

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

May 28, 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, Margrit Hadden
District 5, Luke Chapman
District 6, A. Stuart Markham

Staff Members: Deputy City Manager Andrew Haines
City Secretary Renee Bensley
City Solicitor Bruce Herron
Planning & Development Director Maureen Feeney Roser

1. The regular Council meeting began with a moment of silent meditation and the Pledge of Allegiance.

2. MOTION BY MR. CLIFTON, SECONDED BY MR. TUTTLE: THAT ITEM 5, FINANCIAL STATEMENT ENDING APRIL 30, 2013, BE REMOVED FROM THE AGENDA.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

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

01:35 A. Public

Noah Carp, a member of the Boy Scouts from Bear, asked which items would be discussed at the meeting. Mr. Funk explained the agenda would be followed and started with public comment.

4. **1-B. UNIVERSITY**

(1) **Administration** – There were no comments forthcoming.

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

There were no comments forthcoming.

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

03:20

Mr. Morehead

- Mr. Morehead reported on his tour of the new GE plant and said the technology being developed in Newark was cutting edge and very interesting. Mr. Clifton added that 70 new jobs would be created over a three-year period at the facility.

7. **Mr. Clifton**

- Mr. Clifton said the Memorial Day parade was well attended in light of the weather. He thanked everyone who served in the military, including Mr. Funk, and all those individuals who made the ultimate sacrifice for our freedom.
- Mr. Clifton referenced the new IT position that Council would vote on which listed the position as a Grade 28. He thought it should be made clear to the public that Grade 28 translated to a salary range of \$77,000 - \$97,000 and asked that salary range be added to similar bills in the future.
- Mr. Clifton received a request from a constituent to clarify placement of buildings on a new construction project. The scale was so small that it was difficult to read the numbers. Mr. Clifton thought it was important, especially on building separations and setbacks, to enlarge these numbers on construction plans.

8. Mr. Tuttle

- Mr. Tuttle said he was enjoying the peace and tranquility of the summer.

9. Ms. Hadden

- Ms. Hadden spent time with Mr. Simonson touring the City's water treatment facilities and felt the City had reason to be proud of the job they do on treating the water.
- Ms. Hadden attended the police memorial on May 16 in Wilmington. It was interesting and well attended and made her proud that these officers put themselves on the line for us.
- Ms. Hadden attended the Memorial Day Parade and thought it was well attended considering the rain.
- Ms. Hadden planned to email her constituents about the upcoming busy weekend with the UD Alumni event and Newark Day to provide contact information for any issues.

10. Mr. Chapman

- Mr. Chapman had no comments at this time.

11. Mr. Markham

- Mr. Markham commented on the Memorial Day commemoration which was very nice and complimented the bagpipes.
- Mr. Markham noted that U Don't Need It appeared to be having good success.
- Mr. Markham remarked on the Data Service Center coming to the STAR campus. A news article quoted \$20 million in terms of taxes which he said was more like \$7 million with \$1.6 million to the City. This would be a welcome addition to the City's finances.
- Mr. Markham issued a reminder about Newark Day on Saturday.
- Mr. Markham congratulated the 2013 graduates.
- Mr. Markham paid for two solar panels at the planned Newark solar park.

12. Mr. Funk

- Mr. Funk had no comments at this time.

13. 2. APPROVAL OF CONSENT AGENDA

13:01

Ms. Bensley read the Consent agenda in its entirety.

- A. Approval of Regular Council Meeting Minutes – May 13, 2013
- B. Receipt of Alderman’s Report – May 9, 2013
- C. Reappointment of Urie Boulden and Bill Dewberry to the Board of Business License Review to Complete the At-Large Terms Expiring July 9, 2014.
- D. Appointment of Ted Elder to the Community Development/Revenue Sharing Advisory Committee to Complete the At-Large Term Expiring March 15, 2016.
- E. Appointment of Sal Sedita to the Board of Building Appeals as an Alternate Member.
- F. **First Reading – Bill 13-13** – An Ordinance Amending Chapter 30, Water, Code of the City of Newark, Delaware, Adding Gallons as a Unit of Measure for Billing Purposes With Corresponding Rates, Increasing the Metering and Billing Frequency from Quarterly to Monthly, and Incorporating Other Changes Precipitated by the Smart Meter Project – **Second Reading – June 10, 2013**
- G. **First Reading – Bill 13-14** – An Ordinance Amending Chapter 2, Administration, Code of the City of Newark, Delaware, By Amending the Management Assignments to Yearly Salary Plan – **Second Reading – June 10, 2013**

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

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

14. 3. ITEMS NOT FINISHED AT PREVIOUS MEETING:

14:26

- A. **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 – **Tabled at January 14, 2013 Meeting by Request of Council**

MOTION BY MR. MOREHEAD, SECONDED BY MR. CLIFTON: THAT BILL 12-43 BE LIFTED FROM THE TABLE.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Mr. Herron explained the intention of the amendment was to give the City the power to deny the issuance of permits or certificates of occupancy when an applicant was not in good standing, not only with respect to the property at issue but also with respect to monies owed to the City in other matters. Mr. Herron said there would be a case-by-case determination as to whether a person or an entity had a controlling interest in the property. Controlling interest was defined in the proposed amendment using the same language as was present in the existing County ordinance.

Mr. Markham questioned whether there was an appeal process in the ordinance. Mr. Herron noted there was a provision that enabled the Finance Director to agree to a payment plan. Mr. Funk suggested checking with New Castle County and Wilmington to find out whether they had an option for appeals. A discussion ensued about whether it would be appropriate for appeals to be handled internally.

The Chair opened the discussion to the public.

Brett Zingarelli, a Newark resident, asked when the ordinance would take effect. He was concerned a property owner could be held liable for monies owed by previous property owners. Mr. Funk advised that ordinances took effect when passed unless otherwise stated and when a property transferred from somebody who previously owed monies to the City, the issue would come to light at the real estate settlement. The City required a lien certificate for all property transfers which would show any outstanding amounts due to the City.

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

It was the consensus of Council to establish a clear path for appeals before proceeding with the ordinance.

MOTION BY MR. MARKHAM, SECONDED BY MR. CLIFTON: THAT BILL 12-43 BE POSTPONED TO THE JUNE 10, 2013 COUNCIL MEETING IN ORDER FOR THE CITY SOLICITOR TO RESEARCH AN APPEAL PROCESS.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Nay – 0.

15. 4. **SPECIAL DEPARTMENTAL REPORTS:**
A. Special Reports from Manager & Staff
1. Capital Projects Fund Transfer Recommendation

27:46

Mr. Haines referred to Ms. Houck's memo of May 17, 2013 regarding a request to transfer capital funds. There were several pieces to dividing up a singular capital project, and staff identified the INovah system integration budgeted at \$145,000 in the 2013 Capital project. Staff asked to reallocate the INova monies when combined with existing Capital Project A1301 for a total of \$142,405 to reprioritize for building security and safety. This included the Alderman's Court security upgrades and a lockdown to the building at nighttime during meetings while providing public access to the restrooms adjoining the Finance and Parks & Recreation Departments.

The elevator keypad would have a lockdown at night and with visitor management software would provide better control to know who was in the building at any given time.

Staff also recommended an expenditure of \$16,248 for other IT needs. Included was an efficiency gain in the process for utility account deposit refunds. Two separate software systems (Harris and Munis) were currently involved, requiring manual entries. An interface platform between Harris and Munis would speed up the refunds for the deposits and reduce the potential for errors.

This would supplement all the monies received by the City from grant funding which was used to build the physical structure in the lobby for security as well as the security monies from FEMA to upgrade servers and network items.

Mr. Clifton raised the issue of why the security booth was put inside the hallway which he believed was in the wrong place since security should go as far out as possible. He believed the ballistic glass in the booth was level 1 and drywall with Kevlar. In looking at one proposal, it specified drywall with no ballistic protection in that system. He did not like doing the security piece meal and stressed the need to look at all the options.

Mr. Haines reported that staff and members of the Police Department were assessing the possibility of standing security in the main lobby in next year's budget.

They were looking into having a receptive City Hall that would meet the intent of safely and efficiently providing services.

Ms. Hadden asked if a security firm came in and made recommendations for the City. Mr. Haines replied that the U.S. Marshals performed an assessment after the shooting at the Wilmington Court House.

Mr. Morehead mentioned the absence of any plans for the City Secretary's office. Mr. Haines said they were looking at upgrades not only for the City Secretary's door but also the sliding doors and the front door to South Main Street with the possibility of buzzer controlled access.

Mr. Clifton thought it would have been more prudent to have this conversation with Council at the beginning.

Mr. Morehead pointed out that Council was responsible for spending the taxpayer's money and this was an initiative that did not come to them. Council was being asked to fund an idea they never approved which he felt was not appropriate.

Mr. Markham understood the concern about the hallway and suggested that the IT work be separated if the entire proposal was not approved.

Mr. Chapman thought there should be a distinction between the IT operations and the other security measures. He pointed out that for a big project (especially one that felt piece meal), there was no supporting evidence or official recommendations to back any of this up. He suggested sending it back and requesting it be brought to Council with supporting evidence.

Mr. Clifton agreed that Council wanted to see a much broader holistic look with the supporting evidence, but he approved of the measures proposed for the Alderman's Court.

Mr. Funk noted he had several difficult experiences when he worked at the Alderman's Court and knew anything to improve it would be appreciated by the staff and the judges.

MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: THAT THE TRANSFER OF FUNDS BE APPROVED AS RECOMMENDED BUT NOT TO MOVE FORWARD ON THE FINANCE AND PARKS & RECREATION DEPARTMENT ENCLOSURE UNTIL STAFF PRESENTED FURTHER INFORMATION TO COUNCIL.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Nay – 0.

16. 5. FINANCIAL STATEMENT: None

17. 6. RECOMMENDATIONS ON CONTRACTS & BIDS:

A. Recommendation to Award Contract No. 13-07 – 2013 Street Improvement & Court Resurfacing Program

49:00

Mr. Haines reviewed the recommendation outlined in Ms. Houck and Mr. Simonson's memo dated May 16, 2013. Fontana Concrete was the lowest responsible bidder with a total bid of \$886,524 including Options 1 and 2. Funding was available from the Community Transportation Fund and Capital Projects H1301 and H 1304.

Ms. Hadden noted the Cherry Hill Manor project was not listed for street improvement and asked if it was considered a separate project. Mr. Haines responded it was a separate entity and would still go forward.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT CONTRACT NO. 13-07, RECOMMENDATION FOR 2013 STREET IMPROVEMENT AND COURT RESURFACING PROGRAM, BE AWARDED TO FONTANA CONCRETE CONTRACTORS, FOR A TOTAL COST OF \$886,524.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

18. 6-B. CONTRACT NO. 13-05 – MAIN STREET PIT RENOVATION FUNDING TRANSFER

52:10

Mr. Haines reported the recommendation was in conjunction with item 6-A tying the resurfacing of Kells Park to the annual street project with a price point for the materials much lower than if bid separately. There was a reduction in the budgeted amount for the Capital Project since the integrity of the goose neck poles for the basketball court, the footers, etc., were in better condition than anticipated. Based on the savings in the overall bid, there was an opportunity to transfer \$17,000 out of that Capital Project to provide the funding needed to the street pit program discussed at a previous Council meeting. There was an overlap of \$8,000 from the previous year's tree pit project, and this amount combined with the \$17,000 saved on the Capital project would provide the \$25,000 needed to complete all tree pits on Main Street.

Staff recommended completing the Main Street pit renovation project in its entirety.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT CONTRACT NO. 13-05, MAIN STREET PIT RENOVATION FUNDING TRANSFER OF \$17,000, BE APPROVED AS REQUESTED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

19. 7. ORDINANCES FOR SECOND READING AND PUBLIC HEARING: *None*

20. 8. RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING & DEVELOPMENT DEPARTMENT:

55:20

A. Request of St. Thomas Episcopal Church for a Minor Subdivision for a Portion of the Property Located at 276 S. College Avenue to Insert a Lot Line Between a Residential Property Located at 15 Indian Road and the St. Thomas Church Property to Create Two Parcels with No New Proposed Construction. **(Agreement and Resolution Submitted)**

MOTION BY MR. CLIFTON, SECONDED BY MR. TUTTLE: THAT THE AGREEMENT AND RESOLUTION BE APPROVED AS PRESENTED.

Joe Charma, Landmark Science and Engineering, was accompanied by Tom Fairchild from St. Thomas and Dominic Bellagio, Esq.

Mr. Charma said the applicant was not seeking approval to add square footage or build any new construction. The house at 15 Indian Road was constructed in 1946, and the church was constructed in 1950. Shortly thereafter, St. Thomas Church purchased the single-family home and used it as a rectory for a short period of time. In 1989, the church sought an administrative subdivision to eliminate the lot line to use the outbuilding on the existing 15 Indian Road parcel as a daycare center. It was no longer used as a daycare, and the church sought to reestablish the property line and sell 15 Indian Road.

Mr. Charma explained the issue came in because the church and the single-family home were constructed prior to the Zoning Code adoption in 1956, and several variances were sought for the church parcel. On February 21, a Board of Adjustment hearing was held, and subsequent variances were granted.

Mr. Charma referred to the subdivision plan to show the lot lines.

Mr. Clifton asked whether the neighboring properties received notification of the proposed project. Ms. Hadden confirmed she communicated with her constituents regarding the request and said the neighbor most impacted had no issue with the request. Ms. Bensley added that neighbors within a 300 ft. radius surrounding the property were notified of the Board of Adjustment hearing but not the Council hearing since this was a minor subdivision. According to Ms. Feeney Roser, neighbors were also notified for the Planning Commission meeting.

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

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Nay – 0.

(RESOLUTION NO. 13-V)

- 21. 8-B. REQUEST OF NCG, LLC FOR THE MINOR RESUBDIVISION OF A PORTION OF THE KERSHAW COMMONS SUBDIVISION LOCATED AT KERSHAW STREET AND E. CLEVELAND AVENUE IN ORDER TO REMOVE PARCEL LINES, RECONFIGURE PARKING SPACES AND CONSTRUCT FIVE FOUR-BEDROOM TOWNHOUSE-STYLE APARTMENTS. (*Agreement and Resolution Submitted*)**

01:01:17

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

Lisa Goodman, Esq. represented Baldini Exchange LLC. Also present were Nick Baldini and Tim Anderson from Karins and Associates. This was a minor resubdivision plan and would add five townhouse units to complete the complex which was a total of 2.25 acres on East Cleveland Avenue. The parcel was zoned RM and was recorded as an overall plan on both sides of Kershaw Street so although the plan would be two separate parcels, it would be recorded as one plan. The four bedroom units would be deed restricted to one person per bedroom. A total of 30 units currently existed on the site, with 15 more parking spaces than required by Code. Eight of those spaces would be removed from the project, leaving three more parking spaces than required. Parking was controlled by informing tenants how much parking each unit was entitled to which worked well in the past.

The project received two minor variances from the Board of Adjustment in December and was a Code compliant plan. The development agreement was amended adding a provision to item 7 to clarify that if either one of the two parcels were sold separately, they would have to separately conform with RM zoning.

Ms. Goodman referred to a PowerPoint presentation showing an aerial view of the proposed units which were designed to be consistent with the existing units.

Mr. Clifton stated he had an understanding of what Council needed to do on a Code compliant plan and felt this was another travesty of the Board of Adjustment. He referred to item 9 of the agreement which said bollards must be installed in front of the gas meters and he assumed these would be a strong composition. Ms. Goodman said they would have to be acceptable to the department since their purpose was to protect

the gas lines. Mr. Clifton wanted to see something strong there. Although this was an immense improvement, he added that he was disappointed in the design which he thought resembled a mundane dormitory.

Mr. Markham asked Ms. Goodman to address why the Planning Commission came down to a 3-2 vote on the project considering it was Code compliant. Ms. Goodman explained this project was heard in the context of the Planning Commission hearing a number of matters on Cleveland Avenue. She said they had some overall questions about traffic on Cleveland Avenue and about improvements to Cleveland Avenue, mostly having to do with Cleveland Avenue further west. She thought the project got caught up in the conversations happening further down on Cleveland Avenue. Since the project met the Code it was surprising to her that it was a 3 to 2 vote at Planning Commission. Mr. Markham pointed out that since that time, the Planning Commission had a training workshop.

Ms. Hadden expressed concern about increased pedestrian traffic and wondered how this would work out when there was construction on both sides of the road. Ms. Goodman explained RM zoning permitted 16 dwelling units per acre and that was not a variance sought. The project received two minor dimensional variances but the overall use – the density that RM was meant for which was decided by Council when adopting the Zoning Code – was consistent and not altered by the Board. Ms. Hadden thanked the developer for voluntarily agreeing to deed restrict their units regarding the number of tenants allowed.

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

Mr. Markham noted that Mr. Clifton raised the issue about the appearance of the project. Ms. Goodman said the intent was to try to match the existing buildings. Mr. Funk thought it did. Mr. Chapman said the guidance from Council was to provide multi-unit connected housing that looked more organic and less uniform by alternating colors, more flashing or trim or dividing the units to make the project more aesthetically pleasing.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(RESOLUTION NO. 13-W)

22. 9. ITEMS SUBMITTED FOR PUBLISHED AGENDA:

A. Council Members – None

23. 9-B. OTHERS – None

24. Meeting adjourned at 8:17 p.m.

Renee K. Bensley
City Secretary