

**CITY OF NEWARK  
DELAWARE**

**COUNCIL MEETING MINUTES**

**December 12, 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  
Assistant to the City Manager Carol Houck  
Finance Director Dennis McFarland  
Planning & Development Director Roy Lopata  
Assistant P& D Director Maureen Feeney Roser  
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. MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT ITEM 2-C, RECEIPT OF ALDERMAN'S REPORT – DECEMBER 8, 2011, BE ADDED TO THE CONSENT AGENDA AND THAT ITEM 5-A, RECOMMENDATION TO MOVE FORWARD WITH MORE PARK DESIGN & COST ANALYSIS FOR A DESIGN-BUILD DEMOUNTABLE PARKING DECK SYSTEM AT LOT NO. 3, BE ADDED TO THE AGENDA.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

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

A. Public

**01:02**

Ron Walker, a Newark resident, referenced the water problem in the Kells Avenue area and suggested investigating the adequacy of the contractor's cleaning job before paying them for this service.

Mr. Walker voiced his objection to the property tax increase in the 2012 budget and said his neighbors, who were mostly senior citizens, were concerned about the increased cost of living in the City. Mr. Walker thought Council members should talk to their senior constituents about the impact of the tax increase.

4. Catherine Ciferni, a Newark resident, suggested Council consider several items in the New Year including a visioning session to review the five-year Comprehensive Plan and the addition of a ramp for accessibility in the Council Chamber. Further, she remarked that it was disturbing when members of the

public spoke at Council meetings and they received no response to their comments.

5. Maria Ruocco, a Newark resident, said she, her mother and several other individuals would ride their decorated bicycles in Newark while singing carols and spreading holiday cheer. They planned to arrive close to Main Street on December 17 around 11:30 a.m. and would make a few stops there before biking through neighborhoods. Ms. Ruocco said they hoped to raise money for the Pearce Q Foundation, a local charity benefitting children with cancer.

**6. 1-B. UNIVERSITY**

**12:59**

1. Administration – Mr. Armitage extended happy holiday wishes to all. He reported that David Singleton, Facilities Vice President, will attend the 1/23 Council meeting to report on campus building plans.

**7. 1-B-2. STUDENT BODY REPRESENTATIVE - None**

**8. 1-C. COUNCIL MEMBERS**

**14:35**

Messrs. Temko, Markham, Tuttle, Morehead, Athey and Funk offered best wishes for a happy and healthy holiday season.

**9. Mr. Temko**

- Mr. Temko said although the public hearing process regarding the budget was legally required, he felt in its current form it was a somewhat antiquated system for involving the public. He hoped to see more workshops where the public was able to be involved in a tangible way. In regard to Ms. Ciferni's earlier comment, he reported that the City Manager was looking into possibilities for a ramp in the Council Chamber and expected a report in the near future.

**10. Mr. Tuttle**

- Mr. Tuttle felt the City should encourage more public involvement with the budget. He observed that at the last Council meeting, which was the formal public hearing for the annual budget, staff and Council members outnumbered the public about 15 to 1.

**11. Mr. Morehead**

- Mr. Morehead thought there was a need to change the perception that the public's comments did not matter to Council. In discussions with constituents about their experiences living in the City, he routinely heard "we pay very low taxes" and "Newark is a tremendous deal." He noted the availability of abatements for senior citizens on fixed incomes, and his viewpoint was that the City should keep up with inflation to stay ahead of the curve. Since residents did not want to cut back on services and personnel costs were three quarters of the City's costs, he said expenses would continue to rise over time. He felt the City should plan for preventive maintenance of its infrastructure to prevent costly breakages and repairs.

- Mr. Morehead questioned the City's plans for solving the bike rack issue. Mr. Sonnenberg reported that staff was working on alternative locations.

**12. Mr. Clifton**

- Mr. Clifton congratulated Planning & Development Director Roy Lopata who was recently honored by the Delaware Association of Public Administration.

- Mr. Clifton recognized City employees not only for doing a stellar job in providing services to residents all year but also for their contributions to the

community. The Police Department sponsored Toys for Tots (a project they have done for several years), the Finance Department provided gifts to the non-profit Family Promise for the Christmas season and the Emmaus House acknowledged a \$550 gift from the foremen and seasonal workers of the Maintenance Yard.

- Mr. Clifton thanked Mike Fortner for his help with a constituent's bike problems on Main Street.

**13. Mr. Athey**

- Mr. Athey commented on the water main work on Kells Avenue where temporary water service was run in plastic pipes above the ground. He was not aware of the cleaning issue raised by Mr. Walker. From constituent feedback he received, the residents seemed to be coping fairly well with the temporary service.
- Mr. Athey enjoyed Winterfest which was always a great Newark event.
- Mr. Athey attended the Delaware Association for Public Administration event where Mr. Lopata received the prestigious Public Service Award for 2011.
- Mr. Athey recognized Mr. Lapointe for accepting the position of President of the local chapter of the American Public Works Association for another year. He felt this provided an information exchange and kept Newark at the forefront of other municipalities in the State.

**14. 2. APPROVAL OF CONSENT AGENDA**

**A.** Approval of Regular Council Meeting Minutes – November 28, 2011

**B. *First Reading – Bill 11-29*** – An Ordinance Amending the Zoning Map of the City of Newark, Delaware, By Rezoning from BL (Business Limited) to BB (Central Business District) the .345 Acre Portion of 132 and 136 East Delaware Avenue - ***2<sup>nd</sup> Reading – January 9, 2012***

**C.** Receipt of Alderman's Report – December 8, 2011

**30:44**

Ms. Fogg read the Consent Agenda in its entirety.

MOTION BY MR. TUTTLE, SECONDED BY MR. CLIFTON: 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.

**15. 3. ITEMS NOT FINISHED AT PREVIOUS MEETING:**

**A.** Adoption of 2012 General Operating Budget (Public Hearing Held November 28, 2011)

**31:29**

Mr. Morehead thanked Messrs. McFarland and Sonnenberg for doing a good job putting the budget together. He said this was a difficult process, and he planned to support the budget.

Mr. Clifton explained that staff took the time to do a comparative cost survey of residential and municipal services for Newark, Wilmington, New Castle, Elsmere and New Castle County. The results showed the City well below the other areas, and with the proposed budget, the City was still below the City of New Castle, the Town of Elsmere and New Castle County. Mr. Clifton brought this to the attention of the public because he thought it was a good survey and helped to explain the overall cost of living in Newark. He believed it was important to remember that the City was trying to get the Enterprise Funds (water

and electric) to operate as businesses, and the 9.5% reduction in electric rates resulted from that strategy.

Regarding the Citizen Survey, Mr. Clifton said residents rated the City high in satisfaction with services. He remarked that during the years when there was no tax increase he advocated to increase the taxes by one penny which he thought was the prudent thing to do. Going forward he wanted to get into the budget process earlier than the end of November to allow more public vetting of the process. When the electric rate reduction occurred, he noticed a banner on Channel 22 touting the reduction. He suggested using something similar to highlight important points of the budget and promote more public exposure.

Mr. Clifton questioned the cost of janitorial services on page 138 which seemed to double from previous years. Ms. Houck reported the actual cost was approximately \$66,000 annually. Mr. Sonnenberg said it appeared the cost was divided between two different budgets in the past but would look into it.

Mr. Clifton suggested that June might be a reasonable time frame to begin developing an outline of where the cost savings were coming from and where potential income streams could be increased. Mr. Sonnenberg agreed that midyear was a good time frame since it could be done in conjunction with financial forecasting for the Capital budget.

Mr. Clifton said although increases were never an easy pill to swallow, he had become comfortable with the budget. He believed most residents understood there was a cost to bearing the services which they valued and since the budget was necessary to keep the City moving forward, he would support it.

Mr. Athey reported he had directly communicated with constituents regarding the City's budget challenges. He said out of over 100 addresses where he sent information explaining the 6% property tax increase, the electric reduction and the water rates, the only opposition expressed came from Mr. Walker at tonight's meeting. He heard from only one other person who requested clarification. Mr. Athey said he would vote in favor of the budget which he felt reflected his constituents' values.

Mr. Tuttle commented that he was comfortable with the budget when it was presented two weeks ago. Most of his constituents believed Newark was a good value and did not want to compromise the quality of services provided by the City even if this meant higher costs for the services.

Mr. Markham said in looking through the budget from the start of 2003 to this budget, a number of cost reductions had been made. For example, there were nine less City employees (not counting the police.) He said the Police Department installed cameras through grant funding, and Parks and Recreation and Water and Sewer were very successful in "finding" money. In addition, the City was saving \$1 million on bond refinancing and savings were being realized through refuse changes and recycling. Employees were paying more now for health coverage. He pointed out that more people showed up for the discussion about outsourcing trash collection than for the public hearing on the budget. He felt residents sometimes thought Council members voted their own interests but in this instance he was voting against his interest since he paid into the electric surplus but would not get it back because he now had solar. Further, he would be significantly impacted by the property tax increase based on property values. However, he planned to support the budget.

Mr. Temko thought this was a responsible budget and had nothing additional to add.

Mr. Funk believed Council had done a good job over the last eight years managing money and boosting the reserves when considering that the City had a

loss of about \$9.2 million on the reservoir and that the water, sewer and electric infrastructure was neglected.

MOTION BY MR. ATHEY, SECONDED BY MR. CLIFTON: THAT THE 2012 GENERAL OPERATING BUDGET BE APPROVED AS PRESENTED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

MOTION BY MR. ATHEY, SECONDED BY MR. TUTTLE: THAT THE CITY ADOPT A PROPERTY TAX RATE FOR 2012 OF 68.58 CENTS PER \$100 OF ASSESSED VALUE.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

16. **4. FINANCIAL STATEMENT:** None

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

A. Recommendation to Move Forward with More Park Design & Cost Analysis for a Design-Build Demountable Parking Deck System at Lot No. 3

**56:54**

Ms. Houck reported that the recommendation contained in her memo of 12/6/11 was for the approval to proceed with the More Park design and final cost analysis. This phase of the design was intended to further identify a final budget for the project based on the completion of necessary engineering studies. The fees associated with the More Park proposal for design and final cost analysis were \$76,200, and funds were available from Capital Project V1201. It was therefore recommended that the City Manager be authorized to enter into an agreement with More Park USA at the proposed cost of \$76,200.

Ms. Houck explained that Council was not approving full funding for the project at this time. Rather, they were being asked to approve the final engineering studies to determine whether to move forward and finalize the total budget for the project. This first step would help to insure that the proposed design was the best choice for Lot No. 3, and staff believed it was from everything they saw thus far.

Mr. Morehead said he was surprised there had not been any presentation to Council on this infrastructure technology which was new in the United States. He had questions regarding the stability of the structure that he felt should be addressed before the City committed money to the project. He also voiced his concern that the math currently used in the plan and at the August Council presentation did not work as the number of parking spaces shown (113) did not meet City Code for width.

Mr. Athey was concerned that Newark would be a guinea pig based on the limited number of projects in the United States. He asked if any risk prevention would be incorporated in the contract. Ms. Houck said the actual construction contract would be where those details would be finalized, and the risk factors would be included at that time.

Ms. Roser explained that she and other members of staff attended a detailed presentation by More Park about how the structure would work and how it was suited for Newark. If the City decided to proceed, there would be an engineering contract to make sure there was adequate geotechnical support for

the structure (this would be covered by the first \$10,000 expenditure.) In reply to Mr. Morehead's comment about the number of parking spaces, Ms. Roser said the drawing was a rough determination of how many spaces the City might get from the parking deck. There was a possibility that a few spaces were not 9 feet wide and since the City was exempt from Code, it could be decided to use 8.5 foot spaces instead, although she would not recommend it. It was her belief that the City should look at every possibility to increase the parking inventory, and this technology seemed to be the best opportunity to address the parking challenge downtown. Mr. Morehead expressed concern about Ms. Roser's comment that the City was exempt from Code.

Mr. Athey questioned the next step if Council approved moving ahead with the engineering. Ms. Roser said More Park would work with the City throughout the process and would first come back with the underground engineering necessary to figure out utility placement costs to determine if the project was still cost effective. Within a month and a half after Council's approval, Ms. Roser expected to have final costs involved with the design and address any structural concerns. Mr. Athey believed he heard somewhere along the way that the City would hire an independent structural engineer or construction manager to keep an eye on the project since this would be a design-build job. Ms. Roser and Ms. Houck did not recall discussing the need to hire outside for inspection services, and Ms. Houck said the City's inspectors were familiar with inspecting garages constructed by the University. Mr. Athey indicated that he and Mr. Morehead would be interested in seeing a presentation by More Park.

Mr. Clifton commented that he was prepared to embrace new technology and felt it was worth spending \$76,000 to be able to get more solid information about the system's compatibility in Newark. He thought the project was large enough that it called for an engineer or construction manager to oversee the project. He planned to support the recommendation.

Mr. Tuttle said he looked at this project in terms of the cost per new space. There would be a gain of 113 parking spaces which equated to \$30,000 per space in round numbers. He reported that Milburn, NJ, was building a conventional garage and would gain fewer spaces at a cost of \$120,000 per new space. Although conventional construction provided a nice facility, he pointed out that the cost was astronomical. While he felt Newark had an opportunity to do something financially attractive, he agreed he was concerned about whether it would work technically.

MOTION BY MR. ATHEY, SECONDED BY MR. CLIFTON: THAT THE CITY MANAGER BE AUTHORIZED TO ENTER INTO AN AGREEMENT WITH MORE PARK (USA), LLC FOR DESIGN AND FINAL COST ANALYSIS AT A COST OF \$76,200.

MOTION PASSED: VOTE: 6 to 1.

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

18. **6. ORDINANCES FOR SECOND READING & PUBLIC HEARING:**  
A. **Bill 11-27** - An Ordinance Amending Chapter 22, Police Offenses, Article XII, Code of the City of Newark, Delaware, By Clarifying What is Considered Imitating the Police Uniform

**1:20**

Ms. Fogg read the ordinance by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. TUTTLE: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL NO. 11-27.

Chief Tiernan explained that the original ordinance was limited to the "standard uniform." Since there were attempts by individuals from the public to

copy and wear the shirts used by the Street Crimes Unit, this amendment would prohibit such conduct.

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. 11–26)**

**19. 6-B. BILL 11-28 - AN ORDINANCE AMENDING CHAPTER 10, ELECTIONS, CODE OF THE CITY OF NEWARK, DELAWARE, BY REAPPORTIONING THE ELECTRIC DISTRICTS OF THE CITY OF NEWARK (PLAN A AND PLAN B SUBMITTED)**

**1:22**

Ms. Fogg read the ordinance by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL NO. 11-28, PLAN B.

The Chair opened the discussion to the public.

Robert Persak, a Washington House resident, commented on behalf of a number of residents of the condominium. Their request was for District 2 to continue to encompass East Main Street down to Academy with Mr. Clifton remaining as their Council representative. Mr. Persak said the residents had developed a level of confidence and respect in working with Mr. Clifton.

Mr. Lopata thanked the Reapportionment Committee for their hard work on Plan A and also Anthony Albence and Howard Sholl of the Department of Elections.

Mr. Athey introduced George Irvine, Reapportionment Committee representative from District 4. Mr. Irvine said in hindsight, he thought Plan A may have been a bit too extreme, particularly in regard to his district (#4). He expressed some reservations during the Committee meetings that a sense of identity of where people lived would be altered by moving the line to West Park Place. He said if the City preferred to have a map that looked more like a pizza slice where every district touched the center and then went out to the edge in a pie shape, Plan A met that goal. While he saw merits to both plans, he thought Plan B was more in the spirit of the guidelines the Committee was formed under and noted it did not make as many drastic changes. Mr. Funk asked Mr. Irvine if it concerned him that there were almost no registered voters in District 4 under Plan B. Mr. Irvine said District 4 shrunk under both plans.

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

Mr. Funk asked why the other Council members should have to deal with twice as many constituent complaints. Mr. Athey said there was some email traffic back and forth on this point, and the exercise he did with the County was based on census tracks, not registered voters. Mr. Funk thought it should be more balanced. Mr. Clifton remarked that while it was understood the ideal number was 5,245 per district, Council members represented every person, regardless of whether they were registered to vote.

Mr. Athey asked how residents would be informed of changes in their district. Ms. Fogg explained that members of the Election Board would take the map Council adopted and drive the City to make sure people were in the correct district. A notification letter would then be sent advising people of their new district. She said that would be done relatively quickly since an election was coming up.

Messrs. Athey and Clifton asked to have their email addresses included in the notifications to their districts. In response to Mr. Markham's question, Mr. Herron advised the change became effective as soon as Council adopted the plan.

Mr. Tuttle made the observation that the concept of balancing not only by population (which was required) but also looking at registered voters was something that would be intriguing to do. He found a model of the State of Hawaii where their districts were determined by permanent residents (the same as a registered voter) created because of the military's presence and the transient population. They wanted their representative districts each to have an equal number of permanent residents, and the Supreme Court said they could do it that way.

Mr. Temko was pleased that Mr. Irvine supported the spirit of the changes to Plan B. He asked Mr. Clifton to elaborate from a map perspective on the changes that were made in his district. Mr. Clifton said he took in the north side of Kirkwood Highway, Laura's Glen, the houses along Kirkwood Highway, McDonald's and Colonial Gardens, came down Main Street one more block, down Academy Street and back down Delaware Avenue. He lost some of the old Newark area.

Mr. Temko said his question was directed more to why Plan B was better than Plan A. Mr. Clifton said he was honored to serve the people in Washington House, that it was the constituent's map, and he felt they should have the ultimate choice where possible as to their elected representative. Mr. Temko thought it would make sense in this process to see where Washington House fit in with adjacent communities and where it would be best represented in terms of the other types of adjacent communities. He said he would be hesitant to put different neighborhoods or communities into districts based upon people who represent those districts. Mr. Clifton added in talking about like communities, he thought Mr. Temko had a valid point and noted there were four condominium associations in his district. Thus, he felt he was well suited to relate to them and to serve them.

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. 11-27)**

- 20. **7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS:**  
None
- 21. **8. ITEMS SUBMITTED FOR PUBLISHED AGENDA**
  - A. **Council Members:** None
- 22. **8-B. OTHERS:** None
- 23. **9. SPECIAL DEPARTMENTAL REPORTS:**
  - A. **Special Reports from Manager & Staff:**

1. **Resolution No 11-\_\_**: Appointment of The Russell Trust Company as an Investment Manager and Authorization to Execute Investment Management Agreement

**1:38**

Mr. McFarland said Council previously approved the action to move the City's funds currently in the OPEB Trust to Russell Investments to diversify that portfolio by minimizing future contributions to the OPEB Trust. In the process of enacting that transition, Russell asked that the City pass a resolution as Trustees of the OPEB Trust authorizing the City Manager to execute the investment management agreement which was identical to the one with Russell for the Pension Plan. According to Mr. McFarland this was a procedural formality.

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT THE RESOLUTION BE APPROVED AS PRESENTED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

**(RESOLUTION NO. 11-N)**

24. **Meeting adjourned at 8:40 p.m.**

Patricia M. Fogg, CMC  
City Secretary

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