

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

June 24, 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
Chief Paul Tiernan, NPD
Captain John Potts, NPD

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

2. **9-A-1. RESOLUTION 13-__ : RECOGNIZING SGT. MICHAEL VAN CAMPEN FOR HIS HONORABLE MENTION AT THE NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS' TWENTIETH ANNUAL TOP COPS AWARDS**

04:53

Council unanimously endorsed the resolution honoring Sgt. Van Campen who was a recipient of the National Association of Police Organization's Top Cops Honorable Mention award.

State Representative Paul Baumbach presented a tribute from the Delaware House of Representatives acknowledging Sgt. Van Campen for his efforts in preventing drugs from entering into Delaware and surrounding areas.

(RESOLUTION NO. 13-Y)

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

A. Public – There were no comments forthcoming.

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**

10:35

Mr. Markham

- Mr. Markham remarked that the City would know the State's position regarding PILOT funding by the next Council meeting since the legislative session ends on 6/30.
- Mr. Markham reported that the solar contract was signed.

- Mr. Markham encouraged speeding up the process to have WiFi installed in the Council Chamber, which would enable the elimination of paper Council packets and allow audience members to follow along with the meeting.

7. Mr. Chapman

- Mr. Chapman attended an event hosted by the Greater Newark Economic Development Partnership where the City, the University of Delaware and the New Castle County Chamber of Commerce focused on economic development growth in the City and the immediate surrounding areas.
- Mr. Chapman reported that Parks and Recreation Director Charlie Emerson would be recognized on 6/27 by the Newark Morning Rotary Club for his service to the City and for his efforts in obtaining grant funding for numerous large projects.

8. Ms. Hadden

- Ms. Hadden had no comments at this time.

9. Mr. Tuttle

- Mr. Tuttle acknowledged Mr. Funk's leadership of a Newark Senior Center program to expand their kitchen facilities in order to help meet the growing demand for Meals on Wheels which showed a significant increase in the last decade. Mr. Funk added that the amount of volunteer work put into this program was incredible.

10. Mr. Clifton

- Mr. Clifton extended his sympathies to the wife and family of Gus Tsionas who passed away on June 17. Mr. Clifton said Mr. Tsionas did a lot of good work in the City, had a heart of gold and was an all-around great person.
- Mr. Clifton offered a suggestion from Conservation Advisory Commission member John Wessells. Mr. Wessells noted there was no one source on the City's website that provided information on green initiatives such as energy saving and water conservation tips and highlights projects being reviewed by the CAC.
- Mr. Clifton received a complaint about early morning trash pickups that violated the City's noise ordinance. One idea was for the City to request information about private refuse companies when issuing rental permits to make it easier for the City to talk to the company in violation. Ms. Houck would look into working out a solution with staff.

11. Mr. Morehead

- Mr. Morehead complimented the Newark Police Department for quickly apprehending the suspect in the motel shooting incident.

12. Mr. Funk

- Mr. Funk had no comments at this time.

13. 2. APPROVAL OF CONSENT AGENDA

19:16

Ms. Bensley read the Consent agenda in its entirety.

- A. Approval of Regular Council Meeting Minutes – June 10, 2013
- B. Receipt of Alderman's Report – June 13, 2013
- C. Appointment of George Irvine to the Conservation Advisory Commission to Complete the Vacant District 4 Term Expiring March 15, 2014.
- D. **First Reading – Bill 13-16: An Ordinance Amending Chapter 27, Subdivisions, Code of the City of Newark, Delaware, By Amending the Expiration of Subdivision and Rezoning Applications and Plans – *Second Reading – July 22, 2013***

- E. **First Reading – Bill 13-17:** An Ordinance Amending Chapter 32, Zoning, Code of the City of Newark, Delaware, By Amending the Definitions of Height of a Building and Grade Plane – **Second Reading – July 22, 2013**
- F. **First Reading – Bill 13-18:** An Ordinance Amending the Comprehensive Development Plan by Changing the Designation of Property Located at 63 W. Cleveland Avenue and 60 New London Road – **Second Reading – July 22, 2013**
- G. **First Reading – Bill 13-19:** An Ordinance Amending the Zoning Map of the City of Newark, Delaware, By Rezoning from BC (General Business) to BLR (Business Limited Residential) 0.354 acres at 63 W. Cleveland Avenue and By Rezoning from RM (Garden Apartment) to BLR (Business Limited Residential) 0.103 acres at 60 New London Road – **Second Reading – July 22, 2013**

MOTION BY MR. CLIFTON, SECONDED BY MR. TUTTLE: 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:** *None*

15. 4. **SPECIAL DEPARTMENTAL REPORTS:**
A. Special Reports from Manager & Staff: *None*

16. 5. **FINANCIAL STATEMENT:** *(Ending May 31, 2013)*

21:04

Mr. Vitola presented the Financial Report for the five months ended 5/31/13 which showed a consolidated Operating Surplus that was \$611,000 stronger than expected. The majority of the positive variance was attributable to the Governmental Funds where revenues continued to exceed expectations. Permit revenues were strong from both the STAR Campus development and activity at East and South Main Streets. Transfer taxes, refuse receipts and property taxes continued to track higher than anticipated. The strong revenues were partially offset by higher IT expenses and administrative line items. The Enterprise funds were marginally outperforming the budget through May. Electric purchases still looked good but revenues were lighter in May on volume, and price per kilowatt hour was a bit lower, which was attributable to being part of the first two months of the UD contract. Sewer expenses continued to track higher than the budget and would be a continuing theme throughout the year. There was a deficit in the Internal Services fund and the Insurance fund that was \$29,000 higher than budgeted. The RSA pass back grew to \$1.4 million through May, and the cash balance dipped to \$31.5 million, due primarily to spending on the Smart Meter project. The \$31.5 million consisted of \$6 million in the Operating accounts, \$5 million in the Smart Meter accounts and \$20.5 million in the Reserve account.

Mr. Markham asked how Water was tracking. Mr. Vitola believed it was right on budget but would follow up on this and report back to Council.

Ms. Hadden asked Mr. Vitola to build into the Financial Statement a column showing the City's percentage of budget for the same time period in 2013 compared to 2012. Mr. Vitola said he would include that information on the Expense lines on the Profit and Loss reports.

17. **6. RECOMMENDATIONS ON CONTRACTS & BIDS:** *None*

18. **7. ORDINANCES FOR SECOND READING AND PUBLIC HEARING:**

- A. **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

25:07

Ms. Bensley read Bill 13-15 by title only.

MOTION BY MR. TUTTLE, SECONDED BY MR. MOREHEAD: THAT THIS BE THE SECOND READING AND PUBLIC HEARING FOR BILL 13-15.

Ms. Houck explained this request was made by the Newark Housing Authority. Based on the number of move-ins and move-outs that the Housing Authority handled, staff recommended that Council exempt HUD-funded properties from the fee.

Mr. Markham thought this was a good idea since the Newark Housing Authority faced severe budget constraints. He said when the application fee was implemented the target market was not the Housing Authority but was the large number of connections and disconnections every year.

Mr. Morehead asked if the recommended fee waiver was applicable only to properties owned by the Newark Housing Authority and not for properties owned by private landlords that were being subsidized by the Newark Housing Authority. The request letter from NHA Executive Director Marene Jordan stated it was "requesting that its agency (a 100% HUD funded public housing agency) be exempt..."

Mr. Morehead proposed postponing the vote to the 7/8/13 meeting until the intent could be clarified with Ms. Jordan.

MOTION BY MR. MOREHEAD, SECONDED BY MR. CHAPMAN: TO POSTPONE BILL 13-15 TO THE JULY 8, 2013 MEETING.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Nay – 0.

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

A. Request of Dyung Twardowski for a Special Use Permit For a Customary Home Occupation at the Residence Located at 401 Apple Road, Newark, Delaware.

32:15

MOTION BY MR. CLIFTON, SECONDED BY MR. TUTTLE: THAT THE SPECIAL USE PERMIT BE GRANTED AS REQUESTED.

Ms. Feeney Roser reported the special use permit application was for a professional hair salon in the Twardowskis' home at 401 Apple Road. The property was zoned RS which allowed a customary home occupation with a permit. Conditions were proposed by staff in the event the special use permit was approved by Council.

Ms. Hadden asked about the parking situation on the street and how many cars were anticipated for the business. According to Mr. Twardowski, (the applicant's husband), Manns Avenue which was adjacent to the residence had no parking restrictions. Mrs. Twardowski did not expect more than two vehicles at any given time.

Mr. Twardowski explained he and his wife had a young child, and the home business would allow more family time and less expense for child care. The salon would be a one chair business with one client at a time and several clients a day.

Mr. Markham commented that neighbors were typically concerned about traffic and deliveries. Mr. Twardowski said they would not have deliveries since they picked up their own supplies. In response to Ms. Hadden's question, Mrs. Twardowski said the operating hours for the business would be about three days a week from 10 am to 5 pm. Ms. Hadden asked if Mrs. Twardowski currently had customers in their residence on an informal basis – Mr. Twardowski replied that she cut hair for family members.

The Chair opened the discussion to the public.

Willard Baxter, an Apple Road resident for more than 50 years asked if Mrs. Twardowski would advertise and wanted to know to defend against this when somebody else wanted to start a business. He thought this would be a big mistake based on the residential area.

Alvina Baxter, a resident of Apple Road, cited concerns about crime and safety and said the zoning was RS – single-family residential when they bought their house. She was never aware of the allowance for a customary home occupation. Mrs. Baxter recognized that the business would be in the lower level of the house and thought there were changes to the Code regarding water usage on that level based on sewage backups in houses at Pheasant Run. She wanted to know if the house met those standards and preferred not to have the business in her neighborhood.

Richard Libera, a resident of Apple Road since 1964, said from its beginnings Apple Road was a desirable, stable and quiet family neighborhood. He thought it was those features that drew the Twardowski family to buy a home there and opposed any change that would disturb the neighborly feel.

Kurt Manal, a resident of Apple Road, said his objection was based on the facts that the residential zoning was residential and as soon as one business came in, it set the foothold for another business. He asked how the City could enforce what was being proposed by the Twardowskis.

Carol McKelvey, a Newark resident, would not want this business in her neighborhood and said Council should decide whether they would want it next to their houses.

Joan Libera, an Apple Road resident, said their neighborhood was a special place and was zoned residential. She was concerned that granting a special use permit would negatively impact the zoning and might start a domino effect resulting in Apple Road becoming commercial. She said there were several commercial locations nearby where Mrs. Twardowski could have her business.

Betty Perna, a resident of Apple Road, said the Twardowskis were nice neighbors, but was not in favor of them getting the permit because their driveway ran directly along the side of her house by her screen porch and would impact their privacy.

Regarding the concerns expressed by neighbors, Mr. Twardowski said they would take active steps to be as low impact as possible.

Alvina Baxter questioned whether restrictions would be put in writing if the permit was granted. Mr. Funk advised that any conditions imposed by the City would be part of the permit if it was granted.

Betty Vonfrankenber, an Apple Road resident, said the neighborhood was a family-like place. She felt the general atmosphere of the area would negatively change by putting a business in one of the houses.

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

Mr. Tuttle said it was his understanding there had been a daycare business at 502 Apple Road for decades, so there were home occupations in that area.

Mr. Clifton mentioned that a number of special use permits were issued during his time on Council, and he never saw a domino effect occur. When he lived in Stafford, there was a home insurance business next to him yet this was still a very family-oriented community. Mr. Clifton added it was important to remember that Council retained purview over the special use permit process if it was granted but did not work

out as stated. Therefore, it was important for the applicant to follow the conditions specified by the City.

Mr. Funk reported there had been a home hair salon in the basement of a house on Winslow Road a number of years ago.

Ms. Hadden referred to the Zoning Code, Section 32-9 (b)(4) which allowed for special provisions to be built into the special use permit. Ms. Feeney Roser said that staff had some suggestions and Council could add any conditions they felt were appropriate. Mr. Funk reported those conditions included: no signage, only one person performing services and one chair. Ms. Feeney Roser added that Council could revoke the special use permit at any time if conditions were not met.

Ms. Hadden was concerned about the number of residents adjacent to the property that came to express their discontent with the proposed business.

Mr. Chapman felt there was miscommunication between the request and what the reality would be – he and his family used similar services while he was growing up and there was a neighborhood feel that was comfortable and allowed mothers to stay home with their children while earning additional income for the family. He was concerned that so many immediate neighbors were discontented and even though Council had the right to add restrictions, it seemed there could be a snowball effect and neighborly disputes. He would not object to this business in his neighborhood.

Mr. Markham said Council recently granted a similar special use permit at Twin Lakes and questioned whether Council had complete discretion about granting the permit. Mr. Herron advised each application had to be considered on its own merits, so this would not set a precedent. Ms. Hadden added that no one came to speak against the Twin Lakes request.

Mr. Tuttle suggested if the permit was granted that the Twardowskis have their customers park on Manns Avenue because there were no parking restrictions which was a real advantage to this site. He remarked that the last special use permit Council granted was for a townhouse community where there was almost no on-street parking.

Mr. Morehead was concerned about the number of neighbors that opposed the request. He urged the Twardowskis to interact and make peace with the neighbors. He noted that Council granted the last special use permit which was also for a home hair business, and he supported this request with some limitations.

Question on the Motion was called.

MOTION DEFEATED. VOTE: 3 to 4.

Aye: Clifton, Morehead, Tuttle

Nay: Chapman, Funk, Hadden, Markham

20. 9. ITEMS SUBMITTED FOR PUBLISHED AGENDA:

A. Council Members

1. **Resolution 13-__**: Recognizing Sgt. Michael Van Campen for his Honorable Mention at the National Association of Police Organizations' Twentieth Annual Top Cops Awards

(See Item # 2)

21. 9-B. Others

1. Newark Regional Transportation Center Presentation – WILMAPCO

01:10:00

Dave Gula, WILMAPCO Principal Planner and Mark Tudor, DeIDOT Assistant Director, provided an update on the Newark Regional Transportation Center project.

The project was under study for some time and included a 2002 rail passenger engineering study for the State which developed into the Wilmington/Newark commuter rail project. The study was completed in 2004, and one of the results of the study looked to relocate the station from its current location to a less convenient area for Newark residents. When the Chrysler plant closed in 2009, WILMAPCO acquired the land needed to expand the station in its current place. In 2010, a train station feasibility study was completed and the Newark Regional Transportation Center has been worked on since 2011.

A TIGER II grant was received for planning which provided funding for feasibility, engineering and environmental work. As DeIDOT's Construction Manager, Mr. Tudor was responsible to implement the concepts being recommended by the Tiger II planning grants which included design, getting rights of way and ultimately managing construction. A TIGER IV grant was later received for construction and key milestones completed under it included the environmental assessment and working with the Federal Transit Administration to obligate grant funds.

Commercial rail that was strategic in the planning included Amtrak, Norfolk Southern, SEPTA and MARC.

Envisioned for the project was an improved, longer station platform, a more functional station building with bathrooms, ticket counter, elevators and stairs, a parking lot designed with 450 spots, an access road to South College Avenue and pedestrian and bicycle pathways to get to the station. The station would be located about 1,200 feet south of the current location. Construction was expected to start in the fall of 2014 and the structure is estimated to be complete by the end of 2016 with a tentative January 2017 opening date.

Further information and visuals may be accessed through: www.wilmapco.org – link can be found under “Plans and Reports – Newark Train Station”.

22. 9-B-2. EXECUTIVE SESSION PURSUANT TO 29 DEL. C. §100004 (b)(2) FOR THE PURPOSE OF PRELIMINARY DISCUSSIONS ON SITE ACQUISITIONS FOR PUBLICLY FUNDED CAPITAL IMPROVEMENTS

Council entered into Executive Session at 8:36 pm. and returned to the table at 10:07 pm.

MOTION BY MS. HADDEN, SECONDED BY MR. CLIFTON: TO RETAIN MARK DUNKLE FROM THE LAW FIRM OF PARKOWSKI, GUERKE & SWAYZE, P.A., AS SPECIAL COUNSEL TO ASSIST IN THE ACQUISITION OF 51 E. MAIN STREET FOR THE PURPOSE OF PUBLIC PARKING.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

MOTION BY MS. HADDEN, SECONDED BY MR. CLIFTON: THAT THE CITY COMMENCE WITH GOOD FAITH NEGOTIATIONS FOR THE ACQUISITION OF 51 E. MAIN STREET.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

23. Meeting adjourned at 10:07 pm.

Renee K. Bensley
City Secretary