CITY OF NEWARK
DELAWARE

COUNCIL MEETING MINUTES

October 24, 2011

Those present at 7:00 pm:

Presiding:	Mayor Vance A. Funk, III District 1, Mark Morehead 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 Bruce Herron Finance Director Dennis McFarland Planning & Development Director Roy Lopata Water & Wastewater Director Roy Simonson Assistant to the City Manager Charles Zusag Assistant P & D Director Maureen Feeney Roser

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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

00:24

Catherine Ciferni, a Newark resident, issued a reminder of the prescription drug drop off day on 10/29/11 with collection from 10 a.m. – 2 p.m. Two drop-off sites were available in the City – the UD Public Safety Office and the Newark Senior Center.

3. Steve Dentel, a Newark resident and Conservation Advisory Commission member, referenced Resolution 05-H which was discussed at the 10/10/11 Council meeting. The resolution stated the City would make an annual purchase of green energy which he said had not been done in three years. Mr. Dentel stated that CAC Chair Tom Fruehstorfer was not contacted to confirm the item was on the agenda so a Committee member could be in attendance. Mr. Dentel further reported that the CAC sent repeated memos over the years requesting the green energy purchase but received no response from the Finance Director. He said in the past the Finance Director and the Acting Finance Director sent a recommendation for the purchase amount to the CAC, and the CAC was never expected to recommend an amount. After there was no purchase in 2007, the CAC took the other side of the role but, in spite of that, no alternative energy was purchased. According to Mr. Dentel it was Mr. Fruehstorfer's clear understanding from the Finance Director was that the money would be spent on recs if it was not going to be used towards a solar farm. Mr. Dentel expressed frustration that the Commission, which was a voluntary organization, did not know what else they could do. They were very disturbed that Resolution 05-H was ignored for three consecutive years and that nothing was being done retroactively.

Mr. Dentel reported the CAC was currently conducting a publicity campaign on the anti-idling resolution that was passed by Council. They would

be developing signs, a video and public service announcements. They were capable of doing the same thing for recycling on Main Street and were willing to do anything they could to help with that effort. He said there were campus communities across the country with recycling in their business areas, and he would be disappointed if that was not considered feasible in Newark. Mr. Dentel spoke with Mr. Lapointe who was checking with the City Manager to see what might be possible.

4. 1-B. UNIVERSITY

1. Administration - None

5. 1-B-2. STUDENT BODY REPRESENTATIVE

05:43

Kenneth Adams, a Newark resident and Senator for UD's Master of Arts and Liberal Studies program of the Graduate Student Senate explained that the MALS program was designed for mature working or retired adults who could bring their experiences into the classroom. To enhance the exchange of information between graduate students and City officials, Mr. Adams invited Council to attend a monthly meeting held on the first Thursday of each month from 5:30-7:00 p.m. at 103 Gore Hall. Council members were welcome to present updates about City concerns and projects followed by a question and answer exchange about how the City functioned. He believed this would foster increased student awareness of City.

Mr. Adams reported that students and faculty were disturbed by vehicular noise and speeding on Delaware Avenue from Elkton Road to the campus. He said the inherent danger and public disturbance was in need of action.

Mr. Adams asked the City to promote the University's educational opportunity which offered tuition-free education for any Newark or Delaware resident 60 years of age or older. He believed more adults on campus would increase the bond between the City and University.

6. 1-C. COUNCIL MEMBERS

08:52

7. Mr. Athey

- In reference to the Bike Summit and the proposal between DNREC and DelDOT for a trail between Newark and Wilmington, Mr. Athey asked the design construction time frame. Mr. Sonnenberg replied this was not imminent and said $7 million was set aside for the designated trails.

8. Mr. Markham

- Mr. Markham attended the signing of House Bill 153 which created the Ada Leigh Soles Memorial Professional Librarian and Archivist program to allow scholarships for library staff seeking a bachelor's or doctoral degree.

9. Mr. Temko

- Mr. Temko welcomed Mr. Adams from the Graduate Student Senate to the meeting and requested follow up on the noise and speeding concerns for Delaware Avenue that he brought to their attention.

- Mr. Temko requested updated numbers with the new recycling cans and whether the cans have improved contamination.

10. 2. APPROVAL OF CONSENT AGENDA

A. Approval of Regular Council Meeting Minutes – October 10, 2011
B. Receipt of Alderman's Report – October 20, 2011
C. Receipt of Planning Commission Minutes – October 4, 2011

11:42

Ms. Fogg read the Consent Agenda in its entirety.

MOTION BY MR. ATHEY, SECONDED BY MR. TUTTLE: THAT THE CONSENT AGENDA BE APPROVED AS SUBMITTED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

11. 3. ITEMS NOT FINISHED AT PREVIOUS MEETING:

A. Discussion re Community Calendar **(Tabled September 12, 2011)**

12:13

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THE DISCUSSION RE COMMUNITY CALENDAR BE LIFTED FROM THE TABLE.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

Mr. Temko referenced the updated memo from Mr. Herron advising that Council could legally approve proceeding with the community calendar. He thought the calendar would be a positive addition to the community and proposed it be implemented within a period of five months. Mr. Clifton suggested that Mr. Herron provide the parameters needed to implement the calendar. In regard to previous concerns about staff time, Mr. Sonnenberg said the calendar would be set up so any interested person or organization could post an event. A Staff member would then only need to make sure the item fit a category under the parameters established by Mr. Herron. Mr. Athey suggested the guidelines include length of submittal. It was the consensus of Council to move forward with the calendar once the guidelines were established.

12. 4. FINANCIAL STATEMENT: None

13. 5. RECOMMENDATIONS ON CONTRACTS & BIDS:

A. Recommendation for Actuarial Services

16:09

Mr. Zusag reported that Mercer, the current actuary for the City's pension plan, was getting out of the business of public pension plans at the end of the year. Requests for proposals were sent to a variety of actuarial firms, and seven proposals were returned. After interviewing four of the firms, staff recommended Milliman as the City's actuary beginning in January 2012. Milliman was the actuary for Dover and Smyrna, and Mr. Zusag was comfortable with their professional qualifications and ability to do the work for the City. Mercer's current fees were approximately $50,000 annually, and the fees for Milliman should be substantially less than that.

MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: THAT THE CITY MANAGER BE AUTHORIZED TO EXECUTE AN AGREEMENT WITH MILLIMAN FOR ACTUARIAL SERVICES.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

14. 6. ORDINANCES FOR SECOND READING & PUBLIC HEARING:

A. Bill 11-22 – An Ordinance Amending Chapter 30, Water, Code of the City of Newark, Delaware, By Establishing a Water Rate Schedule Effective January 1, 2012

17:37

Ms. Fogg read Bill 11-22 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 11-22.

Mr. McFarland reported the ordinance would increase the City's water rates by a uniform 14.5% effective January 1, 2012. The rate increase was necessitated to insure that funds were available to support needed capital investments in the water infrastructure and additionally to recover reasonably incurred operating expenses. The amount of the proposed increase was approximately $800,000 and was based on an analysis of the City's revenue requirements and financial projections which was conducted by Black and Veatch. The last time the City water rates were adjusted was in 2009 when there were two adjustments that effectively increased the rates by 15%.

Mr. McFarland added that in the Capital Improvement Program approved earlier this year by Council, infrastructure investments averaged about $1.6 million annually over the next five years.

A table compared the City's water rates to other providers in the region before and after the proposed increase. After the increase the City remained well below Artesian and Tidewater and remained comparable with other public providers of water service in the region.

Roy Simonson, Water & Wastewater Director, reviewed proposed capital projects over the next five years. Issues to be addressed included fire flow, system reliability, water quality, raceway and dam improvements for the water intake system on the White Clay Creek, a new roof on the concrete tank on Paper Mill Road, water main extensions for supply and pressure issues through Windy Hills and out to Red Mill Road, booster station improvements throughout the system, ongoing tank maintenance projects and water main replacement and renovation.

Mr. Clifton referenced a workshop last year where Mr. Sonnenberg discussed the aging infrastructure. As he understood it, a number of Newark's water mains were 40-50 years old. Mr. Simonson said the unlined pipes were the ones that primarily caused problems and could only be relied on for so long. Mr. Clifton pointed out there were no increases in the water utility between 2001 and 2009.

Mr. Athey referenced the potential work at the dam and the raceway which was being evaluated and since that was still an unknown asked how this was factored into the CIP. Mr. Simonson said the program allowed him to put in a number and as the analysis of the project moved forward to a solution, he would be able to zero in on a number with more specificity and adjust priorities to account for such projects.

Mr. Markham commented that the City would have a major problem if the intake to the water treatment plant was lost and was therefore trying to prevent future issues. He added that other issues the City was trying to address including water quality and water pressure were not inexpensive projects. Mr. Simonson confirmed the intake dated to the first paper mill.

Dave Jagt represented Black & Veatch and detailed the steps taken to complete the rate analysis for the water utility. He explained when the revenue requirements were compared to the projected level of revenue it became

apparent that the City would have to increase the rates by 14% across-the-board in order to generate the required revenue.

Mr. Athey referred to table 2-1, lines 20 and 21, and commented that the General Fund in 2011 was a small percentage of the transfer to the Construction Fund but going out to 2016 was actually greater than the Construction Fund. He asked if this was principally a CIP based rate adjustment. Mr. McFarland said it was a CIP rate adjustment and was the primary reason for the increase but it also maintained a 20% operating margin. Thus there would be fluctuations depending upon the size of the program in a particular year. In 2011 the transfer to the General Fund was relatively small because the City was not making a 20% return on the water utility. Mr. Funk asked if that was because of the weather. Mr. McFarland said it was based on the delay in the rates since Council chose not to raise any of the rates or fees by end of 2011 budget. Mr. Athey said he could understand some fluctuations, but the 2011 transfer to the General Fund was a little over $300,000 and in 2016 it was $2 million. He did not understand why there was that wide of a swing.

Mr. Jagt said the approach used was instead of front loading or getting that target level of return in the first year, it was decided to spread the return over the five-year period. In the first year the revenue adjustment was being made mostly due to cost requirements for the operation and maintenance expense and the capital. Over the five years the rate increases or revenue increases were set to meet the targeted return (the targeted return would not be met for the first year.)

Mr. McFarland explained to Council that the rate adjustment did not achieve the $2 million transfer to the General Fund five years out. This projection included other future revenue adjustments to get to that level.

The Chair opened the discussion to the public.

John Kowalko, State Representative and Newark resident, felt the proposed water rate increase bordered on the outrageous. He stated that with approval of this request, City water rates will have increased by 78.7% since 3/31/09. The increase to out-of-City residents was significantly higher. From 1999 to 2009, taxes in the City increased 43%, electric rates increased 97%, and water (not including sewer) increased 173%. He believed there was also an inaccurate comparison made with outside providers such as Artesian. He pointed out that since 2009 Artesian was granted a 26.1% increase.

Mr. Kowalko noted that Section 2.2.3.7 titled “Transfer to the General Fund” showed anticipated cash to the General Fund to be 20% of annual revenue requirements, excluding debt service deposits, in the amount of $6.486 million. He said in light of this, numerous questions were asked of him such as, were the utility monies being used to subsidize and balance the budget and were out-of-town water customers subsidizing an operational budget for the City while enjoying none of the services provided by the City.

Mr. Kowalko pointed out that the agreement reached in February 2009 by Council was that they would have an across-the-board increase and would probably have to come back and get another increase. Since that time there was a 35% increase less than six months later. The Black & Veatch report seemed to indicate an ongoing need for a 7.2% yearly increase on top of this. He felt the City had a monopoly with a captive audience, and they could not continue to overburden the consumers. He urged Council not to pass the water rate increase at this time.

Mr. Clifton advised Mr. Kowalko that the City needed to take action based on an aging, failing infrastructure. He asked for Representative Kowalko’s suggestions for ways the City could accomplish the improvements to its infrastructure without a rate increase. Mr. Kowalko offered to facilitate looking

into help from the state for assistance. Mr. Clifton asked Mr. Kowalko if he had ever taken on Artesian and Tidewater this way. Mr. Kowalko confirmed he had and added he had been before the PFC probably more than any representative in the State of Delaware. He said his record for protection of the consumers spoke for itself.

Connie Merlet, a Newark resident and owner of a house outside the City, thanked staff for staying on top of the discolored water situation on Kells Avenue. She said the proposed increases exceeded cost of living increases. While she understood that infrastructure and ongoing costs were high, she thought the rate increases were ridiculous.

Donna Means, a Newark resident, thought the water rate increase was ridiculous. She noted that a large majority of Tidewater's service was in Sussex County where taxes were far less than Newark's. She and her husband were both on Social Security and were getting a cost of living increase in January of 3.5%. However, the water rate increases since 2009, the sewer increases and the electric rate increases were well above that 3.5% increase. While she understood the need for improvements, she believed the City had to tighten its belts just like the City's customers.

Ron Walker, a Newark resident, commented about the quality of drinking water in the City which had been a problem in the Kells Avenue area since July 2009. He credited Mr. Athey with being very attentive to the issue but faulted the City and the Water Department for not resolving the issue. Thus, he was not in favor of increasing the rate.

Brenda Quinnette, a Newark resident, questioned whether the University of Delaware was helping to cover water expenses since they were big consumers. Mr. Sonnenberg responded they were a water customer of the City and would get the same increase as other customers.

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

Mr. Clifton asked Mr. Simonson if the Kells problem was an issue of the water at the source or an issue that was occurring going through the infrastructure system. Mr. Simonson replied this was an issue with the water going through the system and did not involve the water coming out of the treatment facilities. Mr. Simonson said the mains needed to be maintained or replaced, and they were trying a process on Kells that did not replace the pipe. Mr. Clifton felt empathy for the residents about the bad water situation and was looking for assurance that the problem would be resolved.

Mr. Simonson said they were looking into the rusting issue but as long as there was a flow of water through the pipe, the water stayed clear. Mr. Sonnenberg added this area was symptomatic of the problems with the system throughout the City. Mr. Athey noted there were two issues – Mr. Walker was getting his water off of Wollaston and when the students leave there was very little flow. That had nothing to do with the water discoloration problem. Mr. Simonson detailed some of the steps taken to try to resolve the problem.

Mr. Clifton believed it was the City's responsibility to maintain the infrastructure system to deliver quality water to the customers and cited the excellent response of the Electric Department in dealing with the hurricane.

Mr. Sonnenberg stressed that the difference with the electric system was that it had been invested in over the years; while the water utility had not. The purpose of this request was to provide the resources for the City to move in the direction of having those same high standards for the water utility. He added that staff did not feel the Kells problem was acceptable and that was why they

brought it forward and proposed to devote more resources to solving these problems.

Mr. Athey commented that everybody was focusing on what happened between 2009 and 2011 where Mr. Clifton noted that from 2001 to 2009 there were no increases. He remarked that the City went through a number of years with either no tax increase or no utility increases and complimented Mr. Sonnenberg for taking a good hard look at the City's infrastructure. Mr. Athey stated that Council had a responsibility to bear the burden which he took seriously, and he intended to support the increase.

Mr. Temko recognized these were times when people did not have excess money to spend and said Council did not enjoy having to increase rates. He added that Council was trying to make up for what happened in the past. He hoped the City could enhance its state partnership going forward in order to find potential funding sources. In good faith he could not have approved the CIP without approving funding for it. He commented that the City's 20% margin was comparable to the profit of private utilities and said the margin went towards the General Fund for operating expenses. He explained there was outreach by the City to see if there were services that could be eliminated. The response was don't raise taxes and don't cut services. In light of the fact that Council was trying to juggle both, he thought the rate increase was necessary to maintain good, clean available water, and he would be irresponsible if he did not support the rate increase.

Mr. Markham felt staff was trying to find small, cost effective ways to resolve the problem on Kells, and if the money was there and the piece of pipe was replaced the situation would be resolved. He added that Council members were impacted by increases, and in looking at the impact to his bill, the increase would be $.13 a day or $3.90 a month which he felt was a small price to pay for a major investment. If the increase was in property taxes instead of in the water utility, he figured it would be a $.23 tax increase to come up with $1.6 million per year.

Regarding the situation with the water discoloration on Kells Avenue, Mr. Athey said the Water Department did exactly what Council asked from staff – innovate, use new techniques and use new processes – and they did. He thought that was the right decision and in the long run it would probably save a significant amount of money because once the process was worked out at Kells, it would be a vast improvement over replacing water mains.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

(ORDINANCE NO. 11-20)

15. 6-B. BILL 11-23 – AN ORDINANCE AMENDING CHAPTER 20, MOTOR VEHICLES AND TRAFFIC AND CHAPTER 2, ADMINISTRATION, CODE OF THE CITY OF NEWARK, DELAWARE, TO PROVIDE PARKING ENFORCEMENT OFFICERS THE AUTHORITY TO ISSUE SUMMONS FOR THE UNLAWFUL REMOVAL OF VEHICLES FROM MUNICIPAL PARKING AREAS

1:24

Ms. Fogg read Bill 11-23 by title only.

MOTION BY MR. TEMKO, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 11-23.

Mr. Herron explained that the Parking Division reported an increase in the number of drivers who are seeking to avoid payment of parking fees. Most of these could be captured on camera, and the purpose of the ordinance was to give Parking Enforcement Officers the authority to issue summons. Repeat offenders would become eligible for immobilization and towing.

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, Morehead, Temko, Tuttle.
Nay – 0.

(ORDINANCE NO. 11-21)

16. <u>7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS</u>:
None

17. <u>8. ITEMS SUBMITTED FOR PUBLISHED AGENDA</u>

A. Council Members:

1. Discussion re Renaming Elkton Road to South Main Street

1:27

Ms. Roser provided a synopsis as to how the renaming idea came about. In May 2007 Council expanded the boundaries of the Downtown Newark Partnership to include both sides of Elkton Road from West Main Street to Apple Road. Since that time the DNP has tried to find ways to better incorporate Elkton Road into the downtown district. Since the efforts met with limited success they continue looking for ways to better incorporate Elkton Road into downtown Newark. Mr. Funk had the idea of changing the name of Elkton Road to South Main Street. The DNP believed the name change would help to better market the commercial space along Elkton Road as numerous prospective businesses said they would only consider opening in downtown Newark on Main Street. The idea was discussed with several merchants and property owners along Elkton Road who were in favor of the idea. The DNP Board agreed changing the street name was a good idea for development. A survey of property and business owners with an Elkton Road address all the way to the Maryland line was then prepared to determine if there was public support for the name change. Out of 100 surveys mailed, 57 were received. The area with the most positive response was the section between W. Main Street and W. Park Place. A second survey was mailed to non-respondents in that area and 9 additional surveys were received. In the area between W. Main and W. Park Place there were 33 properties and 19 businesses. For this area, 38 surveys were returned and of those 25 were in favor of the name change, 9 were opposed and 4 had no opinion. Based on these results the Planning and Development Department suggested that if Council would like to pursue changing the street's name, that it be limited to the area between W. Park Place and W. Main Street and that a report be prepared on the cost to the City to implement the change.

In Mr. Temko's opinion Main Street should run from Library Avenue to City Hall because he felt that showed a concrete Main Street landmarked by two Newark institutions. He said the name Elkton Road had historical significance. His district covered half of Main Street, and he thought this would be confusing and would work only if W. Main Street was renamed since it was not a commercial area. He also questioned the proposed time line. Regarding the time line, the Post Office indicated it would be cleaner if the change was completed by year end and would tie in with DelDOT's redevelopment work and new signage on Elkton Road.

Mr. Athey said he had a hard time having an East, a West and a South Main Street since it was not a very long stretch of road and suggested just making the name Main Street. Mr. Funk said that would create problems for the fire and ambulance companies. Mr. Clifton added this would require completely renumbering every property.

Mr. Morehead was disturbed about the historical situation and added that the cost was an unknown at this point.

Mr. Funk said in Newark, Main Street was the place to be and there were only two vacancies downtown.

In Mr. Tuttle's opinion the history of the road should be honored. In terms of outcry from his constituents, he heard more about this suggestion in favor of the status quo than he did on the water rate increase.

Mr. Clifton added in looking at the dynamic the City was trying to create, it made sense from a business development standpoint to make the change to West Park Place which would encompass the business district while leaving the residential portion unchanged. Regarding the cost to the City he suggested replacing print items on a natural cycle when considering the time frame.

Mr. Markham thought Elkton Road needed some marketing and was not sure renaming would accomplish anything.

Mr. Funk withdrew his recommendation to rename Elkton Road but since this was a public comment item, the Chair opened the discussion to the public.

Catherine Ciferni, a Newark resident, commented there were other reasons Elkton Road was not successful besides the name. For instance, there was no street parking so it did not feel as comfortable to walk it; it was not the most pedestrian friendly; it was not overly compliant with complete streets in terms of ADA access; and it was not that easy to cross. She suggested it would be more proactive to look at those issues rather than its name.

Ken Adams, a Newark resident, thought there were some solutions not yet discussed. He suggested having prominent signs at the entrances to the City that said "Welcome to the Newark Shopping District", or some other creative approach highlighting the beginning or the end of the commercial section of Newark.

Tom Wade, a Newark resident, objected to the suggested name change. If the change was implemented, he suggested stopping at West Park Place where the commercial area ended.

18. <u>8-B. OTHERS</u>: None

19. <u>9. SPECIAL DEPARTMENTAL REPORTS</u>:
A. Special Reports from Manager & Staff: None

20. Meeting adjourned at 8:51p.m.

Patricia M. Fogg, CMC
City Secretary

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