

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

January 14, 2013

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: City Manager Carol Houck
City Secretary Patricia Fogg
City Solicitor Bruce Herron
Interim Finance Director Wilma Garriz
P&D Director Maureen Feeney Roser
Parks & Recreation Director Charlie Emerson

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

2. MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT ITEM 8-A-1, RESOLUTION RETIREMENT OF RICHARD M. LAPOINTE, PUBLIC WORKS DIRECTOR, BE MOVED TO THE FIRST ITEM ON THE AGENDA AND THAT ITEM 7-A, REQUEST OF SOUTH POND PROPERTIES LLC PROSPECT A SERIES FOR THE MINOR SUBDIVISION OF 29-35 PROSPECT AVENUE IN ORDER TO CONSTRUCT TWO THREE-STORY TWIN (DUPLIX) BUILDINGS AND ASSOCIATED PARKING AND ACCESS WAYS, BE TABLED TO THE JANUARY 28, 2013 MEETING.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

3. **8-A-1. RESOLUTION NO. 13-__ : RETIREMENT OF RICHARD M. LAPOINTE, PUBLIC WORKS DIRECTOR**

03:36

Mr. Lapointe was presented a resolution that was read by Mr. Clifton and unanimously endorsed by Council recognizing his retirement after 20 years of service to the City.

(RESOLUTION NO. 13-A)

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

A. Public

07:11

Eric Boye, State organizer and coordinator of Campaign for Liberty, discussed an experiment the group was conducting which graded legislation based on the public's involvement in voicing their opinions. Mr. Boye commented on Bill 12-42 which Ms. Fogg informed him would be open to public comment during the public hearing on Item 6-A. He also spoke about the interconnectivity between Bill 12-43 and Bill 12-32.

Regarding Bill 13-04, he cautioned Council about getting into the practice of waiving the bidding process.

5. Mary Jo Frohlich, a Twin Lakes resident, referenced the rezoning issue that would come to Council in the future and voiced her objection to the Planning Commission's recommendation to rezone Twin Lakes to garden apartments. She expressed concern that the Planning Commission might not have been aware of all that had transpired at Twin Lakes, and she did not realize that she could have voiced her objections to them.

6. **1-B-1. UNIVERSITY**

Mr. Brainard wished everyone a happy New Year.

7. **1-B-2. STUDENT BODY REPRESENTATIVE**

There were no comments forthcoming.

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

16:53

Mr. Clifton

Mr. Clifton introduced John Wessels, a Fountainview resident, who suggested the idea of community gardening and providing excess food to area charities. Mr. Wessels suggesting utilizing the area below the reservoir between the road and the creek. Mr. Funk informed Mr. Wessels that UD was instrumental in establishing a community garden at the Ag school and several other sites in the State. Mr. Clifton requested that staff look into creating additional community gardens in the City.

9. **Mr. Morehead**

Mr. Morehead wished everyone a healthy and prosperous New Year.

10. **Mr. Markham**

Mr. Markham said 11 contractors participated in the solar RFP.

Mr. Markham reported that on February 12 at 7 pm in the County Chamber the rezoning of the Stopyra tract (also known as the Newark Town Center) would be discussed.

Regarding the Curtis Paper Mill smoke stack demolition, Mr. Markham hoped a contract would be awarded in the near future.

Mr. Markham asked to have a monthly status report from Honeywell regarding the Smart Meter project. Ms. Houck reported that a kick off meeting was scheduled for January 31 and February 1, after which the project would be started.

11. **Mr. Athey**

Mr. Athey wished everyone a great 2013.

12. **Mr. Tuttle**

- Mr. Tuttle commented on the recent ribbon cutting ceremony he attended for the dedication of the renaming of Elkton Road to South Main Street.

- Mr. Tuttle advised that he, Messrs. Clifton and Zusag, and Ms. Houck and Ms. Fogg began the interviews for the City Secretary's position. He recommended an Executive Session for the next meeting to review the progress.

13. **Mr. Chapman**

Mr. Chapman requested an updated schedule on completion of the Elkton Road project.

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

26:11

- A. Approval of Regular Council Meeting Minutes – December 10, 2012
- B. Receipt of Alderman’s Report(s) – December 13, 2012 and December 20, 2012
- C. Reappointment of Board of Elections Members – District 3-Edward Wirth; District 6–Jane Creswell; and At-Large-Sam Burns - Three-Year Terms Expire January 2016
- D. Resignation of Board of Adjustment Member Howard Smith; Appointment of David Levandoski to Fill the Unexpired Term
- E. **First Reading – Bill 13-01-** An Ordinance Amending Chapter 2, Administration, Code of the City of Newark, Delaware, By Increasing the Management Employee Long Term Disability Insurance Coverage and By Permitting A Retired Employee and/or Spouse To Re-Enroll in the City’s Health Insurance Coverage – **Second Reading – January 28, 2013**
- F. **First Reading – Bill 13-03 –** An Ordinance Amending the Amended Pension Plan for Employees of the City of Newark, Delaware, Regarding Limitations on Benefits, Required Minimum Distributions and Normal Retirement Date – **Second Reading – January 28, 2013**
- G. **First Reading – Bill 13-04 –** An Ordinance Amending Chapter 2, Administration, Code of the City of Newark, Delaware, By Clarifying Council’s Authority to Waive Bidding Requirements - **Second Reading January 28, 2013**
- H. Receipt of Planning Commission Minutes – December 4, 2012

Ms. Fogg read the Consent agenda in its entirety.

Mr. Athey requested that item 2-A be removed from the agenda.

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

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

15. **2-A. APPROVAL OF REGULAR COUNCIL MEETING MINUTES – DECEMBER 10, 2012**

Mr. Athey corrected page 11, Item 24 – the Motion that passed 6 to 1 was reflected correctly but read “MOTION PASSED UNANIMOUSLY.” He requested that “Unanimously” be deleted.

MOTION BY MR. ATHEY, SECONDED BY MR CLIFTON: THAT THE REGULAR COUNCIL MEETING MINUTES OF DECEMBER 10, 2012 BE APPROVED AS AMENDED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

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

17. 4. FINANCIAL STATEMENT

28:36

Ms. Garriz reviewed the highlights from the November Financial Statement. The Consolidated Operating Surplus continued to exceed budget by \$2.3 million. As forecasted, Revenues and Expenses were higher than budgeted, mostly in the utility margins and Governmental Revenues as well as some savings in Operating Expenses. In the Governmental funds, the operating deficit continued to track less than budget by about \$529,000, mostly due to higher building permit revenues as well as transfer tax revenues. In the Enterprise funds, utility margins continued to exceed budget, mostly due to lower electric purchase costs. There was an increase in the cash balance of \$1 million from last month, mostly due to grant receipts and utility receivable proceeds.

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT THE NOVEMBER 2012 FINANCIAL REPORT BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

18. 5-A. RECOMMENDATION TO AWARD RFP NO. 12-02 – DESIGN-BUILD SERVICES FOR TWO SKATE SPOTS

30:23

Mr. Emerson summarized his memorandum to Mayor and Council dated December 19, 2012, wherein he reviewed the background and purpose, process, funding and the recommendation on RFP No. 12-02.

In May 2012 Council approved the recommendation to proceed with the design and construction of skate spots at Handloff and Phillips Parks. The Skate Spot Committee of interested citizens was instrumental in every aspect of this project and would continue to provide input into the design of each skate spot.

Three proposals were reviewed and ranked, and Grindline received the highest ranking. Six cities for which Grindline designed and constructed skate board facilities were contacted and all were very satisfied with Grindline's work.

Funds were available to implement this project which included a private donation, a Delaware Land and Water Conservation Trust Fund Grant and monies budgeted in the CIP. Therefore, it was recommended that RFP No. 12-02 for the Design-Build services for two skate spots be awarded to Grindline in the amount of \$140,000.

Mr. Emerson confirmed that the private donation funding was received, and he was congratulated on receiving the grant money. Mr. Emerson also clarified that since \$20,000 more was allocated than what was bid, the private donation and the grant funding would be exhausted first.

MOTION BY MR. ATHEY, SECONDED BY MR. CLIFTON: THAT RFP NO. 12-02 – DESIGN-BUILDING SERVICES FOR TWO SKATE SPOTS, BE AWARDED TO GRINDLINE IN THE AMOUNT OF \$140,000.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

19. 5-B. CONTRACT NO. 12-13 – FURNISHING LABOR AND EQUIPMENT FOR TREE PRUNING, REMOVAL AND CREEK CLEARANCE OPERATIONS

34:40

Mr. Emerson summarized his memorandum to Mayor and Council dated December 27, 2012, wherein he explained that this contract provided for man-hour pricing for services of pruning, removal and creek clearance of trees for a three-year period in the City parks and open space areas.

Strobert Tree Service was the lowest responsible bidder and both of their references, Bellevue State Park and the Delaware Center for Horticulture, were contacted and were happy with Strobert's work.

Funds were available to cover the anticipated costs of these services in the amount of \$37,000. Therefore, it was recommended that Contract No. 12-13 be awarded in its entirety to Strobert Tree Services at the following rates:

Tree removal and creek clearance - \$54 per normal man-hour and \$68 per premium man-hour;

Tree pruning and dead wooding - \$62 per normal man-hour and \$78 per premium man-hour.

MOTION BY MR. CLIFTON, SECONDED BY MR. MOREHEAD: THAT CONTRACT NO. 12-13 – FURNISHING LABOR AND EQUIPMENT FOR TREE PRUNING, REMOVAL AND CREEK CLEARANCE OPERATIONS BE AWARDED TO STROBERT TREE SERVICES AT THE RATES STATED ABOVE.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

20. 5-C. CONTRACT NO. 12-15 – PURCHASE OF LIQUID ALUMINUM SULFATE FOR THE NEWARK WATER TREATMENT PLANT

38:40

Ms. Houck summarized Mr. Simonson's memorandum to Mayor and Council dated December 31, 2012, wherein she explained that Contract No. 12-15 provided a one-year supply of liquid aluminum sulfate for the Newark Water Treatment Plant. This contract would extend for 12 months.

USALCO Baltimore Plant, LCC (formerly Delta Chemical) was the low bidder at \$366.37/dry ton and has supplied liquid aluminum sulfate to the City for the past 12 years.

Funds were available to cover the anticipated cost of this treatment chemical in the amount of \$51,300. Therefore, it was recommended that Contract No. 12-15 be awarded to USALCO Baltimore Plant, LLC for the bid amount of \$366.37 per dry ton of liquid aluminum sulfate.

MOTION BY MR. MARKHAM, SECONDED BY MR. ATHEY: THAT CONTRACT NO. 12-15, PURCHASE OF LIQUID ALUMINUM SULFATE FOR THE NEWARK WATER TREATMENT PLANT, BE AWARDED TO USALCO BALTIMORE PLANT, LLC FOR THE BID AMOUNT OF \$366.37 PER DRY TON OF LIQUID ALUMINUM SULFATE.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

21. 5-D. CONTRACT 12-07 – CENTER STREET ENTRANCE TO MUNICIPAL PARKING LOT #3

41:20

Ms. Roser summarized her memorandum to Mayor and Council dated December 20, 2012, wherein she explained the purpose of Contract 12-07 was to provide a new entrance into Parking Lot #3 from Center Street via City-owned property at 17 Center Street. The contract included two options: one – to add eight (six net) new parking spaces; and two – to construct only the entrance.

Ms. Roser reviewed the background which began with the subdivision plan for 108 East Main Street. Originally the demolition of the house at 17 Center Street and the construction of an entrance/exit to Municipal Lot #3 was a part of that plan. However, Council did not approve the demolition of the house or the building of the entrance/exit when the subdivision was approved. Therefore, the subdivision agreement was revised and written to give the City until 12/8/13 to remove the house in order to hold Lang Development accountable for its removal (up to \$20,000).

Staff worked with adjacent property owners and Councilman Markham to develop an entrance to the parking lot from Center Street that was acceptable, thereby eliminating the exit. Ms. Roser noted that the DNP's Parking Committee favored an entrance/exit configuration but determined that an entrance only would be a considerable improvement to the overall parking system.

Ms. Roser reviewed the former proposal of the More Park technology that was recommended for Lot #3 and although funding was recommended in the 2012 Capital Budget for the More Park system, the house demolition and entrance plans, Council decided not to move forward with it at that time.

Since then, staff worked diligently with Lang Development to remove the house, but demolition was delayed. In the meantime, with time being of the essence in building the entrance and because of the expiration date of the 108 East Main Street subdivision agreement clause, staff requested and received permission from the City Manager's Office to move forward with the engineering work to construct the Lot #3 entrance. Because staff had not heard from Mr. Lang regarding his intent to demolish the house, the removal of the house was included in the construction of the entrance contract.

Staff met again with adjacent property owners and Councilman Markham to discuss the entrance design and received concerns about using the 1 Center Street property for parking. To address those concerns and to save time in the bidding process, the contract was sent out to bid with two alternatives for Council to consider once the bids were received.

When bids were received, the price for demolition of the house exceeded the \$20,000 amount that Lang Development Group was required to pay toward it. Staff contacted Lang Development, and they took responsibility which included mobilization and traffic control, silt fencing, clearing vegetation, tree removal and driveway, curbs and sidewalk removal. Their revised bid for Alternative 1 was \$74,525 and \$65,025 for Alternative 2.

Ms. Roser discussed one property owner's concerns regarding noise and lighting and the project's impact on his adjacent rental unit should the property be used for parking in addition to the entrance. However, the value of creating six net new parking spaces for a downtown parking system that was already overtaxed, in staff's view, far outweighed the concerns for the rental property next door. Mr. Markham suggested if Council approved Alternative 1 that the parking spaces be considered temporary and in the future if the City adequately addressed parking needs downtown by another alternative, that the eight spaces be deleted from the system by Council action.

Funding to cover the costs associated with this contract was in the Capital Improvement budget. It was therefore recommended that Contract 12-07 be awarded to Diamond Hill, Inc. for a total of \$74,525 for demolition and Alternative 1.

The cost to the City to build the eight spaces (and because they were included in this contract), was less than \$1,200 per space which was significantly less than it would cost to build them alone. Based on last year's gross income for that lot, each space generated approximately \$134 per month thereby paying for the cost of construction in approximately 9 months.

Mr. Markham asked how many additional parking spaces would be available when the Kate's Place project was completed. Ms. Feeney Roser replied there would be 21 additional parking spaces.

Mr. Funk thought adding the spaces was smart and in terms of parking, commercial parking people viewed each space as being worth \$13,000.

Mr. Athey thought the idea of "temporary" spaces was a good compromise but he was concerned there was a \$10,000 difference in construction, and if they were going to be removed in the future, there would be costs incurred in ripping them out and adding landscaping. Mr. Markham wanted future Councils to make a conscious effort to determine whether to keep the spaces and to vote on the issue. Mr. Tuttle pointed out that according to Ms. Feeney Roser the payback was less than a year, and you would never see that opportunity again because nothing else would be done in that area to improve parking within a year. Mr. Funk supported the new spaces especially in light of the lost spaces in the Municipal Lot during the construction of Kate's Place.

Mr. Morehead questioned why it was thought that the compromise was good when it sounded like most people did not really like the idea of parking spaces in the proposed location which would dramatically change the neighborhood. He said if Council was willing to take the spaces out in the future, perhaps they should not even be added.

Ms. Feeney Roser said the business community would like the spaces to be added and offered to periodically report back to Council on the need for the spaces.

Mr. Chapman noted that the Main Street area was undeniably short of spaces, especially in that area. He like the idea of net positive spaces and thought the compromise was the detail in the design of the four foot brick wall on either side which would be aesthetically pleasing. It made no sense to him to make this a temporary arrangement.

Mr. Clifton agreed with Mr. Chapman and thought if there was more accessible parking in that area which was somewhat constrained, it would be a win-win for the business community and the City.

Mr. Markham reiterated this could be the last area downtown that could revert back to a neighborhood for families and/or young professionals.

Ms. Feeney Roser reminded Council that the new entrance was located directly across from another Municipal Parking Lot and there was only one property (a rental) between this property and Main Street. Also, the landlord wanted it to remain a rental property, so she did not feel the project would preclude redevelopment of that site.

Mr. Morehead was concerned that the business community offered to do a study of parking since Council had already spent good money on many parking studies. Therefore, he did not feel it was appropriate for the business community to do their own parking study.

Ms. Feeney Roser said what she referred to was staff evaluating the existing spaces, not the business community. She offered staff to report back after a few years as to how the spaces were utilized. In fact she clarified that staff could tell who went in and out of the parking lot and how the spaces were used.

Mr. Morehead felt the reason why people could not find parking spaces downtown in December was a procedural problem or because of a decision on the part of the City—not the number of spaces. Ms. Feeney Roser added that it was because of free parking being offered in December and the University of Delaware changed their policy on where staff may park. Mr. Morehead agreed that many of the parking issues were policy driven, not space count driven. He believed people said they could not park in Newark when in actuality they could not park on the curb in front of certain stores at certain times of the day.

Mr. Chapman disagreed with Mr. Morehead. He thought the last parking study indicated there were spaces (which he agreed with), but they were not necessarily where people wanted to park. He understood people did not always get the spot they wanted with the added upscale restaurants in the center of Main Street during the dinner timeframe. He acknowledged that policy decisions such as early December free parking could create problems, but what was important was having spaces in the right area. This location was in the area where more spaces were needed. He would not oppose spending more money on another parking study in the future.

Mr. Clifton pointed out that in the 1980's and early 90's people walked to downtown because the core market was people that lived in Newark. Now, Newark had become a regional destination. He agreed with Mr. Chapman that this area needed more parking. While he supported the overlay Council endorsed for this area several years ago, he believed the market was dictating something different there.

Mr. Funk felt if Council was going to ask for the proposed new spaces to be temporary, the time period should not be less than two to three years. Mr. Markham was not sure putting a limit on the spaces was needed and said removing them should be addressed when additional parking was added via a parking garage or some other means.

Mr. Chapman asked if a time limit was put on the new spaces did that mean if additional parking was added elsewhere, the City would have to award a contract to rip up the new parking spaces and re-sod the property. Ms. Houck thought the best plan was to revisit the need for the parking spaces in 2-3 years and staff could bring its findings back to Council for their review.

Mr. Clifton made a Motion to approve the contract, but it was not seconded in order for Mr. Markham to clarify the motion.

MOTION BY MR. MARKHAM, SECONDED BY MR. ATHEY: TO AWARD CONTRACT 12-07 – CENTER STREET ENTRANCE TO MUNICIPAL PARKING LOT #3, ALTERNATIVE 1, TO DIAMOND HILL, INC. FOR A TOTAL OF \$74,525, WITH THE CAVEAT THAT THE PARKING SPACES AT THIS LOCATION BE REVISITED IN THREE YEARS WITH A REPORT TO COUNCIL.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

22. 5-E. CONTRACT NO. 12-10 – RESTORATION SECOND FLOOR NEWARK TRAIN STATION

1:06

Ms. Houck summarized Mr. Simonson's memorandum to Mayor and Council dated December 28, 2012, wherein she explained that the restoration included the repair and rehabilitation of the windows on the second floor of the Newark Train Station in accordance with requirements associated with properties on the historical register.

Funding for this contract was available in the Capital Budget and through a grant that was received. It was therefore recommended that Contract 12-10 be awarded to the lowest bidder, Nickles Contracting, Inc. of Haddon Heights, New Jersey in the amount of \$26,900.

Mr. Markham pointed out that there was a \$60,000 difference in the two bids received. Ms. Houck assured Council that Nickles had a lot of experience in this type of work.

MOTION BY MR. TUTTLE, SECONDED BY MR. ATHEY: THAT CONTRACT 12-10, RESTORATION OF THE SECOND FLOOR NEWARK TRAIN STATION, BE AWARDED TO NICKLES CONTRACTING INC. IN THE AMOUNT OF \$26,900.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

23. 6. ORDINANCES FOR SECOND READING AND PUBLIC HEARING:

1:08 A. Bill 12-42 – An Ordinance Amending Chapter 32, Zoning, Code of the City of Newark, Delaware, By Establishing an Adult Community 80/20 District

Ms. Fogg read Bill 12-42 by title only.

MOTION BY MR. CHAPMAN: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 12-42.

MOTION FAILED – NO SECOND TO THE MOTION.
BILL 12-42 FAILED.

24. 6-B. BILL 12-43 – AN ORDINANCE AMENDING CHAPTER 7, BUILDING, SECTION 7-1(F), CODE OF THE CITY OF NEWARK, DELAWARE, BY EXPANDING ITS APPLICATION TO DELINQUENCIES IN THE PAYMENT OF MONIES OWED TO THE CITY REGARDING MATTERS UNRELATED TO THE PROPERTY AT ISSUE

1:09

Ms. Fogg read Bill 12-43 by title only.

MOTION BY MR. ATHEY, SECONDED BY MR TUTTLE: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 12-43.

Mr. Herron explained that Bill 12-43 was very similar to the County's ordinance and was requested by Mr. Athey during discussions about prohibiting issuance of building permits and certificates of occupancy to cover situations where the property owner or applicant was delinquent in monies owed to the City.

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

Following questions by Council members regarding the wording about the controlling interest in the property, Mr. Herron will research how other ordinances with this type of language have been applied.

MOTION BY MR. ATHEY, SECONDED BY MR. CHAPMAN: THAT BILL 12-43 BE TABLED PENDING ADDITIONAL RESEARCH BY THE CITY SOLICITOR.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

25. 7. RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING & DEVELOPMENT DEPARTMENT:

A. Request of South Pond Properties LLC Prospect A Series for the Minor Subdivision of 29-35 Prospect Avenue In Order to Construct Two Three-Story Twin (Duplex) Buildings and Associated Parking and Access Ways (*Agreement and Resolution Submitted*)

This item was tabled to the next meeting of Council at the request of the developer.

26. 8. ITEMS SUBMITTED FOR PUBLISHED AGENDA:

A. Council Members:

1. Resolution 13-__: Retirement of Richard M. Lapointe, Public Works Director

(See Item #3)

27. 8-A-2. RESOLUTION 13-__: RETIREMENT OF PATRICK BARTLING, PUBLIC WORKS SUPERINTENDENT

1:18

Ms. Fogg read the resolution by title only.

MOTION BY 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 13-B)

28. 8-B. OTHERS:

1. DEMEC – Review and Approval of Renewable Energy Plan

1:19

Mr. Clifton asked Mr. McCullar whether the City was still on line for the 24% reduction in electric rates in five years. Mr. McCullar, President of DEMEC, said the City would actually beat five years and should be able to easily have wholesale rates reduced more than 24% before five years expired.

Mr. McCullar presented a summary of the recommended municipal electric utilities renewable portfolio standard plan and sought acceptance of the plan. Under State law they were required to file this plan with each of the regulatory bodies of the municipalities, and the plan set forth a schedule by which renewable energy credits and solar renewable energy credits would be acquired to meet compliance with their own created plan. The renewable portfolio standard (RPS) was a State mandated policy that obligated each retail seller of electricity within the State of Delaware to include in its resource portfolio increasing amounts of electricity generated from qualifying renewable energy resources.

DEMEC's five-year compliance plan was detailed in the report, and the schedule matched the State's mandate for Delmarva Power & Light. In 2013, 10% of DEMEC's energy portfolio would be acquired from qualifying renewable energy resources. Of that 10%, six-tenths of 1% would come from solar. Those requirements would escalate every year with an ultimate goal to meet the 25% requirement in 2025. The objective of the plan was to do this at the lowest cost possible so rate payers would not be adversely impacted.

The plan objectives were to present the compliance plan to all of the regulatory bodies. It would first be filed with the nine municipal electric utilities and upon their approval would be filed with the State Energy Office and the State Legislature. The plan was subject to change every year based on changes in State laws, whether retail sales numbers changed substantially, whether technologies changed, etc. They will continue to plan in five-year increments since the State energy plan was a five-year cycle and wanted to make sure they were achieving the lowest cost compliance in this program while encouraging the development of renewable resources in member communities and retaining a high reliability of electric service.

Mr. Clifton asked how this fell out with Newark as a member – where the City itself was at 2% but DEMEC overall was at 1.25% - whether that could adversely affect Newark's participation if we exceeded the benchmark and the other communities were

less than the benchmark. Mr. McCullar responded that according to State law DEMEC had to account for each municipal electric utility separately. Mr. Markham noted that as a practical matter it would only be things like community solar special programs put in place by the individual municipalities that would make Newark different.

Mr. Clifton stated that years ago Council agreed to purchase 1–1.5% of green energy from Green Mountain Energy in Vermont and he asked whether we were hitting that benchmark. Ms. Houck indicated she was not familiar with this plan.

Mr. Markham asked where we stood today on the schedule. Mr. McCullar said the first three years were already owned or under contract. Mr. Clifton clarified if DEMEC did nothing different for three years that the benchmarks would be met. Mr. McCullar said that was correct with the caveat that if retail electric sales were close to projection and there were no other changes.

Mr. Markham offered a suggestion regarding customers with stranded solar REC's to move those into the Delmarva program to the DEMEC program. Mr. McCullar said he would look into the possibility.

The Chair opened the discussion to the public.

Amy Roe, a Newark resident, advised that Council passed Resolution 05-H) to buy renewable energy.

Ms. Roe clarified several points from the presentation.

Ms. Roe said the City exempted itself from the renewable portfolio standard under the premise it was going to have a voluntary subscription program. In 2007 this totaled .3% of electric sales; in 2008 .46%; in 2009 .5%; in 2010 .46%; in 2011 .51%; and in 2012 .52%. In 2013 the plan would purchase 10% of electricity from renewable energy which, (if we used the 2012 numbers) would be 41 million kilowatt hours of renewable, and we have not bought that much in the history of the City. The Resolution in 2005 was a failure, the voluntary green energy subscription program was something that needed to be reassessed since it was supposed to sell non-carbon based electricity but only sold non-carbon based electricity in the last three years.

Ms. Roe pointed out that DEMEC's document was not a plan and that part of the problem in Newark was there was no dialog and no accountability. She thought it was important to have a compliance plan presented to the public. Some things that needed to be included in the plan were: large users were exempted from the RPS and she questioned if that included UD and the City. Were non-renewable fuel fired cells allowed to count for renewable energy in the City – under State law if you are a fuel cell operator and you use fuel cells that can qualify to use renewable energy but you don't use renewable energy, they get renewable energy credits anyway. Delmarva Power was using natural gas fired fuel cells to account for 32% of their solar recs.

Ms. Roe thought these kinds of questions needed to be addressed and that a compliance plan should include answers to all of those questions. She wanted Council to ask DEMEC to report with the compliance plan so she could review it.

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

Mr. Funk noted that a number of solar projects were built by the University and asked if we tracked the amount of energy they generated and whether the City received credit for that energy. Mr. McCullar said the City did not have the right to take ownership of the University's solar recs which they retained and sold to another party. Mr. Markham noted they were in the Delmarva plan.

Mr. Clifton agreed with Ms. Roe that he wanted to see an operation plan from DEMEC that showed the methodology used to get to the end game.

Mr. McCullar explained they took a strong look at the State law and complied with the State law. They set forth goals, showed the resources they will be investing in to get there and made their best effort to comply with State law. Mr. Clifton thought they could do a little better job in detail. Mr. McCullar added that going forward they would make compliance reports to the City and all the other members stating the targets, how they were complied with and the money spent. Mr. Clifton said that was post facto review versus a program and a road map going into it. Mr. McCullar said what they put together was essentially the same report that Delmarva Power filed with the Public Service Commission. Mr. Clifton said if the benchmark was Delmarva Power for the running of Newark's electric system, he was not impressed.

Mr. Chapman said based on what other Council members were saying, going forward whenever there were presentations to Council, he would appreciate more detailed background material especially when so much of the City's revenue was dependant on energy sales. Mr. Clifton agreed with Mr. Chapman that he would rather have too much information than not enough.

Mr. Athey noted the DEMEC memo was written to nine entities and asked what would happen if the other eight approved it and Newark did not. Mr. McCullar replied that Newark was the regulatory body and had the right to either accept the plan or ask for additional information. They would do their best to comply with that request.

Mr. Morehead asked what percentage of renewable generated power purchased by DEMEC was supplied to the City. Mr. McCullar replied they had not yet allocated any to the City because the first compliance year would not begin until June 1, 2013. Further, this was the formal filing DEMEC compiled for the local regulatory authorities, Delaware General Assembly and the Delaware Energy Office. According to State law the filing was due by the beginning of 2013.

Before approving this plan Council asked to see the number of SRECs by source, percentage of the total each one of those made up and projections of how they made their assumptions. Mr. McCullar said they would provide this information to Council in advance of the January 28 Council meeting.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: TO TABLE APPROVAL OF DEMEC'S RENEWABLE ENERGY PLAN TO THE JANUARY 28, 2013 COUNCIL MEETING PENDING ADDITIONAL INFORMATION FROM DEMEC.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

29. 9. SPECIAL DEPARTMENTAL REPORTS:

A. Special Reports from Management and Staff: *None*

30. Meeting adjourned at 9:09 pm.

Patricia M. Fogg, CMC
City Secretary