

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

August 27, 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
Deputy City Secretary Alice Van Veen
City Solicitor Bruce Herron
Finance Director Robert Uyttebroek
Police Chief Paul Tiernan

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

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

A. Public

00:31

Edward Streets, a Newark resident, voiced concerns about homeless people on Main Street and stated they were sleeping in the DART transit hub. Mr. Funk said the transfer station was under DART's control and they would be notified about the situation.

3. Mary Jo Frohlich, a resident of Twin Lakes, said she believed Lang Development would petition Council in the next several months to rezone the over 55 section of their community. She commented that there were no efforts to sell the units by Cornell and complained about the lack of property maintenance which discouraged potential customers. She asked Council to persuade Lang Development to try to actively sell the remaining units for one year before considering a zoning change. Messrs. Funk and Clifton discussed Newark's restrictions which did not allow any occupants under age 55 while Federal Code allowed a 20% deviance. Mr. Funk questioned why Newark was the only Delaware municipality to exempt itself from the Federal law. Mr. Clifton explained in 1996 the Supreme Court allowed State, Municipal and County governments to reduce or eliminate that restriction. Mr. Funk believed the zoning should be left as is because land was very valuable and eventually Lang Development would realize it was more profitable to build on the over 55 side. Further, the City should be vigilant about how the area was being maintained.

4. **1-B. UNIVERSITY**

1. Administration

07:04

Mark Brainard, Office of Government Affairs at UD, said one of his primary responsibilities was to increase communication between the State, the University and the City. He will be starting the first ever Government Affairs website for the University as well as a monthly newsletter to the State and the City. He requested feedback about any information the City wanted to share with the University.

5. **1-B-2. STUDENT BODY REPRESENTATIVE**

There were no comments forthcoming.

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

08:37

Mr. Markham

- Mr. Markham pointed out that the City's Code had not been updated for some time. He noted that recodification should be done every ten years and said the process had been started but not completed by Ms. Lamblack. He thought it should be checked again.
- Mr. Markham hoped the person chosen to represent the City and the State during the upcoming primary election would be a strong representative.

7. **Mr. Morehead**

- Mr. Morehead asked if there were firm property maintenance laws in place for mowing, controlling weeds, etc. for properties under construction. At the last house built in District 1 he noticed very tall weeds until the property was transferred to the new owner. Mr. Morehead suggested since City inspectors were already on site for frequent inspections, perhaps they could report on these types of issues. Ms. Houck said she would encourage them to do so. He noticed at Twin Lakes that the property was not mowed where it was not actively owned and would like to see the Property Maintenance Code enforced there.
- Mr. Morehead announced the National Drug Take Back Day on Saturday, September 29 at the Newark Senior Center from 10 am – 2 pm. The planning meeting for the event was scheduled for September 7 at 9:30 am. He asked for Dana Johnston to publicize this effort.

8. **Mr. Athey**

- Mr. Athey attended the candidates' forum at the Unitarian Universalist Church on 8/25/12. He thought there were some strong voices running for the State Representative of Newark's district.
- Mr. Athey reported that the water main work in the middle of his district was completed and was a great job.
- Mr. Athey recognized the multi-family recycling program which he felt was going well.
- Mr. Athey noted the cancellation of the Newark Film Festival. Mr. Funk heard they would try to bring it back in the fall.

9. **Mr. Chapman**

- Mr. Chapman commented about the return of the UD students and observed that the move in went well over the weekend. At the intersection of Elkton Road and E. Delaware Avenue he noticed a group of about 20 confused-looking students in the median/cone area where the former crosswalks were located. He suggested posting signage there that the area should not be used until the crosswalk was replaced.

10. **Mr. Clifton**

- Mr. Clifton learned from Newark resident Frank Talameo that his mother Alma recently passed away. Mrs. Talameo was six months from her 107th

birthday and was a very active and caring member of the Newark community. She and her husband owned the old drug store on Main Street.

- Mr. Clifton said a constituent praised the City and NPD Officer Adam Mease for raising public awareness about vehicle breaks-ins and said they appreciated this one-on-one communication from Newark which they considered a very positive aspect of living in the City.

11. Mr. Tuttle

- Mr. Tuttle noticed aggressive and dangerous motorist behavior in the crosswalks since the return of UD students such as speeding up to get through before pedestrians. He strongly felt there was a need to educate the motorists. Messrs. Funk and Clifton discussed signaling the crosswalks on Main Street and talking with DeIDOT about that possibility.

12. 2. APPROVAL OF CONSENT AGENDA

41:43

- A. Approval of Regular Council Meeting Minutes – August 13, 2012
- B. Approval of Special Council Meeting Minutes – August 10, 2012
- C. Receipt of Alderman’s Report – August 23, 2012
- D. Reappointment of Kevin Hudson to Board of Adjustment – 4 Year Term to Expire September 2016.
- E. First Reading – Bill 12-24 - An Ordinance Amending Chapter 20, Motor Vehicles and Traffic, Code of the City of Newark, Delaware, to Permit Payment with a Credit Card for Violations that Place a Vehicle on a Scofflaw List and Has Been Booted or Towed
- F. First Reading – Bill 12-25 - An Ordinance Amending Chapter 16, Garbage, Refuse and Weeds, Code of the City of Newark, Delaware, By Amending Article II, Definition of Weeds

Ms. Van Veen read the Consent Agenda in its entirety.

MOTION BY MR. ATHEY, SECONDED BY MR. MARKHAM: 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.

- 13. MOTION BY MR. ATHEY, SECONDED BY MR. CLIFTON: THAT ITEM 6-A, BILL 12-23, ORDINANCE AMENDING CHAPTER 20, MOTOR VEHICLES AND TRAFFIC, BY PROHIBITING PARKING AT ALL TIMES ON THE NORTH SIDE OF SUNSET ROAD BETWEEN SOUTH COLLEGE AVENUE AND ORCHARD ROAD, BE HEARD AT THIS TIME.**

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

6. ORDINANCES FOR SECOND READING & PUBLIC HEARING:

- A. **Bill 12-23** – An Ordinance Amending Chapter 20, Motor Vehicles and Traffic, Code of the City of Newark, Delaware, By Prohibiting Parking At All Times on the North Side of Sunset Road, Between South College Avenue and Orchard Road

43:51

Chief Tiernan reported that a petition was submitted to the Traffic Committee by 100% of the Sunset Road residents to prohibit parking on the street. The Traffic Committee unanimously voted in favor of the recommendation.

The Chair opened the discussion to the public.

Amy Roe, a Newark resident, said since February 2010 when Council approved the change to parking meter regulations that would increase parking fees and days meters were in place, the parking situation on Sunset Road was worse. She asked Council to pass this restriction.

Marge Haddon, a Newark resident, attended a parking meeting at UD over a year ago before they changed the lots on campus. She asked how the changes would affect surrounding neighborhoods. The street parking for the library was now bumper to bumper, and she felt it was not safe for residents or students at night. She thought this change was one step in the right direction.

Amy Smith, a Newark resident, said for the last two years parking for Sunset Road residents was unreal. If you go out on weekends you would not get back in your driveway since people were not careful about whether they parked in front of driveways and fire hydrants.

Georgia Shover, a Newark resident, said the problems were not just caused by students going to the library - it was also visitors who caused neighborhood disturbances with noise, slamming doors, etc.

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

Mr. Athey urged the City to get new signs erected as quickly as possible since school would start tomorrow.

MOTION BY MR. ATHEY, SECONDED BY MR. CLIFTON: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 12-23.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

(ORDINANCE NO. 12-21)

14. MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT ITEM 8-B-1, REQUEST FROM TRAFFIC COMMITTEE TO DISCUSS TIME OF MEETING, BE HEARD AT THIS TIME.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

8-B OTHERS:

1. Request from Traffic Committee to Discuss Time of Meeting

53:53

Chief Tiernan reported that the Traffic Committee recommended changing the meeting time from 5:00 pm to 3:30 pm. Changes to the Committee's meeting time were made several times in the past in an effort to increase public attendance, but there did not appear to be any impact. The proposed time change did not seem to impact the Committee or the public who had the opportunity to voice their comments at Council meetings. Chief Tiernan also pointed out that the Traffic Committee based their recommendations on engineering and the Traffic Code rather than on public sentiment. Another reason for the recommendation was to eliminate compensatory and overtime pay for after-hours work by City employees.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THE STARTING TIME OF TRAFFIC COMMITTEE MEETINGS BE CHANGED FROM 5:00 PM TO 3:30 PM.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

15. 3. ITEMS NOT FINISHED AT PREVIOUS MEETING:

A. Discussion and Approval of 2013-2017 Capital Budget

58:28

The public hearing for this item was held at the 8/13/12 Council meeting, but no action was taken at that time.

Mr. Chapman asked why the CIP was voted on prior to the Operating Budget. Ms. Houck explained that the Capital Budget was preliminary and after getting a better idea of revenues, the CIP could be smoothed out as needed in order to present an Operating Budget that meshed with the CIP. Mr. Athey commented that even if Council approved the CIP as presented, every project would still come to Council for a vote, and the CIP was a blueprint which provided direction to staff from Council.

Mr. Chapman remarked that it seemed like Council was approving how to spend the money and then figuring out later if there was money to spend. He thought that caused confusion and inefficiencies throughout the year and was possibly a driving factor to some waste.

Ms. Houck explained the CIP was a planning tool. By the time the Operating Budget was brought forward later in 2012, staff had every intention that the projects in the CIP would get done. In cases such as the curb project which came in at a cost lower than budgeted, funds were routinely reallocated to different projects.

Mr. Morehead said from another perspective, unused funds in the CIP did not have to be spent. He thought approving the CIP meant this money was sacred and City staff would figure out how to spend it. He felt this was backwards and did not encourage finding efficiencies.

Mr. Athey assumed the financial projection which showed as much as a \$1 million deficit by 2017 excluded a property tax increase and fee increases. Mr. Uyttebroek stated that was correct – the City was in the position of declining revenues, and his projection was a worst case scenario.

In view of the budget workshop on October 1, Mr. Athey clarified with Ms. Houck that there were no RFP's or new projects between now and then. Ms. Houck said her goal was to have an almost completed Operating Budget by the workshop.

In reviewing the forecast, Mr. Markham saw a need for changes because of the limits on transfers out of the electric fund. For example, with large capital projects in the electric fund, the money should not come out of the electric fund into capital and then back to the electric fund but should stay there. Customer Service personnel who primarily worked with electric, water and sewer needed to be in the electric fund. Money should not be taken out and put back in when there was a limit on what could be moved around. He believed by putting the costs where they were, the forecast would be different, and there should not be a shortage anywhere near like what was being projected. Ms. Houck said plans would be underway before the end of the year to make that happen.

Mr. Athey was not sure he agreed. He served on DeIDOT's Transportation Trust Fund Committee where it became known that DeIDOT was

the only State agency that did not pay salaries out of a general fund. He said that was one of the prime reasons why the Transportation Trust Fund was in such dire straits. He cautioned that Mr. Markham's suggestion would put more pressure on the electric utility which was a revenue generating fund.

Mr. Markham said the electric fund was probably paying for it now anyway, and the costs should be where they belonged. Mr. Chapman thought the City should simplify recording in order to recognize efficiencies and inefficiencies. Mr. Clifton said the City should be run like a business with profits and losses contained within that business (the standard enterprise fund). He thought that would identify cost overruns and inefficiencies and high cost expenditures while adding a much higher degree of transparency as to how the funds were used and how much went to the General Fund. Mr. Markham noted the major complaint heard was that the City transferred too much of the General Fund. Mr. Funk asked Mr. Uyttebroek whether other towns and cities treated utilities as separate businesses. Mr. Uyttebroek replied his past experience was mainly with water and sewer utilities which were mostly self sufficient enterprises, and money was not taken from them as long as they supported their activity. Property taxes could be considered burdensome but were the primary financial engine for municipal activities. Mr. Tuttle asked what percentage of the community Mr. Uyttebroek was with was taxable. Mr. Uyttebroek responded it was well over 95% and exempt properties were less than 5%. He felt the City's main issue was that over half the properties were tax exempt since they were owned by the University.

Mr. Markham said it became apparent from the landlord case that the City should examine the fine structure for issues involving significant amounts of the Police Department's time. Mr. Funk believed the City should charge utility connection fees similar to DP&L. Ms. Houck said Council would be receiving information regarding connection fees. Mr. Markham added that the Smart meters should be paid out of the Enterprise Funds since that fund would see the most benefit.

In reference to the preliminary recommendations referenced in Mr. Uyttebroek's 2013 Preliminary Revenue Forecast memo dated 8/24/12, Mr. Clifton asked if the 6.5% sewer rate increase would be added to the County bill or whether the margin would be increased by 6.5%. Mr. Uyttebroek noted the County did not raise their rates this past July, but a rate increase was expected in 2013. The increase would cover the projected cost from the County and help build retained earnings to support infrastructure improvements.

Mr. Clifton referred to the recommendation for a 10% increase (\$357,000) in property taxes. He thought the property tax yield was somewhere around \$4.5-\$5 million of the budget. Mr. Uyttebroek said the City piggybacked off New Castle County for the assessments. Their fiscal and tax year was July 1 through June 30. Therefore, when the City sets new rates on July 1, it only captures a half year from property taxes, and the second half goes in the next fiscal year.

Mr. Chapman thought a key take away for management was that he and several members of Council heard from constituents that there was room for a new way of doing business. He challenged management to be more creative to prevent a 10% tax increase and a 6.5% increase in sewer rates.

Mr. Morehead suggested tabling this item to the workshop. Mr. Athey said that was the reason he asked about not moving ahead with any RFP's or any purchases between now and October 1. Ms. Houck stated there were some big decisions to be made, and she preferred Council approve the CIP now. In October if there was something that could not be funded, she would remove it at that time. Mr. Clifton asked if Council did not approve the CIP tonight and this was still a moving target going into the budget workshop and budget hearing whether there was anything that could change. Mr. Athey saw two scenarios – one was high property tax and fee increases which would be a tough sell. The

other was a \$6.2 million deficit by 2017. He thought it would be fiscally irresponsible to approve the CIP and said maybe a compromise plan was needed.

Mr. Chapman thought it would be pointless to make a decision on the CIP now since nothing was going to be acted on until after the Operating Budget was approved. From his viewpoint, instead of looking at a pile of bills and scraping pennies during the workshop and the Operating Budget approval process, it was a no go on everything. He preferred to get out the red pen once he knew how much money was available rather than give it all a green light and red pen for the next four years.

Mr. Clifton said if there were items to be modified or cut, that was the purpose of this hearing and Council should discuss it now to have something workable going into the Operating Budget. Mr. Morehead would counter what Mr. Clifton said – without knowing the goal, Council did not know how much of the CIP needed to go away or if it was all ok.

Mr. Tuttle urged Council to be careful and not go back to where the City was a few years ago when they were not making adequate investments in the capital infrastructure. Certain elements of the CIP were bedrock issues that should not be deferred.

Mr. Morehead said there were projects in the CIP that were above and beyond what was needed to be done to keep the roof intact.

Mr. Markham noted that capital projects typically came out of reserves built up over time and Council always had the right to revisit a budget at any point.

Ms. Houck requested Council to let her determine cuts as the revenue stream was being finalized and she had further details regarding this year's results. She already identified items that might be cut from the capital budget if necessary, and added that Council would have opportunities to make changes during the Operating Budget process. Mr. Morehead said the expectation was that those steps had already been taken. Mr. Athey would prefer to see staff get out the red pen but was not comfortable approving the budget knowing they were somewhere in the middle of a spectrum with nasty components on either end.

MOTION BY MR. ATHEY, SECONDED BY MR. MOREHEAD: THAT THE CIP BE TABLED PENDING ADDITIONAL INFORMATION FROM THE INTERIM CITY MANAGER.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

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

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

18. **6. ORDINANCES FOR SECOND READING & PUBLIC HEARING:**
A. **Bill 12-23** – An Ordinance Amending Chapter 20, Motor Vehicles and Traffic, Code of the City of Newark, Delaware, By Prohibiting Parking At All Times on the North Side of Sunset Road, Between South College Avenue and Orchard Road

(SEE ITEM #13)

19. **7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS:**
None

20. **8. ITEMS SUBMITTED FOR PUBLISHED AGENDA:**

A. Council Members:

1. **Resolution 12-__:** Final Approval of the Development Known as Wyncliff, Acceptance of Street and Open Space Onto the Official Map of the City, and Release of the Surety Bond

1:35

Mr. Funk asked whether the residents were provided notification of the final approval and acceptance. Ms. Houck replied it was unclear whether this had been done.

MOTION BY MR. MARKHAM, SECONDED BY MR. CLIFTON: TO TABLE THE RESOLUTION TO THE 9/10/12 COUNCIL MEETING IN ORDER TO VERIFY RESIDENT NOTIFICATION.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

21. **8-B OTHERS:**

1. **Request from Traffic Committee to Discuss Time of Meeting**

(SEE ITEM #14)

22. **9. SPECIAL DEPARTMENTAL REPORTS:**

- A. Special Reports from Manager & Staff: None

23. **Meeting adjourned at 8:53 p.m.**

Patricia M. Fogg, CMC
City Secretary

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