

**CITY OF NEWARK  
DELAWARE**

**COUNCIL MEETING MINUTES**

**December 13, 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  
City Secretary Patricia Fogg  
City Solicitor Roger Akin  
Assistant to the City Manager Carol Houck  
Finance Director Dennis McFarland  
Planning & Development Director Roy Lopata  
Police Chief Paul Tiernan

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

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

A. Public – There were no comments forthcoming.

3. **1-B. UNIVERSITY**

1. Administration

**00:22**

In response to a previous question from Mr. Clifton, Mr. Armitage provided a follow-up report on how the University provided housing for students who remain on campus during break time. He reported that some dorms were now open for the entire academic year from September through May, and these were reserved for students who required special accommodations.

4. **1-B-2. STUDENT BODY REPRESENTATIVE**

There were no comments forthcoming.

5. **1-C. COUNCIL MEMBERS**

**01:25**

**Mr. Pomeroy**

- Thanked those who attended the Greater Newark Network event where the discussion centered on education.
- Congratulated City staff who worked on Winterfest which was a wonderful celebration for families.
- Thanked Mr. Akin for his energy and commitment during his tenure with the City.

6. **Mr. Temko**

- Thanked Mr. Akin for his assistance.

- Noted that the Traffic Calming Committee continued to consider recommendations for Country Club Drive where residents were concerned about traffic and speeding issues.

- Thanked Roberta Gealt of the Center for Drug & Alcohol Studies for attending the meeting to present their alcohol study survey results.

**7. Mr. Clifton**

- Thanked Mr. Pomeroy for hosting the Greater Newark Network where he was surprised by some of the opinions expressed.

- Thanked Chief Tiernan and the Parking Enforcement Officers for helping with some parking issues at Fountainview.

- Thanked Mr. Sonnenberg for assisting in having the graffiti removed from the Marrows Road bridge.

- Thanked Mr. Akin for his help during his time on Council.

**8. Mr. Athey**

- Congratulated Mr. Pomeroy on the Greater Newark Network event and hoped he would continue working with the organization in the future.

- Gave kudos to the Parks and Recreation Department for Winterfest and the Thanksgiving Day Breakfast.

- Had the pleasure of working with Mr. Akin in Newark and in New Castle and would miss his counsel and humor.

- Reported that Linda Stapleford was retiring as river coordinator for the White Clay Wild and Scenic program.

**9. Mr. Markham**

- Found the Greater Newark Network event to be an interesting and eye opening experience.

- Enjoyed the Winterfest activities.

- Wished good luck to Mr. Akin.

- Received a letter from Delmarva Power about the installation of smart meters and suggested the City might want to consider installing the meters at locations requiring more customer service time where they might pay for themselves.

**10. Mr. Tuttle**

- Commended Mr. Akin for his service to the City and for providing assistance and training to the Delaware local government community.

- Thought it was good to see progress being made on the Elkton Road reconstruction project, although it would be a long time before reaching the end result.

- Congratulated the University of Delaware football team for their accomplishments.

11. **Mr. Funk**

- Thought Winterfest was a nice event which got better every year and congratulated the Parks and Recreation Department for their efforts.
- Said Mr. Akin would be missed, and it would be hard to replace him.

12. **2. APPROVAL OF CONSENT AGENDA**

- 13:40**
- A. Approval of Regular Council Meeting Minutes – November 22, 2010
  - B. Receipt of Alderman’s Report –December 8, 2010
  - C. Re-appointment of Gloria Hickey, 94 Kells Avenue, to Board of Election – three year term to expire January 2014
  - D. Re-appointment of Alice Liechty, 101 Meriden Drive, to Board of Election – three year term to expire January 2014
  - E. Re-appointment of Fred Dingle, 205 Hullihen Drive, John Brook, 22 Bridlebrook Lane, Heather Dunigan (WILMAPCO), Sally Miller, 203 Hullihen Drive, Lt. George Stanko (NPD), Dennis McFarland (Finance); and appointment of William Fitzpatrick, University of Delaware, Joseph McCoy, 102 E. Main Street (Catherine Rooneys), Krista Milkovics, 26 Haines Street, and Ruth Mayer, 2821 Videre Drive, Wilmington (Newark Property Owner) to DNP Parking Committee – three year terms to expire January 2014

Ms. Fogg read the Consent Agenda in its entirety.

MOTION BY MR. TEMKO, 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.

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

14. **4. FINANCIAL STATEMENT** – None

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

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

**15:09**

Ms. Houck reviewed her memo of 11/29/10 wherein it was recommended to waive the bid requirement and extend the electric line tree trimming Contract No. 06-01 from 1/1/11 through 12/31/11 to Asplundh Tree Expert Company at the 2006 labor rates. The Electric Department continued to be satisfied with their work, and funds totaling \$167,000 were budgeted in the 2011 Operating Budget.

MOTION BY MR CLIFTON, SECONDED BY MR. TUTTLE: THAT THE BIDDING REQUIREMENT BE WAIVED AND THE ELECTRIC LINE TREE TRIMMING CONTRACT BE EXTENDED FOR AN ADDITIONAL YEAR.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

16. **5-B. RECOMMENDATION TO PURCHASE A VALVE EXERCISER FROM A COMPETITIVELY SOLICITED PURCHASE CONTRACT IN ASSOCIATION WITH THE NATIONAL JOINT POWERS ALLIANCE**

**15:56**

Ms. Houck detailed her memo of 12/1/10 wherein it was recommended to waive the requirement for a Newark specific bid and authorize the City Manager to purchase a valve exerciser from a competitively solicited purchase contract in association with the City's membership in the National Joint Powers Alliance. This would be the second purchase made by Newark from the NJPA contract. Funds were available from a planned capital project, and Ms. Houck advised that the City was satisfied with the first purchase.

MOTION BY MR. MARKHAM, SECONDED BY MR. TEMKO: THAT THE REQUIREMENT BE WAIVED TO SOLICIT A NEWARK SPECIFIC BID AND THE CITY MANAGER BE AUTHORIZED TO PURCHASE ONE VERMEER McLAUGHLIN V250 VALVE EXERCISER FROM VERMEER MID ATLANTIC AT A TOTAL COST OF \$55,760.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

**17. 5-C. RECOMMENDATION TO PURCHASE ADDITIONAL VIDEO SURVEILLANCE EQUIPMENT IN ASSOCIATION WITH SYSTEM AND CAMERAS PURCHASED IN JUNE 2010**

**16:44**

Ms. Houck reviewed her memo of 12/1/10 wherein it was recommended to waive the bid requirement and authorize the City Manager to purchase seven additional video surveillance cameras from the Avrio Group at a total cost of \$61,460. The preliminary locations were selected by the Police Department, and funds to cover the cost were available from three grants. Mr. Athey questioned whether the City would be responsible for maintenance costs associated with the cameras. Ms. Houck said the maintenance was on the system that it operated from, and that was in place. Mr. Markham said the coverage from the cameras was impressive and felt the City should be looking at ways to analyze the recorded data in the future.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THE BIDDING REQUIREMENT BE WAIVED AND THE CITY MANAGER BE AUTHORIZED TO PURCHASE SEVEN ADDITIONAL VIDEO SURVEILLANCE CAMERAS AND THEIR LICENSES FROM THE AVRIO GROUP AT A TOTAL COST OF \$61,460.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

**18. 6. ORDINANCES FOR SECOND READING & PUBLIC HEARING – None**

**19. 7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS**

**A. Request of Liborio Louviers LLC for a Revision to the Approved Subdivision Agreement of The Shoppes at Louviers, Parcel A, Paper Mill Road, Newark, Delaware, In Order to Modify Certain Deed Restrictions to Permit the Sale of Beer and Spirits in the Wine-Only Package Store (Deerfield Wines) (*Amended Agreement Presented*)**

**21:29**

MOTION BY MR. MARKHAM, SECONDED BY MR. POMEROY: THAT THE REQUEST OF LIBORIO LOUVIERS LLC BE GRANTED TO MODIFY CERTAIN DEED RESTRICTIONS TO PERMIT THE SALE OF BEER AND SPIRITS IN THE WINE-ONLY PACKAGE STORE.

Lou Ramunno, owner of the Shoppes at Louviers and Deerfield Wines, said they wanted to offer high quality beer and premium spirits in addition to wine

as they believed they were losing sales to other businesses, and this created a hardship in the current economy.

The owner proposed that the sale of beer and spirits be limited to no more than 10% of the total sales floor or 10% of the gross revenue of the wine store. Mr. Athey asked how the 10% revenue would be monitored, and Mr. Funk advised that would be done by the Alcoholic Beverage Control Commission who would provide that information to the City if it was requested.

Mr. Markham confirmed that neighboring residents were contacted about the request, and no feedback was received.

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.

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

**A. Council Members:**

1. Presentation of Alcohol Study Conducted by Roberta E. Gealt (University of Delaware) – Temko

**26:28**

Ms. Gealt of the Center for Drug and Alcohol Studies said the information for the PowerPoint presentation was taken from a report on the website of the University of Delaware's Center for Drug and Alcohol Studies. The Delaware Data website contained other reports dealing with alcohol and other drug use in Delaware.

Also present from the Center was Dr. Whitney Gunter who brought about the rebirth of the college survey developed by the Robert Wood Johnson Foundation grant some years ago. This was the third year for the survey which Dr. Gunter said was revived as a college risk behaviors study. The survey was distributed electronically on an annual basis to 2,000 randomly selected UD full time undergrad students over 18 years. The response rate to the survey was about 45%.

Survey results were available online at [www.udel.edu/cdas/](http://www.udel.edu/cdas/) and at [www.udel.edu/delawaredata/](http://www.udel.edu/delawaredata/).

Mr. Armitage offered to provide more information about the University's prevention program at a future Council meeting.

**21. 8-A-2. RESOLUTION NO. 10-\_\_ IN APPRECIATION ROGER A. AKIN, CITY SOLICITOR**

**1:01**

Council unanimously endorsed the resolution read by Mr. Clifton recognizing City Solicitor Roger Akin for 16 years of service to the City. Mr. Akin said he thoroughly enjoyed his involvement as Newark's attorney, the professional challenges and the friendships he made. He believed that the City was moving forward, that Council and staff had the City's best interests at heart and thought Council should be proud of the competent, professional and very committed staff.

**(RESOLUTION NO. 10-Z)**

**22. 8-A-3. DISCUSSION RE CITY SOLICITOR POSITION**

**1:07**

Mr. Funk discussed the procedure that would be used to select the next City Solicitor. His position was to try to promote the person next in line provided they were competent to do the job. In his opinion, Bruce Herron was very competent. In response to Mr. Funk's question, Mr. Akin felt Mr. Herron would be an excellent candidate and that Council should give him serious consideration for the position.

The majority of Council wanted to proceed with advertising for the position.

Mr. Clifton reviewed a memo detailing the number of hours and costs spent on legal representation for the years 2008, 2009 and 2010. He felt it was important information, particularly the hours, because there was some thought about having a full-time solicitor. Looking at the benchmark of 2,080 hours as being a full year, the hours billed for the Solicitor and Deputy Solicitor positions accounted for only three quarters of a year, with an average billing of \$170,000-\$180,000 per year. Mr. Clifton thought Council owed it to the City to explore all the options available.

Mr. Athey saw this as a short and long-term situation. He suggested retaining Mr. Herron in an interim capacity as the City Solicitor. He agreed with Mr. Clifton that Council owed it to their constituents to investigate all avenues and said it had been many years since the City considered retaining an attorney in a staff position. He suggested there might be a way to structure a part-time position with perhaps a retired lawyer who might be willing to work on a basis other than purely contractual. He suggested taking time to interview firms and individuals in order to make the right decision.

Mr. Funk's experience on a management committee at a law firm was they expected a lawyer to turn in 2,300 billable hours a year. He felt it was important to get as many applicants as possible to be better able to make decisions.

Mr. Funk felt the Alderman's Court was unique and pointed out that Mr. Herron had been given the opportunity to fulfill a lot of the duties that the Solicitor normally fulfilled. Further, he said some of the best criminal lawyers in the state represented clients at the Court, and it was important to have a prosecutor who could handle the challenges of the position.

Mr. Markham suggested looking into hiring a firm with multiple people so there would be back up in case somebody was unavailable. Based on Newark's size, Mr. Funk thought the firms would be facing considerable potential conflicts in terms of zoning, criminal cases, lawsuits, etc.

After working with the City Solicitor's office for 32 years, Ms. Fogg thought it was important to employ an individual rather than a firm based on the Solicitor's almost daily involvement with the City. She felt there was a need to have one person to rely on and did not see a benefit to calling a firm without knowing who may respond to your question.

Mr. Markham thought there could be a point of contact who always funneled things through. Mr. Funk said that was how it was handled in Elsmere where McNally was their City Solicitor but farmed out various responsibilities to different people in the firm.

Mr. Athey felt the discussion had centered on hiring either one individual or a very large firm and said he assumed there were smaller firms with five or six individuals to provide back up. He had no idea Mr. Herron was working almost as many hours as Mr. Akin and asked if the City should be advertising for two attorneys.

Mr. Funk said when the City Solicitor was hired, he was the individual to select the prosecutor. Mr. Athey suggested the topic should be discussed during the interview stage.

Mr. Athey requested that Mr. Sonnenberg develop a memo detailing what a staff position would look like and how it would work by the first meeting in January.

Mr. Clifton asked if Council needed to vote to appoint Mr. Herron as interim City Solicitor and to set his salary.

Mr. Akin advised the Charter stated Council shall appoint a Solicitor. With regard to the Deputy, historically that position was chosen by the Solicitor who provided the name to Council. Mr. Akin stated it would be appropriate to name Mr. Herron as the Interim City Solicitor.

Mr. Funk stated Mr. Herron would not want the salary changed until after the interview process.

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT BRUCE HERRON BE APPOINTED AS THE INTERIM CITY SOLICITOR EFFECTIVE JANUARY 1, 2011.

23. **8-B. OTHERS:** None

24. **9. SPECIAL DEPARTMENTAL REPORTS**  
A. Special Reports from Manager & Staff: None

25. **Meeting adjourned at 8:23 p.m.**

Patricia M. Fogg, CMC  
City Secretary

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