CITY OF NEWARK
DELAWARE

COUNCIL MEETING MINUTES

August 23, 2010

Those present at 7:00 pm:

Presiding:	Mayor Vance A. Funk, III District 2, Jerry Clifton District 1, Paul J. Pomeroy 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 Water & Wastewater Director Roy Simonson

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

2. PUBLIC HEARING FOR 2011-2015 CAPITAL IMPROVEMENT PROGRAM

1:40

MOTION BY MR. ATHEY, SECONDED BY MR. TUTTLE: THAT THE 2011-2015 CAPITAL IMPROVEMENT PROGRAM BE APPROVED AS PRESENTED.

The 2011-2015 Capital Improvement Program was presented by Messrs. Sonnenberg and McFarland. A five-year financial forecast was reviewed to provide a context and make the determination whether the City could afford the planned Capital Improvements. The program consisted of the following expenditures:

Electric Fund	$ 6,212,600
Water Fund	$ 7,171,450
Sewer Fund	$ 2,645,000
Public Works (General) Fund	$14,604,700
Public Works (Maint.) Fund	$ 331,000
Police Department	$ 1,106,500
Parks & Recreation Department	$ 3,401,600
Parking Fund	$ 966,280
Other Departments	$ 582,774
TOTAL	$37,021,904

Mr. Clifton questioned the projected increase in electric usage of 1.5%. According to Mr. McFarland, this included growth and new businesses coming to the City, and while residents were making conservation efforts, electric consumption was going up. There was no sign of decline in consumption on a per customer basis.

On page 3, under Funding Sources, Grants/Other, Mr. Athey questioned the drop of $1 million in the comparison between 2010 and 2011. Mr. McFarland said this was associated with the Christina Creek Sewer Crossing grant funding.

Mr. Athey noted $4.9 million was required in the 2011 budget to fund the 2011 component of the CIP, an 18% increase since 2010 and asked if the CIP could be funded without a property tax increase. Mr. McFarland was unable to make a projection since the 2011 Operating Budget was not yet completed.

Regarding the Financial Forecast and Cash Flow on page 7 which stated "due to significant investments in the water utility, rate increases will be more substantial there, averaging 4 – 5%", Mr. Athey questioned whether the water rate increase would be 4 – 5% annually or a one-time increase. Mr. McFarland said the forecast suggested the need for rate adjustments in the water utility over the next few years annually in the 4 to 5% range. He added that the City's water rate study later this year would help determine rates over a 5-year period.

Mr. Pomeroy said McFarland had mentioned in his assumptions that part of the assumption was a certain increase in revenue related to the electric utility, and the base assumption was no increase in property tax rates. He asked if the statement on page 8 of the narrative, "To achieve these goals, the financial plan would have to include initiatives to raise an additional $10 million over and above what's in the forecast or about $2 million annually" meant to achieve the goals of strengthening the credit rating and to be able to provide yet unidentified but desirable projects, the City would need to do this property tax-related issue, or in order to meet the assumptions here that the City needed to have this level of increased revenue in order to meet goals. Mr. McFarland said it was the former. The forecast was to end 2015 with about $19 million in cash, although the more desirable level of cash reserves was in the $25-$30 million range. Further, there were certain projects not yet identified that the City might want to do over the five-year period that were currently precluded from the program. Mr. McFarland said there was not much in the program that was considered a wish list. Mr. Pomeroy said that was the clarification he wanted as it seemed the majority of the investment in the 2011 CIP included items that needed to be taken care of.

Mr. Temko noted the ADA curb program cost of $120,000 showed funding of $60,000 through Community Development Block Grant funds. If the Revenue Sharing/Community Development Committee came back with less funding, he asked if there would be an amendment to the CIP or if less money would be spent on the ramps. Mr. Sonnenberg said Council would have to make that decision when they adopted the budget and noted the City was committed to make the investment over a period of time to comply with Federal regulations.

Mr. Markham commented that several items included in the CIP had been postponed for a number of years. He hoped the document management system requested for the City Secretary's office to convert files to electronic documents would not be pushed back another year. Regarding the IT upgrade for the Council Chamber, he suggested with the project's delay, the installation of wireless should be considered at the time of the upgrade. He was pleased funding was earmarked for the Curtis Paper Mill which might have to be adjusted based on future solar recommendations. In regard to replacing police cars, he recommended purchasing more fuel efficient vehicles.

Mr. Tuttle referenced the grant funding built into this year's budget of $1 million associated with the Christina Creek Crossing with $250,000 to be contributed from City funds. He asked if the project would be completed this year, and Mr. Simonson advised it would be finished next year.

Regarding the 43% reduction in CIP expenditures for the Water fund between 2011 and 2010 (page 3), Mr. Athey asked if there would be a need to raise water rates in 2011. Mr. McFarland reported the reason for the water program reduction was the new water main replacement in conjunction with the Elkton Road project. He added there would be some flexibility if the water study recommended an increase and Council was not comfortable with that increase. He did not think the City was in such shape that an increase would be required to maintain the integrity of the Water fund.

In light of no tax increase by the City for seven years and since the capital budget relied on volatile utilities for its funding stream, Mr. Clifton pointed out that it seemed the City was committed to having rate increases over the coming years to help support the budget. Mr. Funk added taxes were deductible, and it did not make sense to keep increasing utilities.

The Chair opened the discussion to the public.

Catherine Ciferni, a Newark resident, was concerned about whether funding for the ADA ramps would come from CDBG grant funding for the next 20 years, the time during which the City had committed to completing the project. She did not endorse the long-term plan of using CDBG funding for something she understood had not been done adequately the first time. Mr. Sonnenberg explained the CIP process projected only five years of funding from the CDRS program. He said a number of locations needed ramps and an even larger number of ramps were not in compliance with current standards because the Federal government changed the standards after the ramps had been installed. Mr. Pomeroy added the City was obligated to complete the work and that the CDBG Committee determined usage for their funds on an annual basis. If the Committee no longer approved or allocated the monies for the ramps, Council would need to establish another source for the funding. Ms. Ciferni also commented that downtown sidewalks may not be ADA compliant because of the numerous sandwich boards creating narrow walkways that can be difficult to navigate.

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

Mr. Clifton emphasized if the City did not raise revenue rates, another revenue stream was needed. He thought the key was to watch the City's spending on an ongoing basis. While he understood the CIP was a bare bones program, he believed most people were currently living bare bones. He was convinced the City could do better by getting its revenue stream decoupled from utilities, and thus he could not support the CIP as presented.

Mr. Pomeroy asked if Mr. Clifton's recommendation was that cuts be made now in the proposed capital budget. Mr. Clifton replied that rather than waiting until November to figure out where to make cuts or where to raise fees, he felt the issue should be approached now while it was fresh in everybody's mind.

Mr. Athey questioned if the proposed water utility rate increases averaging 4 or 5% would be used solely to fund water system improvements rather than general City revenues. Mr. McFarland said the answer required some analysis by going back and looking at the actual returns earned by the Water utility over the last few years. He noted staff tried to make the argument to Council that the City was under-invested in the water and sewer utilities for a number of years, and without making those investments, costs would increase in the long run.

Mr. Athey pointed out that Council was maintaining the policies passed about a year and a half ago that the utilities in each of the funds would stand alone. For example, the water rate would be raised to pay for water system improvements to insure a viable system in future years.

Question on the Motion was called.

MOTION PASSED. VOTE: 6 TO 1.

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

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

A. Public

51:53

Mary Jo Frohlich, a resident of the Village of Twin Lakes, expressed concern that residents of the over-55 community were promised amenities such as a walking trail and swimming pool which Lang Development had not yet provided. It was disappointing that the life style she had bought into had not materialized, and she wanted the City to be aware of the situation.

4. Julie Murphy, a resident of the Village of Twin Lakes, conveyed similar concerns. She said while the community had a clubhouse, it had not been turned over to the residents. She was also unclear about the status of their condo association. Mr. Lopata met with Ms. Murphy and had since spoken to Chris Locke of Lang Development to discuss the dissatisfaction of the residents and the City with the unresolved issues. Mr. Lopata said he would continue working to make sure the residents got what they were promised and clarify unresolved issues such as the swimming pool.

5. **1-B. UNIVERSITY**

1. Administration – There were no comments forthcoming.

6. **1-B-2. STUDENT BODY REPRESENTATIVE**

There were no comments forthcoming.

7. **1-C. COUNCIL MEMBERS**

1:02

Mr. Temko

- Noted the announcement had been issued about the Citizen's Academy, and resident recruitment had begun.

- Mentioned a letter he received which was copied to Council from the State Senate regarding his communication about a life partner registry. Mr. Temko spoke to several senators to garner their reactions to a City registry. He said they did not see the registry as a state issue and thought it might be good for the Newark community. He then discussed this matter with Senator DeLuca who shared the feelings of his colleagues. Mr. Temko asked if he could have something to that effect in writing which resulted in the letter. He reminded Council a previously-scheduled meeting to discuss drafting an ordinance was tabled until he investigated the response of State Senators to the issue. Mr. Temko said he might bring the life partner registry issue back to Council in October.

- Referenced a notice about the "Let's Move" program, a nationwide initiative to promote healthy choices among American children. Mr. Markham suggested asking Parks & Recreation to look at the program since they were already involved with children's athletics. Mr. Pomeroy agreed and in addition suggested a partnership with some of the local elementary schools.

8. **Mr. Pomeroy**

- Gave kudos to the NPD for their work on a recent string of high-profile incidents.

- Commended the efforts of everyone involved in responding to the significant house fire in Barksdale Estates.

- Gave recognition to Dr. Danburg's contributions to the City and was saddened by his passing.

9. Mr. Athey

- Appreciated Mr. Simonson's efforts on the water main issue in his neighborhood.

- Discussed the branding presentation for the City, and Mr. Funk explained the consultants would come back with a final recommendation to the DNP.

10. Mr. Tuttle

- Commended Mr. Lopata's intervention with the Twin Lakes residents.

- Noted the University was trying to change the driving behavior of students by encouraging them to move their car only once a day and then walk or use transit to get around. If successful, there will be even more pedestrian traffic crossing the streets than in the past, so he encouraged drivers to exercise caution.

11. 2. APPROVAL OF CONSENT AGENDA

1:11

A. Approval of Regular Council Meeting Minutes – August 9, 2010
B. Receipt of Alderman's Report – August 19, 2010
C. Receipt of Planning Commission Minutes – August 3, 2010
D. Appointment of Kay Snelling, 146 E. Main Street, to Downtown Newark Partnership – term to expire July 27, 2011
E. Receipt of Pension Plan Performance Report – Second Quarter 2010

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.

12. 3. ITEMS NOT FINISHED AT PREVIOUS MEETING – None

13. 4. FINANCIAL STATEMENT

1:12

Mr. McFarland presented the Financial Report for the period ended July 2010. The results for all the funds on a consolidated basis through July were $140,000 ahead of budget. This represented a significant improvement from the prior month when the shortfall was over $800,000 and was the first time this year the City was ahead of budget.

The operating deficit in the Governmental Funds was $6.4 million, or about $255,000 less than budgeted. Transfer taxes were now over budget on a year-to-date basis. Parking meter revenues were $141,000 over budget. The positive variances offset negative results for transfer station revenues and the timing of grant revenues. Operating expenses were about $100,000 over budget. These negative variances were in Finance where contract maintenance agreements were paid earlier in the year and in the Legislative Department from increased legal fees. The year-end outlook for the General Fund was fairly close to budget, although transfer taxes remained an issue.

The Enterprise Funds were $115,000 below budget. The shortfall was due to lower electric margins of about $500,000 year to date. Sales volumes for the year were 2.2% over budget due to very warm weather in June and July. Thus far, August was about 22% warmer than normal, so the electric fund was expected to continue to rebound. Water fund margins were a little over budget,

and the sewer margins were tracking budget for the first time in 2010 as the timing difference with the County turned around. Operating expenses were fairly close to budget.

The cash balance remained at about $11 million, a decrease from the beginning of the year of about $1.5 million. Part of that amount was based on significantly larger working capital requirements in the summer months. The DEMEC bill was paid before the receipt of electric revenues for the same month, so that depressed month-end cash balances.

Overall, it appeared the City was on track for the year both on the revenue and the expense side.

Mr. Markham asked Mr. McFarland what the total cash balance would be at year end. Mr. McFarland said in the original 2010 budget, the target was in the area of $14 million.

MOTION BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT THE JULY 2010 FINANCIAL REPORT BE RECEIVED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

14. **5. RECOMMENDATIONS ON CONTRACTS & BIDS** – None

15. **6. ORDINANCES FOR SECOND READING & PUBLIC HEARING**
1:17

A. Bill 10-15 – An Ordinance Amending Chapter 20, Motor Vehicles and Traffic, Code of the City of Newark, Delaware, By Bringing the Code Into Conformity with the State Code Regarding the Prohibition of the Use of an Electronic Communication Device While Driving a Motor Vehicle

Ms. Fogg read Bill 10-15 by title only.

MOTION BY MR. MARKHAM, SECONDED BY MR. POMEROY: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 10-15.

Mr. Funk advised the bill was identical to state legislation and would become effective on January 2, 2011.

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

Mr. Tuttle said he was compelled to vote against the bill. While he understood the City was doing this to mirror state statute so the Alderman's Court would have jurisdiction, he believed the real issue was inattentive driving.

Mr. Clifton said when this first came to Council he brought up that exact issue. He asked if there was a difference in the fine structure for inattentive driving. Mr. Funk explained the difference was in the points. Messrs. Clifton and Funk agreed this really was about inattentive driving and that it should be codified under that part of the Code.

Mr. Pomeroy asked Mr. Akin for clarification on the impact if Council was to vote the bill down. Mr. Akin advised that motor vehicle operators who committed a violation in the City would be covered under State Code, and Newark prosecutions would be heard in the state courts, resulting in revenue lost

by the City and police officers spending time traveling out of the City to other courts.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 1.

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

(ORDINANCE NO. 10–18)

16. 7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS
1:21

A. Request of Harold G. Prettyman for the Minor Subdivision of 73/79 East Cleveland Avenue in Order to Replace Three Existing Rental Units with Five Townhouse Apartment Dwellings in a Single Building Group **(Resolution and Agreement Presented)**

MOTION BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT THE MINOR SUBDIVISION BE APPROVED AS PRESENTED.

Hal Prettyman, owner of 73 & 79 East Cleveland Avenue gave a PowerPoint presentation of the .573 acre site which was zoned RM. The property was located across from Herman's Meat Market and the Bookateria, and the buildings he planned to replace were a single-unit dwelling and a top and bottom duplex. The proposed subdivision would have parking to the rear. All applicable Zoning Code specifications for a one-acre parcel would be met except for the lot area and the minimum open area for which he received a variance from the Board of Adjustment.

Mr. Prettyman believed the project was unique based on its high-end building material, its architecture and the fact that it maximized the use of the building and not the lot. Another unique fact was that he did not apply for rezoning but proposed the development of the parcels with their present RM zoning. He said this had been advocated in the past and recommended by the Planning Commission to Council, and RM zoning with minimum half acre lot parcels could result in more open space and less density. The project conformed to the land use recommendations in the Comprehensive Plan, and he believed it fit the development pattern the City was striving to achieve. Concerning the 5/20/10 Planning & Development report, he revised the subdivision plan in accordance with staff comments prior to City Council's review.

Mr. Funk asked how the project would look from the side view. Mr. Prettyman said the stone work would continue around both sides.

Mr. Markham questioned whether the setback would be the same as the other properties on Cleveland Avenue. Mr. Prettyman said the setback would be in line with other properties and that the front requirement was 28'.

Mr. Markham noted Planning Commissioner Begleiter was concerned about adequate soundproofing because of the close proximity of the project to the railroad. Mr. Prettyman said the issue was not the building material being used. Rather, Mr. Begleiter wanted Council to communicate with CSX that they consider installing a sound barrier wall behind the residential properties in the event of future changes with the railroad in that area. Mr. Markham wanted to be sure there was discussion about some standard of insulation to fix the sound attenuation. Messrs. Prettyman and Lopata confirmed this was a requirement in the subdivision agreement.

Mr. Markham hoped the project was being designed to discourage partying with large gatherings. Mr. Prettyman confirmed there were only small decks off the back at ground level similar to a project on Kershaw Street.

Mr. Markham noted there were significantly more parking spaces than required and pointed out the loss of green space in the back yard. Mr. Prettyman understood parking was an issue on Cleveland Avenue and considered that fact in his planning. Mr. Markham asked if Mr. Prettyman would be willing to give up parking in front of the project to help eliminate parking along Cleveland Avenue, thereby improving the traffic flow. Mr. Prettyman responded that he would be hesitant to give up his parking which he had previously done in front of other properties on Cleveland Avenue. Mr. Lopata pointed out as Cleveland Avenue evolved, the City may be in a position to eliminate more street parking, and this project would facilitate that opportunity.

Mr. Temko appreciated the project being designed with a quality material other than red brick which he thought added some diversity. He questioned whether Council should consider discussing the sound barrier wall with CSX. Mr. Lopata pointed out that the City required sound attenuation with this project and cited the difficulty and inability of the City in having any influence on the railroad.

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: 7 to 0.

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

(RESOLUTION NO. 10-U)

17. **8. ITEMS SUBMITTED FOR PUBLISHED AGENDA**

A. Council Members: None

18. **9. SPECIAL DEPARTMENTAL REPORTS**

A. Special Reports from Manager & Staff:

1:39

1. Authorization to Enter into Agreements with New Cingular (AT&T) for the Installation of Telecommunications Equipment on Water Tower Located on New London Road

MOTION BY MR. TEMKO, SECONDED BY MR. CLIFTON: THAT THE CITY MANAGER BE AUTHORIZED TO ENTER INTO LEASE AGREEMENTS WITH NEW CINGULAR (AT&T) FOR THE INSTALLATION OF TELECOMMUNICATIONS EQUIPMENT ON THE NEW LONDON ROAD WATER TOWER.

Mr. Simonson presented the lease agreement and photo representation for the proposed communications equipment on the New London Road water tower. It was similar to a previous agreement, as the agreement came in within the same one-year time frame of the last one, had the same lease payment and the same general conditions as it related to the City's operations. The contract was closely reviewed by Mr. Akin.

Mr. Markham asked if Clearwire and AT&T were co-existing. Mr. Simonson said this New Cingular (AT&T) lease was the first one on New London Road. He had a T-Mobile request to locate on New London as well and another

T-Mobile request that would co-locate on the West Main location. Clearwire was currently on the Windy Hills and West Main water towers.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

19. Meeting adjourned at 8:38 p.m.

Patricia M. Fogg, CMC
City Secretary

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