

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

January 24, 2011

Those present at 7:00 pm:

Presiding: District 2, Jerry Clifton, Presiding
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: Mayor Vance A. Funk, III

Staff Members: City Manager Kyle Sonnenberg
City Secretary Patricia Fogg
Interim City Solicitor Bruce Herron
Assistant to the City Manager Carol Houck
Electric Director, Rick Vitelli
Finance Director Dennis McFarland
Planning & Development Director Roy Lopata

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

2. MOTION BY MR. ATHEY, SECONDED BY MR. MARKHAM: THAT ITEM 9-B, REQUEST FOR AN EXECUTIVE SESSION RE POTENTIAL LITIGATION, BE ADDED TO THE AGENDA.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

Nay – 0.

Absent – Funk.

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

A. Public

00:59

John Bauscher, a Newark landlord, revisited items discussed at the City Council meeting on October 25 about the Constitutional right of tenants to refuse entry to the City for the purpose of rental inspections. He said New Castle County provided a form to tenants of rental units which stated the tenant had the right to refuse inspections by NCC Code Enforcement and required their written permission for inspection. Mr. Bauscher noted Mr. Morse of the ACLU of Delaware advised that residents had the right to refuse entry and could give up that right, but the action had to be an intentional relinquishment for abandonment of a known right or privilege. Thus, if an inspector arrived for an inspection and the resident was not aware they had a choice to allow the inspection, this was not considered lawful access. Mr. Bauscher added that during the 10/25 meeting, Mr. Akin indicated the City respected the Constitutional rights of tenants but said that if a Code official presented himself at a rental property and properly identified himself for the purpose of a visit, in Mr. Akin's view there was no obligation for the City to tell the tenant they may refuse entry.

Mr. Bauscher thought it was important to inform tenants of their rights. He heard concerns mentioned about health and safety in regard to rental inspections

but pointed out that Newark's last fatal fire occurred in an owner-occupied property. He believed there was no push to enact an ordinance to inspect owner-occupied properties because owner-occupants would oppose admitting City inspectors. Further, he stated that tenants had the same rights as owner-occupants. Going forward he hoped the City would respect and inform tenants of their rights, but if not, he would campaign to insure this was done.

4. Glen Schmalhofer, a Newark landlord, said he informed his tenants of their Fourth Amendment rights for legal search and seizure. His tenants at 36 N. Chapel Street contacted the City to refuse their inspection. In spite of that fact, Mr. Wilson of the Building Department arrived and tried to gain access. Although the tenant refused entry, several days later Mr. Wilson returned, and access was again refused. Mr. Schmalhofer said the tenants felt intimidated and pressured and eventually allowed the inspection. Mr. Schmalhofer stated he previously notified the Building Department by certified mail that he agreed to inspections at his rental units provided he was present. In this instance, he was notified of the inspection by the City but was not present when it occurred. He thought this was getting into a gray area of violating the Fourth Amendment rights of his tenants.

Mr. Schmalhofer indicated that tenants at 342 Delaware Circle, 36 N. Chapel Street and 55 & 57 Thompson Circle had refused their re-inspections, and he did not want City inspectors going to these locations and bothering his tenants. He said since the City was not providing consent forms, he was not sure how to handle it.

5. William Bratowicz, 36 N. Chapel Street, said he was asked by his landlord, Mr. Schmalhofer, to speak about his experience with rental inspections. Following several contacts with Mr. Wilson of the Building Department, Mr. Bratowicz discussed the inspection request with his roommate, and they agreed to grant permission to Mr. Wilson to inspect their apartment. Mr. Bratowicz asked if Mr. Schmalhofer had been informed of the inspection, and Mr. Wilson said that he had not. Mr. Bratowicz felt he was not intimidated or coerced to allow the inspection by Mr. Wilson.

6. Carol Robbins, a Newark resident, reported she and her husband lived in their present home in Arbour Park for 23 years. They learned from Mr. Simonson of a construction project in their yard that would go back to the woods to the sewer lines crossing the Christina Creek. Based on the City's easement, there would be an access road in their backyard for construction equipment. Mrs. Robbins said she was suffering physically because of the impact this project had on her life. Mrs. Robbins was also concerned about the trees that would be taken down for the project and about the safety of neighborhood children with the construction equipment that would be coming and going.

Bill Robbins, a Newark resident, added that one main issue was the obtrusiveness of this project with the construction road and continued maintenance access to the sewer project through their driveway as a result of the design chosen. During the construction he said their driveway would become one of the main entrances and questioned the impact on their property value if maintenance access for the project continued on their property. There were other options available (which he said were less expensive) to fix the problems with the support of the sewer lines. The option that was chosen took the sewer lines under the creek bed, and he understood why that option was preferred. However, the sewer line had a third crossing that was not even part of the project. It was above ground, above the creek bed, had a 65-foot unsupported span which was very close to the two spans that would be worked on and was the same elevation above the creek bed as the other two spans, yet this line was not going to be affected. He questioned the urgency of using a design that would take the sewer line under the creek bed with the ongoing effects it would have to the neighborhood. Mr. Robbins hoped they could get consideration for loss of value from the City. While they recognized there was an easement, he said

since the sewer line was undisturbed for 40 years they had no idea this would develop into a construction road and future maintenance access in perpetuity.

Mr. Athey asked where their driveway was with respect to the easement. Mr. Robbins said it was on the edge of the property line and was 10 feet on either side of that property line. The neighbor's garage was within 16 feet of the center line of the easement. Mr. Robbins' driveway was only 11 feet wide at the first entrance, and the entire easement covered the driveway.

Mr. Clifton asked Mr. Sonnenberg to meet with Mr. Robbins about his concerns and report back to Council.

7. **1-B. UNIVERSITY**

1. Administration – There were no comments forthcoming.

8. **1-B-2. STUDENT BODY REPRESENTATIVE**

There were no comments forthcoming.

9. **1-C. COUNCIL MEMBERS**

24:40

Mr. Pomeroy

- Thanked Ms. Houck and staff for their diligence in working on the solar proposal, and he looked forward to receiving further information.

10. **Mr. Temko**

- Announced the start of Restaurant Week.
- Would like Council to have a future discussion regarding vacancies in the downtown area. He thought there should be more effort to seek out businesses from the Main Street program perspective of actively recruiting desirable businesses and matching them with available space. Mr. Lopata was asked if it was possible to get an inventory of vacant properties on Main Street and in the shopping centers. Mr. Lopata pointed out that the largest vacancy rate occurred right after the holidays, and this was the worst time to count vacancies. Further, since the City was currently applying for the Great American Main Street award, he believed this was not the best time to be advertising vacancies. He suggested holding off until the process was completed before launching into an analysis and agreed a March time frame would be reasonable.

11. **Mr. Athey**

- Reported that 1743 Holdings LLC held their second meeting regarding the Science and Technology campus which focused on environmental aspects.

12. **Mr. Markham**

- Announced that effective January 31, returnable beverage containers could no longer be redeemed in Delaware, and he was curious if the recycling amounts would increase when the program ended.
- Related information from the National League of Cities about efforts in Congress to cut the CDBG funds, and he suggested following any developments since the City funded a number of CDBG projects.

13. **Mr. Tuttle**

- Attended the first meeting of the Elkton Road Construction working group which was a DelDOT initiative to provide plan updates to those impacted by the construction. DelDOT's project website will be added as a link to the City's

website. The working group planned to meet monthly starting the first week in March.

14. 2. APPROVAL OF CONSENT AGENDA

- 35:48**
- A. Approval of Regular Council Meeting Minutes – January 10, 2011
 - B. Receipt of Alderman’s Report –January 11, 2011
 - C. Extension of Insurance Brokerage Agreement
 - D. Authorization to Execute Delmarva Interconnection and Mutual Operating Agreement

Ms. Fogg read the Consent Agenda in its entirety.

MOTION BY MR. ATHEY, SECONDED BY MR. CLIFTON: THAT ITEM 2-C, EXTENSION OF INSURANCE BROKERAGE AGREEMENT, AND ITEM 2-D, AUTHORIZATION TO EXECUTE DELMARVA INTERCONNECTION AND MUTUAL OPERATING AGREEMENT, BE REMOVED FROM THE CONSENT AGENDA.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

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

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

15. 2-C. EXTENSION OF INSURANCE BROKERAGE AGREEMENT

37:00

Mr. Clifton questioned whether the City might be able to negotiate with Willis for a lower rate. Mr. McFarland felt there was little possibility of obtaining a lower rate from Willis as they extended the 2010 rate for an additional two-year period. He said the brokerage market had not been affected by the economy as much as most industries were and did not feel a new firm could underbid the existing broker who already had a deep understanding of the City’s risk profile.

Rather than working through a broker, Mr. Clifton asked if there was any benefit to going directly with the underwriters for these services. Mr. McFarland felt the City did not have the necessary expertise and said the broker provided a valuable service in searching out the underwriters, understanding the City’s risks and explaining it to the underwriters.

MOTION BY MR. MARKHAM, SECONDED BY MR. TEMKO: THAT THE EXTENSION OF THE INSURANCE BROKERAGE AGREEMENT WITH WILLIS BE EXTENDED TWO ADDITIONAL YEARS TO FEBRUARY 28, 2013.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

16. 2-D. AUTHORIZATION TO EXECUTE DELMARVA INTER-CONNECTION AND MUTUAL OPERATING AGREEMENT

41:16

Mr. McFarland explained this was a revised Operating Agreement that would be entered into with Delmarva Power. Delmarva requested revised Operating Agreements from all DEMEC members since the last agreements were signed over six years ago. The agreement codified the City's relationship with Delmarva in accordance with tariffs filed by them. Part of that tariff required Delmarva to have the Operating Agreements, and in the interim years, the market and the terminology had changed. Mr. McFarland reviewed the agreement from the standpoint of financial liability and said the City incurred no different liability. Mr. Vitelli reviewed it in terms of the City's operational responsibilities, and there were no incremental responsibilities. Further, Mr. McFarland received assurance from DEMEC President Pat McCullar that the agreement was similar in form to those entered into by other DEMEC members.

Mr. Athey reviewed the document and found it very lengthy and difficult to read but assumed it was consistent with the other DEMEC agreements. Mr. McFarland said this was correct and that Mr. McCullar negotiated the basic structure of the agreement on behalf of DEMEC members almost a year ago.

Mr. Vitelli explained this was an operating understanding, it was a document for good utility practices and most of the document was the same as the previous agreement.

MOTION BY MR. ATHEY, SECONDED BY MR. MARKHAM: THAT THE CITY MANAGER BE AUTHORIZED TO ENTER INTO THE REVISED DELMARVA INTERCONNECTION AND MUTUAL OPERATING AGREEMENT.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

Nay – 0.

Absent – Funk.

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

18. 4. FINANCIAL STATEMENT – None

19. 5. RECOMMENDATIONS ON CONTRACTS & BIDS

A. Contract 2010-09, Purchase of a 12,000 kVA Outdoor Type Unit Substation

46:15

Ms. Houck reviewed her memo of 1/14/11 wherein it was recommended to purchase a 12,000 kVA outdoor-type unit substation necessary to accommodate additional electric loads within the City. Five bids were received, and the bid from Crown Electric was not accepted as they did not provide a bid bond.

It was therefore recommended to award the contract to National Electric Systems, Inc., the lowest responsible bidder at \$837,265. Funds were available from the Capital Program totaling \$1,200,000.

MOTION BY MR. MARKHAM, SECONDED BY MR. POMEROY: THAT CONTRACT NO. 2010-09 FOR THE PURCHASE OF A 12,000 KVA OUTDOOR-TYPE UNIT SUBSTATION BE AWARDED TO NATIONAL ELECTRIC SYSTEMS, INC. AT A TOTAL PRICE OF \$837,265.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

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

21. **7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS –**
None

22. **8. ITEMS SUBMITTED FOR PUBLISHED AGENDA**
A. Council Members: None

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

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

25. **9-B. REQUEST FOR AN EXECUTIVE SESSION RE POTENTIAL LITIGATION**

47:19

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

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

Council entered into Executive Session at 7:46 p.m. and returned to the table at 8:29 p.m. Mr. Clifton said no action was required at this time.

26. **Meeting adjourned at 8:31 p.m.**

Patricia M. Fogg, CMC
City Secretary

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