

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

September 10, 2012

Those present at 7:00 pm:

Presiding: Mayor Vance A. Funk, III
District 2, Jerry Clifton
District 3, Doug Tuttle
District 4, David J. Athey
District 5, Luke Chapman
District 6, A. Stuart Markham

Absent: District 1, Mark Morehead

Staff Members: Interim City Manager Carol Houck
City Secretary Patricia Fogg
City Solicitor Bruce Herron
Finance Director Robert Uyttebroek
Assistant to the City Manager Charlie Zusag

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

2. MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT ITEM 2-H, REQUEST OF QUARTERLY PENSION & OPEB REPORTS, 2ND QUARTER OF 2012 BE ADDED TO THE CONSENT AGENDA.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0

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

Nay – 0.

Absent – Morehead.

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

A. Public

00:59

Representative John Kowalko expressed his views on the proposed water rate increase that would go into effect January 1, 2013. He compared the water rates since 2009. The average quarterly bill for his family was \$48.72 and with the new rate the cost would increase \$31.34 per quarter. He pointed out that there were two rate hikes in 2009 and one in January 2012. Although additional revenue would fund improvements to aging infrastructure in the water system, he urged Council not to approve the new rate that would place the burden of the City's financial situation on rate payers, especially in light of the current economic situation.

Representative Kowalko understood the large number of tax-exempt properties in the City put a strain on Newark's revenue. As a result, he offered to sponsor a bill in the Legislature allowing Newark to receive a payment in lieu of taxes from the State. The City would then recover some of the money spent to provide services to tax-exempt properties, specifically those owned by the University of Delaware.

There was a discussion about a similar bill that was introduced several years ago but the City of Newark was removed from the bill at the last hour. Although the Legislature would not be in session until January, Representative

Kowalko urged Council to move forward with a proposal that he would support and work hard to get passed through the Legislature.

4. Connie Merlet, a Newark resident, was shocked by the City's water rates for out of town customers. She noted that the City was fortunate to be a University town and should be reaping the benefits resulting from the number of people and businesses brought in by UD. She urged the City to be creative with its rates.

5. **1-B. UNIVERSITY**

1. Administration

30:52

Mark Brainard, Office of Government Affairs at UD, provided Council with the UDaily notice informing students that the City eliminated non-resident parking on Winslow and Sunset Roads.

6. **1-B-2. STUDENT BODY REPRESENTATIVE**

There were no comments forthcoming.

7. **1-C. COUNCIL MEMBERS**

31:43

Mr. Tuttle

- Mr. Tuttle noted that he attended the monthly progress report on Elkton Road and reported the project was ahead of schedule. In the very near future the only lane obstruction will be the closure of the left turn lane onto Casho Mill Road coming into town.

8. **Mr. Clifton**

- Mr. Clifton introduced Representative Edward Osienski who commented that due to redistricting he now served a small portion of the City, and he would try to attend future meetings of Council. He added that he would support any legislation proposed by Representative Kowalko for Newark to receive supplemental appropriation for tax-exempt properties.

- Mr. Clifton commented on the ribbon cutting ceremony of the Pomeroy Trail and recognized the large number of dignitaries and public who participated.

- Mr. Clifton asked that everyone take a few moments to remember those lives that were lost on 9/11 as well as all the rescuers who embodied the spirit of the American people. Tomorrow marked the 11th anniversary of this tragic event.

- Mr. Clifton recognized Representative Michael Ramone who apologized that he was unable to attend the ribbon cutting ceremony for the opening of the Pomeroy Trail.

- Mr. Clifton provided an update on the status of Fountainview which experienced several changes in management companies. Some residents have been questioning whether they should pay their condo fees. In all fairness to the management, he said things were now getting done considering the fact that Jack Corrozi went through a bankruptcy. They were working hard to finish the third building and were marketing it aggressively. Some items were not getting done on their five-year plan such as replacing the carpet in the common areas because the money was not there. Mr. Clifton had contacted the AG's office and was told they do not take any action in these cases.

9. **Mr. Chapman**

- Mr. Chapman had nothing to bring up at this time.

10. **Mr. Athey**

- Mr. Athey expressed his apologies for missing the Pomeroy Trail ceremony. He thanked Mr. Emerson for the great job everyone has done on this project.

11. **Mr. Markham**

- Mr. Markham commented on the Pomeroy Trail ceremony and exhibited the spike from the Pomeroy Railroad that was given to some of the attendees.

- Mr. Markham asked that everyone take a few moments to remember those lives that were lost on 9/11.

- Mr. Markham reminded everyone that Tuesday was a day for registered voters to vote in the primary.

- Mr. Markham gave a solar update that included a meeting with Ms. Houck, Mr. Uyttebroek, and DEMEC (Scott Lynch) regarding ideas for low cost funding. There was a possibility of some funding through AMP for community solar work. He advised DEMEC if they wanted to expand the project and proceed with a loan, they would have to come back to Council since that plan was not included in Mr. Markham's original proposal to Council.

Mr. Markham spoke with DNREC's Secretary to make sure they were aware of what was being considered for the Brownfield property.

After one year of having solar panels at his home, Mr. Markham said the savings forecast was right on target.

- Mr. Markham referenced a map Council received from DP&L showing work they would be doing in the City – this mostly involved work along the railroad tracks backing up to Carpenter. He noted that the University was aware of the work to be performed.

12. **Mr. Funk**

- Mr. Funk requested that the Planning Commission consider an amendment making the City Code consistent with Federal Law in regard to adult communities (55+) being permitted to have 20% residency under age 55. He would like the amendment to be submitted at the same time Jeff Lang requests a rezoning at Twin Lakes. Mr. Clifton said this proposal would not be supported by people living in 55+ communities. Mr. Funk said the change would not apply to current projects – only projects in the future. Mr. Herron said there could be different standards going forward.

- Mr. Funk reported that Rick Armitage would like to be considered to be the City's lobbyist in Dover. The current lobbyist's contract will expire in 2013.

13. **2. APPROVAL OF CONSENT AGENDA**

49:03

- A. Approval of Regular Council Meeting Minutes – August 27, 2012
- B. Receipt of Alderman's Report – September 6, 2012
- C. ***First Reading – Bill 12-26*** - An Ordinance Amending Chapter 30, Water, Code of the City of Newark, Delaware, By Establishing a Water Rate Schedule Effective January 1, 2013 – ***Second Reading – September 24, 2012***
- D. ***First Reading – Bill 12-27*** - An Ordinance Amending Chapter 11, Electricity, Code of the City of Newark, Delaware, By Adding a New Provision With Respect to the Aggregation of Demand Response on Behalf of Retail Customers in the City of Newark – ***Second Reading – September 24, 2012***

- E. **First Reading – Bill 12-30** – An Ordinance Amending Chapter 7, Building, Code of the City of Newark, Delaware, By Adopting the 2012 Edition of the International Code Council (ICC) Codes with Amendments – **Second Reading – September 24, 2012**
- F. **First Reading – Bill 12-31** – An Ordinance Amending Chapter 14, Fire Prevention, Code of the City of Newark, Delaware, By Adopting the 2012 Edition of the International Fire Code with Amendments – **Second Reading – September 24, 2012**
- G. **First Reading – Bill 12-32** – An Ordinance Amending Chapter 17, Housing and Property Maintenance, Code of the City of Newark, Delaware, By Adopting the 2012 Edition of the International Property Maintenance Code with Amendments – **Second Reading – September 24, 2012**
- H. Receipt of Quarterly Pension & OPEB Reports, 2nd Quarter of 2012

Ms. Fogg read the Consent Agenda in its entirety.

Mr. Athey requested that Bill 12-26 be removed from the Consent Agenda so that he could provide comments.

MOTION BY MR. ATHEY, SECONDED BY MR. MARKHAM: THAT THE CONSENT AGENDA BE APPROVED AS AMENDED.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

Mr. Athey had no problem with Bill 12-26 getting a first reading, but he preferred waiting until after the October 1 workshop for the second reading. There was a discussion regarding whether the bill would have to go back to a first reading if Council lowered the recommended increase. A similar ruling was made by the former Solicitor that the bill had to have a first reading because of the change. Mr. Herron will look into this further.

It was Council's decision to take no action on Bill 12-26, and Ms. Houck will determine whether to bring it back for a first reading on 9/24.

Mr. Clifton noted for the record that he would not be at the 10/8 Council meeting when the Capital Improvement Budget would be reconsidered. Ms. Houck stated she may be able to bring it back to Council at the next meeting pending further review of the financial forecast.

14. 3. ITEMS NOT FINISHED AT PREVIOUS MEETING:

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

57:33

MOTION BY MR MARKHAM, SECONDED BY MR. CLIFTON: THAT RESOLUTION NO. 12-__ BE LIFTED FROM THE TABLE.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

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

Mr. Markham advised that he spoke with a resident of Wyncliff and was told that the landscaping was completed.

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

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

Nay – 0.

Absent – Morehead.

(RESOLUTION NO. 12-Q)

15. 4. FINANCIAL STATEMENT: *Ending July 31, 2012*

58:26

Mr. Uyttebroek presented the Financial Report as of July 31. Everything was tracking well for this fiscal year. Mr. Clifton questioned the Quarterly Pension & OPEB Reports, specifically the funding ratio in December of 64.8% (Item 2-H – Consent Agenda). Mr. Uyttebroek said that funding level was correct and noted the current amortization for thirty-years would speed up the progress in retiring that liability.

With regard to the Financial Statement, Mr. Clifton questioned the exact amount in the City's Reserve Fund. He believed at one time part of what was shown for the reserve was actually money that was being returned to the rate payers for a refund on the electric utility. With all liability figured out, he questioned the reserve fund total as of today. Mr. Uyttebroek replied that it was \$4,433,000 cash on hand in the Governmental Funds as of July 1. Mr. Markham thought they had previously been told it was \$25 million minus whatever remained to be paid to the rate payers.

Mr. Clifton was taken aback by the four million dollar figure and was concerned about long-term stability. He questioned Mr. Uyttebroek's opinion on where the City was as far as being stable in the long term if the City had to lay our hands on unencumbered cash. Mr. Uyttebroek reminded Council of the financial policy that was adopted on April 13, 2009 and said the City could not meet some of these targets, especially in the utility funds where the policy was to establish some contingency fund – there were no retained earnings to be able to establish these different contingency or reserve funds. He said it would be a positive goal for the City to increase both in the General Fund and in utilities or the Enterprise Fund a higher level of retained earnings or fund balance and would stabilize many things.

Mr. Funk said in September the City would take in about five million dollars from property taxes and this financial statement represented when most of the money was spent from the prior year.

Mr. Clifton looked at the reserve, the actual money that was unencumbered for anything else – as being something that was continually there that was stable. He added that he realized \$1 million was taken from Reserve Funds for the landlord case and another \$1 million was paid in attorney fees, but he anticipated the Reserve Funds to have \$19-\$20 million.

Mr. Markham pointed out that they were looking at different numbers. In the past they had looked at the City's cash position. Mr. McFarland reported a \$12 million cash position and now it was a \$24 million cash position.

Mr. Markham commented that the transfer tax looked low. Mr. Funk interjected that the County was slow in transferring the money due the City, and the transfer taxes paid from June 1 to August 1 were about 30% to 40% higher than last year. Mr. Funk also pointed out that the City has not seen a large \$10

or \$20 million building being sold. Although he was told the Newark Shopping Center was sold, he had not seen a deed transfer, so no transfer taxes were generated. He was confident that the market had turned around and at the same time acknowledged there was not a large inventory of buildings for sale.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THE FINANCIAL REPORT FOR THE PERIOD ENDING JULY 31, 2012 BE RECEIVED.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

Nay – 0.

Absent – Morehead.

16. 5. RECOMMENDATIONS ON CONTRACTS & BIDS:

A. Purchase of a Police Vehicle from State of Delaware Contract

1:08

Ms. Houck referred to her memorandum to Mayor and Council dated August 16, 2012, wherein she explained when the Special Operations Unit was formed, NPD's fleet was not increased, vehicles were reassigned and the traffic vehicles were dual purposed to keep the department operating efficiently. However, that arrangement created vehicle shortages requiring officers to double up which limited coverage. Staff was able to locate a Chevrolet Caprice from a State of Delaware contract for the total cost of \$38,997.75 which included the cost of the vehicle and the installation of equipment. Funds were available from a State grant.

Mr. Clifton commented that the Chevrolet Caprice was a better car than the Crown Vics which a few years ago cost about \$21,000-\$22,000. However, with the high cost of the vehicle, he suggested considering other options.

Ms Houck noted that the Police Department was very happy with the Chevrolet Caprice which they began purchasing in April.

MOTION BY MR. TUTTLE, SECONDED BY MR. CLIFTON: THAT THE CITY MANAGER BE AUTHORIZED TO PURCHASE A CHEVROLET CAPRICE FROM A STATE OF DELAWARE CONTRACT FOR THE TOTAL COST OF \$38,997.75, WHICH INCLUDED THE COST OF THE VEHICLE AND EQUIPMENT INSTALLATION.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

Nay – 0.

Absent – Morehead.

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

A. 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

1:13

Ms. Fogg read Bill 12-24 by title only.

MOTION BY MR. MARKHAM, SECONDED BY MR. TUTTLE THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 12-24.

In a memo to Council dated August 20, 2012, Lt. Bill Hargrove explained that the City was ready to go live with the new online parking ticket payment system. This bill would allow violators to pay with a credit card for violations that put their vehicle on a Scofflaw List and have been booted or towed.

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

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

Nay – 0.

Absent – Morehead.

(ORDINANCE NO. 12-22)

18. 6-B. 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

1:14

Ms. Fogg read Bill 12-25 by title only.

MOTION BY MR. MARKHAM, SECONDED BY MR. TUTTLE: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 12-25.

Ms. Houck explained that this proposal corrected a discrepancy in the Code to clarify the definition of weeds, in particular the height which is 10”.

The Chair opened the discussion to the public.

Larry Laber, a Newark resident, said he had a dead sunflower on the side of his house and someone decided to turn him in to the Code Enforcement Department. He was not happy that he could not sell his house if the weeds were too high and that he did not know who turned him in because the City would not tell him who made the complaint.

Mr. Laber also commented on police officers who were parked on the sidewalk to catch speeders on Old Paper Mill Road. He said that action forced kids to walk on the street. He complained to the NPD and found they were very helpful and very professional.

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

Mr. Markham asked Mr. Herron if Ms. Feeney-Roser talked to him about the City requiring a person to give their name when they make a complaint. Mr. Herron said that conversation has not taken place.

Mr. Funk claimed there was a recent court case downstate that it was not proper for a city or county to withhold the name of a person who filed a complaint. As to the incident with Mr. Laber, Council was told that a name was not provided to the City at the time of the complaint.

Mr. Clifton said if a name had to be provided, that would hamper police operations. If someone called in who suspected drug activity a few doors from them, then their name would become public and that would make no sense.

Mr. Funk added that the case downstate had to do with property maintenance. Mr. Athey said he was very familiar with Madison Avenue residents who were very concerned about the retribution aspect of a complaint.

Mr. Chapman believed a resident should be able to make an anonymous complaint. Mr. Laber said if Council was asking for a war, they got one. He

could pick out 12 houses in Mr. Markham's neighborhood that violated the Code. He reiterated if a resident was going to turn someone in, they needed to be responsible for their actions.

Mr. Chapman believed neighbors should be talking to their neighbors about concerns. He would have no problem going to a neighbor asking them to take care of a dead sunflower, but if they were not on good speaking terms, or did not have good neighborly relations, or if he perceived a conflict, then he should still be able to make sure the City was enforcing its Code without fear of Mr. Laber's "war or retribution." Mr. Laber said he brought up "war" because when he called the Code Enforcement Department the person he spoke to said they did not want to get into a "war" with neighbors.

Mr. Chapman explained that he recently fielded several calls about rental properties where the owners were not caring for the exterior of the homes in a manner that was part of the lease agreement. In those cases, the neighbors were talking to the owners and complaining to the City for help. Without codes, there was no way to prevent complete neglect. He concluded by saying he supported the ordinance and the anonymous faction of it.

Mr. Funk thought the bottom line was a court ruling has been handed down and the City needed to find out what it said and comply with the ruling.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

Nay – 0.

Absent – Morehead.

(ORDINANCE NO. 12-23)

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

20. **8. ITEMS SUBMITTED FOR PUBLISHED AGENDA:**
A. Council Members: *None*

21. **8-B OTHERS:** *None*

22. **9. SPECIAL DEPARTMENTAL REPORTS:**
A. Special Reports from Manager & Staff: *None*

23. **Meeting adjourned at 8:25 p.m.**

Patricia M. Fogg, CMC
City Secretary

/pmf