

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

June 14, 2010

Those present at 7:00 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
Deputy City Secretary Alice Van Veen
Assistant to the City Manager Carol S. Houck
City Solicitor Roger A. Akin
Community Affairs Officer Dana Johnston
Planning & Development Director Roy H. Lopata
Finance Director Dennis McFarland
Code Enforcement Supervisor Steve Wilson

1. The meeting began with a moment of silent meditation and pledge to the flag. Mr. Funk asked those present to remember Ada Leigh Soles, prominent Delaware civic leader and legislator and mother-in-law of Councilman Paul Pomeroy, whose memorial service was held today.

2. Mr. Clifton read a proclamation for Mrs. Linda Burns, who was named Honorary Mayor for 30 years of service to the Newark Memorial Day Parade Committee. Mr. Funk presented the proclamation and thanked Mrs. Burns for her dedicated service.

MOTION BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT AGENDA ITEM 8-A-1, PRESENTATION AND DISCUSSION ON NEWARK'S SOLAR OPTIONS, BE MOVED TO FOLLOW COUNCIL MEMBER COMMENTS.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

3. 1. ITEMS NOT ON PUBLISHED AGENDA

A. Public

03:51

Ivan Nusic, a Newark resident, was disturbed that when he spoke at the 5/24/10 Council meeting, he was interrupted by the City Secretary and Mayor for exceeding his five minute time limit, although he was permitted to finish his comments. Mr. Nusic was further concerned this fact was not mentioned in the minutes from the meeting and thus felt the minutes were inaccurate. He planned to listen to the audio recordings from the meeting after which he would decide whether to take legal action against the City.

4. 1-B. UNIVERSITY

1. Administration

07:55

Mr. Armitage distributed a plan showing the two crosswalks on E. Delaware Avenue which the University and DelDOT planned to collapse into one

crosswalk. The University requested area legislators to help fund the project, and it was hoped the project would be completed by summer.

Another traffic project mentioned by Mr. Armitage involved the University's Webb Farm. For a number of years students crossed Rt. 72 to access the Webb Farm, and the concern was for safety along that busy portion of road. The Federal Highway Administration recently approved a new pedestrian-activated traffic signal to allow safer pedestrian crossing, and the University was working with the Department of Transportation to have the signal installed at that location.

5. 1-B-2. STUDENT BODY REPRESENTATIVE

There were no comments forthcoming.

6. 1-C. COUNCIL MEMBERS

10:16

Mr. Temko – reminded Council members the Resident Survey would be an agenda item at the 6/28 Council meeting; at a future Council meeting he wanted to discuss the scheduling of special meetings on the third Monday of the month for Council to review lengthier agenda items; appreciated Ms. Houck working to put together the conservation report update and asked for adequate time for Council to review the report before discussing it; raised the issue of the voluntary Green Energy Fund and, in particular, the energy source which he believed was controversial. Mr. McFarland noted updates on the program would be provided to Council in the near future; noted there would be a Committee looking at how to enhance Newark Nite with representatives from UD, the DNP and the City and suggested community members be included; commented that the City was unprepared for the follow up to Newark Nite and hoped there would be meaningful discussions in preparation for next year's event.

Mr. Clifton added he spoke with Chief Tiernan about Newark Nite. He said the group involved in fighting was asked three or four times to disperse. The shooting that happened later in the evening was still under investigation, but it was suspected that several gang members were involved. Mr. Clifton pointed out the NPD was short five officers, and he was infuriated that the two officers Council asked to have funded several years ago were not funded.

7. Mr. Pomeroy – since he would be leaving the meeting early, commented on Bill 10-12 (New Center Village Overlay Zone) which he applauded for its innovative approach to urban planning and good smart growth policy, and he liked the proactivity that went into exploring the initiative; thanked the City, members of Council and the community who took the time to attend the memorial service for his mother-in-law, Ada Leigh Soles, a former legislator who was highly respected for her contributions to the greater Newark community.

8. Mr. Athey – offered condolences to the Soles, Pomeroy and Armitage families for their recent losses; regarding the Newark Nite Committee, he believed public input was desirable in some manner; noted the sewer rate increase effective July 1 was not posted on the City's website – Mr. McFarland will check that it was on the website and noted comments were included on the bills starting the middle of May; thanked Chief Tiernan for speeding enforcement on South College Avenue at the bridge; recognized Charlie Emerson for a great job at the Kells Park ceremony recognizing the Hall Trail as a National Recreation Trail.

9. Mr. Clifton – expressed his condolences to the Soles family; commented that Linda Burns was the Memorial Day Parade Committee and thanked her for the selfless service she gave for 30 years; offered condolences to Rick Armitage on the loss of his mother; remarked on the passing of Ronnie Bramble, a great Newarker who served 22 years in the Newark Police Department and over 50 years with Aetna Hose Hook and Ladder and who chose to serve his country in

the Marine Corps in the Korean War instead of playing professional ball with the Philadelphia Phillies.

10. Mr. Tuttle – was pleased there would be follow up on Newark Nite; joined in expressing his condolences to Rick Armitage; recognized Ron Bramble whom he knew from his years on the UDPD; remarked that the ceremony honoring Ada Leigh Soles was moving, and it was a privilege and an honor to have known her.

11. Mr. Markham – regarding Newark Nite, he talked to the Chief who promised additional personnel would be on duty next year for the event; offered condolences to Rick Armitage and on the passing of Ada Leigh Soles who was a fine public servant; noted legislators Liane Sorenson and Terry Schooley assisted in trying to complete the sidewalks along Old Paper Mill Road which was supposed to start this week.

12. 8-A-1. PRESENTATION AND DISCUSSION ON NEWARK'S SOLAR OPTIONS

28:12

Mr. Pomeroy believed changes in the City's energy policy were inevitable; they would either be state mandated or demanded by the public. He was interested in trying to move the City forward in a manner that was fiscally prudent while considering whether solar power could provide long-term benefits beyond being a good source of renewable energy for the City. Thus he asked Dr. Byrne, an expert on issues related to solar, to provide options available to the City. Mr. Pomeroy felt it was prudent to explore this no-cost option to broaden the City's energy portfolio.

John Byrne, Director of the Center for Energy and Environmental Policy (CEEP) at the University of Delaware gave a power point presentation and distributed the final report on *Creating A Solar City*. Dr. Byrne said a number of factors would change the nation's energy system, and most were very economic. We were currently paying more from the national income for energy bills than we had in the last 25 years, and the likelihood that it would cost more was high. In looking at what the U.S. Energy Information Administration was forecasting as to pricing for natural gas, gasoline, heating oil and electricity, in the next ten years it was expected to see between a 50% and 150% increase in those prices because the better part of the last century was spent looking for the lowest cost options for these fuels, and what remained was expensive.

Dr. Byrne pointed out the launching of the Dover Sun Park on 6/15 which was a ten megawatt solar power plant being built in the City of Dover. The plant will provide enough electricity for 5,000 households on an annual basis on several acres of land and was an important model for the state. He reported the UD would make an announcement to produce a little less than one megawatt of power to provide energy to about 500 homes in the City. In addition, he believed Delaware Technical Community College would announce their plan to produce two megawatts powering about 1,000 households.

Dr. Byrne said there was a lot of interest in the new option of the Power Purchase Agreement. Under this option, solar power developers bid on solar projects, and if they provided a lower price than what the City currently charged, the City would then look into signing a purchase power agreement. The City of Dover was not spending one dollar of capital budget for Dover Sun Park. It was being financed privately, and they were receiving electricity at a cheaper rate than what they currently charged their customers. According to Dr. Byrne, there were long-term benefits to the City to proceed this way, and the option was immensely important to local economic development.

In order for the economics of solar to work out, the Federal government provided an investment tax credit given to the developer of 30% of the cost of the system. The tax credit caused an explosion of interest in solar. Mr. Pomeroy interjected that grants were distributed to the private sector company, not to the

municipality or public entity. Dr. Byrne added there was also a type of depreciation allowed to private developers where approximately 45% of the cost of the system would be paid for through Federal tax incentives, thereby resulting in a payback period of less than six years.

Mr. Funk remarked that his solar system had been up 23 months, and he received over \$2,000 in renewable energy credits. Dr. Byrne said Delaware was a renewable portfolio standards state which required the utilities to purchase a certain percentage of their electricity from renewable sources. If a customer generated electricity with a renewable source, the utility, in order to show compliance with the law, had to buy the credits in the marketplace.

Ms. Houck reported that she contacted the same company the University was working with to explore solar opportunities for the City. She provided them with approximately 14 locations, sites, buildings and open fields to look at for solar applications. Two areas that showed potential were McKee's Park and Old Paper Mill Park (the old Moore property across from the reservoir.) Once a proposal was received, Ms. Houck would share the information with Council.

Mr. Clifton asked if it would be advantageous for the City to have its own system in order to remove itself from market-based energy. Ms. Houck said the up-front costs would be very expensive to implement. Mr. McFarland added the City could not take advantage of the tax credits without a private partner. Mr. Pomeroy explained the incentives were in place for private entities to spur that industry, and the incentives were set to expire at the end of this calendar year, which was the reason for some degree of urgency. Dr. Byrne noted the advantage in having a private firm was that it took about 40% of the capital cost away from the citizens.

Mr. Temko asked what kind of costs the City would incur with a solar project. Ms. Houck said depending on what was ultimately decided, it was possible the City would not have to spend anything. The private solar developer would purchase, install and maintain the equipment, and there was usually a 20-year agreement. Mr. Temko asked if other solar options were being considered that would require City funding. Mr. McFarland said there was a proposal put on hold to directly purchase RECS at a cost of about \$220,000. Mr. McFarland said the proposal was for about a 1 megawatt solar facility which translated to about 4% of the City's overall sales.

Mr. Markham requested that Ms. Houck's report address financial liability for issues such as the solar developer going out of business or not completing the project, questions about ownership of the solar panels, etc. He also asked whether it was possible that the Federal credit would be even better next year. Dr. Byrne said the investment tax credit would continue for seven more years but the provision for taking the credit in the form of a grant would expire in December, and he did not think there were the votes needed to extend it in its current form. Regarding the PPA, the City should be allowed to take possession of the solar panels if it wished to do so and also could decline to do so – he said it was up to the negotiation to specify. In regard to a developer going bankrupt, because these was a revenue stream being paid on a regular basis, there were numerous companies with an appetite for this type of contract, so having the project completed would not be a problem. Mr. Markham was more concerned about limiting the City's financial liability since it would not be doing the capital outlay.

Ms. Houck said it was reasonable for Council to expect some additional information on this by the first meeting in July.

(Secretary's note: Mr. Pomeroy left the meeting at 7:58 p.m.)

13. 2. APPROVAL OF CONSENT AGENDA

1:02

- A. Approval of Regular Council Meeting Minutes – May 24, 2010
- B. Receipt of Alderman’s Report -- May 19 & June 3, 2010
- C. Appointment of Syl Woolford to the Newark Housing Authority

Mr. Clifton read the Consent Agenda in its entirety.

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

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

Nay – 0.

Absent – Pomeroy.

14. 3. ITEMS NOT FINISHED AT PREVIOUS MEETING: None

15. 4. FINANCIAL STATEMENT: Next Meeting

16. 5. RECOMMENDATIONS ON CONTRACTS & BIDS

- A. Recommendation to Purchase a Police Department Video Surveillance System from a Competitively Solicited Purchase Contract in Association with the U.S. Communities Technology Products and Equipment Contract (Tech Depot)

1:03

Ms. Houck detailed the recommendation for the purchase of a Police Department surveillance system from the U.S. Communities organization, a nationwide governmental purchasing cooperative participating organization where members gained access to competitively bid contracts. Newark was a member of the group since 2006 but had previously utilized it only for office supplies.

The system would be placed in seven locations as noted in Ms. Houck’s memo, and the Newark proposal totaled \$196,945. References were contacted and funds were available from two grants - the 2009 COPS Technology Grant and the 2009 Recovery Act Justice Assistance Grant, totaling \$200,420. It was recommended to award the contract to the Avrio Group at the total cost of \$196,945.

Mr. Markham asked the time frame on the purchase which Ms. Houck expected by late fall.

Mr. Athey remembered getting feedback from constituents regarding the “Big Brother”-type scenario, and thought there might be some negative reaction from the community. He believed the City had the right and obligation to monitor activity on public streets. He questioned maintenance and support following the first year of the contract, and Ms. Houck stated the City would have to provide the funding to continue using the cameras.

Mr. Clifton noted the University was installing cameras on their campus as well and asked if there would be visibility of each other’s cameras. Ms. Houck said yes, we were trying to work with the same company, and there was assurance of compatibility and that the City would be able to share views.

Mr. Clifton stressed the need for good, clear resolution to make the system worthwhile. Ms. Houck and Captain Williams were impressed with what they saw.

Mr. Tuttle was pleased the City was stepping up participation with the U.S. Communities and felt the City might want to look at them again for other technology and major purchases.

Mr. Temko asked Ms. Houck to comment on the choice of locations which she said were chosen by the Police Department.

MOTION BY MR. TUTTLE, SECONDED BY MR. MARKHAM: TO WAIVE THE REQUIRMENT TO SOLICIT A NEWARK SPECIFIC BID AND AUTHORIZE THE CITY MANAGER TO PURCHASE A SEVEN CAMERA WIRELESS SYSTEM AT THE U.S. COMMUNITIES COMPETITIVELY BID CONTRACT (AWARDED TO TECH DEPOT) PRICING AT THE TOTAL COST OF \$196,945 FOR PLACEMENT AT SEVEN LOCATIONS WITH VIDEO FEED TO THE POLICE DEPARTMENT.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

Nay – 0.

Absent – Pomeroy.

17. 6. ORDINANCES FOR SECOND READING & PUBLIC HEARING

1:10

A. Bill 10-09 - An Ordinance Amending and Combining Chapter 6, International Energy Code with Chapter 7, Building, Code of the City of Newark, Delaware, and Establishing a Newark LEED Based Energy Conservation Program

MOTION BY MR. CLIFTON, SECONDED BY MR. TEMKO: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 10-09.

Mr. Lopata explained the proposed LEED based Energy Conservation Program would amend the City's Building Code in a very significant way to enhance energy conservation construction. The LEED based Building Code program came about through discussions between Council, staff and CAC in 2007. At that time, Council authorized staff to do a series of steps in terms of energy conservation and development review in Newark. First, there was a plan to amend the site plan approval portion of the Zoning Code, the flexible neo-traditional zoning density bonus Code provision to include LEED energy conservation stipulations as a voluntary option for development in the City. That was done in February 2008 and was currently the law of Newark.

Second, it was agreed to experiment with LEED requirements for "to be constructed" new City buildings. Although none were planned in the near future, it was agreed to do that if and when the City builds a facility of any significant size.

Finally, Council directed the City to determine whether current Code requirements should be changed to enhance energy conservation and environmental sustainability.

There were a series of meetings held with staff, CAC members and the Code Enforcement Division of the City to develop a set of standards that would put minimum LEED regulations in the Building Code for new construction of small homes, residential buildings and larger industrial and commercial projects.

Under the LEED program, the developer would be required to meet a certain minimum standard to get points that result in certification. The City was not requiring that and not proposing that – they were talking about a substantial level below that but significantly beyond what was currently required in the Building Code. Builders would be required to enhance their energy conservation and the sustainability of their projects at all times through a required program.

Mr. Lopata felt these were significant measures and said most communities do not approach LEED regulation in this manner. He said Newark was pioneering here, and this was groundbreaking for the state and the region.

What was being proposed was a set of specifications. The developer would come to the City with a plan. They would match their plan vs. the new specifications, and if they met the minimum point requirement, the building permit would be issued. There were enough points in the system where the minimum number of points was 25. In both cases for large construction there were up to 29 points available, and in smaller construction 31 to 33, so there was some give in the system. Developers were being allowed to pick and choose from the point values assigned in the ordinance to do what they felt was most effective for their project.

Mr. Lopata recognized Steve Dentel and other members of the Conservation Advisory Commission for spending years on this project to get to this point as well as the efforts of Steve Wilson and Tim Poole from the Code Enforcement Department.

Mr. Athey noted under the category LEED for new construction, he saw a total of 29 possible points with 25 required. To him there was not a huge amount of flexibility, but he assumed that was well vetted. Mr. Lopata said it was decided to pick a minimum set of standards beyond what was in the Code. Mr. Athey assumed this made the City's requirements tougher than New Castle County's. Mr. Lopata agreed and added the proposal was not etched in stone, and staff was willing to continue working on this ordinance.

Mr. Markham presumed there was a lot of discussion and compromise to come up with this document. He noted it addressed only major subdivisions, developments with six or more units or buildings 20,000 square feet or larger. He would like to think about extending this to just about all the construction that comes into the City

Mr. Tuttle assumed the only thing this would not capture would be a vacant lot sold off and developed into a private house.

Mr. Lopata recommended a "testing out" period to see how this worked as it may need to go back to the drawing board and start all over again after a couple of years.

Mr. Temko asked what the process was after the plan was given to the City and before issuing a Certificate of Occupancy. Mr. Wilson said the engineer of record would follow-up and inspect before, during and after construction and would sign that it met LEED certification. Mr. Temko asked what the current numbers were for a LEED-certified project. Mr. Wilson said the minimum certification for construction was 40 points and for single family homes or residential it was 45-49 to get minimum certification.

Mr. Temko asked for an explanation of special circumstances or practical difficulties. Mr. Lopata said that would be a Board of Building Appeals process as there would be cases where the staff may disagree with the engineer.

Mr. Temko asked when Council could expect a report back on progress and whether changes were needed. Mr. Lopata said that depended on how much construction was going on and assured him staff would keep Council informed.

Mr. Athey asked Mr. Wilson why he only picked certain categories from the LEED list. Mr. Wilson said there were other options not mentioned here and there was flexibility inside each category, and it was up to the developer and the design engineer to find what worked for them. This was an outline of the minimum.

The Chair opened the discussion to the public.

Ralph Olivier, a practicing architect in the State of Delaware and resident of Landenberg, PA, provided a list of reasons for Council to vote the ordinance down. The ordinance amended the 2006 International Energy Conservation Code. He said the State already adopted the 2009 IECC, so this ordinance was not in compliance with state statutes. Further, the ordinance referenced and used language that was copyrighted by the U.S. Green Building Council. The USGBC copyright statement declared the LEED rating system was not to be modified (which this ordinance did) and not to reproduce, display or distribute the LEED rating system in any way for public or commercial use. He said because this was an ordinance, the City would have to make the LEED documentation available to the public and asked if the City had permission from the USGBC to use their copyrighted documents. Neither the LEED standard, nor the ordinance nor the Building Code defined what a major renovation was and that was one of the provisions in the ordinance. Further, the bill did not define the process of documentation, submission, evaluation and approval. The bill stated that projects shall be reviewed and evaluated and points rewarded as established through the building permit process. He asked if the City's Code Enforcement Department had the proper training and staffing to handle the evaluation.

Mr. Olivier reported the USGBC review was based on a proprietary online database completed by the design professionals. He was not sure what the current USGBC position was on utilizing their templates without registering a project. Also, the USGBC was focusing more on measurement and verification. Many of the credit requirements could not be completed or evaluated until the project was complete and the field paperwork was submitted. If a project was evaluated at the building permit stage, this may not give an accurate representation of the final built project. He asked what would happen if at the end of the construction, the building did not earn all the required points. Would the CO be withheld? The bill indicated the Planning & Development Department's approved equivalent standards may be used in lieu of LEED. He asked if the City had the resources to evaluate the equivalency of other standards. The bill cited specific credits that must be earned by the project. The point of having a broad-based rating system which LEED was, a system with 110 available points, was that the system was flexible and adaptable to the specific needs of an individual project. This ordinance had only 29 potential points to be earned, with 25 required. Many projects could not meet this requirement because they do not include the practices required to earn these points. Mr. Olivier felt because many projects would not meet point requirements, the Board of Appeals would be flooded with appeals for waivers of the requirements, or the Code Enforcement Department would have to waive requirements when they were not applicable.

Mr. Olivier pointed out the LEED evaluation system was designed for much larger buildings than those typically built in Newark, except for those built by the University. Placing LEED requirements on relatively small buildings was an onerous expense and would place a burden on small developers in Newark while rewarding larger out-of-town developers who had the financial muscles to endure these requirements. He asked if it was Council's intent to burden local developers in favor of others. There was also much debate about whether buildings that met LEED standards were more energy efficient and felt the LEED standard was not a guarantee that buildings would be energy efficient.

Mr. Olivier said he attended a seminar about the future of energy codes given by the Pacific Northwest National Laboratory, the branch of the Department of Energy leading the effort to make buildings more energy efficient. They were doing the research, creating computer models and creating software used by architects and engineers to calculate energy usage of buildings. At the seminar they pointed out that LEED, ASHRAE standards and the International Energy Code did not agree with each other and sometimes worked at cross purposes.

There has been collaboration for the last several years on new standards and codes that address the inadequacies and inconsistencies of existing codes and standards. The goal was for these codes and standards to converge to agreement by 2014. The International Code Council was on track to issue the new Energy Conservation Code in 2012 and was also introducing an International Green Construction Code that included land use, water resources and material conservation (much like the City's proposed ordinance) with an intent to have the code issued by 2012.

Mr. Olivier concluded by saying all the City had to do to create more energy efficient buildings in Newark was to keep adopting the International Codes as they were issued, thereby creating more energy efficient buildings than required by the proposed ordinance.

Mr. Clifton asked if the International Building Code made a building more energy efficient, how would that differ from LEED. Mr. Olivier stated LEED had more complicated reporting requirements in order to justify their certificates which a building code would not do. Thus he thought the City would be better adopting a code written as a code that was easily interpreted by design professionals and the Code Enforcement Department.

Joe Charma, a Newark resident and Chair of the DNP Design Review Committee, said the Design Review Committee reviewed the proposed ordinance and was not in favor of a mandatory requirement. They felt it should be voluntary. He supported the premise of the LEED ordinance, and the Committee supported the principles trying to be established for energy conservation. He agreed the International Building Code would seamlessly mesh all the other international codes. He thought Mr. Lopata made a good point when he said most cities had not made the LEED certification mandatory, and felt cost was the reason. Gold certification on a fairly large building could cost \$100,000 for the paperwork alone. While he supported sustainable design, he felt there was a better way to accomplish it. He felt mandated costs were not a great idea in this economy and suggested carefully thinking about increasing fees or creating situations that have unintended consequences. He thought a better approach was to create incentives for builders and developers, such as bonus densities, reduced license fees, deferred taxes and tradeoffs on stormwater fees. He also felt the IBC was a better way to go.

Mr. Funk asked Mr. Akin to comment on the copyright issue. Mr. Akin had not seen the document from which the material was drawn and was not certain that it was protected status.

Mr. Lopata said he contacted representatives from the U.S. Green Building Council District, and they had not raised any issues. However, he agreed the copyright matter should be double checked.

Mr. Temko asked if the City was requiring certification since the question had been raised about the expense of paperwork and getting certified. Mr. Lopata said there was no requirement for certification. Regarding the 2009 BOCA ICC Code to be considered by Council in a few months, the ordinance was structured so the changes would slip right into that Code. In order to get one of the checklist points, Mr. Temko asked if it had to go to the U.S. Green Building Council or the City. Mr. Lopata said that would require getting somebody with certification, and there would be a cost involved.

Kevin Heitzenroder, a Newark resident and local developer, thought the intent of the ordinance made a lot of sense. His concern, however, was mandating the implementation process, particularly in light of the impact of added costs. Thus, he preferred a voluntary option. He believed the new codes for higher energy standards issued regularly would make buildings much more energy efficient.

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

Regarding the convergence of the codes he mentioned, Mr. Athey asked Mr. Olivier if the proposed ordinance was above that standard or about equal. Mr. Olivier's understanding from the seminar was that the new codes would surpass the LEED requirements. He said this ordinance was enacting last year's standards and this year's standards were already moving beyond that. If the ordinance was enacted, the City would just be doing what would be done in a few years anyway.

Tom Fruehstorfer, CAC Chair, said the CAC started with a proposal years ago. Mr. Lopata took that proposal and adjusted it to work for the City, and the CAC now endorsed the ordinance.

In regard to added costs, Mr. Temko said everything the U.S. Green Building Council put out several years ago (independent of the cost of getting certified) showed a payback in energy conservation savings of 5-8 years.

Mr. Fruehstorfer heard resistance from developers about paying more for building to stronger standards. If the standards did not make them do a better job, they would obviously not take the extra step and would only meet the existing standards. His thought was those developers were not the ones who would stay and pay the utility bills over time.

Mr. Olivier pointed out the statement was made that the engineer would be asked to certify building compliance after completion. He did not know any liability insurance that would cover that risk and did not know how that could work.

Mr. Athey saw three issues – the copyright issue, the training aspect with Code Enforcement staff reviewing documents from a LEED certified professional, and the allegation of outdated Code references. Mr. Lopata agreed written permission was required for the copyright issue. The City staff felt confident they would be able to review the materials. The Code issue was not a problem since the language was structured to easily roll into the 2009 edition which had to be adopted anyway.

Mr. Athey asked if there were any other issues to be addressed before making a tabling motion.

Mr. Clifton noted there has been no participation in the current voluntary program, and he saw this mandatory certification process as doing the right thing. The tenants who lived there in perpetuity were the ones who needed the City to do this. The bottom line was the product costs X to build and the end net from that product remained consistent, so he did not see the requirement as any more burdensome.

Mr. Temko said one thing that might be looked at was not necessarily lowering the minimum from 25 but, for example, in the LEED for new construction, if landscaping would be an issue in the downtown or if there were other specific issues that would preclude this from being successful, perhaps several more potential points could be added.

Mr. Tuttle asked Mr. Lopata the timing for the adoption of the 2009 Code and if this was tabled, would it make sense to reconsider it at the same time as the 2009 Code. Mr. Lopata was not sure that was a good idea based on the size of the 2009 Code.

Mr. Markham questioned if a new ordinance would be required if points and the formula process were being modified. Mr. Lopata said the key item was the copyright issue. What was heard tonight would be integrated into the

proposal, and Mr. Akin would have to opine whether to go back to a First Reading. Mr. Markham suggested listening to the audio again because Mr. Olivier presented a lot of different points, and he wanted to make sure the legal points were addressed.

MOTION BY MR. ATHEY, SECONDED BY MR. CLIFTON: TO TABLE BILL 10-09.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

Nay – 0.

Absent – Pomeroy.

18. 6-B. 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

2:06

MOTION BY MR. MARKHAM, SECONDED BY MR. CLIFTON: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 10-12.

Mr. Lopata explained the main components of the proposed ordinance. Under Amendment 1, a new district would be established that would be labeled NCV. Amendment 2 listed the permitted uses, which were essentially residential up to four stories in height and limited first floor office and home occupancy use. It was largely a residential district with types of ancillary, commercial uses that would fit in a residential urban environment.

One of the key parts of the proposal was grafting the New Center Village district onto the City's site plan approval process, the flexible, neo-traditional zoning ordinance allowing and requiring additional design criteria for redevelopment. For development on vacant sites, this would be used in the New Center Village area, the downtown area between New Street and the back of the City parking areas, and between Choate and Center Streets. In addition to the site plan approval requirements, the ordinance included specific building design and site design criteria that were crafted for this area.

Most important, according to Mr. Lopata, this proposal was an overlay zone. An applicant who wanted to use the requirements or take advantage of the new development procedures here chose to do so voluntarily. If someone did not want to use it, everything at their property reverted back to the current code. The zoning map would not change at all. The underlying zone will be kept, only using these criteria if a land owner wished to add additional units to the site. Any renovation, reconstruction or other changes (but not adding units), would continue to come under the current zonings which vary.

If the model worked, Mr. Lopata felt it could be used in other sections of the City. Although this was planned exclusively for New Center Village, certain aspects of it could be used for some other older sections of the community. Mr. Lopata said there were people in the development community who were anxious for the ordinance to pass because they saw great potential in the locations discussed.

Mr. Athey thought one of the best ways to keep communities such as NCV looking their best was to have owners living at their property. An example he gave was a duplex where the owner lived on one side and rented the other. Mr. Lopata said in Newark's experience restricting rentals to two occupants worked well in communities such as Abbotsford and Country Place.

Mr. Athey asked the time frame or suggested approach for incorporating this plan in other areas. Mr. Lopata said that depended on what happened with this location – if nothing happened in this area for a year or two, there would be no point in going forward. He did not want to rush into this until he was sure that it worked.

The Chair opened the discussion to the public.

David Robertson, a Newark resident, asked if this would preclude something like an auxiliary suite arrangement. Mr. Lopata said it would not preclude that, provided it was limited to two tenants.

Gary Hayman, a Newark resident, was confused about the ordinance and asked what the future impact could be on Cleveland Avenue. Mr. Lopata explained this was an overlay zone intended for a specific area -- from New Street, south of the railroad, to north of the City, parking lot 4, and between Center and Choate Streets. Mr. Temko explained a historic overlay district was being explored on West Main Street to be used in special circumstances. For example, Terry Manor was a neighborhood where there was concern about transforming an owner-occupied neighborhood into student rentals. If the NCV overlay was successful, he would be interested in looking at whether it could be applied to preserve neighborhoods close to the downtown area. For use in other locations, Mr. Athey explained this was a lengthy process that would have to go back to the table for public hearings.

Joe Charma, a Newark resident, spoke in support of the proposed zoning overlay. He saw it as a very exciting opportunity for the City that was badly needed to encourage owner occupancy in this area. He thought it would encourage quality development and design opportunities, would create livable, walkable communities, and the process would create a diversified, planned urban development to overcome the limitations of the existing small lots governed by the current zone. He said the plan would attract young families, grad students, professionals, mature families downsizing from large, single-family homes, and retirees all having one thing in common – their desire to live in the attractive downtown urban environment Newark offered.

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

Mr. Markham commented the goal was to make this area something other than student rentals. He supported the plan for Center Street which was in his district and was pleased it was expanded to the property the City recently obtained from the 108 E. Main Street project.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

Nay – 0.

Absent – Pomeroy.

(ORDINANCE NO. 10-16)

19. 7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS
None.

20. 8. ITEMS SUBMITTED FOR PUBLISHED AGENDA

A. Council Members:

- 1. Presentation and Discussion on Newark’s Solar Options**

(See Item #12)

21. **9. SPECIAL DEPARTMENTAL REPORTS**
A. Special Reports from Manager & Staff – None

22. **9-B. REQUEST FOR EXECUTIVE SESSION RE PERSONNEL**

2:25

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: TO ENTER INTO EXECUTIVE SESSION WITHOUT THE PRESS TO DISCUSS PERSONNEL.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

Nay – 0.

Absent – Pomeroy.

Council entered into Executive Session at 9:21 p.m. and returned to the table at 9:58 p.m. Mr. Funk said no further action was required.

23. **Meeting adjourned at 10:01 p.m.**

Patricia M. Fogg, CMC
City Secretary

/av