

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

June 10, 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: City Manager Carol Houck
City Secretary Renee Bensley
City Solicitor Bruce Herron
Deputy City Manager Andrew Haines
Finance Director Lou Vitola
Planning & Development Director Maureen Feeney Roser

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

2. 1. ITEMS NOT ON PUBLISHED AGENDA

04:03 A. Public

Steve Dentel, a Newark resident, spoke about a parking ticket he received after placing a "For Sale" sign in his vehicle that was parked on the street in the same location for a number of years. The ticket indicated he was in violation of Section 20-90.1 which said, (a) "No person shall park a vehicle upon any street for the principal purpose of" (1) Displaying such vehicle for sale. Mr. Dentel requested clarification from the Parking Enforcement Officer who voided the ticket. Mr. Dentel questioned whether the Parking Enforcement Officer had the leeway to void the ticket and suggested changing the wording in the ordinance so it no longer stated "principal purpose". Ms. Houck said she would get back to Mr. Dentel to let him know how his concern would be addressed.

3. Nick Wasileski, a Newark resident, commented about the proposed Data Center business venture at the former Chrysler site. Data storage for computers (such as cloud storage) would be provided, and electricity generation would be sold. His concerns had to do with the generation of electricity and the scope of the installation. The electrical generation plant proposed to be built was a 248 MW natural gas turbine plant, and in comparison to other plants, Mr. Wasileski felt this was rather large. He said this would generate pollution and felt there was an obligation to inform citizens of the scope of this plant. He added there would be a lot of fuel burned and a lot of oxygen being consumed. He also heard the plant would require a Title V permit.

4. John Kowalko, a Newark resident and State Representative, suggested Council consider hosting public hearings on the Data Processing Center in the interest of transparency. Regarding the PILOT program, he reported that the area representatives are working diligently to try to get this passed. According to Mr. Kowalko, the Joint Finance Committee did not allocate the money in that stage of the budget process this year. Based on what he hoped would be a success story next year, Mr. Kowalko said he would come back to ask Council for a reduction in utility charges. He hoped the resolution supporting PILOT would be passed tonight. Regarding Mr. Dentel's traffic ticket, Mr. Kowalko felt discretion should have been applied since the van was parked in

this same location for a number of years, and a friendly contact from the PEO would have resolved the issue.

5. Amy Roe, a Newark resident, congratulated the City for getting the contract signed for the solar project at McKees Park and recognized the hard work done by Mr. Markham. Regarding the Data Center, Ms. Roe said the City needed to know more details about the project, the impact it would have on noise, property values, quality of life, local pollution, etc. She hoped Council would take leadership and have a forum where community residents could ask questions and satisfy their concerns.

Ms. Houck clarified that the Data Center's design was not completed at this time. The City had a good record of public outreach and would come forward when it was available. She said the substation the City would build at the STAR campus to serve this group and others was where the reliability came in to its customers. Ms. Hadden asked what type of leeway the City would have with this project given the University's involvement. Ms. Houck said they would need to obtain building permits. Ms. Feeney Roser added the Data Center would be on property zoned STP (Science Technology Campus) and was the first zoning district that applied to UD property. Ms. Hadden wondered how the zoning would fit with an actual power generating station. Ms. Feeney Roser said it did mention utilities. Mr. Funk added that even though it was University land, the City had the right to exercise authority for ordinances and statutes regarding health, safety and welfare. Ms. Houck noted the data center would have to meet all environmental regulations.

6. **1-B. UNIVERSITY**
(1) Administration – There were no comments forthcoming.

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

There were no comments forthcoming.

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

28:22

Mr. Markham

- Mr. Markham referred to reports of tornadoes and high winds and asked if any areas in the City were impacted. Ms. Houck believed it was just outside and some employee's homes were impacted. Newark experienced flooding and power outages.
- Mr. Markham thanked the City Secretary for her assistance regarding a Verizon outage (about 15 hours) in the northern part of the City. He added that since Verizon and Comcast were franchised through the City, residents could request her to help with unresolved installation and service issues. Mr. Markham thought the City should be notified about major outages in communication and felt an automatic credit should be provided to affected customers.
- Mr. Markham commented about maintenance issues in the Municipal Building and thought Council should start setting money aside in the Capital Budget for refurbishing the building.
- Mr. Markham referenced the recent building collapse in Philadelphia and said it would be helpful to learn what went wrong in the demolition process.
- Mr. Markham reported that Senate Bill 97 (the transgender bill) was making its way through the House and might impact the City as a public employer.
- Mr. Markham said Newark Day was a great event in spite of being very hot.

9. **Mr. Chapman**

- Mr. Chapman had no comments at this time.

10. **Ms. Hadden**

- Ms. Hadden attended the Veterans' Memorial service at the Delaware Memorial Bridge with Mr. Clifton and also attended a ceremony at the Veterans' cemetery later that day.
- Ms. Hadden toured the City parks with Mr. Emerson and remarked on how many great ones there were throughout Newark
- Ms. Hadden's district survived UD's Alumni weekend.
- Ms. Hadden attended Newark Day which was a fun event and well attended.

11. **Mr. Tuttle**

- Mr. Tuttle reported that the Law Enforcement Torch Run ceremony was cancelled Friday due to the weather, although the Special Olympics went on as scheduled.

12. **Mr. Clifton**

- Mr. Clifton agreed that Newark Day was a tremendous event, and he was pleased there were no problems.
- Mr. Clifton commended Newark Police Officer Paul Lawrence who was the recipient of the Newark Lions Club Officer of the Year.
- Mr. Clifton thanked Mr. Funk for passing the notice on to him that the Delaware League of Local Governments voted unanimously to request that the General Assembly add Newark to the PILOT Program. He added that Mr. Funk was a big part of moving that subject forward with the League.

13. **Mr. Morehead**

- Mr. Morehead thanked the City Manager for preventive action taken by the City to reduce flooding in District 1.
- Mr. Morehead remarked that the Board of Adjustment training sponsored by Bruce Herron and Max Walton was very interesting and educational. He thought the Board came away with a better understanding of how the State law impacted their role and thought it was a successful training session.

14. **Mr. Funk**

- Mr. Funk had no comments at this time.

15. **2. APPROVAL OF CONSENT AGENDA**

38:08

Ms. Bensley read the Consent agenda in its entirety.

- A. Approval of Regular Council Meeting Minutes – May 28, 2013
- B. Approval of Court of Assessment Appeals Minutes – May 28, 2013
- C. Receipt of Alderman's Report – May 28, 2013
- D. Appointment of John Horner to the Conservation Advisory Commission to Complete the Vacant At-Large Term Expiring March 15, 2015.
- E. ***First Reading*** – **Bill 13-15** – An Ordinance Amending Chapter 11, Electricity, Code of the City of Newark, Delaware, By Adding an Exemption For HUD-Funded Public Housing Agencies Providing Low Income Housing From the Application Fee for Electricity Account Transfers – ***Second Reading*** – **June 24, 2013**
- F. Receipt of Planning Commission Meeting Minutes – May 7, 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.

16. 3. ITEMS NOT FINISHED AT PREVIOUS MEETING:

39:26

- 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 – *Postponed from May 28, 2013 Meeting by Request of Council*

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

Mr. Herron explained the issue was raised by Council about the availability of an appeal to the ordinance. Upon his further review of the Code he noted the amendment came under Section 7 which contained a specific reference to the right to file an appeal with the Board of Building Appeals. Thus, the right of appeal already existed. Mr. Markham said this resolved his major concern since it did not seem right to go to court to work out a disagreement.

MOTION BY MR. MARKHAM, SECONDED BY MR. TUTTLE: THAT BILL 12-43 BE APPROVED AS PRESENTED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(ORDINANCE NO. 13-13)

17. 4. SPECIAL DEPARTMENTAL REPORTS:

- A. Special Reports from Manager & Staff: *None*

18. 5. FINANCIAL STATEMENT: (Ending April 30, 2013)

41:40

Mr. Vitola said the Consolidated Operating Surplus was far over the budgeted surplus through April, driven primarily by stronger revenues. Some of the revenue reported in the Governmental Funds was attributable to timing differences versus the budget. Those positive variances were expected to normalize through December. Permit revenues, transfer taxes and subvention were beating the budget. On the Enterprise side, margins were strong, primarily due to lower-than-expected Electric costs which were partially offset by higher-than-budgeted sewer costs. Revenues across all three utilities plus parking were within three-tenths of a percent of budget. Utility budgeting did well overall, but there was an issue with the Sewer expense budgeting related to the customer classification. The RSA slowed down in April because it was the first month UD was not subject to the RSA as a result of the agreement, but the other customers were receiving a rebate. The City's cash balance at the end of April was \$33.5 million across all accounts: \$6.5 million in the operating account, \$21 million in reserves and \$6 million in the Smart Meter fund which would start being drawn down over the next eight months or so.

Mr. Funk noted the County was about 30 days behind in sending the transfer tax checks. Mr. Vitola agreed but believed they were booked on a cash basis so taxes received in January for December were counted in the first period of 2013 and April receipts were accounted for in March's activity.

Mr. Markham asked if the line of the financial fund for Electric was separated. Mr. Vitola said it was on pages 2 and 6 as the Rate Stabilization Reserve under the Equity account and the \$1,039,580 was the amount that was voted in March to be moved out and specifically reserved. Mr. Vitola verified that this money could only be accessed by Council voting to use it, and it was being counted in the surplus funds. Mr. Vitola was still working on the encumbered number.

Mr. Chapman stated that when Mr. Vitola reviewed the utilities, Mr. Vitola summarized by saying he felt the budgeting was correct, but it sounded like the City under-budgeted for the cost of sewage and over-budgeted for the cost of electricity. Mr. Vitola said no, on the revenue side the City achieved budgeted expectations and was within three-tenths of a point of those four enterprise revenue areas combined. He said the sewer expense budget was missed consistently over the past three-plus years by about \$300,000-\$400,000 each year, and the same thing would happen again in 2013. He had a plan to fix that: the City knows what the County charges and applies the rate based on the water volume the City bills rather than the volume flowing out of the City into the County. Basically, the City under-budgeted and should increase the budget.

Mr. Chapman asked if the City would receive a larger amount of revenue if the revenue received was in line with what the City expected and the wholesale cost was much cheaper. Mr. Vitola said the margin was higher because revenue was as expected but the expenses were lower than expected. Mr. Chapman asked Mr. Vitola if there is a way the City would be leaning in terms of adjustments and the rate charged or modifying the City's assumptions. Mr. Vitola said numbers-wise, no, but in general direction, yes. Since electric wholesale costs were coming in less than budgeted, there is over collecting right now which will have to be part of the give back, meaning that the RSA should be negative again in 2014. Additionally, the City knew DEMEC's wholesale rates were going to continue to go down, so the expectation was that the rates would stay the same. The City would have to budget the decrease in the wholesale rate as closely as possible based on DEMEC's projections.

Mr. Chapman asked that the City consider some forecasting modeling and set assumptions based on those DEMEC expectations so a long term plan could be created rather than continue collecting large surpluses.

Mr. Morehead asked for clarification regarding the sewer volume issues and whether this referred to leakage into the system. Mr. Vitola said there was a small amount of leakage. He clarified that the County only billed what the City billed its residents, which had not been a problem thus far as the City did not lose revenue because it sent more to the County than the County billed.

Mr. Morehead asked how the subvention actually became a true positive. Ms. Houck and Mr. Vitola gave additional clarification on the \$300,000 line item referenced by Mr. Morehead and said if the City was lower somewhere on the electric side and there was a positive variance due to subvention on the general administration side, it was a wash.

19. 6. RECOMMENDATIONS ON CONTRACTS & BIDS:

- A.** Recommendation to Award Contract No. 13-08 – Furnishing Labor and Equipment for Aerial Line Reconductoring

56:54

Ms. Houck referred to the memo dated 6/4/13 from Mr. Vitelli and Ms. Wright and noted there was a bid opening with three sealed bids received. Ms. Houck pointed out the large difference between the bids and noted that all three vendors attended the pre-bid meeting, so there should not have been confusion on the scope of the job. Funds were budgeted to cover the work in the Electric Capital Budget, and \$125,000 was anticipated for Main Street and \$135,000 for South College Avenue. The low bidder came in under that amount. It was recommended that Contract No. 13-08 be awarded to the Tri-M Group, LLC for the total amount of \$171,000. Tri-M was used before, and Mr. Vitelli was comfortable with their work. Mr. Morehead asked what the disposition would be of the \$89,000 remaining in the Capital Project. Ms. Houck said it would remain in the Electric fund in the Capital Program until the end of the year.

MOTION BY MR. TUTTLE, SECONDED BY MR. CLIFTON: THAT CONTRACT NO. 13-08, FURNISHING LABOR AND EQUIPMENT FOR AERIAL LINE RECONDUCTORING, BE AWARDED TO TRI-M GROUP, LLC, FOR THE TOTAL AMOUNT OF \$171,000.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Nay – 0.

20. 7. ORDINANCES FOR SECOND READING AND PUBLIC HEARING:

A. 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

1:00:36

Ms. Bensley read Bill 13-13 by title only.

MOTION BY MR. TUTTLE, SECONDED BY MR. MOREHEAD: THAT THIS BE THE SECOND READING AND PUBLIC HEARING FOR BILL 13-13.

Mr. Morehead clarified that water rates were not being changed with this bill.

Regarding Amendment 5, Mr. Markham asked if there could be exceptions for the failure to pay by people with certain medical conditions. Ms. Houck said a procedure already existed and required advance documentation and notification to the City.

Regarding Amendment 2 striking the minimum quarterly charge, Mr. Markham stated that the City had no customer connection charge, and asked how these fit together. Mr. Vitola said there was no charge for minimum usage, but the Code currently stated that there was no quarterly charge, and with the upcoming monthly billing, this was simply to clarify that there was no quarterly or monthly minimum charge. Ms. Hadden questioned the July 1, 1999 effective date which she thought should be 2013. Mr. Vitola said that in 1999 the City went from having a minimum fee to not having a minimum fee, so the City Code was being changed to reflect the reality of quarterly or monthly billing. Ms. Houck added that leaving it as is allowed the Code to retain the history.

Regarding Amendment 1, Mr. Chapman asked Mr. Vitola why this stated “Beginning with all billings after July 1, 2013...” if the actual conversion of billing from quarterly to monthly would not occur until 2014. Mr. Vitola said he thought it gave the City permission to convert as early as July 1, 2013. Mr. Chapman was concerned that a number of residents were on fixed incomes and may need to plan ahead to manage their money. He believed there should be at least a quarter’s advance notice on the utility bills as well as having it on Channel 22. Mr. Chapman understood the argument for flexibility so as long as the City would take that action and properly notify customers in advance, he thought the date was acceptable. Mr. Vitola agreed staff would provide notification on utility bills a quarter in advance as well as advertise the change on Channel 22. He said the change would most likely occur early in 2014, so notice would be given in the fall.

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

Nay – 0.

Mr. Clifton commented that he expected a contingent of residents from Fountainview wanted to discuss the Smart Meters with regard to the Water utility and would attend a future Council meeting for that purpose.

(ORDINANCE NO. 13-14)

21. 7-B. 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

01:09:28

Ms. Bensley read Bill 13-14 by title only.

MOTION BY MR. MARKHAM, SECONDED BY MR. TUTTLE: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 13-14.

Mr. Clifton questioned whether the IT Manager position was in the context of a singular manager of IT operations or would have other individuals working for them. Mr. Haines said two existing full-time and a half-time person would report to the IT Manager as well as all third party external consultants, projects and IT operations including the Police Department. In looking at the budget, Mr. Clifton said Grade 28 was equal to a department director position and also noted that the former Assistant to the City Manager was two grades below that level. While he believed this was an extremely important position, it was in line with the starting salary in Dover which supervised five employees. He also looked at the position in Wilmington which started at \$59,000 and supervised 20 people, so he questioned the grade level of this position as it applied to the responsibilities and skill sets.

Regarding Wilmington, Ms Houck said they would have to look at the position description and responsibilities, but that she was aware that Wilmington had done quite a bit of outsourcing.

Mr. Haines said a lot of research was done looking at the job description and comparables, including the private sector, and what the City could afford within the priority discussed for the position and the department. It was felt this compensation scale would help the City to attract a candidate with strong leadership skills and achieve its needs and expectations for the department.

Mr. Clifton asked if consideration was given to outsourcing the entire IT operation. Mr. Haines responded that a number of options were considered, and this was a hybrid they felt would be as efficient as possible. Mr. Haines explained there was a full recruitment process going on, and Ms. Houck added this was all in line with the reorganization plans previously brought to Mayor and Council

Mr. Markham asked for more detail about the education, experience and background they were looking for in a candidate since that defined the salary range. Mr. Haines said qualifications included 5 to 10 years of progressive, direct management of personnel, including internal and external customers, with an expectation of 15-20 years of IT experience; someone who could communicate in a very technical field and a Bachelor's degree in a related field with progressive growth and preference to municipal and client management. Mr. Markham said the State's pay scale for a top level technical position which was not management, was around \$92,000 with a Master's Degree and more than 10 years experience. He felt a Master's Degree should be required as well as someone with more recent experience. He said it was a competitive field and if the person was not well paid, it would be short term. He requested a more detailed job description for the position, and Mr. Haines agreed to provide that to Council.

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

Nay – 0.

Absent – Morehead.

(ORDINANCE NO. 13-15)

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

None

23. 9. ITEMS SUBMITTED FOR PUBLISHED AGENDA:

A. Council Members – *None*

24. 9-A-1. RESOLUTION 13-__ : IN SUPPORT OF THE EXPANSION OF THE PAYMENT IN LIEU OF TAXES PROGRAM (PILOT)

01:21:48

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

Mr. Markham acknowledged Mr. Kowalko's support of the PILOT program and said the resolution outlined why the City should be included in this program. He noted that 46% of the property in the City was not taxable, translating to \$4.88 million in lost revenue. The City's local legislators proposed to change the law to allow Newark into the PILOT program and provide the City a small offset of \$425,000. The University of Delaware and Delaware State University property also would be included. The increase would be about 12% to Newark of its non-taxable funds, but Georgetown, Wilmington and Dover would also receive increases. Mr. Markham thought it was in the best interest of the City to support the resolution. Mr. Funk added that getting the support of the Executive Committee of the Delaware League of Local Governments was helpful.

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-X)

25. 9-B. OTHERS – *None*

26. Meeting adjourned at 8:18 pm.

Renee K. Bensley
City Secretary