

**CITY OF NEWARK
DELAWARE
COUNCIL MEETING MINUTES**

July 23, 2007

Those present at 7:30 pm:

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

Staff Members: Assistant to the City Manager Carol S. Houck
Assistant to the City Manager Charles M. Zusag
Acting City Secretary Patricia M. Fogg
Deputy City Solicitor Bruce C. Herron
Planning Director Roy H. Lopata
Parks & Recreation Director Charlie Emerson
Public Works Director Richard M. Lapointe
Acting Chief of Police John Potts
Finance Director Dennis McFarland

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

2. MOTION BY MR. CLIFTON, SECONDED BY MR. TUTTLE: THAT THE AGENDA BE AMENDED BY ADDING ITEM 8-A, BILL 07-21 – AN ORDINANCE AMENDING VARIOUS CHAPTERS IN THE CODE BY INCREASING VARIOUS CURRENTLY ASSESSED FEES/FINES.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

3. **2. CITY SECRETARY'S MINUTES FOR COUNCIL APPROVAL:**
A. Regular Council Meeting of July 9, 2007

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

4. **3. ITEMS NOT ON PUBLISHED AGENDA:**
A. Public

There were no comments forthcoming.

5. **3-B. UNIVERSITY**
1. Administration

There were no comments forthcoming.

6. **3-B-2. STUDENT BODY REPRESENTATIVE**

There were no comments forthcoming.

7. 3-C. COUNCIL MEMBERS

Messrs. Clifton, Tuttle, and Pomeroy had nothing to bring up at this time.

8. Mr. Funk thanked Council for attending a luncheon to meet Patrick Harker, the University's new president. The City Manager and a few department heads also attended. Mr. Funk was confident the City and President Harker would work well together.

9. Mr. Markham asked when the contractor would begin the sidewalks at the reservoir, and when Council would be getting information regarding the demolition of Curtis Paper Mill. Ms. Houck advised she expected to get a date relatively soon for the pre-construction meeting regarding the sidewalks and then work should start soon after. With regard to Curtis Paper Mill, she advised that contracts were being prepared for the rehabilitation of the smokestack as well as demolition, and Council should have something regarding that by the end of September.

10. Mr. Osborne thanked Mr. Emerson for the dogwood tree planted in the Fairfield Park and noted that it needed water.

11. Mr. Athey thanked Mr. Lapointe for the information regarding DeIDOT repairing the Rt. 896 pedestrian bridge. About a year ago some of the posts that held the fence had corroded so that the fence was holding the posts up.

12. Mr. Athey recognized the Food & Brew Festival held July 14th which he thought was a good event that showcased the restaurants in town.

13. Mr. Athey advised that he attended the legislative wrap up held in the Council Chamber last week hosted by Senators Amick and Sorenson, and Representatives Schooley, Maier and Kowalko. He noted that in the past the City's lobbyist, Bob Maxwell, provided a summary of the legislative session and asked if he would do that again. Ms. Houck advised that Mr. Maxwell would be providing a summary.

14. **4. ITEMS NOT FINISHED AT PREVIOUS MEETING:** None

15. **5. RECOMMENDATIONS ON CONTRACTS & BIDS:**

A. Contract 07-10, Roof Replacement – George Wilson Center

Ms. Houck summarized her memorandum to the City Manager, dated July 12, 2007, wherein she recommended that C.T.A. Roofing and Waterproofing, Inc. be awarded Contract 07-10 for a bid price of \$59,000 and its \$3.00 per sq. ft. pricing for steel decking replacement as necessary.

MOTION BY MR. CLIFTON, SECONDED BY MR. POMEROY: THAT CONTRACT 07-10, ROOF REPLACEMENT – GEORGE WILSON CENTER, BE AWARDED TO C.T.A. ROOFING AND WATERPROOFING, INC. FOR A BID PRICE OF \$59,000 AND \$3.00 PER SQ. FT. PRICING FOR STEEL DECKING REPLACEMENT AS NECESSARY.

Mr. Markham noted that this contract had been in front of Council before but rejected because of the cost. Ms. Houck agreed and noted that this contract was for a different roofing system product.

Mr. Funk questioned the term of the warranty and was told it was a 10-year warranty, the same warranty that would have been provided for the other product. Mr. Emerson added that the roof on the center was about 20 years old and for the past 10 years there were problems with patching it.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

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

A. Bill 07-25 - An Ordinance Amending Ch. 20, Motor Vehicles & Traffic, By Providing for a Stop Sign on Witherspoon Lane at Aylesboro Road

Ms. Fogg read Bill 07-25 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. OSBORNE: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 07-25.

Acting Chief Potts explained that residents in that area requested the stop sign because they felt traffic was proceeding too fast through the intersection. Their request was reviewed and recommended by the Traffic Committee.

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: 7 to 0.

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

(ORDINANCE NO. 07-22)

17. 7. RECOMMENDATIONS FROM THE PLANNING COMMISSION/DEPT.

None

18. 8. ORDINANCE FOR FIRST READING:

A. Bill 07-21 – An Ordinance Amending Various Chapters in the Code, By Increasing Various Currently Assessed Fees/Fines

Ms. Fogg read Bill 07-21 by title only.

MOTION BY MR. POMEROY, SECONDED BY MR. TUTTLE: THAT THIS BE THE FIRST READING OF BILL 07-21.

Mr. Funk questioned the purpose of raising the scofflaw from \$50.00 to \$75.00 (Amendment 5). Mr. Zusag said that was done because he also recommended raising the cost of a violation regarding parking meters from \$5.00 to \$15.00 which meant an individual would get to the \$50.00 limit much quicker. At the present time, it took 10 tickets to get to \$50.00. The proposed change would mean after five tickets the individual would reach \$75.00.

Mr. Athey advised that the General Assembly passed H.B. 264 (which imposed a 50% surcharge on collected traffic fines). He thought the idea behind that change was to put more money into the Transportation Trust Fund. He then referred to a 2004 memorandum from then Chief Conway that provided a summary of the various traffic fines. Since that time some fines were adjusted, but no moving violations were changed. He asked staff to look at H.B. 264 and make a recommendation as to whether the City should also increase fines for moving violations within the City limits.

Mr. Funk advised that normally when those laws were passed, the surcharge was paid through the municipal court to the state so that would

automatically happen with Newark. Ms. Houck interjected that she would look at the bill to determine whether it also affected the City.

Mr. Athey asked if a surcharge was levied against fines in the City, were those monies going to the State Transportation Trust Fund. Mr. Funk said he needed the opportunity to review H. B 264, but thought the answer was probably yes.

Mr. Athey concluded by saying it has always been an issue for him that if you were 10 mph over the speed limit, it was only a little less than a \$100.00 fine, yet statistics showed if you were traveling 35 mph in a 25 mph zone and hit a biker or pedestrian, that person would not get up. It was his personal opinion that the \$100.00 fine was too low.

Mr. Funk noted in regard to the parking meter fine that a \$15.00 ticket would be \$30.00 after 30 days so maybe the number of tickets should be lowered to three instead of five tickets. This will be discussed further at second reading.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(2ND READING 8/13/07)

19. 9. ITEMS SUBMITTED FOR PUBLISHED AGENDA:

A. Council Members: None

20. 9-B. COMMITTEES, BOARDS & COMMISSIONS:

1. Appointments to Downtown Newark Partnership (Mayor Appts.)

MOTION BY MR. FUNK, SECONDED BY MR. CLIFTON: THAT SUZY ROGERS, 307 KINROSS DRIVE, BE APPOINTED TO THE DOWNTOWN NEWARK PARTNERSHIP; AND RYAN GERMAN, 90 E. MAIN STREET, BE REAPPOINTED FOR ANOTHER THREE-YEAR TERM; SAID TERMS TO EXPIRE JULY 27, 2010.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

21. 9-B-2. APPOINTMENT TO PERSONNEL REVIEW COMMITTEE

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT VICTOR BERNSTEIN, 416 DOUGLAS D. ALLEY DRIVE, BE REAPPOINTED TO THE PERSONNEL REVIEW COMMITTEE FOR ANOTHER THREE YEAR TERM; SAID TERM TO EXPIRE JULY, 2010.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

22. 9-B-3. PLANNING COMMISSION MINUTES OF JULY 3, 2007

MOTION BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT THE PLANNING COMMISSION MINUTES OF JULY 3, 2007 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Mr. Markham questioned why the Planning Commission reviewed the Capital Budget. Mr. Lopata said the basic reason was the City's capital expenditures ought to be linked to its long-term plan. In other words, electric, water and sewer facilities specifically should not be constructed just because they needed to be upgraded, but should also be linked in some way to the City's plans for the future. Also, the City Charter required that the Planning Department and Planning Commission be involved in the Capital Budget process.

Mr. Markham said he thought most of the time developers paid the bill for anything into the development. Mr. Lopata said not the major extensions, especially in the area of electric. He added that it was also important to make sure the City had the stormwater facilities.

23. 9-C. OTHERS:

None

24. 10. SPECIAL DEPARTMENTAL REPORTS:

A. Special Reports from Manager & Staff:

1. Setting Date for Public Hearing of 2008-2012 Capital Improvement Program (August 13, 2007)

MOTION BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT THE PUBLIC HEARING FOR THE 2008-2012 CAPITAL IMPROVEMENT PROGRAM BE HELD AUGUST 13, 2007.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Mr. Markham asked if the presentation could be in electronic form, spreadsheet, or power point. He was advised that it was presented in power point at the Planning Commission and it would be done that way for Council. Also, copies of the spreadsheets would be available because the power point was difficult to read.

25. 10-B. ALDERMAN'S REPORT

MOTION BY MR. OSBORNE, SECONDED BY MR. CLIFTON: THAT THE ALDERMAN'S REPORT DATED JULY 16, 2007 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

26. 10-C. FINANCIAL STATEMENT

Mr. Tuttle noted that the Finance Director's memorandum to the City Manager, dated July 19, 2007, commented on the fact that net utility revenues were down \$1.4 million due to lower electric sales than budgeted. However, in reading the details on page 4, he thought it looked like the City actually sold \$2.9 million more than budgeted for the first six months of the year. It appeared that the City paid \$3.8 million more than what was budgeted for electricity, and Mr. Tuttle asked if that was correct.

Mr. McFarland said that Mr. Tuttle was right in that the cover page referred to net utility revenues which was after the increased purchase cost. The rates the City paid for power had gone up and the rate in which the City recovered the power had gone up. What has declined was the volume—the amount of power the City sold was less than what was budgeted.

Mr. McFarland continued by saying the City presumably budgeted for normal volumes and low budgeted levels and what has been sold has been lower than normal. The best judgment at this point was the fairly cool weather through most of May and June and residents holding off turning on their air conditioners. He hoped they would recover some of that with the weather in July although it has been cool the last couple of days.

Mr. Tuttle said what wasn't apparent to him was if the City's margin was "x" and we were spending more for power because the price of power went up, if they applied that margin, then they should be collecting more as well and it seemed not to be the right ratio.

Mr. McFarland explained that the margins were on a unit basis so if volumes go down, the gross dollar margin the City collected also goes down.

Mr. Funk said he remembered in December or January Council was informed that a really good deal was negotiated where the City got the power from, and he assumed that price had gone down and not up. Mr. McFarland said the price was down from what it had been in the prior period, and was still a very competitive price compared to the market price for the power, but it was high by historical standards.

Mr. Clifton added that he thought the City's profit margin was fairly consistent after changes were made a year or two ago that allowed the City to move on a monthly basis with the market rather than a year later. Therefore, he thought it was the fact that the volume was not there. Mr. McFarland said Mr. Clifton was correct—the rate mechanism permitted the City to maintain a fixed margin per unit of sales, but it was still sensitive to the volume sold.

Mr. Funk asked if the City was in trouble with legal fees because a half million dollars was already spent the first six months. Mr. McFarland said it appeared the budget would not be sufficient to cover the legal fees this year. He noted that showed up early in the year and could continue to get worse throughout the remaining part of the year. Also, he noted that the legal fees over the last couple of months had tapered off because there hasn't been as much activity.

Mr. Funk commented on the recent revision to the City's Fitch Credit Rating. The City has maintained its 'A' GO Rating, but Fitch revised the City's outlook from positive to negative. This would not affect the City at this time because it was not giving out bonds. Mr. McFarland agreed there was no immediate consequence. Mr. Pomeroy asked if the City received a yearly bond review to which Mr. McFarland said in principle it should, but the City has not been reviewed for several years. He further stated that it did not mean much unless the City intended to issue bonds. It would affect the price of the debt trade in the public market but that would not have any direct consequence to the City. Mr. McFarland also noted that the revised outlook was given because Fitch had to do something because the City's situation changed from several years ago, but nothing so severe that would cause them to challenge the double AA rating. He also noted they had to give some recognition to the fact that there were things hanging over the City's financial outlook. Usually they tweak the outlook first and if the City doesn't correct things, the next step would be to change the bond rating.

Mr. Funk noted that the closing of Chrysler would not have a great impact. Mr. McFarland felt that was understood, but they had a great amount of concern

about the regional economy as well as Chrysler. Typically when they looked at economics, they looked at it from a regional perspective.

Mr. Markham asked what caused the delay in the University of Delaware electric payment. Mr. McFarland explained that it was just a one-day slip in getting the bill and turning it around.

MOTION BY MR. TUTTLE, SECONDED BY MR. CLIFTON: THAT THE FINANCIAL STATEMENT ENDING JUNE 30, 2007 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

27. REQUEST FOR EXECUTIVE SESSION RE PENDING LITIGATION (DURKIN V. NEWARK)

Mr. Funk announced that an Executive Session was not required at this time.

28. Meeting adjourned at 8:10 pm.

Susan A. Lamblack, MMC
City Secretary

/pmf