

CITY OF NEWARK DELAWARE

COUNCIL MEETING MINUTES

July 22, 2013

Those present at 7:00 pm:

Presiding: District 2, Jerry Clifton
District 3, Doug Tuttle
District 4, Margrit Hadden
District 5, Luke Chapman
District 6, A. Stuart Markham

Absent: Mayor Vance A. Funk, III
District 1 Mark Morehead

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**

A. Public

01:04

Amy Roe, a Newark resident, read the following prepared statement.

"I came before City Council on June 10th asking for information about the plans to build a 248MW power plant in Newark by The Data Centers LLC. Subsequent to that council meeting, I submitted a Freedom of Information Act request about the project, and I am here tonight to share with you what I have learned. I ask that the City Secretary type my statement verbatim into the minutes of this meeting, and I am happy to provide a digital copy of my prepared statement to make that easier.

In my Freedom of Information Act request I learned that the City of Newark has been negotiating to bring a 248 MW power plant to our town for more than a year. The City of Newark entered into a confidentiality agreement with The Data Centers LLC on July 23, 2012. On July 24, 2012 the Planning and Development Director wrote a memo to the City Solicitor asking for zoning review. The memo said: "the new facility is proposed for 60 acres of the site along the railroad tracks and will require its own electric generator in order to ensure reliability and redundancy for their clients. The City Electric Department and DEMEC are involved because the proposed generator may, in fact, produce enough electricity to sell a percentage of it back to the grid."

On July 27, 2012 the City Solicitor replied to the Planning and Development Director, stating that the proposed building for data storage and the planned associated electric generator are permitted uses under Section 32-23.1 of the code, and that "Council approval would therefore not be required".

On November 16, 2012 the City Manager wrote a letter to the Delaware Economic Development Office in support for the project and their application for state funding. In this letter, the City Manager stated "I would like nothing more than to welcome The Data Centers to Newark and the State of Delaware with you in the near future."

On December 17, 2012 DEMEC wrote a letter of intent to The Data Centers LLC that describes their intent "to purchase up to 100% of the excess electricity the Project generates once completed ... "

On June 21, 2013 DEMEC President Pat McCullar wrote an email to the City Manager stating: "no approval of the power purchase agreement will be needed from Newark City Council. The agreement will be between TDC and DEMEC. The PPA will have to be approved by DEMEC Board of Directors." For your reference, the City Manager of the City of Newark serves on the DEMEC Board of Directors.

Also at issue in this project is the STC Zoning Code, which is a new zoning code for the University of Delaware's Science and Technology Campus. On July 10, 2013 the City Solicitor wrote a memo to Mayor and Council about the zoning of the project. The City Solicitor stated that "An electric generator which exists for the primary purpose of supplying electricity to the Data Center building, which is clearly a permitted use under Sec. 32-23.1 (a)(5), is an accessory use/building which is permitted under 32-23.1 (a)(13). The electric generator would be "incidental and subordinate to the {use} of the main building on the same lot" which is how our Code defines accessory building/use. Section 32-4 (a) (1) and (2)."

"Standing alone, the words "Utility distribution" and "electric" in 32-23.1 (a) could be interpreted to include an electric generator, However, the proposed generator would be built because of and will support the Data Center building. Therefore, there is no need to engage in this analysis since it qualifies as an accessory use."

I ask the City Council to consider how a power plant of 248 MW size fits the description that the City Solicitor used for "electric generator", which is more appropriately used to describe something that one could buy at Lowes or Home Depot. What is at issue here is a power plant, and a good-sized one. I ask the City Council to consider how a 248 MW power plant is "incidental." It is my understanding that the term "incidental" is not defined in the city code. I have looked up "incidental" in the dictionary. It is defined by Merriam Webster as meaning: "being likely to ensue as a chance or minor consequence; occurring merely by chance or without intention or calculation." To characterize this power plant as a minor consequence without intention or calculation is a gross misrepresentation of the facts.

I ask the City Council to consider how this power plant is "subordinate" to the Data Centers cloud storage project, when it exceeds the energy needs of the client and is so big that they want to sell excess generation. There is nothing subordinate about the power plant. Instead, by all reading of the information provided to me in my FOIA request, the Data Center is subordinate to the power plant. In a June 26, 2013 email from the Planning Director to the City Manager, the Planning Director also questioned the STC Zoning Code. She said "I know we discussed the power plant in the beginning and decided that it met Code for the STC district...and now that I think about it maybe we've gotten off track."

Documentation provided as a result of my Freedom of Information Act request includes numerous other emails by city staff, some notes from a meeting, and a PowerPoint presentation that described the project.

On July 18, 2013 the City Solicitor provided me with a list of documents withheld from by Freedom of Information Act request. This information includes emails on December 4, 2012 regarding the estimated water usage of the project. Nowhere in the documentation was "pollution", "quality of life" or "property values" mentioned. I have duplicated the materials that I have just described for your review.

A research paper published in the Review of Economics and Statistics in November 2011 entitled "The Effect of Power Plants on Local Housing Values and Rents" found that "3-7% decreases in housing values and rents within 2 miles of [power] plants" and "somewhat larger decreases within 1 mile." I live within 1 mile of where this plant is proposed. I would imagine that many of you also live within 1 mile.

From my FOIA request it is very clear that the negotiations to build a power plant within the City of Newark have occurred without City Council involvement, and without the knowledge of the public. I am asking City Council to become involved in the planning and negotiations that are occurring on our behalf. You now know that this has been going on for at least a year, and that DEMEC could authorize a Purchase Power Agreement for this project without your consent. Instead of making an informed decision that results from public discourse, we are about to be blindsided.

The advice from the City Solicitor about the zoning code is not a sound legal argument. It is for this reason, and the potential for neighbors to litigate to protect ourselves, that I ask that my statement be included in the minutes verbatim. I am also asking you to slow this process down and to hold a meeting open to the public where the facts can be presented to the citizens who will be impacted by reduced air quality, lower property values, consumption of our water supply, noise, and untold other negative outcomes. I also made this request before you on June 10, and was told that no "final plans" were available. City Council holds meetings for other development projects before final plans are available on a regular basis. I fear that if we wait for final plans, there will be no opportunity to protect the interests of the citizens of Newark.

If a power plant is built in Newark, it should not be an undertaking that occurs outside of the public eye."

(Secretary's note: Nick Wasileski, a Newark resident, deferred his public speaking time to Amy Roe.)

09:41

3. John Kowalko, State Representative, reported that he met with the group opposing The Data Center. They were concerned with the possibility of having a major power generation station of 248 megawatts located in the middle of 30,000 residents. Mr. Kowalko was troubled about the impact on the quality of life in the community and tax structure changes. He did not feel the distribution of information was as open as it should be and strongly urged the City to hold a public meeting. He requested further information that would include emails regarding DEDO's grant structure and emails regarding The Data Center's estimated water usage.

Ms. Houck responded that the City planned to have a public meeting but was unable to do so until a plan was submitted by The Data Center. Mr. Herron would consider Mr. Kowalko's request to provide additional information that was considered privileged and whatever could be appropriately given would be provided.

Mr. Kowalko was disturbed by the definition of accessory use. Ms. Houck reminded everyone that everything The Data Center required would have to meet State and Federal regulations for noise and air, so there were hurdles they would have to overcome. Mr. Kowalko pointed out that the State was very weak when it came to quality of life issues, and State regulations were too easily circumvented.

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**

21:30

Mr. Tuttle

- Mr. Tuttle was on vacation for the last meeting and said it was great to be back.

7. **Ms. Hadden**

- Ms. Hadden had a meeting with the Newark Landlord's Association and felt it went well. They told her they had been working on several projects with City staff and were very positive and appreciative.
- Ms. Hadden visited with the Police Department Communications Center and was very impressed with the scope of the operation.
- Ms. Hadden was questioned by a constituent regarding a cable install project on Sunset Road. The homeowner said they were never notified about the project and woke up to see heavy equipment in their front yard. Ms. Houck said typically calls were made and/or notices were posted on doors. Ms. Houck would get further information.

Mr. Chapman added that he heard similar complaints and believed there should be a review of standard practices to make sure notifications were done every time without fail whether work involved outside contractors or City employees.

8. **Mr. Chapman**

- Mr. Chapman had no comments at this time.

9. **Mr. Markham**

- Mr. Markham echoed Aetna's commendation to the four Newark Police Department officers who entered a burning house and put out a stove fire before the Fire Department arrived thereby preventing a lot more damage. Mr. Clifton noted that Master Corporal Frank Gillespie, Corporal Robert Vernon, Officer Ken Odom and Officer William Anderson were the officers involved.

10. **Mr. Clifton**

- Mr. Clifton followed up on Mr. Markham's comment at the last Council meeting about water usage and thanked Mr. Vitola for the information he provided. Mr. Clifton remembered a drought situation before the reservoir was built when the amount of water purchased by the City was a six digit figure as compared to last month when the City's purchase was \$12.81.

11. 2. **APPROVAL OF CONSENT AGENDA**

29:12

Ms. Bensley read the Consent agenda in its entirety.

- A. Approval of Regular Council Meeting Minutes – July 8, 2013
- B. Receipt of Alderman's Report – July 8, 2013
- C. ***First Reading – Bill 13-21*** – An Ordinance Amending Chapter 30, Water, Code of the City of Newark, Delaware, Clarifying the Right to Access Water Meters and Specifying Penalties for Non-Compliance – ***Second Reading – August 12, 2013***
- D. ***First Reading – Bill 13-22*** – An Ordinance Amending Chapter 30, Water, Code of the City of Newark, Delaware, Providing the City the Power to Make Adjustments for Water Billing Errors and Omissions – ***Second Reading – August 12, 2013***
- E. ***First Reading – Bill 13-23*** – An Ordinance Amending Chapter 30, Water, Code of the City of Newark, Delaware, By Increasing the Water Rates Effective September 1, 2013 to the Rate Approved in the 2013 Budget – ***Second Reading – August 12, 2013***
- F. ***First Reading – Bill 13-24*** – An Ordinance Amending Chapter 25, Sewer, Code of the City of Newark, Delaware, Increasing the Metering and Billing Frequency from Quarterly to Monthly and Incorporating Other Changes Precipitated by the Smart Meter Project – ***Second Reading – August 12, 2013***

G. First Reading – Bill 13-25 – An Ordinance Amending Chapter 25, Sewer, Code of the City of Newark, Delaware, Providing the City the Power to Make Adjustments for Sewer Billing Errors and Omissions – Second Reading – August 12, 2013

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

MOTION PASSED UNANIMOUSLY. VOTE: 5 to 0.

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

Nay – 0.

Absent – Funk, Morehead.

12. 3. ITEMS NOT FINISHED AT PREVIOUS MEETING:

A. Municipal Building Security Upgrades Report – City Manager

30:55

Ms. Houck sought final approval of the next phase of increased security and building control. She reported that Council previously approved all but one item (the first floor hallway security) which encompassed the Finance and Parks & Recreation Departments. The remaining improvements would allow the building to be secured in the evening and would provide more security during the work day. The additional funds totaled \$73,360, the same as recommended at the May meeting.

Mr. Clifton said one of his concerns was that Kevlar lined drywall was not listed in the proposal, and he discovered that was left off the paperwork received by Council. He and Ms. Houck discussed issues, and he was quite comfortable now with the proposal.

In response to Ms. Hadden's question about placing a camera in the Alderman's Court, Ms. Houck said this would be done following completion of the Smart Meter Project when new camera locations would be identified. Securing the building was the primary goal and that process would start in August or early September.

Mr. Tuttle observed that because the building gets a lot of use, the security upgrades made sense.

MOTION BY MS. HADDEN, SECONDED BY MR. MARKHAM: TO TRANSFER FUNDS TOTALING \$73,360 TO COMPLETE THE SECURITY ENCLOSURES FOR THE FINANCE AND PARKS & RECREATION DEPARTMENTS.

MOTION PASSED UNANIMOUSLY. VOTE: 5 to 0.

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

Nay – 0.

Absent – Funk, Morehead.

13. 4. SPECIAL DEPARTMENTAL REPORTS:

A. Special Reports from Manager & Staff:

1. 2012 Comprehensive Annual Financial Report – Finance Director

35:08

Mr. Vitola reported that the Financial Statement for the fiscal year ended December 31, 2012 was completed and successfully audited. The Comprehensive Annual Financial Report was published on July 2, 2013. Mike Stephens, Partner with CliftonLarsonAllen, was the lead auditor for the City and presented the results of the audit and the CAFR with a PowerPoint presentation.

FINANCIAL STATEMENT

Mr. Stephens named the audit team which was a consistent team that had worked on past City audits and their goal was the retention of the staff in order to retain their knowledge with respect to the City, its policies, procedures and testing.

The audit approach was an integrated risk based approach and was made up of multiple tasks with specialists representing each of those areas. Financial Statement auditors (lead auditors) audited the numbers in the related internal controls compliance requirements related to producing the CAFR. IT Auditors were on the team since the City's system was sophisticated. There were Pension Specialists since the Pension Plan was part of the Financial Statement. Mr. Stephens reported there were new standards coming with respect to pension liability that would have significant impact on the City as to how that liability was reported. The Compliance Specialists handled the single audit which was required whenever a governmental entity received Federal funds in excess of \$500,000.

The approach was referred to as a risk based approach. Internal controls and the operations of the City were assessed and identified in the areas most prone to risk.

In regard to communication the audit process was fairly clean and most of the communication with management was informal on a day-to-day basis. There were also formal meetings with respect to report preparation, etc.

The City received an unqualified (term was changed by the audit standard setters to "unmodified") opinion on the Financial Statements meaning they were fairly presented in accordance with generally accepted accounting principles.

The report on internal controls overall financial reporting identified one finding related to segregation of duties which in the case of the City was mainly due to size of staff. He emphasized that they were opining on the financial statements and the fair presentation of those financial statements; they were not opining on internal controls. To overcome the hurdle with respect to what was considered good internal controls would require hiring additional staff to mitigate the finding or reduce the risk by developing compensating controls.

There were no audit adjustments for this fiscal year.

There were no unrecorded or past audit adjustments. Because of the auditing process they did not audit 100% of the transactions but were testing on a sample basis. If they were to come across an item where an adjustment was required but it was not material to finance statements, they may elect to pass on that adjustment or management may elect to say it was not material to statement, and it would not be recorded.

SINGLE AUDIT

As Mr. Stephens mentioned in the two reports there was a comment with respect to segregation of duties because that is an internal control issue. On the compliance side, the City had no findings. The major program tested this year was highway planning and construction costs.

Mr. Stephens reported on a new standard that would impact the City next year (GASB 65). Of note was a requirement that bond issuance costs amortized over the life of the bond would now be considered period costs, so they were direct write offs. For a number of municipalities this was resulting in significant hits to the net position for the write off of those bond issuance costs. Next year costs already on the books for the City would be written off to net position, but any new bond issues would be expensed as incurred. Up to this point they were set up as an asset and amortized.

Preparation of the Financial Statements involved disclosing estimates, and it was concluded management had a reasonable basis for all those estimates.

There was also a requirement to disclose any difficulties in performing the audit, and Mr. Stephens commented that management made it a pretty smooth process with open communication.

Also part of the audit process was a representation letter from management to the auditors. Any disagreements with management related to reporting matters, etc. had to be disclosed to Council. Other significant findings or issues involved a separate management letter. There were some IT access issues, but it was not felt any of these rose to the level of being in the Single Audit Internal Control report.

Mr. Markham reference the segregation of duties issue and Mr. Stephens pointed out there were no questionable transactions identified as a result. However, they were obligated to report control risks to Council. Mr. Stephens said there were some simple fixes, such as removing a person from a function that did not need to be involved with it. The second piece was audit trails with documentation of the review of audit reports as far as transactions coming out of an area of risk concern. Mr. Markham asked if auditing was currently being done against the logs. Mr. Vitola responded that some was and some was not and a lot could be done without adding staff. IT controls and supervisory oversight could be put into place and some of that was underway. Mr. Markham said there was a way to take it further down to the detail level and recommended looking for red flags that needed to be handled. Mr. Stephens agreed there were a multitude of compensating controls that could be developed, many of which were automated and did not require additional staff.

Ms. Hadden agreed with Mr. Markham and was aware of a constituent issue with the City where they were billed more than once for a business utility and getting their money back would take up to six weeks. Mr. Markham encouraged the Finance Department to look for the double billings because it was better for the City to find it first and bring it to the customer's attention.

Mr. Vitola credited Wilma Garriz, Assistant Finance Director with the fact that there were no audit adjustments and no past adjustments. Mr. Stephens noted it was deemed to be an audit adjustment if the auditor found the problem versus staff finding the problem, and that is where the communication during the year was important.

Mr. Clifton referenced Management's Discussion and Analysis (Financial Highlights) on page 13, second bulleted item, which stated the "unrestricted net position decreased by \$4.8 million in 2012 to \$23.6 million" and the next bulleted item stated "Approximately \$2.7 million is *available for spending* at the City's discretion (*unassigned fund balance*). He asked if the \$2.7 million was part of the \$23.6 million or whether it stood alone in the Enterprise Funds. Mr. Stephens explained that the \$2.7 million was part of the \$4.8 million.

Mr. Clifton referenced the section involving pensions on pages 58 which listed Plan Assets of \$40,760,760 and Unfunded Liability of \$22 million. Page 59 referred to the Net Position (Position held in trust for employees post employment benefits) of \$45 million. He asked for an explanation of the difference between the \$40 million Plan Assets on page 58 and the \$45 million on page 59. Mr. Stephens said page 58 was the actuarially determined number that makes certain assumptions with respect to the plan assets while page 59 was an actual Financial Statement of the Pension Plan cash in the bank. The amount on page 59 was the stand alone Pension Plan Financial Statement balance sheet, and the bank statements, investment statements, etc. as of 12/31/12 would show the \$45 million. Mr. Stephens further explained that the actuarial assumption for the Pension Plan had to be as of the beginning of the year while the Financial Statement for the Pension Plan was as of the end of the year so there was a year's difference. Further, they will net some liabilities of the plan against the plan's assets, and those differences explain that \$5 million difference.

Ms. Hadden pointed out that page 74 detailed the funded ratio for the Pension Plan which was at 64.8% in 2012 while in 2007 (the second highest in the past six years) was 78.26% and reminded Council there was a discussion about raising that to 90%. Mr. Stephens reported with the new standards coming out in 2014 and 2015 there was a change in the calculation about liability, and it was expected to increase significantly with respect to future funding and future liabilities. They were basically projecting out and encompassing all potential liability and that would be required to be reported on the books of the Financial Statements. Because the City had a separate

plan it was, in effect, in trust, so those numbers were not hitting the books. The disclosures were there to provide the reader with an idea of what was out there and that would all come on the books under the new standards being implemented. It was a very controversial standard because of the impact on net position. There were concerns about bond ratings because there would be entities with hundreds of millions of dollars in liability dropped on their books that was never before recorded. So the funding issue became all the more important as to when that standard would come into effect. Mr. Vitola further explained when a liability was added on the balance sheet that was a credit, and the debit had to be put somewhere.

Mr. Chapman said some members of Council may remember talking last year about making an adjustment to the standards. He thought this should be focused on internally with adjustments being made proactively. Mr. Chapman felt it would be prudent to make difficult decisions now to perhaps mitigate the ultimate cost. He recommended moving the effective date up for those changes. Ultimately the adjustments would be very minor percentage wise but would have a great impact dollar wise so when we are projecting out decades the end result was very impactful.

Ms. Houck said there was pension information they would be sharing with Council that just came in – also some interim changes were being made in management pensions and post retirement benefits, and this was significant enough that other unions would be looked at to come on board.

Ms. Hadden referenced Note 2 (Cash, Cash Equivalents and Investments – Deposits) on page 45. She asked for an explanation as to why the City did not have a written policy for custodial credit risk, where in the event of a bank failure the City's deposits may not be returned. Mr. Stephens advised this did not mean the City was not covered but many organizations had a policy saying they would accept a certain amount of custodial credit risk, were willing to go a certain amount above FDIC insurance or would only require collateralization of any investments above a certain dollar threshold. The City did not have a formal policy in place. Ms. Hadden asked if the City should have one. From an auditor's standpoint, Mr. Stephens would recommend having a custodial risk policy. However, from an economic standpoint, things were not as bad as they were in 2008 or in 1991-92 with the savings and loan crisis. He did not think the City was with any bank that was questionable by any means. That being said, in his view having an established collateralization policy in place was never a bad idea. Mr. Vitola said his policy was that 100% of everything over \$250,000 should be collateralized. Mr. Chapman added there was a temporary, unlimited guarantee of bank deposit funds because of the banking crisis in the last five years. The guarantee has since expired so the guaranteed bank deposit amounts went back down to their normal levels of \$250,000. Above and beyond that \$250,000 threshold, banks were going out and getting promises so there was something else backstopping a failure. Mr. Chapman said what Mr. Vitola was working to do was have some sort of policy and agreement in place with the City's banks that they cannot adjust those numbers below a 100% guarantee.

MOTION BY MR. CHAPMAN, SECONDED BY MR. MARKHAM: TO ACCEPT THE 2012 AUDIT/COMPREHENSIVE ANNUAL FINANCIAL REPORT AS PRESENTED.

MOTION PASSED UNANIMOUSLY. VOTE: 5 to 0.

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

Nay – 0.

Absent – Funk, Morehead.

14. 5. FINANCIAL STATEMENT: *(Ending June 30, 2013)*

01:21:05

Mr. Vitola presented the unaudited financial statement for the first half of the year which showed a consolidated operating surplus of \$1.2 million stronger than expected, which was a nice rebound after a softer May. The majority of the positive variance was attributable to the Governmental Funds where revenues continued to exceed

expectations. Permit revenues remained strong and 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 also outperforming the budget through June. Electric purchases continued to be better than budgeted and the wholesale cost per kilowatt hour was down again as DEMEC kicked off its 2014 plan year. Sewer expenses continued to track higher than budget and will continue to do so throughout the year. The County just increased sewer rates which by Code will be passed through directly to the users. A memo will be provided to Council specifying the amount of the increase and the corresponding rate tier. Mr. Vitola pointed out that the City's portion of the flow rate was not increased in more than three years. Adding that to the problems with budgeting, the margin has been shrinking in the sewer department even though the City kept pace with the County rates which comprised three quarters of the components of the rates. Mr. Vitola said while the City would do everything it could on the cost side of the equation, a rate adjustment may need to be considered at budget time or sooner.

The water margin was \$130,500 lower than the budgeted margin which was driven primarily by the timing of the budgeted revenue. There was a 5% rate increase in the budget which was introduced tonight but it was assumed that rate increase would hit all 12 months of the year. This caused an artificial underage to the budget which would be overcome in the next six months if the rate increase passed.

The other part of the negative variance was that June was one of the wettest on record. The RSA pass back grew to \$1.6 million for June, and the cash balance dipped to \$30.4 million primarily from spending Smart Meter funding. The \$30.4 million consisted of \$5.9 million in the operating accounts, \$4 million in the Smart Meter accounts and \$20.5 million in the reserve.

Regarding Mr. Vitola's comments about the water rate, Mr. Markham noted the City also hoped to get PILOT funding which did not occur.

Mr. Markham asked if there would be funds left in the RSA at the end of the year since the University was no longer part of that process under their new contract. Mr. Markham had hoped those funds could be reallocated towards stormwater issues in the City. Mr. Vitola believed those funds had to be disposed of to show that they were given back and said the University was getting them in the form of reduced rates, so they had to be consumed into the electric revenue. Mr. Chapman added that a determination would be made over the next 6-12 months when the actual effect of the net adjustment was finalized before making any larger adjustment decisions. Mr. Vitola advised the RSA was calculated late in 2012 before the UD contract was contemplated and they had to mathematically consume. Once the rate was figured out, the idea was to give that amount back over the year so there would be no balance left over that had to be computed with 2013.

Regarding funding for a stormwater utility, Mr. Vitola said if the Enterprise Funds generated surpluses, they could only be transferred into the General Fund and then be used to subsidize other funds. It could also be funded from user fees if Council made a budgetary decision to do so. Mr. Chapman felt revenues should be raised in the areas where the costs were incurred, so if costs were increasing in water and wastewater management and there was a lot of surplus because of lower costs of electricity, there should be offsetting to provide a net impact to the customer. Mr. Chapman noted Council would be seeking guidance from Finance in the next several months to figure out how best to accomplish that adjustment.

Mr. Markham asked Mr. Vitola when he would be able to provide the number which was the unencumbered amount of free cash where the City would not have to keep adding to that amount in the bank. Mr. Vitola was working on the number and Ms. Houck added it was part of the budget with a lot of moving parts right now and reminded Council of the upcoming stormwater workshop on September 30 and budget workshop on October 7.

MOTION BY MR. MARKHAM, SECONDED BY MR. TUTTLE: THAT THE FINANCIAL STATEMENTS FOR THE SIX MONTHS ENDED JUNE 30, 2013, BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 5 to 0.

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

Nay – 0.

Absent – Funk, Morehead.

15. 6. RECOMMENDATIONS ON CONTRACTS & BIDS:

A. Recommendation on Increase of Funding for Contract 13-02 – Rewind and Overhaul of a 3000/3750/4200KVA Outdoor Type Single Circuit Unit Substation

01:43:09

Ms. Houck explained that when the damaged unit was opened it was determined that additional repairs were needed. After the insurance payment of \$14,728 was applied, the balance owed was \$18,537. Funding was available in the original capital project.

Mr. Markham questioned the age of the transformer (45 years old) and asked if it was worth the effort to repair it. Ms. Houck said yes it was, and it would go back in service following the repairs.

MOTION BY MR. CHAPMAN, SECONDED BY MS. HADDEN: THAT THE ADDITIONAL REPAIR EXPENSE TOTALING \$18,937 BE AUTHORIZED TO CONTRACT NO. 13-02, REWIND AND OVERHAUL OF A 3000/3750/4200KVA OUTDOOR TYPE SINGLE CIRCUIT UNIT SUBSTATION.

MOTION PASSED UNANIMOUSLY. VOTE: 5 to 0.

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

Nay – 0.

Absent – Funk, Morehead

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

A. 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

01:44:57

Ms. Bensley read Bill 13-16 by title only.

MOTION BY MR. TUTTLE, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 13-16.

Ms. Feeney Roser explained the ordinance was prompted by recent development activity and was designed to clarify subdivision regulations. The first change dealt with the expiration of subdivision and rezoning applications. At the present time, there was no Code provision to sunset applications. Theoretically, an application could be submitted and lay dormant for years until the applicant decided to revive it. At that point, the review had to be based on the Zoning Code as it existed when the original plan was submitted. The proposed ordinance sets a 24-month limit for a plan to advance to Planning Commission review from the time it was submitted. The ordinance also provides for a one-time extension of six months for circumstances beyond the applicant's control. Thus, the longest possible time period between plan submissions and Planning Commission review was 30 months.

The second change addressed approved subdivisions. Current regulations stated that if an approved subdivision was not completed within five years of the date of Council approval, the Planning Commission may require the applicant to start over at the beginning of the process. Staff believed there was a clear distinction between a subdivision that has begun construction and had not completed it and one that has not

begun at all. The proposed amendment acknowledges that difference and if a subdivision's construction was not begun in five years it automatically expired. If construction was started and not completed, the Planning Commission could make a determination as to whether the process should start over.

Mr. Clifton asked if there were any projects in the pipeline that would be impacted by the change. Ms. Feeney Roser advised that the ordinance would become effective for subdivisions submitted after Council's approval at tonight's meeting.

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: 5 to 0.

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

Nay – 0.

Absent – Funk, Morehead.

(ORDINANCE NO. 13-17)

17. 7-B. 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

01:49:29

Ms. Bensley read Bill 13-17 by title only.

MOTION BY MR. MARKHAM, SECONDED BY MR. TUTTLE: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 13-17.

Ms. Feeney Roser referred to a PowerPoint presentation and explained the proposed ordinance would amend the definition of height in the Zoning Code to mirror the definition in the ICC Code which was used for building construction and also added the definition of grade plane which was previously undefined in the Zoning Code. At the present time the Zoning Code and the Building Code definitions were inconsistent. The definition of height in the Zoning Code was lengthy and confusing while the ICC definition of height was straightforward. Staff learned that many communities adopted the ICC definition or similar language. Ms. Feeney Roser explained that first the grade plane was calculated which was the average grade elevation at exterior walls. After taking the elevation at all four sides of the building they were averaged, and that elevation became the grade plane. Measurements were then taken from the grade plane to the highest roof surface, defined as the midpoint between the roof eave and the roof edge. When the Planning Commission reviewed the proposed amendment there was a discussion about what it meant by highest roof surface, and since the ICC definition did not directly address that, they added the following language: "The average highest roof surface is further defined as the midpoint between the highest roof eave and its roof ridge." Since there was no definition of grade plane, one was added: "The plane representing the average of the finished ground level adjoining the building at exterior walls." Ms. Feeney Roser said it was believed this minor change would provide a consistent definition of height in both the Zoning and Building Codes, an important fact since both were enforced by the same department. The definition was also easier to understand and would increase consistency and predictability for users and would allow for more flexibility and more interesting roof lines for the community and may lead to fewer requests for variances, particularly for residential buildings.

In Amendment 1 Mr. Chapman suggested adding "highest" before the words "roof ridge" in the last line to eliminate ambiguity. The second sentence would not read: "The average highest roof surface is further defined as the midpoint between the highest roof eave and its *highest* roof ridge."

Mr. Chapman asked what impact was expected from this change. Ms. Feeney Roser said it would provide just a few more feet in height. Mr. Chapman asked if the

maximum height restriction of 35 feet was the midpoint or the highest ridge. Ms. Feeney Roser confirmed it was the midpoint between the eave and the ridge, so the highest point of the structure could be higher than 35 feet.

Mr. Clifton stated the City did not regulate the angle of the peak of the roof, and asked what would happen if a developer brought the peak down to allow them to raise the usable space in the building. Ms. Feeney Roser said major subdivision regulations required the elevations to be provided, so staff could comment on odd looking features.

The Chair opened the discussion to the public.

Rick Longo, Hillcrest Associates, said because of the present Code much of what was built on South Main Street was flat roofs. The proposed change would encourage more of a residential look, with a roof that lasts longer because it sheds water and snow and was better for heating and air conditioning. Mr. Longo said he could not currently produce a good looking building without obtaining a variance from the Board of Adjustment for 3 to 5 feet in additional height. Further, he did not feel it was appropriate for the Board of Adjustment to handle such cases but said it should be up to Planning and Council to look to the Code to insure that all architects could do the best possible work for the City.

Mr. Longo favored the change since it would help developers be more creative and would lessen the need for variance requests at the Board of Adjustment. He felt the developers in Newark were looking for these roof lines because if the student housing stock ever changed to owner occupied, the people who would live in the units would want the more attractive steeper pitched roofs.

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

AMENDMENT BY MR. CHAPMAN, SECONDED BY MR. MARKHAM: IN AMENDMENT 1, SECTION 32-4(a)(53), LAST LINE, ADD THE WORD "HIGHEST" BETWEEN "ITS" AND "ROOF RIDGE", SO THE SENTENCE READS, "THE AVERAGE HIGHEST ROOF SURFACE IS FURTHER DEFINED AS THE MIDPOINT BETWEEN THE HIGHEST ROOF EAVE AND ITS *HIGHEST* ROOF RIDGE."

AMENDMENT PASSED UNANIMOUSLY. VOTE: 5 to 0.

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

Nay – 0.

Absent – Funk, Morehead.

Question on the Motion as amended was called.

MOTION AS AMENDED PASSED UNANIMOUSLY. VOTE: 5 to 0.

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

Nay – 0.

Absent – Funk, Morehead.

(ORDINANCE NO. 13-18)

- 18. 7-C. 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**

02:07:59

Ms. Bensley read Bill 13-20 by title only.

Ms. Bensley reviewed the ordinance which contained three amendments. Amendment 1 changed the deadline for filing nominating petitions for candidates for

Mayor and Council and was in conjunction with the Charter changes recently passed by the State legislature. This allowed the deadline to be changed from at least 29 days before the next municipal election to not later than the Monday which is between 60 and 66 days before the next municipal election. Since Newark holds elections on Tuesdays, the filing deadline would typically fall about 64 days before the election.

Ms. Bensley explained that Amendments 2 and 3 came to light during the last election cycle and make minor corrections to the written boundaries of Districts 3 and 4. No changes were made to the maps nor were any residents moved to another district. The Newark Board of Elections was consulted to make sure the boundaries match the Council district map.

MOTION BY MR. TUTTLE, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 13-20.

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: 5 to 0.

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

Nay – 0.

Absent – Funk, Morehead.

(ORDINANCE NO. 13-19)

19. 8. RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING & DEVELOPMENT DEPARTMENT: *None*

20. 9. ITEMS SUBMITTED FOR PUBLISHED AGENDA:

A. Council Members: *None*

21. 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 9:06 pm. and returned to the table at 9:42 pm.

Mr. Clifton advised that no action was necessary by Council at this time.

22. Meeting adjourned at 9:43 pm.

Renee K. Bensley
City Secretary