

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

July 8, 2013

Those present at 7:00 pm:

Presiding: Mayor Vance A. Funk, III
District 1, Mark Morehead
District 2, Jerry Clifton
District 4, Margrit Hadden
District 5, Luke Chapman (arrived 7:05)
District 6, A. Stuart Markham

Absent: District 3, Doug Tuttle

Staff Members: City Manager Carol Houck
Deputy City Secretary Alice Van Veen
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**

A. Public

01:44

Victor Bernstein, a Newark resident, thanked Council and the City for providing support following the June 10th tornado. He said all 48 residents in the Woods of Yorkshire (and many Robscott Manor residents) also wished to extend their appreciation. He reported there was a host of vehicles offering assistance within three to four hours of the storm, and power was restored several hours later.

3. **1-B. UNIVERSITY**

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

4. **1-B (2) STUDENT BODY REPRESENTATIVE**

There were no comments forthcoming.

5. **1-C. COUNCIL MEMBERS**

03:06

Mr. Markham

- Mr. Markham enjoyed the July 4th fireworks and was glad the City continued to sponsor the event.
- Mr. Markham said the tax analysis was still on his list of things to do.
- Mr. Markham reported that although the City did not succeed in getting the PILOT program through the General Assembly (not due to lack of effort from Paul Baumbach and others), a glimmer of hope remained. Section 27 of the Grant and Aid bill states, "It is the intent of the General Assembly that the City of Newark, in cooperation with the office of the Controller General, assess the feasibility of expanding the County seat package to include the City's tax exempt property holdings."
- Mr. Markham commended the hero (as yet unnamed) in the Police Department who rescued several people from under the bridge on Paper Mill Road during recent flooding. He looked at the past several weeks as a wake-up call for Council and felt the

City should look at what could be done to prevent at least some of the major roads from flooding so resources were available to residents. He added that the City incurred costs from handling the flood and suggested looking at creative ways to prevent future problems.

6. Mr. Chapman

- Mr. Chapman apologized for being tardy.

7. Ms. Hadden

- Ms. Hadden commented that the fireworks at the Fourth of July celebration were fantastic.
- Ms. Hadden thanked the City for consistently offering to assist a constituent with flooding problems.

8. Mr. Clifton

- Mr. Clifton mentioned that City personnel worked until midnight during the recent storm on Douglas D Alley.
- Mr. Clifton said the Fourth of July fireworks were great as always.
- Mr. Clifton thanked Ms. Houck for adding a “Green Newark” page to the City’s website.
- Mr. Clifton raised the issue of security cameras in the building that did not work for a number of days. Ms. Houck responded that numerous issues occurred, including not continuing the maintenance contract, which was later reinstated, as well as some efforts with changes related to IT.
- Mr. Clifton pointed out that the stormwater retention pond in Fountainview was empty which was surprising in light of the heavy rainfall. He referenced discussions last year between the City and Representatives Osienski and Kowalko regarding stormwater runoff issues in Brookside. Ms. Houck said discussions were ongoing, and the City hoped to obtain funding to have a study performed.

9. Mr. Morehead

- Mr. Morehead reiterated Mr. Markham’s comments about the stormwater wake-up call and said while some of the problems were hard to fix, others were actually pretty easy. Timber Creek under Timberline Drive flooded due to an undersized culvert. He asked that staff work on a cost benefit analysis because a whole neighborhood was cut off. He explained there was also a telephone pole in the middle of the creek above the road and asked Mr. Vitelli if the City could replace that pole with a pole on either side since the amount of debris coming down the creek and hitting the pole probably compromised it by now.

10. 2. APPROVAL OF CONSENT AGENDA

16:34

Ms. Van Veen read the Consent agenda in its entirety.

- A.** Approval of Regular Council Meeting Minutes – June 24, 2013
- B.** Receipt of Alderman’s Report – June 27, 2013
- C.** Receipt of Planning Commission Minutes – June 4, 2013
- D.** Appointment of Tom Rogers to the Downtown Newark Partnership to the At-Large Citizen Term to Expire July 15, 2016.
- E.** Appointment of Kevin Heitzenroder to the Mayor’s Appointment to the Newark Housing Authority Term to Expire July 15, 2016.
- F.** Reappointment of Ryan German to the Downtown Newark Partnership to the Owner of Main Street Business Term to Expire July 15, 2016.
- G.** Reappointment of Victor Bernstein to the Personnel Review Committee At-Large Term to Expire July 15, 2016.
- H.** ***First Reading*** – **Bill 13-20:** An Ordinance Amending Chapter 10, Elections, Code of the City of Newark, Delaware, By Amending the Deadline for Filing Nominating Petitions and Amending the Codified

Boundaries of Districts Three and Four – **Second Reading – July 22, 2013**

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

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Tuttle.

11. 3. **ITEMS NOT FINISHED AT PREVIOUS MEETING:**

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

18:15

Ms. Van Veen read Bill 13-15 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND PUBLIC HEARING FOR BILL 13-15. (*postponed from 6/24/13 meeting*)

Ms. Houck introduced Greg Baldwin, Newark Housing Authority Inspector and Don Gouge, NHA Attorney. She noted that additional information was provided to Council to answer questions raised at the last meeting.

Mr. Markham said Council's question was whether the exemption applied solely to properties that were 100% owned by Newark Housing Authority and not to properties being subsidized by Section 8 funds. Mr. Gouge confirmed the exemption would apply only to Newark Housing Authority HUD properties.

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

Mr. Morehead said the two options provided to all landlords addressed whether they chose to have an "off" property where the electric would be disconnected with every move out or an "on" property where, when a tenant requested closure of the electric account, an account would automatically be established in the apartment or property owner's name. His understanding of the fee was that it was aimed specifically at tenants because Council was looking for a revenue source that was not unnecessarily aimed at residents. Further, Mr. Morehead stated Section 11-16 indicated the deposits were not required for residential owner-occupied units and also not required for account transfers. However, what was being considered was an interpretation of the law passed where application fees would not get that same allowance. He thought what Council was considering was a misinterpretation of the intent of the law.

Mr. Markham remembered part of the reason the bill was passed was to recoup the cost of new applications (setting up new accounts, some credit checks, having staff go out to perform meter readings, etc.). Ms. Houck thought the intent was to capture the transfers as well.

Mr. Vitola clarified the Finance Department's interpretation of the bill. His understanding was it was a way to recoup costs incurred which was every time an account was transferred from the old owner to a new owner and this included when the service transferred from the landlord to the tenant and back to the landlord.

Mr. Morehead indicated the bill as originally proposed was for a \$25 fee but Council raised it to \$30 to be sure that costs were covered. He did not mean for the fee to be doubled.

Mr. Funk thought the law provided that properties sold in Newark with unpaid electric bills could have a lien placed on the property. Mr. Herron advised that State law excluded electric liens.

Mr. Markham referenced previous discussions and pointed out that account transfers would not have credit checks and with Smart Meters, readings would be simplified and less costly for the City. Ms. Houck explained an error was found at the table and corrected regarding credit checks and they were not done for all applicants. Secondly, not all of the meters had remote shutoff and turn on. Those were more expensive and were placed in areas with higher turnover rates.

Mr. Morehead felt that the user incurring the cost should pay for it. Mr. Chapman said it sounded like the tenant could incur a cost, not pay the bill and leave the City hanging because there could not be a lien against electric. Mr. Morehead responded that was the reason for deposits and not application fees.

Mr. Chapman asked if Mr. Morehead was trying to protect landlords from having this fee in the absence of the tenant paying it. Mr. Morehead said he felt if the fee was doubled to \$60 and paid up front by the tenant, then that would be appropriate. The apartment would always come back to the landlord. He said the Finance Department forced the landlord to choose if they would back stop the bill or if they would let it get disconnected. Ms. Houck believed that was because landlords wanted to keep the power on as a convenience for them. In regard to Mr. Morehead's suggestion about tenants paying \$60.00 up front, she pointed out there could be occupants who paid the \$60.00 fee and then lived in the rental property for 25 years.

Mr. Vitola emphasized that the proposed ordinance would change only the exemption for the Housing Authority and that the other language in the ordinance could be addressed at another time. Although there seemed to be some disagreement by Council, he did not want to postpone the fee exemption for them.

Mr. Markham noted the Housing Authority was working with the least financially capable people. His request was for staff to go back and review the cost analysis.

Mr. Morehead commented that the City's software had two names on the account – the owner's name and the tenant's name. He thought since the owner's name was always there and the tenant's name was just taken out, that it was not really a transfer.

Mr. Clifton felt this should be looked at more holistically. Regarding a cost analysis, he did not see the turnover as being that great. Ms. Houck reported it averaged six units per year, but it was anticipated with Cleveland Heights reopening that turnovers would increase based on a higher turnover rate for multi-family units.

Mr. Chapman said no one disputed an exemption for the Newark Housing Authority and the greater question was what the City was trying to achieve. He thought it made sense to approve the ordinance, have staff do more research and bring something back to Council that would make sense for the future of the fee itself.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Tuttle.

(ORDINANCE NO. 13-16)

12. 4. **SPECIAL DEPARTMENTAL REPORTS:**
A. Special Reports from Manager & Staff:

1. Recommendation Regarding COLA Increase for Retirees

37:25

Mr. Haines reported that staff's memo of 6/27/13 outlined the triennial option to consider a cost of living adjustment for existing retirees. In January 2006 Council provided a COLA increase, it considered but did not provide one in 2009 and had the opportunity to look at one in 2012, but it was not reviewed at that time. Several inquiries were made by retirees to staff in the last several months, and a staff-initiated review was conducted. The existing liabilities were outlined as well as what was viewed as a target for funding ratio for the defined pension fund. If the same standard was used as in the past, a 0.5% increase would translate to just under a \$78,000 increase in the currently liability for annual pension expenses. The current annual pension expenses were slightly above \$3.4 million to all retirees currently on the payment rolls.

According to Mr. Haines, in the last full valuation for the defined pension fund, the funded ratio was about 63%. The target should be a 90% funded ratio. The actuaries recommended a 7-8% return to keep up with the expectations on defined benefit plans.

Mr. Haines discussed the annual requirement contribution (ARC) and said that alone would not sustain the long-term solvency for the Pension Plan. Rather, closing the funding gap would require a combination of increased monetary contributions by the City and plan changes similar to the new management defined contribution plan.

Based upon existing conditions, it was staff's recommendation that Council, as the Plan's trustees, not provide a COLA to retirees at this time but look at it again in 2016.

Mr. Clifton commented that July 2012 was the last actuarial evaluation and the funded ratio was 62.9%. Since that data was a year old, he asked where it stood today. Mr. Haines said our actuary was in the process of finalizing this year's valuation. He said although investment returns were strong, liabilities increased with more retirees although this did not substantially change percentages from a funding standpoint. Mr. Clifton thought the retirement fund should be tracked on a quarterly or monthly basis. Mr. Haines said the City had monthly/quarterly statistics of the fund's performance. The annual valuation was a holistic review of the entire City's defined benefit plan of all three unions and funding requirements. From a cost standpoint and the fact that the pension fund was such a long methodical item, he felt an annual valuation was more than sufficient.

Mr. Chapman added that the cost incurred in doing a more frequent analysis would be prohibitive and the information gathered would be minimal.

Mr. Clifton remarked there were pros and cons on doing this and said a lot of the people working for the City could have gone other places and made more money. If the benchmark would be set at 90%, then all retirees should be notified they will never get a pension increase in this lifetime.

Mr. Chapman said 90% was lofty and was a long way to go from 62.9% but was not impossible. However, the reality was it would get worse the longer the City decided not to deal with it. He said the City's actuary could provide several "what if" scenarios and instead of revisiting this in 2016, he suggested looking at this every year.

Mr. Haines said there would be a draft of the 2013 valuation in the near future. He could work with Milliman to come up with modeling on assumptions on a 5, 10 and 15 year window assuming certain criteria happened with the defined benefit plan or perhaps future changes to the defined contribution. Mr. Chapman requested that if the City was not looking very strongly at that change that staff get that research done and have a proposal for Council. Ms. Hadden asked if that would provide the real percentage of funding ratio. Mr. Haines replied it would give the scenario of the defined benefit plan (current pensioners and future liabilities) and could make assumptions if a certain number of employees became defined contribution how that would start shifting and modeling. He said he and Mr. Vitola had been looking with Milliman at that and getting a cost proposal put together.

Mr. Morehead clarified Mr. Haines' comment that since the July 2012 annual actuarial valuation was a snapshot of December 31, 2011, the most recent data should be available in several weeks. He felt Council should postpone making a decision until this updated information was available. Mr. Haines said even if his overly aggressive numbers of a 64-65% funded ratio were achieved, his recommendation would still be the same.

It was the consensus of Council to wait to make a decision until the final numbers were received from Milliman. Mr. Morehead asked that Mr. Haines provide the draft actuarial numbers to Council as soon as they become available.

- 13. **5. FINANCIAL STATEMENT**: *None*
- 14. **6. RECOMMENDATIONS ON CONTRACTS & BIDS**: *None*
- 15. **7. ORDINANCES FOR SECOND READING AND PUBLIC HEARING**: *None*
- 16. **8. RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING & DEVELOPMENT DEPARTMENT**: *None*
- 17. **9. ITEMS SUBMITTED FOR PUBLISHED AGENDA**:
 - A. **Council Members**: *None*
- 18. **9-B-1. EXECUTIVE SESSION PURSUANT TO 29 DEL. C. §100004 (b)(2) FOR THE PURPOSE OF PRELIMINARY DISCUSSIONS ON SITE ACQUISITIONS FOR PUBLICLY FUNDED CAPITAL IMPROVEMENTS**

01:00:12

Council entered into Executive Session at 7:56 pm. and returned to the table at 8:37 pm.

Mr. Funk advised that no action was required by Council at this time.

- 19. **Meeting adjourned at 8:38 pm.**

Alice Van Veen
Deputy City Secretary