

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

June 11, 2007

Those present at 7:31 pm:

Presiding: Vance A. Funk III, Mayor
District 1, Paul J. Pomeroy
District 2, Jerry Clifton
District 3, Doug Tuttle
District 4, David J. Athey
District 5, Frank J. Osborne
District 6, A. Stuart Markham

Staff Members: City Manager Carl F. Luft
City Secretary Susan A. Lamblack
Assistant to the City Manager Carol S. Houck
City Solicitor Roger A. Akin
Planning Director Roy H. Lopata
Water & Wastewater Director Roy Simonson
Acting Chief of Police John Potts
Finance Director Dennis McFarland

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

2. MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THE AGENDA BE AMENDED BY MOVING ITEM 9-A-1 TO BE HEARD AS ITEM 1-C.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

3. **1-B. RECOGNITION OF SUPPORTERS OF NEWARK POLICE
DELAWARE CANINE UNIT**

Acting Chief Potts described the canine program that began as a joint venture between the late Chief of Police Bill Nefosky and the FOP. The proposal was developed, a grant was secured from the Criminal Justice Council, and support was solicited from the business community and the public. The response was very impressive and the Police Department thought several contributors warranted recognition. Those contributors recognized were as follows:

Daimler-Chrysler Corporation - \$7,500.

Newark Charter School – Student Government - \$500.

DMS Stucco - \$1,000 to purchase vests for the canine.

Dr. Miki King from the New London Veterinary Center – donated veterinary services to take care of the canine.

Wilmington Trust - \$1000.

Delaware State Police – Assisted with the selection of the canine and provide 800 hours of training to Officer Jones and canine Paco at no cost to the City.

Wal-Mart Foundation – \$1,250 from each store in Elkton and New Castle.

4. **1-C. (9-A-1) RESOLUTION 07-__ : IN RECOGNITION OF THE COORDINATION OF THE “U DON’T NEED IT?” STUDENT MOVE-OUT PROGRAM**

Ms. Lamblack read the resolution in its entirety.

Mr. Funk congratulated everyone involved with the program, which turned out to be very successful.

The resolution was unanimously endorsed by Council.

(RESOLUTION 07-N)

5. **2. CITY SECRETARY’S MINUTES FOR COUNCIL APPROVAL:**

A. Court of Assessment Appeals of May 29, 2007

There being no additions or corrections to the minutes, they were approved as received.

6. **2-B. REGULAR COUNCIL MEETING OF MAY 29, 2007**

Mr. Tuttle amended page 13, second paragraph from the bottom of the page, by adding the word “not” between “were” and “able.” On page 14, the first sentence, the word “past” was changed to “passed.”

MOTION BY MR. OSBORNE, SECONDED BY MR. MARKHAM: THAT THE MINUTES OF MAY 29, 2007 BE APPROVED AS AMENDED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

7. MOTION BY MR. CLIFTON, SECONDED BY MR. POMEROY: THAT THE AGENDA BE AMENDED BY NOT LIFTING ITEMS 4-A, 4-B, AND 4-C FROM THE TABLE; AND BY ADDING ITEM 8-A, BILL 07-23, AN ORDINANCE AMENDING CHAPTER 32, ZONING, BY ADDING CENTER STREET TO THE LIST OF EXEMPT STREETS IN THE STUDENT HOME ORDINANCE.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

8. **3. ITEMS NOT ON PUBLISHED AGENDA:**

A. Public

Representative John Kowalko, provided his thoughts regarding land use and development that impacted and would continue to impact much of New Castle County, the City of Newark, and the surrounding communities. He believed future decisions made by the County, State, and the City of Newark would adversely impact or continue to contribute to impacts already affecting the community’s quality of life and economic stability. He believed development codes were becoming locally inadequate and placed a strain on resources and the environment. He also believed clear cutting old growth and mature trees added a devastating dimension to erosion, flooding, and watershed failures. He urged Council to seriously consider annexation as its last line of defense to impede development proposals that met code, but were insufficient to protect surrounding communities.

Representative Kowalko also commented on the proposed Village of Chestnut Hill subdivision that was left on the table for a discussion at a later date. He claimed the community supported a limited form of development for that land, but still had concerns about the development's detrimental impact to the environment and adjacent properties. The proposed plan was for four units per acre, which he claimed was environmentally unsustainable on W. Chestnut Hill Road. He reviewed the drainage and sediment erosion problems in surrounding communities and thought it was evident the hydrogeology of that area could not sustain intense development.

Representative Kowalko concluded by suggesting that Council read the article on the front page of *The News Journal* about the affordable housing crunch and specifically subsidized housing in New Castle County. He was concerned about the demolition of Cleveland Heights and whether the residents would be provided decent housing. He was assured by Mr. Funk that the City was working with the Newark Housing Authority in regard to the demolition of Cleveland Heights.

9. **3-B. UNIVERSITY**

1. Administration

There were no comments forthcoming.

10. **3-B-2. STUDENT BODY REPRESENTATIVE**

There were no comments forthcoming.

11. **3-C. COUNCIL MEMBERS**

Mr. Clifton encouraged everyone to attend a ceremony on Monday at the Governor Bacon Health Center for the 175 people from the 153rd MP Company that were being deployed. Acting Chief Potts' son, as well as a Newark police officer, and several other officers from various police departments were among those being deployed for a one-year deployment including their time at Fort Dix for training. Most of the unit were full-time law enforcement officers, which Mr. Clifton felt would have a great impact on public service in our state.

12. Mr. Markham said he was at the recycling site on Saturday morning and took this time to recognize Carol Houck for the hard work she did with that project.

13. Mr. Markham advised that he and Mayor Funk attended a ribbon cutting ceremony earlier in the day for CAI which was located near Timothy's. He was pleased to see a high-tech company bring part of its business to Newark.

14. Mr. Tuttle stated that from May 31 through June 2nd, his academic unit at the University hosted an international conference in Newark. It was a gathering of over 120 public management, public administration, educators, and researchers from 20 countries, half of which were from outside of the United States. The only negative was their final evening was spent in Philadelphia and not in Newark for Newark Nite. He received many compliments about the City of Newark from the participants who said they were "blown away" by our community.

15. Mr. Funk complimented Mr. Osborne on his 50th wedding anniversary that was celebrated last Saturday.

16. Mr. Funk complimented Newark Nite and said all the experts told him there were at least an additional 5,000 people making it the most attended Newark Nite since its inception. Despite the large crowd, there were the fewest problems, and he credited that to the Police and Parks and Recreation Departments for doing such a great job.

17. Mr. Pomeroy thanked Mr. Luft and staff for assisting with several constituent matters in his district. Specifically, he thanked Roy Simonson for the work he did identifying a problem in Country Hills with water pressure. Those residents were impressed with the response from Mr. Simonson.

18. Mr. Pomeroy commented on the fact that W. L. Gore was doing renovations and would be reopening their facility on Barksdale Road. He has heard nothing but positive comments about W. L. Gore from the community. He credited them for going out of their way to talk to Mr. Pomeroy and other Council Members, as well as people in the community. He thought the City was lucky to have them as a neighbor.

19. Mr. Osborne complimented the recycling program at Curtis Paper Mill Road and acknowledged the hard work that went into its success. Mr. Funk interjected that this project partially began last year with University students who did a food and clothing drive and forwarded their collections to the Food Bank and various missions. He was very pleased with the success of this year's project.

20. Mr. Athey said he visited the recycling site Saturday morning and wanted to recognize Carol Houck and Marta Pacheco's hard work that day, as well as the many volunteers who helped make the program successful.

21. Mr. Athey agreed that this year's Newark Nite was the best ever with perfect weather and the largest crowd ever. He congratulated everyone who was involved with putting it together.

22. Mr. Athey advised that he was at City Hall Friday afternoon for the arrival of the Special Olympics torch, the Flame of Hope. It was a very moving ceremony and this year over \$180,000 was raised for the Special Olympics.

23. Mr. Athey commented on the City's intent to issue a design/build request for proposal (RFP) for the expansion of the Curtis Water Treatment Plant. He thought it was an appropriate project to use this process. Based on his experience, you have to be very careful that the evaluation criteria was clearly spelled out.

Mr. Luft asked if it was okay to proceed with the design/build RFP for this project and Council Members endorsed the proposal. Mr. Athey believed it was something the City should be doing on certain types of projects, but reminded Council that the learning curve could provide some tough situations.

24. Mr. Athey advised that he would not be at the August 27th meeting and asked that the Capital Budget hearing not be held at that time.

25. Mr. Osborne noted that Val Nardo, who has been very active for many years collecting food for the needy, would continue to do so, but has joined with the Newark Welfare Association in that effort.

26. **4. ITEMS NOT FINISHED AT PREVIOUS MEETING**

(NOTE: Items 4-A, 4-B, and 4-C remained tabled at the request of the petitioners.)

27. **5. RECOMMENDATIONS ON CONTRACTS & BIDS:** None

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

29. **7. RECOMMENDATIONS FROM THE PLANNING COMMISSION/DEPT.**
None

30. 8. ORDINANCE FOR FIRST READING:

- A. Bill 07-23 - An Ordinance Amending Ch. 32, Zoning, By Adding Center Street to the List of Exempt Streets in the Student Home Ordinance

Ms. Lamblack read Bill 07-23 by title only.

MOTION BY MR. MARKHAM, SECONDED BY MR. OSBORNE: THAT THIS BE THE FIRST READING OF BILL 07-23.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(2ND READING 7/9/07)

Messrs. Funk and Clifton asked for an explanation as to how this ordinance came about being placed on the agenda. Mr. Lopata explained that the student home ordinance had a list of exempted streets, and periodically the City got a request from property owners to add their street to the list. A request was made from residents on Center Street that was forwarded to the Planning Commission for their review and approval. It was now before Council in ordinance form. Mr. Lopata noted that most of the properties on Center Street were already student rentals.

31. 9. ITEMS SUBMITTED FOR PUBLISHED AGENDA:

- A. Council Members

(NOTE: See Item #4.)

32. 9-B. COMMITTEES, BOARDS & COMMISSIONS: None

33. 9-C. OTHERS:

1. Request from DEMEC to Designate Director & Alternate

Mr. Luft explained that the Delaware Municipal Electric Corporation (DEMEC) required each of the member municipalities to designate a Director and Alternate Director. Mr. Luft has served as Director and the Director of Finance has served as the Alternate. He recommended that Council appoint the position of City Manager as the Director and appoint the position of Director of Finance as the Alternate Director to DEMEC.

MOTION BY MR. OSBORNE, SECONDED BY MR. ATHEY: THAT THE CITY MANAGER BE APPOINTED AS THE DIRECTOR AND THE DIRECTOR OF FINANCE BE APPOINTED AS THE ALTERNATE DIRECTOR TO DEMEC.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

34. 10. SPECIAL DEPARTMENTAL REPORTS:

- A. Special Reports from Manager & Staff:
1. Discussion re State Whistle-blower Statutes & City Implementation Issues – Akin

Mr. Akin referred to his May 11, 2007 memorandum to Mayor and Council on the subject of whistle-blowing that Mr. Pomeroy asked him to research. He explained that whistle-blowing resulted from the aftermath of Enron and some other national scandals dealing with publicly traded corporations. Both the

federal and state governments passed laws that defined whistle-blowing and provided protection for employees who went to their employers to complain about what they believed were financial and/or other sorts of “shenanigans.” Both the federal and state law stated that whistle-blowers must be treated respectfully and may not be subject to any unlawful, adverse employment action such as threats, demotions, loss in pay, loss of benefits, etc. Whistle-blowing complaints must be dealt with seriously and until a whistle-blower has proved to have a separate agenda and proved to be giving false information, the government/employers (including municipalities) must establish a process by which whistle-blowing complaints would be investigated and resolved.

Mr. Akin was asked by Mr. Pomeroy to determine if an employee or other person who was reluctant to bring a whistle-blowing complaint within the City hierarchy, if it was a good idea to have the Solicitor as the person to whom an employee could take their complaint. Mr. Akin said employees should always be encouraged to go to the level of supervision where they felt comfortable bringing a complaint and believed it would be fully investigated. He also indicated Council could designate him as an additional person within the government to whom a complaint could be brought.

Mr. Pomeroy explained that he brought this subject up after a discussion he had with a friend who now lived in Cincinnati. He assured Council it was not a reaction to anything specific brought to his attention. He believed for a city that always prided itself in transparency and kept a high level of public trust, by providing another avenue through the City Solicitor was an additional check and balance on the City’s operations. In his mind there were two reasons to explore this idea. First, it provided an additional layer of transparency and support of public trust for the City’s operations. Second, it would provide an extra layer of security for the employees. He agreed with Mr. Akin in that he hoped any employee who had an issue would follow it along the chain of command and go to his/her supervisor. However, there may be instances where an employee may not feel comfortable doing that. Mr. Pomeroy thought if another avenue was provided to that employee, it would protect everyone.

Mr. Funk said in his 39 years as an attorney, he has never known where the existing system had broken down. He thought having the City Solicitor as part of the process was not a good idea because the Solicitor’s client was the City and it would waive red flags as a conflict of interest. Therefore, in his view, it would have to be somebody outside of the system.

Mr. Pomeroy reiterated that his concern was providing an employee with another avenue if he/she did not feel comfortable going through the chain of command. Mr. Funk disagreed and said there was another avenue, that being that employees stop by his office with their complaint or they could go to any Council Member and that was why the system worked.

Mr. Clifton agreed with Mr. Pomeroy that there needed to be another level within any organization where an employee felt comfortable registering a complaint that could very well affect taxpayers. He referred to a well-publicized case in his own arena a few years ago where money was being skimmed off to buy a girlfriend a very expensive diamond ring. A whistle-blower brought that to their attention.

Mr. Funk interjected that a lot of people go the Attorney General Office’s with complaints, which was another reason the system worked.

Mr. Clifton thought it had to be more internalized before going to the state level. He saw Mr. Pomeroy’s suggestion as one more mechanism for a transparent system of checks and balances. He did not believe the additional avenue could be anybody internal. He also saw this as providing protection to 220 employees that were in some respect a watchdog to the system.

It was suggested that Mr. Akin look into what the County and other municipalities did regarding whistle-blowing.

Mr. Markham thought another avenue provided a safety valve and he thought Mr. Akin could fill that role. Mr. Funk disagreed and pointed out that Mr. Akin reported to Council but represented the City. Mr. Tuttle agreed with looking at other municipalities.

Mr. Clifton asked if an employee was terminated for cause and took the City to court, would the Solicitor represent the City. Mr. Akin said if the City had an insurance policy that would cover such a claim, it was more than likely the insurance company would hire private counsel. His office would represent the City if he believed they had the expertise to provide the representation. Otherwise, he would ask Council for permission to retain outside counsel.

35. 10-B. ALDERMAN'S REPORT

MOTION BY MR. OSBORNE, SECONDED BY MR. MARKHAM: THAT THE ALDERMAN'S REPORT DATED JUNE 5, 2007 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

36. 10-D. REQUEST FOR EXECUTIVE SESSION RE PENDING LITIGATION (DURKIN V. NEWARK)

An Executive Session was not required at this time.

37. Meeting adjourned at 8:22 pm.

Susan A. Lamblack, MMC
City Secretary

/pmf