

**CITY OF NEWARK  
DELAWARE**

**COUNCIL MEETING MINUTES**

**May 9, 2011**

Those present at 7:00 pm:

Presiding: Mayor Vance A. Funk, III  
District 1, Mark Morehead  
District 3, Doug Tuttle  
District 4, David J. Athey  
District 5, Ezra J. Temko  
District 6, A. Stuart Markham

Absent: District 2, Jerry Clifton

Staff Members: City Manager Kyle Sonnenberg  
Assistant to the City Manager Carol Houck  
Deputy City Secretary Alice Van Veen  
City Solicitor Bruce Herron  
Finance Director Dennis McFarland  
Assistant P&D Director Maureen Feeney Roser  
Planning & Development Planner Mike Fortner  
Chief Paul Tiernan, NPD  
Captain John Potts, NPD

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

2. MOTION BY MR. MARKHAM, SECONDED BY MR. ATHEY: THAT ITEM 1-B-1, WELLSRING PRESENTATION, BE REMOVED FROM THE AGENDA AND RESCHEDULED TO THE JUNE 27, 1011 COUNCIL MEETING.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

3. **PRESENTATION OF 'BIKE TO WORK DAY' PROCLAMATION**

Mr. Athey read the proclamation which was unanimously endorsed by Council declaring May 20, 2011 as Bike to Work Day. Mr. Funk advised DeIDOT signed off on authorizing the City to proceed with bids on the Pomeroy Trail which was good news for biking.

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

A. Public – None

5. **1-B. UNIVERSITY**

**03:05**

1. Administration

Mr. Armitage reported the University cancelled their Wellspring presentation at the request of Mr. Clifton who was unable to attend the meeting. The presentation was rescheduled for the Council meeting on June 27.

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

There were no comments forthcoming.

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

**03:49**

**Mr. Athey**

- Recognized members of the Newark Police Department for their attendance at the meeting and gave special thanks to Sgt. Rubin for providing him with a ride along.
- Attended Creek Fest on 5/7 which had good participation.
- Asked for an updated Emergency Operations Plan. Mr. Sonnenberg advised the update was recently completed and would provide Council with a revised plan.
- Requested a Council workshop on July 25 to discuss various policies that were implemented after the budget workshop a few years ago and in light of numerous discussions on electric rates, property taxes, etc. He felt the timing would coincide fairly well with the draft CIP and saw the two as going hand in hand.

**8. Mr. Markham**

- The National Prescription Drug Take Back Day appeared to be successful based on the results. He felt this should be encouraged every year to keep the drugs out of the water system.
- Issued a reminder for the Memorial Day Parade on Sunday, May 15.
- Noted that U Don't Need It postcards were direct mailed to students and was informed by Ms. Houck that press releases would be issued to publicize the event.

**9. Mr. Tuttle**

- Commended Mr. Sonnenberg for the work he did regarding the State's recycling bill that resulted in a grant that will reimburse the City for the cost of the carts purchased several years ago.

**10. 2. APPROVAL OF CONSENT AGENDA**

**09:20**

- A.** Approval of Regular Council Meeting Minutes – April 25, 2011
- B.** Receipt of Alderman's Report – May 5, 2011
- C.** Setting Date for Court of Assessment Appeals (May 23, 2011)

Mr. Athey asked that Item 2-A, Approval of Regular Council Meeting Minutes, be removed from the Agenda.

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

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

**11. 2-A. APPROVAL OF REGULAR COUNCIL MEETING MINUTES –  
APRIL 25, 2011**

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Mr. Athey requested a copy of the petition referenced on page 5 for University Garden Apartments be attached to the minutes and noted under public discussion that the name Kate Robinson should be Kate *Robbins*.

MOTION BY MR. ATHEY, SECONDED BY MR. TUTTLE: THAT THE MINUTES OF APRIL 25, 2011 BE APPROVED AS AMENDED.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

**12. 3. ITEMS NOT FINISHED AT PREVIOUS MEETING:** None

**13. 4. FINANCIAL STATEMENT/REFUND OF 2010 PPCA OVER-COLLECTION**

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**11:05**

Mr. McFarland presented the March 2011 Financial Report. March results continued the trends of the first two months of the year which were generally positive. At the end of the quarter the City was about \$500,000 over budget for all funds. Governmental Funds were about \$250,000 less than budgeted, and Revenues were \$100,000 over budget, mostly based on one large building permit for the Carpenter Center expansion. Operating expenses were roughly \$150,000 under budget due to lower personnel costs, primarily in the Police Department, and partially offset by higher costs for contractual services. Enterprise Funds were over budget by about \$265,000, primarily based on the delay in implementing new lower electric rates from January 1 to June 1. Water and Sewer margins continued to lag due to timing differences for large customer billings. Expenses were almost \$300,000 over budget due to the payment of one-time contractual expenses in the first part of the year. The cash balance at the end of March was \$20.3 million, an increase of about \$1.3 million from the beginning of the year due primarily to working capital changes.

MOTION BY MR. TUTTLE, SECONDED BY MR. ATHEY: THAT THE MARCH 2011 FINANCIAL REPORT BE RECEIVED.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

Mr. McFarland reviewed his memo of April 27 concerning over collection of the 2010 PPCA revenues by about \$314,000. Staff recommended that the revenues be refunded to electric customers by making a one-time credit to the Revenue Stabilization Adjustment as of July 1. The impact upon a typical residential customer would be about \$7.

MOTION BY MR. ATHEY, SECONDED BY MR. MOREHEAD: THAT THE 2010 ELECTRIC UTILITY OVERCOLLECTION OF \$314,380 BE REFUNDED IN JULY 2011 THROUGH THE REVENUE STABLIZATION ADJUSTMENT.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

**13. 5. RECOMMENDATIONS ON CONTRACTS & BIDS:**

- A.** Purchase of a Replacement Backhoe for the Water Department from Eagle Power and Equipment Based on a Pennsylvania Bid Pricing

**15:52**

Ms. Houck detailed her memo of 4/28/11 wherein it was recommended to replace and trade in the Water Department's backhoe. Contract pricing was in accordance with the State of Pennsylvania bid pricing made available to the City at the total cost of \$93,701. Funds to cover the purchase price of the equipment were in the Capital Program, and it was therefore recommended that Council authorize the purchase of the backhoe from Eagle Power and Equipment for the total price of \$93,701.

MOTION BY MR. MARKHAM, SECONDED BY MR. ATHEY: THAT THE PURCHASE OF A REPLACEMENT BACKHOE FROM EAGLE POWER AND EQUIPMENT CORPORATION BE AUTHORIZED AT A TOTAL PRICE OF \$93,701 (AFTER TRADE IN OF EXISTING EQUIPMENT.)

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

**14. 5-B. RECOMMENDATION ON CONTRACT NO. 2011-01 PURCHASE OF TRUCK CHASSIS WITH FLATBED AND ELECTRIC/HYDRAULIC TAILGATE LIFT**

**16:55**

Ms. Houck detailed her memo of 4/28/11 wherein it was recommended to replace the Public Works Department's sign truck, a 1997 vehicle with excess miles. Three of the four bidders were not responsive to the one addendum that was issued which resulted in their bids not meeting all of the specifications. For that reason, Ms. Houck recommended awarding the contract to the third lowest bidder. Funds were available in the Capital Program totaling \$60,000, and it was therefore recommended that Council award the contract to Bayshore Ford at their total bid price of \$50,759.

In response to Mr. Markham's question about the addendum, Ms. Houck said it covered tool boxes and required changes to the lift gate system.

Mr. Athey questioned the issue with three of the four bidders not responding to Addendum No. 1. Ms. Houck said the City's procedure was standard and was stated in contracts and on the City's website. Mr. Athey asked Mr. Herron if the low bidder cried foul, he assumed this was a purely defensible position by the City. Mr. Herron said it was given our past practice.

MOTION BY MR. MARKHAM, SECONDED BY MR. TUTTLE: THAT CONTRACT NO. 2011-01 FOR THE PURCHASE OF A TRUCK CHASSIS WITH FLATBED AND ELECTRIC/HYDRAULIC TAILGATE LIFT. BE AWARDED TO BAYSHORE FORD TRUCKS AT A TOTAL COST OF \$50,759.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

**15. 6. ORDINANCES FOR SECOND READING & PUBLIC HEARING:**  
None

16. **7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS:**

None

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

A. Council Members:

1. Discussion re Revenue Stabilization Adjustment Process

**20:04**

Mr. McFarland reviewed his 5/4/11 memo which addressed the timing of adjustments in the newly established Revenue Stabilization Adjustment. The RSA clause was part of the new electric rate change ordinance passed at the 4/25 Council meeting. The RSA served two purposes. The first, and its historical purpose, was to track changes in the City's wholesale cost of power. Currently in the base rates there was a charge of 9.33 cents per kilowatt hour, the current rate charged the City by DEMEC for wholesale power. According to Mr. McFarland, DEMEC typically adjusted that charge once a year when they set their annual budget. However, it was possible for DEMEC to have changes within a given calendar year where they might change their rate to the City. The RSA could also be used to track that type of change. The last time an intra-year change occurred was in the summer of 2009 when spot prices spiked.

The second purpose of the RSA was to insure that the Electric utility collected sufficient revenues to achieve its budgeted margin. This use of the RSA was first established in early 2007, and the need to use it in this manner occurred when consumption was significantly different from budgeted volumes and would result in over or under collection of the margin. Such a variance could occur as a result of weather or economic cycles. Use of the RSA in this manner was employed several times since 2007, most significantly in May 2010. Mr. McFarland emphasized that using the RSA in this way was not arbitrary but was intended to achieve a particular dollar amount approved by Council when the annual operating budget was set. Thus, it was not affected by anything that happened in any fund other than the Electric fund. In the past there was some confusion over using the RSA to support the General Fund but that was not the case – it was used in a particular number included in the Electric utility's Operating Budget.

Mr. McFarland explained that staff was asked to prepare background information on the timing of how often these adjustments should be made. Staff's recommendation was that when the City's wholesale cost of power was changed as a result of a change in the DEMEC price, that the RSA be adjusted as soon as possible following thirty days notice to customers of the change.

The use of the RSA for its second purpose was more complicated because actual margins may vary from budgeted margins on a monthly basis, making it hard to determine whether the variance would be there at the end of the year or whether it would be offset by a variance in the opposite direction in a subsequent month.

Staff's recommendation was that changes in the RSA for purposes of tracking the margin only be made once a year in January of the subsequent year in which the variance occurred. The September results for the Electric utility would be examined, the variance computed and that figure would be the amount collected or flowed back to customers in a subsequent calendar year. This would be accompanied by an accounting change whereby on a monthly basis revenues would be deferred so the reported results for any given month would match the budget. The accumulating variance would show up on the balance sheet as a deferred revenue amount. As of September that amount would be amortized in a subsequent January to December period. Since this was fairly involved, Mr. McFarland wanted the City's accountant, Clifton Gunderson, in attendance for the presentation to Council currently scheduled to occur at a July meeting.

Mr. McFarland explained that although there were other options staff could have recommended, he thought they would produce unnecessary volatility in the

rate and confuse the customers. This option would provide stable financial reporting and adjusting the rates only once a year in January for both purposes of the RSA – tracking power cost changes and volumetric changes.

Mr. Temko thought Council was wise to establish the RSA as a means of making sure the City was financially solvent as an organization. When he researched how to decouple the City's utility from its interest in volume and consumption, this type of mechanism kept coming up as a tool used by municipal utilities to remove the incentive to have more energy used by customers in order to meet financial goals. He felt the recommended annual change would establish a more routinely expected method of implementation, so he thought this was a good step forward.

Mr. Athey asked for further clarification on tracking variances from the budgeted margins. Mr. McFarland said there would be a cumulative balance on a balance sheet account that would be tracked through the month of September and that was the amount they would try to recover or flow back in the subsequent calendar year. Mr. Athey asked if Council and the public would be able to see a periodic update of where this stood. Mr. McFarland said it would show up on the balance sheet in the monthly Financial Report in a line for preferred revenue. If this became significant, he would include it in the monthly narrative of the financial results.

Mr. Markham questioned the RSA stabilization fund. Mr. McFarland explained the rate stabilization reserve included in the financial policies would be funded with the new electric rates and when the annual budget was presented to Council there would be an expense in the budget to fund those reserves.

Mr. Morehead questioned the City's contractual involvement with DEMEC. Mr. McFarland advised that the City was contractually obligated to buy wholesale power from DEMEC who had the discretion to reset the price of that power yearly as the contracts contributing to their portfolio change. The contracts could be multi-year and expired at varying times. When the contract was signed, the contract year started on that date. As far as the City being aware of rate changes, Mr. McFarland said the City was represented on DEMEC's Board of Directors where the annual rates were set and approved. Mr. Morehead pointed out that DEMEC could change the rate during the year, but Mr. McFarland said DEMEC would have to go back to the Board of Directors with just cause. He added that DEMEC acted as the City's agent in contracting for power which was accomplished through a portfolio of contracts they assemble.

Regarding Mr. Markham's questions about peak usage, Mr. McFarland explained that DEMEC made changes in how they managed their portfolio to try to mitigate that type of situation. They now estimated their need and tried to contract for more than 90% of it, thereby limiting exposure for going to the spot market for large volumes.

Mr. Markham said he remembered that the City also paid for congestion on the transmission lines, especially in the summer. Mr. McFarland said there were a number of auxiliary services embedded in the wholesale power costs, with congestion being one of the largest.

**MOTION BY MR. ATHEY, SECONDED BY MR. TEMKO: THAT THE ACCOUNTING FIRM OF CLIFTON GUNDERSON BE REQUESTED TO MAKE A FORMAL RECOMMENDATION TO COUNCIL IN JULY 2011 FOR THE REVENUE STABLIZATION ADJUSTMENT.**

**MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.**

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

18. **8-B. OTHERS:** None

19. **9. SPECIAL DEPARTMENTAL REPORTS:**

A. Special Reports from Manager & Staff:

1. Update on Curtis Paper Mill Parking

**41:49**

Ms. Roser reported that staff was asked to consider opening the Curtis Paper Mill site for free parking. This request was generated by a letter from a Main Street business person. After considering this request, Staff concluded it would not be prudent for the City to open the site for a number of reasons including insurance concerns regarding the floodplain and the fact that the master plan for the site would be coming to Council for direction in the near future. Thus staff did not feel it was appropriate to put any money into the site for parking at this time. Ms. Roser suggested looking into the option of approaching the University, through the Parking Committee, about offering a monthly rate for permanent parking for night time employees of downtown businesses in their lots close to downtown.

Mr. Funk felt the answer to all the parking woes for employees was to meet with representatives of College Square and discuss a way to use their empty parking spaces. Mr. Temko agreed with Mr. Funk that there might be potential for a partnership with College Square.

20. **9-A-2. VOLUNTARY GREEN SUBSCRIPTION PROGRAM**

**45:40**

Mr. McFarland detailed his report of 4/27/11 regarding the City's voluntary green energy program. Under the program established in 2006 customers could purchase green energy for their accounts. At that time the City was required by State statute to offer such a program. The statutory requirement was eliminated as a result of the City now being under the State's RPS program. The City acquired green energy for those electing customers by requesting that DEMEC purchase renewable energy credits or RECs on its behalf. The first two years of the program those RECs consisted of landfill gas recovery and consisted of eligible biomass for subsequent program years. These were all renewable energy sources qualified by the State as being green and renewable. Prospectively DEMEC has indicated it will meet the City's future requirements with wind recs and has offered to substitute the biomass recs allocated to the City in 2010 with wind recs. The number of customers participating in the program was between 250 and 300.

Mr. McFarland noted the other municipalities in the State had all discontinued this program due to low participation rates of generally less than 1%. Newark's participation rates were approximately 2.5%, and he indicated to DEMEC that the City wanted to continue the voluntary program for the foreseeable future.

Mr. Temko appreciated the program and hoped the City would continue it. However, he added it could be very confusing and technical and asked if customers could be made aware of the low cost to participate in the program. Mr. McFarland said the charge was \$0.21 cents per block monthly with subscriptions being offered in blocks of 100 kWh. This information was posted on the City's website with the subscription enrollment form.

Mr. Markham was pleased that wind was now offered because of negative comments received from residents regarding biomass.

21. **Meeting adjourned at 7:53 pm.**

Patricia M. Fogg, CMC  
City Secretary

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