

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

July 23, 2012

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, Luke Chapman
District 6, A. Stuart Markham

Staff Members: Interim City Manager Carol Houck
City Secretary Patricia Fogg
City Solicitor Bruce Herron
Electric Director Rick Vitelli
Finance Director Robert Uyttebroek
P & D Director Maureen Feeney Roser
Water & Wastewater Director Roy Simonson
Community Affairs Officer Dana Johnston
Assistant Finance Director Wilma Garriz
Finance Accountant Jim Smith
Systems Support Specialist John Herring

1. The regular Council meeting began with a moment of silent meditation and pledge to the flag. Mr. Funk asked for a moment of silence and sympathy for City of Newark Water Department employee Kevin Locke and his family following the sudden and violent death of his 22 year old son Kevin Waterman last Friday in Wilmington.

2. **PRESENTATION OF PROCLAMATION TO LORI ECONOMOS AND DARRYL SAUNDERS**

00:43

Mr. Clifton read the proclamation which was unanimously endorsed by Council recognizing Newark Police Department School Resources Officer Darryl Saunders and Newark High School Nurse Lori Economos for their efforts in saving the life of a Newark High School student who suffered a medical emergency.

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

A. Public

03:28

Julie Murphy, a resident of The Village of Twin Lakes, was disturbed by the possibility that Lang Development might be requesting a rezoning of the unsold portion of the AC-zoned property to eliminate the age restriction. She did not believe Lang Development was making an effort to market the unsold units and encouraged Council to deny a rezoning request unless the tenants unanimously agreed to the change. Ms. Murphy also pointed out that promised amenities had not been completed.

4. **1-B. UNIVERSITY**

10:49

Mr. Brainard reported that Nancy Chase was available to attend the August 13th Council meeting to make a Wellspring presentation.

5. **1-B-2. STUDENT BODY REPRESENTATIVE** - None

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

11:43

Mr. Athey

- Mr. Athey extended his thanks to Mr. Simonson for hosting a public meeting regarding water main work in the vicinity of Orchard Road.

7. **Mr. Morehead**

- Mr. Morehead said it was brought to his attention that some Nottingham Road residents wanted to ban the use of engine compression braking on large trucks. Ms. Houck and Mr. Clifton thought there was an ordinance in place Citywide. Ms. Houck will follow up on this request.

- Mr. Morehead attended the Newark Landlord's Association meeting where they asked for help with expanding the penalties for repeat noise violations at the same properties involving the same tenants. He requested information to determine whether the parties were occurring at the same or different properties.

8. **Mr. Markham**

- Mr. Markham provided an update on the solar project which he discussed with the Conservation Advisory Commission. They agreed to pursue the solar installation over the purchase of renewable energy (recs) but stressed that the City should purchase the recs if the project did not come to fruition. DEMEC expressed interest in this project and said other cities were interested in a community solar project and they would follow Newark's progress.

9. **2. APPROVAL OF CONSENT AGENDA**

16:20

- A. Approval of Regular Council Meeting Minutes – July 9, 2012
- B. Receipt of Alderman's Report – July 19, 2012
- C. Reappointment of Ronald Gardner and John Horner to the Personnel Review Committee – Three-Year Term to Expire July 2015
- D. Resignation of Syl Woolford from the Newark Housing Authority; Appointment of Robert Detweiler to Fill Term to Expire January 2013.

Ms. Fogg read the Consent Agenda in its entirety.

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

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

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

11. **4. FINANCIAL STATEMENT:**

- A. Presentation of 2011 Audit/Comprehensive Annual Financial Report

17:25

J. Michael Stephens, Partner with CliftonLarsonAllen, LLP, presented the results of the audit of the financial statements for the year ending December 31, 2011. Mr. Stephens noted that although the firm name changed following a merger in January 2012, the same staff conducted the City's audit.

The opinion on the financial statements was an unqualified opinion meaning the statements were fairly presented in accordance with generally accepted accounting principles. This was the best opinion the City could have on the financial statements.

The report on internal controls over financial reporting and compliance identified an issue with internal controls. This was a segregation of duties issue and was a function of size limited by Finance Department staffing. There were several IT access controls, again a function of size. However, in testing by the auditors, no questionable transactions were identified. The segregation of duties issue raised the risk of errors not being detected.

Mr. Stephens directed Council to the management discussion and analysis related to the actual financial results of the City. The only accounting issue that came up was a bond refinancing towards the end of the year. Mr. Stephens complimented the City for being in a financial position to fund in excess of 100% of their post benefit obligation. He stressed how rare that was and said many government entities did not have the capability to fund their liability.

Regarding the City's self insurance from an actuarial perspective, Mr. Clifton asked whether that fund was stable and solid. Mr. Stephens said keep in mind they were not actuaries. Typically with self insurance a contingent liability was established. When they came on board with Newark, that amount was zero which was rare for a city of this size. After that initial year they became comfortable that the City had a basis for what was not recorded and used a reasonable approach for their estimates. Further, since the City was partially insured, the audit risk was mitigated.

Mr. Tuttle did not recall the IT-related comments being a focus area in the past. Mr. Stephens thought they previously issued a comment in the management letter or may have lumped it as a segregation issue. The controls they identified as having some weaknesses were mostly a function of size and convenience. This area was highlighted to make management aware of this weakness so they could decide whether to take any action. Mr. Markham noted he did not see anything out of the ordinary and added that the City would become more dependent on IT in light of the Honeywell contract. He believed the City could not afford breaches or downtime in IT and needed to make sure this area was properly covered and supported.

MOTION BY MR. ATHEY, SECONDED BY MR. CLIFTON: TO ACCEPT THE 2011 AUDIT/COMPREHENSIVE ANNUAL FINANCIAL REPORT AS PRESENTED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

PRESENTATION AND RECEIPT OF GFOA AWARD

Mr. Funk presented the Certificate of Achievement for Excellence in Financial Reporting which was awarded to Newark by the Government Finance Officers Association of the United States and Canada for excellence in its comprehensive annual financial report. Members of the Finance Department who accepted the award were Wilma Garriz, Assistant Finance Director and Jim Smith, Accountant. Mr. Uyttebroek acknowledged Daina Montgomery, Finance Assistant (not present) and Dennis McFarland, former Finance Director during this reporting period.

12. 5. RECOMMENDATIONS ON CONTRACTS & BIDS:

- A.** Recommendation re Guarantee Energy Performance Contract – Smart Meter Project

44:22

Ms. Houck provided background information on the performance contract. In 2009 Honeywell performed the feasibility review of the City's facilities and helped complete the energy efficiency conservation grant application. This resulted in identification of many conservation measures to satisfy the requirements of the grant, three of which were successfully implemented: energy efficient windows in the Municipal Building, lighting retrofits and sensors throughout the building and LED street lights the length of Main Street. The total cost of these projects was \$147,800.

This effort was followed in 2010 by the selection of additional energy conservation measures also identified in the feasibility review. The City wanted to include them in a guaranteed energy performance contract to take advantage of additional ARRA funds and limited them to facility improvements. This project will wrap up by September and includes lighting retrofits in additional facilities, building control systems, building envelope upgrades and variable frequency drive upgrades in the water plant and pump stations.

Earlier this year it was determined that a large number of water meters needed to be replaced and that renewed interest in bringing Smart Meters to Newark. Through further consideration and looking at operations, it was determined this was feasible. The installation of Smart Meters for water and electric customers Citywide would provide operational cost savings. A Smart Metering system, its associated data collection opportunities and software improvement will provide greater detail of utility consumption. Customers could save money and better understand the impact of their usage. A Smart Meter project installation would also provide the base for a Wi-Fi mesh throughout Newark to support and advance multiple aspects of the City's operations.

Ms. Houck reported that Mayor and Council authorized moving forward to identify the scope. The recommendation presented was the outcome of that earlier approval. Honeywell was now prepared to provide a guaranteed comprehensive turnkey Smart Metering project for Newark that included the design, the engineering, procurement, installation and project management. The Smart Meter system will allow the City to generate timely and accurate usage and billing information for residents and will eliminate the need for monthly visits to properties for electric readings and quarterly visits for water readings. All customers will get monthly readings for electric and water. This project will also result in enhanced controls directly related to correcting one of the audit concerns noted earlier for IT and utility billing.

As part of the project Honeywell will provide and install a fixed base meter reading system for water and electric meters. They will also install the thin mesh Wi-Fi network to be used by various departments including the Police Department.

A detailed project scope advised that final bidding and selection of the meters would take place pending Council's approval tonight. Cost estimates and savings provided were the worst case scenario. However, it was felt the final numbers would be more attractive.

Replacement of the existing electric meters and analog water meters with Smart Meters would improve accuracy by eliminating errors which occurred as a water meter aged and eliminated misreads and requested re-reads for accuracy. The new meters would provide for faster detection and pinpointing of leaks. The system would do a read of water usage in the middle of the night when there was minimal usage and an alert would be issued allowing quicker action when problems were detected.

Data would be transmitted directly to Newark every hour for water meters and every 15 minutes for electric meters and would be available to customers on the City's website.

Meter installation detail included how customers would be notified of project information, contact name and address, phone numbers for questions, the type of work to be performed at the homes or businesses and a reason for affecting or disrupting services.

The technology that would bring the utility readings directly to Newark was an automatic meter infrastructure or a fixed face mesh network radio frequency system used to collect meter readings through the installation of collectors and repeaters on poles, water tanks and buildings. Approval was already received from UD's STAR campus to use their water tank and from Christiana Towers at the other end of the City.

The web portal for the end user was made possible through the inclusion of a meter data management system and customer connection software. These products were available from Harris, the existing utility billing system, and worked with the Smart Meters to provide the information to be transmitted through the Wi-Fi network to feed into the web portal through the server.

The wireless mesh network was intended to be used by various departments. Approximately 50 mobile routers were included in the planned project, 27 of which would support police cars that currently had laptops. The additional vehicles included Code Enforcement, Water and Parking Enforcement, providing the opportunity for more efficient mobile offices.

The financial summary provided was based on the best rates available as of July 12. Ms. Houck provided a new, more favorable rate received of 2.4% fixed with the flexibility of payment timing to conform to the City's cash flow. It was expected that the final numbers for lost water revenues and the meter costs would result in additional savings and reduce costs, thereby improving the cash flow.

Upon Council's approval, Ms. Houck said she would move forward with the closing of the ARRA funding by the end of the month. The Resolution Council received was a requirement of that funding and was prepared by bond counsel. Within a week Honeywell would begin the RFP process for the bidding in order to finalize electric and water meter selections.

Ms. Houck hoped to receive the go ahead from Council to proceed to closing, finalize meter selection and the balance of project funding and enter into the guaranteed energy performance contract.

Mr. Funk asked why the City was paying \$800/hour to bond counsel since the ARRA funding was promissory notes. Mr. Uyttebroek said this was a tax exempt lease purchase so bond counsel was ascertaining the tax exempt status for the holders of the lease purchase and a legal opinion was needed.

Mr. Athey referred to the minutes of the April 23rd Council meeting regarding the savings. He was confused by the handout where the table at the bottom of page 6 started with \$866,000 in savings in 2013 and then 3% every year thereafter. The attachment started at \$475,000 but that was purely operational savings. He did not understand where to account for the other \$400,000. Michele Peterson, Honeywell representative, said the remainder of that money was in the meter accuracy. The water meters in place today were 20 years old, and they needed to determine the actual accuracy to compute the remainder of the performance contract to determine the remainder of the guarantee. Mr. Tuttle commented that the handout contained a column called "Honeywell Estimated Savings" where the dollar figures from the years were all identical except for year one which showed a difference of about \$400,000 which he thought was an error in the year one number. Mr. Uyttebroek confirmed the figure should be \$866,153 on both pages.

John Topmiller, lead engineer for Honeywell said once they enter into the contract for the work and the construction was completed, some 20,000 meters would be replaced. Their year one for the savings started when the construction was completed (a 9-14 month construction time.) After that time the City would start reaping the savings.

Mr. Chapman questioned the actual year one cost. Ms. Houck said that would not be known until the bidding was finalized and the City finalized the balance funding to decide a payment schedule and other details.

Mr. Athey asked who was responsible for guaranteeing the estimated savings of \$400,000 expected with the new meters. Mr. Topmiller said Honeywell would guarantee the accuracy of the meters. They would test a sample of the population of the meters beforehand to determine the accuracy of the existing meters and then every year they would test another sample of the meters to make sure they were as accurate as Honeywell said they would be. Mr. Athey asked if Ms. Houck intended to bring the agreement between Honeywell and the City back to the table because it was not a contract per se.

Ms. Houck stated she would like the approval to do the closing on the ARRA funding but if it was Council's preference, she would come back with the final results of the bidding of the meters, the results of the best rates for the balance of the money and other final details including what the City was prepared to do, reorganization plans, etc. Mr. Athey agreed that should be done in the interest of transparency.

Mr. Athey said it seemed to him with the operational savings there could be some double counting – it talked about less meter rereading costs, fewer meter repairs, and a reduction in personnel. Ms. Houck responded that was based on records of how many times a meter reader had to go out. The meter reading expenses for the personnel was just their regular costs. Mr. Athey said since the personnel was no longer there, they were double counting. Ms. Houck said they were currently counting cost per trip including the vehicle rolls. Dan Madden, Honeywell, said he thought Mr. Athey was saying if you went with the program today, they were double counting a reread. From an operational savings standpoint Honeywell was saying if the City continued to stay with the existing meters, it would continue to have rereads. Mr. Morehead said it did not matter because the rereads were forcing the four personnel rather than the three personnel for example. Mr. Madden said they were just looking at existing costs today. Mr. Morehead said it was a true double count because it did not take four people without the reread.

Mr. Uyttebroek added it was also part of Honeywell's guarantee. Honeywell would guarantee the savings. The City would do its part to reduce staffing and Honeywell guaranteed the City would save money on not having to send people out to do disconnections, rereads, etc.

Mr. Clifton was unclear on the actual guarantee. Ms. Peterson said the easiest way to explain that was to show Council their Phase 1 contract and look at the language showing where Honeywell guaranteed the savings. It had been looked at legally and by the City's bond counsel and approved. Ms. Houck added there was a whole measurement and verification portion of the agreement which Council did not have today because of the meters being bid and awaiting the water loss accuracy results. Since there was uneasiness from Council, Ms. Peterson said they would come back to Council with everything including the guarantee and the measurement verification.

Mr. Clifton referenced the charge offs and write offs of \$17,000. When he questioned the amount in the past, the figure was tens of thousands of dollars. He wondered where Finance came up with the current number. Ms. Peterson said they spent a considerable amount of time with staff where these numbers were developed.

Mr. Chapman was concerned that for several months Council was awaiting the numbers and doing piecemeal approvals. At some point even if the contract did not come back the way they wanted to see it, he thought the City would be committed to move forward. Ms. Houck said approving the \$2.9 million ARRA funding and going through to closing did not commit the City any further because the money could be returned if Council decided not to move forward. At the point where Honeywell provided a viable guarantee meaning all the needs and savings were there, then the City would be obligated to pay the \$150,000 break fee. She explained there was a very short time frame on the loan to make the target date. They did not go forward with the meter bidding because they were taking extra time to identify the meters that would best suit the City's needs.

Mr. Athey asked if Honeywell provided a 100% guarantee. Ms. Peterson confirmed it was a 100% guarantee and said the City already had one with Honeywell on the Phase 1 project. This was a first party guarantee meaning Honeywell held the guarantee on their balance sheet. Ms. Houck added that Honeywell had to put up a bond for 100% of the project.

Mr. Athey was not clear on how a lease purchase would work. Ms. Houck explained there were changes in the State law where borrowing this type of money or doing this as a lease purchase would not constitute debt for the City. The City would own the meters at the end of the payoff. Mr. Uyttebroek added it was a finance instruction to make this project work – instead of doing a bond or a note, it was a lease purchase. If something went wrong with the meters, they carried a manufacturer's replacement warranty. (The City was seeking a twenty year guarantee.) Mr. Clifton asked if that was a service contract. Ms. Peterson replied it was the base warranty.

Mr. Markham thought a larger IT staff would be needed but the difference was they would be available Citywide, not just for meter reads. This would provide expansion capability in the IT Department. He said Council had to look at what this project would do for the City. It revamped how the City does business in the electric and water utilities. We would not be sending people out, we would get accurate information and we could better pinpoint electric outages. When doing the rollout Mr. Markham hoped staff would start at areas where the City saved the most the fastest. Mr. Markham then asked to hear from staff about what the project meant to them.

Mr. Vitelli was anxious to replace meters because it would help the Electric Department from an engineering perspective. Service calls to customers reporting low voltage would be eliminated and would now be checked through the computer. Software would integrate with an outage management system to show outages after a big storm. It would also integrate with the GIS system so staff would be able to click and see the meter number, the customer, etc. In two years they have money budgeted for an engineering software package to help check the transformer loads. Conservative voltage reduction would be possible, saving the City and the customer money. Mr. Vitelli believed this project was a good way to get all the meters changed. Mr. Uyttebroek added that with the data management system, if a meter was not read after several 15 minute intervals, a work order would automatically be generated to check out the meter.

Mr. Simonson said he was very encouraged by this project. It would make the system more efficient, more effective and eliminate a lot of busy work spent tracking down issues. For example, leaks in houses required a lot of staff time. Typically the customer cannot imagine where all the water was used or how it was used, and with this system they will be able to go in and look at it. City staff will be able to pull it up on the computer and pinpoint when the usage shot up. It will provide better information to address those situations. The system will issue an alert and generate a report if during the night (when there should be a period when no water was used) there was never a zero usage. The customer could

then be contacted about a possible water leak. Meter accuracy was guaranteed so there would not be a gradual degradation of the meters over time.

Mr. Uyttebroek remarked that water was currently billed quarterly and if a homeowner had a leak in month one, it could go undetected until they received their bill two months later. This would allow the problem to be addressed in a more timely fashion.

Regarding billing cycles, Mr. Uyttebroek said this would allow the City to gather and validate all the data while streamlining and automating the process. They could look at outsourcing the printing, there could be more e-billing and it would open up a whole avenue of options with the data management system coupled with the Smart Meters. In response to Mr. Markham's question, Mr. Uyttebroek said the net metering system would take care of the manual billing for solar customers.

Mr. Clifton discussed concerns of several residents at Fountainview about the accuracy of readings billed through the condo association which were read from the hall while the meter was in the unit. Since the meters were in the condo utility room, Mr. Clifton assumed when the new meters go in, they will replace the analog dial and gauge. Mr. Simonson confirmed the new equipment would typically replace the whole meter although there were some situations where just the head could be replaced. Mr. Clifton asked if that would allow water service to a unit to be turned off remotely where the owner could not turn it back on again. Mr. Simonson said that was not a technology they were looking at on the water side because it was not cost effective at this time.

Mr. Clifton requested that a minimum of 48 hours written notice be provided to residents, occupants and businesses of the work disruption when the new meters are installed. Honeywell explained changing electric meters was a very quick process and agreed to be flexible with providing notice.

Mr. Morehead commented about water meters becoming less accurate over time in under reading. He understood that Honeywell would guarantee the meters for accuracy and asked if the technology changed that much. Mr. Simonson said the meters would be magnetic meters with no moving parts and a flow tube that measured the water through the magnetic properties of water and the electric properties of magnetism. The manufacturer and Honeywell guaranteed them accurate for 20 years. The new meters operated on a battery guaranteed for 20 years. Ms. Houck reported the reason the water meter read only once an hour was to preserve battery life.

Mr. Markham asked if users would be able to remotely control their thermostats. Ms. Peterson responded that technology was with the actual thermostat and could be purchased by customers.

Mr. Markham asked if there was any backup system to the Wi-Fi mesh for the police in the event of a failure in an area so they would be able to communicate. Ms. Houck replied that their radio system would still be in operation. She added the City would be eliminating its contract with Verizon to run the computers in the cars.

Mr. Chapman asked for the Honeywell annual support numbers for the first five years. Ms. Peterson said they had to determine the level of support, how much the City wanted to pay for an annual service contract vs. how much the IT group would do and there would be support for their measurement and verification services just as on their current contract with Phase 1 as well as some overall software maintenance that had to be purchased on the AMI systems being installed.

Regarding the estimated savings, Mr. Chapman asked if they were taking into consideration consumers learning about their usage and adjusting their

usage to save money. Ms. Peterson said those numbers were not based on growth of the City's revenues. The 3% escalation was based on operational costs and how much more the City would pay employees to do the same thing they do today vs. next year. In reference to the accuracy testing of existing meters, Mr. Madden explained that the testing was for water meters only. It was a matter of pulling the data and figuring out a typical year and then going out and physically testing the meter. Mr. Chapman asked when to expect a complete project proposal. Mr. Madden said the audits typically took four months, and they were six weeks into it.

Suzanne Johnson from Honeywell said some of the timing was determined by the approval for the financing because Honeywell could not complete the proposal until the financing was solidified.

Mr. Athey said in regard to Mr. Chapman's comment – if use of both water and electric started to drop at some point they may have to adjust the formula of the fixed component for both rates. Mr. Uyttebroek interjected that he spoke with the town of Braintree, MA who was installing Smart Metering, and they commented about peak billing at a different rate and that was when serious money could be lost by people shifting their usage to the nighttime. He said people were still going to use their microwaves, computers, etc. and did not see consumption dropping off.

While Mr. Chapman wanted to support this project, his concern was that it was really expensive and relied on a lot of unknowns.

Mr. Clifton agreed that was the core of his consternation. The City was looking at moving into a project that was a close second behind the value and cost of the reservoir. His fear was that the savings might not come to fruition. He believed the City needed to be quite diligent and prudent moving forward and said the final contract would be the maker or the breaker.

Mr. Athey agreed there were unknowns. However, he noted they knew what the ARRA rate would be, half of the guarantee would come from a contractor that posts a bond for that guarantee, and more than half of it was the City's responsibility. While he had a number of reservations, after talking it through he thought Ms. Houck built enough conservatism into it, but he still wanted to see the final agreement and said the City had to be very transparent about what was happening.

Ms. Houck commented that this project did not fit into a nice little box like other contracts; it was different. She thought the City was moving in the right direction. She said this would not go forward unless they had the guarantees, and if Honeywell did not think there was a guarantee in this and could not benefit the City, they would not be here.

Mr. Markham added the City was not in this alone – it had a partner whose money was on the line. As far as the final numbers were concerned, Ms. Peterson pointed out the numbers they presented were firm, fixed prices with no change orders and included the guarantee of a self-funded solution just as in Phase 1.

Mr. Clifton clarified that even if the vendors come forward with a change order, the City would not see the impact. Ms. Peterson said that was correct – the City would get a firm, fixed price with no change orders.

Mr. Tuttle thought it was important to recognize what this project said about Newark as a place to live. If they were trying to be attractive to a sophisticated population, this was what people expected. They wanted to be able to manage their daily lives, including the use of utilities. Ms. Peterson added that the City had only just begun to realize the benefits of the meters. With the Wi-Fi wireless mesh network the City could look at adding parking

meters, had options for Public Works, Code Enforcement, and public safety. It could be used as a revenue source, and the possibilities were endless.

MOTION BY MR. ATHEY, SECONDED BY MR. CLIFTON: THAT THE DISCUSSION BE OPENED FOR PUBLIC COMMENT.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

A Newark resident (name inaudible), expressed concern that the City would add \$400,000 every year to the water bills of current residents to pay for this system.

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

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT THE INTERIM CITY MANAGER BE AUTHORIZED TO PROCEED WITH THE CLOSING OF THE ARRA FUNDING.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

13. **5-A-1. RESOLUTION NO. 12-__:** A RESOLUTION AUTHORIZING AND APPROVING A CITYWIDE AUTOMATED METERING INFRASTRUCTURE PROJECT; AUTHORIZING THE ISSUANCE OF THE CITY'S PROMISSORY NOTE (EFFICIENCY PLUS – SMART ELECTRIC METERS PROJECT), SERIES OF 2012, IN ORDER TO PROVIDE THE FUNDS NECESSARY TO FINANCE THE ELECTRIC METERING COMPONENT OF THE AUTOMATED METERING INFRASTRUCTURE PROJECT; DETERMINING THE FINAL TERMS AND CONDITIONS OF THE NOTE; ENTERING INTO A SECURITY AGREEMENT WITH THE DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL; PROVIDING FOR THE PURCHASE OF THE NOTE BY THE DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL; AUTHORIZING THE CITY TO ENTER A LEASE AGREEMENT UNDER WHICH THE CITY WILL LEASE ALL OTHER EQUIPMENT NEEDED TO FULLY IMPLEMENT THE AUTOMATED METERING INFRASTRUCTURE PROJECT; AUTHORIZING THE EXECUTION OF VARIOUS DOCUMENTS IN CONNECTION WITH THE FINANCING OF THE AUTOMATED METERING INFRASTRUCTURE PROJECT; AND AUTHORIZING OTHER NECESSARY ACTION

2:00

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

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

(RESOLUTION NO. 12-N)

14. **6. ORDINANCES FOR SECOND READING & PUBLIC HEARING:**
A. **Bill 12-22** – An Ordinance Amending Chapter 2, Administration, Article IV, Downtown Newark Partnership, Code of the City of

Newark, Delaware, By Expanding the Boundaries of Downtown Newark

2:00

Ms. Fogg read Bill 12-22 by title only.

MOTION BY MR. ATHEY, SECONDED BY MR. TUTTLE: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 12-22.

Ms. Roser reported that when Council considered changing the name of Elkton Road to South Main Street from the area of West Main Street to West Park Place, the Partnership recommended the companion legislation to expand the City's boundaries. The boundary change would become effective January 1, the same time the street name change would occur. The timing would allow staff to meet with businesses between Apple Road and West Park Place to discuss the changes.

Mr. Clifton relayed comments from a number of business people who were not in the Partnership boundaries who paid the annual \$25 fee and felt they were being unfairly taxed since they received none of the benefits. They believed the economic development focus was limited to the downtown area.

Ms. Roser explained when the Partnership was formed; they sought a cooperative effort between the City, the business community and the University. The City committed to providing staff support and the necessary overhead to keep the Partnership operating, the University increased their subvention and Council decided to increase the business license fee across the board by \$25. Businesses inside the district paid no more than those outside. The logic was what was good for the heart of the community was good for the community as a whole. The Partnership discussed the matter on many occasions and looked at ways to increase the amount for businesses inside the downtown area. The discussion got bogged down and never went any further. Mr. Roser said the Board could be asked to come up with a new formula.

Ms. Roser added that the City also participated in the Greater Newark Partnership which was based on the success of the DNP working with the New Castle County Chamber of Commerce and UD to foster economic development in the greater Newark area.

Mr. Morehead did not feel it was fair to require businesses out of the downtown area to pay to support their competition. If the DNP was going to advertise Newark as a whole, then the argument made sense that there was a benefit to everybody when downtown Newark succeeded.

Mr. Clifton said this subject was discussed frequently, and the complaints he received were ongoing. Mr. Funk suggested that the City stop billing for the DNP line item and raise the business fees accordingly. Mr. Morehead said this was included in the Code and there was a basic inequity that needed to be fixed.

Ms. Houck and Ms. Roser said they would look into the charging issue.

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: VOTE: 6 to 1.

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

(ORDINANCE NO. 12- 19)

15. **6-B. BILL 12-20 – AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF NEWARK, DELAWARE, BY REZONING FROM BC (GENERAL COMMERCIAL) TO BB (CENTRAL BUSINESS DISTRICT) .826 ACRE PROPERTY AT 264 ELKTON ROAD (SEE ITEMS 7-A AND 7-B)**

2:13

(Note: The public hearing was held at this time for the rezoning, the major subdivision and the Special Use Permit.)

Ms. Fogg read Bill 12-20 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 12-20.

Lisa Goodman, Esq. represented the applicant, Bariglio Corporation, which proposed to redevelop the Newark Car Wash on Elkton Road. The site was an extension of the original Rittenhouse Station project and would be redeveloped with 22 apartments. She explained that Rittenhouse Road was a private road, and there was an agreement to access it for Rittenhouse Station. There was no agreement for the car wash to access Rittenhouse Road; thus, The Lofts at Rittenhouse would have access from Elkton Road. The site was .826 acres and was currently fully developed with the car wash. West Knoll Apartments were to the rear and zoned RM and a cemetery was to the west. The Comprehensive Plan called for medium to high density apartments with 11 to 36 dwelling units per acre. The proposal was for 20-two bedroom units and 2-three bedroom apartments. That translated to 26.6 dwelling units per acre which was compliant with the Comp Plan and with the revised BB zoning designation.

She referred to a handout which showed the access from Elkton Road, the site plan, various views of the building and the design for the project which resembled a converted industrial building. Ms. Goodman explained that the building did not propose retail because of the elevation which was raised up rather than at street level. There was also an abundance of retail next door at Rittenhouse Station. A new bus enclosure would be provided by Bariglio Corporation and would encourage the use of public transportation.

Ms. Goodman reported that an issue was just brought to their attention today when the owner of West Knoll Apartments raised a question about the proximity of the two buildings. The two buildings were approximately 60 feet apart. BB zoning required a 15-foot rear setback; they were providing a 40-foot rear setback. The site was Code compliant and had 48 parking spaces under the building. A solid fence would be placed along the West Knoll side of the property. The project required a Special Use Permit because they proposed BB zoning. There was no adverse affect on health or safety, it was not detrimental to public welfare or injurious to property, would continue the redevelopment of Elkton Road and was consistent with the Comprehensive Plan.

Ms. Goodman explained that the Subdivision Agreement recommended the installation of sidewalks along Rittenhouse Road which the applicant was more than willing to do. However, Bariglio Corporation did not own Rittenhouse Road or have any rights to install sidewalks on their property. They requested Council to obtain permission for the sidewalks from the owner of Rittenhouse Road which Ms. Goodman said would be more of a benefit to tenants of West Knoll Apartments.

Mr. Clifton asked if the landscaping would be the same as pictured in the rendering. Tim Anderson, Karins and Associates Project Engineer, said the colored renderings did not necessarily reflect the plantings proposed in the landscape plan. It was more an illustration of the landscaping. Ms. Goodman said the rendering was representational for the elevation. Typically street trees were not included on the elevation plan because they would block the building.

Mr. Markham asked if the applicant approached West Knoll for access to Rittenhouse Road. Ms. Goodman replied there was significant dialogue back and forth until it became clear this would not happen in a reasonable time or for a reasonable price. DeIDOT reviewed the access on Elkton Road and said it was acceptable. Mr. Chapman said the applicant could request Council to press the current owner to allow Bariglio to install the sidewalks or request that the current owner install them. Ms. Goodman did not know that the City legally had power to make that request of the owner. Mr. Athey asked if there was any dialog about making Rittenhouse a public road. Mr. Funk advised the City had a sidewalk ordinance where property owners were required to install sidewalks. He thought the City might have the right to order West Knoll to install sidewalks. Ms. Goodman stated based on the amount of time spent discussing access and redesigning as a result of not having access to Rittenhouse Road, they needed to go forward this evening and then potentially revisit this question down the road.

Ms. Morehead questioned whether a bus stop existed there now. Ms. Goodman said there was not. He asked if this needed DeIDOT approval since it appeared to be in the middle of an intersection. Mr. Tuttle said Elkton Road/Rittenhouse Road was a designated bus stop location for the Route 16 bus.

Mr. Morehead questioned the parking spaces. Dan Hoffman, Design Collaborative Architects, said there were 8 parking spaces outside of the building behind the bus stop area on the front of the building facing Elkton Road/South Main Street. The renderings showed the big opening on the right hand side and the arched opening on the left hand side. All the openings inside between them had a garage door which would shield one car. One car would be in and out and one car would be in. The arched bay, the bay all the way to the left and the parking the rear were just carports, so there was some shielding, but all the rest would be visible.

Mr. Morehead asked how the fact that there was no commercial in this project fit in with the requirements of BB in the Central Business District. Ms. Goodman said BB permitted parking as a use on the first level. In looking next door at Rittenhouse Station, the building along Elkton Road had retail on the first floor, and the center building had parking on the first floor. Both were permitted in BB.

The Chair opened the discussion to the public.

Sami Khan owner of West Knoll Apartments said he invested in the City for 16 years. Their property was affected by this proposed construction, and one of their buildings was located directly behind the car wash. The construction of a three-story building would block the natural light of the residents, and the air and view would be affected. They requested that the project be denied. He also commented about increased traffic with 100 people living there and the inconvenience that would cause. Mr. Khan commented about the problems the residents have faced with Elkton Road construction and noted that the West Knoll Apartment sign was removed making it difficult to find the complex. Mr. Khan pointed out that his company owned Rittenhouse Road.

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

Mr. Markham was disappointed the access was not off Rittenhouse Road. The project seemed to fit what was being done down Elkton Road. He had no reason to oppose it and would support it.

Mr. Morehead thought the building set a bad precedent in BB downtown for South Main Street. He granted that parking was allowed on the first floor.

However, he preferred that this building have commercial on the first floor and apartments above because it was prime real estate. He did not plan to support the project.

Mr. Athey planned to support the project which was Code compliant, and was a transitional use on Elkton Road. He encouraged the City to offer to take over part of Rittenhouse Road for a public right-of-way.

Mr. Funk requested that the City Solicitor look into the situation with Rittenhouse Road before forcing the owners to install sidewalks. In terms of first floor commercial, the shape of the property dictated the buildings be put in the back and with the elevation, nobody would rent the space for retail. He said it was a beautiful building and would be a great addition and thus would support it.

Mr. Chapman liked the design and the different architecture. As far as the parking on the first floor rather than commercial space, it made sense to him and he said it would probably attract a higher clientele which Council asked developers to do for quite some time. He intended to support the project.

Mr. Clifton agreed with Mr. Athey's comments about this being a transitional element on Elkton Road from the stereotypical residential over commercial and also agreed with Mr. Funk about exposure to the road being essential for retail. When looking at rezoning for this property and what was already redeveloped on Elkton Road, this was the highest and best use. It was aesthetically pleasing and a great project and he planned to support it.

Mr. Tuttle planned to support the proposal and thought the zoning was appropriate to the neighboring uses. Although Council would expect BB to embody commercial in most cases, there was room for some variation and he felt this was an appropriate place to exercise it.

Question on the Motion was called.

MOTION PASSED: VOTE: 6 to 1.

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

(ORDINANCE NO. 12-20)

16. 7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS:

- A.** Request of Bariglio Corporation for the Redevelopment and Major Subdivision of 264 Elkton Road, In Order to Construct a One-Story Building at the Site of the Existing Newark Car Wash, Containing 48 First Floor Parking Spaces and 20 Two-Bedroom and 2 Three-Bedroom Second and Third Floor Apartments for a Total of 22 Apartments to be Known as "The Lofts at Rittenhouse" (***Agreement & Resolution Presented***) (***See Items 6-B and 7-B***)

2:57

(Note: The public hearing was held for the major subdivision under Item #15.)

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

AMENDMENT BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT ITEM 11 OF THE AGREEMENT BE AMENDED TO READ "THE DEVELOPER AGREES TO CONSTRUCT THE PROPOSED SIDEWALK ALONG THE WESTERLY PORTION OF RITTENHOUSE ROAD, AND RAISE THE CURB HEIGHT ALONG RITTENHOUSE ROAD TO ELIMINATE VEHICULAR ACCESS TO THE SITE, PROVIDED THAT THE OWNERS OF RITTENHOUSE ROAD CONSENT TO SUCH

CONSTRUCTION AND ENTER INTO A MAINTENANCE AND CROSS-ACCESS AGREEMENT, AND A CONSTRUCTION ACCESS AGREEMENT REGARDING SUCH CONSTRUCTION WITH THE DEVELOPER.”

AMENDMENT PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Question on the Motion as Amended was called.

MOTION AS AMENDED PASSED. VOTE: 6 to 1.

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

(RESOLUTION NO. 12-O)

17. **7-B. REQUEST OF BARIGLIO CORPORATION FOR A SPECIAL USE PERMIT TO ALLOW 20 TWO-BEDROOM AND 2 THREE-BEDROOM SECOND AND THIRD FLOOR APARTMENTS IN THE PROPOSED BUILDING TO BE CONSTRUCTED AT 264 ELKTON ROAD TO BE KNOWN AS “THE LOFTS AT RITTENHOUSE” (See *Items 6-B and 7-A*)**

2:58

(NOTE: The public hearing was held for the Special Use Permit under Item #15.)

MOTION BY MR. CLIFTON, SECONDED BY MR. CHAPMAN: THAT THE SPECIAL USE PERMIT BE APPROVED AS REQUESTED.

MOTION PASSED. VOTE: 6 to 1.

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

18. **7-C. REQUEST OF ELKTON PLAZA ASSOCIATES LLC, FOR A REVISION TO THE APPROVED SUBDIVISION AGREEMENT FOR 136 ELKTON ROAD, IN ORDER TO ADD EIGHT ADDITIONAL UNITS TO THE EXISTING 14-UNIT APARTMENT MIXED USE BUILDING AND CONSTRUCT FIRST FLOOR PARKING (*Addendum to Agreement Presented*)**

2:58

MOTION BY MR. MOREHEAD, SECONDED BY MR. ATHEY: THAT THE REVISED SUBDIVISION AGREEMENT BE APPROVED.

Lisa Goodman, Esq. represented Elkton Plaza Associates and explained they were seeking site plan approval for a current project to permit an additional seven or eight apartment units at 136 Elkton Road.

In February 2010 Council approved a rezoning from BC to BB for this property that was formerly the home of the Eagle Diner. It was for 10,600 square feet of commercial and 14 two-story townhouse style apartments and was currently under construction and close to completion. The revised plan elongated the building from a partial L into a full L. This would provide ground level parking and an additional eight apartments. To provide the additional eight apartments, they were required to provide 89 parking spaces which this plan accomplished. Ms. Goodman explained they were in discussions with DeIDOT regarding one space. DeIDOT had concerns about the first parking stall on the west side of the entrance. They demonstrated multiple times that one could access and exit that parking stall without crossing over into the area that DeIDOT believed should not be crossed into. If they lost that parking space, they would

be down to building seven apartments, not eight. They requested Council to approve this as eight units, and if DeIDOT took away the one parking space, they would build seven units to be Code compliant as to parking. The proposed density with the new apartments met the BB requirements. It was 18.8 dwelling units per acre, and 20 were permitted for three bedrooms and above.

Ms. Goodman said they had an interesting time at the Planning Commission which ended with a 3 to 4 vote resulting in the Commission voting against the recommendation. No one spoke in opposition to the project. The Commission's issue was purely the proximity of this project to the railroad tracks. Ms. Goodman provided to Council an aerial of the CSX line that showed the distances of the buildings to the railroad tracks. This building was proposed at its closest point to be 70 feet from the tracks. The existing building that was located on the rear of the property was 63 feet from the line. The Millyard was approved at 52 feet.

Ms. Goodman said they were taking away a one section stub of this building and fully utilizing the lot which she thought said a lot about the faith the owners had in the vitality of the City.

Mr. Funk was confused that the entrance and exit looked a lot different than on the plan. Joe Charma, Landmark Engineering, said the current entrance and exit was a temporary facility pushed over next to Kinko's because Elkton Road was not finished. It would be a 24-foot wide in and a 24-foot wide out, one way in, one way out. Mr. Charma explained in the previous plan that was approved, the one level that went back to the rear of the property was for Networks. They wanted to come into the new building and the owners wanted to accommodate them, but the construction schedule got pushed back, and they went to another location. That was why they were back with a revised plan.

In response to Mr. Markham's question about how many bedrooms were in the proposed apartments, Ms. Goodman responded there were three bedrooms in each apartment. He asked what the benefit was to the City to agree to the change. Ms. Goodman responded vitality, putting a property to its highest and best use and they would have a nicer looking building.

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

Mr. Athey reviewed the minutes from the June 5, 2012 Planning Commission meeting and disagreed with the four votes that opposed the proposal. Normally, he would not vote against the Planning Commission's recommendation but would vote against this one.

Question on the Motion was called.

MOTION PASSED. VOTE: 6 to 1.

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

19. 8. ITEMS SUBMITTED FOR PUBLISHED AGENDA:

A. Council Members:

1. Resolution No. 12-___: In Support of an Urban Tree Canopy for the City of Newark

3:13

Ms. Fogg stated this Resolution was brought forward from Parks and Recreation.

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

Ms. Houck noted the City participated in this effort in the past, but there was a new requirement that a Resolution be presented.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Athey, Chapman, Clifton, Funk, Markham, Morehead, Tuttle.

Nay – 0

(RESOLUTION NO. 12-P)

20. **8-B OTHERS:** None

21. **9. SPECIAL DEPARTMENTAL REPORTS:**

A. Special Reports from Manager & Staff: None

22. **Meeting adjourned at 10:12 p.m.**

Patricia M. Fogg, CMC
City Secretary

/av