. Problems were experienced with lights shutting off in offices where people spend a considerable amount of stationary time. Mr. Sonnenberg said this issue had been discussed with the Electric Department, and mounting sensors in different locations would avoid problems.

In response to a question from Mr. Markham regarding LED street lighting, Ms. Houck said installation was now possible because of the Federal Government funding. Mr. Markham was disappointed there were no heating and cooling projects scheduled for the Municipal building and recommended new thermostats and zoning. Although funding was not available, Ms. Houck said she was exploring other options along those lines.

MOTION BY MR. POMEROY, SECONDED BY MR. TEMKO: THAT THE ENERGY EFFICIENCY & CONSERVATION BLOCK GRANT STIMULUS FUNDING BE USED AS FOLLOWS.

- FUND THE PURCHASE OF MATERIALS AND INSTALLATION COST REIMBURSEMENT FOR THE MUNICIPAL BUILDING LIGHTING RETROFIT PROJECT TOTALING $14,351.69 FOR MATERIALS AND AN ESTIMATE OF $27,520 FOR CITY LABOR FOR INSTALLATION.

- ENTER INTO AN AGREEMENT WITH AEROSEAL CONTRACTING CORPORATION FOR THE PURCHASE AND INSTALLATION OF ENERGY EFFICIENT WINDOW REPLACEMENTS AT THE TOTAL COST OF $65,591.46.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

14. 6. ORDINANCES FOR SECOND READING & PUBLIC HEARING

A. Bill 10-07 – An Ordinance Amending Chapter 25, Sewers, Code of the City of Newark, Delaware, General Requirements, With Regard to Owner and City Responsibilities

22:20

Ms. Fogg read Bill 10-07 by title only.

MOTION BY MR. TUTTLE, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 10-07.

Mr. Simonson explained the Code did not work well with current practice in the industry, specifically related to the City's maintenance of the sewer lateral within the right-of-way where there was no clean out. Without that clean out, Mr. Simonson said the City was unable to achieve maintenance of the lateral as written in the Code. Further, the current language was silent on whose responsibility it was to install the clean out. He believed changes were needed in the Code to clarify responsibility, removing language that based decisions on where the roots entered the lateral.

If there was no clean out in the lateral within the roadway, Mr. Simonson said the property owner could determine whether to treat the roots themselves with readily available products or install a clean out at their expense at which point the City would then take over the responsibility for the roots. However, in the event that the lateral on the property needed to be replaced, the homeowner was required to install a clean out.

Mr. Markham asked Mr. Akin if the revised ordinance clarified, rather than changed, the rules. Mr. Akin said rules were being adopted where there were none, and the revision gave clarity as to responsibility.

Mr. Athey verified that the homeowner was responsible to maintain trees in the right of way. A general discussion ensued to clarify the impact of this change under different scenarios.

The Chair opened the discussion to the public.

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

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

(ORDINANCE 10-13)

15. 7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS
43:28

A. Request from Chipotle Grill for the Property at 136 East Main Street, to Reduce the Approved Parking Waiver Fee

MOTION BY MR. MARKHAM, SECONDED BY MR. TUTTLE: THAT THE PARKING WAIVER FEE BE REDUCED AS REQUESTED.

Lisa Drake and Andrew Daly represented Chipotle Mexican Grill and requested a 50% reduction in the parking waiver fee. Following the approval of the Special Use Permit and Parking Waiver last summer, Chipotle decided not to proceed with the project because of the exorbitant parking waiver fee. The organization found it very unusual to be charged such a large fee in an urban environment and had never paid a similar fee in any other location.

Mr. Funk was willing to support this request because the building was vacant for more than five years, and he felt there should be special efforts to fill it. Further, he said the building was very large for Main Street and difficult to rent. If the request was granted by Council, he agreed with Mr. Lopata's suggestion that the parking waiver not run with the land.

Ms. Drake said they were working in conjunction with Ms. Danneman to get this deal done and asked if it would be agreeable to have the waiver run with the building so long as future tenancy needs did not exceed Chipotle's. The base term of their lease was ten years with two five year options, and they hoped to be in Newark for the long term.

Mr. Lopata advised it was Council's purview to make a determination regarding the parking waiver fee.

Mr. Pomeroy believed an important discussion Council needed to have was the type of parking waivers expected from commercial tenants and the impediments they caused for a business wanting to come to Main Street. As a possible solution to Chipotle's request, he suggested an initial payment of 50% and then spreading the remainder of the parking waiver fee over a period of 3-5 years. However, he felt strongly about the waiver not running with the land.

The Chair opened the discussion to the public.

Gene Danneman, a Newark resident and owner of the property, asked that Council support the motion. The building was vacant for over five years, and she said the property had been shown a minimum of 100-150 times during that time. She reported there had been a number of prospective tenants, but they backed out when they learned of the parking variance. Ms. Danneman stated that she had no discussions with the City about a land swap. This was something she had a hard time considering because the property was one of the few in the City that had not been remodeled, rebuilt, etc., and she felt swapping land would take away their future options.

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

Mr. Athey said the precedent aspect stood out clearly in his mind and to some degree he thought of it as a credibility issue. He felt that Council was frequently put in a position of changing their collective minds, and he was concerned about unintended consequences.

Mr. Funk said if a downtown property was vacant five years, he thought serious consideration should be given to reducing the parking waiver fee since not only did it negatively affect the City's image, but the property taxes had not been reassessed and the City was not selling utilities.

Following a brief conversation with Mr. Lopata, Ms. Drake suggested paying 50% of the parking waiver fee now and spreading out the remaining 50% over ten years of their tenancy. Mr. Pomeroy felt this was a good compromise and saved the City the precedent.

Mr. Tuttle pointed out in that case, the parking waiver clearly would run with the land because it would be paid 100%.

Mr. Athey was concerned there was still a precedent issue. Mr. Tuttle felt it was an economic development incentive. Mr. Lopata added that exceptions were made in the past. Mr. Pomeroy saw it as working out a payment plan, not altering the fee.

AMENDMENT BY MR. POMEROY, SECONDED BY MR. MARKHAM: THAT CHIPOTLE GRILL WILL PAY 50% OF THE PARKING WAIVER FEE DUE UPON ISSUANCE OF A BUILDING PERMIT AND THE REMAINING BALANCE TO BE PAID ANNUALLY OVER A TEN-YEAR PERIOD.

AMENDMENT PASSED. VOTE: 5 to 1.

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

Question on the Motion as Amended was called.

MOTION AS AMENDED PASSED. VOTE: 5 to 1.

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

16. 8. ITEMS SUBMITTED FOR PUBLISHED AGENDA

A. Council Members:

1. Discussion re Charging for Collection of Commercial Refuse from Various Non-Profit Institutions

1:15

Mr. Sonnenberg explained there was a brief discussion at the last Council meeting about the City's solid waste collection and services for churches, non-profits and schools. He provided more information regarding services the City received from some of these entities as well as existing financial support the City provided to them.

In terms of the non-profits, Mr. Sonnenberg stated that since Aetna and the Senior Center provided services that could typically be provided by a municipality, his recommendation was that the City amend the text of the existing ordinance to continue providing them with free solid waste collection. In the case of Emmaus House and the Century Club, these were not uses typically provided by municipalities, and he recommended charging them for refuse service. Concerning churches, he believed the City should stop providing free collection based on information from Mr. Akin about findings in a Rhode Island court case. In the case of the school district, Mr. Sonnenberg reported the City derived benefits for free weekend use and for the right of first refusal for usage of the school facilities. Without that option, there could be a serious impact on the City's ability to provide many of its recreation programs. His recommendation was to amend the text of the existing ordinance to continue providing free collection while requiring any future cost increases for tipping fees to be paid by the schools.

Mr. Pomeroy thought the arrangement for Aetna and the schools was reasonable and fair. His concern was about the churches where fees could

range anywhere from $360 to $1400. He wanted to reach out and give them other collection options to lessen the impact of the fees.

Mr. Athey asked if there was a way to provide a break on the fee to the various churches from whom the City received some type of benefit.

Mr. Sonnenberg thought it would be cleaner and more straightforward to impose the fee to churches across the board and for the City to rent their facilities on an as-needed basis for events such as elections.

Mr. Akin referenced the District Court case in New England which he said was very much on point. The city chose to provide free snow removal and trash collection services to all houses of worship, and a claim was made that the city was thereby favoring religion at the expense of non-religious institutions and organizations. The court agreed under the First Amendment they were providing a valuable service for organizations solely based on the fact that they were religious, and the court ruled that was inappropriate.

Mr. Temko suggested allowing non-profits and churches to add two carts or less to be part of the City's free collection. Mr. Markham suggested the addition of recycling to reduce costs.

Mr. Sonnenberg reminded Council of the discussion about charging the trash collection fee which was based on the apartment owners' interest that they be treated like everybody else.

Mr. Funk liked the idea of offering two trash and two recycling carts free. A fee would be charged for dumpsters since this was where the City was losing money. Mr. Pomeroy agreed that was a fair compromise.

The Chair opened the discussion to the public.

Tom Fruehstorfer, a Newark resident and CAC Chair, thought recycling should be required if the City provided free trash pick.

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

Mr. Funk thought there should be a fee for people who did not recycle.

In looking at the situation with the schools, Mr. Markham stated the first come, first served premium cost the City about $18,000 per year and asked if that was a good deal. Mr. Sonnenberg felt it was very important for the Parks Department to be able to carry on their programs since the City did not have the facilities and there was a lot of demand for them from the community.

17. 8-B-1. PRESENTATION BY PATRICK McCULLAR, DEMEC, RE GOVERNOR'S ENERGY BILL PROPOSAL AND THE ADDITION OF A SECOND UNIT AT THE BEASLEY GENERATING PLANT

1:39

Mr. McCullar reviewed a PowerPoint presentation about DEMEC's expansion project at the Beasley Power Station in Smyrna. Delaware Municipal Electric Corporation was the wholesale generation and power supply entity that supplied electric power to the nine municipal electric utilities within the State of Delaware. Their primary mission was to deliver power reliably at the lowest possible cost.

Mr. McCullar outlined some of the steps DEMEC took in the last few years to respond to the legislative and the public policy issues of renewable energy as part of the power supply.

The estimated project cost for the second unit was $34 million. Two options for technology were under consideration: the GE LM6000 Combustion Turbine and the Rolls Royce Trent Combustion Turbine. The current participants in unit #1 and the anticipated participants in unit #2 were the seven municipalities. Based on 2009 peak demand, Newark would have an ownership ratio share of 35.05%.

The debt service cost of the new unit to supply energy to DEMEC's members would be equivalent to $2.50 per megawatt hour. The anticipated capacity cost decrease would be about $3.00. Anticipated total savings in power supply would be about $.50 per megawatt, or $550,000 annually with Newark's share totaling $193,000.

DEMEC was trying to solve the growing demand as transmission capability on the Delmarva Peninsula was inadequate. The lack of local generation caused a capacity surcharge of about 10% to be imposed on all Delaware rate payers. Installation of the additional peaking generation enabled a larger expansion of renewable energy, and the goal was to maintain reliability of electricity for the expansion of economic development in the state and to have a capacity cost in Delaware that was equal to surrounding states.

Participating members will be asked to approve the Power Purchase Agreements with DEMEC to support the project. Once the participating members have signed the agreements, the financing commitment will be made, and project construction will start. The target operating date was June 1, 2012.

Mr. Funk asked how many days Beasley was used last year. Mr. McCullar reported it was used approximately 2,000 hours. He explained it had to be economical to use Beasley, and the unit would not be run to generate electricity when it was cheaper to buy it from other sources. Only when it became very expensive to buy electricity would the generator be turned on to cap the cost of electricity.

Mr. McCullar also detailed a proposal from the Governor's office about revisions to the state's Renewable Portfolio Standard legislation. Governor Markell proposed to stimulate the state economy by encouraging the development of a green job sector through long-term contracts for renewable energy and domestic production of renewable energy. State administration wanted comments from DEMEC members because some of the proposals would impact communities. The proposal would increase the standard from 20% of the power supply coming from renewable sources by 2019 and extending it out to 30% by 2029 and would award a 10% credit for fulfilling the RPS requirements if 50% or more of the components of the renewable energy project were manufactured within the state.

Mr. McCullar detailed some of the changes that impacted DEMEC members directly which would take away local control over programs from the municipalities. Mr. McCullar said in discussing this with various members, they did not like the provision.

The proposal still preserved municipal control of the green energy grant money. There were also specific provisions about solar, and the administration wanted to discourage solar from going large by encouraging small scale solar installer businesses and setting the solar project size. Mr. Pomeroy stated the City was researching its own small scale experiment with solar and was concerned that such a project could be negatively impacted by the legislation.

Council members agreed they would like to retain local control over the City's decisions. Mr. Markham added another reason for local control was so the City had a competitive advantage against Delmarva Power. Mr. McCullar said DEMEC was continuing discussions with the administration and would present

input from the City. DEMEC's position was that retaining local control for the municipalities was absolutely essential.

Mr. Markham asked why the City was not able to get as good deal on electric rates as the state did recently. Mr. McCullar said DEMEC's Board of Directors looked first for stability in prices, and the lack of volatility in electric rates gave a reliable price to customers. Thus, they buy multiple years ahead to assure rate stability. The trade off was not capturing the absolute lowest deals that come along periodically. Mr. Sonnenberg said DEMEC's policy eliminated rate spikes.

Mr. McCullar will keep the City informed as the legislation progresses.

18. <u>9. SPECIAL DEPARTMENTAL REPORTS</u>

A. Special Reports from Manager & Staff:

1. Approval of Unicity Bus Service for State Fiscal Year 2010-2011

2:17

Mr. Lopata introduced the annual renewal of the Unicity contract with the University and the state. The budgeted amount was $139,200, the same amount allocated last year, and he anticipated being able to continue providing Unicity service with no rate increase. As part of the current transportation study currently underway, the City continued to look at cost savings including mergers and realignments of the trolley, DART, UD transit and Unicity to promote additional efficiencies in the future.

MOTION BY MR. ATHEY, SECONDED BY MR. MARKHAM: TO APPROVE THE UNICITY BUS SERVICE AGREEMENT FOR STATE FISCAL YEAR 2010-2011.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

19. <u>9-B. REQUEST FOR EXECUTIVE SESSION RE LITIGATION</u>

MOTION BY MR. ATHEY, SECONDED BY MR. TUTTLE: THAT COUNCIL ENTER INTO EXECUTIVE SESSION WITHOUT THE PRESS TO DISCUSS LITIGATION.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

Council entered into Executive Session at 9:14 and returned at 9:21 p.m. Mr. Funk announced a disability award for an employee.

MOTION BY MR. ATHEY, SECONDED BY MR. MARKHAM: THAT COUNCIL APPROVE THE PERMANENT PARTIAL IMPAIRMENT AWARD FOR AN EMPLOYEE IN THE WATER DEPARTMENT.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

20. Meeting adjourned at 9:21 p.m.

Patricia M. Fogg, CMC
City Secretary

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