

**CITY OF NEWARK  
DELAWARE**

**COUNCIL MEETING MINUTES**

**February 28, 2011**

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  
Interim City Solicitor Bruce Herron  
Finance Director Dennis McFarland  
Planning & Development Director Roy Lopata

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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

**01:11**

University of Delaware Public Policy student Adeel Iqbal learned about the proposal for adding ethnic food stands adjacent to the University campus and said he hoped to bring his mother's cooking and teaching to the University of Delaware. (Mr. Iqbal was referring to Bill 11-02.)

3. State Representative John Kowalko announced a DeIDOT proposal to eliminate the jug handle at the intersection at Route 896 and West Chestnut Hill Road where there were six accidents in the last four years. DeIDOT also wanted to install a left turn lane on Route 896 to West Chestnut Hill Road by narrowing the median strip back to the Exxon station. Mr. Kowalko advised DeIDOT of his objections to the plan. He was scheduled to meet with them on March 24 and encouraged others who did not agree with the intersection proposal to write a letter to DeIDOT in care of Jim Westhoff.

4. **1-B. UNIVERSITY**

**03:19**

1. Administration – Mr. Armitage reported he was trying to find a date for the Wellspring presentation to Council about alcohol programs on campus.

5. **1-B-2. STUDENT BODY REPRESENTATIVE**

There were no comments forthcoming.

6. **1-C. COUNCIL MEMBERS**

**03:54**

**Mr. Pomeroy**

- Noted he would be absent from the March 28 Council meeting and had only two meetings remaining before his Council term ended.

**7. Mr. Clifton**

- Congratulated the Newark Police Department for being a professional and proactive force and achieving quick closure with a number of recent crimes.

**8. Mr. Athey**

- Acknowledged that the City was reimbursed \$200,000 for costs incurred in implementing the curbside recycling program.
- Commented that residents of Madison Drive were pleased that the service roads were plowed during the last snow storm.
- Attended the economic development plan presentation several weeks ago which he felt was a great plan with ambitious goals and asked Mr. Pomeroy what direction the plan was headed in. Mr. Pomeroy hoped to find a way to communicate the information to a broader constituency and said it would ultimately come back to Council for action. Further, he believed the Greater Newark Network would be a willing partner in soliciting outside support and feedback.
- Reported that DNREC held a workshop on an ambitious trails program for White Clay Creek State Park that could take up to ten years to complete. Ultimately, this will be a paved and unpaved trail network throughout the entire northern part of New Castle County and will tremendously benefit the City.

**9. Mr. Markham**

- Recognized Representative Kowalko for attending the meeting.
- Reported that the New Castle County Chamber of Commerce awarded the late Ada Leigh and Jim Soles the Dr. Wallace M. Johnson Community Service Award.

**10. Mr. Tuttle**

- Regarding Elkton Road construction, expressed concern with the “No Left Turn” sign erected by DelDOT at Chrysler Avenue and Elkton Road since drivers were unaware of the restriction until they were already out on Elkton Road preparing to turn left. Mr. Tuttle suggested posting a “No Left Turn Ahead” sign at Lehigh to alert drivers of the restriction which provided them the opportunity to turn right to get to the traffic signal where they could make a legal left turn.

**11. 2. APPROVAL OF CONSENT AGENDA**

- 14:57**
- A.** Approval of Regular Council Meeting Minutes – February 14, 2011
  - B.** Receipt of Alderman’s Report – February 17, 2011
  - C.** Reappointment of James Grimes, UDPD, to the DNP, Newark Parking Committee

Ms. Fogg read the Consent Agenda in its entirety.

MOTION BY MR. POMEROY, 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**

**15:45**

Mr. McFarland reviewed the January 2011 Financial Statement for calendar year 2010. The City was about \$500,000 under budget which was almost entirely attributable to higher than budgeted contractual payments (it was common practice to make annual payments on various maintenance contracts at the beginning of the year.) Mr. McFarland reported the format of the cover memo was changed to include some other funds so the total exactly matched the financial statements. These included small grant funds such as the Law Enforcement grant fund, CDBG grant fund and Parks and Recreation grant funds.

**PENSION REPORT**

Mr. McFarland presented the annual report on the Pension Plan performance for 2010. Overall the year was very solid, and the return on assets invested in the portfolio was about 13.5%, or 59 basis points higher than the benchmark established for the fund. The domestic equity components of the fund slightly underperformed. The fixed income portion did exceedingly well while the international and real estate components performed adequately. Plan assets rose from \$34.6 million at the beginning of the year to \$39.1 million at year end, and the increase was mostly attributable to asset appreciation. According to actuarial studies, the plan was about 66.6% funded. However, using the December 31, 2010 market valuations the plan was closer to 69% funded. The Administrative expenses showed an annualized expense ratio of about .79% which compared favorably with the benchmark of 100 basis points.

Mr. Clifton discussed the City's rates of return in comparison to the Thrift Savings Plan available to Federal government employees and noted the City did not seem to be getting as high a rate of return. While he understood the need for a more conservative approach than he might take with his own particular investments, it seemed overall the City was still low and could be better. The segment of the portfolio he referred to was the International Fund. Mr. McFarland said that portfolio was 10.72% for the year against the benchmark of 8.83. Mr. Clifton asked how often this was reviewed to assure the City had good, stable investment vehicles while getting something from all its returns in the range of what the market was doing at the time. Mr. McFarland replied that quarterly Pension Plan reports were issued to Council showing the returns by segment against the benchmarks. The general rule was if you were beating the benchmark, you were in good shape. If you were south of the benchmark, it required attention. The only lagging segments for the City were the large cap domestic equities. This was tweaked a little in discussions with Russell a year ago, and he and Mr. Zusag would meet with Russell before the end of the quarter to review it again. Mr. McFarland was generally satisfied with the performance of the funds.

MOTION BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT THE JANUARY 2011 FINANCIAL REPORT AND THE 2010 PENSION PLAN PERFORMANCE 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**

- A. Bill 11-01 – An Ordinance Amending Chapter 17, Housing and Property Maintenance, Code of the City of Newark, Delaware, By Eliminating the Late Fee for Failure to Complete Required Rental Unit Inspection Within 60 Days of Renewal Date**

**24:48**

Ms. Fogg read Bill 11-01 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 11-01.

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.

**(ORDINANCE NO. 11-01)**

**16. 6-B. BILL 11-02 – AN ORDINANCE AMENDING CHAPTER 21, PEDDLERS, VENDORS AND SOLICITORS, CODE OF THE CITY OF NEWARK, DELAWARE, TO PERMIT VENDING ON SIDEWALKS ABUTTING THE UNIVERSITY OF DELAWARE ‘CAMPUS CUISINE COLONNADE’ OR SIMILAR LOCATIONS**

**25:29**

Ms. Fogg read Bill 11-02 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. TUTTLE: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 11-02.

Mr. Armitage reported the University of Delaware asked for the Code change to permit a pilot program that would allow a variety of ethnic foods supplied by cart vendors. The people who brought the idea forward had experience eating from the food carts on Philadelphia campuses. Aramark, the University’s current food vendor, was asked if they could provide this service. They declined and suggested the University explore outside vendors. The plan was to locate two food carts on Amstel Avenue in the colonnade area between Smith and Purnell Halls. No arrangements had been made with any vendors, but there had been discussions with Afghani, Thai and Jamaican vendors.

Mr. Armitage said the Planning Department made recommendations to Council which the University agreed made sense in the permitting process. The potential vendor would obtain an application from the City Secretary’s office which would then be returned to the City Secretary and processed by the Police Department who would evaluate the site, do a criminal history background check and respond back to the City Secretary within 30 days. Also, an adjacent property owner needed to agree the food cart could be located on the sidewalk. At this time, that would only include the University, but the ordinance would allow additional locations in the future in consultation with the Planning Director, the City Secretary and the Chief of Police. Once the City Secretary received approval from the Police Department, the vendor would need to present proof of insurance indemnifying the City in the amount of \$100,000, proof of a State health inspection and payment of the fee.

In response to concerns that the food vendors might compete with existing restaurants, Mr. Armitage said the Planning Department and the City Secretary would determine which vendor could locate a cart on the sidewalks that would not offer food that would compete with City restaurants. Further, he felt the food

carts would appeal to patrons with a limited amount of time to eat and thus would not compete with sit-down restaurants.

Since this was a pilot program, Mr. Pomeroy asked if there were any legal or codified obligations due to the vendor should it be decided the program was not working out. Mr. Lopata said this was not a concern as the permits were renewed on an annual basis, and Council periodically made adjustments to the Code based on experience.

Mr. Clifton noted that a neighbor expressed some concern about the possible proliferation of vending carts and asked for clarification that the Code regulations for downtown vending regarding sidewalk width, etc. would apply to this location. Mr. Lopata assured Mr. Clifton that the same existing regulations would be applied to this very small area on Amstel. Although a clause was added that this program could be expanded if the experiment succeeded, Mr. Lopata wanted to keep the vending in a very small location near campus.

Mr. Athey pointed out that the decision making was with the City Secretary, and if the merchants claimed their business was hurt, this was out of Council's hands. Mr. Lopata said Council could repeal the Code and inform vendors that their permits would not be renewed at the end of the calendar year. Ms. Fogg added there was a section in the Code that if an applicant was denied a license by the City Secretary, they may appeal the decision to the City Manager. Mr. Athey asked if the DNP opined in any way on the amendment, and Mr. Lopata replied the Merchant's Committee reviewed it but there had been no response from them.

The Chair opened the discussion to the public.

Robyn Harland, a Newark resident, asked who would police the vendors to make sure they had approved licenses. Ms. Fogg said this was the Police Department's responsibility and vendors were required to have their permit with them at all times. She did not feel there could be more than two or three vendors at the Amstel Avenue location based on all the restrictions in the Code.

Adeel Iqbal, A University student, said his mother's passion was cooking, and one thing she wanted to do was to teach cooking. The reason he asked Council to pass the amendment was because he wanted to make his mother's dreams come true to cook for a living.

Bennie Dollard, a Main Street vendor for seven years and in the food service business for 23 years, asked what kind of ethnic foods the carts would be selling. Mr. Armitage replied the University would be working with City staff to review the applications as they did not want to compete with Main Street restaurants and hoped to offer different food choices. Mr. Dollard noted that Jamaican-Caribbean food was on his menu and asked if he would be able to obtain a permit. Ms. Fogg advised he would have to complete an application and obtain permission from the University to sell at the new location.

Duvall Sanders said he represented a group of vendors who were interested in being part of the program and did not want the process to be restricted by the University. He felt if Aramark decided they did not want to provide carts, the University should allow outside vendors on campus to better service the students. Mr. Armitage reported the University required a minimum of \$5 million in liability insurance, and most vendors were not willing to make that investment to be able to move onto campus.

Mr. Clifton noted there had been a lot of conversation about selectivity. He pointed out that the process had worked well for Mr. Dollard whose cart was on Main Street based on the approval of the Handloff family. He said this was not a new process, and the intent was to superimpose it into another area of town.

State Representative John Kowalko had concerns about the approval process being given to the University. He thought the City might want to add policy regarding the selection process in order to close any loopholes and prevent possible accusations about fairness. Ms. Fogg said the permitting process was first come, first served, provided the application met all the criteria. Mr. Funk noted the only change being made was adding Amstel Avenue to the ordinance.

David Robertson, a Newark resident, thought the ordinance should not contain the provision granting the City Secretary authority to allocate new locations. He thought that decision should be made by Council. Mr. Robertson had no problem with the Amstel Avenue location but was concerned when he heard about the possibility of adding more locations in the future.

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

Mr. Temko asked Mr. Herron if it was legal to include the sentence in amendment 3(c)(2), "To ensure Newarkers and visitors have access to a variety of diverse and exotic foods, preference for approved vending may be restricted to foods not otherwise available in Newark." Mr. Herron advised this was legal. Mr. Temko suggested eliminating the words "and exotic" as he felt "exotic" was offensive to people and was not culturally sensitive. Further, he questioned what would happen if a vendor provided a particular type of food and a restaurant serving the same food then moved to the City. Mr. Lopata said the City would have to consider the vendor's permit the following year in that context. He explained the ordinance was worded to get the intent of the community across. He believed the intent was to provide a variety of foods that might otherwise not be available.

AMENDMENT BY MR. TEMKO, SECONDED BY MR. POMEROY:  
AMEND AMENDMENT 3, ITEM (c)(2) BY ELIMINATING THE WORDS  
"AND EXOTIC" TO READ: "TO ENSURE NEWARKERS AND VISITORS  
HAVE ACCESS TO A VARIETY OF DIVERSE FOODS, PREFERENCE  
FOR APPROVED VENDING MAY BE RESTRICTED TO FOODS NOT  
OTHERWISE AVAILABLE IN NEWARK."

AMENDMENT PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

In regard to Amendment 3, Item 4 which stated the University had input into proposed vending, Mr. Markham thought they already had the same right of refusal as the Main Street businesses. Mr. Lopata replied the current vending ordinance referred specifically to the downtown area, so it was necessary to include this language.

Mr. Pomeroy summed up the point of the proposed ordinance. Council's major decision was whether to extend sidewalk vending to a new location. This option would be completely revocable if the pilot program did not work out. The decision to allow vending would rest primarily with the adjacent property owner (the same as it currently did in the downtown area.) Mr. Pomeroy felt this would be just another vending option and would not take business away from sit-down restaurants which offered a very different dining experience.

Mr. Athey asked whether the City could be held legally responsible if a property owner chose not to allow a vending permit or requested that an existing permit be revoked. Mr. Herron advised the City would have no exposure if a property owner declined approval and, in the case of an existing permit, the permit was not renewed at the expiration date.

Question on the Motion as Amended was called.

MOTION AS AMENDED PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

**(ORDINANCE NO. 11-02)**

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

- A. Request of Pauline A. Mayer, Inc. for a Minor Subdivision for a Proposed WSFS Bank to be Located at the Southwest Corner of the Intersection of the Christina Parkway Extended and Elkton Road (Suburban Plaza), Newark, Delaware

**1:24**

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

Lisa Goodman, Esquire, represented WSFS Bank who requested a minor subdivision and Special Use Permit for a branch bank at the intersection of Elkton Road and Christina Parkway. The project received the unanimous approval of the Planning Commission. The property was zoned BC and was surrounded by other County and City commercial, manufacturing and office-type zoning. The bank would be less than 4,000 square feet and would have two drive-through positions, requiring a Special Use Permit. The plan was revised to move the proposed building out of the wetland area and to keep the 50 foot buffer. The project was more than Code compliant with 30 parking spaces including the required handicapped parking. All transportation comments in Mr. Lopata's report to the Planning Commission were addressed.

Regarding the legal standards for the Special Use Permit, there was no adverse health or safety impact, the property was properly zoned, was a low-impact use and was consistent with the Comprehensive Plan. Ms. Goodman said WSFS was a true local bank and would be a great addition to the City.

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

Mr. Athey asked about the possibility of a traffic signal at the location. Ms. Goodman said there was considerable discussion on this issue, and the landowner had signed an agreement with the City to enter into a signal agreement if and when one was required by DeIDOT. DeIDOT was uncertain a signal was required as there were multiple issues having to do in part with signal timing.

Mr. Markham asked if a bike lane was planned. Ted Williams, Project Engineer for Landmark Engineering, said there was a bike area going along Christina Parkway, and they were also asked to reserve an area on Elkton Road for a side path. That was reserved but was deferred back to DeIDOT because it required a wetlands crossing.

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.

18. **7-B. REQUEST OF PAULINE A. MAYER, INC., FOR A SPECIAL USE PERMIT FOR A DRIVE-THRU FACILITY AT THE PROPOSED WSFS BANK TO BE LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF THE CHRISTINA PARKWAY EXTENDED AND ELKTON ROAD (SUBURBAN PLAZA), NEWARK, DELAWARE**

**(Discussion and public hearing was held under Item 17)**

MOTION BY MR. POMEROY, SECONDED BY MR. MARKHAM: THAT THE SPECIAL USE PERMIT BE GRANTED AS REQUESTED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

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

A. Council Members: None

B. Others: None

20. **9. SPECIAL DEPARTMENTAL REPORTS:**

A. Special Reports from Manager & Staff: None

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

Patricia M. Fogg, CMC  
City Secretary

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